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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 PLAINTIFF'S MOTION TO RECONSIDER**
CHARLES SCHRADER Plaintiff v. NARINDER SANGHA Defendant	Hearing Held: **Date:** December 6, 2021 **Time**: 11:00 a.m. **Courtroom**: 301 **Place:** 3420 Twelfth St. Riverside, CA 92501

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, 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.

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

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.

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").

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[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.

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.

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

[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.

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)).

As noted above, the Court must analyze the five threshold requirements when a party seeks to apply collateral estoppel: (1) the issue sought to be precluded from relitigation must be identical to that decided in a former proceeding; (2) the issue must have been actually litigated; (3) the issue must have been necessarily decided; (4) the decision in the former proceeding must be final and on the merits; and (5) the party against whom preclusion is sought must be the same as, or in privity with, the party to the former proceeding. *See, e.g.*, *Lucido v. Superior Ct.*, 51 Cal. 3d. 335, 341 (Cal. 1990).

"The 'identical issue' requirement addresses whether 'identical factual allegations' are at stake in the two proceedings, not whether the ultimate issues or dispositions are the same." *Id*. at 342; *see also Hardwick v. County of Orange*, 980 F.3d 733, 740 (9th Cir. 2020). Here, the factual allegations contained in the complaint are unambiguously identical to those raised in the State Court complaint. In fact, the Complaint does not actually contain a recitation of factual allegations, but, rather, it simply attaches, incorporates, and refers to the allegations made in the State Court complaint.

The "actually litigated" requirement functionally is not a separate requirement in this case. Courts have phrased the requirement as "[a]n issue is actually litigated when it is properly raised by a party's pleadings or otherwise, and is submitted for determination, and is determined." *Wabakken v. Cal. Dept. of Corrections & Rehabilitation*, 801 F.3d 1143, 1148 (9th Cir. 2015) (emphasis omitted). But courts have also held that "if an issue is determined to have been necessarily decided in a prior proceeding, it was actually litigated." *See In re Harmon*, 250 F.3d

1240, 1248 (9th Cir. 2001). Therefore, the Court must conclude that an issue was "actually litigated" if it concludes that that issue was "necessarily determined."

Under California law, an issue is necessarily decided when: (1) there are explicit findings of an issue made in a judgment or decision; or (2) or when the issue is a conclusion that must have been necessarily decided by the court. *See In re Dason*, 588 B.R. 537, 544 (Bankr. C.D. Cal. 2018). "Whether an issue was 'necessarily decided' has been interpreted to mean that the issue was not 'entirely unnecessary' to the judgment in the prior proceeding." *Lucido v. Superior Court*, 51 Cal.3d 335, 342 (Cal. 1990); *see also Apple, Inc. v. Franchise Tax Board*, 199 Cal. 4th 1, 15 (Cal. Ct. App. 2011) ("The 'necessarily decided' requirement generally means only that the resolution of the issue was not 'entirely unnecessary' to the judgment in the initial proceeding."). In order to determine the whether the two prongs of an action under 11 U.S.C. § 523(a)(6) were necessarily decided in the State Court Action, the Court must turn to the relevant state law, which it does in section VII, *infra*.

Fourth, there does not appear to be any dispute that the Judgment is final and on the merits.

Finally, there is no contention that the parties here are not the same parties identified in the Judgment.

VII. *The Relationship Between the Standards for Slander Per Se, Willfulness, and Maliciousness*

Turning to the underlying State Court claim, the basis for a claim of slander *per se* in California is CAL. CIV. CODE § 46, reproduced below:

> Slander is a false and unprivileged publication, orally uttered, and also communications by radio or any mechanical or other means which:
>
> 1. Charges any person with crime, or with having been indicted, convicted, or punished for crime;
> 2. Imputes in him the present existence of an infectious, contagious, or loathsome disease;
> 3. Tends directly to injure him in respect to his office, profession, trade or business, either by imputing to him general disqualification in those respects which the office or other occupation peculiarly requires, or by imputing something with reference to his office, profession, trade, or business that has a natural tendency to lessen its profits;
> 4. Imputes to him impotence or a want of chastity; or
> 5. Which, by natural consequence, causes actual damage.

