

**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN RE:)	
)	
JOHN WAYNE ATCHLEY and)	
ROBIN APRIL ATCHLEY,)	
)	CASE NO. 05-79232-MHM
Debtors)	
)	CHAPTER 13
)	
)	
)	

DONALD F. WALTON,)	
United States Trustee for Region 21,)	
)	
Plaintiff,)	ADVERSARY NO. 08-6092
)	
vs.)	
)	
COUNTRYWIDE HOME LOANS, INC.,)	
)	
Defendant.)	

**DEFENDANT COUNTRYWIDE HOME LOANS, INC.’S MEMORANDUM OF LAW IN
SUPPORT OF ITS MOTION TO WITHDRAW THE REFERENCE TO THE
BANKRUPTCY COURT**

RELIEF IS SOUGHT FROM A UNITED STATES DISTRICT JUDGE

Defendant Countrywide Home Loans, Inc. (“Countrywide”), files this Memorandum of Law in support of its Motion to Withdraw the Reference to the Bankruptcy Court pursuant to 28 U.S.C. § 157(d) and Federal Rule of Bankruptcy Procedure 5011(a):

I.

INTRODUCTION

Plaintiff Donald F. Walton, United States Trustee for Region 21 (“Plaintiff”), filed this adversary proceeding claiming the power to sue Countrywide for injunctive relief and for sanctions under section 105 of the Bankruptcy Code and the Bankruptcy Court’s inherent powers “for engaging in bad faith conduct which has abused the judicial process.” The alleged violations which Plaintiff contends constitute abuse of the judicial process were remedied long before Plaintiff filed this adversary proceeding, and the debtors in this case are not participating in the proceeding.¹ Even if the Plaintiff’s allegations are accepted as true, this case should not be heard in the Bankruptcy Court.

The District Court has three distinct bases to withdraw the reference to the Bankruptcy Court. First, the Bankruptcy Court lacks jurisdiction to hear these claims under 28 U.S.C. § 1334. Second, the Bankruptcy Court lacks jurisdiction to award the type of relief Plaintiff seeks. Third, the permissive factors for withdrawal of the reference weigh strongly in favor of withdrawal.

II.

FACTUAL BACKGROUND

Plaintiff, a United States trustee, alleges that Countrywide filed two allegedly inaccurate motions for relief from stay on February 21, 2006, and May 24, 2006, assessed charges without disclosing how the fees arose in a May 11, 2007 payoff statement, received payments on these

¹ This lawsuit joins two almost identical lawsuits filed by the Plaintiff and another United States Trustee, one in the United States Bankruptcy Court for Southern District of Florida and another filed by Habbo Fokkena, United States trustee for Region 9, in the United States Bankruptcy Court for the Northern District of Ohio. *See Walton v. Countrywide Home Loans, Inc. (In re Sanchez)*, Case No. 01-42230-BKC-AJC, Adv. No. 08-1176 (Bankr. S.D. Fla. 2008); *Fokkena v. Countrywide Home Loans, Inc. (In re O’Neal)*, Case No. 07-51027, Adv. No. 08-5031 (Bankr. N.D. Ohio 2008); (Compl. ¶ 50). While the underlying facts are slightly different in each case, in all cases the plaintiff improperly invokes bankruptcy jurisdiction to obtain sanctions and impermissible injunctive relief.

charges through the sale of the debtors' residence, and that Countrywide continued to accept payments on June 1, 2007, and July 1, 2007, from the Chapter 13 trustee after the satisfaction of the mortgage. (Compl. at Sections B, C, D). Plaintiff acknowledges that Countrywide withdrew the first motion for relief from stay on February 28, 2006, and withdrew the second motion for relief from stay on June 20, 2006. (Compl. at ¶¶ 19, 26). Plaintiff also acknowledges that Countrywide issued refund checks for monies received after satisfaction of the loan on November 7, 2007, and withdrew its proof of claim on November 17, 2007. (Compl. at ¶¶ 39, 41). Plaintiff alleges that this "pattern of conduct" has resulted in "an abuse of the bankruptcy process" on a national level. (Compl. at Section E). Plaintiff does not allege any continuing violation of any court orders or Bankruptcy Code provisions.

