

AUG 19 2014

NOT FOR PUBLICATION

SUSAN M. SPRAUL, CLERK  
U.S. BKCY. APP. PANEL  
OF THE NINTH CIRCUIT

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

In re: ) BAP No. NC-13-1469-DJuKu  
 )  
 MARCO GUTIERREZ and JENNIFER ) Bk. No. 08-44503  
 GUTIERREZ, )  
 )  
 Debtors. )  
 )  
 )  
 MARCO GUTIERREZ; JENNIFER )  
 GUTIERREZ, )  
 )  
 Appellants, )  
 )  
 v. ) **M E M O R A N D U M**<sup>1</sup>  
 )  
 JOHN DIAZ COKER; IRENE MACIAS, )  
 )  
 Appellees. )  
 )

Argued and Submitted on July 24, 2014  
at San Francisco, California

Filed - August 19, 2014

Appeal from the United States Bankruptcy Court  
for the Northern District of California

Honorable M. Elaine Hammond, Bankruptcy Judge, Presiding

Appearances: Appellants Marco Gutierrez and Jennifer Gutierrez  
argued pro se; John Diaz Coker, Esq. argued pro se  
and for Appellee Irene Macias.

Before: DUNN, JURY and KURTZ, Bankruptcy Judges.

<sup>1</sup> This disposition is not appropriate for publication.  
Although it may be cited for whatever persuasive value it may  
have (see Fed. R. App. P. 32.1), it has no precedential value.  
See 9th Cir. BAP Rule 8013-1.

1 Debtor appellants Marco A. Gutierrez ("Mr. Gutierrez") and  
2 Jennifer V. Gutierrez ("Ms. Gutierrez") (collectively, "Debtors")  
3 appeal the bankruptcy court's order denying their motion for  
4 contempt for violation of the discharge injunction ("Motion")  
5 against appellees Irene Macias ("Ms. Macias") and John Diaz Coker  
6 ("Mr. Coker") (collectively, "Appellees"). The Debtors contend  
7 that the bankruptcy court erred in determining that the Appellees  
8 did not willfully violate the discharge injunction. We conclude  
9 otherwise, and we AFFIRM.

#### 10 I. FACTUAL BACKGROUND

11 The Debtors and Appellees each filed multiple, voluminous  
12 declarations setting forth their conflicting versions of events  
13 in support of and in opposition to the Motion prior to the  
14 evidentiary hearing on the Motion before the bankruptcy court,  
15 which they have submitted in their excerpts of record. However,  
16 the parties did not include in their excerpts of record the  
17 bankruptcy court's Memorandum Decision ("Memorandum Decision"),  
18 entered on September 9, 2013, that set forth its findings of fact  
19 and conclusions of law for purposes of Civil Rule 52(a),  
20 applicable with respect to the Motion under Rules 7052 and 9014,<sup>2</sup>  
21 or its Order Denying Motion for Contempt ("Order"), entered on  
22 the same date. We located and reviewed the Memorandum Decision  
23 and the Order in exercising our discretion to review the  
24

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25 <sup>2</sup> Unless otherwise indicated, all chapter and section  
26 references are to the federal Bankruptcy Code, 11 U.S.C.  
27 §§ 101-1532, and all "Rule" references are to the Federal Rules  
28 of Bankruptcy Procedure, Rules 1001-9037. All "Civil Rule"  
references are to the Federal Rules of Civil Procedure.

1 bankruptcy court's electronic docket and the documents on record  
2 therein. See O'Rourke v. Seaboard Sur. Co. (In re E.R. Fegert,  
3 Inc.), 887 F.2d 955, 957-58 (9th Cir. 1989); Atwood v. Chase  
4 Manhattan Mortg. Co. (In re Atwood), 293 B.R. 227, 233 n.9 (9th  
5 Cir. BAP 2003). The following factual narrative relies  
6 substantially on the factual information included in the  
7 Memorandum Decision.

