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UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA

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4 In re: ) Case No. 14-23090-B-13  
5 RUBY HARPREET DULAY, ) Adversary No. 14-2188  
6 ) DC No. KDC-2  
7 Debtor(s). )  
8 DEEPAK GUPTA, VIJAY GUPTA, )  
9 Plaintiff(s), )  
10 v. )  
11 RUBY HARPREET DULAY, )  
12 )  
13 Defendant(s). )  
14

ORDER DENYING MOTION FOR SUMMARY JUDGMENT

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16  
17 This is an action to determine the dischargeability of debts  
18 under 11 U.S.C. § 523(a)(6) (libel, conversion) and 11 U.S.C.  
19 § 523(a)(2)(A) (fraud). Plaintiffs Deepak Gupta and Vijay Gupta  
20 ("Plaintiffs") are seeking the nondischargeability of debts based  
21 on a pre-petition judgment entered in their favor and against  
22 Defendant Ruby Harpreet Dulay ("Defendant") which resulted from a  
23 ruling on a motion for summary judgment by the Placer County,  
24 California, Superior Court ("State Court"). Plaintiffs have now  
25 moved for summary judgment in this case.

26 Plaintiffs' request for summary judgment is based  
27 exclusively on certain requests in a *Requests for Admissions, Set*  
28 *One* ("RFAs"), which are attached as Exhibit A to the Cable  
Declaration. Plaintiffs assert that Defendant's failure to

1 timely respond to those RFAs means the RFAs are now deemed  
2 admitted and, as such, are admissions for purposes of summary  
3 judgment. The RFAs upon which Plaintiffs rely for summary  
4 judgment asked Defendant to admit nondischargeability and the  
5 preclusive effect of the State Court judgment. Because those are  
6 legal conclusions, those RFAs are improper and Defendant's  
7 untimely response did not result in those RFAs being deemed  
8 admitted. Summary judgment will, therefore, be denied.

9 This matter was initially heard on January 6, 2015, and was  
10 continued to February 3, 2015. In reaching its decision, the  
11 court has considered the statements of counsel on the record in  
12 open court. The court has also reviewed and considered the  
13 following: (I) Plaintiffs' (i) *Notice of Motion and Motion for*  
14 *Summary Judgment* ("MSJ"), (ii) *Separate Statement of Undisputed*  
15 *Facts in Support of Motion for Summary Judgment* [LBR 7056-1],  
16 (iii) *Declaration of Keith D. Cable in Support of Motion for*  
17 *Summary Judgment* ("Cable Declaration"), (iv) *Plaintiffs' Request*  
18 *for Judicial Notice in Support of Motion for Summary Judgment*;  
19 (II) *Defendant's Debtor's Opposition to Plaintiffs' Motion for*  
20 *Summary Judgment*; and (III) *Plaintiffs' Reply to Opposition to*  
21 *Motion for Summary Judgment* [FRBP 7056; LBR 7056-1]. The court  
22 has further reviewed and, at Plaintiffs' request, has taken  
23 judicial notice of the *Complaint Objecting to Discharge and for*  
24 *Other Relief* ("Complaint") and the *Answer to Complaint to*  
25 *Determine Dischargeability of Debt* ("Answer").  
26  
27  
28

1 JURISDICTION AND VENUE

2 The court has jurisdiction over this matter pursuant to 28  
3 U.S.C. §§ 1334 and 157. This is a core proceeding under 28  
4 U.S.C. § 157(b)(2)(A), (I), and (O). Venue is proper under 28  
5 U.S.C. § 1409.

