UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

February 13, 2025 at 11:00 a.m.

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1. **23-23292-E-7** **IAN LONG** **MOTION FOR ENTRY OF DEFAULT**
24-2025 **Bruce Dwiggins** **JUDGMENT**
CAE-1 **1-3-25 [24]**

HAMILTON V. LONG

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Defendant, Chapter 7 Trustee, attorneys of record, and Office of the United States Trustee on January 6, 2025. By the court's calculation, 38 days' notice was provided. 28 days' notice is required.

NO OFFICIAL CERTIFICATE OF SERVICE SHEET USED

Though notice was provided, Movant has not complied with Local Bankruptcy Rule 7005-1 which requires the use of a specific Eastern District of California Certificate of Service Form (Form EDC 007-005). This required Certificate of Service form is required not merely to provide for a clearer identification of the service provided, but to ensure that the party providing the service has complied with the requirements of Federal Rule of Civil Procedure 5, 7, as incorporated into Federal Rule of Bankruptcy Procedure 7005, 7007, and 9014(c).

The Motion for Entry of Default Judgment has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Therefore, the defaults of the non-responding parties and other parties in interest are entered.

The Motion for Entry of Default Judgment is granted.

Robert Lee Hamilton ("Plaintiff-Creditor") filed the instant Motion for Default Judgment on January 3, 2025. Dckt. 24. Plaintiff-Creditor seeks an entry of default judgment against Ian Christopher Long ("Defendant," "Debtor") in the instant Adversary Proceeding No. 24-02025.

The instant Adversary Proceeding was commenced on March 21, 2024. Dckt. 1. The summons was re-issued by the Clerk of the United States Bankruptcy Court on July 18, 2024. Dckt. 11. The complaint and summons were properly served on Defendant. Certificate of Service, Dckt. 12.

Defendant failed to file a timely answer or response or request for an extension of time. Default was entered against Defendant pursuant to Federal Rule of Bankruptcy Procedure 7055 by the Clerk of the United States Bankruptcy Court on September 5, 2024. Dckt. 15.

Plaintiff provides his Declaration in support of the Motion. Dec.; Dckt. 25. The testimony under penalty of perjury by Plaintiff includes the following:

A. "Defendant Ian Christopher Long (hereafter LONG) stated to me in 2022 and early 2023 that he had been in the construction business for approximately 30 years, had participated in building approximately 500 new homes from the ground up, had been a licensed contractor in Oregon since he was 21 years old and was experienced in virtually every aspect of construction."

Declaration, p. 1:22-25; Dckt. 25.

B. "LONG represented that he did not currently have a California Contractor's License but would soon be working under is daughter's California State Construction Contractor's License."

Id.; p. 2:1-2.

C. " To further induce me into securing his services, LONG told me that he did not charge for changes (other than the actual cost) that inevitably needs to be made while remodeling; and that because of his connections and the large of quantities of materials he purchases (for multiple customers and projects), that I would benefit from LONG's purchasing power by buying the needed materials through him at his cost (because that savings would be passed on to me). By purchasing my remodeling materials through LONG, I would get those materials at his cost.

Id.; p. 2:3-7.

D. " LONG also agreed to provide all receipts for the materials he purchased on my behalf. Though I made numerous requests for these receipts, LONG has never provided any to me."

Id.; p. 2:8-9.

E. "LONG abandoned the project on July 10, 2023, leaving the remodeling area in disarray, torn up and uninhabitable/unusable. LONG charged for materials he did not purchase and work he did not perform (and/or work that had to be tom out and re-done

at additional expense to me). LONG misrepresented his qualifications, who he would be employing (i.e., experienced construction workers) and working with (i.e., his daughter a licensed contractor) and the quality of work that I was to expect."

Id.; p. 2:10-14.

F. "LONG also represented himself as an experienced property manager in Shasta County and said that two of the offices he was to create in my building could easily be rented for $2,500.00 each per month."

Id.; p. 2:16-18.

G. Plaintiff then authenticates ten exhibits, and Plaintiff's personally witness statements made by Defendant-Debtor [LONG].

Id.; p. 2:18-5:6.

H. In authenticating the Exhibits, Plaintiff testimony also includes:

1. "Exhibit "2" copy of a certified letter that I received directly from the State of Oregon Construction Contractor's Board which in summary states that neither LONG (nor any of his alter egos listed therein) has ever been licensed as contractor in Oregon." *Id*. p. 2:20-22.

