

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA**

Honorable Fredrick E. Clement  
Fresno Federal Courthouse  
2500 Tulare Street, 5<sup>th</sup> Floor  
Courtroom 11, Department A  
Fresno, California

**PRE-HEARING DISPOSITIONS**

**DAY: WEDNESDAY**

**DATE: APRIL 24, 2019**

**CALENDAR: 10:00 A.M. CHAPTER 7 ADVERSARY PROCEEDINGS**

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

**No Ruling:** All parties will need to appear at the hearing unless otherwise ordered.

**Tentative Ruling:** If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

**Final Ruling:** Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

**Orders:** Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

1. [17-10104](#)-A-7    **IN RE: FRED/KARLA OLMSTEAD**  
[17-1035](#)

PRETRIAL CONFERENCE RE: AMENDED COMPLAINT  
5-4-2017    [[8](#)]

AIR-WAY FARMS, INC. ET AL V.  
OLMSTEAD  
BRIAN CUTTONE/ATTY. FOR PL.  
DISMISSED; CLOSED

**Final Ruling**

The adversary dismissed, the pretrial conference is discharged.

2. [18-13412](#)-A-7    **IN RE: KIRANDEEP CHIMA**  
[18-1063](#)

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT  
9-26-2018    [[6](#)]

CHIMA V. CHIMA  
MATTHEW QUALL/ATTY. FOR PL.

**Final Ruling**

The status conference is continued to May 22, 2019, at 10:00 a.m.  
If a judgment has not been entered, not later than May 8, 2019, the  
plaintiff shall file a status report.

3. [18-13412](#)-A-7    **IN RE: KIRANDEEP CHIMA**  
[18-1063](#)    [MQW-1](#)

CONTINUED MOTION FOR ENTRY OF DEFAULT JUDGMENT  
2-8-2019    [[27](#)]

CHIMA V. CHIMA  
MATTHEW QUALL/ATTY. FOR MV.

**Final Ruling**

**Motion:** Entry of Default Judgment Determining Pre-Petition Debt Non-Dischargeable under 11 U.S.C. §§ 523(a)(2)(A), 523(a)(4) (embezzlement), and/or 523(a)(6)

**Notice:** LBR 9014-1(f)(1); written opposition required

**Disposition:** Granted

**Order:** Prepared by the moving party

The hearing on this motion was continued from March 21, 2019 in order for the plaintiff to file a declaration by the person who translated the plaintiff's declaration in support of this motion. The required declaration was filed on March 19. ECF No. 36. The

declaration satisfactorily addresses the court's concerns about the translation and preparation of the plaintiff's own declaration in support of this motion.

Accordingly, the court's ruling granting the motion, as posted tentatively in connection with the March 21 hearing on this motion, follows below.

The clerk has entered a default against the defendant in this proceeding. The default was entered because the defendant failed to appear, answer or otherwise defend against the action brought by the plaintiff. Fed. R. Civ. P. 55(b)(2), *incorporated by Fed R. Bankr. P. 7055.*

Fed. R. Civ. P. 55(b)(2) provides that:

"A default judgment may be entered against a minor or incompetent person only if represented by a general guardian, conservator, or other like fiduciary who has appeared. If the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with written notice of the application at least 7 days before the hearing. The court may conduct hearings or make referrals – preserving any federal statutory right to a jury trial – when, to enter or effectuate judgment, it needs to:

- (A) conduct an accounting;
- (B) determine the amount of damages;
- (C) establish the truth of any allegation by evidence; or
- (D) investigate any other matter."

The factors courts consider in determining whether to enter a default judgment include: (i) the possibility of prejudice to the plaintiff, (ii) the merits of the plaintiff's substantive claim, (iii) the sufficiency of the complaint, (iv) the amount at stake, (v) the possibility of a dispute over material facts, (vi) whether the default was due to excusable neglect, and (vii) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits. *Valley Oak Credit Union v. Villegas (In re Villegas)*, 132 B.R. 742, 746 (B.A.P. 9th Cir. 1991).

The plaintiff has requested that the court enter default judgment against the defendant on the claims brought in this action. Having accepted the well-pleaded facts in the complaint as true, and for the reasons stated in the motion and supporting papers, the court will grant the motion and enter default judgment for the plaintiff on the claims brought against defendant in this adversary proceeding.

The court has the authority to declare pre-petition debts non-dischargeable under 11 U.S.C. §§ 523(a)(2)(A), 523(a)(4), 523(a)(6).