8 A. Pre-Bankruptcy Relations

9 This appeal arises from the personal relationship between  
10 the Debtors and Ms. Macias that ripened into friendship but  
11 ultimately soured into estrangement and antipathy. The Debtors  
12 formed and operated Hidalgo Properties, a real estate and  
13 mortgage brokerage business. Ms. Macias worked for the Debtors  
14 from 2006 until 2008, first as a real estate assistant and later  
15 as a real estate broker under Mr. Gutierrez' license. Hidalgo  
16 Properties eventually grew to encompassing 60 agents and  
17 assistants with four branches in Antioch, Citrus Heights, Madera  
18 and Concord, California. However, with the recession, Hidalgo  
19 Properties and the Debtors fell on hard times, and the Debtors  
20 experienced financial difficulties. As Ms. Macias recalled,  
21 "Toward the end of the time I was with them [the Debtors] began  
22 to do loan modifications and bankruptcies, as their regular real  
23 estate business decreased. With the real estate crisis of 2007,  
24 their business decreased so much that they fell behind in paying  
25 commissions so they lost all but two of their agents."

26 Ms. Macias Declaration, at p. 2.

27 In July 2007, facing eviction from the Antioch office, the  
28 Debtors moved their business office into their home. During the

1 period from mid-2007 through 2008, Ms. Macias continued to work  
2 for the Debtors. She stated in her Declaration:

3 I became the office manager, and continued as agent  
4 when all of their other agents left them. My  
5 relationship became personal and I even helped  
6 [Debtors] with frequent small loans, with housekeeping,  
7 and with the care of their children.

8 I was occasionally paid, but more often I was asked to  
9 give them money because they were in financial  
10 difficulty with their large house . . . .

11 Ms. Macias Declaration, at pp. 2-3. Ms. Gutierrez stated in her  
12 Declaration that her husband "believed the debt owed to Miguel  
13 and Irene Macias to be approximately \$50,000." Ms. Gutierrez  
14 Declaration, at p. 11.

15 In his Declaration, Miguel Macias stated, "As Marco  
16 Gutierrez' business declined my wife [Ms. Macias] and I became  
17 close to them and helped them by sharing some of my earnings from  
18 other employment." Miguel Macias Declaration, at p. 2. In fact,  
19 when utilities were shut off at the Debtors' home for nonpayment,  
20 the Debtors moved their family in with Mr. and Ms. Macias for a  
21 short period. However, over time, the relationship between the  
22 Debtors and Mr. and Ms. Macias deteriorated to the point where  
23 Ms. Macias decided to cut off all ties with the Debtors and  
24 ceased communications.

#### 25 B. The Debtors' Bankruptcy

26 The Debtors are no strangers to bankruptcy court. They have  
27 filed "a total of 14 bankruptcy cases (either jointly or  
28 individually)." Memorandum Decision, at p. 2; Mr. Coker  
Declaration, at p. 8. The chapter 7 case ("Chapter 7 Case") from  
which this appeal arises was filed on August 19, 2008, and is the  
only one of the Debtors' bankruptcy cases in which they obtained

1 a discharge. At oral argument, Ms. Gutierrez insisted that the  
2 Chapter 7 Case was only the Debtors' third bankruptcy filing.

3 Ms. Macias stated in her Declaration,

4 During the time I was working with [Debtors] they  
5 explained to me how they were using the bankruptcy  
6 court to prevent foreclosure on their home and to  
7 prevent other collection efforts, since they had no  
8 money. Mrs. Gutierrez explained to us that the way  
9 they were preventing a foreclosure was by filing for  
10 bankruptcy and then not following up on a legal  
11 requirement and the case would be dismissed. She  
12 explained to us that sometimes there was a three month  
13 period between the filing and the dismissal and that  
14 interfered with the foreclosure.