6 SUMMARY JUDGMENT STANDARD

7 Federal Rule of Civil Procedure ("FRCP") 56 - as made  
8 applicable to this adversary proceeding by Federal Rule of  
9 Bankruptcy Procedure ("FRBP") 7056 - provides that summary  
10 judgment is appropriate if the pleadings, depositions, answers to  
11 interrogatories, admissions on file, and declarations, if any,  
12 show that there is "no genuine issue of fact and that the moving  
13 party is entitled to judgment as a matter of law." "The initial  
14 burden of showing the absence of a material factual issue is on  
15 the moving party. Once that burden is met, the opposing party  
16 must come forward with specific facts, and not allegations, to  
17 show a genuine factual issue remains for trial." DeHorney v.  
18 Bank of America N.T.&S.A., 879 F.2d 459, 464 (9th Cir. 1989); see  
19 also, Celotex Corp. v. Catrett, 477 U.S. 317, 323-324 (1986). On  
20 summary judgment, all reasonable inferences to be drawn from the  
21 underlying facts must be viewed in the light most favorable to  
22 the nonmoving party. Matsushita Elec. Indus. Co. v. Zenith Radio  
23 Corp., 475 U.S. 574, 587 (1986) (quotation omitted).

24 The court cannot grant summary judgment simply because no  
25 opposition has been filed. Henry v. Gill Industries, Inc., 983  
26 F.2d 943, 950 (9th Cir. 1993) (summary judgment cannot be granted  
27 based upon the failure to file opposition under a local rule); In  
28 re Lenard, 140 B.R. 550, 555 (D. Co. 1992) (discussing the

1 advisory notes to FRCP 56(e), which state: "Where the evidentiary  
2 matter in support of the motion does not establish the absence of  
3 a genuine issue, summary judgment must be denied even if no  
4 opposing evidentiary matter is presented."). Thus, even if no  
5 response to the motion in the manner required by local rules or  
6 otherwise is filed, the court must "independently determine from  
7 the record whether summary judgment is proper." Id. at 555.  
8 Moreover, a motion for summary judgment based on an admission  
9 established by default may be given special scrutiny from the  
10 court. Fleet Credit Card Services, L.P. v. Harden (In re  
11 Harden), 282 B.R. 543, 545 (Bankr. M.D. Ga. 2002).

12 APPLICABLE FACTS

13 Plaintiffs served the Defendant with the RFAs by U.S. Mail  
14 on October 14, 2014. Defendant's responses to the RFAs were due  
15 by November 17, 2014. Defendant served responses to the RFAs on  
16 November 28, 2014. Defendant's responses were untimely.

17 Plaintiffs seek to use Defendants' untimely response to the  
18 RFAs as admissions to establish both that there is no genuine  
19 dispute of material fact and that they are entitled to judgment  
20 as a matter of law on the issue of nondischargeability and the  
21 preclusive effect of the State Court judgment. In fact, the  
22 purported admissions resulting from the absence of a timely  
23 response is the sole basis upon which Plaintiffs seek summary  
24 judgment on each of the claims for relief alleged in the  
25 Complaint. See MSJ at 3,  
26 4-5.

27 The RFAs upon which Plaintiffs rely as a basis for summary  
28 judgment fall into two categories: (1) those that request the

1 Defendant to admit nondischargeability; and (2) those that  
2 request Defendant to admit the preclusive effect of the State  
3 Court judgment.

4 The RFAs that fall into the first category, *i.e.*, those that  
5 ask the Defendant to admit nondischargeability, are identified as  
6 follows:

7 RFA 9 which asks Defendant to admit that she has no  
8 facts to support her denial in ¶ 11 of her Answer.  
9 Paragraph 11 of the Answer corresponds with ¶ 11 of the  
10 Complaint which states: "Pursuant to 11 U.S.C. §  
11 523(a)(6), a debt incurred by a debtor who willfully  
12 and maliciously injures another entity or the property  
13 of another entity shall be nondischargeable. Libel is  
14 a 'willful and malicious injury' for purposes of  
15 applying 11 U.S.C. § 523(a)(6). Moreover, state court  
16 judgments for libel are nondischargeable. In re  
17 Sicroff, 401 F.3d 1101 (9th Cir. 2005), *cert. denied*,  
18 545 U.S. 1139, 125 S. Ct. 2964 (2005)."

