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SUSAN M. SPRAUL, CLERK  
U.S. BKCY. APP. PANEL  
OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

5	In re:	)	BAP No. CC-14-1397-PaKiTa
6	NARINDER SANGHA,	)	Bankr. No. 13-16964-MH
7	Debtor.	)	Adv. Proc. 13-01171-MH
8	_____	)	
9	NARINDER SANGHA,	)	
10	Appellant,	)	
11	v.	)	<b>MEMORANDUM<sup>1</sup></b>
12	CHARLES EDWARD SCHRADER,	)	
13	Appellee.	)	
14	_____	)	

Argued and Submitted on March 19, 2015  
at Pasadena, California

Filed - June 11, 2015

Appeal from the United States Bankruptcy Court  
for the Central District of California

Honorable Mark D. Houle, Bankruptcy Judge, Presiding

Appearances: Deepalie Milie Joshi argued for Appellant Narinder Sangha; Appellee Charles Edward Schrader argued pro se.

Before: PAPPAS, KIRSCHER, and TAYLOR, Bankruptcy Judges.

<sup>1</sup> This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have (see Fed. R. App. P. 32.1), it has no precedential value. See 9th Cir. BAP Rule 8024-1.

1 Chapter 7<sup>2</sup> debtor Narinder Sangha ("Sangha") appeals the  
2 judgment of the bankruptcy court declaring that his debt to  
3 creditor Charles Edward Schrader ("Schrader") is excepted from  
4 discharge under § 523(a)(6). We VACATE and REMAND.

5 **I. FACTS**

6 On October 13, 2009, Schrader filed a complaint against  
7 Sangha for defamation (slander per se) in San Francisco Superior  
8 Court, alleging that Sangha had made false statements<sup>3</sup> about  
9 Schrader in the course of an employment background investigation.  
10 On November 17, 2009, Sangha filed an answer and general denial.  
11 The state court granted Schrader leave to file a second amended  
12 complaint<sup>4</sup> on February 14, 2011. In the second amended complaint,  
13 all fourteen causes of action alleged that Sangha made the  
14 defamatory statements with malice; the prayer sought an award of  
15 exemplary damages.

16 Schrader, on March 4, 2011, filed a motion for terminating  
17 sanctions against Sangha for engaging in discovery abuses. The  
18 state court granted Schrader's sanctions motion and struck  
19 Sangha's answer to the second amended complaint, commenting: "The  
20 Court finds that Defendant's failure to respond to the Court's  
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22 <sup>2</sup> Unless otherwise indicated, all chapter and section  
23 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, all  
24 Rule references are to the Federal Rules of Bankruptcy Procedure,  
25 Rules 1001-9037, all Civil Rule references are to the Federal  
Rules of Civil Procedure 1-86, and all Appellate Rule references  
are to the Federal Rules of Appellate Procedure 1-48.

26 <sup>3</sup> In sum, the allegedly defamatory statements were that  
27 Schrader had verbally, physically, and emotionally abused Sangha.

28 <sup>4</sup> Our record does not include copies of the original  
complaints.

1 orders compelling a response to interrogatory is willful." Sangha  
2 then dismissed his attorney Christopher Leuterio and filed a  
3 substitution of attorney showing Christopher N. Mandarano was to  
4 be his counsel. On April 8, 2011, Sangha terminated Mandarano,  
5 and substituted Robert D. Finkle as his attorney.

6 On April 18, 2011, the state court entered a default against  
7 Sangha. It conducted a prove-up hearing on Schrader's motion for  
8 entry of default judgment on June 2, 2011, and entered a judgment  
9 the same day (the "State Court Judgment") awarding Schrader  
10 \$1,369,633.40, comprised of \$1,000,000 for general damages,  
11 \$368,535.40 for "Special/Punitive Damages,"<sup>5</sup> and \$1,098.00 for  
12 costs.

13 On November 14, 2011, the state court denied Sangha's motion  
14 to vacate the State Court Judgment. Sangha did not appeal the  
15 State Court Judgment.<sup>6</sup>

16 Sangha filed a chapter 7 bankruptcy petition on April 18,  
17 2013. In his schedules, he listed a disputed debt owed to  
18 Schrader of \$1,369,634.00 for the State Court Judgment.

