UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

July 23, 2020 at 11:00 a.m.

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1. **14-30222-E-13** **CAMERON ELFORD**
20-2014 **BHS-1**
SCHOONOVER V. ELFORD

CONTINUED MOTION FOR SUMMARY JUDGMENT AND/OR MOTION FOR SUMMARY ADJUDICATION
5-27-20 [23]

Tentative Ruling: The Motion For Summary Judgment has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

Below is the court's tentative ruling.

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 Debtor's Attorney, Chapter 13 Trustee, and Office of the U.S. Trustee on May 27, 2020. By the court's calculation, 48 days' notice was provided. 28 days' notice is required.

The Motion for Summary 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). The defaults of the non-responding parties and other parties in interest are entered.

The hearing on the Motion for Summary Judgment is continued to 11:00 a.m. on August xxxxxxxxxx, 2020. Plaintiff shall file and serve supplemental pleadings on or before xxxxxxxxxx, 2020, and Defendant shall file and serve Supplemental Responses on or before xxxxxxxxxx, 2020.

David Schoonover ("Plaintiff") filed the instant adversary proceeding on February 7, 2020 against Cameron Elford ("Defendant-Debtor").

Before the court is Plaintiff's Motion for Summary Judgment requesting a determination that each of Plaintiff's three claims are nondischargeable pursuant to 11 U.S.C. § 523(a)(9) as claims arising from a vehicular accident caused by Defendant-Debtor driving while intoxicated from using alcohol. Dckt. 23.

At issue is whether more than $3,000,000 in debt is nondischargeable. The Motion has been met with a multi-million dollar opposition asserting evidentiary objections, based both on the Federal Rules of Evidence and the California Evidence Code (that documents from the state court proceedings have not been properly authenticated, that there are material facts in bona fide dispute appearing to relate to the blood alcohol level of the Defendant-Debtor when the accident occurred), and statutory construction of the Federal Bankruptcy Statutes.

To avoid the court going off the cliff in addressing federal and California state evidentiary rule issues, arguing about evidence of blood alcohol levels, and addressing whether or not documents have been authenticated, the court first considers the applicable federal law and the specific Bankruptcy Code sections at issue.

REVIEW OF BANKRUPTCY CODE ISSUES

The Plaintiff asserts that a criminal Restitution Order for $376,200.00 and a civil State Court Judgment for $2,962,902.77 (it is not clear from the motion whether the state court judgment also includes the damages subject to the Restitution Order) are nondischargeable obligations as provided in: 11 U.S.C. § 523(a)(9), § 1328(a)(3), and § 1328(a)(4).

11 U.S.C. § 523(a)(9)

The Court begins with 11 U.S.C. § 523(a)(9). In this provision Congress sets for a type of debt that is not discharged in a bankruptcy case which includes:

> a) A discharge under section 727, 1141, 1192, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt—
>
> > (9) for death or **personal injury caused by the debtor's operation of a motor vehicle**, vessel, or aircraft if such operation was **unlawful because the debtor was intoxicated from using alcohol**, a drug, or another substance;

11 U.S.C. § 523(a)(9). In considering this provision, the court begins with the discussion of this section in Collier on Bankruptcy, which includes:

> The purpose of the section 523(a)(9) is to deter drunk driving and protect the victims by preventing those who caused injury by driving while drunk from discharging their civil liability. **It is limited to debts for personal injury** and does not encompass debts for injury to property.
>
> . . .
>
> Section 523(a)(9) makes nondischargeable debts "for death or personal injury caused by the debtor's operation of a motor vehicle, vessel or aircraft if such operation was unlawful because the debtor was intoxicated from using alcohol, a drug, or another substance." Thus, for a debt to be nondischargeable under section 523(a)(9), it must have arisen from a death or **personal injury and resulted from the debtor's operation of a motor vehicle**, vessel or aircraft **that was unlawful because the debtor was intoxicated from using alcohol,** a drug or another substance.
>
> The three elements that must be proven under section 523(a)(9) are (1) the existence of a debt for death or personal injury; (2) caused by operation of a motor vehicle, vessel or aircraft; (3) being operated unlawfully under state law due to the debtor's intoxication. For the debt to be nondischargeable, it is not necessary for the debtor to be charged with driving under the influence. The creditor may establish at trial that the debtor was intoxicated. **Nor must the creditor prove that the debtor's intoxication caused the injury; it is sufficient that the injury was caused by the operation of the motor vehicle, vessel or aircraft when such operation was unlawful due to the debtor's intoxication.**
> . . .
>
> The requirement that the operation of the motor vehicle, vessel or aircraft be unlawful due to the debtor's intoxication requires that the bankruptcy court look to state law for guidance. In the absence of a national standard for intoxication, **the bankruptcy court must determine whether the debtor met the legal standard for intoxication in the jurisdiction where the liability arose.**
> . . .
>
> As in cases arising under subsections 523(a)(2), (a)(4) and (a)(6), **the record in a prior state court proceeding determining the debtor's liability may provide a sufficient basis by itself for the bankruptcy court to find a debt nondischargeable under section 523(a)(9)**. In other cases, however, the prior record by itself will be insufficient. Where the prior record is inadequate, the creditor may present the bankruptcy court with additional evidence permitting the court to find that the standards for nondischargeability under section 523(a)(9) are satisfied.