19 RFA 11 which asks Defendant to admit that she has no  
20 facts to support her denial in ¶ 13 of her Answer.  
21 Paragraph 13 of the Answer corresponds with ¶ 13 of the  
22 Complaint which states: "Based on the foregoing,  
23 Plaintiff Deepak Gupta requests that the debt arising  
24 from the judgment for libel be deemed nondischargeable  
25 by this Court."

26 RFA 12 which asks the Defendant to admit that she has  
27 no facts to support her denial in ¶ 16 of the Answer.  
28 Paragraph 16 of the Answer corresponds with ¶ 16 of the  
Complaint which states: "Pursuant to 11 U.S.C. §  
523(a)(6), a debt incurred by a debtor who willfully  
and maliciously injures another entity or the property  
of another entity shall be nondischargeable.  
Conversion of another's property is a 'wilful and  
malicious injury' for purposes of applying 11 U.S.C. §  
523(a)(6) and thus gives rise to a nondischargeable  
debt. In re Cecchini, 780 F.2d 1440, 1443 (9th Cir.  
1986); In re Giangrasso, 145 B.R. 319 (B.A.P. 9thCir.  
[sic] 1992)."

RFA 14 which asks Defendant to admit that she has no  
facts to support her denial in ¶ 18 of the Answer.  
Paragraph 18 of the Answer corresponds with Paragraph  
18 of the Complaint which states: "Based on the  
foregoing, Plaintiffs Deepak Gupta and Vijay Gupta  
request that the debts arising from the respective  
judgments for conversion be deemed nondischargeable by  
this Court."

1 RFA 15 which asks the Defendant to admit she has no  
2 facts to support her denial in ¶ 21 of her Answer.  
3 Paragraph 21 of the Answer corresponds with ¶ 21 of the  
4 Complaint which states: "Pursuant to 11 U.S.C. §  
5 523(a)(a)(A) [sic], a debt incurred by a debtor for  
6 money obtained by false pretenses, a false  
7 representation, or actual fraud shall be  
8 nondischargeable. A finding of debt due to fraud is  
9 all that is necessary to satisfy § 523(a)(2)(A) to  
10 render the debt nondischargeable. Cohen v de la Cruz,  
11 523 U.S. 213, 223, 118 S. Ct. 1212, 140 L. Ed. 2d 341  
12 (1998)."

13 RFA 17 which asks Defendant to admit that she has no  
14 facts to support her denial in ¶ 23 of her Answer.  
15 Paragraph 23 of the Answer corresponds with ¶ 23 of the  
16 Complaint which states: "Based on the foregoing,  
17 Plaintiffs Deepak Gupta and Vijay Gupta request that  
18 the debts arising from the respective judgments for  
19 fraud be deemed nondischargeable by this Court."

20 RFA 23 which asks Defendant to admit that the award in  
21 favor of Plaintiff Deepak Gupta for \$24,050 on his  
22 libel claim against Defendant Ruby Harpreet Dulay is  
23 nondischargeable.

24 RFA 25 which asks Defendant to admit that the that the  
25 award in favor of Plaintiff Deepak Gupta for \$30,510 on  
26 his conversion claim against Defendant Ruby Harpreet  
27 Dulay is nondischargeable.

28 RFA 27 which asks Defendant to admit that the award in  
favor of Plaintiff Deepak Gupta for \$20,516 on his  
fraud claim against Defendant Ruby Harpreet Dulay is  
nondischargeable.

RFA 29 which asks Defendant to admit that the award in  
favor of Plaintiff Vijay Gupta for \$34,499.17 on his  
conversion claim against Defendant Ruby Harpreet Dulay  
is nondischargeable.

RFA 31 which asks Defendant to admit that the award in  
favor of Plaintiff Vijay Gupta for \$34,499.17 on his  
fraud claim against Defendant Ruby Harpreet Duly is  
nondischargeable.

