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9 Attorneys for Plaintiffs
10 Ocean Mission Park, LLC and Craig Campbell **CHANGES MADE BY COURT**

11 **UNITED STATES BANKRUPTCY COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA LOS ANGELES DIVISION**

13 In re:
14 MEHRDAD TAHERIPOUR
15 Debtor,

Chapter 7
Case No: 2:12-bk-30028

16 OCEAN MISSION PARK, LLC and
17 CRAIG CAMPBELL,
18 Plaintiffs,

Adv. No. 2:12-ap-01829-RK

19 v.
20 MEHRDAD TAHERIPOUR,
21 Defendant.

STATEMENT OF UNCONTROVERTED FACTS AND CONCLUSIONS OF LAW ON PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT PURSUANT TO 11 U.S.C. §523(a)(2)(B)

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23
24 On June 20, 2012, Ocean Mission Park, LLC and Craig Campbell
25 (collectively, the "Plaintiffs"), commenced this adversary proceeding by filing a
26 Complaint seeking a determination of dischargeability of debt pursuant to 11
27 U.S.C. § 523(a)(2)(B) and § 523(a)(6). The defendant in this adversary proceeding
28

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1 is debtor Mehrdad Taheripour (“Defendant” or “Debtor”). On July 16, 2012,
2 Plaintiffs filed their First Amended Complaint for nondischargeability of debt
3 pursuant to 11 U.S.C. § 523(a)(2) and (6).

4 On July 23, 2012, Defendant moved to dismiss plaintiffs’ First Amended
5 Complaint. Contemporaneously, Plaintiffs moved for relief from stay to proceed
6 on claims against Debtor in Los Angeles Superior Court Case Nos. SC 104571
7 and BC 457833, as consolidated. Both motions were heard on August 21, 2012.
8 Plaintiffs were granted relief from stay by order dated August 31, 2012. On
9 September 14, 2012, the Court issued an order granting Defendant’s motion to
10 dismiss, with thirty days leave to amend. On October 12, 2012, Plaintiffs filed
11 their Second Amended Complaint (“SAC”), alleging causes of action for
12 nondischargeability pursuant to 11 U.S.C. §§ 523(a)(2)(A), 523(a)(2)(B) and
13 523(a)(6).

14
15 Plaintiffs proceeded against Debtor in the state court consolidated actions.
16 Ultimately, Plaintiffs obtained judgment on their common law fraud claim against
17 Debtor, including an award of punitive damages, with a statement of decision
18 issued on November 6, 2013, and final judgment entered on February 20, 2014.
19 Debtor did not appeal the judgment.

20
21 It is the debt represented by that judgment with respect to which Plaintiffs
22 seek an order of nondischargeability. Plaintiffs filed and served a motion for
23 summary judgment for nondischargeability of debt on July 17, 2014 (the
24 “Motion”) based on Plaintiffs’ second and third causes action, under 11 U.S.C. §§
25 523(a)(2)(B) and 523(a)(6),¹ respectively. Plaintiffs also submitted a request for

26
27 ¹ As noted, below, Plaintiffs propose to proceed to judgment on their second cause of action
28 (523(a)(2)(B)), and to dismiss their first and third causes of action (523(a)(2)(A) and 523(a)(6)).

1 judicial notice in support of the Motion including as to the state court pleading,
2 statement of decision and judgment. Plaintiffs contend that there is no genuine
3 issue of material fact that the subject debt owed by Defendant to them is non-
4 dischargeable under 11 U.S.C. § 523(a)(2)(B) based on Defendant's false written
5 financial statement which Defendant used to fraudulently induce them into
6 purchasing property and upon which they reasonably relied to their detriment.
7 Plaintiffs maintain that the state court statement of decision and judgment is
8 preclusive on the substantive issues necessary to determine whether the debt is
9 non-dischargeable under § 523(a)(2)(B).

10
11 Defendant did not file an opposition to the Motion. Under Local
12 Bankruptcy Rule 9013-1(h), the failure by a party to file an opposition to a motion
13 may be considered that party's consent to the granting of the motion.

