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WRITTEN DECISION – NOT FOR PUBLICATION

ENTERED 9/26/12
FILED
SEP 26 2012
CLERK, U.S. BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY HLS #152 DEPUTY

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA

In re:) Bankruptcy No.: 11-12065-LT7
)
KAREN ELIZABETH LEE,) Adversary No. 11-90447-LT
)
)
Debtor,)
)
_____) MEMORANDUM DECISION
)
ALLEN-SLATTERY, INC.,)
)
Plaintiff,)
)
v.)
)
KAREN ELIZABETH LEE,)
)
Defendant.)
_____)

1 Plaintiff Allen-Slattery, Inc. ("Allen-Slattery") initiated an adversary proceeding
2 requesting a determination that its pre-petition state court judgment (the "Judgment") against
3 Dr. Karen Lee ("Dr. Lee") is nondischargeable under 11 U.S.C. § 523(a)(2) and (a)(6).¹
4 Having considered the admitted evidence and testimony at the trial held on May 14, 2012 and,
5 in particular, having assessed the credibility of Dr. Lee, the Court determined that some, but
6 not all, of Dr. Lee's acts of conversion were done with willfulness and malice within the
7 meaning of section 523(a)(6). This determination, thus, prevents the discharge of at least a
8 portion of Allen-Slattery's claim. Allen-Slattery argues that issue preclusion or an independent
9 evidentiary review requires a determination that the entire quantum of its judgment based
10 claim is nondischargeable. This Court disagrees. Instead, the Court awards a
11 nondischargeable judgment of \$15,632.²

12 **I. SUMMARY OF THE FACTS.**

13 **A. Facts Leading To The Judgment.**

14 Dr. Lee was a client of Allen-Slattery, a firm specializing in family law, until Allen-
15 Slattery obtained court approval for a non-consensual withdrawal from Dr. Lee's case. On
16 March 17, 2010, Dr. Lee went to Allen-Slattery's office, collected her files, and departed with
17 said files and, inadvertently, with a file containing highly sensitive material belonging to
18 another Allen-Slattery client, Mr. Kelly (the "Kelly File"). Approximately three weeks later,
19 on April 6, Dr. Lee discovered the Kelly File and reported her possession by phone call to
20 Allen-Slattery. She also called several other times in hopes of discussing with Mr. Allen
21 complaints she had about his firm's allegedly unprofessional behavior.

22 Mr. Allen did not return her calls. Instead, he wrote a letter to Dr. Lee dated April 8,
23 2010, acknowledging that she had possession of another's client's file, emphasizing the
24 confidential nature of the file, and requesting its swift return. Mr. Allen wrote that Allen-

26 ¹ Unless otherwise indicated, all chapter, section and rule references are to the
27 Bankruptcy Code, 11 U.S.C. §§ 101-1532, and to the Federal Rules of Bankruptcy Procedure,
28 Rules 1001-9037.

² This amount is subject to amendment as discussed at fn. 5, 6, & 8 below.

1 Slattery had provided "everything in our offices that had any bearing on your case." But
2 Dr. Lee ignored the request to return the Kelly File; she apparently hoped that her possession
3 of the Kelly File would serve as leverage to force a return call from Mr. Allen.

4 Eventually, Dr. Lee sought another ear for her complaints about Allen-Slattery –
5 Mr. Kelly himself. Dr. Lee called Mr. Kelly, not to inform him that she had inadvertently
6 taken and would therefore be returning his files, but instead to besmirch Allen-Slattery and to
7 warn him against continuing as its client.

8 **B. State Court Civil Proceedings.**

9 Eventually, Allen-Slattery hired outside counsel who wrote Dr. Lee a letter dated
10 May 12, 2010, demanding that she return the Kelly File by the next day or face a lawsuit (the
11 "Larabee Letter"). Dr. Lee also was given notice at this time, at the latest, that the family court
12 had sealed documents in the Kelly File. Dr. Lee told the outside counsel that she would return
13 the Kelly File, but failed to keep her word. Keeping its word, Allen-Slattery filed a civil
14 lawsuit in state court (Case # 20010-00092175) against Dr. Lee seeking injunctive relief and
15 replevin and damages on account of alleged conversion.

