

1 calculation, forty-eight days' notice was provided. Forty-two days' notice is required. L.B.R.7056-
2 1(a).

3 The Motion for Summary Judgment has been set for hearing on the notice required by Local
4 Bankruptcy Rule 9014-1(f)(1). Opposition was filed, and the hearing was conducted on February 25,
5 2021.

6 As addressed below, the Court grants the Motion for Summary Judgment, and judgment shall
7 be entered by this court determining that the obligation of Defendant-Debtor to Plaintiff on the State
8 Court Judgment is nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(A). This court will not enter
9 a new monetary judgment, leaving Plaintiff to enforce the State Court Judgment in that forum.

10 **Review of the Complaint**

11 Plaintiff seeks a determination that Plaintiff's claim is nondischargeable pursuant to
12 11 U.S.C. §§ 523(a)(2), as the claim arises from Defendant-Debtor's wrongful concealment and false
13 representations relating to a real estate purchase in 2017. Dckt. 1. The grounds upon which the
14 claim is based are as follows:

- 15 A. Defendant-Debtor constructed a home over terrain that was not solid land.
16 Defendant-Debtor knew of this dangerous condition and concealed the
information from county inspectors and the previous owners.
- 17 B. The land passed through several hands without any owners being aware of the
18 problem and it was not until after drought conditions had subsided and
Plaintiff had purchased the Property that the improperly filled drainage
19 washed out and caused a massive landslide.
- 20 C. The concealment of the information was designed to mislead purchasers and
with intent to defraud.
- 21 D. These actions were willful and malicious, and Defendant-Debtor knew they
22 would cause serious harm to purchasers of the Property.
- 23 E. Defendant-Debtor undertook these actions to induce Plaintiff and Plaintiff's
24 predecessors to act in the manner herein alleged in reliance thereon.
- 25 F. Plaintiff was ignorant of the facts involving the construction and terrain
issues that Debtor suppressed and failed to disclose. Had Plaintiff known of
26 these facts, Plaintiff would not have purchased the Property.
- 27 G. As a result of Defendant-Debtor's conduct and concealment of facts, Plaintiff
28 has been damaged in an amount exceeding \$100,000.00.
- H. On August 31, 2017, Plaintiff filed a lawsuit against Defendant-Debtor, the
State Court Action, seeking damages against Defendant-Debtor for fraud

1 based on the concealment and suppression of facts.

2 I. On July 17, 2019, judgment was entered in the State Court Action awarding
3 Plaintiff damages against Defendant-Debtor on Plaintiff's fraud cause of
4 action in the sum of \$100,000.00, plus costs of suit. A copy of the State
5 Court Judgment has been filed as Exhibit A, Dckt. 6.

6 J. As a direct and proximate result of the Defendant-Debtor's wrongful
7 concealment and false representations as aforesaid and Plaintiff's actual and
8 reasonable reliance thereon, Plaintiff suffered \$100,000.00 of damages as
9 reflected in the State Court Judgment.

10 K. As such, the entirety of the damages awarded in the State Court Judgment
11 should be deemed a debt of Defendant-Debtor nondischargeable within the
12 meaning of 11 U.S.C. sections 523(a)(2) and/or 523(a)(6).

13 Prayer for Relief

14 A. For a determination that all damages awarded to Plaintiff in the State Court
15 Judgment are damages recoverable from Defendant-Debtor and are
16 nondischargeable within the meaning of 11 U.S.C. sections 523(a)(2).

17 **Review of the Answer**

18 In response, Defendant-Debtor filed an Answer to the Complaint on December 7, 2020.
19 Dckt. 9.

20 A. Defendant-Debtor admits that he is the debtor in the bankruptcy case and that
21 he formerly operated as a licensed California contractor, that the court has
22 jurisdiction over this proceeding, that venue is proper, and that this core
23 proceeding within the meaning of 28 U.S.C. § 157(b)(2)(I).

24 B. Defendant-Debtor further admits that Plaintiff filed a lawsuit in the
25 El Dorado County Superior Court and that a judgment was rendered in favor
26 of Plaintiff and against Defendant-Debtor in the amount of \$100,000.00.

27 C. Defendant-Debtor denies, specifically or based on lack of information, the
28 allegations pertaining to the construction of the home, the actions taken to
conceal the drainage issues in the terrain where the home was built, the
failure to disclose the terrain facts to the county inspector and previous owner
of the residence, the discovery of such issues after a massive landslide, that
Defendant-Debtor failure to disclose the information was made with the
intent to induce to purchase in reliance, that Plaintiff was ignorant of the
facts, that Defendant-Debtor's concealment of facts was a direct and
proximate result of Plaintiff's damages and that the State Court Judgment
award is nondischargeable.

D. Defendant-Debtor then asserts eight affirmative defenses: failure to state a
cause of action; statute of limitations; assumption of the risk; failure to
mitigate; laches; waiver; standing; and offset.

