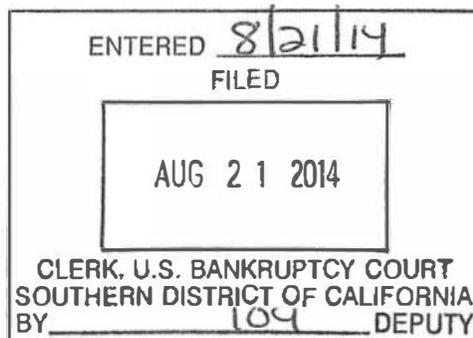


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WRITTEN DECISION – NOT FOR PUBLICATION



UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF CALIFORNIA

In re: ) Bankruptcy Case No. 13-07239-CL7  
)  
SEAN M. GUINN, ) Adversary Proceeding No. 13-90232-CL  
)  
Debtor, ) Chapter 7  
)  
\_\_\_\_\_)  
)  
ERNEST R. VARGAS, ) MEMORANDUM DECISION AND ORDER  
) GRANTING PARTIAL  
Vargas, ) NONDISCHARGEABILITY  
)  
v. )  
) Judge: Christopher B. Latham  
SEAN M. GUINN, )  
)  
Guinn. )  
\_\_\_\_\_)

1 **MEMORANDUM DECISION AND ORDER GRANTING**

2 **PARTIAL NONDISCHARGEABILITY**

3  
4 This dispute arises from a failed business based on a written agreement between Plaintiff Ernest  
5 Vargas and Debtor-Defendant Sean Guinn. Vargas contributed all of the investment capital, \$30,000,  
6 while Guinn provided sweat equity. After the business failed, Vargas sued Guinn for breach of  
7 contract in state court and obtained a default judgment against him. Vargas now seeks to hold that  
8 debt nondischargeable under §§ 523(a)(2)(A) and (a)(4). For the following reasons, the court finds  
9 that that Vargas is entitled to partial judgment in the amount of \$7,163.72, plus costs and interest, to be  
10 excluded from Guinn’s discharge.

11  
12 **I. JURISDICTION AND VENUE**

13 The court has jurisdiction over this adversary proceeding under 28 U.S.C. §§ 1334(b) and  
14 157(b)(2)(I). Venue is proper under 28 U.S.C § 1409(a).

15  
16 **II. FACTUAL BACKGROUND AND FINDINGS**

17 Guinn and Vargas are cousins. But before 2008, they had only minimal contact with one  
18 another. Guinn had recently graduated high school and lacked any formal business experience or  
19 education. Vargas was on the cusp of retirement. When Guinn came up with an idea for a business, a  
20 mutual relative proposed an initial meeting between the two cousins.

21 Vargas testified that Guinn presented him with a written agreement (the “Agreement”) to form  
22 a limited liability company (“LLC”) – Calaspherian Gaming – to sell trading cards and miniature  
23 figurines. The Agreement provided in its entirety:

24 **Calaspherian Gaming**  
25 **Miniatures and Trading Cards**

26 We, Ernest Vargas and Sean Guinn, agree to the terms as follows:

- 27 1. The company Calaspherian Gaming, a limited liability company, will be co-owned  
28 by Ernest Vargas and Sean Guinn.  
2. The start-up money will total thirty thousand \$30,000 dollars, which will be given by  
Ernest Vargas to the company.

- 1 3. When the net profits have been determined each month, they will be split into two  
2 parts.
  - 3 a. Ernest Vargas will receive half of the profits each month.
  - 4 b. Sean Guinn will receive half of the profits each month.
- 5 4. After a two year period Ernest Vargas and Sean Guinn will determine the goal of the  
6 company for future business.
  - 7 a. If it is determined to sell the company, fifty 50% percent of the sale will go to  
8 Ernest Vargas and fifty 50% percent of the sale will go to Sean Guinn.
  - 9 b. If it is determined that growth of the company is necessary Ernest Vargas and Sean  
10 Guinn will be responsible for all the costs associated with that.
- 11 5. All ideas for major changes to the company will be sent either via phone, or in  
12 writing to each of the owners.
  - 13 a. If any time critical issues shall arise, Sean Guinn will have total authority to make  
14 decisions without Ernest Vargas.<sup>1</sup>

15 Vargas denied having any involvement with drafting the agreement's terms. He testified that  
16 Guinn unilaterally prepared the Agreement and presented it to him at their first meeting on March 12,  
17 2008. But Guinn credibly recounted that Vargas had actually named the company, which appears at  
18 the top of the only version of the Agreement the parties committed to writing. This fact, coupled with  
19 Guinn's persuasive testimony, strongly suggests that the parties discussed terms of an eventual  
20 agreement sometime before the first meeting. Vargas's testimony on this point, by contrast, is not  
21 credible.