2. "Though requested, LONG has never provided me any receipts for the materials he purportedly purchased on my behalf." *Id*.; p. 3:13-14.

3. Testimony of having paid for materials which were never delivered to Plaintiff.

I. "I believe my damages exceed the amount I paid LONG ($82,476.00) and request a judgment for this full amount of $82,476.00 (reimbursement for monies spent on labor and materials). I have also spent at least $15,000.00 replacing and repairing LONG's shoddy and incompetent workmanship; lost rent; interest, etc., that was the result of LONG's malfeasance, fraud and intentional misrepresentations."

Id.; p. 5:11-15.

J. "In the alternative, based on LONG's representations that I actually paid him $60,000.00 for materials - I would be requesting a judgement for $58,000.00."

Id.; p. 5:15-16.

K. "In the second alternative, I request a judgment for materials in the amount of at least ($46,476.00 - $2,000.00) or $44,476.00 which represents the materials I paid for but have never received and have never been reimbursed for by LONG."

Id.; p. 5:17-19.

REVIEW OF COMPLAINT

Plaintiff-Creditor filed a complaint for injunctive relief against Defendant. The Complaint contains the following general allegations as summarized by the court:

A. Plaintiff-Creditor owns a commercial property in Redding, California.

B. Defendant claims to be a licensed contractor in Oregon for approximately 29-years, and was allegedly qualified under the California Contractor's State through his daughter in Shasta County, California.

C. Plaintiff-Creditor and Debtor entered a contract to remodel Plaintiff's commercial property in Redding.

D. Plaintiff-Creditor alleges that Debtor abandoned the project, leaving it unusable, and absconding with $45,476.00 to $60,000.00 worth of materials.

E. Along with the alleged claim of abandonment of the project and disappearing with building materials, Plaintiff-Creditor claims Defendant owes $36,000.00 for contracted labor-totaling $82,476.00.

F. All in all, Plaintiff-Creditor alleges that Defendant issued phony invoices, repudiated the contract by not completing the work, and obtained payment for materials never purchased or used.

First Claim for Relief-
Exception to a Discharge of Debtor's Debt
due to False Pretenses, a False Representation,
or Actual Fraud

Plaintiff-Creditor alleges the following for the First Cause of Action:

A. Plaintiff-Creditor claims that under 11 U.S.C. §523(a)(2)(A), the court should deny discharge of Defendant's debt to Plaintiff-Creditor because Defendant allegedly made false representations and promises to Plaintiff.

B. As a direct result of Defendant's conduct, Plaintiff-Creditor has requested damages in the amount of $82,476.00 plus interest, and costs of suit.

Second Claim for Relief-
Exception to Discharge of Debtor's Debt
for Fraud or Defalcation in a Fiduciary Capacity,
Embezzlement, or Larceny

Plaintiff-Creditor alleges the following for the Second Cause of Action:

A. Plaintiff-Creditor claims that under 11 U.S.C. §523(a)(4), the court should deny discharge of Defendant's debt owed to Plaintiff-Creditor because Defendant allegedly committed fraud or defalcation while acting in a fiduciary capacity.

B. Plaintiff-Creditor also claims that Defendant committed embezzlement or larceny under section 523(a)(4).

B. Plaintiff-Creditor claims Defendant was in a position of trust regarding Plaintiff's funds, and thus had a fiduciary duty to Plaintiff's account.

C. As a result of Defendant's alleged mismanagement of the funds, Plaintiff-Creditor claims the actions constitute fraud or defalcation in the fiduciary capacity, or fraud or embezzlement, and should thus be exempt from discharge.

Third Claim for Relief-
Exception to Discharge of Debtor's Debt
for Willful and Malicious Injury by the
Debtor to Plaintiff-Creditor

Plaintiff-Creditor alleges the following for the Third Cause of Action:

A. Plaintiff-Creditor claims that under 11 U.S.C. §523(a)(6), the court should deny discharge of Defendant's debt owed to Plaintiff-Creditor because Defendant allegedly committed a willful and malicious injury to Plaintiff-Creditor.

B. Plaintiff-Creditor claims Defendant converted funds for his own use and benefit, which was both willful and malicious.