To help focus its analysis of slander *per se* under California law, the Court will first review the "willfulness" standard in 11 U.S.C. § 523(a)(6). Section 523(a)(6) provides that: "(a) A discharge under 727 ... of this title does not discharge an individual debtor from any debt—... (6) for willful and malicious injury by the debtor to another entity or to the property of another entity." Whether a particular debt is for willful and malicious injury by the debtor to another or the property of another under § 523(a)(6) requires application of a two-pronged test to the conduct giving rise to the injury. In other words, the creditor must prove that the debtor's conduct in causing the injuries was both willful and malicious. *In re Barboza*, 545 F.3d 702,711 (9th Cir. 2008).

In analyzing willfulness, the Court is guided by the Supreme Court's analysis in *Kawaauhau v. Geiger*, 523 U.S. 57 (1998). In rejecting the argument that negligent or reckless torts are

sufficient for a willfulness finding under § 523(a)(6), the Supreme Court reasoned: "[A]s the Eighth Circuit observed, the (a)(6) formulation triggers in the lawyer's mind the category 'intentional torts,' as distinguished from negligent or reckless torts. Intentional torts generally require that the actor intend 'the consequences of an act,' not simply 'the act itself.'" *Id.* at 61-62 (emphasis omitted) (*quoting* RESTATEMENT (SECOND) OF TORTS § 8A, cmt. a). The RESTATEMENT (SECOND) OF TORTS §8A, quoted by the Supreme Court, contains the following commentary delineating what makes a tort intentional:

> a. "Intent," as it is used throughout the Restatement of Torts, has reference to the consequences of an act rather than the act itself. When an actor fires a gun in the midst of the Mojave Desert, he intends to pull the trigger; but when the bullet hits a person who is present in the desert without the actor's knowledge, he does not intend that result. "Intent" is limited, wherever it is used, to the consequences of the act.
> b. All consequences which the actor desires to bring about are intended, as the word is used in this Restatement. Intent is not, however, limited to consequences which are desired. If the actor knows that the consequences are certain, or substantially certain, to result from his act, and still goes ahead, he is treated by the law as if he had in fact desired to produce the result. As the probability that the consequences will follow decreases, and becomes less than substantial certainty, the actor's conduct loses the character of intent, and becomes mere recklessness, as defined in § 500. As the probability decreases further, and amounts only to a risk that the result will follow it becomes ordinary negligence, as defined in § 282. All three have their important place in the law of torts, but the liability attached to them will differ.

As such, according to the Restatement, a tort is "intentional" if: the tortfeasor: (a) intended the consequences of the act; or (b) knew that the consequences were substantially certain to occur. After *Kawaauhau*, the willfulness standard universally applied has mirrored the definition of an intentional tort recited above. *See, e.g.*, *In re Su*, 290 F.3d 1140, 1143 (9th Cir. 2002). Therefore, any tort that is an intentional tort under the Restatement's definition of that term would satisfy the willfulness test. *See, e.g.*, *In re Luebbert*, 987 F.3d 771, 784 (8th Cir. 2021) ("It is enough to

show that conduct amounting to an intentional tort accompanied the breach of contract for a creditor to meet the willful injury requirement of § 523(a)(6)."); *In re Jercich*, 238 F.3d 1202, 1208 (9th Cir. 2001) ("the willful injury requirement of § 523(a)(6) is met when it is shown either that the debtor had a subjective motive to inflict the injury *or* that the debtor believed that injury was substantially certain to occur as a result of his conduct"); *In re Markowitz*, 190 F.3d 455, 464 (6th Cir. 1999) (deriving willfulness standard from Restatement of Torts definition of intentional tort).