14 The Motion came on for hearing before the undersigned United States
15 Bankruptcy Judge on September 2, 2014. Counsel for Plaintiffs appeared. There
16 was no appearance by or on behalf of Defendant. The Court noted that the Motion
17 as it regards the second cause of action under § 523(a)(2)(B) would be better
18 supported if the record included a copy of the financial statement at issue and a
19 copy of the state court docket demonstrating that no notice of appeal had been
20 filed. Plaintiff offered to place such evidence in the record, and the hearing was
21 continued to September 30, 2014. The Court also inquired about Plaintiffs'
22 intentions with respect to their first cause of action. Plaintiffs indicated that,
23 assuming summary judgment is granted on the second cause of action, they
24 intended to dismiss the first and third causes of action. On September 23, 2014,
25 Plaintiff filed a supplemental declaration and a supplemental request for judicial
26 notice to place the subject financial statement and the state court docket into the
27 record.

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UNCONTROVERTED FACTS.

1. The issues sought to be precluded from relitigation in this adversary proceeding are the same as issues that were the subject of Plaintiffs’ state court lawsuit against Debtor, Los Angeles Superior Court Case Nos. SC 104571 and BC 457833. In the state court proceeding, the First Cause of Action was for a 2007 fraud by Debtor based upon Debtor's written misrepresentations of his financial condition and the financial condition of entities under his control. First Amended Complaint in Case No. BC 457833, Ex. E to RFJN and Rips Decl.; Rips Decl. ¶¶ 5, 18, 19, 24, 25. On Plaintiffs’ second cause of action under 11 U.S.C. § 523(a)(2)(B), Plaintiffs allege nondischarge on account of the same 2007 fraud by Debtor based upon Debtor's same written misrepresentations of his financial condition and the financial condition of entities under his control. SAC, Dkt No.16, Ex. A to RFJN.

2. The issues sought to be precluded from relitigation in this adversary proceeding actually were litigated in Plaintiffs’ state court lawsuit against Debtor. Plaintiffs went to trial against Debtor on their cause of action for fraud based on the written misrepresentation of financial condition. Statement of Decision by the Honorable Alan J. Goodman, Judge of the Los Angeles County Superior Court (the “Statement of Decision”), passim, Ex. C to RFJN and Rips Decl.; Rips Decl. ¶¶ 17-24.

3. The issues sought to be precluded from relitigation in this adversary proceeding necessarily were decided in the state court proceeding. The state court entered judgment for Plaintiffs and against Debtor on their cause of action for fraud based on the written misrepresentation of financial condition. Statement of

1 Decision, passim, Ex. C to RFJN and Rips Decl.; Rips Decl. ¶¶ 18, 19, 23, 24, 25;
2 Ex. A to Supplemental Declaration of Matthew A. Rips (“Supp. Rips Decl.).

3
4 4. The judgment in Plaintiffs’ state court lawsuit against Debtor is final and
5 was on the merits. No notice of appeal was filed within the requisite 90-day
6 period following entry of judgment. California Rules of Court, Appellate Rule
7 8.822. State Court Docket, Ex. 1 to Supp. RFJN (copy of docket); Statement of
8 Decision, passim, Ex. C to RFJN and Rips Decl.; Amended Judgment dated
9 February 10, 2014 filed February 14, 2014 and Minute Order attached thereto, Ex.
10 D to RFJN and Rips Decl.; Rips Decl. ¶¶ 14, 16.

11 5. The party against whom preclusion is sought, the Debtor, is the same
12 person that Plaintiffs sued and obtained judgment against in the state court
13 lawsuit. Statement of Decision, at 2:13-14 and passim, Ex. C to RFJN and Rips
14 Decl.; Amended Judgment, Ex. D to RFJN and Rips Decl.

15 6. Debtor was represented by counsel in the state court lawsuit, and had a full
16 and fair opportunity to litigate the issues in the state case. Statement of Decision,
17 at 23:9-11, Ex. C to RFJN and Rips Decl.; Rips Decl. ¶ 8.

18
19 7. In 2007, the Debtor made written representations to Plaintiffs about the
20 Debtor’s financial condition and the financial condition of an entity under his
21 control. Statement of Decision at 5:13-15, Ex. C to RFJN and Rips Decl. and
22 Ex. 1 to Supp. Rips Decl. (copy of false financial statement); Campbell Decl. ¶¶ 8,
23 9 and Ex. A; Rips Decl. ¶¶ 18, 19, 24, 25.

24
25 8. The financial condition representations made by Debtor to Plaintiffs were
26 material. Statement of Decision at 9:5 (“Taheripour’s personal financial condition
27 was critical to the investment and purchase.”), Ex. C to RFJN and Rips Decl.;

1 Campbell Decl. ¶¶ 8 (“we requested financial information about the Debtor and
2 the car dealership tenant. We indicated that obtaining such information was very
3 important to our purchase”) and 12 (“Had the Debtor provided us with truthful
4 information about these matters, we would not have purchased the Drivers Way
5 Property.”); Rips Decl. ¶¶ 18, 19, 24, 25.