III.

ARGUMENTS AND AUTHORITIES

Under 28 U.S.C. § 157(d), a district court has authority to withdraw the reference to the bankruptcy court "on timely motion of any party, for cause shown." *See also* Fed. R. Bankr. P. 5011(a). This motion is timely because it challenges jurisdiction, and a court must always have jurisdiction over a case in order to proceed.² Additionally, Countrywide shows cause for withdrawal as follows.

A. The Bankruptcy Court Lacks Jurisdiction Over This Proceeding.

Bankruptcy court jurisdiction is "grounded in, and limited by statute." *Celotex Corp. v. Edwards*, 514 U.S. 300, 307 (1995); *see Miller v. Kemira, Inc. (In re Lemco Gypsum)*, 910 F.2d 784, 786-87 (11th Cir. 1990) (discussing the limits on bankruptcy jurisdiction following *Marathon Pipeline*). An exercise of jurisdiction by a bankruptcy court requires two steps: first,

² The lack of subject matter jurisdiction may be raised at any time during pendency of the case, "even initially at the highest appellate level." *Kontrick v. Ryan*, 540 U.S. 443, 455 (2004); FED. R. CIV. P. 12(h)(3).

jurisdiction must be proper in the district court, and, second, the bankruptcy court's exercise of power must be an appropriate exercise of core or non-core jurisdiction.³ *Id.* at 787. Relevant here, district courts have the power to hear cases "under title 11," and "arising under title 11 or arising in or related to cases under title 11." 28 U.S.C. § 1334(a), (b). The jurisdiction of bankruptcy courts is then dependent upon and derivative of district court jurisdiction. *Celotex*, 514 U.S. at 307. Cases "under," "arising under," "or arising in . . . cases under title 11" require invocation of either substantive rights or the handling of administrative matters under the Bankruptcy Code. *In re Toledo*, 170 F.3d 1340, 1344-45 (11th Cir. 1999).

In determining whether a case is "related to" a case under title 11, the Eleventh Circuit follows the Third Circuit's test in *Pacor v. Higgins*, 743 F.2d 984 (3d Cir. 1984):

The usual articulation of the test for determining whether a civil proceeding is related to bankruptcy is whether the outcome of the proceeding could conceivably have an effect on the estate being administered in bankruptcy. The proceeding need not necessarily be against the debtor or against the debtor's property. An action is related to bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankrupt estate.

Lemco Gypsum, 910 F.2d at 788 (citing *Pacor*, 743 F.2d at 994). The Eleventh Circuit added a "general principle" to this test: "if the resolution of litigation cannot affect the administration of the estate, the bankruptcy court does not have jurisdiction to decide it." *In re Gallucci*, 931 F.2d 738, 742 (11th Cir. 1991). Furthermore, "overlap between the bankrupt's affairs and another dispute is insufficient unless its resolution also affects the bankrupt's estate or the allocation of assets among creditors." *Lemco Gypsum*, 910 F.2d at 789. The Supreme Court has noted that it is "clear bankruptcy courts have no jurisdiction over proceedings that have no effect on the debtor." *Celotex*, 514 U.S. at 308 n. 6.

³ The lack of core jurisdiction over this proceeding will be addressed in Section C, *infra*.

Plaintiff cannot establish “related to” jurisdiction. The cause of action would have to involve the administration of the estate or the allocation of assets among creditors, and the Complaint fails to seek any money damages for the benefit of the estate and certainly fails to adjust allocation of assets under the Plan. *See Lemco Gypsum*, 910 F.2d at 789; *Gallucci*, 931 F.2d at 742.

