UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
RIVERSIDE DIVISION

In re: NARINDER SANGHA Debtor	Case No.: 6:13-bk-16964-MH Chapter: 7 Adv. No.: 6:13-ap-01171-MH **ORDER DENYING DEFENDANT'S MOTION FOR ORDER: (1) RECONSIDERING MEMORANDUM DECISION GRANTING PLAINTIFF PARTIAL SUMMARY ADJUDICATION ON REMAND; (2) AWARDING DEFENDANT SUMMARY JUDGMENT PURSUANT TO RULE 56(F); AND (3) ISSUING SEPARATE ORDER TO SHOW CAUSE RE SANCTIONS AGAINST PLAINTIFF UNDER COURT'S INHERENT AUTHORITY** Hearing Held: **Date:** December 6, 2021 **Time**: 11:00 a.m. **Courtroom**: 301 **Place:** 3420 Twelfth St. Riverside, CA 92501
CHARLES SCHRADER Plaintiff v. NARINDER SANGHA Defendant	

I. *Procedural Background*

The Court conducted two days of trial in the above-proceeding on August 24 and 25, 2021. Based upon the request of the parties, the Court permitted each party to file a motion to reconsider the summary judgment opinion entered on March 15, 2019 as docket number 277. Defendant filed his motion to reconsider on September 21, 2021, as docket number 524 (the "Motion"). Plaintiff filed an opposition and evidentiary objections on September 28, 2021, and a request for judicial notice on September 29, 2021. Defendant filed a reply on October 12, 2021.

On November 8, 2021, the Court sent a copy of its extensively detailed tentative ruling to the parties, providing the parties an opportunity to file a written response to the tentative ruling prior to the hearing. Both parties filed their response on November 22, 2021.

II. *Factual Background*

The following is a recitation of the facts of this adversary proceeding, partially drawing from the summarization by the Bankruptcy Appellate Panel ("BAP") in *In re Sangha*, 2015 WL 3655113 at *2 (B.A.P. 9th Cir. June 11, 2015).

On October 13, 2009, Charles Schrader ("Plaintiff") filed a complaint against Narinder Sangha ("Defendant") for defamation (slander per se)[1] in San Francisco Superior Court ("State Court"), alleging that Defendant had made false statements about Plaintiff in the course of an employment background investigation. On November 17, 2009, Defendant filed an answer and general denial. The State Court granted Plaintiff leave to file a second amended complaint on February 14,

[1] Throughout this opinion, the Court will use "defamation" and "slander" interchangeably to refer to the basis of Plaintiff's claim.

2011. In the second amended complaint, all fourteen causes of action alleged that Defendant made the defamatory statements with malice; the prayer sought an award of exemplary/punitive damages.

On March 4, 2011, Plaintiff filed a motion for terminating sanctions against Defendant for engaging in discovery abuses. The State Court granted Plaintiff's motion for terminating sanctions and struck Defendant's answer to the second amended complaint, commenting: "The Court finds that Defendant's failure to respond to the Court's orders compelling a response to interrogatory is willful." Defendant then dismissed his attorney Christopher Leuterio and filed a substitution of attorney showing Christopher N. Mandarano was to be his counsel. On April 8, 2011, Defendant terminated Mr. Mandarano, and substituted Robert D. Finkle as his attorney.

On April 18, 2011, the State Court entered a default against Defendant. It conducted a prove-up hearing on Plaintiff's motion for entry of default judgment on June 2, 2011 and entered a judgment the same day awarding Plaintiff $1,369,633.40, comprised of $1,000,000 for general damages[2], $368,535.40 for "Special/Punitive Damages,"[3] and $1,098.00 for costs (the "Judgment").

On November 14, 2011, the State Court denied Defendant's motion to vacate the Judgment. Defendant did not appeal the Judgment.

[2] This damage amount was generally for emotional distress, medical problems, and injury to reputation.
[3] This damage amount included $180,435 in lost wages, $6,000 in punitive damages, and the remainder for lost future wages and costs of appealing the employment decision.

Defendant filed a Chapter 7 bankruptcy petition on April 18, 2013. In his schedules, he listed a disputed debt owed to Plaintiff in the amount of $1,369,634.00 for the Judgment. Plaintiff subsequently filed a proof of claim for a secured claim in the amount of $1,627,049.43 ("Claim 1").

On April 25, 2013, Plaintiff filed an adversary complaint against Defendant seeking to have Claim 1 held found to be non-dischargeable under 11 U.S.C. § 523(a)(6). Defendant filed an answer on May 22, 2013. After Plaintiff filed a motion to strike all affirmative defenses that was granted in part and denied in part with leave to amend, Defendant filed an amended answer on August 21, 2013 generally denying the complaint's allegations and stating three affirmative defenses: that the purported false statements were privileged; that Plaintiff had engaged in fraud by concealment of material facts from the State Court; and that Plaintiff had unclean hands. On October 18, 2013, the parties conducted a mediation conference that did not result in settlement. Subsequent to this mediation conference, the discovery process between the parties began to break down, leading to a variety of discovery litigation. A second mediation conference on February 27, 2014, was also unsuccessful.

Plaintiff filed a motion for summary judgment on April 25, 2014, arguing that there were no disputed material facts and that the State Court Judgment was preclusive as to all the elements required for a non-dischargeability judgment under § 523(a)(6). Responding to the summary judgment motion on June 4, 2014, Defendant asserted that triable issues of fact remained and that Defendant was entitled to conduct additional discovery. Plaintiff filed a reply on June 12, 2014.