19 On April 23, 2013, Schrader filed an adversary complaint  
20 against Sangha seeking an exception to discharge under § 523(a)(6)  
21 for the debt evidenced by the State Court Judgment. Sangha filed  
22 an answer on August 21, 2013, generally denying the complaint's  
23

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24  
25 <sup>5</sup> Of this sum, \$6,000 was for punitive damages. See  
discussion below in footnote 7.

26 <sup>6</sup> Sangha later obtained a malpractice judgment in the same  
27 state court against Leuterio in the amount of \$1,370,349.85 based  
upon Leuterio's negligence in representing Sangha in the Schrader  
28 suit. Sangha alleges that he has been unable to collect the  
malpractice judgment.

1 allegations and stating three affirmative defenses: that the  
2 purported false statements were privileged; that Schrader had  
3 engaged in fraud by concealment of material facts from the state  
4 court; and that Schrader had unclean hands.

5 Schrader filed a motion for summary judgment on April 24,  
6 2014, arguing that there were no disputed material facts and that  
7 the State Court Judgment was preclusive as to all of the elements  
8 required for an exception to discharge under § 523(a)(6).

9 Responding to the summary judgment motion on June 4, 2014,  
10 Sangha asserted that triable issues of fact remained concerning  
11 Schrader's unclean hands, fraud, the damage award, and Sangha's  
12 intent. Sangha also argued that he was entitled to conduct  
13 discovery. Schrader filed a reply on June 12, 2014, which  
14 included various documents in opposition to Sangha's allegations.

15 Before the motion hearing on July 8, 2014, the bankruptcy  
16 court posted a detailed Tentative Decision. Among the  
17 conclusions in the Tentative Decision of the bankruptcy court were  
18 that:

- 19 - There was no genuine dispute that the State Court Judgment
- 20 included \$6,000 in punitive damages.<sup>7</sup>
- 21 - All elements of issue preclusion were satisfied.
- 22 - None of Sangha's arguments supported the extrinsic fraud

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23  
24 <sup>7</sup> As noted above, the State Court Judgment awarded Schrader  
25 \$368,535.40 in "Special/Punitive Damages." That \$6,000 of that  
26 sum was for punitive damages was hotly contested by the parties in  
27 the bankruptcy court. The bankruptcy court ultimately concluded  
28 that \$6,000 represented punitive damages after subtracting the  
amounts awarded to Schrader for his lost wages and the costs of an  
unsuccessful appeal. Sangha has not continued his argument on  
appeal, and indeed, his counsel conceded at oral argument before  
the Panel that the damages awarded in the State Court Judgment  
included a punitive damages component.

1 exception to issue preclusion.

2 - The evidence reflected that all damages awarded were  
3 attributable to Sangha's malicious conduct.

4 - Sangha was seeking discovery in order to relitigate the  
5 State Court Judgment findings. The information he sought would  
6 not prevent summary judgment.

7 After hearing from the parties at the hearing, the bankruptcy  
8 court decided to grant summary judgment, and adopted its Tentative  
9 Decision, which it incorporated in a judgment (the "Bankruptcy  
10 Judgment") entered on August 7, 2014, that declared the State  
11 Court Judgment in the amount of \$1,369,633.40 was excepted from  
12 discharge under § 523(a)(6).

13 Sangha filed a timely appeal of the Bankruptcy Judgment on  
14 August 18, 2014.

## 15 **II. JURISDICTION**

16 The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334  
17 and 157(b)(2)(I). We have jurisdiction under 28 U.S.C. § 158.

## 18 **III. ISSUES**

19 Whether the bankruptcy court erred in granting Schrader a  
20 summary judgment determining that the State Court Judgment was  
21 excepted from discharge under § 523(a)(6) based on issue  
22 preclusion.

## 23 **IV. STANDARDS OF REVIEW**

24 We review the grant of summary judgment de novo. Omega S.A.  
25 v. Costco Wholesale Corp., 776 F.3d 692, 695 (9th Cir. 2015);  
26 Expeditors Int'l v. Official Comm. of CFLC, Inc. (In re CFLC,  
27 Inc.), 209 B.R. 508, 512 (9th Cir. BAP 1997). De novo review  
28 requires the Panel to independently review an issue, without

1 giving deference to the bankruptcy court's conclusions. First  
2 Ave. W. Bldg., LLC v. James (In re Onecast Media, Inc.), 439 F.3d  
3 558, 561 (9th Cir. 2006). Summary judgment is appropriate "if the  
4 pleadings, the discovery and disclosure materials on file, and any  
5 affidavits show that there is no genuine dispute as to any  
6 material fact and that the movant is entitled to judgment as a  
7 matter of law." Civil Rule 56(a), incorporated by Rule 7056;  
8 Barboza v. New Form, Inc. (In re Barboza), 545 F.3d 702, 707 (9th  
9 Cir. 2008). In making this determination, the trial court must  
10 view all facts and reasonable inferences in the light most  
11 favorable to the non-moving party. Olsen v. Idaho St. Bd. of  
12 Med., 363 F.3d 916, 922 (9th Cir. 2004).