Prayer

Plaintiff-Creditor requests the following relief in the Complaint's prayer:

A. A determination in the amount of $82,476.00, plus interest at the legal rate;

B. A determination that the debt owed by Defendant is not discharged in the bankruptcy case;

C. Costs of suit; and

D. For other relief the court deems just and proper.

APPLICABLE LAW

Federal Rule of Civil Procedure 55 and Federal Rule of Bankruptcy Procedure 7055 govern default judgments. *Cashco Fin. Servs. v. McGee* (*In re McGee*), 359 B.R. 764, 770 (B.A.P. 9th Cir. 2006). Obtaining a default judgment is a two-step process which requires: (1) entry of the defendant's default, and (2) entry of a default judgment. *Id.*

Even when a party has defaulted and all requirements for a default judgment are satisfied, a claimant is not entitled to a default judgment as a matter of right. 10 MOORE'S FEDERAL PRACTICE-CIVIL 55.31 (Daniel R. Coquillette & Gregory P. Joseph eds. 3d ed.). Entry of a default judgment is within the discretion of the court. *Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986). Default judgments are not favored, because the judicial process prefers determining cases on their merits whenever reasonably possible. *Id.* at 1472. Factors that the court may consider in exercising its discretion include:

(1) the possibility of prejudice to the plaintiff,
(2) the merits of plaintiff's substantive claim,
(3) the sufficiency of the complaint,
(4) the sum of money at stake in the action,
(5) the possibility of a dispute concerning material facts,
(6) whether the default was due to excusable neglect, and
(7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits.

Id. at 1471-72 (citing 6 MOORE'S FEDERAL PRACTICE-CIVIL 55-05[s], at 55-24 to 55-26 (Daniel R. Coquillette & Gregory P. Joseph eds. 3d ed.)); *Kubick v. FDIC* (*In re Kubick*), 171 B.R. 658, 661-62 (B.A.P. 9th Cir. 1994).

In fact, before entering a default judgment the court has an independent duty to determine the sufficiency of Plaintiff-Creditor's claim. *Id.* at 662. Entry of a default establishes well-pleaded allegations as admitted, but factual allegations that are unsupported by exhibits are not well pled and cannot support a claim. *In re McGee*, 359 B.R. at 774. Thus, a court may refuse to enter default judgment if Plaintiff-Creditor did not offer evidence in support of the allegations. *See id.* at 775.

DISCUSSION
False Pretense, False Representation, or Actual Fraud

The First Cause of Action seeks a declaration exempting the discharge of debts owed to Plaintiff-Creditor because of alleged fraudulent conduct.

Plaintiff-Creditor states that on September 21, 2023, Defendant filed a Chapter 7 bankruptcy case. As of that date, Plaintiff-Creditor was not listed as a creditor nor did Plaintiff-Creditor receive notice of the filing. Mot. 2:3-6, Docket 24.

Plaintiff-Creditor, although not listed as a creditor by Defendant, filed an adversary complaint more than the required 60-day period under Federal Rules of Bankruptcy Procedure 4007(c). But courts have found that equitable tolling may be warranted in instances in which creditors were not efficiently notified. *See In re Najjar*, No. 06-01955, 2007 WL 1395399, at *3 (Bankr. S.D. N.Y. May 11, 2007). Because the record shows Plaintiff-Creditor was not properly given notice of the bankruptcy case, the court tolls the deadline for filing this adversary proceeding and will not dismiss the complaint based off Rule 4007(c).

As to the first cause of action, Plaintiff-Creditor claims that Defendant made false representations and promises to Plaintiff regarding the remodeling of Plaintiff's property. *See* Compl. 3:5-8, Docket 1.

Of note, 11 U.S.C. §523(a)(2)(A) states:

> "A discharge under section 727, 1141, 1191, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt for . . . money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by . . . false pretenses, a false representation or actual fraud, other than a statement respecting the debtor's or an insider's financial condition."

Further, §523(a)(2)(A) "requires [the less demanding] justifiable, but not reasonable, reliance." *Field v. Mans*, 516 U.S. 59, 74-75 (1995). For instance, a nondisclosure of a material fact in the face of a duty to disclose is grounds for "causation for actual fraud under the Bankruptcy Code." *In re Apte*, 96 F.3d 1319, 1323 (9th Cir. 1996). And according to both the Supreme Court and the Ninth Circuit, a duty to disclose is triggered if the information "was basic to the transaction, and any reasonable person would expect its disclosure." *Id.* at 1324; *Field*, 516 U.S. at 68-69.

In determining whether a fraudulent misrepresentation occurred, the creditor bears the burden to prove that there was a false representation by a preponderance of the evidence. *In re Sabban*, 600 F.3d 1219, 1222 (9th Cir. 2010). The "creditor must demonstrate five elements: (1) misrepresentation, fraudulent omission or deceptive conduct by the debtor; (2) knowledge of the falsity or deceptiveness of the 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." *In re Yon Li*, No. 11-02107, 2012 WL 5419068, at *3 (Bankr. App. 9th Cir. Nov. 7, 2012).