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1 REVIEW OF THE MOTION FOR SUMMARY JUDGMENT

2 Plaintiff asserts the right to a judgment in this Adversary Proceeding as a matter of law for
3 the single cause of action for nondischargeability of the State Court Judgment based on an Issue
4 Preclusion and Collateral Estoppel. Plaintiff sued Defendant-Debtor in State Court for fraud based
5 on allegations of concealment and nondisclosure of material facts relating to a real estate purchase
6 in 2017. The State Court Judgment was entered in favor of Plaintiff on the fraud cause of action in
7 2019. Defendant-Debtor did not appeal, nor did Defendant-Debtor file a motion to set aside the
8 State Court Judgment. As addressed below, the State Court Judgment became a final judgment
9 under California law prior to the Defendant-Debtor commencing his bankruptcy case.

10 Plaintiff asserts that the Motion for Summary Judgment should be granted because the State
11 Court Judgment meets the requirements for Issue Preclusion as stated in *Harmon v. Kobrin (In re*
12 *Harmon)*, 250 F.3d 1240, 1245 (9th Cir. 2001), and *In re Solario*, 611 B.R. 327, 40-41 (Bankr. E.D.
13 Cal. 2020). Plaintiff asserts the following points.

14 First, the State Court Judgment is final as no appeal or motion to set aside was filed.

15 Second, the issues litigated are identical in both proceedings where Plaintiff has alleged only
16 one cause of action as fraud based on concealment and willful disclosure of material facts.
17 Moreover, Plaintiff argues that Defendant-Debtor admits that the State Court Action lawsuit was
18 based on fraud, and only fraud, and that the judgment was based on fraud.

19 Third, Plaintiff argues that the issues were actually litigated because a default judgment is
20 deemed to have been actually litigated and has preclusive effect under California law.

21 Fourth, the issue was necessarily decided, because the only cause of action asserted by
22 Plaintiff against Defendant-Debtor in the State Court Action was for fraud and the State Court
23 Judgment was based on that single cause of action.

24 Lastly, the parties in the State Court Action are the same parties as in this adversary
25 proceeding.

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**APPLICABLE LAW FOR A
MOTION FOR SUMMARY JUDGMENT**

3 In an adversary proceeding, summary judgment is proper when “[t]he movant shows that
4 there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter
5 of law.” Fed. R. Civ. P. 56(a), incorporated by Fed. R. Bankr. P. 7056. The key inquiry in a motion
6 for summary judgment is whether a genuine issue of material fact remains for trial. Fed. R. Civ. P.
7 56(c), incorporated by Fed. R. Bankr. P. 7056; *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242,
8 248–50 (1986); 11 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE
9 § 56.11[1][b] (3d ed. 2000). “[A dispute] is ‘genuine’ only if there is a sufficient evidentiary basis
10 on which a reasonable fact finder could find for the nonmoving party, and a dispute [over a fact] is
11 ‘material’ only if it could affect the outcome of the suit under the governing law.” *Barboza v. New*
12 *Form, Inc. (In re Barboza)*, 545 F.3d 702, 707 (9th Cir. 2008), citing *Anderson v. Liberty Lobby,*
13 *Inc.*, 477 U.S. at 248 (1986).

14 The party moving for summary judgment bears the burden of showing the absence of a
15 genuine dispute of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). To support the
16 assertion that a fact cannot be genuinely disputed, the moving party must “cit[e] to particular parts
17 of materials in the record, including depositions, documents, electronically stored information,
18 affidavits or declarations, stipulations . . . , admissions, interrogatory answers, or other materials.”
19 Fed. R. Civ. P. 56(c)(1)(A), incorporated by Fed. R. Bankr. P. 7056.

20 In response to a sufficiently supported motion for summary judgment, the burden shifts to
21 the nonmoving party to set forth specific facts showing that there is a genuine dispute for trial.
22 *Barboza*, 545 F.3d at 707, citing *Henderson v. City of Simi Valley*, 305 F.3d 1052, 1055–56 (9th Cir.
23 2002). The nonmoving party cannot rely on allegations or denials in the pleadings but must produce
24 specific evidence, through affidavits or admissible discovery materials, to show that a dispute exists.
25 *Id.* (citing *Bhan v. NME Hosps., Inc.*, 929 F.2d 1404, 1409 (9th Cir. 1991)). The nonmoving party
26 “must do more than simply show that there is some metaphysical doubt as to the material facts.”
27 *Matsushita Electric Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986).

28 In ruling on a summary judgment motion, the court must view all of the evidence in the light

1 most favorable to the nonmoving party. *Barboza*, 545 F.3d at 707 (citing *County. of Tuolumne v.*
2 *Sonora Cmty. Hosp.*, 236 F.3d 1148, 1154 (9th Cir. 2001)). The court “generally cannot grant
3 summary judgment based on its assessment of the credibility of the evidence presented.” *Agosto v.*
4 *INS*, 436 U.S. 748, 756 (1978). “[A]t the summary judgment stage [,] the judge's function is not
5 himself to weigh the evidence and determine the truth of the matter[,] but to determine whether there
6 is a genuine issue for trial.” *Anderson*, 477 U.S. at 249.

