

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
SAN FERNANDO VALLEY DIVISION**

In re:

Maria Estela San Vicente

Debtor(s).

Maria Saucedo

Plaintiff(s),

v.

Maria Estela San Vicente, Sergio San
Vicente

Defendant(s).

CHAPTER 11

Case No.: 1:19-bk-11935-MT

Adv No: 1:19-ap-01123-MT

**MEMORANDUM OF DECISION GRANTING
PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT**

Date: January 18, 2023

Time: 1:00 p.m.

Courtroom: 302 (via ZoomGov.com)

Maria San Vicente ("Maria" or "Debtor") filed a Chapter 13 on July 31, 2019. Thereafter, the case was converted to Chapter 11 on October 2, 2019. Debtor had filed five previous cases and her husband, licensed real estate agent Sergio San Vicente ("Sergio¹"), filed four previous cases between August 2010 and April 2017.

¹ In order to distinguish between Maria and Sergio San Vicente, they are sometimes referred to by their first names for greater clarity and ease. No disrespect is intended.

1 Procedural Background for Plaintiff Rosa Saucedo's Action:

2 Prior to Debtor having filed this chapter 11, on November 28, 2016, Plaintiff Rosa
3 Saucedo ("R. Saucedo") filed her original complaint in Los Angeles Superior Court
4 against Sergio, d.b.a. San Vi Management, as well as several other defendants,
5 asserting causes of action for fraud and breach of fiduciary duty, among others, in
6 relation to a home loan modification scheme. Rosa Saucedo v. San Vicente, et al.,
7 LASC no. LC104925 (the "R. Saucedo Action"), RJN ISO MSJ, Ex. 2, int. p. 2.
8 R. Saucedo filed adversary case 1:19-ap-01130-MT on October 30, 2019, asserting
9 claims of nondischargeability under §§ 523(a)(2) and (a)(4) based on the same Superior
10 Court proceeding (the "R. Saucedo Adversary").

11 Procedural Background for Plaintiff Maria Saucedo's Action:

12 On April 19, 2018, prior to Debtor having filed this chapter 11, Plaintiff Maria
13 Saucedo ("M. Saucedo") filed her original complaint in Los Angeles Superior Court
14 against Sergio, d.b.a. San Vi Management, as well as several other defendants,
15 asserting causes of action for fraud and breach of fiduciary duty, among others, in
16 relation to a scheme to obtain title to her home free and clear. Maria Saucedo v. San
17 Vicente, LASC no. LC107140 (the "M. Saucedo Action"), RJN ISO MSJ, Ex. 2, int. p. 3-
18 4.

19 M. Saucedo filed adversary case 1:19-ap-00123-MT on October 15, 2019,
20 against Debtor and Sergio, asserting claims of nondischargeability under §§ 523(a)(2)
21 and (a)(4) based on a Superior Court proceeding against Sergio (the "M. Saucedo
22 Adversary").

23 Bankruptcy Proceedings

24 On May 8, 2020, Debtor filed her Chapter 11 Disclosure Statement and Plan of
25 Reorganization. The disclosure statement did not list either R. Saucedo or M. Saucedo
26 as unsecured creditors or provide any treatment for their claims and does not disclose
27 one of the adversaries. See bankr. ECF doc. 80 and 81.
28

1 On November 20, 2020, the Court granted unopposed motions for relief from the
2 automatic stay, filed by R. Saucedo and M. Saucedo (collectively, "Plaintiffs") to
3 proceed with the pending state actions against Sergio.

4
5 On February 17, 2022, Los Angeles Superior Court Judge Keeny issued her
6 Proposed Statement of Decision in the R. Saucedo Action, which became the final
7 statement of decision under Cal. Rule of Court 1.1590, et seq. 19-ap-01130, RJN ISO
8 MSJ, Ex. 2. The Superior Court found that Sergio committed fraud and violated Cal.
9 Civ. Code § 2945. Judgment in favor of R. Saucedo and against Sergio was entered on
10 August 16, 2022, in the amount of \$95,000. Attorney's fees in the amount of \$29,350
11 and costs of \$910.17 were also awarded. Id. at Ex. 1.