But not all torts that are characterized as "intentional" under state law necessarily follow the definition of "intentional tort" outlined in the Restatement of Torts. *See, e.g.*, *First Weber Group, Inc. v. Horsfall*, 738 F.3d 767, 774 (7th Cir. 2013) ("Although *Geiger* refers to intentional torts to help explain the federal standard, it does not hold that all state-law intentional torts are 'willful' for purposes of section 523(a)(6)."); *In re Arden*, 2015 WL 4068962 at *10 (B.A.P. 9th Cir. 2015) ("Comparing the elements of the California intentional tort of malicious prosecution with the requirements to establish a willful and malicious injury . . . we disagree that the 'willful' standard was necessarily met."). This inconsistency in the use of the term "intentional tort" has led to the following pronouncement from the Fifth Circuit Court of Appeals: "the language of Section 523(a)(6) mirrors the definition of an intentional tort . . . [d]espite similarities in the language used to describe an injury under Section 523(a)(6) and intentional torts, Section 523(a)(6) creates a narrower category of tortious conduct." *In re Williams*, 337 F.3d 504, 508 (5th Cir. 2003).

This apparent contradiction is partially explained by the Fifth Circuit's previous analysis in *Matter of Miller*, 156 F.3d 598, 603-04 (5th Cir. 1998). To wit:

> Merely because a tort is classified as intentional does not mean that any injury caused by the tortfeasor is willful. . . .
>
> Most often, an intentional tort requires either objective substantial certainty of harm or subjective motive to do harm. Indeed, the presence of one of these factors is both necessary and sufficient for a tort to be classified as an "intentional tort" under the traditional modern definition.
>
> Thus, rather than allow the general classification to be a talisman, we hearken back to this original definition of "intentional tort" to determine whether injury is "willful" for § 523(a)(6).

Id. at 604 (citations omitted). In other words, for an intentional tort to necessarily satisfy the willfulness standard, it must be a "traditional modern" intentional tort, i.e. an "intentional tort" under the Restatement standard.

In the context of slander *per se*, relating to a category of statements that are deemed to necessarily cause harm to their subject, one could interpret the theoretical underpinnings as either assigning or presuming the intent of the speaker, or one could conclude that the intent is irrelevant, and, as such, the action is more akin to a strict liability tort. The Court now turns to a law review article cited by the Fifth Circuit Court of Appeals in *In re Miller* -- Kenneth Vandevelde, *A History of Prima Facie Tort: The Origins of a General Theory of Intentional Tort*, 19 HOF. L. REV. 447 (1990).

According to *The Origins of a General Theory of Intentional Tort*, the concept of intentional tort was conceived by Oliver Wendell Holmes, who devised a scheme separating torts into three

categories: (1) intentional torts; (2) torts based on negligence; and (3) strict liability torts. *See id*. at 448. At the time, the "classic" intentional torts (i.e. assault, battery, false imprisonment, etc.) were considered strict liability torts. *See id*. at 450, 459. The category of intentional torts outlined by Holmes, however, "was a grab-bag of miscellaneous torts which had developed out of the old action on the case: deceit, slander and libel, malicious prosecution and conspiracy. He treated each separately." *Id*. at 459. Regarding slander specifically, Holmes observed that

> Slander . . . often had been said to require malice, which suggested that actual intent to cause harm, if not malevolence, was required. Yet, he argued malice[5], in fact, was presumed upon the speaking of certain words, regardless of the speaker's state of mind.

Id. Vandevelde comments on Holmes' scheme as follows:

> In truth, Holmes' category of intentional torts was really not that at all. As Holmes knew, slander was really a strict liability tort because malice was presumed from certain conduct. . . .Holmes might well have simplified his scheme by dividing torts into those based on fault and those based on strict liability, without further subdividing the former category into intentional and negligent tort.

As noted above, earlier formulations of "intentional tort" predated the current Restatement's definition, and, as such, produced some caselaw and commentary that used the terms in a