4 Collier on Bankruptcy P 523.15 (16th 2020).

11 U.S.C. § 1328(a)(3)
Discharge Exception for Debts for Restitution or
Fine Included in Sentence on Debtor's Conviction of Crime

Section 1328(a)(3) excludes from the full-compliance discharge in chapter 13 cases debts for "restitution included in a sentence on the debtor's conviction of a crime." 11 U.S.C. § 1328(a)(3).

11 U.S.C. § 1328(a)(4)
Debts for Restitution or Damages Awarded
for Willful or Malicious Injury or Death

Section 1328(a)(4) makes nondischargeable in the full compliance discharge certain debts for personal injury to an individual or the death of an individual. 11 U.S.C. § 1328(a)(3). For a debt to be nondischargeable under this provision it must meet several criteria.

The debt must be for damages or restitution awarded in a civil action. In addition, the debt must be a result of willful *or* malicious injury. As noted by Collier on Bankruptcy, Sixteenth Edition, this is a lower standard than section 523(a)(6), which requires the debt to be the result of a willful *and* malicious injury. 8 Collier on Bankruptcy P 1328.02 (16th 2020). However, unlike section 523(a)(6), injuries to property are not included. *Id*. The injury must be a personal injury to an individual or the death of an individual. *Id*.

Timeliness of Relief Sought

In the Opposition, Defendant-Debtor asserts that the present Amended Complaint is not timely, having violated the deadlines set in Federal Rule of Bankruptcy Procedure 4007(c). Using non-federal court citation standards and only providing a secondary citation to the case (making it appear that it was an unpublished decision, Defendant-Debtor cites to the Ninth Circuit decision *Willms v. Sanderson*, 723 F.3d 1094 (9th Cir. 2013), for Defendant-Debtor's assertion that "[t]he complain was filed February 7, 2020, in excess of fours years after the deadline. Accordingly, the action should be denied." Memorandum, p. 13:6-8; Dckt. 32.

Plaintiff responded to this assertion that the claims in the Complaint were time-barred, stating:

> Defendant seeks to mislead this Court by falsely claiming Plaintiff's Adversary Proceeding is time-barred under Federal Rule of Bankruptcy Procedure, Rule 4007(c). A plain reading of 11 U.S.C. section 523(c)(1) indicates that the time bar only applies to Adversary Proceedings brought under 11 U.S.C. sections 523(a)(2), (4) and (6). The proper rule that applies here is Rule 4007(b) which states, "A complaint other than under section 523(c) may be filed at any time."

Reply, p. 3:11-16; Dckt. 34.

Plaintiff is correct, the assertion that the claims in the Amended Complaint are time-barred are without merit. While Defendant-Debtor includes in the paragraph asserting that Bankruptcy Rule 4007(c) dictates that all claims in the Amended Complaint are untimely a quotation of Federal Rule of

Bankruptcy Procedure 4007(c), with "emphasis added," Defendant-Debtor neglects to include the provisions of 11 U.S.C. § 523(c) which expressly circumscribes the scope of the deadlines established in Bankruptcy Rule 4007(c).