Furthermore, section 105 of the Bankruptcy Code cannot provide a basis for jurisdiction where it is otherwise lacking. *Cunningham v. Pension Benefit Guaranty Corp.*, 235 B.R. 609, 618 (N.D. Ohio 1999). To the extent that a court attempts to retain jurisdiction under section 105 after confirmation of a plan, that jurisdiction is “limited to matters concerning the implementation or execution of a confirmed plan.” *Id.* at 617. Section 105 “does not authorize the bankruptcy courts to create substantive rights that are otherwise unavailable under applicable law....” *United States v. Sutton*, 786 F.2d 1305, 1308 (5th Cir. 1986) (citing *Southern Ry. Co. v. Johnson Bronze Co.*, 758 F.2d 137, 141 (3d Cir. 1985)). A court sitting in bankruptcy by section 105 is not a “roving commission to do equity.” *Bessette v. Avco Fin. Servs., Inc.*, 230 F.3d 439, 444-45 (1st Cir. 2000); *see also Guetling v. Household Fin. Servs., Inc.*, 312 B.R. 699, 704-05 (M.D. Fla. 2004). And, section 105 cannot be used by a court to “legislate” by adding remedies. *Pertuso v. Ford Motor Credit Co.*, 233 F.3d 417, 423 (6th Cir. 2000). Additionally, a bankruptcy court’s authority under section 105 is limited by the language of the statute itself as only allowing orders “‘necessary and appropriate’ to carry out the provisions of the Bankruptcy Code.” *In re Hardy*, 97 F.3d 1384, 1390 (11th Cir. 1996) (citing *Jove Engineering, Inc. v. Internal Revenue Service*, 92 F.3d 1539, 1553 (11th Cir. 1996)).

B. The Bankruptcy Court Lacks Jurisdiction To Grant The Relief Plaintiff Seeks.

The relief Plaintiff seeks is inappropriate for the Bankruptcy Court's consideration. First, the sanctions Plaintiff seeks could only be awarded in criminal contempt, and the Bankruptcy Court lacks criminal contempt powers. Second, Plaintiff seeks injunctive relief that would be improper if entered by any court.

i. Any monetary penalty awarded in this case would be in the nature of a criminal contempt penalty, and bankruptcy courts lack criminal contempt powers.

Contempt sanctions can either be classified as civil or criminal. Civil contempt sanctions coerce compliance with a court order, and, as a result, a party can avoid sanctions through obedience. *Int'l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 812, 827 (1994). However, criminal contempt sanctions are punitive, aimed at vindicating the authority of the court. *Id.* at 828; *see also Placid Refining Co. v. Terrebonne Fuel & Lube, Inc. (In re Terrebonne Fuel & Lube, Inc.)*, 108 F.3d 609, 612 (5th Cir. 1997). Because the proper classification of a contempt sanction requires an examination of its "character and purpose," a court must look to the "character of the relief" to decide whether a sanction is criminal or civil. *Bagwell*, 512 U.S. at 827. A fine will be considered a civil sanction if a party can avoid the fine through compliance or if it is designed to compensate a party for the contemnor's conduct. *Id.* at 829. However, a flat fine, "totaling even as little as \$50 is criminal if the contemnor has no subsequent opportunity to reduce or avoid the fine through compliance." *Id.* at 829.

Bankruptcy courts lack the power to hold parties in criminal contempt. *In re Hardy*, 97 F.3d 1384, 1390 (11th Cir. 1996) (noting that bankruptcy courts under section 105 "may only impose sanctions for contempt that are coercive and not punitive"); *see In re Hipp, Inc.*, 895 F.2d 1503 (5th Cir. 1990) (finding no constitutional, statutory, or inherent authority for a bankruptcy court to exercise criminal contempt powers). If a plaintiff seeks "money damages in the form of

a fixed, non-compensatory fine, then the court may not order such monetary damages, as they are punitive and not coercive.” *Hardy*, 97 F.3d at 1390.