Here, it appears that Plaintiff-Creditor justifiably relied on Defendant's statement that he was an experienced licensed contractor in Oregon. *See* Exhibit 3, Dckt. 25. According to Plaintiff, Defendant claimed that he was licensed under Oregon law for 29-years. *Id.* But evidence on record suggests otherwise. *See* Exhibit 2, Dckt. 25.

According to the evidence, the licensing manager for the Construction Contractors Board in Oregon certified that there was no license issued to Defendant. *Id.* Despite that, Defendant seemed to have claimed otherwise while under oath as an expert witness in the Shasta County Superior Court. *See* Exhibit 3, Dckt. 25. Further evidence suggests that Plaintiff relied on such statements as he sent multiple checks to Defendant for materials. *See* Exhibit 5, Dckt. 25. Because Defendant claimed that as a licensed contractor, he was able to obtain such materials for a "wholesale" price, Plaintiff sent monies to Defendant so that he may purchase it at a supposed lower rate. *See* Exhibit 8, Dckt. 25.

As a result of such reliance, Plaintiff seems to have suffered damages in the amount of the cost of materials and service rendered to Defendant. Because the information, that a contractor is licensed under state law is material to a remodeling transaction, any reasonable person would expect such a disclosure.

Therefore, the court finds there is sufficient evidence to suggest that Defendant had fraudulently misrepresented a statement to Plaintiff, which Plaintiff detrimentally relied on.

Fraud or Defalcation in a Fiduciary Capacity; Embezzlement or Larceny

The Second Cause of Action seeks a declaration exempting discharge of debts owed to Plaintiff-Creditor because of an alleged Fiduciary Defalcation.

11 U.S.C. §523(a)(4) states in relevant parts:

> A discharge under . . . this title does not discharge an individual debtor from any debt . . . for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny.

And under section 523(a)(4), defalcation is defined as a "state of mind as one involving knowledge of, or gross recklessness in respect to, the improper nature of the relevant fiduciary behavior." *Bullock v. BankChampaign, N.A.*, 569 U.S. 267, 269 (2013). Additionally, "[w]hether a person is a fiduciary under §523(a)(4) is a question of federal law." *In re Hemmeter*, 242 F.3d 1186, 1189 (9th Cir. 2001). As such, "courts have construed 'fiduciary' in the bankruptcy discharge context as including express trusts, but excluding trusts ex maleficio, i.e., trusts that arose by operation of law upon a wrongful act." *Id.* (citing *Davis v. Aetna Acceptance*, 293 U.S. 328, 333 (1934)). Given this understanding, the Ninth Circuit has refused "to deny discharge to those whose fiduciary duties were established by constructive, resulting and implied trusts." *Id.* at 1189-90 (internal citations omitted).

Here, there is not enough evidence on record that a fiduciary relationship was established between Defendant and Plaintiff-Creditor. At most, Plaintiff-Creditor and Defendant entered a resulting trust when Plaintiff transferred monies to Defendant for the purchase of materials. *See* Exhibit 5, Dckt. 25. But as established by the Ninth Circuit, a resulting trust does not establish a fiduciary duty under section 523(a)(4). *Hemmeter*, 242 F.3d at 1189-90.

Plaintiff-Creditor also relies on the theory of embezzlement or larceny under section 523(a)(4). Mot. 4:24-25, Dckt. 24. Larceny as defined by the Ninth Circuit is "a felonious taking of another's personal property with intent to convert it or deprive the owner of the same." *In re Ormsby*, 591 F.3d 1199, 1205 (9th Cir. 2010) (internal quotations and citation omitted). The Ninth circuit has held that "[u]nder federal law, embezzlement in the context of nondischargeability has often been 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.'" In re Littleton, 942 F.2d 551, 555 (9th cir. 1991) (citing *Moore v. United States*, 160 U.S. 268, 269 (1885)). 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.* And in evaluating whether the action amounts to fraudulent intent, the court may infer it based off the "totality of the circumstances and the conduct of the person accused." *Ormsby* at 1206 (citing *In re Rose*, 934 F.2d 901, 904 (7th Cir. 1991).