7 **DISCUSSION**

8 **California Law Regarding the Filing of An Appeal or**
9 **Motion to Vacate by Debtor Has an Outside Deadline**
10 **of 180 Days After the Entry of the Judgment**

11 In his opposition to the Motion for Summary Judgment (“Opposition”), Defendant-Debtor
12 argues that the State Court Judgment is not “final” since the judgment is still subject to a motion to
13 set aside default, and Debtor’s filing for bankruptcy stayed the State Court Action. Defendant-
14 Debtor cites no legal authority for such propositions and does not compute how, as of the
15 commencement of this case, Defendant-Debtor had a timely right to either appeal or seek to vacate
16 the State Court Judgment.

17 The State Court Judgment was entered on July 17, 2019. Judgment, Exhibit B, Dckt. 14.
18 Defendant-Debtor commenced his bankruptcy case on October 8, 2020. 20-24700; Voluntary
19 Petition, Dckt. 1. However, Defendant-Debtor states that he was not provided with notice of entry
20 of the State Court Judgment until July of 2020. Declaration, ¶ 4; Dckt. 20.

21 To the extent that there was an active time period in which Defendant-Debtor could assert
22 an appeal or other right to have the State Court Judgment vacated, as discussed in COLLIER ON
23 BANKRUPTCY, the provisions of 11 U.S.C. § 108(b) staying the running of time to appeal do not
24 apply if the period expired before the commencement of the bankruptcy case. 2 COLLIER ON
25 BANKRUPTCY P 108.03 (16TH 2020).

26 Plaintiff directs the court to California Rule of Court 8.104 for the assertion that the
27 Defendant-Debtor had a 180-day period after the entry of the State Court Judgment to file a notice
28 of appeal, which would be in January 2020, nine months before this Defendant-Debtor filed his
bankruptcy case. In setting the deadline for filing an appeal from a state court judgment, California

1 Rule of Court 8.104 provides (emphasis added):

2 Rule 8.104. Time to appeal

3 (a) Normal time Unless a statute or rules 8.108, 8.702, or 8.712 provides otherwise,
4 a notice of appeal must be filed on or before the earliest of:

5 (1)

6 (A) **60 days after the superior court clerk serves** on the party filing the
7 notice of appeal **a document entitled "Notice of Entry" of judgment or a**
filed-endorsed copy of the judgment, showing the date either was served;

8 (B) **60 days** after the party filing the notice of appeal serves or is **served** by
9 a party with a document entitled **"Notice of Entry" of judgment** or a
filed-endorsed copy of the judgment, accompanied by proof of service; or

10 (C) **180 days after entry of judgment.**

11 (2) Service under (1)(A) and (B) may be by any method permitted by the Code of
12 Civil Procedure, including electronic service when permitted under Code of Civil
Procedure section 1010.6 and rules 2.250-2.261.

13 In discussing the third deadline provided in California Rule of Court 8.104(a)(1)(C), 9 Witkin
14 California Procedure § 574 (2020), states (emphasis added):

15 (2) Current Law. Unless the time is extended (*see infra*, § 586 *et seq.*), a **notice of**
16 **appeal must be filed on or before the earliest of the following times:**

17 (a) Sixty days after the superior court clerk mails the party filing the notice of appeal
18 a document entitled “Notice of Entry” of judgment or a file-stamped copy of the
judgment, showing the date either was mailed. (C.R.C., Rule 8.104(a)(1).)

19 (b) Sixty days after the party filing the notice of appeal serves or is served by a party
20 with a document entitled “Notice of Entry” of judgment or a file-stamped copy of the
judgment, accompanied by proof of service. (C.R.C., Rule 8.104(a)(2).)

21 (c) One hundred and eighty days after entry of judgment. (C.R.C., Rule 8.104(a)(3).)

22 *See also, Laraway v. Pasadena Unified School District et al*, 98 Cal.App. 4th 579 (2nd DCA 2002),
23 holding:

24 Compliance with the time for filing a notice of appeal is mandatory and
25 jurisdictional. (*Imuta v. Nakano* (1991) 233 Cal.App.3d 1570, 1579, fn. 11, 285
26 Cal.Rptr. 681 and cases cited there.) If a notice of appeal is not timely, the appellate
27 court must dismiss the appeal. (Cal. Rules of Court, rule 2(e).) The latest possible
time within which a notice of appeal must be filed is 180 days after entry of judgment
or entry of an appealable order. (Cal. Rules of Court, rule 2(a)(3), (c)(3), & (f) [prior
Rule sections relating to notice of appeal periods].)

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1 Thus, it appears that the time for a notice of appeal expired, even if no notice of entry of
2 judgment was provided, 180 days after July 17, 2019 - which would be mid-January 2020, well
3 before the October 8, 2020 commencement of Defendant-Debtor’s bankruptcy case.