Before the motion hearing on July 8, 2014, the bankruptcy court posted a detailed tentative decision. Among the conclusions in the tentative decision of the bankruptcy court were that:

-There was no genuine dispute that the Judgment included $6,000 in punitive damages.
-All elements of issue preclusion were satisfied.
-None of Defendant's arguments supported the extrinsic fraud exception to collateral estoppel.
-Defendant had not provided a cognizable argument for "splitting up the damages in the State Court Judgment based on Defendant's conduct."
-Defendant was seeking additional discovery to simply relitigate the State Court findings.

After hearing from the parties at the hearing, the Court granted Plaintiff's motion for summary judgment, adopting the tentative ruling. On August 7, 2014, the Court entered: (1) an order granting Plaintiff's motion for summary judgment [Dkt. No. 149]; and (2) a judgment holding the debt of $1,369,633.40 to be non-dischargeable under 11 U.S.C. § 523(a)(6) [Dkt. No. 150] (the "Non-Dischargeability Judgment").

Defendant filed an appeal of the Non-Dischargeability Judgment on August 18, 2014. On June 11, 2015, the Bankruptcy Appellate Panel issued a decision vacating the Non-Dischargeability Judgment and remanding the matter for further proceedings. The Bankruptcy Appellate Panel decision was subsequently appealed to the Ninth Circuit. On March 10, 2017, the Ninth Circuit Court of Appeals issued it's a decision affirming the Bankruptcy Appellate Panel and directing

the Court to re-evaluate the availability of issue preclusion in light of *In re Plyam*, 530 B.R. 456 (B.A.P. 9th Cir. 2015), which was decided by the Bankruptcy Appellate Panel subsequent to the issuance of the Non-Dischargeability Judgment. The Ninth Circuit Court of Appeals further directed that:

> [T]he bankruptcy court must consider whether the state court default judgment and the allegations in Schrader's second amended complaint preclude relitigation of § 523(a)(6)'s "willful" intent requirement. If the bankruptcy court determines that the allegations in the second amended complaint together with the punitive damage award preclude relitigation of § 523(a)(6)'s "willful and malicious" intent requirements, then the California state trial court default judgment in favor of Schrader is not dischargeable.

In re Sangha, 678 F. App'x 561, 562 (9th Cir. 2017).

The mandate of the Ninth Circuit Court of Appeals to this Court was docketed on March 23, 2017. On April 5, 2017, the Court held a status conference to discuss with the parties the need for briefing to address the Ninth Circuit Court of Appeals's determination that application of collateral estoppel must be evaluated in light of *Plyam*. At the status conference, the Court directed the parties to file supplemental briefs; the parties ultimately filed a variety of supplemental pleadings.

The Court took the matter under submission on December 19, 2017. On June 12, 2018, after further supplemental pleadings were filed, the Court took the matter off submission, setting the matter for hearing. On October 10, 2018, the Court issued an oral ruling in Plaintiff's favor, and indicated it would enter a written opinion. On March 15, 2019, the Court issued a judicial opinion, revising its earlier position and granting Plaintiff's motion for summary judgment as to

the maliciousness prong while denying the motion as to the willfulness prong (the "Opinion"). The Court also set a status conference for April 17, 2019.

At the status conference, Defendant indicated that it wanted to file a motion to reopen discovery. At a hearing on May 22, 2019, the Court realized that the parties had never complied with the Court's instructions to lodge a scheduling order containing discovery deadlines. As a result, the Court issued a scheduling order setting a discovery deadline of July 31, 2019, and a pretrial motion deadline of August 23, 2019.

On June 28, 2019, Defendant filed a motion seeking an extension of the discovery deadline, which the Court denied on July 16, 2019. On July 30, 2019, Defendant filed a second motion to extend discovery, and Plaintiff responded by filing a motion for a protective order the following day, seeking to block the discovery sought by Defendant on the City of San Jose. The Court ultimately denied the motion for a protective order and extended the discovery deadline to the extent of allowing responses to any discovery propounded by the discovery deadline [Dkt. No. 323].

During October 2019, Defendant filed a: (1) motion for sanctions against Plaintiff seeking terminating sanctions for bad faith discovery conduct; and (2) a motion to reconsider the Opinion. The Court ultimately denied both motions.

On March 11, 2020, Plaintiff began litigating the scope of Defendant's permitted defense, filing a motion in limine seeking to preclude evidence related to the privileged nature of the

communications. On March 31, 2020, Defendant sought to amend his answer to plead the additional defenses of constitutionally protected speech and truthfulness. Both of these motions were denied.

On April 23, 2020, Plaintiff filed a motion in limine for failure to provide initial disclosures and timely respond or update interrogatories. On June 24, 2020, the Court issued an order granting the motion to the extent of precluding any evidence "other than what could be reasonably anticipated to be offered in support of the affirmative defenses pled" [Docket No. 379]. On July 8, 2020, Plaintiff filed a motion for partial summary adjudication on Defendant's affirmative defenses. On October 15, 2020, the Court entered an order granting the motion, finding that the affirmative defenses pled by Defendant were barred by collateral estoppel.

On November 10, 2020, Plaintiff filed an additional motion in limine, seeking to preclude the testimony of witnesses who were not timely disclosed. On January 19, 2021, the Court granted the motion, precluding the testimony of Randy Wissel, James Sutherland, Mark Rappaport, Robert Burns, and Clem Jones. On March 3, 2021, Plaintiff filed another motion in limine, this time seeking to preclude the admission of a variety of exhibits. Plaintiff also filed a motion for default judgment in March 2021 on the grounds that Defendant had stopped actively participating in the case, although the motion was ultimately withdrawn.[4] On May 26, 2021, the Court issued an oral ruling precluding Defendant from admitting Exhibits I, J, HH, II, and JJ, although no proposed order was ever lodged with the Court.