16 Upon a motion for preliminary injunction in state court, the state court judge explained
17 to Dr. Lee that she could bring her own lawsuit for return of any files that had not been
18 returned by Allen-Slattery, but that she had to return the other client's documents immediately;
19 Dr. Lee then allowed Allen-Slattery to pick up the Kelly File.

20 Thereafter, Allen-Slattery sought damages and requested entry of default judgment.
21 After filing its Complaint, on May 20, 2010, Plaintiff prepared a Statement of Damages under
22 California Code of Civil Procedure § 425.11 (the "Section 425.11 Statement"). In this
23 document, Allen-Slattery listed alleged general damages for emotional distress in the amount
24 of \$15,000, special damages for attorneys' fees in the amount of \$10,000, damage to
25 professional reputation in the amount of \$10,000, and separately listed punitive damages in the
26 amount of \$15,000. On October 18, 2010, the State Court entered a default judgment against
27 Dr. Lee in the amount of \$50,632 (the "Judgment"). In connection with its default prove-up,
28 Allen-Slattery filed a Memorandum of Costs listing attorneys' fees of \$10,000 and costs of

1 \$632. It also filed a Request for Entry of Default requesting \$15,000 in special damages,
2 \$25,000 in general damages, and \$10,000 in attorneys' fees. Allen-Slattry was awarded
3 \$40,000 in damages, \$10,000 in attorneys' fees, and \$632 in costs in the Judgment. The
4 Judgment did not award punitive damages. Allen-Slattry did not provide evidence otherwise
5 justifying its claims for damages, except for counsel's statements that Dr. Lee was: "as
6 difficult an opposing party as I have ever encountered" and otherwise expressing difficulty in
7 dealing with her; this evidence appears relevant to a request for punitive damages. Tr. Ex. 5.

8 Dr. Lee did not timely appeal from the Judgment, but did timely bring a motion for
9 relief from default judgment. The State Court denied this motion on May 27, 2011.

10 C. Bankruptcy Proceedings.

11 On July 21, 2011, Dr. Lee filed a chapter 7 petition and shortly thereafter, on
12 September 16, 2011, Allen-Slattry initiated this adversary proceeding alleging
13 nondischargeability of the Judgment. Allen-Slattry then brought a summary judgment
14 motion, and the Court set a briefing schedule as to the finality of the Judgment. In response,
15 the parties entered into a stipulation in which they waived their right to a decision on the
16 summary judgment motion and agreed to proceed to a one-day trial on the issues of malice and
17 willfulness under section 523(a)(6). Allen-Slattry chose not to pursue its section 523(a)(2)
18 claim.

19 No one disputes that Dr. Lee committed conversion under California law.³ Conversion
20 is a tort that can support a section 523(a)(6) claim. Under the stipulation, however, the parties,
21 in effect, agreed that issue preclusion did not resolve the section 523(a)(6) issues, likely
22 because the State Court did not make any finding regarding Dr. Lee's intent. *See Spencer v.*
23 *Blanchard (In re Blanchard)*, 201 B.R. 108, 118 (Bankr. E.D. Pa. 1996) (finding that

24
25 ³ Conversion exists where: (1) a plaintiff owns or has a right to possession of tangible
26 personal property; (2) Defendant wrongfully exercises control over this property; and
27 (3) Plaintiff incurs damages as a result. *Moore v. Regents of Univ. of Cal.*, 51 Cal. 3d 120, 137
28 (1990). Wrongful withholding also is actionable as conversion. *Edwards v. Jenkins*, 214 Cal.
713, 720 (1932). Not all acts of conversion, however, give rise to a non-dischargeable
judgment under section 523(a)(6), as conversion is a strict liability tort and the plaintiff need
not establish wrongful intent. *Poggi v. Scott*, 167 Cal. 372, 375 (1914).