#### 13 **IV. DISCUSSION**

14 Issue preclusion may provide a proper basis for granting  
15 summary judgment. San Remo Hotel, L.P. v. San Francisco City and  
16 Cnty., 364 F.3d 1088, 1094 (9th Cir. 2004). To meet its burden on  
17 a motion for summary judgment based on issue preclusion, the  
18 proponent must have pinpointed the exact issues litigated in the  
19 prior action and introduced a record establishing the controlling  
20 facts. Honkanen v. Hopper (In re Honkanen), 446 B.R. 373, 382  
21 (9th Cir. BAP 2011); Kelly v. Okoye (In re Kelly), 182 B.R. 255,  
22 258 (9th Cir. BAP 1995).

23 Issue preclusion may apply in bankruptcy discharge  
24 proceedings. Grogan v. Garner, 498 U.S. 279, 284 (1991). The  
25 preclusive effect of a state court judgment in a subsequent  
26 federal lawsuit generally is determined by the Full Faith and  
27 Credit Act, 28 U.S.C. § 1738, which provides that state judicial  
28 proceedings "shall have the same full faith and credit in every

1 court within the United States . . . as they have by law or usage  
2 in the courts of such State . . . from which they are taken."  
3 Marrese v. Am. Academy of Orthopaedic Surgeons, 470 U.S. 373, 380  
4 (1985). When state preclusion law controls, the decision to apply  
5 the doctrine is made in accordance with state law. Khaligh v.  
6 Hadegh (In re Khaligh), 338 B.R. 817, 823 (9th Cir. BAP 2006),  
7 aff'd, 506 F.3d 956 (9th Cir. 2007).

8 Under California law, the party asserting issue preclusion  
9 has the burden of establishing the following threshold  
10 requirements:

11 First, the issue sought to be precluded from  
12 relitigation must be identical to that decided in a  
13 former proceeding. Second, this issue must have been  
14 actually litigated in the former proceeding. Third, it  
15 must have been necessarily decided in the former  
16 proceeding. Fourth, the decision in the former  
17 proceeding must be final and on the merits. Finally,  
18 the party against whom preclusion is sought must be the  
19 same as, or in privity with, the party to the former  
20 proceeding.

21 Harmon v. Kobrin (In re Harmon), 250 F.3d 1240, 1245 (9th Cir.  
22 2001) (citing Lucindo v. Super. Ct., 795 P.2d 1223, 1225 (Cal.  
23 1990)). These are known as the "Harmon" factors. But even if  
24 these five requirements are met, application of issue preclusion  
25 under California law requires a "mandatory 'additional' inquiry  
26 into whether imposition of issue preclusion would be fair and  
27 consistent with sound public policy." Khaligh, 338 B.R. at  
28 824-25. "The purposes of the doctrine are to promote judicial  
economy by minimizing repetitive litigation, preventing  
inconsistent judgments which undermine the integrity of the  
judicial system and to protect against vexatious litigation."  
Younan v. Caruso, 51 Cal. App. 4th 401, 407 (1996).

1 In this appeal, we must decide if a critical issue – whether  
2 Sangha committed willful and malicious injuries to Schrader – was  
3 actually litigated (Harmon factor 2) in the state court. The  
4 bankruptcy court concluded it was, but we disagree. However,  
5 before we reach the merits of that question, we examine Sangha’s  
6 arguments in this appeal that lack merit.

