

**United States Bankruptcy Court  
Central District of California  
Los Angeles  
Robert Kwan, Presiding  
Courtroom 1675 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room 1675**

1:30 PM

**2:00-00000**

**Chapter**

**#0.00**

**PROCEDURES FOR APPEARING FOR, OR ACCESSING,  
COURT HEARINGS IN JUDGE KWAN'S CASES**

**INSTRUCTIONS FOR THE GENERAL PUBLIC AND THE MEDIA: See Special Instructions Below.**

**INSTRUCTIONS FOR PARTIES OFFICIALLY APPEARING ON THEIR MATTERS AT HEARINGS BEFORE JUDGE KWAN AND THEIR COUNSEL:** Judge Kwan conducts non-evidentiary hearings in hybrid format, that is, in person in the courtroom and remotely by video using Zoom for Government (ZoomGov) videoconferencing technology, but only in person in the courtroom for evidentiary hearings, trials and other matters specially set by Judge Kwan. Parties officially appearing on their matters at hearings before Judge Kwan and their counsel may choose to appear in person in the courtroom or remotely on ZoomGov at a hearing on their matters unless otherwise ordered by the court. Judge Kwan's courtroom is located in Courtroom 1675, 16<sup>th</sup> Floor, Roybal Federal Building, 255 East Temple Street, Los Angeles, California 90012. Parties are directed to review Judge Kwan's self-scheduling instructions for calendaring hearings, whether by in-person and/or ZoomGov.

For parties and their counsel officially appearing on their matters using ZoomGov to appear remotely at hearings, video and audio connection information for each hearing will be provided on Judge Kwan's publicly posted hearing calendar on the court's website, which may be viewed online at: <http://ecf-ciao.cacb.uscourts.gov/CiaoPosted/default.aspx>, and then selecting "Judge Kwan" from the tab on the left-hand side of the page.

Parties and their counsel officially appearing on their matters may view and/or listen to hearings before Judge Kwan using ZoomGov free of charge. Individual participants may appear at a hearing by ZoomGov video and audio using a personal computer (equipped with camera, microphone and speaker), or a handheld mobile device (such as an iPhone or Android phone). Individual participants may also participate in a hearing by ZoomGov audio only using a telephone (standard telephone charges may apply). Neither a Zoom nor a ZoomGov account are necessary to

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participate in a hearing, and no pre-registration is required. The audio portion of each hearing will be recorded electronically by the court and constitute its official record.

To implement the mandate of the Judicial Conference of the United States that the general public and the media may not access the video feed of a court hearing, only the audio feed (see Special Instructions to the General Public and the Media below), Judge Kwan or court personnel may inquire as to the status of a person accessing ZoomGov as either an official hearing participant or a member of the general public or the media, and the court may place persons attempting access to video feed of a court hearing in a Zoom waiting room for a status inquiry and otherwise restrict a member of the general public or the media to audio access only if accessing the hearing remotely.

**SPECIAL INSTRUCTIONS FOR THE GENERAL PUBLIC AND THE MEDIA:** The Judicial Conference of the United States has now clarified its policy on Cameras in the Courtroom and mandated that the members of the general public (or the Public) and the Media may not observe **by video** any court hearing proceedings unless they are actual parties or counsel with matters before the court in which they have an official interest. However, as an accommodation to the Public and the Media, the Judicial Conference of the United States has also clarified that many court hearing proceedings will still be accessible **by audio**, but that this audio accommodation for the Public and the Media is limited to (1) non-trial hearings; and (2) non-live witness evidentiary hearings.

To be clear, during hearings where no live testimony is being received by the court, the court may permit hearing accessibility remotely by audio, but not video, to the Public and the Media. No trials may ever be accessible remotely by audio to the Public and the Media. The court has the final control regarding remote audio accessibility and may choose to terminate remote audio accessibility at any time, regardless of the type of hearing. These remote audio services are accessible through ZoomGov, and the Public and the Media may utilize the telephone number login, but not the video login, presented by the court on its publicly posted hearing calendar, which may be viewed online at: <http://ecf-ciao.cacb.uscourts.gov/CiaoPosted/default.aspx>, and then selecting "Judge Kwan" from the tab on the left-hand side of the page.