1 conversion does not necessarily include malicious intent); *see also Cal-Micro, Inc. v. Cantrell*
2 (*In re Cantrell*), 329 F.3d 1119, 1124 (9th Cir. 2003) (only where the record shows that the
3 issue on which preclusion was sought was actually and necessarily litigated may the court
4 preclude relitigation of the issues). As a result, only the issues of maliciousness, willfulness,
5 and damages remained for trial.

6 **D. Trial.**

7 On May 14, 2012, the Court conducted a trial to determine the nondischargeability of
8 Dr. Lee's debts to Allen-Slattery. Under section 523(a)(6), a debt arising from "willful and
9 malicious injury by the debtor to another entity or to the property of another entity" is
10 nondischargeable. The injury must be both "willful" and "malicious." While these elements
11 share certain characteristics, they are separate and distinct. *Petralia v. Jercich (In re Jercich)*,
12 238 F.3d 1202, 1209 (9th Cir. 2001).

13 The malicious prong of the section 523(a)(6) test requires: "(1) a wrongful act, (2) done
14 intentionally, (3) which necessarily causes injury, and (4) is done without just cause or
15 excuse." *Jercich*, 238 F.3d at 1209. While many of the willful and malicious elements
16 overlap, the differentiating element between willful and malicious is principally whether
17 Dr. Lee acted without just cause or excuse. *See Id.*

18 The Court found that Dr. Lee acted with malice within the meaning of section 523(a)(6).
19 Dr. Lee committed a wrongful act – conversion of the Kelly File. Dr. Lee acknowledged that
20 she knew that she was in possession of the Kelly File on approximately April 6, 2010, that she
21 understood that she had no rights to the Kelly File, but that she did not turn it over to Allen-
22 Slattery until ordered to do so by Judge Vargas and after Allen-Slattery filed the State Court
23 law suit and the preliminary injunction motion. All the evidence indicates that she knowingly
24 and intentionally kept the Kelly File after April 6, 2010. Dr. Lee had a motive to inflict injury,
25 because she was angry about her failed attorney-client relationship and the perceived
26 inattentiveness of her attorney at Allen-Slattery. This came through loud and clear at the
27 hearing. The retention of the file and her calls to Mr. Kelly necessarily caused injury – at a
28 minimum the need to use an outside counsel to recover the file. Dr. Lee's acts were

1 inexcusable – her chagrin at the firm could not justify continued retention of another person's
2 highly sensitive legal file.

3 Willful means, within the meaning of section 523(a)(6), that the defendant had
4 subjective motive to inflict injury or the defendant believed that the injury was substantially
5 certain to occur as a result of his or her conduct. *Jercich*, 238 F.3d at 1208. The focus of the
6 "willful" test is whether the debtor intended to cause injury or knew injury would follow from
7 his or her acts. *Thiara v. Spycher Bros. (In re Thiara)*, 285 B.R. 420, 434 (9th Cir. BAP 2002).

8 The Court found that Dr. Lee acted with willfulness within the meaning of
9 section 523(a)(6) once she called Mr. Kelly and not only retained the sensitive Kelly File, but
10 acted to Allen-Slattry's detriment. The evidence established that at that time she knew that
11 her retention of the Kelly File had the ability to cause injury and that she, in fact, intended to
12 cause the firm reputational injury, at minimum, in connection therewith. Dr. Lee chose this
13 point in time to directly contact Mr. Kelly to advise him that the firm had mistakenly provided
14 his file to her and to ask him what he wanted her to do. She attempted to defend her actions by
15 testifying repeatedly as to the poor quality of Allen-Slattry's actions and her fears for
16 Mr. Kelly. Given that, despite her call to Mr. Kelly and her alleged concerns, she decided to
17 keep rather than return his file, the Court does not find Dr. Lee's testimony credible; she did
18 not make this call solely out of concern for Mr. Kelly.