The U.S. Supreme Court first provides in Federal Rule of Bankruptcy Procedure 4007(a) and (b) the following with respect to any time limitation on a creditor seeking to obtain a judgment stating that a debt has not been discharged in a bankruptcy case:

> (a) Persons Entitled To File Complaint. A debtor or any **creditor may file a complaint** to obtain a **determination of the dischargeability of any debt.**
>
> (b) Time for Commencing Proceeding Other Than Under §523(c) of the Code. **A *complaint** other than under §523(c)* **may be filed at any time.** A case may be reopened without payment of an additional filing fee for the purpose of filing a complaint to obtain a determination under this rule.

Fed. R. Bankr. P. 4007(a) and (b) [emphasis added]. Thus, the rule is that a complaint to determine the dischargeability of any debt may be filed at any time, except for those grounds as expressly specified in 11 U.S.C. § 523(c). In Defendant-Debtor asserting that everything in the Amended Complaint is time barred, the Defendant-Debtor leaves out that such time limitations are the exception to the general rule that such a complaint can be brought at any time.

When one turns to the limited exception to the any time general rule that Congress has created in 11 U.S.C. § 523(c), the claims for nondischargeability subject to the time limitations are only as follows:

> (c)
> (1) Except as provided in subsection (a)(3)(B) of this section, the **debtor shall be discharged from a debt of a kind specified in paragraph (2), (4), or (6) of subsection (a)** of this section, **unless, on request of the creditor** to whom such debt is owed, and after notice and a hearing, **the court determines such debt to be excepted from discharge** under paragraph (2), (4), or (6), as the case may be, of subsection (a) of this section.

11 U.S.C. § 523(c)(1) [emphasis added]. The provisions of 11 U.S.C. § 523(a)(2) is for nondischargeability based on fraud, (a)(4) is based on fraud or defalcation in a fiduciary capacity, embezzlement, or larceny; and (a)(6) willful and malicious injury by the debtor to another entity or to the property of another entity. [FN. 1]

FN. 1 The "Except as provided in subsection (a)(3)(B)" is the reference to the provision in 11 U.S.C. § 523(a)(3)(B) that makes any debt of the kind specified nondischargeable pursuant to 11 U.S.C. § 523(a)(2), (4), or (6) nondischargeable if the creditor did not have notice or actual knowledge of the bankruptcy case to allow that creditor to file a timely proof of claim. That is not a ground being asserted by Plaintiff in the Amended Complaint.

Thus, on its face, the plain language of Federal Rule of Bankruptcy Procedure 4007(c) clearly states that is does not apply to the claims for relief in the Amended Complaint for which nondischargeablity is asserted to exist pursuant to 11 U.S.C. § 523(a)(9), 11 U.S.C. § 1328(a)(3), and 11 U.S.C. § 1328(a)(4).

The assertion that the Amended Complaint for a determination that the obligations owed to Plaintiff by Defendant-Debtor are time-barred because the Adversary Proceeding was commenced after the deadline established in Federal Rule of Bankruptcy Procedure 4007(c) is meritless and denied.

Defendant-Debtor's Assertion That A Triable Issue of Fact Exists Because The State Court Judgment Was Not Entered Until After The Bankruptcy Case Was Commenced

Defendant-Debtor asserts that a triable issue of fact exists because the State Court Judgment determining almost $3,000,000 of damages were suffered by Plaintiff in the accident caused by Defendant-Debtor was not entered until after the current bankruptcy case was filed. Memorandum, p. 10:9-27, 11:1-28, 12:1-25; Dckt. 32. Defendant-Debtor begins this assertion with quoting the provisions of 11 U.S.C. § 523(a)(9), stating:

> A genuine issue of triable fact exists as to the first cause of action which seeks to prevent discharge of its State Court Judgment pursuant to Title 11 of the United States Code section 523(a)(9), which prevents discharge of a debt "to any entity, **to the extent that such debt arises from a judgment or consent decree entered in a court of record against the debtor** wherein liability was incurred by such debtor as a result of the operation of a motor vehicle while legally intoxicated[.]"

Memorandum, p. 10:18-27; Dckt. 32. Then, citing to the dissenting opinion in *Stackhouse v. Hudson (In re Hudson),* 859 F.2d 1418, 1419 (9th Cir. 1988) (dis. opn. of Wiggins, J.), again using non-federal court citation style, concludes that federal law requires there to be a pre-petition non-bankruptcy court judgment if 11 U.S.C. § 523(a)(9) is to apply to the non-bankruptcy court judgment. [FN. 2]

FN. 2 By the very nature of being a dissent, the "authority" cited by Defendant-Debtor necessarily is not the law established by the majority decision in *Hudson*. The majority did not adopt the "avoid drunk driving liability by filing bankruptcy before the state court judge can get the judgment entered."