[4] During this time, the parties were also engaged in a dispute in state court related to the issuance and violation of a restraining order. On March 29, 2021, the Court was forced to seal and strike explicit photos filed with the Court by Defendant. The parties also filed a variety of unauthorized, miscellaneous documents.

On June 14, 2021, the Court issued a pre-trial order. On August 3, 2021, Defendant filed a motion seeking reconsideration of the order precluding the admission of Exhibits I, J, HH, II, and JJ. On August 10 and 11, the parties filed their trial briefs. The Court held two days of trial on August 24 and 25. At the conclusion of the second day of trial, the Court informed the parties that it would entertain motions to reconsider the Opinion.

The Court notes that during the entirety of these proceedings Plaintiff has proceeded *pro se*. Defendant, on the other hand, has had the following representation:

-Denise Tessier represented Defendant from the filing of the answer until July 7, 2017. Deepalie Joshi, however, represented Defendant during his appeal

-On July 7, 2017, Ryan Thomas substituted in as Defendant's counsel

-On May 15, 2019, Ryan Thomas substituted out, leaving Defendant *pro se*

-On July 11, 2019, Defendant retained Donald Reid & Charity Manee

-On November 20, 2019 Donald Reid withdrew from the case

-On September 15, 2020, Charity Manee withdrew from the case, leaving Defendant *pro se*

-On July 27, 2021, Donald Reid returned to represent Defendant

III. *Jurisdiction*

The Court has jurisdiction over this adversary proceeding under 28 U.S.C. 157(b)(2)(I) and § 1334. Venue is proper in this judicial district.

IV. *Motion to Reconsider Standard*

FED. R. BANKR. P. Rules 9023 and 9024 incorporate FED. R. CIV. P. Rules 59 and 60, with minor modifications. "[A] 'motion for reconsideration' is treated as a motion to alter or amend judgment under Federal Rule of Civil Procedure 59(e) if it is filed within [fourteen] days of entry of judgment. Otherwise, it is treated as a Rule 60(b) motion for relief from a judgment or order." *Am. Ironworks & Erectors, Inc. v. N. Am. Const. Corp.*, 249 F.3d 892, 898-99 (9th Cir. 2001) (citation omitted); *see also In re Giga Watt, Inc.*, 2021 WL 321890 at *4 (B.A.P. 9th Cir. 2021) (noting that in bankruptcy proceedings the applicable time frame is fourteen-days).

FED. R. CIV. P. Rule 60(b) provides that "the court may relieve a party or its legal representative from a *final* judgment, order, or proceeding" (emphasis added). As a treatise explains:

> Fed. R. Civ. P. 60(b) provides that the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding; therefore, making a motion for relief under Rule 60(b) is premature where no final judgment has been entered unless the parties have agreed to waive the separate document requirement and proceed as though a final judgment had been entered. The term "final" applies to orders and proceedings as well as judgments and limits the applicability of Rule 60(b) to judgment and orders which have been entered and which are independently "final decisions" under 28 U.S.C.A. § 1291, the statute providing appellate review of final decisions of district courts. The test for determining finality for purposes of Rule 60(b) is the same as for determining whether a judgment is appealable – namely, whether it ends the litigation on the merits and leaves nothing for the court to do but execute its judgment.

21A FED. PROC., L. ED. § 51:126 (September 2021); *see also Matter of Wade*, 969 F.2d 241 (7th Cir. 1992) (denial of Rule 60(b) motion appropriate when no final order has been entered); *Kapco Mfg. Co., Inc. v. C&O Enters., Inc.*, 773 F.2d 151, 154 (7th Cir. 1985) ("'final' in Rule 60(b) must modify 'order, or proceeding' as well as 'judgment'").

"An order granting partial summary judgment is usually not an appealable final order under 28 U.S.C. § 1291 because it does not dispose of all of the claims." *Am. States Ins. Co. v. Dastar Corp.*, 318 F.3d 881, 884 (9th Cir. 2003). FED. R. CIV. P. Rule 54(b), incorporated into bankruptcy proceedings by FED. R. BANKR. P. Rule 7054(a) states the following:

> When an action presents more than one claim for relief – whether as a claim, counterclaim, crossclaim, or third-party claim – or when multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay. Otherwise, any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities.

Here, there are not multiple parties nor are there multiple claims. The Opinion only adjudicated part of a claim as to the sole defendant, and therefore the above exception is inapplicable, and the Opinion is not final or appealable.

"A [] court's power to rescind, reconsider, or modify an interlocutory order is derived from the common law, not from the Federal Rules of Civil Procedure." *City of L.A., Harbor Div. v. Santa Monica Baykeeper*, 254 F.3d 882, 886 (9th Cir. 2001); *see also Melancon v. Texaco, Inc.*, 659 F.2d 551, 553 (5th Cir. 1981) ("As long as a district (or an appellate) court has jurisdiction over the case, then (in the absence of prohibition by statute or rule), it possesses the inherent procedural power to reconsider, rescind, or modify an interlocutory order for cause seen by it to be sufficient."); *Bucy v. Nev. Constr. Co.*, 125 F.2d 213, 217 (9th Cir. 1942) ("Rule 60 does not affect, interfere with, or curtail the common-law power of the federal courts"). The law of the

case doctrine is not an impediment to such reconsideration. *U.S. v. Smith*, 389 F.3d 944, 949 (9th Cir. 2004) ("The law of the case doctrine is 'wholly inapposite' to circumstances where a district court seeks to reconsider an order over which it has not been divested or jurisdiction.").