12
13 On February 17, 2022, Los Angeles Superior Court Judge Keeny also issued her
14 Proposed Statement of Decision in the M. Saucedo Action, which became the final
15 statement of decision under Cal. Rule of Court 1.1590, et seq. 19-AP-01123, RJN ISO
16 MSJ, Ex. 2. The Superior Court found that Sergio committed fraud and violated Cal.
17 Civ. Code § 2945. Judgment in favor of M. Saucedo and against Sergio was entered on
18 May 2, 2022, in the amount of \$95,000. Attorney's fees in the amount of \$36,000 and
19 costs of \$1,127.17 were also awarded. Id. at Ex. 1. The two judgments entered against
20 Sergio are referred to here as the "Judgment Debts."

21
22 Debtor then filed an amended plan and disclosure statement on November 4,
23 2020. See bankr. ECF doc. Bankr. ECF doc. 103 and 104. On January 20, 2021, the
24 Amended Chapter 11 plan was confirmed. Id. at ECF doc. 144. On November 29, 202,
25 the chapter 11 case was closed on an interim basis. Id. at ECF doc. 167.

26 //

27 //

28 //

1 **STANDARDS**

2 **Summary Judgment**

3 Summary judgment shall be granted "if the movant shows that there is no
4 genuine dispute as to any material fact and the movant is entitled to judgment as a
5 matter of law." FRCP 56(a); see also FRBP 7056. The moving party must show that a
6 fact cannot be disputed by citing to "materials in the record, including depositions
7 documents, electronically stored information, affidavits or declarations, stipulations... or
8 other materials..." FRCP 56(c)(1)(A).

9
10 The moving party has the burden of establishing the absence of a genuine issue
11 of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). If the moving party
12 shows the absence of a genuine issue of material fact, the nonmoving party must go
13 beyond the pleadings and identify facts that show a genuine issue for trial. Id. at 324.
14 The nonmoving party must show more than "the mere existence of *some* alleged factual
15 dispute... the requirement is that there be no *genuine* issue of *material* fact." Anderson
16 v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986). The court must view the evidence in
17 the light most favorable to the nonmoving party. Tolan v. Cotton, 572 U.S. 650, 656-57
18 (2014). Summary judgment must not be granted if "a reasonable juror, drawing all
19 inferences in favor of the nonmoving party, could return a verdict in the nonmoving
20 party's favor." James River Ins. Co. v. Hebert Schenk, P.C., 523 F.3d 915, 920 (9th Cir.
21 2008). However, the evidence offered by the parties must be believable. See Scott v.
22 Harris, 550 U.S. 372, 380-81 (2007). "When opposing parties tell two different stories,
23 one of which is blatantly contradicted by the record, so that no reasonable jury could
24 believe it, a court should not adopt that version of the facts for purposes of ruling on a
25 motion for summary judgment." Id.

26 //

27 //

28 //

1 **Community Property Discharge under 11 U.S.C. 524**

2 Section 524(a)(3) contains two exceptions to the community property discharge.
3 First, the community property discharge does not apply to a community claim that has
4 been excepted from discharge under §§ 523, 1228(a)(1), or 1328(a)(1). Second, the
5 community property discharge does not apply if the bankruptcy court determines that
6 the claim would be excepted from discharge in a hypothetical case filed by Debtor's
7 spouse on the same petition date. Section 524(b) also contains two exceptions based
8 on the conduct of a non-debtor spouse. Section 524(b)(1) provides that the community
9 property discharge does not apply if the non-debtor spouse files a bankruptcy case
10 within six years of the debtor's petition and is denied a discharge. And § 524(b)(2)
11 states that the community property discharge does not apply if the bankruptcy court
12 determines that it would not grant a discharge to the non-debtor spouse in a
13 hypothetical case filed on the same petition date.