11 U.S.C. § 523(a)(2)(A)

To succeed on a nondischargeability claim under § 523(a)(2)(A), a creditor must establish five elements: "(1) misrepresentation, fraudulent omission or deceptive conduct by the debtor; (2)

knowledge of the falsity or deceptiveness of his statement or conduct; (3) an intent to deceive; (4) justifiable reliance by the creditor on the debtor's statement or conduct; and (5) damage to the creditor proximately caused by its reliance on the debtor's statement or conduct." *Turtle Rock Meadows Homeowners Ass'n v. Slyman (In re Slyman)*, 234 F.3d 1081, 1085 (9th Cir. 2000). "The purposes of [§ 523(a)(2)(A)] are to prevent a debtor from retaining the benefits of property obtained by fraudulent means and to ensure that the relief intended for honest debtors does not go to dishonest debtors." *Id.*

11 U.S.C. § 523(a)(4), Embezzlement

"Federal law and not state law controls the definition of embezzlement for purposes of § 523(a)(4)." *First Del. Life Ins. Co. v. Wada (In re Wada)*, 210 B.R. 572, 576 (B.A.P. 9th Cir. 1997). "Embezzlement is defined as the fraudulent appropriation of property by a person to whom such property has been entrusted or into whose hands it has lawfully come." *Id.* (quoting *Moore v. United States*, 160 U.S. 268, 269 (1895)) (internal quotation marks omitted). A debt can be nondischargeable for embezzlement under § 523(a)(4) even without the existence of a fiduciary relationship. *Transamerica Commercial Fin. Corp. v. Littleton (In re Littleton)*, 942 F.2d 551, 555 (9th Cir. 1991). "Embezzlement, thus, requires three elements: (1) property rightfully in the possession of a nonowner; (2) nonowner's appropriation of the property to a use other than which it was entrusted; and (3) circumstances indicating fraud." *Id.* (alteration omitted) (citation omitted) (internal quotation marks omitted).

11 U.S.C. § 523(a)(6)

Section 523(a)(6) excepts from discharge a debt "for willful and malicious injury by the debtor to another entity or to the property of another entity." The "malicious" injury requirement is separate from the "willful" injury requirement. *Barboza v. New Form, Inc. (In re Barboza)*, 545 F.3d 702, 706 (9th Cir. 2008).

A "malicious" injury involves "(1) a wrongful act, (2) done intentionally, (3) which necessarily causes injury, and (4) is done without just cause or excuse." *Petralia v. Jercich (In re Jercich)*, 238 F.3d 1202, 1209 (9th Cir. 2001) (quoting *In re Bammer*, 131 F.3d 788, 791 (9th Cir. 1997)).

A "willful" injury is a "deliberate or intentional injury, not merely a deliberate or intentional act that leads to injury." *Kawaauhau v. Geiger*, 523 U.S. 57, 61 (1998) (emphases in original). This willful injury requirement is satisfied "only when the debtor has a subjective motive to inflict injury or when the debtor believes that injury is substantially certain to result from his own conduct." *Carrillo v. Su (In re Su)*, 290 F.3d 1140, 1142, 1144-45 (9th Cir. 2002). By contrast, "debts arising from recklessly or negligently inflicted injuries do not fall within the compass of § 523(a)(6)." *Geiger*, 523 U.S. at 64.

Thus, the standard is a subjective one, where the debtor must have "either a *subjective intent* to harm, or a *subjective belief* [or *actual knowledge*] that harm is substantially certain." *Su*, 290 F.3d at 1444 (emphases added). In determining whether the debtor has actual knowledge, the court can infer that the debtor is usually "charged with the knowledge of the natural consequences of his actions." *Ormsby v. First Am. Title Co. (In re Ormsby)*, 591 F.3d 1199, 1206 (9th Cir. 2010). "In addition to what a debtor may admit to knowing, the bankruptcy court may consider circumstantial evidence that tends to establish what the debtor must have actually known when taking the injury-producing action." *Su*, 290 F.3d at 1146 n.6.

Based on the undisputed facts, starting in 1995, the plaintiff Charni Chima gave authority to the defendant Kirandeep Chima (the debtor in the underlying chapter 7 case) to take charge of her finances, including having possession of keys for the plaintiff's home and mail box, receiving and opening the plaintiff's mail, paying the plaintiff's bills, managing the plaintiff's bank accounts, among other things. As the plaintiff's husband had passed away approximately two years earlier and the plaintiff is not fully proficient in the English language, the plaintiff looked to the defendant, as her daughter-in-law and family member, for help with the management of her finances. Due to the defendant's representations and familial connection with the plaintiff, the plaintiff relied on the defendant to manage her finances.