Thus, Defendant-Debtor appears to assert that a plaintiff asserting the right to relief pursuant to 11 U.S.C. § 523(a)(9) who obtains a post-petition judgment against the debtor in a non-bankruptcy court must prosecute a separate, independent federal action under 11 U.S.C. § 523(a)(9) and retry each and every legal issue and factual determination. Defendant-Debtor asserts that failure of the court to require a retrial of the issues if the non-bankruptcy court judgment was entered post-petition would render the statute (11 U.S.C. § 523(a)(9) nugatory.

Plaintiff jumps on this assertion, asserting that Defendant-Debtor "seeks to mislead this Court by quoting extensively from the dissent on a case decided over 30 years ago by the Ninth Circuit Court

of Appeals, *In re Hudson*, 859 F.2d 1418 (9th Cir. 1988)." Plaintiff goes further, stating that the law is clear that a pre-petition judgment is not required, citing to the majority holding in *Hudson*.

Defendant-Debtor's assertion runs contrary to basic legal Doctrine of *Res Judicata* and the sub-doctrine of Collateral Estoppel, as well as the provisions of 28 U.S.C. § 1738 which create a statutory Full Faith and Credit Act for state court judgment in federal court similar to the Constitutional Full Faith and Credit given to sister state judgments. U.S. Const. Art. IV, Sec. 1.

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

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

In describing the five elements for Collateral Estoppel under California law, the Ninth Circuit Court of Appeals stated,

> Under California law, collateral estoppel only applies if certain threshold requirements are met:
>
> First, the issue sought to be precluded from relitigation must be identical to that decided in a former proceeding. Second, this issue must have been actually litigated in the former proceeding. Third, it must have been necessarily decided in the former proceeding. Fourth, the decision in the former proceeding must be final and on the merits. Finally, the party against whom preclusion is sought must be the same as, or in privity with, the party to the former proceeding. *Harmon v. Kobrin (In re Harmon*), 250 F.3d 1240, 1245 (9th Cir. 2001).

Cal-Micro, Inc. v. Cantrell, 329 F.3d 1119, 1123 (9th Cir. 2003). The party asserting collateral estoppel bears the burden of establishing these requirements. *In re Harmon*, 250 F.3d 1240, 1245 (9th Cir. 2001). *Id.* at 1245. The application of collateral estoppel is greater than merely the convenience of the court, but is required of the federal courts to respect and give effect to state court judgments.

The party "asserting collateral estoppel carries the burden of proving a record sufficient to reveal the controlling facts and pinpoint the exact issues litigated in the prior action." *In re Lambert*, 233 Fed. Appx. 598, 599 (9th Cir. 2007). If the Court has a reasonable doubt as to what was actually decided by the prior judgment, it will refuse to apply preclusive effect. *Id.*

Collateral Estoppel is a variant of the fundamental *Res Judicata* Doctrine. The Ninth Circuit Court of Appeals addressed the modern application of this Doctrine in *Robertson v. Isomedix, Inc. (In re International Nutronics)*, 28 F.3d 965 (9th Cir. 1994). The court considers four factors in determining whether *Res Judicata* applies,

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

Id. at 970, citing *Clark v. Bear Sterns & Co.*, 966 F.2d 1318, 1320 (9th Cir. 1992).

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

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

Review of Ninth Circuit Ruling in *Hudson*

Both the Plaintiff and Defendant-Debtor cited to the Ninth Circuit Decision in *Hudson* as slamming the door on their respective opponent. Both cannot be right in that proposition. So, the court begins with a review of *Stackhouse v. Hudson (In re Hudson)*, 859 F.2d 1418 (9th Cir. 1988).

At the start of the decision, the Ninth Circuit panel states the issue presented and the Ruling of the Ninth Circuit on the Issue as follows:

> The dispositive issue on appeal is **whether 11 U.S.C. § 523(a)(9), requires** that a creditor obtain **judgment** for damages against a debtor **prior to the debtor's filing for bankruptcy** as a prerequisite to having declared nondischargeable a debt arising from damages caused by drunk driving. **We hold that a prepetition judgment is not required**, and reverse the decision of the B.A.P.