14 **DISCUSSION**

15 **The Judgment Debt is Community Debt**

16 All claims against a marital community are discharged "except a community claim
17 that is exempted from discharge under[, *inter alia*,] section 523." In re Soderling, 998
18 F.2d 730, 733 (9th Cir. 1993); 11 U.S.C. § 524(a)(3). A "community claim" is defined as
19 any "claim that arose before the commencement of the case concerning the debtor for
20 which property of the kind specified in section 541(a)(2)[5] of this title is liable, whether
21 or not there is any such property at the time of the commencement of the case." 11
22 U.S.C. § 101(7). The Ninth Circuit in Soderling provided this broader explanation:

23
24 Unlike a claim, a "community claim" is a debt owed by the debtor *or*
25 *the debtor's spouse*, which under state law could have been
26 satisfied from community property that would have passed to the
27 debtor's bankruptcy estate, whether or not such property existed at
28 the commencement of the case. Thus, three criteria must be met
before an obligation has the status of a community claim: (1) it must
be a debt owed by one of the spouses; (2) it must be satisfiable
from community property under applicable state law; and (3) the
community property from which the debt could be satisfied under

1 state law must be included within the assets which would pass to
2 the debtor's bankruptcy estate, whether or not such assets exist at
3 the commencement of the case.

4 In re Soderling, 998 F.2d at 733, quoting *Community Property and the Bankruptcy*
5 *Reform Act of 1978*, Alan Pedlar, 11 St. Mary's L.J. 349, 351-52 (1979). The bottom
6 line is that "whether or not a creditor holds a community claim will be determined by
7 state law." Id.

8
9 Maria and Sergio lived as a married couple in California during and immediately
10 after the filing of the Chapter 11 petition. Under California law, the community is liable
11 for debt incurred by either spouse, the community estate is liable for a debt incurred by
12 either spouse before or during marriage, regardless of which spouse has the
13 management and control of the property and regardless of whether one or both spouses
14 are parties to the debt or to a judgment for the debt. Cal. Fam.Code § 910. Defendant
15 concedes this is a community debt. Defendant's Supplemental Brief in Opposition, ad.
16 ECF doc. 37, 2:20-21.

17 **The Judgment Debt is Nondischargeable in a Hypothetical Case filed by Sergio**

18 To state a claim for relief from the community property discharge, where the
19 purported fraudulent conduct is by a non-debtor spouse, a creditor must: (1) allege the
20 existence of a community debt; and (2) allege sufficient facts to support a hypothetical
21 claim of nondischargeability or denial of discharge against the non-debtor spouse as of
22 the petition date. In re Lockhart-Johnson, 631 B.R. 38 (B.A.P. 9th Cir. 2021).

23 On April 22, 2020, Sergio filed motion in Superior Court to vacate the default judgment
24 due to Maria's bankruptcy. There was no bankruptcy by Sergio filed or pending at that
25 time – his previous cases had been dismissed. It is not clear why² but the Superior
26

27
28 ² No copy of the motion to vacate was provided. Both Sergio and Maria each filed bankruptcy so many times, it is
hard to tell what was pending at the time of the original default judgment. In any case, another judgment was
obtained by each Plaintiff. The delays and costs imposed on Plaintiffs in reaching this stage have been extensive
due to multiple bankruptcies.

1 Court agreed default judgement was void and then held a trial after this Court granted
2 relief from stay, and thereafter entered a new judgment against Sergio. Maria was not
3 named in that action. There has been no nondischargeability ruling as against Sergio
4 as he has not filed bankruptcy since the Superior Court judgment was entered.
5 Because Maria has filed bankruptcy, the dischargeability as against community property
6 must be considered in her case. Sergio has been named in the complaint and has been
7 given notice of all proceedings. He has not responded.