15 Ms. Macias Declaration, at p. 5.

16 Initially, the Debtors did not list Ms. Macias as a creditor  
17 in their schedules. However, two and a half months after the  
18 Chapter 7 Case was filed, the Debtors filed an amended Schedule F  
19 listing Ms. Macias as a creditor. The amended Schedule F was  
20 filed after a notice of a possible distribution to creditors was  
21 served. "There is no record of [Ms.] Macias having received  
22 notice from the court of the bankruptcy filing at this time, or  
23 of the opportunity to file proofs of claim." Memorandum  
24 Decision, at p. 2. The Debtors received their discharge by order  
25 entered on May 27, 2009.

26 C. Subsequent Litigation among the Parties

27 The Debtors first sued Ms. Macias and her husband in Contra  
28 Costa Superior Court ("State Court") in January 2010 ("First  
29 Suit"). Ms. Macias filed a general denial and affirmative  
30 defenses, but did not file a cross-complaint for unpaid wages or  
31 commissions. The First Suit was mediated and ultimately was  
32 dismissed without any determination of liability.

The Debtors subsequently filed a second lawsuit ("Second

1 Suit") against Mr. and Ms. Macias and Ms. Lorena Mendez in State  
2 Court on September 13, 2011, setting forth claims for  
3 "Defamation, Civil Conspiracy, Misappropriation of Trade Secret  
4 and Punitive Damages," seeking damages of "one dollar short of  
5 one million." Ms. Macias Declaration, at p. 6; Mr. Coker  
6 Declaration, at p. 3. The Second Suit

7 was brought after [Ms.] Macias and Lorena Mendez had  
8 cooperated with the investigation by the State  
9 Department of Real Estate resulting from a complaint by  
10 Mr. Oscar Garzon, which ultimately resulted in  
11 revocation of Mr. Gutierrez' broker's license, for  
12 various violations, including the surreptitious taking  
of money from the bank account of Mr. Oscar Garzon, the  
illegal collection of fees in advance of a modification  
for the same individual and his wife, and for Debtors'  
acting in the real estate field on suspended licenses.

13 Mr. Coker Declaration, at p. 3. The defendants answered, and  
14 Ms. Macias filed a cross-complaint for unpaid wages, unpaid  
15 commissions and abuse of process, pro se but assisted by a law  
16 student. Ultimately, the Second Suit was dismissed, again with  
17 no determination of liability.

18 Meanwhile, the Debtors filed a motion to reopen the  
19 Chapter 7 Case, which was granted by order entered on January 10,  
20 2012. The Debtors subsequently filed an adversary proceeding  
21 complaint against Mr. and Ms. Macias, Mr. Coker and his wife, and  
22 Lorena Mendez, asserting claims for violation of the discharge  
23 injunction and additional state law claims, to which answers were  
24 filed. The bankruptcy court abstained from hearing claims other  
25 than the claim for violation of the discharge injunction.

26 D. Further Proceedings and the Decision on the Motion

27 In light of the Ninth Circuit's determination that no  
28 private right of action exists to enforce the discharge

1 injunction, see Walls v. Wells Fargo Bank, N.A., 276 F.3d 502  
2 (9th Cir. 2002), the bankruptcy court interpreted the Debtors'  
3 adversary complaint as a motion ("Motion") for civil contempt.  
4 As noted above, the parties filed multiple, lengthy declarations  
5 in support of and in opposition to the Motion.

6 The Motion was heard at an evidentiary hearing ("Hearing")  
7 before the bankruptcy court on August 29, 2013. At that point,  
8 the claims against Mr. Macias, Mrs. Coker and Lorena Mendez had  
9 been dropped, and the Debtors were pursuing the Motion only  
10 against Ms. Macias and Mr. Coker. In addition to the  
11 declarations submitted by the parties, Ms. Macias, Ms. Gutierrez  
12 and Lorena Mendez testified at the Hearing. At the conclusion of  
13 the Hearing, the bankruptcy court took the matter under  
14 submission.

15 In its subsequent Memorandum Decision, the bankruptcy court  
16 began its legal analysis by noting that a party who knowingly  
17 violates the discharge injunction can be held in contempt under  
18 § 105(a), citing Walls v. Wells Fargo Bank, 276 F.3d at 507.