V. *Summary Judgment Standard*

Summary judgment should be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Fed. R. Civ. P. 56(c) (made applicable to adversary proceedings by Fed. R. Bankr. P. 7056).

The moving party has the burden of establishing the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). If the moving party shows the absence of a genuine issue of material fact, the nonmoving party must go beyond the pleadings and identify facts that show a genuine issue for trial. *Id*. at 324. The court must view the evidence in the light most favorable to the nonmoving party. *Bell v. Cameron Meadows Land Co.*, 669 F.2d 1278, 1284 (9th Cir. 1982). All reasonable doubt as to the existence of a genuine issue of fact should be resolved against the moving party. *Hector v. Wiens*, 533 F.2d 429, 432 (9th Cir. 1976). The inference drawn from the underlying facts must be viewed in the light most favorable to the party opposing the motion. *Valadingham v. Bojorquez*, 866 F.2d 1135, 1137 (9th Cir. 1989). Where different ultimate inferences may be drawn, summary judgment is inappropriate. *Sankovich v. Insurance Co. of N. Am*., 638 F.2d 136, 140 (9th Cir. 1981).

Collateral estoppel may provide a proper basis for granting summary judgment. *San Remo Hotel, L.P. v. San Francisco City and Cnty*., 364 F.3d 1088, 1094 (9th Cir.2004). To meet its burden on a motion for summary judgment based on collateral estoppel, the proponent must have pinpointed the exact issues litigated in the prior action and introduced a record establishing the controlling facts. *In re Honkanen*, 446 B.R. 373, 382 (B.A.P. 9th Cir. 2011).

VI. *Application of Collateral Estoppel*

Collateral estoppel can be applied in bankruptcy proceedings. *Grogan v. Garner*, 498 U.S. 279, 284 n.11 (1991) ("We now clarify that collateral estoppel principles do indeed apply in discharge exception proceedings pursuant to § 523(a)."). "Under the Full Faith and Credit Act, 28 U.S.C. § 1738, the preclusive effect of a state court judgment in a subsequent bankruptcy proceeding is determined by the preclusion law of the estate in which the judgment was issued." *In re Harmon*, 250 F.3d 1240, 1245 (9th Cir. 2001). The Bankruptcy Appellate Panel has recently listed the threshold requirements for the application of collateral estoppel:

> (1) the issue sought to be precluded from relitigation is identical to that decided in a former proceeding; (2) the issue was actually litigated in the former proceeding; (3) the issue was necessarily decided in the former proceeding; (4) the decision in the former proceeding is final and on the merits; and (5) the party against whom preclusion is sought was the same as, or in privity with, the party to the former proceeding.

In re Plyam, 530 B.R. 456, 462 (B.A.P. 9th Cir. 2015) (*citing Lucido v. Superior Ct.*, 51 Cal. 3d. 335, 341 (Cal. 1990); *see also In re Harmon*, 250 F.3d 1240, 1245 (9th Cir. 2001) (listing the five factors). "If these threshold requirements are met, California courts will only apply issue preclusion 'if application of preclusion furthers the public policies underlying the doctrine.'" *In*

re Janian, 2019 WL 9243073 at *4 (Bankr. C.D. Cal. 2019) (*quoting In re Harmon*, 250 F.3d 1240, 1245 (9th Cir. 2001)).

Here, the only collateral estoppel element at issue in Defendant's motion is the public policy test. In 1990, the California Supreme Court wrote that:

> Even assuming all the threshold requirements are satisfied, however, our analysis is not at an end. We have repeatedly looked to the public policies underlying the doctrine before concluding that collateral estoppel should be applied in a particular setting. As the United States Supreme Court has stated, the rule of collateral estoppel in criminal cases is not to be applied with the hypertechnical and archaic approach of a nineteenth century pleading book, but with realism and rationality. Accordingly, the public policies underlying collateral estoppel – preservation of the integrity of the judicial system, promotion of judicial economy, and protection of litigants from harassment by vexatious litigation – strongly influence whether its application in a particular circumstance would be fair to the parties and constitute sound judicial policy.

Lucido v. Superior Ct., 51 Cal. 3d 335, 342-43 (Cal. 1990) (quotations and citations omitted); *see also In re Baldwin*, 249 F.3d 912, 919 (9th Cir. 2001) ("The California Supreme Court has identified three policies underlying the doctrine of collateral estoppel: 'preservation of the integrity of the judicial system, promotion of judicial economy, and protection of litigants from harassment by vexatious litigation.'").

Analysis of these factors is often conducted in a relatively summary fashion and, assuming the threshold requirements are met, courts generally conclude that public policy considerations weigh in favor of the application of collateral estoppel. For instance, the Ninth Circuit, dealing with a state court default judgment that arose after the debtor stopped participating during the pendency of the state court litigation, conducted its analysis as follows:

> With regard to the integrity of the judicial system, the California Supreme Court directs us to inquire whether eliminating the possibility of inconsistent verdicts – which would follow from the application of collateral estoppel – would undermine or enhance the public's confidence in the judicial system. Where, as here, the state court was fully capable of adjudicating the issue subsequently presented to the bankruptcy court, we conclude that the public's confidence in the state judicial system would be undermined should the bankruptcy court relitigate the question of whether Baldwin had acted with the intent to injure Kilpatrick. Moreover, relitigation in bankruptcy court of the issue decided by the state court would conflict with the principle of federalism that underlies the Full Faith and Credit Act.
>
> Turning to the second policy, it is obvious that application of collateral estoppel in the present context will promote judicial economy. If Baldwin were not precluded from relitigating the issue, the bankruptcy court would have to conduct an evidentiary hearing in order to determine whether Baldwin intentionally acted to injure Kilpatrick. Relying on the state court's determination allows the bankruptcy court to conserve judicial resources.
>
> Finally, we conclude that under these circumstances, application of collateral estoppel will protect creditors from vexatious litigation. Baldwin had a full and fair opportunity to litigate the issue in the state court proceedings. There is no indication in the record that those proceedings violated Baldwin's right to due process, nor does Baldwin allege any constitutional infirmity. Baldwin forfeited his right to defend himself in state court. He presents no good reason for having done so. It would be unfair to Kilpatrick to require him to relitigate before the bankruptcy court what was properly decided by the state court.