4 Defendant-Debtor then cites the court to California Code of Civil Procedure § 473 for the
5 proposition that he has six months, or even longer if proper notice of judgment is not served on him,
6 to set aside a judgment.

7 § 473. Amendment of pleadings

8 . . .
9 (b) The court may, upon any terms as may be just, **relieve a party** or his or her legal
10 representative **from a judgment**, dismissal, order, or other proceeding taken against
11 him or her **through** his or her **mistake, inadvertence, surprise, or excusable**
neglect. Application for this relief shall be accompanied by a copy of the answer or
other pleading proposed to be filed therein, otherwise **the application** shall not be
granted, and **shall be made** within a reasonable time, **in no case exceeding six**
months, after the judgment, dismissal, order, or proceeding **was taken**

12 Cal Code Civ. Proc. § 473(b) (emphasis added). This provision too has the 180- day time limit from
13 the entry of the judgment for seeking the relief.

14 As with the outside deadline to file an appeal, the outside 180-day deadline for filing a
15 motion to vacate had also expired as of the time Defendant-Debtor commenced his bankruptcy case.

16 **Application of the Full Faith and Credit Statute**
17 **and the Doctrine of Collateral Estoppel or Issue Preclusion**

18 Defendant-Debtor asserts that the Doctrine of Collateral Estoppel and Issue Preclusion does
19 not apply in this case to the State Court Judgment because the issues before the State Court were
20 determined by default and the federal bankruptcy court must independently determine
21 nondischargeability, which federal determination is asserted to require a different analysis and
22 standard of review. Defendant-Debtor argues that in order for this court to determine
23 dischargeability for fraud in bankruptcy, the court must find whether or not Defendant-Debtor had
24 a duty to disclose. In making this assertion, Defendant-Debtor does not address that the duty to
25 disclose for the alleged fraud is necessarily is a state law, and not a federal law, issue.

26 This court begins with an analysis of the Doctrine of Collateral Estoppel and Issue
27 Preclusion, followed by an analysis of 11 U.S.C. § 523(a)(2).

28 Defendant-Debtor’s assertion runs contrary to basic legal Doctrine of Collateral Estoppel and

1 Issue Preclusion. Additionally, it runs afoul of the provisions of 28 U.S.C. § 1738¹ which create a
2 statutory Full Faith and Credit Act for state court judgments in federal court. This is similar to the
3 Constitutional Full Faith and Credit given by the court of one state to a judgment issued by a court
4 of any other state. U.S. Const. Art. IV, Sec. 1.

5 As stated by the court in *Harmon v. Kobrin (In re Harmon)*, 250 F.3d 1240, 1245 (9th Cir.
6 2001):

7 Under the Full Faith and Credit Act, 28 U.S.C. § 1738, the preclusive effect of a state
8 court judgment in a subsequent bankruptcy proceeding is determined by the
9 preclusion law of the state in which the judgment was issued. *Gayden v. Nourbakhsh*
10 (*In re Nourbakhsh*), 67 F.3d 798, 800 (9th Cir. 1995) (citing *Marrese v. Am. Acad.*
of Orthopaedic Surgeons, 470 U.S. 373, 380, 84 L. Ed. 2d 274, 105 S. Ct. 1327
(1985)).

11 The Ninth Circuit Court of Appeals addressed the modern application of this Doctrine in *Robertson*
12 *v. Isomedix, Inc. (In re International Nutronics)*, 28 F.3d 965 (9th Cir. 1994). In discussing this
13 application in the context of the Doctrine of *Res Judicata* (which applies these principles to entire
14 claim preclusion, rather than discrete issue preclusion as under Collateral Estoppel), the court
15 considers four factors in determining whether *Res Judicata* applies,

16 (1) whether rights or interests established in the prior judgment would be destroyed
17 or impaired by prosecution of the second action; (2) whether substantially the same
18 evidence is presented in the two actions; (3) whether the two suits involve
infringement of the same right; and (4) whether the two suits arise out of the same
transactional nucleus of facts.

19 *Id.* at 970, citing *Clark v. Bear Sterns & Co.*, 966 F.2d 1318, 1320 (9th Cir. 1992). The interrelated
20 Doctrines of *Res Judicata* and Collateral Estoppel and Issue Preclusion are discussed by the Supreme
21 Court in *Montana v. United States*, 440 U.S. 147, 153 (1979).

22 In describing the five elements for Collateral Estoppel under California law, the Ninth Circuit

24 ¹ 28 U.S.C. § 1738 provides in pertinent part (emphasis added):
25 § 1738. State and Territorial statutes and judicial proceedings; full faith and credit

26 Such Acts, records and **judicial proceedings** or copies thereof, so authenticated, **shall have the**
27 **same full faith and credit in every court within the United States** and its Territories and
28 Possessions **as they have by law or usage in the courts of such State**, Territory or Possession
from which they are taken.