19 The bankruptcy court continued:

20 Violation of a discharge injunction requires proof that  
21 the creditor (1) knew the discharge injunction was  
22 applicable and (2) intended the actions, which violated  
23 the injunction. In re Zilog, Inc., 450 F.3d 996, 1007  
24 (9th Cir. 2006). A party seeking contempt sanctions  
has the burden of proving by clear and convincing  
evidence that sanctions are justified. In re Bennett,  
298 F.3d 1059, 1069 (9th Cir. 2002).

25 Memorandum Decision, at p. 3.

26 The bankruptcy court then stated separate findings as to  
27 Ms. Macias and Mr. Coker. As to Ms. Macias, the bankruptcy court  
28 noted that the Debtors asserted that Ms. Macias had knowledge of

1 their discharge in the Chapter 7 Case because she received a copy  
2 of the discharge order from the court. The bankruptcy court  
3 further noted that the Bankruptcy Noticing Center sent a copy of  
4 the discharge order to Ms. Macias at her home address in Oakley,  
5 California ("Residence Property") on May 29, 2009.

6 However, the bankruptcy court further noted that Ms. Macias  
7 testified that she moved from the Residence Property in March  
8 2009 following foreclosure, and that due to a forwarding error,  
9 the postal service continued to deliver her mail to the Residence  
10 Property. Ms. Macias admitted that she had knowledge of the  
11 Debtors' bankruptcy filings, but she testified that she did not  
12 know that the Debtors had received a discharge in the Chapter 7  
13 Case. Ms. Gutierrez asserted in her Declaration that Ms. Macias  
14 was informed that the Debtors had obtained a discharge during a  
15 December 2010 settlement conference. However, the bankruptcy  
16 court considered this evidence and rejected it as dispositive for  
17 the following reasons:

18 The court notes that this appears to be the only time  
19 knowledge on this basis is asserted in the 18 months of  
20 proceedings before this court and the state court, and  
21 in the approximately 11 inches of pleadings filed on  
22 the issue of violation of the discharge. At the  
[Hearing], no testimony was provided as to this  
allegation. The court finds it is not clear and  
convincing evidence that [Ms.] Macias knew of the  
discharge.

23 Memorandum Decision, at p. 3 n.3.

24 The bankruptcy court also addressed the Debtors' allegations  
25 that Ms. Macias violated the discharge injunction by cooperating  
26 with an investigation conducted by the California Department of  
27 Real Estate with respect to the Debtors' business practices and  
28 by speaking out against the Debtors' business operations within



1 their common religious community. The bankruptcy court found  
2 that the discharge injunction did not prohibit Ms. Macias from  
3 engaging in such speech, and no evidence was presented to the  
4 effect that such speech by Ms. Macias was undertaken to collect a  
5 discharged debt. In fact, the bankruptcy court further concluded  
6 that harming the Debtors' business operations would be  
7 counterproductive if Ms. Macias' goal was to collect a debt,  
8 discharged or otherwise. The bankruptcy court ultimately  
9 determined that the Debtors had not established by clear and  
10 convincing evidence that Ms. Macias had violated the discharge  
11 injunction order in the Chapter 7 Case.

12 As to Mr. Coker, the bankruptcy court first noted that  
13 Mr. Coker "was not, and never has been, a creditor of Debtors."  
14 Memorandum Decision, at p. 2. However, the Debtors asserted that  
15 Mr. Coker assisted Ms. Macias in preparing her cross-complaint  
16 against them, and as Ms. Macias' counsel, failed to dismiss the  
17 cross-complaint immediately after receiving notice of the  
18 Chapter 7 Case discharge in a letter from the Debtors.

