



**UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Department B – Courtroom #13
Fresno, California
Hearing Date: Wednesday, May 15, 2024**

Unless otherwise ordered, all matters before the Honorable René Lastreto II, shall be simultaneously: (1) **In Person** at, Courtroom #13 (Fresno hearings only), (2) via **ZoomGov Video**, (3) via **ZoomGov Telephone**, and (4) via **CourtCall**. You may choose any of these options unless otherwise ordered or stated below.

All parties or their attorneys who wish to appear at a hearing remotely must sign up by **4:00 p.m. one business day** prior to the hearing. Information regarding how to sign up can be found on the **Remote Appearances** page of our website at <https://www.caeb.uscourts.gov/Calendar/RemoteAppearances>. Each party/attorney who has signed up will receive a Zoom link or phone number, meeting I.D., and password via e-mail.

If the deadline to sign up has passed, parties and their attorneys who wish to appear remotely must contact the Courtroom Deputy for the Department holding the hearing.

Please also note the following:

- Parties in interest and/or their attorneys may connect to the video or audio feed free of charge and should select which method they will use to appear when signing up.
- Members of the public and the press who wish to attend by ZoomGov may only listen in to the hearing using the Zoom telephone number. Video participation or observing are not permitted.
- Members of the public and the press may not listen in to trials or evidentiary hearings, though they may attend in person unless otherwise ordered.

To appear remotely for law and motion or status conference proceedings, you must comply with the following guidelines and procedures:

1. Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
2. Parties appearing via CourtCall are encouraged to review the [CourtCall Appearance Information](#). If you are appearing by ZoomGov phone or video, please join at least 10 minutes prior to the start of the calendar and wait with your microphone muted until the matter is called.

Unauthorized Recording is Prohibited: Any recording of a court proceeding held by video or teleconference, including "screen shots" or other audio or visual copying of a hearing is prohibited. Violation may result in sanctions, including removal of court-issued media credentials, denial of entry to future hearings, or any other sanctions deemed necessary by the court. For more information on photographing, recording, or broadcasting Judicial Proceedings, please refer to Local Rule 173(a) of the United States District Court for the Eastern District of California.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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, and all parties will need to appear at the hearing unless otherwise ordered. 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.

Post-Publication Changes: The court endeavors to publish its rulings as soon as possible. However, calendar preparation is ongoing, and these rulings may be revised or updated at any time prior to 4:00 p.m. the day before the scheduled hearings. Please check at that time for any possible updates.

9:30 AM

1. [24-10603](#)-B-13 **IN RE: ERICKA MARTINEZ**
[EAT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY LAKEVIEW LOAN
SERVICING, LLC.
4-1-2024 [\[17\]](#)

LAKEVIEW LOAN SERVICING,
LLC./MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
CASSANDRA RICHEY/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Overruled or sustained after hearing.

ORDER: The court will issue an order.

Lakeview Loan Servicing, LLC ("Creditor"), Debtor's mortgage lien holder, objects to confirmation of the *Chapter 13 Plan* filed by Ericka Martinez ("Debtor") on March 21, 2024, on the following grounds:

1. The plan incorrectly states the amount of Debtor's ongoing conduit mortgage payment in Class 1 and is short by \$32.00 per month.
2. Debtor's Schedules I and J indicate that Debtor's net monthly income is inadequate to make the proposed monthly plan payments.

Doc. #17. On May 1, 2024, Debtor filed a response, stating:

1. That Creditor's ongoing mortgage payment would be paid according to Creditor's Proof of Claim.
2. Debtor would file an Amended Schedule I&J, which Debtor did on May 2, 2024, and which reflects a monthly net income of \$2,536.00, an amount sufficient to make plan payments.

Docs. ##26,30. Unless Creditor withdraws this Objection, this matter will proceed as scheduled to determine whether Debtor has successfully resolved Creditor's Objections. The court notes that Creditor has not filed a claim as of May 9, 2024.

2. [24-10603](#)-B-13 **IN RE: ERICKA MARTINEZ**
[LGT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE LILIAN G. TSANG
4-30-2024 [\[22\]](#)

TIMOTHY SPRINGER/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Overruled or sustained after hearing.

ORDER: The court will issue an order.

Chapter 13 trustee Lilian G. Tsang ("Trustee") objects to confirmation of the *Chapter 13 Plan* filed by Ericka Martinez ("Debtor") on March 21, 2024, on the following basis:

1. Debtor failed to list her 2023 tax refund received post-petition on her Schedule A/B so that Trustee could properly determine liquidation. Debtor has also failed to provide a Class 1 Checklist or a recent mortgage statement for Class 1 Creditor Lakeview Loan Servicing LLC ("Lakeview") as required by LBR 3015-1(b)(6).
2. Debtor failed to disclose on Schedule I income in the form of \$850.00 per month from a renter.
3. Debtor's proposed plan payment is \$2,535.49 per month, but her Schedule J reflects a net monthly income of only \$782.00 per month.

Doc. #22. On May 1, 2024, Debtor filed a response stating that the required disclosures and amendments would soon be made, and that Debtor expected Trustee would withdraw the objection. Doc. #25. On May 2, 2024, Debtor filed an Amended Schedule I&J which disclosed the rental income, and which listed a monthly net income of \$2,536.00 which is sufficient to fund the plan. Doc. #30.

Unless the Trustee withdraws this Objection, this matter will proceed as scheduled to determine whether Debtor has successfully resolved Trustee's Objections.

3. [24-10407](#)-B-13 **IN RE: TONY/LILIA RIOS**
[LGT-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE
LILIAN G. TSANG
4-8-2024 [\[16\]](#)

PETER BUNTING/ATTY. FOR DBT.