19 Alternatively, the Court concluded that once Dr. Lee learned of the confidential nature
20 of the Kelly File and called Mr. Kelly directly, Dr. Lee knew her actions necessarily caused
21 injury. Dr. Lee is familiar with the confidentiality of patients' records. Indeed, she testified
22 that she had some questions about who the file belonged to given that medical files typically
23 "belong" to the patient and not the doctors, although the medical files are maintained by the
24 doctor.⁴ Her awareness of the potential for injury was heightened when she learned that the
25 Kelly File was subject to a protective family law court order. The damages Allen-Slattry
26 suffered were a foreseeable consequence of refusing to return private confidential information.

27
28 ⁴ This is also true of legal files. Allen-Slattry's conversion claim arises out of its right to possess Mr. Kelly's file, not its ownership of the file.

1 It does not matter whether Dr. Lee intended to cause the degree of harm that she caused. *State*
2 *Farm Fire and Cas. Co. v. Edie (In re Edie)*, 314 B.R. 6, 15-16 (Bankr. D. Utah 2004) ("The
3 crucial question is whether [the debtor] intended, or expected, to cause injury to [the plaintiff's]
4 property, not whether she intended to cause the precise magnitude of injuries sustained.").
5 Allen-Slattry is entitled to be compensated by a nondischargeable debt for the damages
6 suffered.

7 After the Court made its findings on the record, the Court explained that the Judgment,
8 even if final, did not afford a sufficient basis for determining what quantum of the damages
9 included therein were correctly attributable to the portion of Dr. Lee's conduct that is willful
10 and malicious, as compared to other conduct that does not have such a character. This problem
11 is amplified by the fact that the amount of the Judgment does not bear a rational relationship to
12 the outline of damages set forth in the Section 425.11 Statement which lists general and special
13 damages of \$35,000, while in the Judgment such damages total \$50,000. The Court
14 recognized that the Section 425.11 Statement also asked for \$15,000 in punitive damages, but
15 the form of the Judgment makes clear that the State Court did not award punitive damages.
16 Indeed, Allen-Slattry effectively concedes this point, since it did not pursue a summary
17 judgment based on issue preclusion as to willfulness and malice after this Court observed this
18 to be the case.

19 The Court noted that attorneys' fees incurred in obtaining possession of the Kelly File
20 are properly part of the nondischargeable award for willful and malicious injury because
21 Dr. Lee did not turn over the Kelly File until ordered to do so by Judge Vargas and knew about
22 its confidential nature and acted to harm Allen-Slattry prior to the time Allen-Slattry
23 incurred all such fees; Dr. Lee's testimony that she fully intended to turn it over is not credible
24 and is irrelevant, in any event. The Court was also aware that Judge Vargas awarded damages
25 based on other theories and that some of these damages may be properly nondischargeable.
26 Before rendering a final judgment, this Court requested briefing regarding the finality of the
27 Judgment and whether and/or how to apportion Judgment damages for the time period when
28 the conversion was willful and malicious.

1 **II. JURISDICTION.**

2 This Court has constitutional authority to enter a final judgment in this adversary
3 proceeding determining both the amount of the damage claim and that the claim is excepted
4 from discharge. *Deitz v. Ford (In re Deitz)*, 469 B.R. 11, 31-32 (9th Cir. BAP 2012).

5 **III. ISSUE PRECLUSION.**

6 "The classic example of the proper use of issue preclusion in discharge proceeding is
7 when the amount of the debt has been determined by the state court and reduced to judgment."
8 *Sasson v. Sokoloff (In re Sasson)*, 424 F.3d 864, 872 (9th Cir. 2005). State law determines the
9 collateral estoppel effect of state court judgments. *Gayden v. Nourbakhsh (In re Nourbakhsh)*,
10 67 F.3d 798, 800 (9th Cir. 1995). Under California law, issue preclusion requires that: (1) the
11 issue to be precluded from relitigation be identical to that decided in the prior proceeding;
12 (2) the issue have been actually litigated; (3) the issue have been necessarily decided; (4) the
13 decision on the issue be final and on the merits; and (5) the party be the same as, or in privity
14 with, the party in the prior proceeding. *Younie v. Gonya (In re Younie)*, 211 B.R. 367, 373
15 (9th Cir. BAP 1997). The sixth element is a mandatory "additional" inquiry into whether
16 imposition of issue preclusion in the particular setting would be fair and consistent with sound
17 public policy. *Alonso v. Summerville (In re Summerville)*, 361 B.R. 133, 143 (9th Cir. BAP
18 2007).