8
9 Issue Preclusion

10 Issue preclusion, or collateral estoppel, applies in discharge exception
11 proceedings under §523(a). Grogan v. Garner, 498 U.S. 279, 284 n.11 (1991).
12 Pursuant to 28 U.S.C. §1738, as a matter of full faith and credit, federal courts are
13 required to apply the pertinent state's collateral estoppel principles. Gayden v.
14 Nourbakhsh (In re Nourbakhsh), 67 F.3d 798, 800 (9th Cir. 1995). Under California law,
15 collateral estoppel applies only if (1) the issue sought to be precluded from relitigation is
16 identical to that decided in the former proceeding; (2) the issue was actually litigated in
17 the former proceeding; (3) the issue was necessarily decided in the former proceeding;
18 (4) the decision in the former proceeding was final and on the merits; and (5) the party
19 against whom preclusion is sought is the same, or in privity with, the party to the former
20 proceeding. Harmon v. Kobrin, (In re Harmon), 250 F.3d 1240, 1245 (9th Cir. 2001).
21 M. Saucedo filed a Motion for Summary Judgment in adversary 1:19-ap-01123-MT,
22 while R. Saucedo filed a Motion for Summary Judgment in adversary 1:19-ap-01130-
23 MT. Each Motion was supported by a copy of the Superior Court's findings as to the
24 individual plaintiff. While some of the findings of fact overlap both adversary cases, for
25 the purposes of the issue preclusion requirement of finding that the parties are the
26 same, the Court applies only the factual findings that were made as to the specific
27 Plaintiff to ensure that fact preclusion is applied only to the same party named in the
28 Superior Court case.

1 Lastly, in the Ninth Circuit, the Court must also find that giving the previous
2 judgment preclusive effect would further the public policies underlying the collateral
3 estoppel doctrine. The California Supreme Court has identified three policies underlying
4 the doctrine of collateral estoppel: "preservation of the integrity of the judicial system,
5 promotion of judicial economy, and protection of litigants from harassment by vexatious
6 litigation." Baldwin v. Kilpatrick (In re Baldwin), 249 F.3d 912, 919-920 (9th Cir. 2001).

7
8 *Fraud under § 523(a)(2)(A)*

9 Section 523(a)(2)(A) excepts from discharge any debt "to the extent obtained by
10 false pretenses, a false representation, or actual fraud, other than a statement
11 respecting the debtor's or an insider's financial condition." 11 U.S.C. §523(a)(2)(A).

12
13 The Ninth Circuit has held that a creditor's claim of nondischargeability based on
14 Section 523(a)(2)(A) must satisfy five elements: (1) the debtor made false statement or
15 deceptive conduct; (2) the debtor knew the representation to be false; (3) the debtor
16 made the representation with the intent to deceive the creditor; (4) the creditor justifiably
17 relied on the representation; and (5) the creditor sustained damage resulting from its
18 reliance on the debtor's representation. In re Slyman, 234 F.3d 1081, 1085 (9th Cir.
19 2000).

20
21 As to R. Saucedo, the Superior Court findings establish that Sergio intentionally
22 misled her by telling her that he would save her house from foreclosure by getting a
23 loan modification and get her title to the house. that he made these statements in order
24 to obtain compensation from her, that when he made these statements, he had no
25 intention of doing anything other than delay foreclosure, that R. Saucedo relied to her
26 detriment on these promises, and that she suffered economic damages of \$45,000 as a
27 result. R. Saucedo Adversary, RJN ISO MSJ, Ex. 2, 3:10-20; 7:16-21; 7:27-28. The
28 Superior Court found R. Saucedo's reliance on Sergio was justifiable because she

1 testified that she trusted him, as he was the real estate agent that had sold her the
2 house originally and she considered him a friend, Id. at 4:5-7; 24-26, and the Superior
3 Court specifically considered in part the betrayal of that trust when awarding emotional
4 distress damages of \$50,000. Id. at 8:1-2. The Superior Court found that Sergio's
5 explanations were not credible. Id. at 7:21.