In re Baldwin, 249 F.3d 912, 920 (9th Cir. 2001). The framework laid out by the Ninth Circuit, and the factors recited by *Lucido* above, would appear to indicate that policy considerations usually weigh in favor of the application of collateral estoppel when, as is the case here, the underlying judgment was issued by a state court. Specifically, in those circumstances, declining to apply collateral estoppel would: (a) seem to rarely further judicial integrity; (b) never improve judicial economy; and (c) never affirmatively protect litigants from "vexatious" litigation. An

example of a court finding that none of the *Lucido* factors were satisfied is found in *Vandenberg v. Superior Ct.*:

> As noted above, the primary purposes of collateral estoppel are to preserve the integrity of the judicial system, promote judicial economy, and protect litigants from harassment by vexatious litigation. But because a private arbitrator's award is *outside* the judicial system, denying the award collateral estoppel effect has no adverse impact on judicial integrity. Moreover, because private arbitration does not involve the use of a judge and a courtroom, later relitigation does not undermine judicial economy by requiring duplication of judicial resources to decide the same issue. Finally, when collateral estoppel is invoked by a *nonparty* to the private arbitration, the doctrine does not serve the policy against harassment by vexatious litigation. In such cases, the doctrine is asserted not to protect one who has already once prevailed against the same opponent on the same cause of action, but simply to gain vicarious advantage from a litigation victory *won by another*.

21 Cal. 4th 815, 833 (Cal. 1999) (quotation and citation omitted); *see also In re Khabushani*, 2021 WL 2562111 at *9 (B.A.P. 9th Cir. 2021) ("In *Vandenberg v. Superior Court*, the California Supreme Court held that in deciding whether there is 'fairness and sound public policy,' 'courts consider the judicial nature of the prior forum, i.e., its legal formality, the scope of its jurisdiction, and its procedural safeguards, particularly including the opportunity for judicial review of adverse rulings."). Only in unique cases, i.e. where the findings were made by a quasi-judicial forum (negating factors (a) and (b)), or where a non-party to the original proceeding seeks to utilize collateral estoppel (negating factor (c)), does it appear that public policy considerations would weigh against application of collateral estoppel. As this analysis, and the subsequent excerpt, make clear, the Court cannot decline to apply collateral estoppel simply because of serious questions regarding the merits of the underlying judgment:

> The bankruptcy court's role was not to evaluate the state court's decision, but merely to determine whether Samuels was precluded from relitigating an issue that had already been determined. Moreover, there is no indication that it is within

> a bankruptcy court's discretion to decline to apply collateral estoppel simply because the state court's analysis was lacking. While certain public policies may limit applicability of collateral estoppel in California, the flawed nature of the prior decision is not one of them.

In re Samuels, 2008 WL 1751745 at *2 (9th Cir. 2008) (quotation omitted).

Therefore, given the reasoning and caselaw outlined above, and noting that the Court has not been provided with any directly applicable caselaw providing a basis to decline to apply collateral estoppel, the Court concludes that each of the public policy considerations weigh in favor of application of collateral estoppel here, for the same reasons as articulated in *In re Baldwin*.

Defendant's primary arguments as to why collateral estoppel should not apply are: (1) Plaintiff "perjured" himself to obtain the default judgment; and (2) one of Defendant's state court attorneys committed malpractice/was negligent. The Court notes that in a tentative ruling incorporated into an order entered on August 7, 2014, as docket number 149, the Court rejected both arguments, provided detailed reasoning, and cited applicable caselaw. While Defendant attaches this tentative ruling to his response filed as docket number 539, he does not lay out a legal argument supported by caselaw contending that either: (1) the caselaw and legal standards cited are incorrect; or (2) application of the caselaw and legal standards should result in a different conclusion.

A. *Alleged Misrepresentations Made to Court in Support of Judgment*

Defendant's first argument is that Plaintiff committed fraud in the State Court proceeding by misrepresenting the reasons for the withdrawal of the employment offer. While not explicitly stated in section V.A of the motion, presumably Defendant wants the Court to either not apply collateral estoppel to the Judgment or to dismiss the adversary proceeding outright.

In *In re Roark*, 2019 WL 3842998 (S.D. Cal. 2019), the Court was presented with a materially similar situation: a party obtained a default judgment on a defamation cause of action in state court after terminating sanctions were entered against the defendant based on discovery misconduct. After the defendant filed bankruptcy, the plaintiff filed a non-dischargeability complaint under 11 U.S.C. § 523(a)(6), and defendant argued that certain statements in the declarations submitted to the state court were fraudulent. *Id*. The district court, in reviewing an appeal of a bankruptcy court order granting summary judgment to plaintiff wrote: "Critically, however, the bankruptcy court found *even if* Roark's allegations were true, and NIFCU did present false statements to the state court, this constitute intrinsic fraud, which is not a grounds for relief. . . . the Court finds no evidence warranting a different conclusion." *Id*. at *5.