19 Under California law, a trial court judgment is not final pending appeal. Cal. Code Civ.
20 Proc. § 1049; *Kuykendall v. State Bd. of Equalization*, 22 Cal. App. 4th 1194, 1207 (1994).
21 Here, the Judgment is final, but the order denying relief from the default Judgment ("Default
22 Order") is not. Time remains to appeal the Default Order. The State Court entered its minute
23 order denying Dr. Lee's motion for relief from the default judgment on May 27, 2011, but no
24 one prepared a written order. Therefore, May 27, 2011 was the date of the Default Order. See
25 Cal. Rule of Ct. 8.104 (the date of the order is the date of the entry of the minute order into the
26 permanent minutes). This order was appealable for 180 days after May 27, 2011 or until
27 September 24, 2011. Cal. Rule of Ct. 8.104(c) and (e). Section 362(a)(1) of the Bankruptcy
28 Code stayed the appeal of this Default Order as a result of the filing of Dr. Lee's chapter 7

1 petition on July 21, 2011. *See, e.g., Parker v. Bain (In re Parker)*, 68 F.3d 1131, 1135-36
2 (9th Cir. 1995). Thus, Dr. Lee's time to appeal has not run, California's deadlines for filing of a
3 motion for a new trial or a notice of appeal were tolled, which thereby precluded the Default
4 Order from becoming final. 11 U.S.C. § 108(c); *Wright v. Turner (In re Turner)*, 204 B.R.
5 988, 992 (9th Cir. BAP 1997).

6 The Court concludes that issue preclusion is inapplicable here either because the lack of
7 finality of the Default Order was sufficient to render the Judgment not final, because the
8 required consideration of public policy and fairness requires that it be so, or because the
9 State Court awarded damages for a range of conduct that is broader than the conduct giving
10 rise to a nondischargeable claim.

11 California law allows a party to seek relief from an otherwise final default judgment.
12 Public policy clearly ties the motion for relief from default to the default judgment such that
13 finality as to both should be required for issue preclusion in most, if not all, cases. And given
14 the limited evidence and the questionable math underlying the damages calculations here, that
15 is particularly true. *See, e.g., Newsom v. Moore (In re Moore)*, 186 B.R. 962, 971 (Bankr. N.D.
16 Cal. 1995) (a default judgment is entitled to preclusive effect where it is regular and valid).

17 Further, reasonable doubts as to what the prior court decided in the Judgment must be
18 decided against the party seeking issue preclusion. *Kelly v. Okoye (In re Kelly)*, 182 B.R. 255,
19 258 (9th Cir. BAP 1995). Here, with the exception of Mr. Larabee's declaration as to
20 attorneys' fees and possibly punitive damages, Allen-Slattey provided no damages evidence to
21 the State Court. As the Judgment awards special and general damages in an amount in excess
22 of the Section 425.11 Statement and without explanation, this is of further concern. And
23 finally, as discussed below, the Section 425.11 Statement improperly requested emotional
24 distress damages for an entity. In short, the Court cannot determine how the State Court
25 calculated its damages award. Public policy considerations bar a rubber stamp of the Judgment
26 until the Default Order becomes final.

1 And finally, at most, the Judgment is an indicator of possible damages. It relates to
2 damages for the entirety of the acts and time period of conversion. This Court found only a
3 portion of Dr. Lee's acts of conversion to be nondischargeable.