The RFAs that fall into the second category, *i.e.*, those  
that ask the Defendant to admit the preclusive effect of the  
State Court judgment, are as follows:

RFA 10 which asks Defendant to admit that she has no  
facts to support her denial in ¶ 12 of her Answer.  
Paragraph 12 of the Answer corresponds with ¶ 12 of the

1 Complaint which states: "Defendant is precluded from  
2 relitigating the judgment. It is well established in  
3 this circuit that the preclusive effect of a state  
4 court judgment must be given the same effect by federal  
5 courts as by the courts of the rendering state. Gayden  
6 v.Nourbakhsh [sic] (In re Nourbakhsh), 67 F.3d 798, 800  
7 (9th Cir. 1995)."

8 RFA 13 which asks Defendant to admit that she has no  
9 facts to support her denial in ¶ 17 of her Answer.  
10 Paragraph 17 of the Answer corresponds with ¶ 17 of the  
11 Complaint which states: "Defendant is precluded from  
12 relitigating the judgments. It is well established in  
13 this circuit that the preclusive effect of a state  
14 court judgment must be given the same effect by federal  
15 courts as by the courts of the rendering state. Gayden  
16 v.Nourbakhsh [sic] (In re Nourbakhsh), 67 F.3d 798, 800  
17 (9th Cir. 1995)."

18 RFA 16 which asks Defendant to admit that she has no  
19 facts to support her denial in ¶ 22 of her Answer.  
20 Paragraph 22 of the Answer corresponds with ¶ 22 of the  
21 Complaint which states: "Defendant is likewise  
22 precluded from relitigating the judgments. It is well  
23 established in this circuit that the preclusive effect  
24 of a state court judgment must be given the same effect  
25 by federal courts as by the courts of the rendering  
26 state. Gayden v.Nourbakhsh[sic] (In re Nourbakhsh), 67  
27 F.3d 798, 800 (9th Cir. 1995)."

28 NONDISCHARGEABILITY AND THE PRECLUSIVE EFFECT OF THE STATE COURT  
JUDGMENT ARE LEGAL CONCLUSIONS THAT ARE IMPROPER UNDER FRCP  
36/FRBP 7036 AND, THEREFORE, NOT DEEMED ADMITTED BY AN UNTIMELY  
RESPONSE.

Federal Rule of Civil Procedure 36(a)(1) - made applicable  
by FRBP 7036 - states that "[a] party may serve on any other  
party a written request to admit, for purposes of the pending  
action only, the truth of any matters within the scope of Rule  
26(b)(1) relating to: . . . facts, the application of law to  
fact, or opinions about either . . . ." FRCP 36(a)(1)(A). When a  
party fails to timely respond to requests for admissions, those  
requests are automatically deemed admitted. See FRCP 36(a)(3).  
Any matter admitted under the rule is conclusively established  
unless the court, on motion, permits withdrawal or amendment of



1 the admission. See Conlon v. U.S., 474 F.3d 616, 621 (9th Cir.  
2 2007). One notable exception to Rule 36 admissions is where the  
3 requests are manifestly improper, such as when they seek the  
4 admission of legal conclusions. Playboy Enters., Inc. v. Welles,  
5 60 F. Supp. 2d 1050, 1057 (S.D. Cal.1999) ("Requests for  
6 admissions cannot be used to compel an admission of a conclusion  
7 of law."). Thus, "one party cannot demand that the other party  
8 admit the truth of a legal conclusion." Disability Rights  
9 Council v. Wash Metro. Area, 234 F.R.D. 1, 3 (D.D.C. 2006).

10 The MSJ relies *exclusively* on purported admissions that  
11 Plaintiffs claim resulted from Defendant's untimely response to  
12 RFAs which asked Defendant to admit nondischargeability and the  
13 preclusive effect of the State Court judgment. This is  
14 problematic for the Plaintiffs and fatal to the MSJ because "the  
15 ultimate issue of dischargeability is a legal question to be  
16 addressed by the bankruptcy court in the exercise of its  
17 exclusive jurisdiction to determine dischargeability." St.  
18 Laurent v. Ambrose (In re St. Laurent), 991 F.2d 672, 676 (11th  
19 Cir. 1993). In other words, "the nondischargeability of a debt  
20 is a legal conclusion that cannot be admitted as a fact." Karl  
21 v. Stalnaker (In re Stalnaker), 408 B.R. 440, 445 (Bankr. M.D.  
22 Ga. 2009). The same is true regarding the preclusive effect of a  
23 prior judgment. That too is also a legal question for the court.  
24 McInnes v. State of California, 943 F.2d 1088, 1092 (9th Cir.  
25 1991); In re Advantage Communications Group, Inc., 1997 WL 414169  
26 at \*3 (N.D. Cal. 1997).