6
7 As to M. Saucedo, the Superior Court findings establish that Sergio intentionally
8 misled her by telling her that he would get her title to her home free and clear by
9 creating a trust, transferring title of the Saticoy property to the newly-created trust, and
10 then making M. Saucedo a "trustee" of that trust. M. Saucedo Adversary, RJN ISO
11 MSJ, Ex. 2, 3:7-16; 6:28-7:1. The Superior Court found that Sergio made these
12 statements to obtain compensation from her of \$1,000 per month for his "services," that
13 when he made these statements, he had no intention of doing anything other than delay
14 foreclosure, that M. Saucedo relied to her detriment on these promises, and that she
15 was damaged as a result. Id., Ex. 2, 7:2-16. The Superior Court found M. Saucedo's
16 reliance on Sergio was justifiable because she was unsophisticated and his status as a
17 real estate agent and friend lent credibility to his statements. Id. at 4:16-18. The
18 Superior Court specifically considered M. Saucedo's "vulnerable and unsophisticated"
19 status when awarding emotional distress damages of \$50,000. Id. at 7:12-13; 18-20.
20 The Superior Court explained that Sergio used his status as a real estate agent and
21 translator, as well as the fact that R. Saucedo was "very unsophisticated" to mislead her
22 with these false representations to pay her money to Sergio (over \$1000 per month) for
23 years, while Sergio did nothing to preserve her equity in the property or obtain better
24 terms from the lender, or even the benefits of a short sale. Id. 7:3-5. The Superior
25 Court found that Sergio's explanations were not credible. Id. at 7:5.

26
27 All of the elements of issue preclusion have been met by the findings made by
28 the Superior Court. The facts support a finding here that giving the previous judgment

1 preclusive effect would further the public policy by preservation of the integrity of the
2 judicial system in respecting the findings of a state court, as well as promoting judicial
3 economy and protecting Plaintiffs from having to relitigate these matters here.

4
5 There is no genuine dispute as to any material fact. R. Saucedo and M.
6 Saucedo are entitled to judgment as a matter of law. Summary judgment is appropriate
7 under 11 U.S.C. §523(a)(2)(A).

8
9 *Fraud or Defalcation While Acting in a Fiduciary Capacity under § 523(a)(4)*

10 Section 523(a)(4) provides that:

11 (a) A discharge under § 727 does not discharge an individual
debtor from any debt --

12
13 (4) for fraud or defalcation while acting in a fiduciary capacity

14 The meaning of "fiduciary" in § 523(a)(4) is an issue of federal law. See In re Woosley,
15 117 B.R. 524, 529 (B.A.P. 9th Cir. 1990). The broad, general definition of fiduciary -- a
16 relationship involving confidence, trust and good faith -- is inapplicable in the
17 dischargeability context. Id., internal citations omitted. The trust giving rise to
18 the fiduciary relationship must be imposed prior to any wrongdoing; the debtor must
19 have been a "trustee" before the wrong and without reference to it. Id., citing Davis v.
20 Aetna Acceptance Co., 293 U.S. 328, 333 (1934). These requirements eliminate
21 constructive, resulting or implied trusts. Id., citing Runnion v. Pedrazzini (In re
22 Pedrazzini), 644 F.2d 756, 758 (9th Cir. 1981).

23
24 Although the concept of fiduciary is to be narrowly defined as a matter of federal
25 law, state law is to be consulted to determine when a trust in this strict sense
26 exists. Ragsdale v. Haller, 780 F.2d 794, 796 (9th Cir. 1986), citing In re Pedrazzini, 644
27 F.2d at 758.