The United States District Court for the Western District of Texas addressed the civil and criminal contempt distinction in deciding an appeal of contempt sanctions from a bankruptcy court. *See In re Rodriguez*, 2007 WL 593582 (W.D. Tex. 2007). In *Rodriguez*, a debt counselor, Divins, had repeatedly violated bankruptcy court orders and injunctions over the course of several proceedings. *Id.* at 2-5. The United States trustee filed a motion seeking an order for Divins to show cause why she should not be held in contempt for these violations. *Id.* at 1. The bankruptcy judge characterized the proceeding as a civil contempt proceeding and imposed sanctions consisting of \$15,000 for three prior violations of court orders and \$6,000 to compensate the debtor. *Id.* at 4-5. On appeal, the district court noted that bankruptcy courts may conduct civil contempt proceedings but lack the authority to hold criminal contempt proceedings. *Id.* at 7-8. Applying distinctions between civil and criminal contempt outlined by the United States Supreme Court, the district court determined that the \$15,000 sanction was an inappropriate criminal contempt sanction because no level of compliance by Divins would have avoided the penalty; rather, the penalty punished Divins for prior conduct. *Id.* at 11-14 (citing *Gompers v. Buck's Stove & Range Co.*, 221 U.S. 418 (1911) and *Bagwell*, 512 U.S. at 821). Conversely, the \$6,000 sanction fairly compensated the debtor for losses suffered due to Divins' conduct, and compensation is an appropriate goal of civil contempt. *Id.* at 15.

Plaintiff as a matter of law cannot be pursuing civil contempt because any imposition of “monetary sanctions” would not compensate the debtors or coerce compliance with a court order. *See Bagwell*, 512 U.S. at 827; (Compl. at 10). *See Bagwell*, 512 U.S. at 827; (Compl. at 16). The debtors, the only persons even arguably injured by Countrywide's alleged conduct, are not

parties to this proceeding, and the Plaintiff does not purport to seek monetary damages on the debtors' behalf. Nor does Plaintiff purport to coerce compliance with any orders. The sanctions Plaintiff seeks are undoubtedly punitive in nature and aimed at vindicating the authority of the Court and addressing an alleged "pattern of conduct" by a "national lender and servicer of secured loans." See *Bagwell* at 829; (Compl. at 8). The reference to the Bankruptcy Court should be withdrawn because this relief could only be awarded, if at all, in the District Court. See *Hipp*, 895 F.2d at 1505; *Rodriguez*, 2007 WL 593582 at 16.

ii. Plaintiff's claim for injunctive relief is improper, leaving the Bankruptcy Court without authority to award any relief in this matter.

Plaintiff's claim for injunctive relief fails on a number of grounds. First, an injunction against future conduct requires proof of a "real and immediate threat" of future injury accompanied by "continuing, present adverse effects." *Elend v. Basham*, 471 F.3d 1199, 1207-08 (11th Cir. 2006); *Koziara v. City of Casselberry*, 392 F.3d 1302, 1305 (11th Cir. 2004) (quoting *Nat'l Parks Conservation Ass'n v. Norton*, 324 F.3d 1229, 1241 (11th Cir. 2003)). Second, the requested injunctive relief is "impermissible" and unnecessary if it merely amounts to an injunction to obey the law. *Elend*, 471 F.3d at 1209; *Burton v. City of Belle Glade*, 178 F.3d 1175, 1200-01 (11th Cir. 1999) (finding that the district court correctly refused to issue requested injunction ordering defendant city not to discriminate as such injunction would amount to an order to "obey the law"). Finally, a request for an injunction requires specificity and clear guidance. See *Burton*, 178 F.3d at 1200 (rejecting requested injunctive relief on basis that injunction must contain an operative command capable of enforcement); *Federal Elec. Comm'n. v. Furgatch*, 869 F.2d 1256, 1263-64 (9th Cir. 1989).

Plaintiff's claim for injunctive relief fails on all of these grounds. Plaintiff has failed to show an imminent threat of future injury or any continuing, current injury warranting any sort of

injunction. *See Elend*, 471 F.3d at 1207-08. Any injury alleged occurred in the past and has been resolved, leaving no current conduct warranting restraint. Plaintiff's failure to prove future injury spills into the next gap in the Plaintiff's argument for injunctive relief, for Plaintiff requests an injunction that Countrywide obey the bankruptcy laws by not "engaging in bad faith and abusive practices"—practices already prohibited by, *inter alia*, Federal Rule of Bankruptcy Procedure 9011. *See Elend*, 471 F.3d at 1209 (calling injunctions to obey the law "impermissible" in the Eleventh Circuit). Any hypothetical future injury requiring injunctive restraint is addressed by existing rules and procedures and the injunction Plaintiff seeks would be an unnecessarily duplicative decree. Moreover, the claim for injunctive relief lacks any degree of specificity and fails to provide any real guidance for Countrywide's future conduct.