Stackhouse v. Hudson (In re Hudson), 859 F.2d 1418, 1419 (9th Cir. 1988) [emphasis added]. At the very start of the decision cited by Defendant-Debtor the controlling law in the Ninth Circuit is contrary to what Defendant-Debtor asserts is the law. Though Defendant-Debtor may not like Ninth Circuit establish law, that does not allow the court to ignore Ninth Circuit Court of Appeals decisions.

Thus, the issue that Defendant-Debtor appears to seek to raise is whether a determination of the Defendant-Debtor's liability under the applicable non-federal, State of California law and the damages arising under the applicable non-federal, State of California law must be adjudicated by a federal court judge or whether such applicable non-federal, State of California law may be properly determined by the California State Courts.

On December 9, 2014, the Hon. Christopher M. Klein (the judge to whom the Defendant-Debtor's bankruptcy case and this Adversary Proceeding were previously assigned) entered an order modifying the automatic stay to:

> [t]o allow David Schoonover [Plaintiff] and Thuy Bich Van, and its agents, representatives and successors, to pursue the Sacramento Superior Court Case action (Case No. 34-2012-00131228) to determine the amount of the claim and/or to pursue collection of the liquidated claim against Debtor's third-party insurance carrier.

14-30222; Order, Dckt. 49.

The findings of fact and conclusions of law of the court in granting relief from the stay include the following stated in the Civil Minutes from the December 9, 2014 hearing on the motion for relief from the stay:

> From the pleadings, the court concludes that Creditors are requesting relief from the stay to liquidate damages and liability for Personal Injuries received in an auto accident in which Debtor has admitted he was driving under the influence of alcohol . . . . Dkt. 26.
>
> The **court has no opposition to Creditor pursuing the claim to determine the amount of the claim**. The court also does not oppose **granting relief from stay for Creditor to pursue collection of the claim against Debtors insurance carrier**, if any. However, the court does not find cause to grant relief from the stay to permit Creditors to pursue any liquidated claim resulting from the state court case against Debtor personally. The court shall issue a minute order terminating and vacating the automatic stay to allow Creditors, and their agents, representatives and successors, to pursue the subject state court action (Case No. 34-2012-00131228) to determine the amount of the claim and/or to pursue collection of the liquidated claim against Debtors third-party insurance carrier.

Id.; Civil Minutes, Dckt. 44 (emphasis added).

In the Exhibits filed with the Motion for Summary Judgment on May 27, 2020, though not authenticated, Plaintiff includes an Amended Judgment on Verdict in case No. 34-2012-00131228 (the State Court Action the court modified the stay to allow Plaintiff to pursue to judgment). Exhibit D, Dckt. 27.

The unauthenticated Amended Judgement includes findings that:

> "Defendants [which includes Defendant-Debtor] admitted that Cameron Taylor Elford was intoxicated, operated a motor vehicle, and was negligent in causing the motor vehicle collision."
>
> "Defendants admitted that Cameron Taylor Elford's negligence was a substantial factor in causing harm to David Schoonover [Plaintiff] and Thuy Bich Van."

> That Plaintiff's damages arising from Defendant-Debtor's conduct are: (1) Past and Future Economic Loss (including medical expenses) of $612,902.77; (2) Past Non-Economic Loss consisting of Pain, Mental Suffering, Physical Impairment, Grief, Anxiety, Emotional Distress, and loss of enjoyment of life of $650,000; and (3) Future Non-Economic Loss consisting of Pain, Mental Suffering, Physical Impairment, Grief, Anxiety, Emotional Distress, and loss of enjoyment of life of $1,750,000,000.

Amended Judgment on Verdict, Filed December 9, 2015, *Nunc Pro Tunc* to October 23, 2015; Dckt. 27 at 12-15. The judgment for $2,962,902.77 is entered jointly and severally against Defendant-Debtor and Lisa Pashennee. *Id.* at 15.

There being a final state court judgment to which this court must give full faith and credit pursuant to 28 U.S.C. § 1738 and for which the Doctrine of *Res Judicata* and Collateral Estoppel apply, the respective parties should properly identify what has been determined and how the Doctrine of Collateral Estoppel applies.