1 Civil Code 2945 and 2945.4 makes it per se illegal for a foreclosure consultant--
2 that is, a person who solicits or represents that for a fee he/she can help stop or
3 postpone a foreclosure sale--to engage in any of the following practices:

4 1) collecting or even charging compensation before performing
5 each and every service that he/she agreed to perform on behalf of
6 the homeowner;

7 2) charging or collecting excessive fees for services;

8 3) taking a lien on the property, requiring any other security as
9 collateral for compensation, or taking any interest in the property
10 (for example, buying the property from the owner so that he/she
11 can allegedly "rent it back")

12 4) taking money or property from a third party in connection with the
13 services that the consultant has agreed to perform for the
14 homeowner without fully disclosing that the third-party involvement
15 to the homeowner;

16 5) taking a power of attorney from the homeowner (a "power of
17 attorney" is a document that authorizes someone to act on another
18 person's behalf in a legal or business matter); or

19 6) inducing or attempting to induce the owner into signing an illegal
20 contract (that is, one that doesn't comport with all statutory rules
21 and regulations).

22 See California Civil Code 2945.4.

23
24 Courts in the Ninth Circuit have previously held that real estate license carries
25 with it fiduciary obligations to his principals under California law when carrying out
26 licensed activities. See Ragsdale v. Haller, 780 F.2d 794, 796 (9th Cir. 1986); In re
27 Woosley, 117 B.R. 524, 529 (B.A.P. 9th Cir. 1990). The Bankruptcy Appellate Panel for
28 the Ninth Circuit ("BAP") explained that, with respect to licensed activities, real estate
licensees have the same obligations as trustees under California law, including duties to
refrain from making misrepresentations or obtaining any advantage over their principals,
and to make the fullest disclosure of all material facts concerning the transaction that
might affect their principal's decision. In re Woosley, 117 B.R. 524, 529 (B.A.P. 9th Cir.

1 1990)(internal citations omitted). The BAP explained that, under California law, licensed
2 activities include “solicit[ing] borrowers or lenders for or negotiat[ing] loans or collect[ing]
3 payments or perform[ing] services for borrowers or lenders or note owners in
4 connection with loans secured directly or collaterally by liens on real property...”. Cal.
5 Bus. & Prof. Code § 10131(d).

6
7 The BAP later distinguished Woosley in Evans v. Pollard (In re Evans), 161 B.R.
8 474 (B.A.P. 9th Cir. 1993), questioning whether a real estate broker's general fiduciary
9 obligations of undivided service and loyalty in the absence of an identifiable trust *res* are
10 sufficient to establish fiduciary capacity for purposes of § 523(a)(4). In re Evans, 161
11 B.R. at 477. There, the BAP held that general fiduciary obligations are not sufficient to
12 fulfill the fiduciary capacity requirement of § 523(a)(4) in the absence of an express,
13 technical or statutory trust, and an identifiable trust *res*. Id. at 478.

14
15 The BAP more recently called this line of reasoning into question, in Honkanen v.
16 Hopper (In re Honkanen), 446 B.R. 373 (B.A.P. 9th Cir. 2011), noting that neither the
17 Ninth Circuit nor the BAP provided any reasoning for not considering, in addition to
18 fiduciary obligations, whether an express, technical, or statutory trust existed. In re
19 Honkanen, 446 B.R. at 380. Based on the requirements set forth in Cal-Micro, Inc. v.
20 Cantrell (In re Cantrell), 329 F.3d 1119, 1125 (9th Cir. 2003), the BAP held that a
21 California real estate licensee does not meet the fiduciary capacity requirement of §
22 523(a)(4) solely based on his or her status as a real estate licensee. In re Honkanen,
23 446 B.R. at 381. "General fiduciary obligations are not sufficient to fulfill the fiduciary
24 capacity requirement in the absence of a statutory, express, or technical trust." Id.

25
26 The Superior Court found Sergio was a licensed real estate agent who violated
27 Cal. Civ. Code § 2945, but this finding alone is not sufficient in the absence of a
28 statutory, express, or technical trust. Such finding is not necessary here given that the

1 entirety of the economic and emotional distress damages was awarded under the fraud
2 claims and are not dischargeable under § 523(a)(2)(A).