The injunctive relief Plaintiff seeks cannot be awarded by the Bankruptcy Court.⁴ The inability of the Bankruptcy Court to redress the Plaintiff's alleged injury requires withdrawal of the reference. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992) (listing redressability as a requirement of standing).

C. The Permissive Factors For Withdrawal Of The Reference Weigh In Favor Of Withdrawal.

While the above points address why the District Court must withdraw the reference due to a lack of bankruptcy court jurisdiction, the District Court should also withdraw the reference after considering the following factors for permissive withdrawal: whether the matter is core or non-core; whether the claim is legal or equitable; whether the claim is triable to a jury; whether withdrawal would provide the most efficient use of judicial resources; whether withdrawal will avoid forum shopping; whether withdrawal will conserve party resources; and whether withdrawal will promote uniformity in bankruptcy administration. *In re Orion Pictures Corp.*, 4

⁴ Countrywide's arguments also address why the Plaintiff's desired injunctive relief will also be unattainable in the District Court.

F.3d 1095, 1101 (2d Cir. 1993); *In re Parklane/Atlanta Joint Venture*, 927 F.2d 532, 536 n. 5 (11th Cir. 1991); *Holland Am. Ins. Co. v. Succession of Roy*, 777 F.2d 992, 999 (5th Cir. 1985).

i. This is not a core proceeding.

The issue of whether the proceeding is a core or non-core proceeding is primary “since it is upon this issue that questions of efficiency and uniformity will turn.” *In re Orion*, 4 F.3d at 1101. District courts may refer to bankruptcy courts the power to “hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11.” 28 U.S.C. § 157(b)(1). The statute presents a non-exclusive list of core proceedings, followed by a catch-all provision covering “other proceedings affecting the liquidation of assets of the estate.” 28 U.S.C. § 157(b)(2)(O). All core proceedings have “an overarching requirement that property of the estate under § 541 be involved.” *In re Toledo*, 170 F.3d 1340, 1348 (11th Cir. 1999).

Bankruptcy court jurisdiction over non-core proceedings is limited to those that are “otherwise related to a case under title 11”; however, any final order or judgment in a non-core proceeding must be entered by a district court. 28 U.S.C. § 157(c)(1). Even the “related to” requirement for non-core jurisdiction requires a connection to the estate, for “if the action does not involve property of the estate, then not only is it a noncore (*sic*) proceeding, it is an unrelated matter completely beyond the bankruptcy court’s subject matter jurisdiction.” *In re Gallucci*, 931 F.2d 738, 742 (11th Cir. 1991).

Section 105 of the Bankruptcy Code may not be used to convert a non-core proceeding into one that is core. *Cunningham*, 235 B.R. at 618. This comports with the more general rule that section 105 cannot be used to create substantive rights or to create bankruptcy court

authority not otherwise present in the Bankruptcy Code. *See Hardy*, 97 F.3d at 1390 (11th Cir. 1996); *Sutton*, 786 F.2d at 1308 (5th Cir. 1986).

Plaintiff specifically alleges that this is a core proceeding because it concerns the administration of the debtors' estate under § 157(b)(2)(A), because it involves the allowance or disallowance of claims under § 157(b)(2)(B), and because it either terminates, annuls, or modifies the automatic stay under § 157(b)(2)(G). These arguments are meritless.

Even if the relief Plaintiff seeks could be granted by the Bankruptcy Court, there would be absolutely no effect on the administration of the debtors' estate. Plaintiff does not seek money to administer within the estate or any modification to the plan or any adjustment to the debtors' right to discharge. Thus, this cannot be a core proceeding under § 157(b)(2)(A).

Additionally, Plaintiff is not attempting to adjudicate the allowance or disallowance of any claim under § 157(b)(2)(B). Countrywide's claim was addressed and determined in the Bankruptcy Court. No issue remains to be decided. This argument also fails.