As noted by the Court in *Roark*, the extrinsic fraud exception essentially requires that the fraud deprive the opposing party of due process. *See id.* at *4 (extrinsic fraud occurs "when a party's conduct prevents another party from presenting his or her claim in court"). Here, however, the State Court ordered terminating sanctions based on Defendant's conduct during the proceedings. "[U]pon entry of default, the allegations of the complaint were deemed true." *Curtis v. Illumination Arts, Inc.*, 682 Fed. Appx. 604, 605 (9th Cir. 2017). Defendant's line of argument, that the truth of the allegations presented to the State Court should be considered by this Court,

would lead to the elimination of the application of the collateral estoppel doctrine to default judgments, since it essentially affords a defendant a second opportunity to litigate the merits of the allegations in the underlying dispute.[5]

At the hearing held on December 6, 2021, Defendant challenged the correctness/applicability of the reasoning presented in *In re Roark*. Nevertheless, this reasoning finds support in a variety of caselaw. *See Cedars-Sinai Med. Ctr. v. Superior Court*, 18 Cal. 4th 1, 10 (Cal. 1998) ("This same concern underlies another line of cases that forbid direct or collateral attack on a judgment on the ground that evidence was falsified, concealed, or suppressed. After the time for seeking a new trial has expired and any appeals have been exhausted, a final judgment may not be directly attacked and set aside on the ground that evidence has been suppressed, concealed, or falsified; in the language of the cases, such fraud is 'intrinsic' rather than 'extrinsic.' *Similarly, under the doctrines or res judicata and collateral estoppel, a judgment may not be collaterally attacked on the ground that evidence was falsified or destroyed*.") (emphasis added) (citations omitted) (collecting California authority); *see also U.S. v. Throckmorton*, 98 U.S. 61, 68 (1878) ("We think these decisions establish the doctrine on which we decide the present case; namely, that the acts for which a court of equity will on account of fraud set aside or annul a judgment or decree, between the same parties, rendered by a court of competent jurisdiction, have relation to frauds, extrinsic or collateral, to the matter tried by the first court, and not to a fraud in the matter on which the decree was rendered.").

[5] The Court also notes that this section of the motion does not contain any legal citations, and so the basis of the argument is unclear.

Pursuant to the clear and binding reasoning set forth by the California Supreme Court in *Cedars-Sinai Med. Ctr.*, the Court concludes that it must reject Defendant's argument that allegedly false statements made by Plaintiff in the State Court proceeding provide a basis to decline to apply collateral estoppel. The Court also notes that Defendant was provided an opportunity to file a responsive brief to the Tentative, and Defendant did not provide any caselaw that would suggest the Court should reach a different conclusion.

Additionally, the Court notes that this reasoning and the applicable caselaw has been available to Defendant (or his counsel) to research for years. In the Court's tentative ruling posted in the summer of 2014, *which counsel attached to its response*, the Court set forth the following:

> The party seeking to invoke extrinsic fraud must show: (1) the judgment was entered by default under circumstances which prevented him from presenting his case; and (2) these circumstances resulted from extrinsic fraud practiced by the other party or his attorney. The vital question is whether the successful party has by inequitable conduct, either direct or insidious in nature, lulled the other party into a state of false security, thus causing the latter to refrain from appearing court or asserting legal rights. Some examples of extrinsic fraud are: concealment of the existence of a community property asset, failure to give notice of the action to the other party, convincing the other party not to obtain counsel because the matter will not proceed (and it does proceed). . . .
>
> Here, none of Defendant's allegations support the extrinsic fraud exception to issue preclusion and Defendant does not ask the Court to apply the extrinsic fraud exception. Defendant's arguments regarding fraud attack the veracity of Plaintiff's allegations in the second amended complaint in the State Court Action and in the Complaint in the instant adversary proceeding. Defendant continues to argue that the allegations in Plaintiff's complaints were not true and that Defendant's statements were not the reason that Plaintiff's job offer was withdrawn. Defendant also alleges that Plaintiff knew the true reason his job offer was withdrawn. However, a judgment will not be set aside because it is based upon perjured testimony or because material evidence is concealed or suppressed, that such fraud both as to the court and the party against whom judgment is rendered is not fraud extrinsic to the record for which relief may be had."

> Moreover, these allegations if true would not invoke the extrinsic fraud exception to issue preclusion. . . .
>
> The extrinsic fraud exception is applicable where Defendant was unable to present his case because of Plaintiff's fraudulent conduct. While Defendant makes many allegations of Plaintiff's purported misconduct, none of these allegations, even if true, prevented Defendant from presenting his case or asserting his legal rights in the State Court Action.

[Dkt. No. 149] (citations and quotations omitted). As outlined above, Defendant is making the same argument made over seven years ago, and rejected by this Court without making a genuine attempt to provide legal analysis or supporting caselaw warranting a change in the Court's conclusion.

B. *Malpractice of Defendant's Counsel in State Court Proceedings*

In this section Defendant raises a new argument, not contained in the motion for reconsideration, asserting that Defendant was denied a full and fair opportunity to litigate due to the malpractice and/or negligence of his attorney. Defendant relies upon *Smith v. ExxonMobil Oil Corp.*, 153 Cal. App. 4th 1407 (Cal. Ct. App. 2007) in support of his argument. The Court agrees that, if Defendant was "denied a full and fair opportunity" to litigate in State Court, then such a conclusion would lead this Court to conclude that the application of collateral estoppel was not appropriate.