7 **A. Default judgments may be preclusive under both**  
8 **California and federal law.**

9 In Gayden v. Nourbakhsh (In re Nourbakhsh), 67 F.3d 798 (9th  
10 Cir. 1995), the Ninth Circuit held that the preclusive effect of a  
11 state court judgment is determined by reference to the preclusion  
12 law of the state in which the judgment was entered, and that if  
13 applicable state law affords preclusive effect to the issues  
14 decided in a default judgment, so will the federal courts of this  
15 circuit. The rules announced in this published Opinion are  
16 binding on all the courts of the Ninth Circuit, including this  
17 Panel. Miranda B. v. Kitzhaber, 328 F.3d 1181, 1186 (9th Cir.  
18 2003) (“[W]here a panel confronts an issue germane to the eventual  
19 resolution of the case, and resolves it after reasoned  
20 consideration in a published opinion, that ruling becomes the law  
21 of the circuit,” binding on all lower courts.).<sup>8</sup>

22 While not the law in all states, California affords  
23 preclusive effect to the default judgments entered by its courts.  
24 Gottlieb v. Kest, 141 Cal. App. 4th 110, 149 (2006). As the  
25 Gottlieb court explained, a default judgment, under California

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26  
27 <sup>8</sup> The Ninth Circuit’s Nourbakhsh decision affirmed the  
28 published decision of this Panel in Nourbakhsh v. Gayden  
(In re Nourbakhsh), 162 B.R. 841 (9th Cir. BAP 1994).

1 law,

2 conclusively establishes, between the parties so far as  
3 subsequent proceedings on a different cause of action  
4 are concerned, the truth of all material allegations  
5 contained in the complaint in the first action, and  
6 every fact necessary to uphold the default judgment.

7 Id. at 149.

8 Sangha's brief in this appeal attempts the same frontal  
9 attack on Nourbakhsh that he offered to the bankruptcy court:

10 The Ninth Circuit's position [giving preclusive effect  
11 to state court default judgments when authorized by  
12 state law] is the minority view . . . . By utilizing a  
13 blanket application of collateral estoppel to default  
14 judgments, without considering why the default issues,  
15 the Ninth Circuit and other similarly-holding courts  
16 have, in essence, created a new exception that is not  
17 based on any malicious wrongdoing, but may simply be the  
18 result of "neglect, substance abuse, emotional turmoil,  
19 or simple inability to afford a lawyer. . . . The rule  
20 results in increased litigation and a lack of uniformity  
21 in the results. . . . Because the [Nourbakhsh] rule  
22 violates public policy and the rationale underlying  
23 issue preclusion, this Court should deign [sic] to  
24 follow it.

25 Sangha Op. Br. at 12-15. For support, Sangha cites to several  
26 bankruptcy and district court decisions within the Ninth Circuit,  
27 including the bankruptcy court in this appeal, that express  
28 dissatisfaction with the Nourbakhsh rule. However, none of those  
29 courts refused to follow the rule. Nor will we. Simply put, we  
30 have no authority to ignore binding circuit precedent:

31 Binding authority within this regime cannot be  
32 considered and cast aside; it is not merely evidence of  
33 what the law is. Rather, case law on point is the law.  
34 If a court must decide an issue governed by a prior  
35 opinion that constitutes binding authority, the later  
36 court is bound to reach the same result, even if it  
37 considers the rule unwise or incorrect. Binding  
38 authority must be followed unless and until overruled by  
39 a body competent to do so.

40 Hart v. Massanari, 266 F.3d 1155, 1171 (9th Cir. 2001).

41 Because we can not presume to overrule the Ninth Circuit,

1 even were we to disagree with the rule it announced, we must  
2 reject all of Sangha's arguments suggesting that we should ignore  
3 the preclusive effect of a California default judgment in federal  
4 bankruptcy proceedings in this circuit.

5 **B. The bankruptcy court erred in inferring that Sangha**  
6 **committed willful injury to Schrader based solely on the**  
6 **State Court Judgment awarding punitive damages.**

7 Section 523(a)(6) provides that: "(a) A discharge under 727  
8 . . . of this title does not discharge an individual debtor from  
9 any debt - . . . (6) for willful and malicious injury by the  
10 debtor to another entity or to the property of another entity."  
11 Whether a particular debt is for willful and malicious injury by  
12 the debtor to another or the property of another under § 523(a)(6)  
13 requires application of a two-pronged test to the conduct giving  
14 rise to the injury. In other words, the creditor must prove that  
15 the debtor's conduct in causing the injuries was both willful and  
16 malicious. Barboza v. New Form, Inc. (In re Barboza), 545 F.3d  
17 702,711 (9th Cir. 2008) (citing Carrillo v. Su (In re Su), 290 F.3d  
18 1140, 1146-47 (9th Cir. 2002) and requiring the application of a  
19 separate analysis of each prong of "willful" and "malicious").