Nor has Plaintiff moved "to terminate, annul, or modify the automatic stay" to support core jurisdiction under 28 U.S.C. § 157(b)(2)(G). Even if Plaintiff were seeking enforcement of the automatic stay for a current stay violation, § 157(b)(2)(G) would not make that effort a core proceeding. Any alleged stay violation has already been remedied. This cannot be a core proceeding under § 157(b)(2)(G).

Moreover, this proceeding is not even "related to" a core proceeding under § 157(c). This proceeding will have no effect whatsoever on the debtors' bankruptcy estate, and Plaintiff fails to allege any facts that would involve estate property or the administration of any estate. *See Gallucci*, 931 F.2d at 742. While this argument underscores the lack of bankruptcy court jurisdiction, it also reveals that, even if the District Court finds the proceeding to be a non-core

proceeding somehow “related to” a case under title 11, the Court will have to review the entire Bankruptcy Court proceeding *de novo*, which relates to questions of efficiency and uniformity addressed in more detail below. *See* 28 U.S.C. § 157(c)(1).

ii. The claims are both legal and equitable in nature, so the second factor provides little guidance.

Plaintiff invokes the Bankruptcy Court’s equitable powers under section 105(a). (Compl. at 1). The claim for equitable relief would make this the only factor weighing against withdrawal of the reference, but the Bankruptcy Court lacks the authority to enter the injunction Plaintiff seeks, and the District Court will be equally capable to address these claims if they are viable.

iii. The claims are triable by jury, and Countrywide may demand a jury trial.

Right to a trial by jury weighs strongly in favor of withdrawing the reference because bankruptcy judges are constitutionally prohibited from holding jury trials in non-core matters. *Orion*, 4 F.3d at 1101. The right to a trial by jury arises for claims of serious criminal contempt as well as claims for injunctive relief when coupled with claims for compensatory or punitive damages. *See Bloom v. State of Illinois*, 391 U.S. 194, 201-02 (1968); *Leary v. Daeschner*, 349 F.3d 888, 910 (6th Cir. 2003). Because the right to trial by jury attaches here, this factor also favors withdrawal of the reference.

iv. Withdrawal of the reference will result in the most efficient use of judicial resources.

Withdrawal of the reference will conserve judicial resources for a number of reasons. First, the Bankruptcy Court lacks jurisdiction to hear any of these claims, so the District Court will inevitably have to review the matter. Moreover, Plaintiff has failed to allege how the proceeding is either a core or a non-core proceeding. Non-core proceedings must be tried *de novo* by the district court. 11 U.S.C. § 157(c)(1); *In re Orion Pictures*, 4 F.3d at 1100-01.

Also, due to the significance of the proceedings between Countrywide and the United States trustee across the United States, an appeal to the District Court of the Bankruptcy Court's decision is inevitable, and inevitable appeal weighs in favor of withdrawal. *See Veldekens v. GE HFS Holdings, Inc.*, 362 B.R. 762, 763 (S.D. Tex. 2007). Appeals of non-core proceedings to the district court require *de novo* review, so the efficient solution is trial by the District Court in the first place. *See* 28 U.S.C. § 157(c)(1).

This proceeding remains in its infancy. Countrywide has yet to file an answer in the case, the Bankruptcy Court has not held hearings, and no discovery has been conducted. Thus, by withdrawing the reference now the District Court does not risk wasting judicial resources already devoted to the matter.

v. Withdrawal of the reference will help eliminate forum-shopping.

While Plaintiff here has filed two adversary proceedings with a third filed by the United States trustee in Ohio, all of these lawsuits seek the same relief. These multiple filings of similar lawsuits in three bankruptcy courts all seeking the same relief could be an indication that the United States trustee may be engaging in forum-shopping.⁵ If the United States trustee wanted an injunction that would operate nationally against Countrywide, it could have filed suit in a single court of competent jurisdiction, rather than seeking the same relief from multiple courts. As postured, nothing prevents the United States trustee from filing similar suits in every jurisdiction in the United States seeking the same relief until it finds a court that will grant it.