[5] Note that the article uses "intent" and "malice" as roughly synonymous terms, whereas, in the context of this non-dischargeability proceeding, malice has a different, defined meaning. *See id.* at 459 ("both malice and intent referred simply to foresight that a harm would occur"); *see also id.* at 461 ("Holmes had argued that malice, as used in criminal statutes, simply meant intent. It became his rhetorical device thereafter routinely to pair malice and intent as if essentially synonymous."). *But see id*. at 474 ("In *Privilege, Malice, and Intent*, Holmes in effect acknowledged that the presence of malice was relevant to the justification rather than the foreseeability element of intentional tort. Intent and negligence could be arranged along a continuum, but malice measured an entirely different dimension of the defendant's conduct.") and at 483 ("[W]illful injury 'would embrace all injuries intended to follow from the parties' acts, although they were intended only as the necessary means to ulterior gain for the parties themselves.' Malicious injury, on the other hand, meant 'doing a harm malevolently for the sake of the harm as an end in itself, and not merely as a means to some further end legitimately desired.").

different matter. Additionally, the difficulty in positing a unified theory of torts resulted in the following:

> The ultimate triumph of Holmes' tripartite scheme was assured in 1934, when the American Law Institute adopted it for use in its *Restatement of the Law of Torts*. The first *Restatement* organized tort law into three divisions coinciding with Holmes' three categories: intentional harms to persons, land and chattels; negligence; and liability without fault.
>
> In the Institute's view, however, these three divisions did not exhaust the law of torts. The first *Restatement*, thus, contained additional divisions relating to defamation; deceit and malicious prosecution; harms to contract relations; harms to domestic relations; and legal and equitable relief against tortfeasors.

Thus, in the foundational assortment of torts, defamation managed to find a place outside the "comprehensive" scheme, neither placed with the intentional torts, nor with the negligent, nor with those to which liability attaches regardless of actor's state of mind.

This difficulty in categorizing and defining defamation has produced an analytical hesitancy in § 523(a)(6) actions where the underlying claim is based on slander. A revered bankruptcy treatise applies the intent element to the knowledge of falsity, rather than knowledge of injury: "A judgment obtained in an action of slander or libel may also be excepted from the operation of a discharge, at least when the cause of action requires knowledge of the falsity of the published statements and not mere reckless disregard for the truth or falsity of the statement." 4 COLLIER'S ON BANKRUPTCY ¶ 523.12[5] (16th ed. 2019). A second leading bankruptcy treatise applies the intent element to the act of making the statement, rather than knowledge of injury: "A debt based on libel or defamation may be nondischargeable under § 523(a)(6) if the statement is made

intentionally and without just cause or excuse." GINSBERG & MARTIN ON BANKRUPTCY § 11.06[I][1] (6th ed. 2021).

These formulations can be explained by reference to caselaw. In 1979, the Ninth Circuit concluded that the issue of whether a libelous statement was "willful" was determined by whether the speaker knew the statement to be false. *Matter of Kasler*, 611 F.2d 308, 310 (9th Cir. 1979) ("'willfulness' denotes that the speaker knew his statements were false"). Concluding that "libel liability in California can even be based on simply negligence," the Ninth Circuit concluded that a libel judgment was not necessarily willful for non-dischargeability purposes. *Id*. This position was adopted by the Sixth Circuit in 1986. *Wheeler v. Laudani*, 783 F.2d 610, 615 (6th Cir. 1986) ("The intentional tort of libel meets the requirements of § 523(a)(6) for non-dischargeability when the debtor/author knows the published statements were false.").

Seven years after *Wheeler*, an opinion was issued in *In re Thompson*, analyzing, in detail, the application of willfulness to a defamation judgment. 162 B.R. 748 (Bankr. E.D. Mich. 1993). Disagreeing that knowledge of falsity was the operative inquiry for "willfulness," the court found that more appropriate inquiry was "whether the debtor intentionally published a defamatory statement."[6] *Id*. at 753. In reaching this conclusion, the court noted that "the act which results in injury is, by definition, the publication of a defamatory statement," and that "[t]hat the defamatory statements happens to be true will generally render the publication not actionable,

[6] The Court points out that *In re Thompson* noted that *Wheeler's* statement that "[t]he intentional tort of libel meets the requirements of § 523(a)(6) for non-dischargeability when the debtor/author knows the published statements were false" combined the "willfulness" and "maliciousness" prongs into one, and cited two cases. One of those cases concluded that knowledge of falsity was required for "willfulness" and the other concluded that knowledge of falsity was required for "maliciousness."

but it does not render it any less defamatory –i.e., injurious." *Id*. at 752. Under this reasoning, *In re Thompson* concluded that the state of mind of the speaker with regard to the truth of the statement was related to the maliciousness prong, not to the willfulness prong.