FINAL RULING: There will be no hearing in this matter.

DISPOSITION: Withdrawn

No order is required.

On May 9, 2024, the Trustee withdrew the Objection to Confirmation in the above-styled case. Accordingly, this Objection is WITHDRAWN.

4. [23-10914](#)-B-13 **IN RE: JAMIE ALLEN**
[SLL-1](#)

MOTION FOR COMPENSATION FOR STEPHEN LABIAK, DEBTORS
ATTORNEY(S)
4-11-2024 [\[35\]](#)

STEPHEN LABIAK/ATTY. FOR DBT.

After posting the original pre-hearing dispositions, the court has modified its intended ruling on this matter.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

Stephen L. Labiak ("Applicant"), attorney for Jamie Allen ("Debtor"), requests interim compensation in the sum of **\$11,018.20** under 11 U.S.C. §§ 330 and 331. Doc. #35. This amount consists of **\$10,985.00** in fees and **\$33.20** in expenses from October 28, 2022, to March 27, 2024. *Id.* This is Applicant's first fee application. *Id.*

Debtor executed a statement of consent and a separate Declaration both dated April 11, 2024, indicating that Debtor has read the fee application and approves the same. *Id.* § 9(7); Doc.#37.

No party in interest timely filed written opposition. This motion will be GRANTED.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Fed. R. Bankr. P. ("Rule") 2002(a)(6). The failure of the creditors, the chapter 13 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required

by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys. Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Section 3.05 of the *Chapter 13 Plan* dated April 28, 2023, confirmed July 7, 2023, indicates that Applicant was paid \$400.00 prior to filing the case and, subject to court approval, additional fees of \$12,000.00 shall be paid through the plan upon court approval by filing and serving a motion in accordance with 11 U.S.C. §§ 329 and 330, and Rules 2002, 2016-17. Docs. ##3,18.

Applicant's firm provided 32.3 billable hours at the following rates, totaling **\$10,985.00** in fees:

Professional	Rate	Billed	Total
Stephen L. Labiak	\$350	30.7	\$10,745.00
Linda Fellner	\$150	1.60	\$240.00
Total Hours & Fees		32.3	\$10,985.00

Doc. ##35,38. Applicant also incurred **\$33.20** in expenses:

Computer Research	\$1.20
Filing Fees	\$32.00
Total Expenses	\$33.20

Ex. D, id. These combined fees and expenses total **\$11,018.20**.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, considering all relevant factors, including those enumerated in subsections (a)(3)(A) through (E). § 330(a)(3).

Applicant's services here included, without limitation: prepetition consultation and fact-gathering; preparation of the petition, Schedules, and Form 122C; independent verification of information; amendments to petitions and/or schedules; original plan, hearings, objections; 341 preparation and attendance; claim administration and claim objections; fee applications; and case administration. Docs. ##35, 38. The court finds these services and expenses reasonable,

actual, and necessary. No party in interest timely filed written opposition and Debtor has consented to payment of the proposed fees. Doc. #37.

Accordingly, this motion will be GRANTED. Applicant shall be awarded **\$10,985.00** in fees as reasonable compensation for services rendered and **\$33.20** in reimbursement of actual, necessary expenses on a final basis under 11 U.S.C. § 330. The chapter 13 trustee will be authorized to pay Applicant **\$11,018.20** through the confirmed plan for services and expenses from October 28, 2022, to March 27, 2024. *Id.*

5. [24-10045](#)-B-13 **IN RE: JAMES/REYNA SALAS**
[LGT-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE
LILIAN G. TSANG
3-25-2024 [\[23\]](#)

JEFFREY ROWE/ATTY. FOR DBT.
RESPONSIVE PLEADING

FINAL RULING: There will be no hearing in this matter.

DISPOSITION: Withdrawn.

No order is required.

On May 7, 2024, the Trustee withdrew the Objection to Confirmation in the above-styled case. Doc. #35. Accordingly, this Objection is WITHDRAWN.

6. [24-10647](#)-B-13 **IN RE: JORGE/JOSEFINA ALVARADO**
[KMM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY FIRSTKEY MASTER FUNDING
2021-A COLLATERAL TRUST
4-2-2024 [\[13\]](#)

FIRSTKEY MASTER FUNDING 2021-A
COLLATERAL TRUST/MV
STEPHEN LABIAK/ATTY. FOR DBT.
KIRSTEN MARTINEZ/ATTY. FOR MV.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Continued to **June 20, 2024, at 9:30 a.m.**

ORDER: The court will issue an order.

Firstkey Master Funding 2021-A Trust ("Creditor"), Debtors' mortgage lien holder, objects to confirmation of the *Chapter 13 Plan* filed by Jorge and Josefina Alvarado ("Debtors") on March 15, 2024, on the following grounds:

1. The plan provides for a total mortgage arrearage payment of \$10,500.00 to Creditor in Class 1. However, Creditor avers that the actual arrearage is \$95,028.20.
2. Based on Debtors' Schedules, Debtors will be unable to afford plan payments if the entire \$95,028.20 arrearage is paid through the plan.

Doc. #13.

This objection will be CONTINUED to **June 20, 2024, at 9:30 a.m.** Unless this case is voluntarily converted to chapter 7, dismissed, or the objection to confirmation is withdrawn, the Debtors shall file and serve a written response to the objection not later than **14 days before the hearing**. The response shall specifically address each issue raised in the Objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the Debtors' position. Creditor shall file and serve a reply, if any, by **7 days before the hearing**.