20 In this context, to show that a debtor's conduct is willful  
21 requires proof that the debtor deliberately or intentionally  
22 injured the creditor, and that in doing so, the debtor intended  
23 the consequences of his act, not just the act itself. Kawaauhau  
24 v. Geiger, 523 U.S. 57, 60-61 (1998); In re Su, 290 F.3d at 1143.  
25 The debtor must act with a subjective motive to inflict injury, or  
26 with a belief that injury is substantially certain to result from  
27 the conduct. In re Su, 290 F.3d at 1143.

28 For conduct to be malicious, the creditor must prove that

1 the debtor: (1) committed a wrongful act; (2) done intentionally;  
2 (3) which necessarily causes injury; and (4) was done without  
3 just cause or excuse. Id.<sup>9</sup>

4 The "identical issue" requirement addresses whether  
5 "identical factual allegations" are at stake in the two  
6 proceedings. Murphy v. Murphy, 164 Cal. App. 4th 376, 400 (2008).  
7 Here, the bankruptcy court found that the issue examined, and the  
8 findings made in the state court, that Sangha acted with malice in  
9 fact in connection with each of the fourteen causes of action  
10 stated in Schrader's complaint, were identical to the issue raised  
11 in the adversary proceeding, whether Sangha had inflicted willful  
12 injury on Schrader. We disagree.

13 The bankruptcy court reasoned that the state court had  
14 awarded Schrader punitive damages of \$6,000. We find no error in  
15 that determination. In order to recover punitive damages in a  
16 defamation lawsuit, the state court had to find that Sangha  
17 committed slander with malice. DiGiorgio Corp. v. Valley Labor  
18 Citizen, 260 Cal. App. 2d 268, 277 (1968). That malice must be  
19 "malice in fact" in every case to support an award of punitive  
20 damages. Davis v. Hearst, 160 Cal. 143, 164 (1911).

21  
22 <sup>9</sup> Because we find that the bankruptcy court erred in  
23 determining that there was a willful injury, we do not reach the  
24 issue of whether the State Court Judgment preclusively establishes  
25 that Sangha acted maliciously for purposes of § 523(a)(6). We  
26 note that the bankruptcy court simply ruled that because the  
27 injury was the result of malice in fact, the first two elements  
28 for malicious injury, that the individual committed a wrongful act  
and it was done intentionally, were satisfied. However, the Panel  
in Plyam v. Precision Dev., LLC (In re Plyam), \_\_\_\_\_ B.R. \_\_\_\_\_,  
No. CC-14-1362, 2015 WL 2124780 (9th Cir. BAP May 5, 2015),  
discussed below, noted that the maliciousness prong was partially  
satisfied by a finding of malice in law, not malice in fact. On  
remand, the bankruptcy court may review its finding on the  
maliciousness prong.

1 The bankruptcy court next examined the characteristics of  
2 "malice in fact" required to recover in defamation actions under  
3 California law. California defines malice in fact as "a state of  
4 mind arising from hatred or ill will, evidencing a willingness to  
5 vex, annoy, or injure another person." Davis, 160 Cal. at 160;  
6 see also In re V.V., 51 Cal. 4th 1020, 1028 (1966) ("Malice in fact  
7 — defined as 'a wish to vex, annoy, or injure' . . . — consists of  
8 actual ill will or intent to injure."). From these legal  
9 premises, the bankruptcy court inferred:

10 Malice in fact is defined as having ill-will or an  
11 attempt to injure. Malice in fact contemplates that  
12 defendant's conduct is intended to specifically injure  
13 Plaintiff, not just an intentional act that leads to  
injury. Thus, the Court finds that the issues set forth  
under malice in fact are the same as those for willful  
injury under § 523(a)(6)."

14 Tentative Decision at 8, July 8, 2014. Therefore, the bankruptcy  
15 court reasoned that: (1) The state court awarded punitive damages  
16 to Schrader in the State Court Judgment; (2) Punitive damages in a  
17 California defamation suit must be founded upon the trial court's  
18 finding that, in making the defamatory statements, the defendant  
19 acted with malice in fact; (3) Applying the state case law  
20 standard for malice in fact, the bankruptcy court could infer that  
21 Sangha had acted with an intent to injure Schrader.