The Court does not agree, however, that Defendant was denied a full and fair opportunity to litigate. As pointed out by the Court during the hearing on December 6, 2021, the holding of *Exxon Mobil Oil*, rested on the conclusion that "neither Mobile *nor its counsel* were in any way

responsible for Dr. Weir's unavailability." *Id*. at 1420 (emphasis added). Here, Defendant's argument is that malpractice/negligence by state court counsel is the cause of his denial of a "full and fair opportunity to litigate." Defendant has not pointed to any caselaw that concluded the negligence or malpractice of counsel was a basis to decline to apply collateral estoppel.

While caselaw on the issue is not extensive, the caselaw supports the Court's conclusion that malpractice or negligence on the part of Defendant's state court counsel generally is not a basis to decline to apply collateral estoppel. *See, e.g.*, *Arunachalam v. Fremont Bancorporation*, 2015 WL 12806552 at *2 (N.D. Cal. 2015) ("Plaintiff's only other argument as to why collateral estoppel does not apply is that Pi-Net did not have a full and fair opportunity to litigate the *JP Morgan* and *Fulton* cases because it was deprived of crucial evidence and witnesses by a rogue former attorney who is subject to an ongoing malpractice suit by Plaintiff. Plaintiff cites no evidence in support of this contention. *Furthermore, the remedy for malpractice is damages, not an invalidation of the prior judgment*.) (emphasis added) (citations omitted); *In re Gessin*, 2013 WL 829095 at *6-7 (B.A.P. 9th Cir. 2013) (determining whether attorney negligence deprived party of "full and fair opportunity to litigate); *In re Rounds*, 2010 Bankr. Lexis 6521 at *34, n.6 (Bankr. D. Colo. 2010) ("Both cases hold that attorney malpractice is no bar to the application of collateral estoppel for two reasons. Parties are bound by the actions of their agents (e.g. attorneys), against whom a separate remedy for malpractice exists. Furthermore, it would be unfair to burden a party, successful in a prior suit, with the necessity of relitigating issues already decided due to negligence on the part of the losing party's attorney."); *In re Williams*, 282 B.R. 267 (Bankr. N.D. Ga. 2002) ("The Debtor claims that he was denied a full and fair opportunity to

litigate because his attorney committed malpractice. However, an attorney's malpractice is not a per se denial of a full and fair opportunity to litigate.").

As the discussion in *Gessin* indicates, there may be some circumstances when attorney negligence does deprive a litigant of a "full and fair opportunity to litigate." Here, Defendant has not articulated any argument as to *when* attorney malpractice/negligence results in a finding that a "full and fair opportunity to litigate" was absent, nor has Defendant articulated *how* Defendant's attorney negligence denied him a "full and fair opportunity to litigate," instead appearing to assume that malpractice requires such a conclusion, when the caselaw is not in accord. On the contrary, the State Court order granting terminating sanctions against Defendant states that "[t]he Court finds that Defendant's failure to respond to the Court's orders compelling a response to interrogatory is willful." [Dkt. No. 87, pg. 88].

Additionally, the Court notes that Defendant has employed numerous attorneys, and has engaged in extensive motion practice, both in this proceeding and in State Court, attempting to remedy the judgment obtained in State Court. Just as with Defendant's argument that alleged perjury/fraud on the court should preclude collateral estoppel being applied to the Judgment, Defendant's argument regarding attorney negligence/malpractice has previously been addressed by the Court. To wit:

> Attorney's malpractice is not per se denial of a full and fair opportunity to litigate; the inquiry is whether the party had adequate notice of the issue and was afforded the opportunity to participate in its determination. . . .
>
> Here, the undisputed facts establish that Defendant was given due process and had a full and fair opportunity to litigate the State Court Action. Defendant retained three different sets of counsel to represent him in the State Court Action. He

> answered the complaint, requested a fee waiver, and appeared at a fee waiver hearing. The record also reflects that Defendant's second attorney, Christopher Mandarano was substituted in as counsel for Defendant prior to Plaintiff filing his Motion for Default Judgment in the State Court Action and represented Defendant [ ] in connection with filing the Motion to Vacate the Entry of Default. . . . Defendant hired three different attorneys to represent him during the State Court Action, and filed a Motion to vacate entry of the State Court Judgment. . . . Moreover, any argument that Defendant did not have a full and fair opportunity due to his first attorney's negligence is not persuasive.

[Dkt. No. 149] (citations and quotations omitted). Despite attaching the foregoing to his response, Defendant has made no attempt to present a sound legal argument or applicable caselaw that would warrant a change in the Court's position.

VII. *Defendant's Miscellaneous Arguments*

The Court now turns to the secondary arguments laid out in Defendant's motion and in Defendant's response to the Tentative. Subsections (A) through (C) relate to the arguments raised in Defendant's motion. Subsections (D) through (F) relate to the arguments addressed were raised in Defendant's response to the Tentative.

A. *The Court Should Reconsider the Remand Decision Pursuant to Rule 54(b)*

Defendant's first argument simply argues that the public policy factors weigh in favor of not applying collateral estoppel. The Court disagrees.

As noted in section VI, *supra*, the Court concludes that application of collateral estoppel is appropriate here for the same reasons outlined in *In re Baldwin*. Specifically, first, relitigating an

issue that the State Court was fully capable of adjudicating would undermine the integrity of the judicial system. Second, relitigating the issues resolved in State Court would require additional judicial resources and, therefore, would not promote judicial economy. Finally, Defendant had a "full and fair opportunity to litigate the issue in the state court proceedings. There is no indication in the record that those proceedings violated [Defendant's] right to due process, nor does [Defendant] allege any constitutional infirmity." *In re Baldwin*, 249 F.3d 912, 920 (9th Cir. 2001).