If the Debtors elect to withdraw the plan and file a modified plan in lieu of filing a response, then a confirmable, modified plan shall be filed, served, and set for hearing not later than **7 days before the hearing**. If the Debtors do not timely file a modified plan or a written response, this objection will be sustained on the grounds stated in the objection without further hearing

7. [24-10648](#)-B-13 **IN RE: NANCY ALVA**
[LGT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE LILIAN G. TSANG
4-30-2024 [\[25\]](#)

STEPHEN LABIAK/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Continued to **June 20, 2024, at 9:30 a.m.**

ORDER: The court will issue an order.

The Chapter 13 Trustee ("Trustee") objects to confirmation of the *Chapter 13 Plan* filed by Nancy Marie Alva ("Debtor") on March 15, 2024, on the following grounds:

1. The Debtor's Schedule J shows gross income of \$6,566.00, of which \$3,300.00 consists of contributions from family members (Debtor's father and son) Both of whom have not submitted Declarations regarding their ability and willingness to contribute these funds for the duration of the Plan. The Debtor's son has submitted a declaration stating that he would pay \$3,000.0 per month in support for Debtor, but her father had not filed a Declaration as of the filing of the motion. (See Doc. #22).

2. According to the Treasury Department's Proof of Claim (POC #4-1), Debtor has not filed her 2021 tax returns.

Doc. #25.

The court notes that the son's declaration does state he lives in the household and that he will pay \$3,000.00 per month toward the Plan payment. The declaration alludes to the source of these funds but also that he is temporarily receiving disability payments. Evidence showing any historical effort of the son to provide funding and the son's financial ability to continue to pay 75% of his monthly income is also needed.

On May 13, 2024, Debtor's father submitted a Declaration that he would be contributing \$300.00 towards Debtor's support. However, Debtor has not responded to the objection arising from failure to file the 2021 tax returns.

This objection will be CONTINUED to **June 20, 2024, at 9:30 a.m.** Unless this case is voluntarily converted to chapter 7, dismissed, or the objection to confirmation is withdrawn, the Debtor shall file and serve a written response to the objection not later than **14 days before the hearing**. The response shall specifically address each issue raised in Trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the Debtors' position. Trustee shall file and serve a reply, if any, by **7 days before the hearing**.

If the Debtor elects to withdraw the plan and file a modified plan in lieu of filing a response, then a confirmable, modified plan shall be filed, served, and set for hearing not later than **7 days before the hearing**. If the Debtor does not timely file a modified plan or a written response, this objection will be sustained on the grounds stated in the objection without further hearing.

8. [23-11458](#)-B-13 **IN RE: TRAVIS COLBY AND KENDAL LOCHOWSKI**
[FW-1](#)

CONTINUED MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR
WADDELL, P.C. FOR GABRIEL J. WADDELL, DEBTORS ATTORNEY(S)
3-26-2024 [[34](#)]

GABRIEL WADDELL/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

Fear Waddell, P.C. ("Applicant"), counsel for Travis Colby and Kendal Lochowski ("Debtors"), requests interim compensation under 11 U.S.C. § 330 and §331 in the amount of **\$18,020.50** in fees and

\$338.17 in expenses from February 13, 2023, through March 15, 2024, for a total award of **\$18,045.67**. Doc. #35. This is Applicant's first fee application.

Debtors executed a statement of consent dated March 21, 2024, indicating that Debtors have read the fee application and approves the same. Doc. #36 (*Exhib. E*).

No party in interest timely filed written opposition. This motion will be GRANTED.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Fed. R. Bankr. P. ("Rule") 2002(a)(6). The failure of the creditors, the chapter 13 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys. Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Section 3.05 of the *Chapter 13 Plan* dated July 7, 2023, confirmed August 21, 2024, indicates that Applicant was paid **\$3,187.00** prior to filing the case and, subject to court approval, additional fees of **\$30,000.00** shall be paid through the plan upon court approval by filing and serving a motion in accordance with 11 U.S.C. §§ 329 and 330, and Rules 2002, 2016-17. Docs. ##3,16.

Applicant's firm provided 73.7 billable hours at the following rates, totaling **\$20,207.50** in fees:

Professional	Rate	Billed	Total
Gabriel J. Waddell (2023)	\$360.00	41.30	\$14,868.00
Gabriel J. Waddell (2024)	\$380.00	2.80	\$1,064.00
Katie Waddell (2024)	\$280.00	0.70	\$196.00
Kayla Schlaak (2023)	\$140.00	27.00	\$3,780.00
Kayla Schlaak (2024)	\$160.00	1.80	\$288.00
Laurel Guenther (2023)	\$115.00	0.10	\$11.50
Total Hours & Fees		73.7	\$20,207.50

Docs. ##34,36.

Applicant also incurred **\$338.17** in expenses:

Copies	\$5.25
Postage	\$19.92
Filing Fees	\$313.00
Total Expenses	\$338.17

Id. These combined fees and expenses total **\$20,545.67**. There appears to be a discrepancy in the amount of prepetition fees paid by Debtors to be subtracted from this sum. The Plan and the Attorney Fee Disclosure Statement which accompanied the petition both say that Applicant was paid \$3,187.00 prepetition. Docs. ## 1,3. However, the billing records attached as an Exhibit to Application indicate that Applicant received only \$2,500.00 prepetition, and when that amount is subtracted from the total fees and expenses, the figure yielded is **\$18,045.67**, the amount of compensation sought in this Application. Applicant subsequently filed a Supplemental Declaration averring that the figure used in the Disclosure Statement was in error, and the Applicant was paid **\$2,187.00** prepetition, plus \$313.00 for the filing fee.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, considering all relevant factors, including those enumerated in subsections (a)(3)(A) through (E). § 330(a)(3).