Members of the Public and the Media may always personally attend hearings

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before the court in open court in-person in the courtroom. Judge Kwan's courtroom is located in Courtroom 1675, 16<sup>th</sup> Floor, Roybal Federal Building, 255 East Temple Street, Los Angeles, California 90012.

On hearing days, Judge Kwan's courtroom will remain open during hearings for in-person public and media attendance, so that the courtroom observers will have video and audio access to ZoomGov participants. The court will have video monitors on and viewable within the courtroom for viewing. The parties, including counsel, their clients, and self-represented individual parties, may virtually join the hearing and appear remotely or virtually on ZoomGov.

Members of the general public and the media, however, may only view the hearings in person from the courtroom, which will remain open, or by audio access, as noted above. To implement the mandate of the Judicial Conference of the United States that the general public and the media may not access the video feed of a court hearing, only the audio feed, Judge Kwan or court personnel may inquire as to the status of a person accessing ZoomGov as either an official hearing participant or a member of the general public or the media, and the court may place persons attempting access to video feed of a court hearing in a Zoom waiting room for a status inquiry and otherwise restrict a member of the general public or the media to audio access only if accessing the hearing remotely. Individual members of the public and the media may access a hearing by ZoomGov audio only using a telephone (standard telephone charges may apply). Neither a Zoom nor a ZoomGov account are necessary to access the live audio feed of a hearing, and no pre-registration is required.

**RESTRICTIONS ON LIVE TESTIMONY AT HEARINGS:** No live testimony, however, will be permitted at a hearing by ZoomGov unless specifically authorized by the court either prior to, or during, a hearing. If a party intends to call a witness to testify by remote transmission, the party calling the witness should state such intention in the joint pretrial stipulation filed before the final pretrial conference or file a written application for permission to call a witness by remote means at least 21 days before the evidentiary hearing or as soon as practicable if the evidentiary hearing is set on less than 21 days notice.

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ZoomGov logon information for all matters on today's hearing calendar:

**Video/audio web address:** <https://cacb.zoomgov.com/j/1614990466>

**ZoomGov meeting number:** **161 499 0466**

**Password:** **980049**

**Telephone conference lines:** **1 (669) 254 5252 or 1 (646) 828 7666**

Please connect at least 5 minutes before the start of your hearing, and wait with your microphone muted until your matter is called.

Zoomgov hearing etiquette: (a) wait until the judge calls on you, so everyone is not talking at once; (b) when you first speak, state your name and, if you are an attorney, whom you represent (do not make your argument until asked to do so); (c) when you make your argument, please pause from time to time so that, for example, the judge can ask a question or anyone else can make an objection; (d) if the judge does not see that you want to speak, or forgets to call on you, please say so when other parties have finished speaking (do not send a "chat" message, which the judge might not see); and (e) please let the judge know if he mispronounces your name or uses the wrong pronoun.

Docket 0

**Tentative Ruling:**

- NONE LISTED -

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**2:18-11525 Shahriar Joseph Zargar**

**Chapter 11**

Adv#: 2:18-01144 Shadsirat v. Zargar et al

**#1.00** Status conference re: Complaint  
(1) objecting to dischargeability of debt pursuant to 11 U.S.C. §523(a)(2);  
(2) objecting to dischargeability of debt pursuant to 11 U.S.C. §523(a)(4);  
(3) objecting to dischargeability of debt pursuant to 11 U.S.C. §523(a)(6); and,  
(4) for declaratory relief requesting adjudication of pending state court lawsuits

fr. 6/14/22, 9/13/22, 11/29/22, 3/14/23, 3/28/23, 4/11/23, 5/30/23, 8/22/23,  
10/17/23, 10/24/23

Docket 1

**\*\*\* VACATED \*\*\* REASON: Cont'd to 1/30/24 at 11:00am**

**Tentative Ruling:**

Updated tentative ruling as of 1/9/24. Off calendar. Continued on the court's own motion to 1/30/24 at 11:00 a.m. No appearances are required on 1/23/24.