Based off the totality of the circumstances of the evidence on record, the court finds Defendant's actions support a finding of embezzlement. According to Plaintiff-Creditor, Defendant deprived him of the money that was to be used to buy materials. Mot. 5:1-3, Dckt. 24. The text messages exchanged between Plaintiff and Defendant support these allegations. *See* Exhibit 8, Dckt. 25. Indeed, Defendant on numerous occasions texted that he "will gather [the materials] and get them to [Plaintiff] as soon as possible," being entrusted with Plaintiff's money. *Id.* at 90. Defendant never returned the materials, despite numerous messages appearing to show that he would return the materials Plaintiff had paid for. *Id.* at 90-97.

Therefore, the court finds that there facts to show Defendant committed embezzlement as a violation to Section 523(a)(4).

Willful and Malicious Injury by the Debtor to Plaintiff-Creditor

Plaintiff-Creditor's last cause of action under 11 U.S.C. § 523(a)(6), which provides that a debt "for willful and malicious injury by the debtor to another" is not dischargeable, lacks merit.

To establish whether an injury was willful and malicious, the debtor must have intended to commit the "wrongful act." *Kawaauhau v. Geiger*, 523 U.S. 57, 63 (1998). A mere injury rising from recklessness or negligence does "not fall within the compass of § 523(a)(6)." *Id.* at 64.

The Ninth Circuit addressed the 'willful' and 'malicious' prongs separately. *In re Su*, 290 F.3d 1140 (9th Cir. 2002). In *Su*, the Ninth Circuit held that 'willful' requires a "subjective intent to harm, or a subjective belief that harm is substantially certain." *Id.* at 1144. And 'malicious' requires that the injury "involves (1) a wrongful act, (2) done intentionally, (3) which necessarily causes injury, and (4) is done without just cause of excuse." *Id.* at 1146-47 (internal citation and quotations omitted). Cillier's Treatise states on the subject:

> Section 523(a)(6) generally **relates to torts and not to contracts**. By its terms, it may apply to a broad range of conduct causing harm to people or property, subject to the limitation that the injury be "willful and malicious." Conduct that may give rise to a nondischargeable debt under section 523(a)(6) may also be nondischargeable under other subsections of section 523(a).4a For example, debts procured by fraud may be nondischargeable under section 523(a)(6) as arising from conduct causing willful and malicious injury to an entity or property of an entity. Four other subsections of section 523(a) make different sorts of debts procured by fraud nondischargeable.5 Consequently, in considering claims of nondischargeability under section 523(a)(6) arising from conduct which may give rise to nondischargeability of a debt under other subsections of section 523(a), courts must be careful to preserve the elements of nondischargeability and limitations on nondischargeability found in other, more specific other subsections of section 523(a) to prevent section 523(a)(6) from rendering superfluous those other subsections. For example, under section 523(a)(2)(B), a false statement concerning the financial condition of the debtor or an insider may give rise to a nondischargeable debt only if the statement was in writing. The courts have held that section 523(a)(6) cannot be used to circumvent section 523(a)(2)(B)'s requirement of a writing and that a debtor's oral misrepresentations concerning his financial condition cannot give rise to a nondischargeable debt under section 523(a)(6).6

4 COLLIER ON BANKRUPTCY ¶ 523.12[1] (emphasis added).

Here, the injury in question sounds in contract law. The court finds neither prong was sufficiently established by Plaintiff-Creditor. There is no evidence supporting that Defendant's conduct rose to the standard of willful and malicious.

Request for Attorneys' Fees

Movant requests attorney's fees and costs as part of this judgment pursuant to Cal. Code Business and Professions Code § 7160. Mot. 10:4-5, Docket 24. That Section states:

> Any person who is induced to contract for a work of improvement, including but not limited to a home improvement, in reliance on false or fraudulent representations or false statements knowingly made, may sue and recover from such contractor or solicitor a penalty of five hundred dollars ($500), plus reasonable attorney's fees, in

addition to any damages sustained by him by reason of such statements or representations made by the contractor or solicitor.

As discussed above, the court is finding in favor of Plaintiff-Creditor that Defendant committed fraud relating to the home improvement project. However, Plaintiff does not specify the any number of fees earned in prosecuting this action or provide supporting documentation to substantiate the numbers.

At the hearing, **XXXXXXX**

CONCLUSION

Applying these factors, the court finds that Plaintiff-Creditor has sufficiently shown that Defendant fraudulently misrepresented himself, which Plaintiff detrimentally relied on. As a result, Plaintiff was injured due to the misrepresentation. The record also supports a finding of embezzlement based on the totality of the circumstances here. But the court does not find that the conduct was a willful and malicious injury by the Defendant.