Applicant's services here included, without limitation:

- a. Prepetition consultation and fact-gathering (2.90 hours; \$1,019.50 charged);
- b. Preparation of voluntary petition, schedules, and Form 22C (29.50 hours; \$8,002.00 charged);
- c. Independent verification of information (21.50 hours; \$5,078.00 charged);
- d. Amendments to petition and/or schedules (3.20 hours; \$1,086.00 charged)
- e. 341 preparation and attendance (4.40 hours; \$1,540.00 charged)
- f. Claim administration and Claim objections (2.70 hours; \$928.00 charged);
- g. Original plan, hearings, objections (1.80 hours; \$632.00 charged);
- h. Fee applications (3.50 hours; \$956.00 charged); and
- i. Case administration (4.20 hours; \$966.00 charged).

Doc. #36. When this matter was originally set for hearing, the court requested additional information to justify some of the larger billing entries which gave the court pause. Doc. #44. However, Applicant's Supplemental Declaration satisfied the court's concerns. Doc. #49. After review of the Supplemental Declaration, the court

finds all the services provided and expenses sought to be reasonable, actual, and necessary. No party in interest timely filed written opposition and Debtor has consented to payment of the proposed fees. Doc. #36 (*Exhib. E*).

Accordingly, this motion will be GRANTED. Applicant shall be awarded **\$20,545.67** in fees as reasonable compensation for services rendered and **\$338.17** in reimbursement of actual, necessary expenses on an interim basis under 11 U.S.C. § 330 and § 331. After application of the prepetition payment in the amount of **\$2,187**, the chapter 13 trustee will be authorized to pay Applicant **\$18,045.67** through the confirmed plan for services and expenses from February 13, 2023, through March 15, 2024.

9. [24-10161](#)-B-13 **IN RE: ERNESTO/ASHLEY ARELLANO**
[LGT-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE
LILIAN G. TSANG
3-25-2024 [\[21\]](#)

SCOTT LYONS/ATTY. FOR DBT.
WITHDRAWN

FINAL RULING: There will be no hearing in this matter.

DISPOSITION: Withdrawn.

No order is required.

On April 30, 2024, the Trustee withdrew the Objection to Confirmation to Plan confirmation. Doc. #38. Accordingly, this Objection is WITHDRAWN.

10. [23-12271](#)-B-13 **IN RE: RODNEY TIMMONS**
[AMS-9](#)

MOTION TO CONFIRM PLAN
4-10-2024 [\[101\]](#)

RODNEY TIMMONS/MV
ADELE SCHNEIDEREIT/ATTY. FOR DBT.
RESPONSIVE PLEADING

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The court will issue an order.

Rodney Timmons ("Debtor") moves for an order confirming the *Second Amended Chapter 13 Plan* dated April 10, 2024. Doc. ##100,101. No plan has been confirmed thus far. Chapter 13 trustee Lilian G. Tsang ("Trustee") timely objected to confirmation of the plan but withdrew

the objection on May 13, 2024. No other objections have been filed, and this matter is ripe for consideration.

The 60-month plan proposes the following terms:

1. Debtor's payment for months 1-4 will be as received by the Trustee. Payments for months 5-60 will be \$865.00 per month.
2. Debtor's attorney was paid \$4,000.00 prepetition. Section 3.06 states that \$0.00 will be paid through the plan.
3. Secured creditors to be sorted into appropriate Classes and paid as follows:
 - a. Jpmcb Auto (Class 2A, PMSI. 2022 Jeep Gladiator. \$24,647.13 at 8.50% to be paid at \$505.67 per month.
4. A dividend of 38.56% to unsecured creditors.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of the creditors, the chapter 13 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

This motion will be GRANTED. The confirmation order shall include the docket control number of the motion and reference the plan by the date it was filed.

11. [23-12271](#)-B-13 **IN RE: RODNEY TIMMONS**
[LGT-1](#)

CONTINUED MOTION TO DISMISS CASE
1-9-2024 [\[61\]](#)

LILIAN TSANG/MV
ADELE SCHNEIDEREIT/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

In *Item #10*, above, the court granted Debtor's *Motion for Confirmation*. Accordingly, this motion will be DENIED as moot.

12. [21-10976](#)-B-13 **IN RE: MARK HALL AND LOUISE JURACEK HALL**
[KMM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-5-2024 [\[137\]](#)

CREDIT SUISSE FIRST BOSTON
MORTGAGE SECURITIES CORP./MV
PATRICK KAVANAGH/ATTY. FOR DBT.
AUSTIN NAGEL/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied as moot.

ORDER: The court will issue the order

Credit Suisse First Boston Mortgage Securities Corp. serviced by Specialized Loan Servicing LLC ("Movant") brings this *Motion for Relief from the Automatic Stay* against Mark Stephen Hall and Louise Clara Juracek Hall ("Debtors") as to certain real property located at 319 Fern Meadow Drive, Bakersfield, CA 93307 ("the Property"). Doc. #137. The First Modified Chapter 13 Plan reflects that Movant is listed as a Class 4 creditor to be paid directly. Doc. #42, Confirmed Doc. #81. Accordingly, the automatic stay is not in effect as to the Property and Movant is already free "to exercise its rights against its collateral and any non-debtor in the event of a default under applicable law or contract." Doc. #42 at 3.11.

Debtors have filed a response indicating that they have since made payments sufficient to cure any deficiency in mortgage payments. Doc. #143.

The court is inclined to DENY this motion for defective service on the Chapter 13 Trustee. Ms. Tsang has been the Chapter 13 Trustee since January 2024. The motion should also be denied as moot since the Movant's claim is classified in Class 4 of the Plan. Nevertheless, the court will call this matter as scheduled.