On the other hand, Countrywide does not seek withdrawal of the reference in an attempt to forum-shop. Rather, Countrywide hopes to avoid an unnecessary proceeding in a bankruptcy court that manifestly lacks jurisdiction. *See Veldekens*, 362 B.R. at 763 (favoring withdrawal because the district court would face fewer jurisdictional objections). Additionally, Countrywide

⁵ *See* note 1, *supra*.

hopes to expedite the inevitably long appellate process by resolving matters at the District Court initially instead of having to repeat efforts on a *de novo* review. *See* 11 U.S.C. § 157(c)(1).

vi. Withdrawal of the reference will conserve the parties' resources.

As noted above, any resolution of this proceeding by the Bankruptcy Court will certainly be appealed. If the Bankruptcy Court enters any relief for Plaintiff, it will have exceeded its authority and improperly exercised subject matter jurisdiction, both providing strong grounds for appeal. *See* Sections A & B, *supra*.

Instead, withdrawing the reference allows initial determination of these issues by the District Court, allowing both parties to conserve resources. If the reference is not withdrawn, because this proceeding is non-core, *de novo* review by the District Court is required, forcing the parties to repeat any proceeding conducted before the Bankruptcy Court. *See* 11 U.S.C. § 157(c)(1).

vii. Withdrawal of the reference will provide uniformity in bankruptcy administration.

Countrywide presently faces the prospect of three different bankruptcy court determinations, potentially followed by three different district court determinations on appeal, and the additional risk of distinct circuit court of appeal decisions. The United States trustee is asserting unprecedented powers in filing these lawsuits, and resolution of these claims will require the adjudication of challenges to the United States trustee's standing and role in the bankruptcy system. *See* Countrywide's Motion to Dismiss. Resolution of these questions will involve distinct resolution of constitutional standing issues, bankruptcy court jurisdictional issues, United States trustee standing issues, and issues regarding types of relief available in bankruptcy and through injunctions.

The potential complications from this fragmented process could be profound. If the Bankruptcy Court for the Northern District of Georgia grants the Plaintiff's injunction while the Bankruptcy Court for the Northern District of Ohio dismisses the proceeding for a lack of United States trustee authority, one order will, in essence, collaterally attack the other, and the inconsistencies will make compliance with any injunction difficult while leaving secured creditors and the United States trustee uncertain about their respective rights, duties, and powers.

By withdrawing the reference, the District Court can do its part to eliminate one decision-maker from the process, which will promote uniformity.

IV.

CONCLUSION

The District Court should withdraw the reference to the Bankruptcy Court. Withdrawal is proper because the Bankruptcy Court lacks jurisdiction to consider these matters. *See* 28 U.S.C. §§ 157, 1334. Additionally, the Bankruptcy Court cannot redress Plaintiff's claims because Plaintiff seeks sanctions in the nature of criminal contempt and an impermissible injunction requiring Countrywide to do no more than obey the law. *See Hipp*, 895 F.2d at 1505; *Elend*, 471 F.3d at 1209. Finally, the permissive factors for withdrawal reveal that this non-core proceeding should be efficiently adjudicated by a court able to enter final relief. *See Orion*, 4 F.3d at 1101; 28 U.S.C. § 157(c)(1). For these reasons, the District Court should grant Countrywide's Motion to Withdraw the Reference to the Bankruptcy Court.

Respectfully submitted this 28th day of May, 2008.

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**ATTORNEYS FOR COUNTRYWIDE HOME
LOANS, INC.**

**UNITED STATES BANKRUPTCY COURT
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JOHN WAYNE ATCHLEY and)	
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DONALD F. WALTON,)	
United States Trustee for Region 21,)	
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Plaintiff,)	ADVERSARY NO. 08-6092
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CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of May, 2008, I electronically filed the foregoing Defendants' Memorandum of Law in Support of Its Motion to Withdraw the Reference to the Bankruptcy Court with the Clerk of Court using the CM/ECF system. I further certify that I served a copy of the foregoing by United States Mail postage prepaid and delivered to:

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