Without the plaintiff's knowledge or consent, the defendant largely drained the plaintiff's bank accounts, destroyed her credit rating by opening several credit cards in the plaintiff's name, stole jewelry from a safety deposit box belonging to the plaintiff, and failed to pay many of the plaintiff's bills, precipitating collection actions against the plaintiff. As part of her scheme, the defendant created false bank statements to present to the plaintiff and made many other misrepresentations to the plaintiff about her finances. The defendant also misrepresented herself as the plaintiff in telephone calls with financial institutions.

The scheme of the defendant was not discovered until August of 2017, when the plaintiff physically visited financial institutions at which she had accounts and pulled her credit report.

In pre-petition litigation between the parties, including elder abuse, fraud, and California Penal Code claims, among others, the state court determined that the monetary damages sustained by the plaintiff were \$562,893.98. That court entered a final judgment on August 1, 2018 in favor of the plaintiff in the amount of \$1,138,659.70, doubling the damages of \$562,893.98 (under Welfare and Institutions Code § 15610.30), adding a \$10,000 penalty (under California Penal Code § 368), and including attorney's fees (\$2,252) and costs (\$619.74). The defendant filed the underlying bankruptcy case on August 22, 2018.

The plaintiff's claim was liquidated pre-petition by the state court. The court is unwilling to apply issue preclusion, as there

are no findings of fact and conclusions of law from the state court litigation in the record.

Given the foregoing, nevertheless, the court finds the plaintiff's claims here to be sound. The above-outlined facts satisfy the elements of each of the three causes of action under 11 U.S.C. §§ 523(a)(2)(A), 523(a)(4) (embezzlement), 523(a)(6).

The defendant was served with the Amended Complaint filed on September 26, 2018 and related reissued summons. Her default was entered on January 9, 2019. Her default was not entered due to excusable neglect.

A default judgment against the defendant is warranted. After entry of an order granting this motion, to be prepared by the moving party, the court will enter a judgment declaring the debt owed to the plaintiff as set by the state court non-dischargeable in the underlying bankruptcy case. The movant shall prepare and lodge with the court a judgment consistent with the instant ruling no later than 30 days after the April 24 hearing on this motion.

4. [18-11240](#)-A-7     **IN RE: DIANA XAVIER**  
[18-1083](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT  
11-19-2018   [[1](#)]

MANFREDO V. RIVER-X  
SHARLENE ROBERTS-CAUDLE/ATTY. FOR PL.  
RESPONSIVE PLEADING

**Final Ruling**

The status conference is continued to May 1, 2019, at 10:00 a.m.

Counsel for the trustee is advised that in the future motion to approve a compromise need to be noticed for hearing in the main case, here at 9:00 a.m., not for the adversary proceeding calendar.

5. [18-14542](#)-A-7     **IN RE: LARRY SELL**  
[19-1025](#)

STATUS CONFERENCE RE: COMPLAINT  
2-15-2019   [[1](#)]

THE LEAD CAPITAL, LLC V. SELL  
DERRICK COLEMAN/ATTY. FOR PL.  
RESPONSIVE PLEADING

**No Ruling**

6. [18-14546](#)-A-7    **IN RE: LANE ANDERSON**  
[19-1024](#)

STATUS CONFERENCE RE: COMPLAINT  
2-15-2019    [[1](#)]

MURILLO V. ANDERSON ET AL  
RICK MORIN/ATTY. FOR PL.  
RESPONSIVE PLEADING

**No Ruling**

7. [17-12781](#)-A-7    **IN RE: DALIP NIJJAR**  
[17-1066](#)    [FW-4](#)

MOTION FOR SANCTIONS  
3-25-2019    [[264](#)]

SALVEN V. NIJJAR ET AL  
PETER SAUER/ATTY. FOR MV.

**No Ruling**

8. [17-12781](#)-A-7    **IN RE: DALIP NIJJAR**  
[17-1066](#)    [FW-7](#)

MOTION FOR CONTEMPT  
3-26-2019    [[269](#)]

SALVEN V. NIJJAR ET AL  
PETER SAUER/ATTY. FOR MV.

**No Ruling**

9. [17-12389](#)-A-7    **IN RE: DON ROSE OIL CO., INC.**  
[17-1086](#)

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT  
9-5-2018    [[131](#)]

KODIAK MINING & MINERALS II  
LLC ET AL V. DON ROSE OIL CO.,  
VONN CHRISTENSON/ATTY. FOR PL.  
RESPONSIVE PLEADING

**No Ruling**