Prior tentative ruling as of 10/19/23. Appearances are required on 10/24/23, but counsel and self-represented parties must appear either in person in the courtroom or remotely through Zoom for Government in accordance with the court's remote appearance instructions.

Prior tentative ruling as of 10/4/23. The court notes that the matter is on calendar on 10/24/23 on plaintiff's motion for summary judgment. Appearances are required on 10/17/23, but counsel and self-represented parties must appear either in person in the courtroom or remotely through Zoom for Government in accordance with the court's remote appearance instructions.

Updated tentative ruling as of 8/10/23. Appearances are required on 8/22/23, but counsel and self-represented parties must appear either in person in the courtroom or remotely through Zoom for Government in accordance with the court's remote appearance instructions.

Prior tentative ruling as of 5/24/23. Appearances are required on 5/30/23, but

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counsel and self-represented parties must appear either in person in the courtroom or remotely through Zoom for Government in accordance with the court's remote appearance instructions.

Prior tentative ruling as of 4/7/23. The hearing is to discuss the status of the proceedings only. After reviewing the docket, it appears that the court's abstention order of 12/7/18 staying "all applicable deadlines" is still in effect. The court granted plaintiff's abstention motion to allow the state courts to decide the Van Nuys and Los Angeles actions, and the court in this adversary proceeding has conducted status conferences to monitor the state court proceedings. The wording of the abstention order was that all applicable deadlines were stayed, and it appears that the then pending 45 day deadline for plaintiff to file a second amended complaint then due on 12/8/18 was also stayed. The court's review of the docket reflects that there has been no order lifting that stay and restarting the deadline clock for plaintiff to serve and file a second amended complaint. (However, it now appears that the court should issue a formal order lifting the prior stay.) Given the peculiar wording of the abstention order staying deadlines as opposed to proceedings, it does not appear to the court that the stay prevented plaintiff from filing and serving the amended complaint when he did on 2/13/23. The executed summons on the second amended complaint indicates that defendant was served on 2/27/23, and defendant responded by filing and serving his motion to dismiss on 3/21/23 within the 30 day time period for response in the order granting the motion to dismiss. Although a summary judgment motion may be made at any time at least 30 days before the first date set for an evidentiary hearing on the issue for which summary judgment is sought pursuant to FRBP 7056, the court believes that the summary judgment motion should not be heard until the adversary proceeding is at issue resolving defendant's motion to dismiss first since the court and parties need to know what claims are at issue for defendant to meaningfully respond to the summary judgment motion.

The court will discuss setting further proceedings with the parties. The court is of the view that a date for argument on the motion to dismiss should be promptly set. After the pleadings are at issue with the filing of defendant's answer, the court will set a date for hearing on the summary judgment motion.

Regarding the motion to dismiss, defendant's argument that there is no

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fiduciary relationship under the federal standard to support a claim under 11 U.S.C. 523(a)(4) appears to be well-taken in the court's tentative view. See Double Bogey, L.P. v. Enea, 794 F.3d 1047 (9th Cir. 2015). However, defendant's argument that the fraud claims to support the 11 U.S.C. 523(a)(2) and (6) claims appear to be hypertechnical in the court's tentative view as the state court in the Van Nuys action described in detail what the conduct was. The conclusiveness of the language in the settlement agreement for the Los Angeles state court action will have to be addressed as there was no express language regarding debt dischargeability. However, the court's tentative views can be discussed at argument on the motion to dismiss.

Appearances are required on 4/11/23, but counsel and self-represented parties must appear in person or remotely through Zoom for Government in accordance with the court's remote appearance instructions.