4 **IV. DAMAGES.**

5 Having determined that a portion of Dr. Lee's acts of conversion give rise to a
6 nondischargeable claim, and that the Judgment does not preclusively decide the matter, the
7 Court must quantify the resulting nondischargeable damages by reference to applicable state
8 law. *Cohen v. De la Cruz*, 523 U.S. 213, 223 (1998) (discharge exception applies to all
9 liability arising on account of a debtor's fraudulent conduct, including treble damages and
10 attorneys' fees and costs under state law); *Fry v. Dinan (In re Dinan)*, 448 B.R. 775, 782
11 (9th Cir. BAP 2011) (discharge exception "applies to all liability arising on account of a
12 debtor's fraudulent conduct"); *Bertola v. N. Wis. Prod. Co. (In re Bertola)*, 317 B.R. 95, 99-100
13 (9th Cir. BAP 2004) (attorneys' fees included in a nondischargeability award when they were
14 recoverable under state statute).

15 California Civil Code § 3336 provides that damages for a conversion claim are the fair
16 market value of the property plus interest or an amount sufficient to compensate for damages
17 proximately caused by the conversion that could not be avoided through reasonably prudent
18 efforts of the plaintiff and fair compensation for time and money spent in pursuit of the
19 property. Here, Allen-Slattery presented only limited evidence regarding its damages. In its
20 brief on the issue, it merely argued that damages from the state court default judgment should
21 be pro-rated to exclude the number of days where Dr. Lee did not have a malicious and
22 wrongful intent. Given that the Judgment does not have preclusive effect, and that, in any
23 case, damages for conversion are not based under California law on the number of days of
24 conversion, the Court declines to follow Allen-Slattery's reasoning.

25 The fair market value of the box of files itself is minimal, and the Court will not award
26 damages on this basis.

1 Allen-Slattry requested damages for reputational harm but provided no evidence in this
2 regard. In the absence of such evidence, the Court will not make such an award.⁵

3 As to fair compensation for time and money spent in pursuit of the Kelly File, Allen-
4 Slattry's attorney's declaration in support of the Judgment states that Allen-Slattry paid
5 \$5,000 in attorneys' fees, but owed more due to a contingent fee agreement. While the
6 declaration is far from clear, it appears that fees of \$5,000 were incurred prior to return of the
7 file and that fees exceeding \$10,000, the amount in the Judgment, were anticipated in the
8 collection process. Due to the shift after \$5,000 from hourly fees to a contingent fee recovery,
9 the Court is somewhat stymied. But the Court will honor the evidence of a contingent fee
10 agreement and will not award additional fees beyond the \$5,000. This is also consistent with
11 Cal. Civ. Code § 3336 which allows recovery of costs of obtaining return of the converted
12 property – not costs of collection of damages.⁶

13 Allen-Slattry is also entitled to \$632 in costs.

14 Allen-Slattry also requested \$15,000 in punitive damages. California law permits an
15 award of exemplary damages when the defendant is guilty of "oppression, fraud or malice."
16 Cal. Civ. Code § 3294(a). Because the Court found willfulness and malice in relation to the
17 conversion, Allen-Slattry is entitled to request exemplary damages under Cal. Civ. Code

18 _____
19 ⁵ If Allen-Slattry has such evidence it must file a document outlining such evidence and
20 explaining why it did not present such evidence earlier within 14 days of this Memorandum
21 Decision. The Court affords Allen-Slattry this opportunity given the unusual procedural
22 progress of this matter, but may, notwithstanding, determine that an additional opportunity for
23 submission of evidence is inappropriate. Dr. Lee should file no response until ordered by the
24 Court, but will have an opportunity to be heard both on the question of whether additional
25 damages evidence can be considered and, if so, on the damages issue itself.

26 ⁶ If the Plaintiff has fee records supporting recovery of a greater quantum of costs in
27 connection with recovery of the Kelly File, then, once again, Plaintiff must file a document
28 within 14 days of the Memorandum Decision that outlines such evidence and explains why it
was not provided earlier. The Court affords Allen-Slattry this opportunity given the unusual
procedural progress of this matter, but may, notwithstanding, determine that an additional
opportunity for submission of evidence is inappropriate. Dr. Lee should file no response until
ordered by the Court, but will have an opportunity to be heard both on the question of whether
additional damages evidence can be considered and, if so, on the damages issue itself.