3 Summary judgment is denied as to § 523(a)(4).

4
5 *Damages amount*

6 As to both R. Saucedo and M. Saucedo, the Superior Court identified that
7 \$45,000 in "economic damages" were awarded to each on the fraud claim. M. Saucedo
8 RJN ISO MSJ, Ex. 2, 7:17-18; 8:74-6; R. Saucedo RJN ISO MSJ, Ex. 2, 7:27-28; 8:16-
9 17. The Court also found that the value of Plaintiffs' emotional distress damage was
10 \$50,000 each. M. Saucedo RJN ISO MSJ, Ex. 2, 7:18-20; R. Saucedo RJN ISO MSJ,
11 Ex. 2, 8:1-3. In order to include the emotional distress damages, it must be clear from
12 the state court record that these damages relate to one of the non-dischargeable
13 causes of action. Here, the Superior Court analyzed the findings supporting the
14 emotional distress damages award under the "Fraud" heading and explained how each
15 Plaintiffs' emotional distress was directly related to the fraud. Those damages, \$95,000
16 total for each Plaintiff, are not dischargeable under § 523(a)(2)(A), for the reasons
17 explained above.

18
19 Plaintiffs include in their damages the award of attorney's fees under Cal. Civ.
20 Code § 2945.6. Civil Code 2945.6 provides: "An owner may bring an action against a
21 foreclosure consultant for [a violation of Civil Code 2945.4]. Judgment shall be entered
22 for actual damages, reasonable attorneys' fees and costs, and appropriate equitable
23 relief."

24
25 The Superior Court awarded attorney's fees under Civil Code 2945.6 to M.
26 Saucedo in the amount of \$36,000, and costs of \$1,127.17. M. Saucedo RJN ISO MSJ,
27 Ex. 1, 2:13-14. R. Saucedo was awarded attorney's fees under Civil Code 2945.6 in the
28 amount of \$29,350, and costs of \$910.17. R. Saucedo RJN ISO MSJ, Ex. 1, 2:12-14. In

1 discussing the damages suffered by both R. Saucedo and M. Saucedo, the Superior
2 Court explained:

3 Plaintiff also established that defendant violated several aspects of
4 Section 2945, including collecting money before performing all
5 services he agreed to perform; charging excessive fees; failing to
6 fully disclose third party involvement in the services provided; and
7 taking power of attorney from the homeowners.

8 Plaintiff established that she paid \$45,000 for these illegal services.
9 Other than apparently assisting her to file a bankruptcy action, the
10 true nature of which she did not understand, defendant did not
11 establish that he performed anything of value for these payments.
12 Therefore, plaintiff has established that she suffered economic
13 damages of \$45,000. **Of course, she cannot recover such
14 economic damages twice. As they are already awarded under
15 the claim for fraud, the court finds that plaintiffs total
16 economic damages to be \$45,000.**

17 M. Saucedo RJN ISO MSJ, Ex. 2, 8:1-7; R. Saucedo RJN ISO MSJ, Ex. 2, 8:12-18
18 (emphasis added).

19 The attorney fee awards were awarded to Plaintiffs was for a statutory violation
20 that does not require a showing of fraud. Nor does the statutory scheme of Cal. Civ.
21 Code § 2945 require a finding of a trust *res* that would be required for a judgment for
22 fraud or defalcation while acting in a fiduciary capacity under § 523(a)(4). Because the
23 attorney's fee awards are not related to nondischargeable damages for fraud, those
24 portions of the Judgment Debts would be dischargeable in a hypothetical case against
25 Sergio.

26 **Maria's Discharge Will Not Bar Collection against Community Property**

27 Once a debt has been determined to be a community debt pursuant to state law,
28 the second issue is the scope of the debtor spouse's discharge. This question is
governed by bankruptcy law.