Prior tentative ruling as of 3/22/23. The court notes that plaintiff has filed a motion for summary judgment set for hearing on 4/11/23, but defendants have filed a motion to continue the hearing on plaintiff's motion for summary judgment on 4/11/23 and a motion to dismiss noticed for hearing on 4/18/23. The court will discuss with the parties defendant's continuance motion at the status conference as well as rescheduling the hearing on defendants' motion to dismiss because the Clerk's Office has requested the judges not to conduct hearings during the week of 4/14/23-4/18/23 due to CM/ECF and other software system and security upgrades. See Public Notice 23-004 posted on the court's website on 3/1/23. Otherwise, no tentative ruling on the merits. Appearances are required on 3/28/23, but counsel and self-represented parties must appear in person or remotely through Zoom for Government in accordance with the court's remote appearance instructions.

Prior tentative ruling as of 11/22/22. The court notes that this matter is trailing the trial in the contested matters of debtors' objection to amended claim of judgment creditors and judgment creditors' motion to determine secured interest in and turnover of sale proceeds set for further hearing on 12/20/22. No tentative ruling on the merits. Appearances are required on 11/29/22, but counsel and self-represented parties must appear in person or remotely through Zoom for Government in accordance with the court's remote appearance instructions.

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**Chapter 11**

**Party Information**

**Debtor(s):**

Shahriar Joseph Zargar

Represented By  
Ashley M McDow

**Defendant(s):**

Shahriar Joseph Zargar

Pro Se

Shabnam Mesachi

Pro Se

**Joint Debtor(s):**

Shabnam Mesachi

Represented By  
Ashley M McDow

**Plaintiff(s):**

Behrouz Shadsirat

Represented By  
Rosendo Gonzalez



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**2:18-11525 Shahriar Joseph Zargar**

**Chapter 11**

Adv#: 2:18-01144 Shadsirat v. Zargar et al

**#2.00** Motion for Summary Judgment or in  
alternative Summary Adjudication

fr. 10/24/23

Docket 90

**\*\*\* VACATED \*\*\* REASON: Cont'd to 1/30/24 at 11:00am**

**Tentative Ruling:**

Updated tentative ruling as of 1/9/24. Off calendar. Continued on the court's own motion to 1/30/24 at 11:00 a.m. No appearances are required on 1/23/24.

Supplemental tentative ruling as of 10/23/23. The court notes that the state court's final statement of decision discusses its rulings on plaintiff's claims against defendant at pages 47 to 52. The state court did not find that all of defendant's conduct alleged by plaintiff was actionable fraud, and in finding that some of the action was actionable fraud, the court did not expressly discuss the elements of fraud. Thus, it appears that the state court made implicit findings of the elements of fraud as to some of the alleged misconduct, which this court believes to be identified as meeting the elements of plaintiff's claims under 11 U.S.C. 523(a)(2)(A) and 523(a)(6) based on collateral estoppel. The amount of plaintiff's claims seems to be a matter of res judicata, though the applicable doctrine for the claims under 11 U.S.C. 523(a)(2)(A) and 523(a)(6) would seem to be collateral estoppel. An example of the court's granting of summary judgment on claims under 11 U.S.C. 523(a)(2)(A) and 523(a)(6) based on collateral estoppel and res judicata as to the amount is *Richards v. Bishop* (In re Bishop), Case No. 2:16-bk-16503-RK Chapter 7, Adv. No. 2:16-ap-01383-RK, 2018 WL 1069145 (Bankr. C.D. Cal. Feb. 22, 2018)(statement of of uncontroverted facts and conclusions of law on plaintiffs' motion for summary judgment, which is posted as an opinion on the court's website).