27 Because the RFAs upon which Plaintiffs rely for summary  
28 judgment are improper requests for the admission of legal



1 conclusions, they are not - and will not be - deemed admitted as  
2 a result of Defendant's untimely response. Stripped of the  
3 ability to rely on those RFAs as admissions, there is no other  
4 factual and legal discussion or analysis of the claims for relief  
5 in the Complaint and no other basis upon which the court may  
6 grant Plaintiffs' request for summary judgment. Plaintiffs have  
7 failed to demonstrate there is no genuine dispute of material  
8 fact and that they are entitled to judgment as a matter of law on  
9 the ultimate issue of nondischargeability under 11 U.S.C.  
10 §§ 523(a)(6) and 523(a)(2)(A). Plaintiffs' request for summary  
11 judgment will, therefore, be denied.<sup>1</sup>

12 THE COURT WILL NOT IDENTIFY FACTS NOT IN DISPUTE OR ESTABLISHED  
13 UPON DEFECTIVE NOTICE TO DEFENDANT

14 If the MSJ is denied, Plaintiffs ask the court to identify  
15 facts not in dispute and that are otherwise established for  
16 purpose of this motion. "If the court does not grant all the  
17 relief requested by the motion, it may enter an order stating any  
18 material fact - including an item of damages or other relief -  
19 that is not genuinely in dispute and treating the fact as  
20 established in the case." FRCP 56(g). The court will deny  
21 Plaintiffs' request for Rule 56(g) relief. The court will not  
22 grant Rule 56(g) relief based on defective notice to the  
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24 <sup>1</sup>As an alternative basis for denying summary judgment, the  
25 court notes that notice of the MSJ is materially defective. The  
26 notice includes two hearing dates, i.e., January 6, 2015, and  
27 January 20, 2015, and it fails to state whether and when a  
28 written opposition must be filed, the deadline for filing and  
serving a written opposition, and the names and addresses of the  
person who must be served with an opposition, all are required by  
Local Bankruptcy Rule 9013-1(d)(3).

1 Defendant. See fn.1, *supra*.<sup>2</sup>

2 CONCLUSION

3 Based on all of the foregoing, and good cause appearing:

4 IT IS HEREBY ORDERED that the MSJ and Plaintiffs' request  
5 for summary judgment therein are **DENIED**.

6 IT IS FURTHER ORDERED that Plaintiffs' request for relief  
7 under Federal Rule of Civil Procedure 56(g)/Federal Rule of  
8 Bankruptcy Procedure 7056 is **DENIED**.

9 Dated: February 2, 2015.

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UNITED STATES BANKRUPTCY JUDGE

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25 <sup>2</sup>Except for the legal conclusions in the RFAs identified in  
26 this order which are improper and not deemed admitted, the  
27 court's denial of Rule 56(g) relief does not preclude Plaintiffs  
28 from identifying other requests in the RFAs that Plaintiffs  
assert are deemed admitted as a result of Defendant's untimely  
response at a later stage of these proceedings and after proper  
notice to the Defendant.

1                                   **INSTRUCTIONS TO CLERK OF COURT**  
2                                   **SERVICE LIST**

3           The Clerk of Court is instructed to send the attached  
4 document, via the BNC, to the following parties:

5           Keith D. Cable  
6           101 Parkshore Dr #100  
7           Folsom CA 95630

8           Brandon Scott Johnston  
9           915 Highland Pointe Drive, Ste. 250  
10           Roseville CA 95678