The court finds that the Complaint is sufficient, and the requests for relief requested therein are meritorious. The court has not been shown that there is or may be any dispute concerning material facts. Defendant has not contested any facts in this Adversary Proceeding.

For damages, Plaintiff has provided the court with evidence for a determination that a Judgment in the amount of $82,476.00 (reimbursement for monies spent on labor and materials) and $15,000.00 for having to replace and repair work which had improperly been done by Defendant-Debtor.

Judgment is also granted determining that the Judgment for the $97,476, and all post-petition interest, and post-petition costs and expenses, are nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(A) and 11 U.S.C. § 523(a)(6), as independent grounds for the Judgment to be nondischargeable.

Attorney's Fees and Costs, if any, may be sought pursuant to post-judgment costs bill(s) and motion for prevailing party attorney's fees and costs (if any are allowable under applicable law).

The court does not grant relief pursuant to 11 U.S.C. § 523(a)(4).

The court does not award punitive damages.

The court grants the default judgment in favor of Plaintiff-Creditor.

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Entry of Default Judgment filed by Plaintiff Robert Lee Hamilton having been presented to the court, no opposition having been filed by Defendant-Debtor Ian Christopher Long, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Entry of Default Judgment granted, and a monetary judgment in the amount of $97,476.00 is entered in favor of Plaintiff and against Defendant-Debtor.

IT IS FURTHER ORDERED that the $97,476.00 judgment, and all post-petition interest, and post-petition costs and expenses, are nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(A) and 11 U.S.C. § 523(a)(6), as independent grounds for the Judgment to be nondischargeable.

Attorney's Fees and Costs, if any, may be sought pursuant to post-judgment costs bill(s) and motion for prevailing party attorney's fees and costs (if any are allowable under applicable law).

No other relief is granted pursuant to the Motion for Entry of Default Judgment.

Plaintiff shall prepare and lodge with the court a proposed judgment consistent with this Order. The judgment shall provide that attorney's fees and costs allowed by the court shall be enforced as part of the judgment.

2. **22-22625-E-7** **JASON/CHRISTINE EATMON** **PRE-TRIAL CONFERENCE RE: MOTION REQUESTING COURT CONFERENCE ON CLARIFICATION OF PRE-TRIAL ORDER MECHANICS**
23-2086
DB-1

LOCKWOOD ET AL V. EATMON ET AL **1-29-25 [60]**

Plaintiff's Atty: Jamie P. Dreher; Sandra L. Sava
Defendant's Atty: Patricia Wilson

Adv. Filed: 10/30/23
Reissued Summons: 12/27/23
Answer: 1/8/24

Nature of Action:
Objection/revocation of discharge

Notes:
Set by order of the court dated 2/5/25 [Dckt 73]

The Pre-Trial Special Pre-Trial Clarification Conference is xxxxxxx

On November 18, 2024, this court entered its order setting the Trial in this Adversary Proceeding to be conducted commencing on March 3, 2025. Order; Dckt. 55. The Order included the court's longstanding pre-trial procedures for the exchange of Direct Testimony Statements and Exhibit, filing of trial briefs, and the filing of evidentiary objections and responses thereto.

***Ex Parte* Motion for Clarification Conference**

On January 29, 2025, Plaintiffs Daniel Lockwood and Roseanne Lockwood filed a pleading titled "Ex Parte Application Requesting Court Conference on Clarification of Pre-Trial Order Mechanics." Dckt. 60. The basis for requesting the Conference on Clarification of Pre-Trial Order Mechanics stated in the Motion is:

A. "There is either a dispute or disagreement regarding the mechanics of exchanging trial exhibits as required by the Court's Notice of and Order for Trial (Docket No. 55)." Motion, p. 1:26-28; Dckt. 60.

B. It appears that the Parties cannot resolve the dispute without court intervention. *Id*.; p. 1:28-2:1.

C. "[t]he dispute is really over an interpretation of the Court's order, and because it is outlined in the Exhibits attached to the Exhibit List submitted herewith, ..." *Id*.; p. 2:2-4.

The Declaration of Plaintiff's Counsel is filed with the *Ex Parte* Motion. Dec.; Dckt. 62. Counsel describes the communication between another attorney in his office ("Plaintiffs' Co-Counsel") and Defendants' Counsel. Exhibit A filed with the *Ex Parte* Motion is an email thread of the discussions pertaining to production and transmission of exhibits. Plaintiffs' Counsel states that Plaintiffs' exhibits were transmitted electronically.

