

1 seeks a default judgment against SR. For the reasons set out
2 hereafter the request for default judgment is denied.

3 The Court has subject matter jurisdiction pursuant to
4 28 U.S.C. § 1334 and General Order No. 312-D of the United States
5 District Court for the Southern District of California. This is
6 a core proceeding under 28 U.S.C. § 157(b)(2)(A), (O).

7 Debtor's complaint is styled "Adversary Proceeding for
8 Violations of Discharge Injunction", and cites to 11 U.S.C.
9 §§ 105, 524. Since this adversary proceeding was filed, and
10 since debtor applied for default judgment, the Court has had
11 multiple occasions to examine issues underlying the complaint.
12 At the center is debtor's implicit assertion that section 524
13 and/or section 105 give her a private right action to enforce the
14 discharge injunction of § 524 or the court's contempt powers
15 under § 105. The Ninth Circuit Court of Appeals has determined
16 that no such private right of action exists under either statute.
17 Walls v. Wells Fargo Bank, 276 F.3d 502 (9th Cir. 2002). In that
18 case, the court was directly urged to find a private right of
19 action under both § 524 and § 105. The court rejected those
20 arguments. In discussing the question, the court noted:

21 Walls argues that § 524 creates
22 substantive rights in favor of the debtor;
23 therefore § 105(a) should be available to
24 enforce these rights and should not be
25 limited only to authorizing a cause of action
26 for contempt.

25 276 F.3d at 506. Walls invoked a First Circuit decision,
26 Bessette, but the Ninth Circuit stated:

1 We disagree that Besette goes so far, but
2 regardless, are persuaded that violations of
3 that section may not independently be
remedied through § 105 absent a contempt
proceeding in the bankruptcy court.

4 Id. The Ninth Circuit's reading of Besette was that in its
5 decision:

6 The First Circuit addressed only the § 105(a)
7 issue. It states that § 105 does not itself
8 create a private right of action, but that it
9 does provide a bankruptcy court with
10 statutory contempt powers in addition to
11 whatever inherent contempt powers the court
12 may have. Because these powers inherently
13 include the ability to sanction a party, the
14 court concluded that a bankruptcy court is
15 authorized to invoke § 105 to enforce the
16 discharge injunction and order damages for
17 the debtor if appropriate on the merits.

18
19
20
21
22
23
24
25
26
Walls suggests that § 105 may be used to
create substantive rights in the Code,
therefore a private right of action is
appropriate because § 105 empowers the
bankruptcy court to use "any" means necessary
to advance the purpose of the Code. However,
to create a new remedy would put us in the
business of legislating.

276 F.3d at 506-07.

In deciding that Congress did not intend to create a private
right of action under § 524 or under § 105, the Ninth Circuit
observed:

In the 1984 amendments, Congress added
subsection (b) to § 362, expressly conferring
on debtors the right to sue for damages for a
willful violation of the automatic stay.
Section 524 was amended on the same day, but
no similar provision, providing a private
right of action for violation of the
discharge injunction, was added.

1 276 F.3d at 509. After another sentence, the court placed its
2 footnote 3, which stated:

3 This also bolsters our conclusion that
4 § 105 does not allow for a private right of
5 action to enforce § 524. If Congress had
6 understood § 105 as permitting a private
7 cause of action, the 1984 amendment creating
8 one for violations of § 362 would have been
9 superfluous.

7 Id.

8 Yet another reason presented by the Ninth Circuit for why
9 implying a private right of action would be inappropriate was
10 recognition that:

11 Implying a private remedy here could put
12 enforcement of the discharge injunction in
13 the hands of a court that did not issue it
14 (perhaps even in the hands of a jury), which
15 is inconsistent with the present scheme that
16 leaves enforcement to the bankruptcy judge
17 whose discharge order gave rise to the
18 injunction.

16 Id.

17 In light of Walls, it is clear that debtor has no private
18 right of action under either § 524 or § 105. So, rhetorically,
19 the question is how does she get her concerns before the Court.
20 The answer should be clear: Debtor wants this court to utilize
21 the court's powers under § 105 to remedy an alleged violation of
22 the discharge injunction. To do so, she needs to ask the court
23 to examine the circumstances. She cannot, however, simply sue
24 defendants under the authority of the court's powers because she
25 would thus be exercising a right of action she does not have, at
26 least on a *de facto* basis.

1 The Court recognizes, however, that the water is somewhat
2 muddied by language such as in Walls, where Walls had, in part,
3 sued for contempt. There, the district court referred the
4 "request for contempt to the bankruptcy court." 276 F.3d at 507.
5 Or, in In re Dyer, 322 F.3d 1178, 1189 (9th Cir. 2003), where the
6 court stated:

7 Nonetheless, we have held that the
8 Trustee may be entitled to recovery for
9 violation of the automatic stay "under
 section 105(a) as a sanction for ordinary
 civil contempt."

10 The Dyer court referenced the Walls decision in stating that the
11 trustee "is limited to the civil contempt remedy provided by
12 § 105(a)." To the extent such language can be read to suggest a
13 trustee does have a private right of action under § 105(a), it is
14 diametrically contrary to Walls, which has not been reversed or
15 vacated. Moreover, such a reading would be inconsistent with In
16 re Bennett, 298 F.2d 1059, 1069 (9th Cir. 2002), where the court
17 found it was not necessary to assert a counterclaim for § 105
18 sanctions because such sanctions are a part of the relief a court
19 can grant independent of any formal demand in a party's
20 pleadings.

21 Echoing the concerns of the Walls court, in In re Startec
22 Global Comm'n Corp., 292 B.R. 246, 253-54 (Bankr. D.MD 2003), the
23 court noted:

24 Generally, enforcement of a court's order by
25 contempt power is the sole province of the
 court that originated the order. . . .

26 Just as modification or vacatur of an

1 order must be sought from the originating
2 court, . . . request for the enforcement must
3 be addressed to the originating court. If
4 parties could apply to another tribunal, or
5 arbitrator, to determine whether an order of
6 another court has been breached, or should be
7 enforced, and by what means, an improper
8 collateral attack on the order effectively
9 would be permitted. . . . Therefore, this
10 court, and this court only, has the power to
11 enforce its own order and sanction violations
12 by civil contempt.

13
14
15 Conclusion

16 Because debtor has no private right of action under 11
17 U.S.C. §§ 524 or 105, she is not entitled to take judgment
18 against SR Financial Services, even by default. Accordingly,
19 debtor's request for entry of a default judgment shall be, and
20 hereby is denied.

21 IT IS SO ORDERED.

22 DATED: MAR 12 2008

23
24
25
26


PETER W. BOWIE, Chief Judge
United States Bankruptcy Court