1 Court of Appeals stated,

2 Under California law, collateral estoppel only applies if certain threshold
3 requirements are met:

4 First, the issue sought to be precluded from relitigation must be identical to that
5 decided in a former proceeding. Second, this issue must have been actually litigated
6 in the former proceeding. Third, it must have been necessarily decided in the former
7 proceeding. Fourth, the decision in the former proceeding must be final and on the
8 merits. Finally, the party against whom preclusion is sought must be the same as, or
9 in privity with, the party to the former proceeding. *Harmon v. Kobrin (In re*

10 *Harmon)*, 250 F.3d 1240, 1245 (9th Cir. 2001).

11 Application to Default Judgment

12 The requirements as stated in *Cal-Micro* do not preclude the application of Collateral
13 Estoppel and Issue Preclusion when the state court judgment was obtained by default. The court in
14 *Cal-Micro* continued, stating:

15 The mere fact that "judgment was secured by default does not warrant the
16 application of a special rule." *Williams v. Williams (In re Williams' Estate)*, 36 Cal.
17 2d 289, 223 P.2d 248, 252 (Cal. 1950). California law does, however, place two
18 limitations on this general principle. The first is that collateral estoppel applies only
19 if the defendant "has been personally served with summons or has actual knowledge
20 of the existence of the litigation." *In re Harmon*, 250 F.3d at 1247 (quoting
21 *Williams*, 223 P.2d at 254). Collateral estoppel, therefore, only applies to a default
22 judgment to the extent that the defendant had actual notice of the proceedings and a
23 "full and fair opportunity to litigate." 250 F.3d at 1247 n.6.

24 The second limitation, in the context of a default judgment, is that a decision
25 has a preclusive effect in later proceedings "only where the record shows an express
26 finding upon the allegation" for which preclusion is sought. *Williams*, 223 P.2d at
27 254. But, as we recognized in *In re Harmon*, "the express finding requirement can
28 be waived if the court in the prior proceeding necessarily decided the issue." 250
F.3d at 1248. In such circumstances, an express finding is not required because "if
an issue was necessarily decided in a prior proceeding, it was actually litigated." *Id.*

29 *Id.* at 1123-1124. In its earlier decision *Harmon v. Kobrin*, the Ninth Circuit Court of Appeals stated
30 that:

31 The mere fact that Kobrin obtained a judgment by default does not, in itself,
32 foreclose the possibility that the resolution of some issues in the litigation would later
33 have preclusive effect. In *Williams v. Williams (In re Williams' Estate)*, 36 Cal. 2d
34 289, 223 P.2d 248 (Cal. 1950) (in bank), the California Supreme Court held that "the
35 fact that [a] judgment was secured by default does not warrant the application of a
36 special rule. 'A default judgment is an estoppel as to all issues necessarily litigated
37 therein and determined thereby exactly like any other judgment.'" 223 P.2d at 252
38 (quoting *Horton v. Horton*, 18 Cal. 2d 579, 116 P.2d 605, 608 (Cal. 1941) (in bank)).

1 *Harmon v. Kobrin (In re Harmon)*, 250 F.3d at 1246. Moreover, the *Harmon v. Kobrin* court
2 discussed that a default judgment is to be given preclusive effect when:

3 [a] party against whom collateral estoppel is being asserted had a full and fair
4 opportunity to litigate the issue. *See, e.g., D'Arata v. NY Cent. Mut. Fire Ins. Co.*, 76
5 N.Y.2d 659, 564 N.E.2d 634, 636, 563 N.Y.S.2d 24 (N. Y. 1990) (stating that the
6 two requirements of collateral estoppel are: (1) "the party seeking the benefit of
7 collateral estoppel must prove that the identical issue was necessarily decided in the
8 prior action and is decisive in the present action"; and (2) "the party to be precluded
9 from relitigating an issue must have had a full and fair opportunity to contest the
10 prior determination").

11 *Id.*, 1247 n.6. A party is not given a "pass" in litigating in state court, have a final state court
12 judgment entered, and then have the federal court issue a conflicting judgment.

13 The party asserting collateral estoppel bears the burden of establishing these requirements.
14 (*Id.*, 1245). The application of collateral estoppel is greater than merely the convenience of the court,
15 but is required of the federal courts to respect and give effect to state court judgments.

16 The California Supreme Court discussed the Doctrine of Collateral Estoppel in *Murray v.*
17 *Alaska Airlines, Inc.*, 50 Cal. 4th 860, 879 (2010), stating:

18 We find that the public policies underlying the doctrine of collateral estoppel will
19 best be served by applying the doctrine to the particular factual setting of this case.
20 Those policies include conserving judicial resources and promoting judicial economy
21 by minimizing repetitive litigation, preventing inconsistent judgments which
22 undermine the integrity of the judicial system, and avoiding the harassment of parties
23 through repeated litigation. (*Allen v. McCurry* (1980) 449 U.S. 90, 94; *Montana v.*
24 *United States* (1979) 440 U.S. 147, 153–154; *Sims*, *supra*, 32 Cal.3d at pp. 488–489;
25 *Syufy Enterprises v. City of Oakland* (2002) 104 Cal.App.4th 869, 878.)