6
7 9. Debtor knew the financial condition representations he made to Plaintiffs to
8 be false. Statement of Decision at 9:19-21 (“Taheripour, with full knowledge of
9 their falsity delivered materially false and misleading personal financial
10 statements to Plaintiff on April 14, 2007”) and fn.9; 24:6 (Debtor committed a
11 “calculated fraud”), Ex. C to RFJN and Rips. Decl.; Rips Decl. ¶¶ 18, 19, 24, 25.

12 10. Debtor intended to deceive Plaintiffs with his financial condition
13 representations. Statement of Decision at 9:19-21 (Debtor provided the financial
14 statements “fully intending that they be relied on to aid in substantiating the worth
15 of his personal guarantee, itself a material factor in Plaintiffs closing the
16 transaction. ... These financial statements constituted a fiction, a calculated
17 fraud.”), Ex. C to RFJN and Rips. Decl.; Rips Decl. ¶¶ 18, 19, 24, 25.

18 11. Plaintiffs relied upon Debtor’s financial condition representations.
19 Statement of Decision at 6:12-15; 21:13-15 (“Taheripour’s performance of the
20 leases and payment of the rent were what Plaintiff clearly and rightfully expected
21 to receive as the material inducement to them to make the investment and
22 purchase of the Drivers Way Property”), Ex. C to RFJN and Rips. Decl.;
23 Campbell Decl. ¶ 12 (“We purchased the Drivers Way Property in reliance upon
24 the detailed written financial information and written summary information
25 concerning the financial condition of the car dealership tenants, as provided to us
26 by the Debtor”); Rips Decl. ¶¶ 18, 19, 24, 25.
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1 12. Plaintiffs' reliance upon Debtor's financial condition representations was
2 reasonable. Statement of Decision at 21:13-15 ("The Court finds that it was
3 reasonable for Plaintiffs to believe that of which the defendants assured them."),
4 Ex. C to RFJN and Rips. Decl.; Campbell Decl. ¶¶ 10 and 12 ("We took
5 reasonable steps in an effort to crosscheck the information given to us"); Rips
6 Decl. ¶¶ 18, 19, 24, 25.

7 13. Debtor's misrepresentations proximately resulted in damages to Plaintiffs.
8 Statement of Decision at 4:1-2 and at 22-25, generally, Ex. C to RFJN and Rips
9 Decl.; Amended Judgment: (Plaintiffs' awarded damages of \$16,300,780.89), Ex.
10 D to RFJN and Rips Decl.; Rips Decl. ¶¶ 18, 19, 24, 25.

11 CONCLUSIONS OF LAW

- 12 1. The Court has jurisdiction of this action pursuant to 28 U.S.C. §
13 157(b)(2)(I).
- 14 2. Venue in this district is proper pursuant to 28 U.S.C. § 1391(b) and (c).
- 15 3. This is a core proceeding under 28 U.S.C. § 157(b)(2)(I).
- 16 4. This adversary proceeding relates to the Chapter 7 bankruptcy petition filed
17 by Mehrdad Taheripour.
- 18 5. Under Rule 56(c) of the Federal Rules of Civil Procedure, as made
19 applicable pursuant to Rule 7056 of the Federal Rules of Bankruptcy Procedure,
20 summary judgment is proper "if the pleadings, depositions, answers to
21 interrogatories, and admissions on file, together with the affidavits, if any, show
22 that there is no genuine issue as to any material fact and that the moving party is
23 entitled to a judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317,
24 322, 106 S.Ct. 2548, 2550 (1986). Material facts are those which might affect the
25 outcome of a proceeding under the governing substantive law. *Anderson v. Liberty*
26 *Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986).

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1 6. The moving party has the burden of showing that there is no genuine issue
2 of material fact, and that it is entitled to judgment as a matter of law. *Celotex*
3 *Corp. v. Catrett.* at 323. Once the movant carries its burden, the burden shifts to
4 the non-movant. *Id.*

5 7. Collateral estoppel applies in bankruptcy proceedings to determine the
6 dischargeability of a debt. *Grogan v. Garner*, 498 U.S. 279, 284-85 n. 11, 111
7 S.Ct. 654, 112 L.Ed.2d 755 (1991). Under collateral estoppel, once an issue is
8 actually and necessarily determined by a court of competent jurisdiction, that
9 determination is conclusive in subsequent suits based on a different cause of
10 action involving a party to a prior litigation. *Montana v. U.S.*, 440 U.S. 147, 153,
11 59 L. Ed. 2d 210, 99 S. Ct. 970 (1979).