After *In re Thompson* was decided, the Supreme Court issued its opinion in *Kawaauhau*, more clearly articulating its standard of willfulness, and shifting the focus from the actor's state of mind regarding his actions to the actor's state of mind regarding the injury. Subsequent to *Kawaauhau*, the Sixth Circuit returned to the issue of whether a defamation judgment necessarily satisfies the "willfulness" prong. *See In re Kennedy*, 249 F.3d 576 (6th Cir. 2001). Now focusing on the state of mind of the actor with regard to the injury, the Sixth Circuit concluded that defamation *per se* did, in fact, necessarily involve a willful act. To wit:

> [I]t is presumed that when Debtors made statements as to Creditors' chastity in the case at hand, they were substantially certain that harm would result because such statements are considered defamation *per se*. . . .
> [T]he statements at issue are defamation *per se* under Michigan law, meaning that the courts presume that the speakers make such statements knowing that substantial harm or injury will result.

Id. at 582-83.

The Court has extensively researched the post-*Kawaauhau* caselaw that considered the legal relationship between the elements of a state law claim for defamation and the elements of a non-dischargeability claim pursuant to 11 U.S.C. § 523(a)(6). Unfortunately, none of this caselaw is binding or particularly detailed in its application of § 523(a)(6) to defamation causes of act. Some cases, either explicitly or implicitly, reflect the reasoning outlined in *Kennedy*. *See, e.g.*, *In*

re Day, 409 B.R. 337, 343 (Bankr. D. Md. 2009) (citing *Kennedy* and finding that defamatory *per se* statements were necessarily willful); *In re Bland*, 1999 WL 33520530 at *5 (Bankr. N.D. 1999) ("[D]efamation by libel is an intentional tort. Therefore, the Court concludes that the jury's finding that Bland committed defamation by libel necessarily included a finding that Bland's conduct was 'willful' within the meaning of section 523(a)(6) because intentional torts satisfy the element of 'willfulness.'"); *see also In re Stanton*, 2010 WL 757804 at *11 (Bankr. N.H. 2010) (finding willfulness necessarily satisfied by defamation judgment). Other cases, without address the unique underpinnings of defamation causes of action, simply summarily conclude that a defamation judgment is not collateral estoppel because specific intent is not an element of the underlying action. *See, e.g.*, *In re Kauanui*, 2015 WL 359088 at *3 (Bankr. D. Hawaii 2015) (defamation claim not collateral estoppel as to willfulness); *In re Rizzo*, 337 B.R. 180 (Bankr. N.D. Ill. 2006) (willfulness requires intent to harm and maliciousness requires knowledge of falsity); *see also In re Provencher*, 2020 WL 7787036 (Bankr. W.D. Tex. 2020); *In re McCabe*, 588 B.R. 428 (E.D. Pa. 2018); *In re Palmer*, 555 B.R. 611 (Bankr. N.D. Ohio 2016); *In re Faller*, 547 B.R. 766 (Bankr. W.D. Ky. 2016); *In re Maxey*, 395 B.R. 665 (Bankr. W.D. Mo. 2008).

Many cases adopt a more nuanced position. The Sixth Circuit, interpreting a child pornography statute that, like defamation, presumed injury, offered the following analysis:

> As *Geiger* emphasizes, a debtor might act intentionally but simply not know that the act will cause injury. That is typically the case with judgments involving negligence. In such cases, the creditor will need to show that the debtor knew injury would result from his actions to except the judgment from discharge.

> But the law will sometimes presume that injury results from an act. Such is the case for false statements imputing a lack of chastity, which are defamatory per se. The law presumes that those statements will injure. Thus, all a creditor needs to prove to except a defamation per se judgment from discharge is that the debtor knew the facts which made his statements actionable: that they were false and published without privilege to a third party. The judgment precludes the debtor from arguing that he thought his words weren't harmful. Any debtor who makes a knowingly false, defamatory per se statement is at least substantially certain that his statement will injury.