26 If the Court has a reasonable doubt as to what was actually decided by the prior judgment,
27 it will refuse to apply preclusive effect. *In re Lambert*, 233 Fed. Appx. 598, 599 (9th Cir. 2007),
28 citing to *In re Kelly*, 182 B.R. 255, 258 (B.A.P. 9th 1995).

29 **Review of State Court Complaint and** 30 **State Court Judgment Thereon**

31 The State Court Judgment has been filed as Exhibit B, Dckt. 14, in support of the Motion for
32 Summary Judgment. Though that judgment was by default, the State Court Judgment states that the
33 State Court considered Plaintiff's testimony and other evidence. State Court Judgment, ¶ 1.e;
34 Dckt. 14. The amount of the State Court Judgment is \$101,523.40, consisting of \$100,000.00 in

1 “Damages” and \$1,523.40 in “Costs.” *Id.*, ¶ 6.a. No other information relevant to the basis for the
2 judgment is on the face of the State Court Judgment.

3 The State Court Complaint upon which the State Court Judgment is based is provided to this
4 court as Exhibit A, Dckt. 14. The State Court Complaint states two causes of action - the First Cause
5 of Action naming only El Dorado Irrigation District against whom relief was sought, and the Second
6 Cause of Action for fraud naming only Defendant-Debtor as the person against whom relief was
7 sought.

8 The allegations of fraud in the Second Cause of Action in the State Court Complaint against
9 Defendant-Debtor are summarized as follows:

- 10 A. On the 5381 Hilltop Circle, Camino California property (the “Property”) Defendant-
11 Debtor filled a drainage gully with stumps, timber, loose logs and brush, used
12 building materials, loose uncompacted dirt, and other materials. State Court
Complaint, ¶ 12; Exhibit A, Dckt. 14.
- 13 B. The above materials placed in the drainage gully was then covered over with dirt and
14 leveled to give it the appearance of solid land. *Id.*
- 15 C. Though given the appearance of solid land, the filling of the drainage gully
constituted a serious hazard and threat of landslide. *Id.*
- 16 D. Defendant-Debtor knew of the dangerous condition the filling of the drainage gully
17 created, but Defendant-Debtor: (1) suppressed all information about how the drainage
gully was filled in, (2) failed to disclose the condition of the filled in drainage gully
18 to County inspectors, and (3) ultimately failed to disclose the condition of the filled
in drainage gully to Plaintiff. *Id.*
- 19 E. The Property was passed through several owners, without the condition of the
20 drainage gully being disclosed. *Id.*
- 21 F. Plaintiff purchased the Property and after Plaintiff’s purchase the improperly filled
in drainage gully washed out, causing a massive landslide. *Id.*
- 22 G. Defendant-Debtor suppressed and failed to disclose the improper filling of the
23 drainage gully to mislead all purchasers of the Property. *Id.*
- 24 H. Plaintiff was so misled by the failure to disclose the improper filling of the drainage
gully and the surface appearance condition to make it appear to be solid land. *Id.*
- 25 I. The creation of the appearance of solid land and the failure to disclose the actual
26 improper filling of the drainage gully was done by Defendant-Debtor to induce
Plaintiff, and predecessor purchasers, to rely on the appearance of there being solid
27 land and act in reliance thereon with respect to the Property. *Id.*, ¶ 13.
- 28 J. Plaintiff was ignorant of the failures of Defendant-Debtor to disclose the condition
of the improper filling of the drainage gully. If the actual condition of the improper

1 filling of the drainage gully had been disclosed, Plaintiff would not have purchased
2 the Property. *Id.* ¶ 14. However, being unaware of the actual condition of the
improper filling of the drainage gully, Plaintiff did purchase the Property. *Id.*

3 K. As a result of the failure to disclose the actual condition of the improper filling of the
4 drainage gully, Plaintiff was damaged in the amount of \$100,000.00. *Id.* ¶ 15.

5 L. Defendant-Debtor’s failure to disclose the actual condition of the improper filling of
6 the drainage gully and preparation of the surface area to make it appear to be solid
7 land was intentional, malicious, and intended to cause harm to Plaintiff. *Id.* ¶ 16.

8 M. In the prayer, Plaintiff requested general, special, and putative damages. *Id.*, p. 4 of
9 State Court Complaint, prayer for relief.

10 The State Court Complaint, in the Second (and only) Cause of Action against Defendant-
11 Debtor asserts a claim for actual fraud. *See also*, Defendant-Debtor’s Statement of Undisputed Fact,
12 ¶¶ 1, 2; Dckt. 22; and Defendant-Debtor Declaration, ¶ 2; Dckt. 20. No constructive fraud or other
13 “lesser fraud” claim is asserted.