Defendant-Debtor's Assertion That Because Defendant-Debtor Was 17 Years Old, There is Not a Criminal Conviction

Defendant-Debtor's Memorandum argues that the Restitution ordered in the State Court criminal proceeding is not a "criminal conviction" so there cannot be criminal restitution because Defendant-Debtor became a ward of the court pursuant to California Welfare and Institutions Code § 602. Memorandum, p. 13:23-27, 14:1-2; Dckt. 32. In the six pages of argument set forth with this proposition, Defendant-Debtor fails to provide the court with California State law that the asserted "conviction" is not a "real conviction" under California law.

A review of the unauthenticated exhibits include an Order on Restitution (Exhibit B) and Juvenile Court form (Exhibit C). Dckt. 27. It does not stand out to the court where there is a judgment convicting the Defendant-Debtor of a crime. While citing Welfare and Institutions Code § 602 and § 730.6, the actual text of those code sections are not included in the Defendant-Debtor's Memorandum. Those California Code Section provide:

> § 602. Persons subject to jurisdiction of juvenile court and to adjudication as ward for violation of law or ordinance defining crime
>
> (a) Except as provided in Section 707, any minor who is between 12 years of age and 17 years of age, inclusive, **when he or she violates any law** of this state or of the United States or any ordinance of any city or county of this state defining crime other than an ordinance establishing a curfew based solely on age, **is within the jurisdiction of the juvenile court, which may adjudge the minor to be a ward of the court**.

§ 730.6. Imposition of restitution fine; Community service; Fee

(a)
(1) It is the intent of the Legislature that a victim of conduct for which a minor is found to be a person described in Section 602 who incurs an economic loss as a result of the minor's conduct shall receive restitution directly from that minor.

(2) Upon a minor being found to be a person described in Section 602, the court shall consider levying a fine in accordance with Section 730.5. In addition, the court shall order the minor to pay, in addition to any other penalty provided or imposed under the law, both of the following:

> (A) A restitution fine in accordance with subdivision (b).
>
> (B) Restitution to the victim or victims, if any, in accordance with subdivision (h).

. . .
(h)
(1) Restitution ordered pursuant to subparagraph (B) of paragraph (2) of subdivision (a) shall be imposed in the amount of the losses, as determined. . . The court shall order full restitution unless it finds compelling and extraordinary reasons for not doing so, and states them on the record. A minor's inability to pay shall not be considered a compelling or extraordinary reason not to impose a restitution order, nor shall inability to pay be a consideration in determining the amount of the restitution order. . . A restitution order pursuant to subparagraph (B) of paragraph (2) of subdivision (a), . . . , and shall be of a dollar amount sufficient to fully reimburse the victim or victims for all determined economic losses incurred as the result of the minor's conduct for which the minor was found to be a person described in Section 602, including all of the following:

> (A) Full or partial payment for the value of stolen or damaged property. The value of stolen or damaged property shall be the replacement cost of like property, or the actual cost of repairing the property when repair is possible.
>
> (B) Medical expenses.
>
> (C) Wages or profits lost due to injury incurred by the victim, and if the victim is a minor, wages or profits lost by the minor's parent, parents, guardian, or guardians, while caring for the injured minor. Lost wages shall include any commission income as well as any base wages. Commission income shall be established by evidence of commission income during the 12-month period prior to the date of the crime for which restitution is being ordered, unless good cause for a shorter time period is shown.
>
> (D) Wages or profits lost by the victim, and if the victim is a minor, wages or profits lost by the minor's parent, parents, guardian, or

> guardians, due to time spent as a witness or in assisting the police or prosecution. Lost wages shall include any commission income as well as any base wages. Commission income shall be established by evidence of commission income during the 12-month period prior to the date of the crime for which restitution is being ordered, unless good cause for a shorter time period is shown. . . .

At the hearing **xxxxxxxxxx**

JULY 23, 2020 HEARING AND
SCHEDULING FURTHER BRIEFING
ON THE APPLICATION OF
RES JUDICATA/COLLATERAL ESTOPPEL

At the hearing the court addressed with the parties that the issues of Full Faith and Credit being afforded the State Court Judgement and the application of Collateral Estoppel had not been clearly addressed by the parties. **xxxxxxxxxx**