19 The bankruptcy court found that Ms. Macias filed her  
20 cross-complaint against the Debtors in the Second Suit on  
21 October 24, 2011. Mr. Coker received a letter from Mr. Gutierrez  
22 on November 28, 2011, advising Mr. Coker that the debt included  
23 in Ms. Macias' cross-complaint was discharged, and any effort to  
24 collect that debt violated federal law. The bankruptcy court  
25 found that Mr. Coker responded promptly on November 30, 2011,  
26 acknowledging that the Debtors had provided a partial copy of the  
27 discharge order and stating that if the information provided was  
28 correct, no further action to collect on the claim asserted in

1 Ms. Macias' cross-complaint would be taken. However, the  
2 bankruptcy court further noted that Mr. Coker had stated that  
3 Ms. Macias had no knowledge of any discharge, and he indicated  
4 that he was going to "review whether setoff of the discharged  
5 debt might still be available." Memorandum Decision, at p. 4.  
6 Mr. Coker subsequently filed a motion to amend the cross-  
7 complaint to assert only a claim for setoff, but before the  
8 motion was determined, Ms. Macias voluntarily dismissed the  
9 cross-complaint on February 7, 2012.

10 Noting that the Debtors did not allege that Mr. Coker had  
11 any knowledge of their discharge prior to November 28, 2011, the  
12 bankruptcy court found that his actions following their informal  
13 letter notice did not constitute a clear violation of the  
14 discharge injunction. Accordingly, the bankruptcy court found  
15 against the Debtors on the Motion both as to Ms. Macias and  
16 Mr. Coker.

17 Consistent with its findings and conclusions in the  
18 Memorandum Decision, the bankruptcy court entered its Order  
19 denying the Motion on September 9, 2013. The Debtors timely  
20 appealed.

21 E. Epilogue

22 After the bankruptcy court abstained from hearing the state  
23 law claims asserted in the Debtors' adversary proceeding, the  
24 Debtors filed a new lawsuit ("Third Suit") in State Court against  
25 Mr. and Ms. Macias and Lorena Mendez, seeking three million  
26 dollars in damages. The Debtors' allegations in the Third Suit  
27 were essentially the same as in their prior State Court lawsuits.  
28 After the defendants had filed answers and cross-complaints for

1 abuse of process, among other claims, the Debtors agreed to  
2 dismiss the Third Suit with prejudice, and the cross-complaints  
3 also were dismissed with prejudice.

## 4 **II. JURISDICTION**

5 The bankruptcy court had jurisdiction under 28 U.S.C.  
6 §§ 1334 and 157(b) (2) (O). We have jurisdiction under 28 U.S.C.  
7 § 158.

## 8 **III. ISSUE**

9 Did the bankruptcy court err in determining that Ms. Macias  
10 and Mr. Coker did not willfully violate the discharge injunction  
11 in the Debtors' Chapter 7 Case?

## 12 **IV. STANDARDS OF REVIEW**

13 "We review the decision to impose contempt for an abuse of  
14 discretion, and underlying factual findings for clear error."  
15 Knupfer v. Lindblade (In re Dyer), 322 F.3d 1178, 1191 (9th Cir.  
16 2003) (citing FTC v. Affordable Media, 179 F.3d 1228, 1239 (9th  
17 Cir. 1999)).

18 A bankruptcy court abuses its discretion if it applies an  
19 incorrect legal standard or misapplies the correct legal standard  
20 under the facts before it. United States v. Hinkson, 585 F.3d  
21 1247, 1262 (9th Cir. 2009) (en banc). If the bankruptcy court  
22 applied the correct legal standard, the question then becomes  
23 "whether the . . . court's application of the correct legal  
24 standard was (1) 'illogical,' (2) 'implausible,' or without  
25 'support in inferences that may be drawn from the facts in the  
26 record.'" Id. (quoting Anderson v. City of Bessemer City, North  
27 Carolina, 470 U.S. 564, 577 (1985)). Clear error exists when, on  
28 the entire record, the reviewing court has a definite and firm

1 conviction that a mistake was made. Hoopai v. Countrywide Home  
2 Loans, Inc. (In re Hoopai), 369 B.R. 506, 509 (9th Cir. BAP  
3 2007). "Where there are two permissible views of the evidence,  
4 the factfinder's choice between them cannot be clearly  
5 erroneous." Anderson, 470 U.S. at 574.