Looking at the exhibits, Exhibit A is an email from Plaintiffs' Co-Counsel to Defendants' Counsel dated January 28, 2025, at 3:15 p.m. Dckt. 61. In it, Co-Counsel states that their reading of the court's Trial Scheduling Order is that physical binders of exhibits were required to be delivered to the court, but electronic versions of the exhibits could be provided to opposing counsel.

Exhibit B is an email from Defendants' Counsel to Plaintiffs' Co-Counsel, dated January 28, 2025, at 12:42 p.m. *Id*. In Defendant's Counsel's email she identifies specific paragraphs in the court's Trial Scheduling Order for her conclusion that the exhibits must be provided in exhibit binder physical form, as is produced for the court.

Opposition to Motion for Clarification Conference

On January 31, 2025, the Defendants filed response pleadings. The court reviews these in the order in which they are filed on the Docket.

First filed is the Declaration of Defendants' Counsel. Dckt. 64. It is titled as an Opposition to Plaintiffs' *Ex Parte* Motion and in Support of Defendants *Ex Parte* Request for an Order Requiring Plaintiffs to Serve Physical Exhibits in Binders. In the Declaration, Defendants' Counsel summarizes discussions concerning the production of a joint set of exhibits in binders. Unfortunately, the cost of such was not something the Defendants could afford. *Id*.; p. 2:1-7.

Defendants' Counsel alludes to Plaintiffs' Counsel wanting to have physical binders, and that Defendants' Counsel had them delivered to the court and Plaintiff's Counsel on January 27, 2025. *Id*.; p. 2:12-18.

Then, on the afternoon of January 27, 2025, Defendants' Counsel received an email that Plaintiffs' Co-Counsel's assistant sent which contained a link to Plaintiffs' exhibits. Defendants' Counsel describes the exhibits being electronically transmitted as:

> I use that term [document dump] advisedly because what I received was a link to a folder containing **251 documents with the notation 836 MB. Not one of those 251 entries contained an individual document name or any other way to identify what it might contain or its possible relevance to the case. Neither was there any visible organization chronologically or by subject matter.** Filed herewith as Exhibit 2 are screen shots of what I see on my computer when I open the Downey Brand document dump. The middle column on these screen shots does not print, but in that column on my screen every one of the 251 entries says only the very same thing: "Adobe Acrobat Document," over and over again. Not one of them gives a clue what the document is about. **My legal assistant later counted the pages contained in that document dump and the total came to 6,334.**

Id.; p. 2:22-3:6 [emphasis in original].

Defendants' Counsel then recites an email conversation with Plaintiffs' Co-Counsel in which the Co-Counsel stated that they (Plaintiffs' Counsel) believed it more efficient for Defendants' Counsel to have the exhibits in electronic form for trial, accessible on a laptop. But, if Defendant's Counsel wanted

physical exhibits in binders, then Defendants could pay for them. *Id.*; p. 3:11-19. Exhibits of the emails and screen shots of Defendants' Counsel's file showing the exhibits electronically transferred to Defendants' Counsel. Dckt. 65

Defendants' Counsel makes reference to an *Ex Parte* Counter Motion for an order compelling Plaintiffs' Counsel to produce physical exhibits binders and for Sanctions. However, the court does not identify such a Counter Motion on the Docket. Docket 65, while having a description as a Motion for Sanctions, are the Exhibits in Opposition and in Support of a Counter Motion. Dckt. 65.

Motion to Shorten Time

On February 3, 2024, Defendants filed a pleading titled:

> DEFENDANTS' MOTION FOR AN ORDER REQUIRING PLAINTIFFS TO SERVE DEFENDANTS WITH COPIES OF THE TRIAL BINDERS THEY LODGED WITH THE COURT ON JANUARY 27, 2025, AND FOR SANCTIONS AGAINST PLAINTIFFS FOR THEIR FAILURE TO DO SO ON OR BEFORE JANUARY 27 AS REQUIRED BY THE COURTS'S PRETRIAL ORDER

Dckt. 67.