13. [24-10581](#)-B-13 **IN RE: JULIO CABALLEROS ROMAN**
[LGT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE LILIAN G. TSANG
4-19-2024 [\[16\]](#)

KEVIN TANG/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Continued to June 20, 2024, at 9:30 a.m.

ORDER: The court will issue an order.

Chapter 13 trustee Lilian G. Tsang ("Trustee") objects to confirmation of the *Chapter 13 Plan* filed by Julio Caballeros Roman ("Debtor") on March 11, 2024, on the following grounds:

1. Debtor's paystubs, Schedule I, and Form 122C-1 all inconsistently state Debtor's gross monthly income, making it impossible for Trustee to determine whether the plan was filed in good faith and/or pays in all of Debtor's disposable income for the life of the plan.

Doc. #16.

This objection will be CONTINUED to **June 20, 2024, at 9:30 a.m.** Unless this case is voluntarily converted to chapter 7, dismissed, or the objection to confirmation is withdrawn, the Debtors shall file and serve a written response to the objection not later than **14 days before the hearing**. The response shall specifically address each issue raised in the objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the Debtors' position. Any reply brief shall be served by **7 days before the hearing**.

If the Debtors elect to withdraw the plan and file a modified plan in lieu of filing a response, then a confirmable, modified plan shall be filed, served, and set for hearing not later than **7 days before the hearing**. If the Debtors do not timely file a modified plan or a written response, this objection will be sustained on the grounds stated in the objection without further hearing.

14. [24-10187](#)-B-13 **IN RE: EDWARD MARTIN**
[LGT-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE
LILIAN G. TSANG
3-25-2024 [\[24\]](#)

ERIC GRAVEL/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Sustained.

ORDER: The court will issue an order.

This objection was originally heard on April 10, 2024. Doc. #27.

Chapter 13 trustee Lilian G. Tsang ("Trustee") objected to confirmation of the *Chapter 13 Plan* filed by Edward Martin ("Debtor") on February 9, 2024, on the following basis:

1. The Debtor failed to provide proof of Social Security Number or identification and failed to appear at the initial 341 Meeting of Creditors which was to be conducted on March 19, 2024. [11 U.S.C. § 1325(a)(1)].
2. Debtor is delinquent \$5,598.86 and has yet to make a plan payment.

Doc. #24.

The court continued this objection to May 15, 2024. Doc. #27. Debtor was directed to file and serve a written response to the objection not later than fourteen (14) days before the continued hearing date, or file a confirmable, modified plan in lieu of a response not later than seven (7) days before the continued hearing date, or the objection would be sustained on the grounds stated in the objection without further hearing. *Id.*

Debtor neither filed a written response nor a modified plan. Therefore, Trustee's objection will be SUSTAINED on the grounds stated in the objection.

15. [22-11792](#)-B-13 **IN RE: JOSEPH/SEPTEMBER MIDDLETON**
[DMG-3](#)

CONTINUED MOTION TO MODIFY PLAN
3-6-2024 [\[56\]](#)

SEPTEMBER MIDDLETON/MV
D. GARDNER/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

On May 8, 2024, Joseph Middleton, and September Middleton ("Debtors") filed their *Third Amended Chapter 13 Plan*. Accordingly, the instant *Motion to Modify*, which applied to their *Second Modified Plan*, is DENIED as moot.

16. [24-10693](#)-B-13 **IN RE: ANTHONY MARQUEZ**
[LGT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE LILIAN G. TSANG
4-30-2024 [\[13\]](#)

TIMOTHY SPRINGER/ATTY. FOR DBT.

FINAL RULING: There will be no hearing in this matter.

DISPOSITION: Withdrawn.

No order is required.

On May 6, 2024, the Trustee withdrew the Objection to Confirmation in the above-styled case. Doc. #20. Accordingly, this Objection is WITHDRAWN.

11:00 AM

1. [19-15103](#)-B-7 **IN RE: NATHAN/AMY PERRY**
[20-1017](#)

CONTINUED PRE-TRIAL CONFERENCE RE: COMPLAINT
3-15-2020 [\[1\]](#)

RICHNER ET AL V. PERRY
RICHARD FREEMAN/ATTY. FOR PL.

NO RULING.

2. [23-11445](#)-B-7 **IN RE: SADEGH SALMASSI**
[23-1044](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
10-17-2023 [\[1\]](#)

BLUE CROSS OF CALIFORNIA ET AL
V. SALMASSI
CHRISTOPHER RIVAS/ATTY. FOR PL.

NO RULING.

3. [23-11445](#)-B-7 **IN RE: SADEGH SALMASSI**
[23-1044](#) [RS-1](#)

MOTION FOR SUMMARY JUDGMENT
3-25-2024 [\[17\]](#)

BLUE CROSS OF CALIFORNIA ET AL
V. SALMASSI
CHRISTOPHER RIVAS/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled

DISPOSITION: Granted

ORDER: The movant will prepare the order.

The Plaintiff in this adversary proceeding is Anthem Blue Cross of California and Anthem Blue Cross Life and Health Insurance Company (collectively "Plaintiff" or "Anthem"). The Defendant is Sadegh Salmassi ("Defendant" or "Salmassi") who is also debtor in the underlying Chapter 7 bankruptcy proceeding, *In re Salmassi*, 1:23-bk-11445 ("the Chapter 7 case"). Anthem seeks a judicial determination that Salmassi's debt to Anthem, which arose from an arbitration award premised on a finding that Salmassi committed fraud by intentional misrepresentation and fraud by concealment (among other causes not germane to this adversary), is nondischargeable.

