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5 UNITED STATES BANKRUPTCY COURT  
6 EASTERN DISTRICT OF CALIFORNIA  
7 FRESNO DIVISION

8 In re ) Case No. 05-18085-B-7  
9 Jennifer Leanne Zagala, ) DC No. None  
10 Debtor. )  
\_\_\_\_\_ )

11 **MEMORANDUM DECISION REGARDING MOTION TO**  
12 **PROCEED IN STATE COURT NOTWITHSTANDING**  
13 **BANKRUPTCY DISCHARGE INJUNCTION**

14 This memorandum decision is not approved for publication and may not be cited except  
15 when relevant under the doctrine of law of the case or the rules of res judicata and claim  
16 preclusion.

17 Stephen Austin, Esq., of the Law Offices of Craig E. Johnson, appeared on behalf of the  
18 creditor, Jason Sinkpiel (“Sinkpiel”).

19 Ronda Satterlee, Esq., of Ericksen, Arbuthnot, Kilduff, Day & Lindstrom, Inc., appeared  
20 on behalf of the debtor, Jennifer Leanne Zagala (“Zagala”).

21 A hearing was held before the court on Sinkpiel’s Motion to Proceed in State  
22 Court Notwithstanding Bankruptcy Discharge Injunction (the “Motion”). Sinkpiel seeks  
23 permission to prosecute a state court personal injury action against Zagala, but only seeks  
24 to recover damages from Zagala’s insurance carrier. For the reasons set forth below, the  
25 Motion was both procedurally inappropriate and unnecessary. It will be denied as moot.

26 This Memorandum Decision contains the court’s findings of fact and conclusions  
27 of law as required by Federal Rule of Civil Procedure 52(a), made applicable to this  
28 contested matter by Federal Rule of Bankruptcy Procedure 7052. The bankruptcy court  
has jurisdiction over this matter under 28 U.S.C. § 1334 and 11 U.S.C. § 524<sup>1</sup> and

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<sup>1</sup>Unless otherwise indicated, all chapter, section and rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9036, as enacted and promulgated *prior* to October 17, 2005, the effective date of The

1 General Orders 182 and 330 of the U.S. District Court for the Eastern District of  
2 California. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I).

3 **Background.**

4 Sinkpiel filed a civil action for personal injury against Zagala in the Superior Court  
5 of Kern County on March 16, 2005 (the “State Court Action”). Zagala filed a *pro se*  
6 chapter 7 bankruptcy petition on September 29, 2005 and received a discharge on January  
7 19, 2006. Zagala listed the State Court Action in her Statement of Financial Affairs as a  
8 pending suit for an auto accident. Zagala also listed Sinkpiel as an unsecured creditor in  
9 her Schedule F. After Zagala’s discharge was entered, Zagala’s counsel moved for  
10 dismissal of the State Court Action. That motion was denied. On February 28, 2007, this  
11 court granted Sinkpiel’s *ex parte* motion to reopen Zagala’s bankruptcy case for the  
12 purpose of entertaining this Motion which was filed on March 28.<sup>2</sup>

13 Sinkpiel asks for an order which (1) grants relief from the automatic stay; and (2)  
14 modifies the discharge injunction to allow the State Court Action to proceed against  
15 Zagala, provided that the enforcement of any judgment shall be limited to amounts  
16 payable by Anchor Claims Services, Zagala’s insurance carrier. The Motion was strongly  
17 opposed by Steve Karcher, Esq., the attorney retained by Zagala’s insurance company to  
18 defend her in the pending State Court Action.<sup>3</sup> Zagala’s opposition is not based on the  
19 merits of the Motion, but instead focuses on allegations of inappropriate conduct by  
20 Sinkpiel and his counsel. Zagala contends, *inter alia*, that Sinkpiel prosecuted the State  
21 Court Action in violation of the automatic stay which arose upon commencement of the  
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23 Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. 109-8, Apr. 20,  
24 2005, 119 Stat. 23.

25 <sup>2</sup>Sinkpiel requested an order authorizing prosecution of the State Court Action in his *ex*  
26 *parte* motion to reopen the case. The court issued an order granting the application to reopen,  
but denied any further relief without a noticed hearing.