14 **No Genuine Dispute as to Any Material Facts
15 Has Been Presented by The Parties**

16 Upon review of the evidence presented to the court, there are no genuine disputes as to any
17 material facts. The court is presented with the final State Court Judgment in favor of Plaintiff and
18 against Defendant-Debtor for a claim based on fraud. Defendant-Debtor has admitted that the State
19 Court Judgment in favor of Plaintiff was entered and that said judgment was based on a single cause
20 of action for fraud. Plaintiff’s Motion for Summary Judgment is based on the law and, through the
21 operation of Collateral Estoppel, the final State Court Judgment to be given full faith and credit by
22 this federal court.

23 **Nondischargeability of Debt Based on
24 11 U.S.C. § 523(a)(2)**

25 In looking at the State Court Judgment for fraud, as asserted in the State Court Action
26 Complaint against Defendant-Debtor, and the fraud as determined under 11 U.S.C. § 523(a)(2)(A),
27 this court concludes that the fraud at issue in this Adversary Proceeding is identical to the second
28 cause of action for fraud asserted in the State Court Action against Defendant-Debtor for which the
State Court Judgment was entered.

Congress provides in 11 U.S.C. § 523(a)(2)(A) that debts which are based upon fraud will

1 be nondischargeable. For traditional actual fraud, the creditor is required to establish the following
2 five elements:

- 3 (1) the debtor made . . . representations;
- 4 (2) that at the time he knew they were false;
- 5 (3) that he made them with the intention and purpose of deceiving the creditor;
- 6 (4) that the creditor justifiably relied on such representations; [and]
- 7 (5) that the creditor sustained the alleged loss and damage as the proximate result of
- 8 the misrepresentations having been made.

9 *In re Sabban*, 600 F.3d 1219, 1222 (9th Cir. 2010). A creditor must show these elements by a
10 preponderance of evidence. *In re Slyman*, 234 F.3d 1081, 1085 (9th Cir. 2000). 11 U.S.C.
11 § 523(a)(2)(A) prevents the discharge of all liability arising from fraud. *Cohen v. de la Cruz*, 523
12 U.S. 213, 215 (1998).²

13 For a judgment for fraud under California law, the required elements are stated by the
14 California Supreme Court in *Lazar v. Superior Court of Los Angeles*, 12 Cal. 4th 631, 638 (1996),
15 as:

16 “The elements of fraud, which give rise to the tort action for deceit, are
17 (a) misrepresentation (false representation, concealment, or nondisclosure);
18 (b) knowledge of falsity (or 'scienter'); (c) intent to defraud, i.e., to induce reliance;
19 (d) justifiable reliance; and (e) resulting damage.” (5 Witkin, Summary of Cal. Law
9th ed. 1988) Torts, § 676, p. 778; see also Civ. Code, § 1709; *Hunter, supra*, 6 Cal.
4th 1174, 1184; *Molko v. Holy Spirit Assn.* (1988) 46 Cal. 3d 1092, 1108.)”

20 As one can see, these match up to nondischargeable fraud under 11 U.S.C. § 523(a)(2)(A).

21 A judgment for fraud having been entered, with actual fraud being the only cause of action
22 in the State Court Complaint for which relief was sought against the Defendant-Debtor, the
23 Defendant-Debtor cannot now try to have this court issue conflicting findings of fact and conclusions
24 of law that contradict the findings and conclusions which were necessarily part of the State Court

25
26 ² Nondischargeable fraud under 11 U.S.C. § 523(a)(2)(A) is broader than traditional
27 actual fraud (with the five elements including the intentional misrepresentation and reliance
28 thereon) as discussed by the Supreme Court in *Husky International Electronics, Inc. v. Ritz*, 578
U.S. ___ 136 S. Ct. 1581, 2016 U.S. LEXIS 3048 (2016). Such broader fraud grounds have not
been presented to the court in the Motion for Summary Judgment.

1 Judgment, even if entered by default.

2 **State Court Judgment Necessarily**
3 **Required a Determination of**
4 **Actual Fraud**

4 Though Plaintiff has not presented the court with a record of express findings and
5 conclusions by the State Court judge, Plaintiff is correct in its argument that a default judgment
6 under California law is given preclusive effect. As addressed above, this is a well established
7 principle of federal law as addressed by the Ninth Circuit Court of Appeal in *Harmon v. Kobrin* and
8 *Cal-Micro, Inc. v. Cantrell*.

9 Here, Defendant-Debtor had the opportunity to litigate the issue but instead chose not to. In
10 his Declaration in support to the Opposition, Defendant-Debtor states:

11 Defendant[-Debtor] failed to answer the Plaintiffs’ complaint believing that a
12 settlement between Plaintiffs and El Dorado Irrigation District offset any damages
that could be claimed against him.

13 Defendant-Debtor Declaration, ¶ 3, Dckt. 20. Moreover, even when given the opportunity to do
14 something to address the State Court Judgment after it was entered, Defendant-Debtor, again, chose
15 not to act. In his Declaration, Defendant-Debtor testifies:

16 In September of 2020, I hired Timothy L. Hamilton, Esq. and Mr. Hamilton prepared
17 a Motion to Set Aside Default for lack of notice. After Mr. Hamilton prepared the
18 motion, I informed Mr. Hamilton that I wanted him to file a bankruptcy instead of
pursuing the motion. My bankruptcy was filed in October 2020.