6 We may affirm a decision of the bankruptcy court on any  
7 basis supported by the record. Shanks v. Dressel, 540 F.3d 1082,  
8 1086 (9th Cir. 2008).

#### 9 V. DISCUSSION

10 Section 524 provides that a discharge in bankruptcy  
11 "operates as an injunction against the commencement or  
12 continuation of an action . . . to collect, recover or offset any  
13 [discharged] debt as a personal liability of the debtor."  
14 § 524(a)(2). To justify the imposition of contempt sanctions for  
15 violating the discharge injunction, the Ninth Circuit has adopted  
16 a two-part test: The debtor must establish by clear and  
17 convincing evidence "that the creditor (1) knew the discharge  
18 injunction was applicable and (2) intended the actions which  
19 violated the injunction." Renwick v. Bennett (In re Bennett),  
20 298 F.3d 1059, 1069 (9th Cir. 2002). Zilog, Inc. v. Corning  
21 (In re Zilog, Inc.), 450 F.3d 996, 1007 (9th Cir. 2006) ("A party  
22 who knowingly violates the discharge injunction can be held in  
23 contempt under section 105(a) of the bankruptcy code.").

24 These are precisely the legal standards applied by the  
25 bankruptcy court in its Memorandum Decision, and the Debtors do  
26 not argue otherwise. Construing the Debtors' pro se briefs  
27 liberally, what they do argue is that the bankruptcy court  
28 misapplied the applicable legal standards based on the evidence

1 before it. We disagree for the following reasons.

2 1. Ms. Macias

3 The Debtors argue that Ms. Macias violated the discharge  
4 injunction by pursuing her cross-complaint in the Second Suit  
5 when she had knowledge of the Debtors' discharge in the Chapter 7  
6 Case from the bankruptcy court and from the Debtors. The record  
7 before the bankruptcy court contained contradictory evidence on  
8 this point. The Debtors contended that Ms. Macias received a  
9 copy of their discharge order and presented evidence that the  
10 Bankruptcy Noticing Center sent the discharge order to Ms. Macias  
11 on May 29, 2009 at the Residence Property. Ms. Macias countered  
12 that she had moved out of the Residence Property following  
13 foreclosure in March 2009, and although she had provided a  
14 forwarding address for her mail to the postal service, they kept  
15 delivering her mail to the Residence Property. Although  
16 Ms. Macias admitted that she knew about the Debtors' bankruptcy  
17 filings, she stated in her Declaration that she did not know that  
18 they had received a discharge in this Chapter 7 Case, testimony  
19 that she reiterated under oath at the Hearing. The bankruptcy  
20 court found that there was no evidence to the contrary. The  
21 parties presented two not necessarily contrary versions of the  
22 facts concerning whether Ms. Macias received a copy of the  
23 discharge order and thus knew that the Debtors had received a  
24 discharge. On this mixed record, the bankruptcy court concluded  
25 that the Debtors had not proved by clear and convincing evidence  
26 that Ms. Macias knew that the discharge injunction was  
27 applicable. We perceive no error in that determination.

28 The bankruptcy court also considered Ms. Gutierrez'

1 assertion in her Declaration that Ms. Macias had been informed  
2 that the Debtors had obtained a discharge of their debts during  
3 the course of a settlement conference in 2010. Noting that over  
4 the course of 18 months of proceedings in the State Court and the  
5 bankruptcy court and in their voluminous papers, the Debtors only  
6 referred to such a communication to Ms. Macias on one occasion,  
7 and no testimony to support this allegation was presented at the  
8 Hearing, despite the fact that Ms. Gutierrez testified, the  
9 bankruptcy court emphatically determined that the Debtors did not  
10 establish by clear and convincing evidence that Ms. Macias knew  
11 of their bankruptcy discharge from their direct communications.  
12 Memorandum Decision, at p. 3 n.3. Again, we perceive no error in  
13 the bankruptcy court's determination on this point based on the  
14 entire record before it.