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Updated tentative ruling as of 10/19/23. As recognized in *Plyam v. Precision Development, LLC* (In re *Plyam*), 530 B.R. 456 (9<sup>th</sup> Cir. BAP 2015), a bankruptcy court may rely upon the issue preclusive effect of an existing state court judgment as the basis for granting summary judgment, but in so doing, the bankruptcy court must apply the forum state's law of issue preclusion. *Id.* at 462. In California, application of issue preclusion requires that: (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. *Id.*, citing *Lucido v. Superior Court*, 51 Cal.3d 335, 341 (1990). In California, additional limitation on issue preclusion must be addressed, that is, courts may give preclusive effect to a judgment only if application of preclusion furthers the public policies underlying the doctrine. *Id.*, citing *Harmon v. Kobrin* (In re *Harmon*), 250 F.3d 1240, 1245 (9<sup>th</sup> Cir. 2001). As the Bankruptcy Appellate Panel further observed in *In re Plyam*, the party asserting preclusion bears the burden of establishing the threshold requirements, that this means providing a record sufficient to reveal the controlling facts and pinpoint the exact issues litigated in the prior action and that ultimately, any reasonable doubt as to what was decided by a prior judgment should be resolved against allowing the issue preclusive effect. *Id.*

It is up to movant to meet this burden in order for the court to grant summary judgment based on issue preclusion, and this must be shown in movant's statement of uncontroverted facts and conclusions of law pursuant to Local Bankruptcy Rule 7056-1 as the court will have to adopt a statement of uncontroverted facts and conclusions of law to support any granting of summary judgment. Movant's statement of uncontroverted facts and conclusions of law does not discuss how the elements of issue preclusion under California law are met with respect to his claims under 11 U.S.C. 523(a)(2)(A) and 523(a)(6). That is, movant must show that the standard of issue preclusion is met as to each element of his claims under 11 U.S.C. 523(a)(2)(A) and 523(a)(6). The elements of 11 U.S.C. 523(a)(2)(A) and 523(a)(6) are not discussed in movant's statement of uncontroverted facts

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and conclusions of law, that is, movant has not shown that the findings of state court in the prior action are entitled to issue preclusive effect as to each element of both claims. It is up to the movant to show how these elements of his claims are satisfied as he has the burden of showing that he is entitled to summary judgment under Federal Rule of Bankruptcy Procedure 7056. The stated uncontroverted facts are too conclusory for this court to adopt in determining that there are no genuine issues of material fact regarding the elements of movant's claims in this adversary proceeding. Just saying it was fraud is too conclusory to show that the findings that supported a determination of fraud in the state court support a determination in the adversary proceeding as it has not been shown that the elements of the fraud claim under 11 U.S.C. 523(a)(2)(A) or of the willful injury claim under 11 U.S.C. 523(a)(6) are met. The specific violative conduct that the state court found should be identified in the stated uncontroverted facts, and not just fraud or breach of fiduciary duty in general.

Regarding the evidentiary objections interposed by defendant, the court was inclined to deny them as the operative exhibits are the state court complaint and the decision documents of the state court, the authenticity of which are not in dispute.

The court could either give movant an opportunity to properly support the uncontroverted facts to establish each element of his claims pursuant to Federal Rule of Civil Procedure 56(e)(1) or deny the motion without prejudice for failure to make the required showing as required by Federal Rule of Civil Procedure 56(a).

Appearances are required on 10/24/23, but counsel and self-represented parties must appear either in person in the courtroom or remotely through Zoom for Government in accordance with the court's remote appearance instructions.

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| <b>Party Information</b> |
|--------------------------|

**Debtor(s):**

Shahriar Joseph Zargar

Represented By  
Raymond H. Aver

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**Defendant(s):**

Shahriar Joseph Zargar

Represented By  
Raymond H. Aver

Shabnam Mesachi

Represented By  
Raymond H. Aver

**Joint Debtor(s):**

Shabnam Mesachi

Represented By  
Raymond H. Aver

**Movant(s):**

Behrouz Shadsirat

Represented By  
Rosendo Gonzalez

**Plaintiff(s):**

Behrouz Shadsirat

Represented By  
Rosendo Gonzalez