In re Boland, 946 F.3d 335, 338-39 (6th Cir. 2020) (citations omitted).

While, at first glance, it may appear that the Sixth Circuit's opinion in *Boland* has implemented a lower standard than that outlined in *Kawaauhau*, in fact these cases recognize the unique underpinnings of defamation and the foundational maxim that "every man must be held to intend the natural and probable consequences of his deeds." *Landress v. Phoenix Mut. Life Ins. Co.*, 291 U.S. 491, 500 n.2 (1934). The Ninth Circuit recognized this maxim in the context of a willfulness analysis in a non-dischageability proceeding in *In re Ormsby*: "§ 523(a)(6)'s willful injury requirement is met only when the debtor has a subject motive to inflict injury or when the debtor believes that injury is substantially certain to result from his own conduct. The Debtor is charged with the knowledge of the natural consequences of his actions." 591 F.3d 1199, 1206 (9th Cir. 2010). When the operative statute provides that injury necessarily follows a certain act –like statements that are defamatory *per se*, or, as in the case of *Boland*, certain actions related to child pornography – then whether the injury at issue naturally follows is no longer a question of fact. As a matter of law it has been determined that it does, and, therefore, the actor is charged with knowledge of that injury.[7]

[7] To the extent that an argument could be raised that the injury presumed, general damage to reputation, is distinct from the specific injury that forms the basis of the Judgment, the Court notes that there is extensive caselaw finding

This middle ground is the approach adopted by the courts of appeal that have decided the issue, COLLIER'S ON BANKRUPTCY, and many bankruptcy courts. *See e.g.*, *In re McCabe*, 856 Fed. Appx. 430, 431 (3rd Cir. 2021) ("The CCP's imposition of punitive damages is not dispositive because, under Pennsylvania law, punitive damages may be awarded in a defamation case on a finding of either recklessness or knowledge of the statement's falseness."); *In re Marshall*, 264 B.R. 609, 630 (C.D. Cal. 2001) ("Libel and defamation claims are nondischargeable under § 523(a)(6) when the statements were made with actual knowledge of their falsity."); *In re Mason*, 1999 WL 58579 at *3 (Bankr. S.D.N.Y. 1999) ("The intentional tort of defamation may constitute 'willful and malicious injury' by the debtor to another entity under § 523(a)(6) of the Bankruptcy Code, as long as the debtor knew the published statements were false."); *see also In re Herring*, 2021 WL 1604327 (Bankr. E.D. Pa. 2021); *In re Landon*, 2020 WL 4658284 (N.D. Okla. 2020); *In re Scarbrough*, 516 B.R. 897 (Bankr. W.D. Tex. 2014) (applying collateral estoppel to defamation judgment); *In re Braun*, 327 B.R. 447, 451 (Bankr. N.D. Cal. 2005) (collective cases finding statutory damages non-dischargeable). Given that framework, and applying the willfulness prong to a cause of action under CAL. CIV. CODE § 46, the Court concludes that collateral estoppel does not apply to satisfy the willfulness prong because knowledge of the falsity of the statements at issue is not an element of the statelaw cause of action. *See, e.g.*, RESTATEMENT (SECOND) OF TORTS §580B (liability attaches to slander per se cause of action if the speaker: (a) knows that the statement is false; (b) acts in reckless disregard; or (c) acts negligently); *see also Brown v. Kelly Broadcasting Co.*, 48 Cal. 3d 711, 749 (Cal.

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such a distinction to be irrelevant. *See, e.g.*, *Cohen v. de la Cruz*, 523 U.S. 213, 220 (1998) (construing "debt for" language in § 523 broadly to mean any debt that is a result of or related to the injury); *see also In re Cecchini*, 780 F.2d 1440, 1443 (9th Cir. 1986) (all liabilities resulting from willful and malicious conduct are nondischargeable).