1 § 3294(a). *Leonard v. Guillory (In re Guillory)*, 285 B.R. at 307 (Bankr. C.D. Cal. 2002)
2 (citing *Sunclipse, Inc. v. Butcher (In re Butcher)*, 200 B.R. 675, 680 (Bankr. C.D. Cal. 1996)).

3 Under California law, the amount of punitive damages must be based on the following:
4 "(1) the reprehensibility of the defendant's actions; (2) the amount of compensatory damages,
5 although there is no fixed ratio for determining whether punitive damages are reasonable in
6 relation to actual damages; and (3) the defendant's financial condition – the wealthier the
7 wrongdoer, the larger the punitive damage award must be to meet the goals of punishment and
8 deterrence." *Guillory*, 285 B.R. at 316.

9 As to reprehensibility, Dr. Lee did not commit any physical harm to any member of
10 Allen-Slattery and there currently is no evidence of any damage to its reputation; nevertheless,
11 Dr. Lee contacted Mr. Kelly and maliciously and without reasonable justification delayed
12 return of the Kelly File. As Dr. Lee is currently in bankruptcy, Dr. Lee currently has a "low
13 net worth but good future earning potential"⁷ as a doctor. Given compensatory damages of
14 approximately \$5,632 and having considered the factors in light of the evidence at trial, and, in
15 particular, Dr. Lee's clear animus and failure to recognize the inappropriateness of her conduct,
16 the Court awards Allen-Slattery punitive damages in the amount of \$10,000.⁸

17 Allen-Slattery also requested \$15,000 in emotional distress damages, which the Court
18 denies. "Multiple federal courts, each applying state law, have found that a corporate (non-
19 human) plaintiff cannot suffer emotional distress because 'a corporation lacks the cognizant
20 ability to experience emotions.'" *HM Hotel Props. v. Peerless Indem. Ins. Co.*, 2012 U.S.
21 Dist. LEXIS 83876, at *7 (D. Ariz. June 18, 2012) (citing, e.g., *FDIC v. Hulsey*, 22 F.3d 1472,
22 1489 (10th Cir. 1994); *Nicor Int'l. Corp. v. El Paso Corp.*, 292 F.Supp.2d 1357, 1378 (S.D.
23 Fla. 2003). This is equally true of a law firm.

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26 ⁷ *Klause v. Thomsons (In re Klause)*, 181 B.R. 487, 494 (Bankr. C.D. Cal. 1995) (considering
27 punitive damages in the bankruptcy context).

28 ⁸ The Court will reconsider this calculation if it ultimately awards a higher damages
recovery.

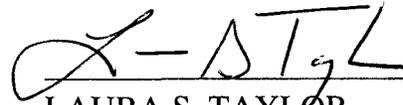
1 Finally, Plaintiff requests fees in connection with this nondischargeability action. There
2 is no right to attorneys' fees incurred in pursuing a nondischargeability action. *See Itule v.*
3 *Metlease, Inc. (In re Itule)*, 114 B.R. 206, 213 (9th Cir. BAP 1990). Further, this action is not
4 a type of proceeding where the California law involving attorneys' fees allows fee recovery.
5 And finally, there is no contractual basis for fee recovery here. The Court, thus, denies this
6 request for post-bankruptcy fee recovery.

7 For the foregoing reasons, the Court finds damages of \$15,632 to Allen-Slattery to be
8 nondischargeable.

9 **V. CONCLUSION.**

10 This Memorandum Decision constitutes the Court's findings of facts and conclusions of
11 law under Federal Rule of Bankruptcy Procedure 7052(a). Plaintiff must either request an
12 opportunity to provide additional evidence on reputational damages and fees or lodge a
13 judgment consistent with this decision within 14 days.

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15 Dated: September 26, 2012

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18 LAURA S. TAYLOR
19 United States Bankruptcy Court
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