B. *The Court Should Grant Defendant Summary Judgment Pursuant to Rule 56(f) Because Plaintiff Cannot Prove Causation*

The Court summarily rejects this argument as being procedurally and summarily flawed. Procedurally, the Court notes that, to the extent it considers Defendant's request a request for summary judgment, the request does not comply with the Federal and Local Rules regarding motions for summary judgment, and was unauthorized, having been filed beyond the deadline for dispositive motions.

Substantively, Defendant's argument is a red herring. Plaintiff has a valid claim under 11 U.S.C. § 502(a). The issue in this adversary proceeding is whether Plaintiff's claim should be held to be non-dischargeable. The amount/validity of Plaintiff's claim, reduced to judgment in State Court, is not at issue in this adversary proceeding. Instead, the nature of the debt/injury is the scope of the Court's review.

The Court also notes that the bulk of the damages awarded in State Court were not related to the withdrawal of the employment offer, but were general damages related to emotional/reputational damage.

C. *The Court Should Issue Order to Show Cause Re Why Plaintiff Should Not Be Sanctioned for Bad Faith Conduct*

The Court considers this argument to be frivolous. Defendant's contention that Plaintiff has been prosecuting this adversary proceeding without evidence is wholly without merit given the discussion set forth herein.

D. *The Rooker-Feldman Doctrine Does Not Apply to Nondischargeability Proceedings and Should Not Be Confused with Preclusion*

In his first argument in the response to the Court's tentative ruling, Defendant takes the Court's reasoning out of context. Nowhere in this order, in the Tentative, or in the Opinion, did the Court rest its conclusion on the *Rooker-Feldman* doctrine. The Court has provided several attempts to brief whether it is appropriate for the Court to afford the Judgment collateral estoppel effect, and, for the reasons set forth elsewhere in this order, the Court concludes that it is appropriate to apply collateral estoppel to the Judgment.[6]

[6] The Court notes that its brief reference to *Rooker-Feldman*, cited by Defendant in its response to the Tentative, reads: "under the *Rooker-Feldman* doctrine, Defendant is not permitted to collaterally attack the merits of the defamation judgment." While clearly stated in that excerpt, the Court reiterates that Defendant is not permitted to challenge the merits of the underlying judgment. This proceeding is about whether Defendant's conduct was "willful" and "malicious." The Court's reference was in the context of what an affirmative defense would look like under § 523(a)(6), and was included because Defendant, and Defendant's counsel's office, have previously attempted to use affirmative defenses to relitigate the merits of the underlying action.

E. *Courts Have Broad Discretion to Decide Whether to Apply Issue Preclusion Under Federal and California Law*

While it is true that collateral is not applied "automatically," the Court disagrees with Defendant's assertion that the Court has "broad discretion" when determining whether to apply collateral estoppel. Regardless of how its discretion is characterized, in section VI, *supra*, the Court quoted from *In re Baldwin* and *In re Samuels* in support of its conclusion that the public policy considerations outlined in *Lucido* weigh in favor of the application of collateral estoppel in this case. Defendant has not provided any caselaw in this section that suggests that *Lucido*, *Baldwin*, and *Samuels* are not good law or that they do not guide the Court's analysis.

F. *The Tentative Ruling Errs in How it Applies Offensive Issue Preclusion Against Sangha in an Automatic and Rigid Manner*

Again, as set forth in section VI, *supra*, the Court concludes that application of the *Lucido* public policy considerations in a manner consistent with *In re Baldwin* and *In re Samuels*, results in a conclusion that application of collateral estoppel is appropriate in this case. The Court disagrees with Defendant's contention that it can merely decline to apply collateral estoppel on some vague ground of "fairness."[7] Defendant's argument ignored the public policy test articulated by the California Supreme Court and recited by the Ninth Circuit, and is inconsistent with the Ninth

[7] The Court does note that there is caselaw that contains statements related to "fairness" and "sound judicial policy." *See, e.g.*, *Vandenberg v. Superior Court*, 21 Cal. 4th 815, 835 (Cal. 1999). But this language is derived from *Lucido*, which laid out a three-part test which is this Court's clearest instruction as to how to evaluate "fairness" and "sound judicial policy," stating that its test "strongly influences" whether [collateral estoppel's] application in a particular setting would be fair to the parties and constitute sound judicial policy. 51 Cal. 3d 335, 343 (Cal. 1990). The Court interprets *Lucido* in light of how the this its language has been applied by the Ninth Circuit Court of Appeals.

Circuit's conclusion in *In re Samuels* limiting consideration to certain public policy factors and stating that: "[w]hile certain public policies may limit applicability of collateral estoppel in California, the flawed nature of the prior decision is not one of them," 2008 WL 1751745 at *2 (9th Cir. 2008). Furthermore, Defendant has provided no caselaw that: (a) would permit this Court to substitute its own, holistic test when considering public policy considerations; or (b) suggests that the Court should, under the facts before it, reach the conclusion that public policy considerations weigh against application of collateral estoppel.

VIII. *Conclusion*

This adversary proceeding has been aggressively litigated for years. Defendant has employed numerous attorneys, and a variety of procedural approaches in an attempt to remedy what he perceives as an unjust judgment. Nevertheless, in the motion before the Court, Defendant has not presented any new, material argument, nor has Defendant provided any legal argument, with supporting caselaw, that would establish that the Court was or is applying the incorrect legal standard, or reaching the wrong conclusion, when it considers whether collateral estoppel should be afforded to the Judgment. For the reasons set forth herein, for the reasons stated on the record, and for the reasons stated in docket number 149, the Court hereby DENIES the motion.

IT IS SO ORDERED.

Date: March 31, 2022

Mark Houle
United States Bankruptcy Judge