1 A debt may be excepted from discharge when (1) the debtor personally commits
2 actual, positive fraud, or (2) the actual fraud of another is imputed to the debtor under
3 partnership/agency principles. In re Tsurukawa, 287 B.R. 515, 525 (B.A.P. 9th Cir.
4 2002)("Tsurukawa II"). Here, there is no mention of Maria's involvement in the fraud
5 scheme and no indication she was a partner of Sergio in any way other than married to
6 him. So Tsurukawa reasoning does not apply. Plaintiffs do not argue that Maria was
7 involved in Sergio's fraud. Plaintiff concedes Maria is an "innocent spouse." Plaintiff's
8 Supplemental Brief in Reply, ad. ECF doc. 2:25.

9
10 The "innocent spouse" defense, however, applies only to the innocent spouse's
11 post-petition sole and separate property, not to the community property. Arcadia Farms
12 Ltd. v. Rollinson (In re Rollinson), 322 B.R. 879, 881–82 (Bankr. D. Ariz. 2005). Maria's
13 discharge will not be a bar to collection of this community debt from her after-acquired
14 community property as it is not dischargeable in a hypothetical case filed by Sergio on
15 the same petition date.

16 17 **Implications for Maria's Confirmed Chapter 11 Plan**

18 Normally, the discharge causes community property acquired post-petition to be
19 free from pre-petition community claims. 11 U.S.C. § 524(a)(3). But, if ... the community
20 debt is excepted from discharge under § 523 ..., the discharge does not immunize such
21 post-petition community property from the community debt. This happens automatically
22 by operation of Code §§ 524(a)(3) and (b), without the necessity for any determination
23 as to the knowledge or participation of the "innocent" spouse, so long as the debt is
24 community debt. In part, this is because the entry of a non-dischargeability order does
25 not transform a community debt into a separate obligation owed by only the wrongdoing
26 spouse. In re Rollinson, 322 B.R. 789 at 883 (citations omitted).

1 As explained above, Plaintiff may collect against all community property, whether
2 acquired before or after Maria's bankruptcy. Plaintiff may not collect against Maria's sole
3 and separate property.

4
5 Debtor's request to bar collection until after repayment under the plan is
6 completed is too vague and no authority is provided to support such request. Is Debtor
7 distributing community or separate property assets? The Chapter 11 is closed so no
8 ruling can be made as to the Chapter 11 plan as part of these adversaries. The Chapter
9 11 Plan appears to be distributing community assets and debtor should have addressed
10 this issue in her plan. She ignored it and will have to address it appropriately in the
11 Chapter 11 case.

12
13 Preference argument

14 In the Oppositions that were initially filed in response to these motions,
15 Defendant argued that because she is the "Debtor in Possession," with the power of a
16 trustee in a Chapter 11, she can file a motion to have the Judgments against Sergio
17 declared a "preference." M. Saucedo Opposition, 4:20-26, Oct. 20, 2022; R. Saucedo
18 Opposition, 4:20-26, Oct. 20, 2022. Debtor provided no statutory or case authority to
19 support this assertion, and it was not clear what she meant by it. Debtor has since
20 substituted in different counsel who filed a supplement brief on December 14, 2022,
21 wherein this argument is seemingly abandoned. So the Court will not address it here.

22 //

23 //

24 //

25 //

26 //

27 //

28 //

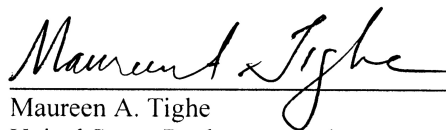
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CONCLUSION

The Court, applying the principals of issue preclusion to the Superior Court Judgments, finds that the Judgment Debts would be nondischargeable under 11 U.S.C. §523(a)(2)(A) against Sergio, in a hypothetical case filed on the same date as this bankruptcy case. There is no genuine dispute as to any material fact and R. Saucedo and M. Saucedo are entitled to judgment as a matter of law under FRCP 56 that the community property discharge in Maria’s chapter 11 case does not apply under the exception of § 524(b)(2).

###

Date: January 25, 2023


Maureen A. Tighe
United States Bankruptcy Judge