This pleading begins with the paragraph stating:

> **PLEASE TAKE NOTICE** that Defendants hereby move this Court for an Order Requiring Plaintiffs to Comply with this Court's November 18, 2025, Order for Trial Requiring Plaintiffs to serve their Trial Exhibit Binders on Defendants, for Evidence Exclusion Sanctions for Plaintiffs' Failure to do so, for Rescheduling of the due date for Defendants to file their Trial Briefs and Evidentiary Motions, and for Sanctions and Attorney Fees and Costs, at a date and time to be set by this Court.
> . . .
> This Request for Order Shortening time is made because this adversary proceeding is set for trial on March 3, 2025, and Plaintiffs have failed and refused to comply with the Court's Trial Order for them to serve Defendants with copies of the trial binders they have presumably lodged with the court that were due on January 27, 2025. Defendants' trial brief and evidentiary objections are due on February 10, 2025, and Defendants cannot

> comply with that deadline without knowing what exhibits Plaintiffs may be allowed to offer at trial.

Id. [emphasis in original]. The totality of the grounds upon which the requested relief is based is stated in the paragraph quoted above. Defendants' Counsel's Declaration and Exhibits are filed with the Motion for Order Shortening Time. Dckts. 69, 70.

Trial Scheduling Order

This court's Order setting the trial and scheduling dates and deadlines was entered on November 18, 2024. Dckt. 55. The court's Order includes the following with respect to exhibits:

> **5. The court requires the original and two copies of all exhibits that a party may offer into evidence or use. The documents shall be pre marked (plaintiffs to use numbers and defendants to use letters). In the case of ten or more exhibits, they should be placed in three-ring binders with each exhibit tabbed.**

Id.; ¶ 5. In the paragraph above, it is asserted that this states that only the court is requiring the exhibits in binders to be presented to the court.

In Paragraph 6 of the court's order, it states:

> 6. On or before January 27, 2025, Plaintiffs and Defendants shall lodge with the court (Attn: Kamee Thao, Clerk's Office, 3rd Floor) and serve any direct testimony statements and exhibits. The Parties may file a joint set of exhibits. If separate sets of exhibits are filed, then the Parties shall use unique exhibit identifier numbering/lettering for their respective exhibits. [See paragraph 5 above.]

Id.

As stated in the court's Trial Scheduling Order, ¶ 4, evidence will be submitted pursuant to Local Bankruptcy Rule 9017-1. *Id*. With respect to exhibits Local Bankruptcy Rule 9017-1(b) provides:

> (b) Submission of Alternate Direct Testimony Declarations, Exhibits, and Objections. Unless otherwise ordered by the Court, copies of **all alternate direct testimony declarations by witnesses and exhibits** that are intended

> to be presented at trial or hearing **shall be furnished to opposing counsel as follows**:
>
> > 1) Plaintiff's Declarations and Exhibits. The plaintiff shall submit to opposing counsel all such declarations and exhibits comprising the plaintiff's case in chief [Scheduling Order Sets Date] days before trial.
> >
> > 2) Defendant's Declarations and Exhibits. The defendant shall submit to opposing counsel all such declarations and exhibits comprising the defendant's case [Scheduling Order Sets Date] days before trial.

Local Bankruptcy Rule 9004-2

This issue of whether the ordered exchange of pre-trial exhibits and direct testimony statement can be delivered electronically or must be physically delivered to the court has not been presented to the court (either in the past 15 years as a judge or prior to that for 26 years as an attorney). The parties have always exchanged physical copies of the exhibits and direct testimony statements.

SPECIAL PRE-TRIAL CONFERENCE

It is clear that the court must conduct an expedited Special Pre-Trial Conference concerning the exchange of exhibits and the ability of the Parties to proceed to Trial.

Some might assert that the court's Trial Scheduling Order may not be as clear as one would like. The court will be interested to hear from Plaintiffs' Counsel what Bankruptcy Judges in the Eastern District of California allow the electronic exchange of exhibits prior to a trial, as well as any District Court Judges in the Eastern District of California that allow such electronic exchange (if their trial procedures provide for such exchanges). As noted above, this is the first time that such an issue and asserted right to exchange trial exhibits as required under the Local Bankruptcy Rules prior to trial may be done electronically.

The Court issued a Special Pre-Trial Status Conference Order, Dckt. 73, for February 13, 2025. Jamie Dreher, Esq. and Sandra Sava, Esq., Counsel and Co-Counsel for Plaintiffs, and Patricia Wilson, Esq., Counsel for Defendants, and each of them, were ordered to appear at the 11:00 a.m. on February 13, 2025 Special Pre-Trial Conference - Telephonic Appearances Permitted and Encouraged. Order; Dckt. 73.

At the Special Pre-Trial Conference, **XXXXXXX**