27 <sup>3</sup>Steve Karcher was not Zagala’s attorney of record in the bankruptcy case and has not  
28 previously made any appearance in this bankruptcy.

1 bankruptcy case. Those allegations are irrelevant to the issue presented here and will not  
2 be considered.

3 **Issue.**

4 The question presented is whether the automatic stay and/or Zagala's discharge  
5 operate to prevent Sinkpiel from prosecuting the State Court Action against Zagala when  
6 liability will be enforced solely against Zagala's insurance carrier.

7 **Analysis and Conclusions of Law.**

8 **The Automatic Stay Has Already Terminated.**

9 The protections afforded by the automatic stay under § 362(a) are temporary. The  
10 scope of Zagala's "fresh start" is defined by the discharge under § 524(a). Sinkpiel seeks  
11 to prosecute the State Court Action solely for the purpose of establishing a right of  
12 recovery against Zagala's insurance carrier. The automatic stay in this case, which  
13 temporarily barred prosecution of the State Court Action, expired automatically upon  
14 entry of Zagala's discharge on January 19, 2006, and is therefore no longer applicable to  
15 the State Court Action. § 362(c)(2)(C); *Ruvacalba v. Munoz (In re Munoz)*, 287 B.R.  
16 546, 550-51 (9th Cir. BAP 2002). No further relief is required with regard to the  
17 automatic stay.

18 **Applicability of the Discharge Injunction.**

19 Once the debtor's discharge is entered, the bankruptcy court is without power to  
20 modify the discharge. The discharge injunction which protects the debtor is set in  
21 "statutory concrete" and cannot be modified. *Id.* at 550. However, the discharge  
22 injunction is only intended to protect the debtor and the debtor's property. It does not  
23 protect third parties who may be co-liable with the debtor on a particular debt. § 524(e);  
24 *Patronite v. Beeney (In re Beeney)*, 142 B.R. 360, 363-64 (9th Cir. BAP 1992).

25 As a procedural matter, the bankruptcy court may enforce, or define the scope of  
26 the discharge injunction, but it may only do so through a declaratory judgment in a  
27 properly filed and served adversary proceeding. Fed.R.Bankr.P. 7001(6) & (9); *In re*  
28 *Munoz*, 287 B.R. at 551. Sinkpiel's attempt to seek relief through a "contested matter"

1 motion, instead of an adversary proceeding is alone grounds to deny the Motion. *Id.*  
2 However, the underlying issue, application of the discharge injunction, has already been  
3 resolved in the Ninth Circuit. In *In re Beeney*, the victim of an automobile accident  
4 brought a motion to reopen a debtor's bankruptcy case seeking a declaration that the  
5 victim was not barred from naming the debtor in a personal injury lawsuit in state court.  
6 The purpose of the lawsuit was to collect damages under the debtor's insurance policy.  
7 The bankruptcy court denied the motion to reopen and the victim appealed. The  
8 Bankruptcy Appellate Panel affirmed, holding that (1) as a matter of law, the discharge  
9 injunction did not bar the victim from pursuing a personal injury lawsuit against the  
10 debtor as long as the victim did not intend or attempt to enforce any judgement against  
11 the debtor or his property; and (2) the bankruptcy case did not have to be reopened, and  
12 the bankruptcy court did not have to enter an order authorizing prosecution of the lawsuit  
13 for that purpose. *In re Beeney*, 142 B.R. at 363-364.

14 **Conclusion.**

15 Based on the foregoing, the Motion will be denied as moot in so far as it seeks any  
16 relief from the automatic stay under § 362(a). The automatic stay terminated upon entry  
17 of Zagala's discharge.

18 With regard to the discharge under § 524(a), the court has no power to modify the  
19 discharge injunction. However, the discharge injunction does not bar the post-discharge  
20 prosecution of Sinkpiel's prepetition personal injury action where the liability, if any, will  
21 be enforced only against Zagala's insurance carrier. No further relief is required and the  
22 Motion will also be denied as moot to the extent that it seeks to modify the discharge  
23 injunction. This bankruptcy case shall be re-closed.

24  
25 Dated: June 19, 2007

26  
27 /s/ W. Richard Lee  
28 W. Richard Lee  
United States Bankruptcy Judge