22 The bankruptcy court then rounded out its reasoning with a  
23 citation to the Panel's unpublished memorandum in In re Emmerson,  
24 2011 WL 3299852, at \* 9 (9th Cir. BAP March 25, 2011) ("We have  
25 therefore concluded that an award of punitive damages, even absent  
26 specific findings of malice or oppression or fraud is entitled to  
27 preclusive effect in a nondischargeability action."). Based on  
28 its own reasoning, and with the apparent blessing of

1 In re Emmerson, the bankruptcy court concluded that issue  
2 preclusion satisfied the willfulness component for an exception to  
3 discharge under § 523(a)(6).

4 While otherwise sound, we find the third step in the  
5 bankruptcy court's analysis and its reliance upon In re Emmerson  
6 problematic.<sup>10</sup> According to the cases cited by the bankruptcy  
7 court, "malice in fact" exists when an act is committed with "ill  
8 will **or** intent to injure." Davis, 160 Cal. at 160 (emphasis  
9 added). Ill will is manifested as a "willingness to vex, annoy,  
10 **or** injure another person." Id. (emphasis added). Because these  
11 standards are stated in the disjunctive, the bankruptcy court  
12 could not assume that Sangha's acts were committed with an intent  
13 to injure as the only possible inference from malice in fact.  
14 There are other possible inferences, including that ill will may  
15 not manifest itself in injury, or an intent to vex or annoy.  
16 While it may be possible to infer an actor's intent to injure from  
17 a finding that the actor committed malice in fact when supported  
18 by other facts in the record, that is not the case here. The  
19 bankruptcy court concluded that, in defaming Schrader, Sangha

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21 <sup>10</sup> The bankruptcy court may have assigned too much weight to  
22 the Panel's decision In re Emmerson. That case dealt with a very  
23 specific application of issue preclusion in a child abduction  
24 case. The underlying state court action awarded punitive damages  
25 against the debtor based on Cal. Civ. Code § 49, which provides a  
26 cause of action for child abduction, and Cal. Civ. Code § 3294 for  
27 punitive damages "where it is proven by clear and convincing  
28 evidence that the defendant has been guilty of oppression, fraud,  
or malice." Cal. Civ. Code § 3294(a). The state court in the  
In re Emmerson case made specific findings supporting its award of  
punitive damages under Cal. Civ. Code § 3294. The Panel's  
decision should be viewed as endorsing an exception to discharge  
under the facts of that case, not as a general ruling that an  
award of punitive damages standing alone satisfies the willfulness  
prong of § 523(a)(6).

1 acted with an intent to injure Schrader based solely on the State  
2 Court Judgment. But that reasoning goes too far, since intent to  
3 injure cannot be inferred from malice in fact under California  
4 law.

5 Rather than In re Emmerson, for guidance, we look to the  
6 Panel's recent discussion of punitive damages and malice in fact  
7 under California law in Plyam v. Precision Dev., LLC  
8 (In re Plyam), \_\_\_ B.R. \_\_\_, No. CC-14-1362, 2015 WL 2124780 (9th  
9 Cir. BAP May 5, 2015). In In re Plyam, the Panel examined whether  
10 a California jury's award of punitive damages to the creditor was  
11 preclusive to show that the debtor had acted with the requisite  
12 intent to injure required for an exception to discharge in  
13 bankruptcy under § 523(a)(6). As relevant here, the Panel  
14 concluded that an award of punitive damages based upon an actor's  
15 malice in fact is "an insufficient basis for [application of]  
16 issue preclusion" under the Supreme Court's decision in Geiger.  
17 As the Panel explained,

18 [B]y holding that the requisite state of mind was an  
19 actual intent to injure (or substantial certainty  
20 regarding injury), the Supreme Court in Geiger  
21 effectively adopted a narrow construction and the most  
22 blameworthy state of mind included within the common  
understanding of malice in fact. As relevant here,  
under California law, the general definition of malice  
in fact encompasses less reprehensible states of mind.

23 Id. at \*5.

24 As can be seen, the In re Plyam opinion explores those "less  
25 reprehensible states of mind" that, while they support an award of  
26 punitive damages under California law, may not be adequate to  
27 support a discharge exception under the Bankruptcy Code. Id. The  
28 Panel discussed the case law in both California and federal