BACKGROUND

Except where otherwise noted, the facts as outlined below are taken from Anthem's *Motion for Summary Judgment, Memorandum of Points and Authorities, Exhibits, and Statement of Undisputed Fact*. See Docs. ##17, 19-21. In his *Response to the Motion*, Salmassisi' states that "Defendant does dispute findings made through the arbitration proceeding but concedes that the doctrine of collateral estoppel and/or res judicata apply." Doc. #27 Salmassisi's *Response* is not accompanied by a reproduced *Statement of Undisputed Facts* that identifies which facts presented as undisputed by Anthem are either disputed or not disputed by Salmassisi, as required by LBR 7056-1(b). Accordingly, for purposes of ruling on this motion, the court accepts as true the information contained in Anthem's *Statement of Undisputed Facts*, which the court summarizes below:

According to the findings of an Arbitrator and confirmed by a California Superior Court judge, Salmassisi participated in a fraudulent billing scheme involving Equaltox, LLC ("Equaltox"), an entity that purported to perform medically necessary laboratory tests for members and/or insureds of Anthem. Doc. #19. Equaltox fraudulently re-routed billing for laboratory services through various providers for the purpose of preventing Anthem from verifying the accuracy of claims. *Id.* Salmassisi was one of the pass-through billers who participated in this scheme. *Id.* In Salmassisi's case, he apparently allowed his identification numbers to be used to bill for services he did not perform and falsely certified the accuracy of the submitted claims in exchange for a "cut" of the reimbursement proceeds. *Id.*

On May 25, 2021, Anthem initiated arbitration proceedings against Salmassisi, and the Arbitrator issued a final arbitration award in Anthem's favor on May 16, 2022, finding that Salmassisi was liable to Anthem for, *inter alia*, fraud by intentional misrepresentation and fraud by concealment. *Id.* The Arbitrator awarded Anthem punitive damages. *Id.* Specifically, the Arbitrator found as follows:

As a result of Respondents Salmassisi Inc. and Salmassisi's liability for breach of contract, fraud by intentional misrepresentation, and fraud by concealment, Claimants shall recover from Respondents Salmassisi Inc. and Salmassisi, jointly and severally, the sum of \$583,085.72 in compensatory damages. The compensatory damages award of \$583,085.72 is non-cumulative and is attributable separately to Respondents Salmassisi Inc. and Salmassisi's breach of contract, fraud by intentional misrepresentation, and fraud by concealment as if each occurred independently of the others. In other words, the entirety of the compensatory damages award is attributable to, and such damage occurred as a result of Salmassisi Inc. and Salmassisi's fraud.

Doc. #21 (*Statement of Undisputed Facts* at ¶5). The Arbitrator further found that "Claimants have proven, by clear and convincing evidence, that Respondents Salmassisi Inc. and Salmassisi are guilty of

fraud.” *Id.* at ¶7. Applying the elements of fraud under California law, the Arbitrator specifically found Salmassi liable for:

Intentional Misrepresentation (Count 2) when, as here, (1) the respondent represented to the petitioner that a fact was true, (2) the respondent’s representation was false, (3) respondent knew that the representation was false when they made it or respondent made the representation recklessly and without regard for its truth, (4) the respondent intended the petitioner to rely on the representation, (5) the petitioner reasonably relied on the respondent’s representation, (6) the petitioner was harmed, and (7) the petitioner’s reliance on the respondent’s representation was a substantial factor in causing the harm. See CACI 1900; Cal. Civ. Code § 1710 (defining deceit).

Id. at ¶8. The Arbitrator further found that Salmassi:

made representations that he “knew were materially false when [he] made them” and “with the intention and purpose of deceiving [Anthem]”; that Salmassi “intended [Anthem] to rely on the [mis]representation[s]”; and that the “outlandish nature of the scheme” Salmassi participated in resulting in “a nearly 20-fold increase over his ‘ordinary’ income” “further supports the conclusion that [Salmassi’s] conduct was willful with the intent to deceive.

Id. at ¶9.

The arbitration award was confirmed by the California Superior Court on August 18, 2022, and the judgment was entered on September 8, 2022. *Id.* at ¶10. The record reflects that Salmassi did not appeal. The Arbitrator awarded Anthem \$583,085.72 in actual damages against Salmassi, \$119,882.24 in prejudgment interest, \$11,344.61 in administrative fees and expenses, and \$350,000.00 in punitive damages based on the arbitrator’s finding that Anthem proved by clear and convincing evidence that Salmassi engaged in fraud. *Id.* Generally.

Anthem now argues that, as a result of the Arbitrator’s findings, Salmassi is collaterally estopped from relitigating the issues and facts considered by the Arbitrator that establish Anthem’s claims under 11 U.S.C. § 523(a)(6) [willful and malicious injury] and (a)(2)(a) [false pretenses, false representations, or actual fraud]. *Id.* Thus, the judgment debt Salmassi owes to Anthem should be declared nondischargeable.

JURISDICTION

This court has jurisdiction under 28 U.S.C. § 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2)(1) [determinations as to the dischargeability of particular debts].

DISCUSSION

A. SUMMARY JUDGMENT.

Civil Rule 56 applies in adversary proceedings. Fed. R. Bankr. P. 7056. The moving party has the burden of demonstrating that there is the "absence of a genuine issue of material fact." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986); F.R.C.P. 56e. A "genuine issue" exists where "based on the evidence presented, a fair-minded jury could return a verdict in favor of a non-moving party on the issue in question." *In re Tills*, 419 B.R. 444, 449 (Bankr. S.D. Cal. 2009). An issue is genuine if there is a sufficient evidentiary basis on which a reasonable fact finder could find for the nonmoving party and a dispute is "material" only if it could affect the outcome of the case under the governing law. *Barboza v. New Form, Inc. (In re Barboza)*, 545 F.3d 702, 707 (9th Cir. 2008).