1989) (adopting negligence standard); *Oleumtech Corp. v. Sheriff*, 2013 WL 12121871 at *8 (C.D. Cal. 2013) (in defamation case, "[n]egligence is shown where there is a lack of 'reasonable care in checking on the truth or falsity of the information before publishing it.'") (*quoting Carney v. Santa Cruz Women Against Rape*, 221 Cal. App. 3d 1009, 1016 (Cal. Ct. App. 1990)).

VIII. *Plaintiff's Motion for Reconsideration*

The Court now turns to the arguments raised in Plaintiff's motion for reconsideration. Plaintiff's argument focuses on the allegations raised in the complaint, asserts that he only alleged "intentional malice" as his basis for punitive damages, and argues that the State Court must have necessarily found intentional malice since punitive damages were awarded.

As a preliminary matter, as previously noted in this Court's first order granting Plaintiff's motion for summary judgment, entered on August 7, 2014, as docket number 149, there is a lack of clarity regarding the calculation regarding damages and, more specifically, that component which represents putative (or exemplary) damages. The Judgment itself does not contain an itemization of damages, other than costs incurred. The Court included a discussion regarding punitive damages in a tentative ruling from July 8, 2014:

> Plaintiff asserts that the State Court Judgment includes an award for punitive damages in the amount of $6,000.00 under CCP § 3294. However, the second amended complaint did not contain any allegations for punitive/exemplary damages under CCP § 3294, and there are no facts set forth by Plaintiff that the State Court Judgment for punitive damages is based on CCP § 3294. While the Court agrees that the State Court Judgment includes an award of $6,000.00 for punitive damages, it does not appear that the punitive damages are based on CCP

> § 3294.[8] Here, the record reflects that the punitive damages were based on Plaintiff's allegations of malice, contained in the second amended complaint.

[Dkt. No. 149, pg. 6].

After further review of the State Court proceedings, the basis of the punitive damages award is not at all clear.[9] On May 4, 2011, prior to and in anticipation of the prove-up hearing, Plaintiff submitted a declaration that included a declaration regarding calculation of damages. This calculation included $1,000,000 based in general damages (emotional distress, damage to reputation, etc.), $180,435.65 in lost wages, $178,801.75 in future lost wages, $3,298 in costs related to the appeal of the withdrawal of the employment offer, $1,098 in costs related to the State Court action, and, importantly, $6,000 for punitive damages. The proof of punitive damages states, in its entirety:

> 27. Defendant Narinder Sangha has misused discovery and ignored a court order subpoenaing his financial records sought in order to provide the court a basis of his financial condition for determining an award of punitive damages. Attached as Exhibit J is a true and correct copy of the court order compelling compliance with a subpoena for his financial records. This is a misuse of discovery that allows an award of punitive damages to stand in the absence of evidence of defendant's financial condition.

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[8] The Court notes that this conclusion was implicitly revisited in the Opinion. CAL. CODE CIV. P. § 3294 would appear to be the exclusive avenue for seeking punitive damages in the State Court action. *See, e.g.*, *Bay Area Roofers Health & Welfare Trust v. Sun Life Assurance Co. of Can.*, 73 F. Supp. 3d. 1154, 1173 (N.D. Cal. 2014) ("Under California law, a party may be awarded punitive damages only where 'there is some evidence of fraud, malice, express or implied, or oppression."); *College Hosp., Inc. v. Superior Court*, 8 Cal. 4th 704, 709 (Cal. 1994) ("The substantive requirements for recovering punitive damages are set forth in Civil Code section 3294."); *Neal v. Farmers Ins. Exchange*, 21 Cal. 3d. 910, 922 (Cal. 1978) ("In order to justify an award of exemplary damages, the defendant must be guilty of oppression, fraud or malice.") (*quoting* CAL. CODE CIV. P. § 3294).

[9] At the prove-up hearing, Plaintiff merely stated that his damage calculation included $6,000 in punitive damages. The State Court did not ask for any clarification on or basis for the punitive damages. As noted by the Bankruptcy Appellate Panel and this Court's previous tentative ruling, a reading of the transcript of the State Court prove-up hearing does not make it clear beyond doubt that punitive damages were even awarded, although it appears they were, and Defendant's counsel has previously conceded the same. *See In re Sangha*, 2015 WL 3655113 at *2, n.7 (B.A.P. 9th Cir. 2015).