15 Finally, the Debtors contend that Ms. Macias violated the  
16 discharge injunction by cooperating with the investigation of the  
17 California Department of Real Estate that resulted in  
18 Mr. Gutierrez losing his broker's license and by speaking against  
19 the Debtors' business practices with people in their common  
20 religious community. The bankruptcy court found no violation of  
21 the discharge injunction on these bases for two reasons: first,  
22 because the discharge injunction did not prohibit such speech;  
23 and second, because no evidence was presented tending to  
24 establish that Ms. Macias' conduct was an effort to collect a  
25 discharged debt. As the bankruptcy court noted, such conduct  
26 "would be counter to any collection efforts." Memorandum  
27 Decision, at p. 5. We conclude, particularly based on the second  
28 rationale articulated by the bankruptcy court for its

1 determination, that the bankruptcy court did not err in its  
2 conclusion that such evidence of conduct by Ms. Macias did not  
3 establish a violation of the discharge injunction.

4 Ultimately, we conclude, based on the record before us, that  
5 the bankruptcy court did not err in deciding that the Debtors did  
6 not meet their burden of proof to establish that Ms. Macias  
7 committed a sanctionable violation of the discharge injunction in  
8 the Chapter 7 Case.

9 2. Mr. Coker

10 The Debtors argue that Mr. Coker violated the discharge  
11 injunction by assisting Ms. Macias in the preparation of the  
12 cross-complaint against them in the Second Suit and in failing to  
13 dismiss Ms. Macias' cross-complaint immediately after receiving  
14 notice of the Debtors' discharge in a letter from Mr. Gutierrez.  
15 Mr. Coker is not a creditor of the Debtors, and they do not  
16 assert otherwise.

17 The uncontradicted evidence before the bankruptcy court was  
18 that Ms. Macias prepared the cross-complaint herself with the  
19 assistance of a law student, and it was filed on October 24,  
20 2011. Mr. Coker was not involved in the preparation of the  
21 cross-complaint. From the record before us, it appears that  
22 Ms. Macias filed the cross-complaint in an effort to counter the  
23 Debtors' harassment through their State Court lawsuits.

24 The record is also clear that Mr. Coker was not aware of the  
25 Debtors' bankruptcy discharge until receiving Mr. Gutierrez'  
26 letter on November 28, 2011. As noted by the bankruptcy court,  
27 Mr. Coker promptly responded two days later on November 30, 2011,  
28 stating that if, in fact, the Debtors had discharged their

1 obligation to Ms. Macias in bankruptcy, no further collection  
2 efforts would be taken. However, he also stated that Ms. Macias  
3 was not aware that the Debtors had obtained a discharge, and he  
4 would investigate whether a setoff of the discharged debt might  
5 still be available to Ms. Macias.

6 The record reflects that Mr. Coker is not a bankruptcy  
7 attorney. He did file a motion to amend the cross-complaint to  
8 assert only a setoff claim. However, after consulting with the  
9 bankruptcy counsel retained to represent all of the defendants in  
10 the Debtors' adversary proceeding, Mr. Coker voluntarily  
11 dismissed the cross-complaint on February 7, 2012, before any  
12 action was taken on the motion to amend.

13 On this record, Mr. Coker could be faulted for failing to do  
14 the limited research required to determine that the Debtors' debt  
15 to Ms. Macias in fact had been discharged and to dismiss the  
16 cross-complaint more quickly. However, we conclude that the  
17 bankruptcy court did not err in determining that the Debtors did  
18 not meet their burden of proof to establish by clear and  
19 convincing evidence that Mr. Coker willfully violated the  
20 discharge injunction. Cf. Knupfer v. Lindblade (In re Dyer),  
21 322 F.3d at 1196-97.

## 22 VI. CONCLUSION

23 Based on the foregoing authorities and analysis, we AFFIRM  
24 the bankruptcy court's Order denying the Motion.  
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28