The court must view all the evidence in a summary judgment motion in the light most favorable to the nonmoving party. *Id.*, citing *Cty. of Tuolumne v. Sonora Cmty. Hosp.*, 236 F.3d 1148, 1154 (9th Cir. 2001); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). Even when no evidence is presented in opposition to the motion, summary judgment should not be granted, if the evidence supporting the motion is insufficient. *North Slope Borough v. Rogstad (In re Rogstad)*, 126 F.3d 1224, 1227 (9th Cir., 1997) citing *Hoover v. Switlik Parachute Co.*, 663 F. 2d 964, 967 (9th Cir. 1981).

A court generally cannot grant summary judgment based on its assessment of the credibility of the evidence presented. *Barboza*, 545 F.3d at 707, quoting *Agosto v. INS*, 436 U.S. 748, 756 (1978). "At the summary judgment stage, the judge's function is not to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986).

To survive a motion for summary judgment, the non-moving party must show specific facts that demonstrate a genuine issue of material fact remains for trial. *Celotex Corp.*, 477 U.S. at 324. The non-moving party cannot rest upon mere allegations or denials in the pleadings. *Anderson*, 477 U.S. at 248.

B. COLLATERAL ESTOPPEL.

As Anthem notes:

The doctrine of collateral estoppel is available in nondischargeability proceedings in the bankruptcy court. *Grogan v. Garner*, 498 U.S. 279, 285 n. 11 (1991) ("If, in the course of adjudicating a state law question, a state court should determine factual issues using standards identical to those [of the relevant statute or section], then collateral estoppel, in the absence of countervailing statutory policy, would bar relitigation of those issues in the bankruptcy court."); see also *Brown v. Felsen*, 442 U.S. 127, 139 n. 10 (1979). Where a

prior fraud judgment has been entered against a defendant-debtor, the court may grant summary judgment on collateral estoppel grounds in favor of plaintiff-creditor on its claim of nondischargeability under Section 523. See e.g. *Gayden v. Nourbakhsh (In re Nourbakhsh)*, 67 F.3d 798, 800 (9th Cir. 1995) (affirming granting of summary judgment to plaintiffs on their Section 523 nondischargeability claim on collateral estoppel grounds).

Doc. #19. See also, *Tobin v. Sans Souci Ltd. Pshp. (In re Tobin)*, 258 B.R. 199 (B.A.P. 9th Cir. 1997) (Holding proof of the elements of fraud under California law identical to the elements in § 523 (a) (2) (A).)

When a state court confirms an arbitration award, a judgment is entered that has the same force and effect as a judgment entered by that same court in a civil action. *Khaligh v. Hadaegh (In re Khaligh)*, 338 B.R. 817, 826 (B.A.P. 9th Cir. 2006). As such, the findings of an arbitrator that have been confirmed by a state court can provide a basis for issue preclusion. *Khaligh*, 338 B.R. at 826. However, before applying issue preclusion, the court must assess "whether imposition of issue preclusion in the particular setting would be fair and consistent with sound public policy." *Italiane*, 632 B.R. at 671 (quoting *Khaligh*, 338 B.R. at 824-25).

Under California law as it pertains to issue preclusion, Anthem must establish the following elements:

- (1) the issue sought to be precluded from relitigation is identical to that decided in a former proceeding;
- (2) the issue was actually litigated in the former proceeding;
- (3) the issue was necessarily decided in the former proceeding;
- (4) the decision in the former proceeding is final and on the merits; and
- (5) the party against whom preclusion is sought was the same as, or in privity with, the party to the former proceeding.

Italiane v. Catanzarite (In re Italiane), 632 B.R. 662, 670-71 (B.A.P. 9th Cir. 2021). In the context of collateral estoppel arising from the findings of an arbitration, the 9th Circuit BAP has added a sixth element: the court must consider the judicial nature of the prior proceeding to determine whether applying collateral estoppel would satisfy standards of "fairness-and-sound-public-policy." *Khaligh*, 338 B.R. at 828. Such an analysis must "take into account the considerations articulated in the *Restatement (Second) of Judgments*, which emphasize the importance of the question whether the underlying arbitration followed basic elements of adjudicatory procedure and was, thus, 'adjudicatory in nature.'" *Id.* (citing *Restatement (Second) of Judgments* §§ 83-84).

Thus, a determination of a fact by an arbitrator is given preclusive effect only if it satisfied the following requirements:

1. Adequate notice to persons who are to be bound by the adjudication, as stated in § 2 [of the Restatement];
2. The right on behalf of a party to present evidence and legal argument in support of the party's contentions and fair opportunity to rebut evidence and argument by opposing parties;
3. A formulation of issues of law and fact in terms of the application of rules with respect to specified parties concerning a specific transaction, situation, or status, or a specific series thereof;
4. A rule of finality, specifying a point in the proceeding when presentations are terminated, and a final decision is rendered; and
5. Such other procedural elements as may be necessary to constitute the proceeding a sufficient means of conclusively determining the matter in question, having regard for the magnitude and complexity of the matter in question, the urgency with which the matter must be resolved, and the opportunity of the parties to obtain evidence and formulate legal contentions.

Id. at 830 (quoting *Restatement (Second) of Judgments* § 83(2)).

The 9th Circuit BAP and California law also requires "an inquiry into whether imposition of issue preclusion in the particular setting would be fair and consistent with sound public policy." *Lucido v. Superior Court*, 51 Cal. 3d 335, 343 (1990); *Jeffrey Catanzarite Family L.P. v. Lane (In re Lane)*, Nos. 11-63503-B-7, 12-1053, 2020 Bankr. LEXIS 2398, at *25 (Bankr. E.D. Cal. Sep. 10, 2020) (citations omitted). To that end, the BAP identified three fundamental policies for consideration:

1. Preservation of the integrity of the judicial system,
2. Promotion of judicial economy, and
3. Protection of litigants from harassment by vexatious litigation.