12 8. As the state court trial of Plaintiffs' claims against Debtor took place in
13 California, California law concerning the collateral estoppel doctrine applies here.
14 *Bugna, v. McArthur*, 33 F.3d 1054, 1057 (9th Cir. 1994). When a federal court
15 reviews the preclusive effect of a state court judgment, it is directed by the
16 mandates of the Full Faith and Credit Statute to look to the preclusion law of the
17 state in which the judgment was rendered. *Marrese v. American Academy of*
18 *Orthopaedic Surgeons*, 470 U.S. 373, 380, 105 S.Ct. 1327, 84 L.Ed.2d 274 (1985)
19 (holding that in cases exclusively within federal jurisdiction, state law determines
20 the preclusive effect of a prior state court judgment unless an exception to the Full
21 Faith and Credit Statute applies).

22 9. California courts permit a party to assert collateral estoppel when the
23 following elements are met: (1) the issue sought to be precluded from relitigation
24 must be identical to that decided in a former proceeding; (2) this issue must have
25 been actually litigated in the former proceeding; (3) it must have been necessarily
26 decided in the former proceeding; (4) the decision in the former proceeding must
27 be final and on the merits; and (5) the party against whom preclusion is sought

1 must be the same as, or in privity with, the party to the former proceeding. *Lucido*
2 *v. Superior Court*, 51 Cal. 3d 335, 341 (1990).

3 10. Under California law, a judgment becomes final if not appealed timely.
4 The maximum possible time period for filing a notice of appeal of a judgment in
5 California is 90 days from entry of judgment (the time period is 30 days, if notice
6 of entry is given). California Rules of Court, Appellate Rule 8.822.

7 11. 11 U.S.C. § 523(a)(2)(B) exempts from discharge any debt obtained by
8 the use of a statement in writing that is: (a) materially false; (b) respecting the
9 debtor's or an insider's financial condition; (c) on which the creditor to whom the
10 debtor is liable for such money, property, services, or credit reasonably relied; and
11 (d) that the debtor caused to be made or published with intent to deceive. 11
12 U.S.C. §523(a)(2)(B). "A creditor must prove by a preponderance of evidence the
13 following requirements to satisfy § 523(a)(2)(B): '(1) a representation of fact by
14 the debtor, (2) that was material, (3) that the debtor knew at the time to be false,
15 (4) that the debtor made with the intention of deceiving the creditor, (5) upon
16 which the creditor relied, (6) that the creditor's reliance was reasonable, (7) that
17 damage proximately resulted from the representation.' The threshold requirement
18 is that the representation must be in the form of a written statement concerning the
19 debtor's financial condition." *In re Tallant*, 218 B.R. 58, 69 (B.A.P. 9th Cir. 1998)
20 (citing *In re Candland*, 90 F.3d 1466 (9th Cir. 1996).

21 12. In the state court action by Plaintiffs against Debtor, the elements necessary
22 for non-discharge under 11 U.S.C. §523(a)(2)(B) were at issue, actually were
23 litigated, and actually were decided by the state court. Since the elements for non-
24 discharge under 11 U.S.C. §523(a)(2)(B) were at issue in the state court case,
25 since those issues actually were litigated in that case, since those issues actually
26 were decided in that case, since the Debtor was party to both the state court action
27 and this proceeding, and since the state court's amended judgment is final and on

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1 the merits, Debtor is collaterally estopped from re-litigating the elements of non-
2 discharge under 11 U.S.C. §523(a)(2)(B), and judgment must be entered for
3 Plaintiff on its claim that Debtor is not entitled to discharge of the debt he owes to
4 Plaintiffs.

5 13. Accordingly, Plaintiffs are entitled to summary judgment of
6 nondischargeability of Debtor's debt as a matter of law under 11 U.S.C.
7 §523(a)(2)(B).

8 Dated: September 23, 2014

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Matthew A. Rips
Nathan D. Meyer

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11 By: /s/ Nathan D. Meyer
Nathan D. Meyer
Attorneys for Plaintiffs
Ocean Mission Park, LLC and
Craig Campbell

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24 Date: October 6, 2014



Robert Kwan
United States Bankruptcy Judge