19 *Id.* at ¶ 5.

20 In substance, Defendant-Debtor seeks to have this federal court act as a “super” appellate
21 court to overrule final state court judgments when Defendant-Debtor’s ability under state law has
22 expired or been exhausted. This court respects the final State Court Judgment and the application
23 of 28 U.S.C. § 1738.

24 **Respecting a Final State Court Judgment**
25 **is Not Contrary to Public Policy**

26 Defendant-Debtor further argues that applying collateral estoppel would be against public
27 policy because a default judgment was entered “without his knowledge” and then was provided the
28 notice of the judgment a year later while he was suffering from cancer. Defendant-Debtor also

1 argues that it would be unfair to apply the doctrine because his conduct was “nothing more than
2 filling in a ditch while he owned the property years before the Plaintiffs’ purchase.”

3 However, Defendant-Debtor’s own evidence documents that he was aware of the State Court
4 Action, that he elected not to answer, and that he was aware of Plaintiff seeking the entry of a default
5 judgment, and elected not to respond. Defendant-Debtor’s own evidence also demonstrates that he
6 was aware of his right to appeal or to seek to vacate the judgment, but that Defendant-Debtor elected
7 not to do so, but instead filed this bankruptcy case. *See*: Defendant-Debtor Declaration, ¶¶ 2, 3, 5,
8 Dckt. 22; Defendant-Debtor’s Statement of Undisputed Facts, ¶¶ 1, 2, 3, Dckt. 22.

9 This federal court has been presented with the final State Court Judgment (from which no
10 timely appeal has been taken, nor timely request to vacate) for which Full Faith and Credit is given
11 as provided by Congress in 28 U.S.C. § 1738. Though Defendant-Debtor may desire to now
12 relitigate the claim for fraud and the judgment of the State Court, such final State Court Judgment
13 cannot be ignored or brushed aside by this federal court.

14 **Obligations Owed on the Judgment**
15 **Are Nondischargeable Pursuant**
16 **to 11 U.S.C. § 523(a)(2)**

17 As analyzed above by the court, Plaintiff’s State Court Complaint and the Complaint in this
18 adversary proceeding meet the requirements for the application of the Doctrine of Collateral Estoppel
19 and Issue Preclusion in the giving of Full Faith and Credit to the final State Court Judgment for
20 fraud.

21 The State Court Judgment for fraud (the only claim asserted against Defendant-Debtor in the
22 State Court Complaint) necessarily required the State Court to make findings of California law fraud
23 which also meet the requirements for nondischargeable fraud pursuant to 11 U.S.C. § 523(a)(2).

24 Therefore, the obligations owed by Defendant-Debtor to Plaintiff under the State Court
25 Judgment are nondischargeable pursuant to 11 U.S.C. § 523(a)(2).

26 **GRANTING OF SUMMARY JUDGMENT FOR PLAINTIFF**

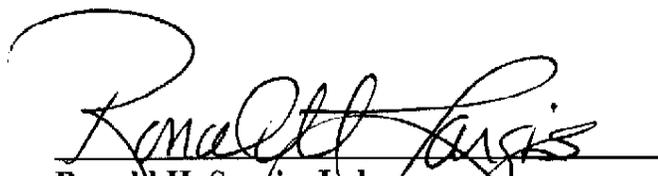
27 For the grounds stated above, the court grants Plaintiff’s Motion for Summary Judgment and
28 will enter judgment for James D. Price and Sharee E. Price, the Plaintiff, and against William Donald
Reddin, Defendant-Debtor, determining that the \$101,523.40 Judgment, and all obligations owing

1 thereunder, in the Superior Court of California for the County of El Dorado, Case No. PC20170418
2 is nondischargeable pursuant to 11 U.S.C. § 523(a)(2).

3 Counsel for the Plaintiff shall lodge with the court a proposed judgment consistent with this
4 Decision.

5 **Dated:** March 22, 2021

By the Court

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9 Ronald H. Sargis, Judge
10 United States Bankruptcy Court
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Instructions to Clerk of Court

Service List - Not Part of Order/Judgment

The Clerk of Court is instructed to send the Order/Judgment or other court generated document transmitted herewith *to the parties below*. The Clerk of Court will send the document via the BNC or, if checked , via the U.S. mail.

Debtor / Defendant-Debtor	Attorney for the Debtor / Defendant-Debtor
Bankruptcy Trustee (if appointed in the case)	Office of the U.S. Trustee Robert T. Matsui United States Courthouse 501 I Street, Room 7-500 Sacramento, CA 95814
Attorney for the Trustee (if any)	Kevin P. Whiteford, Esq. Mark A. Serlin, Esq. 900 Howe Avenue, Ste. 250 Sacramento, CA 95825

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