> 28. Defendant Narinder Sangha did not appear at a deposition scheduled for May 4, 2011 to determine his financial condition. Attached as Exhibit K is a Certificate of Non-Appearance at Deposition. This is also a misuse of discovery that allows an award of punitive damages to stand in the absence of evidence of defendant's financial condition.
>
> 29. Based on our nine month dating relationship, I have personal knowledge of Defendant's approximate financial condition, and estimate his net worth to be approximately $60,000.
>
> 30. My prayer for $6,000 in punitive damages is 1/10th of my estimation of his net worth.

As noted by Plaintiff in his motion to reconsider, with respect to each of the fourteen statements that served as the basis for defamation in the second amended complaint, Plaintiff alleged that Defendant made the statement "with malice and with the intent to injure." Plaintiff then reasons that: (a) the State Court must have awarded punitive damages based on "intentional malice," because that was the only statutory ground for punitive damages that the record supported; and (b) if the State Court awarded punitive damages based on intentional malice, then willfulness is satisfied.

Regarding the latter argument, "intentional malice" as defined by statute and caselaw would, in most cases, satisfy the willfulness prong of § 523(a)(6). *See* CAL. CODE CIV. P. § 46 (defining intentional malice as "conduct which is intended by the defendant to cause injury to the plaintiff"); *In re Plyam*, 530 B.R. 456, 465 (B.A.P. 9th Cir. 2015) ("Only Intentional Malice and fraud expressly require an intent to cause injury.") (citation omitted).

In analyzing this argument, the Court notes that its earlier extended discussion of the difficulties in categorizing defamation in the system of torts and applying § 523(a)(6) to defamation *per se* is

critical. Specifically, there are two unique factors in a slander *per se* cause of action that are relevant here: (1) injury occurs, as a matter of law, upon the speaking of certain words; and (2) that injury is only actionable if the statements are false. As noted earlier, the Court's willfulness evaluation for purposes of § 523(a)(6) centers on whether Defendant had knowledge that the statements were false, rather than the more common formulation, whether the actor intended to injury.

Similarly, when applied to cases of slander *per se*, the intentional malice standard in CAL. CIV. CODE § 46 should be interpreted as requiring knowledge of falsity, rather than intent to injure. In what appears to be the most recent example of a California appellate court analyzing punitive damages in in a case of defamation *per se*, the court began its analysis with the following:

> We first turn out attention to whether managing agents knew the reason given for termination was not substantially true and whether they acted with reckless disregard for the truth.
>
> For punitive damages, the plaintiff must prove by clear and convincing evidence that the defendant acted with oppression, fraud, or malice. . . .
>
> The reckless disregard test is not a negligence test measured by whether a reasonably prudent person would have published, or would have investigated before publishing, the defamatory statement. Instead, a reckless disregard for truth or falsity is demonstrated when there is sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication, but published the statement anyway.

Tilkey v. Allstate Ins. Co., 56 Cal. App. 5th 521, 554 (Cal. Ct. App. 2020) (quotations and citation omitted). The court of appeals' analysis in *Tilkey* contains no reference whatsoever to whether the speaker had the intent to injury the plaintiff; instead, the analysis focused on the state of mind of the speaker with respect to the truth or falsity of the statements at issue.

Here, in Plaintiff's second amended complaint in State Court, with respect to each of the fourteen statements at issue, Plaintiff alleged that Defendant "made said statement knowing the falsity thereof or without using reasonable care to determine the truth or falsity thereof." As a result, Plaintiff has alternatively alleged that Defendant acted with intent/willfulness and that Defendant acted with a less culpable mindset. As a result, it is not true that Plaintiff only alleged intentional malice as a possible basis for punitive damages nor is it true that the State Court must have found intentional malice when it awarded punitive damages.

IX. *Conclusion*

In light of the foregoing analysis, the Court DENIES Plaintiff's motions for reconsideration.

IT IS SO ORDERED.

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Date: March 31, 2022

Mark Houle
United States Bankruptcy Judge