In re Lane, Nos. 11-63503-B-7, 12-1053, 2020 Bankr. LEXIS 2398, at *25 (quoting *Delannoy v. Woodlawn Colonial, L.P. (In re Delannoy)*, 615 B.R. 572, 582 (9th Cir. BAP 2020)).

With those considerations in mind, the court turns to the question of whether the Arbitrator's factual determinations relied upon by Anthem have preclusive effect. The court notes that Salmassi appears to have conceded the point, but the court is still required to determine whether Anthem has met the threshold for summary judgment irrespective of the Defendant's response or lack thereof. And that, in turn,

requires the court to make its own determination of whether the elements of issue preclusion have been met.

The issues for which Anthem seeks to apply collateral estoppel are (1) the Arbitrator's factual findings that Salmassi's conduct satisfied the elements of fraud by intentional misrepresentation and fraud by concealment and (2) the extent of the damages to be awarded to Anthem. Doc. #19. The instant adversary proceeding seeks a determination by the court that the debt owed by Salmassi to Anthem by virtue of the arbitration award is nondischargeable because the debt arose from Salmassi's fraudulent actions. *Id.* The issues are identical.

Salmassi did not personally participate in the arbitration, though he was represented by counsel throughout the process. Doc. #19. If a party does not participate in an arbitration but that party was adequately notified and the arbitration itself was "adjudicatory in nature," the party's non-participation is not an obstacle to issue preclusion. *Stasz v. Quackenbush (In re Stasz)*, No. CC-06-1202-KMoD, 2007 Bankr. LEXIS 4917, at *22 (B.A.P. 9th Cir. Feb. 28, 2007).

Turning to the substance of the issues litigated, the Arbitrator's findings clearly tracked the elements for fraud by intentional misrepresentation and fraud by concealment. Doc. #21. It appears to the court that all the elements for nondischargeability under 11 U.S.C. §§ 523(a)(6) and 523(a)(2)(A) as outlined in the Complaint were met by the Arbitrator's findings. *Compare* Doc. #21 and Doc. #1. The court finds that the issues surrounding Anthem's fraud claims against Salmassi were fully litigated in the arbitration.

For the same reasons, the court finds that the issues pertaining to whether Salmassi engaged in fraud by concealment and fraud by intentional misrepresentation were decided in the former proceeding adversely to Salmassi. After the arbitration award was confirmed by a California Superior Court without timely appeal by Salmassi, the Arbitrator's decision became final and on the merits. And there is no question that Salmassi is both the party against whom preclusion is being sought and the party to the former proceeding.

Turning to the sixth requirement as outlined in *Khaligh*, the court finds that the arbitration proceedings satisfy the five requirements set forth by the 9th Circuit BAP. Salmassi was represented by counsel throughout the arbitration process. The Arbitrator specifically found that Salmassi was "provided notice of and provided with the opportunity to participate in all the proceedings" but elected not to do so. Doc. #20 (*Exhib. 1*, pp. 57-58). However, Salmassi did provide evidence regarding his and his corporation's financial condition which was admitted into evidence. *Id.*

Indeed, the Arbitrator specifically found that Salmassi "affirmatively declined to participate in the Final Hearing"

even though he was afforded full opportunity to "present evidence and legal argument in support of the party's contentions and fair opportunity to rebut evidence and argument by opposing parties." See *Khaligh*, 338 B.R. at 828. The Arbitrator's findings demonstrated "a formulation of issues of law and fact in terms of the application of rules with respect to specified parties concerning a specific transaction, situation, or status, or a specific series thereof," in this case, Salmassi's fraudulent actions and conduct. The Arbitrator's award was presented as a final decision, and it was affirmed by the California Superior Court. It appears to the court that all Salmassi's rights to fair procedure and a conclusive determination of the matters in question were satisfied.

Finally, the court turns to the public policy and fairness concerns raised by the 9th Circuit BAP. After consideration of the arguments and exhibits, the court finds that applying collateral estoppel as Anthem requests would preserve the integrity of the judicial system by giving proper weight to the judicial findings of the arbitral forum which were subsequently confirmed by the state court. Relitigating the question of whether Salmassi's conduct represents nondischargeable fraud as defined by §§ 523(a)(6) and (a)(2) would not promote judicial economy, especially since Salmassi actively choose not to present arguments against such a finding during the arbitration and even now concedes that collateral estoppel is applicable. And the only potential for vexatious litigation that the court can see lies on the possibility of requiring these parties to relitigate the Arbitrator's findings of fraud proven under a clear and convincing standard. Thus, the "fair and consistent with sound public policy" test from *In re Lane* is met.

Based on the foregoing, the court finds that the arbitration award meets adjudicatory standards in a manner that satisfies California law. Combined with the court's analysis of the other five elements of collateral estoppel, the court concludes that collateral estoppel applies to the Arbitrator's findings that Salmassi committed fraud by intentional misrepresentation and fraud by concealment under circumstances that satisfy the requirements of 11 U.S.C. §§ 523(a)(6) and (a)(2).

CONCLUSION

Based on the forgoing analysis, the court finds the debts owed by Salmassi to Anthem that are the subject of this adversary proceeding arose from fraudulent conduct within the meaning of 11 U.S.C. §§ 523(a)(6) and (a)(2). There are no issues of material disputed fact as to whether the debt arising from the arbitrator's award arose from fraud by intentional misrepresentation and fraud by concealment. Accordingly, this debt shall be held nondischargeable.

The motion for summary judgment is GRANTED.