22 Vargas and Guinn executed the Agreement at that first meeting. The parties understood that  
23 Vargas would provide the \$30,000 start up capital by check, while Guinn would operate the business.  
24 Although Guinn and Vargas included express profit sharing provisions, they neglected to discuss  
25 wages or allowances for Guinn's personal expenses if the business did not turn a profit. Vargas  
26 provided the check on March 12, 2008, and Guinn deposited the start up capital into his personal bank  
27 account the same day. His account previously contained just \$42.15. He did not open a separate  
28 account for the business. Guinn stated simply that he "didn't think it mattered."<sup>2</sup>

Guinn planned to run the business in Bakersfield and to that end entered into a commercial  
lease there on April 1, 2008. He did not consult Vargas before signing the three-year lease for  
approximately 3,000 square feet of commercial space. He did, however, include a fellow gamer, Jason

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<sup>1</sup> Pl.'s Ex. 1.

<sup>2</sup> Trial Tr., 59:25, May 22, 2014, ECF No. 25.

1 Gillet, as co-signer on the lease. Once in Bakersfield, Guinn unilaterally abridged the business's name  
2 to "Cala Gaming", although he asserts he informed Vargas of this change. Guinn never registered the  
3 company as an LLC. But he did file a fictitious business name statement in Kern County listing Jason  
4 Gillet as his partner.

5 The company sold its merchandise in store and online via Guinn's PayPal account. Guinn  
6 maintained unorthodox accounting and bookkeeping practices. He used a point of sale ("POS")  
7 service, which he described as a computer system for cataloging inventory and tracking sales. But the  
8 POS system hardware vanished between the time Guinn shuttered the business and returned to vacate  
9 the premises. As such, the court does not have the POS data in the record. To make matters worse,  
10 Guinn neglected to retain receipts, purchase orders or invoices. Instead, he relied on his personal  
11 Comerica bank account and PayPal statements for record keeping. He entered this data into an  
12 accounting software program to generate ledgers for the PayPal and Comerica bank accounts, which he  
13 then compiled to produce a profit and loss statement.

14 The company did not flourish. During its short tenure, Cala Gaming generated just over \$8,000  
15 in revenue, while Guinn spent \$17,950 on inventory and fees to sell his merchandise online. He also  
16 paid for fixed overhead and capital improvements to the store's interior to display merchandise and  
17 create the desired ambience for customers. Guinn's sparse accounting and the missing POS data  
18 complicate the court's task in tracing these funds. For instance on April 2, 2008, Guinn cashed a check  
19 for \$4,000 to purchase merchandise at an auction in Los Angeles. But he could not produce a written  
20 record of the transaction. Nor could he explain the purpose and use of approximately \$3,000 in checks  
21 and expenses referenced in his records. In fact, Guinn's general ledger denominates these line items as  
22 "unidentified." And he could not differentiate business fuel expenses from personal ones. Other than  
23 the general ledger created through the POS system and bank statements, only three receipts and  
24 invoices survived.

25 The court acknowledges that these heavy losses occurred despite Guinn's diligent efforts; he  
26 worked at least ten hours per day, six days a week. But having no other income, Guinn used the  
27 partnership fund to cover his living expenses. In total, he spent over \$7,000 on his apartment rent,  
28 food, transportation and other personal needs. Guinn argued that some of these expenses benefitted the

1 business, such as the gasoline for the trip to the auction in Los Angeles. Moreover, he would  
2 otherwise have had to hire an employee to run the store while he worked for a paid wage elsewhere. In  
3 response to Vargas's contention that he felt entitled to use the partnership funds, he retorted, "I needed  
4 to eat."<sup>3</sup>

5       Between March and June 2008, Guinn depleted the partnership fund. Monthly revenues  
6 averaged \$2,000, while the lease payment alone totaled \$2,100. By mid-April, Guinn's personal  
7 account balance had fallen below \$2,000. Meanwhile, he defaulted on the commercial lease. By June  
8 2008, the start up capital was gone, and the business had failed. Guinn then notified Vargas of the  
9 financial struggle and his intention to return to San Diego. He shuttered the store later that month.

10       Guinn returned to San Diego shortly thereafter. After unsuccessfully attempting to reach  
11 Guinn, Vargas served him with legal process. This prompted Guinn to mail Vargas a letter promising  
12 to repay the \$30,000 in \$750 installments once he obtained employment. The letter also enclosed a  
13 \$300 check. In the letter, Guinn characterized the \$30,000 as a loan. He failed to make any further  
14 installment payments, although he eventually found work as an engineer.

15       On March 25, 2009, Vargas sued Guinn in San Diego County Superior Court for breach of  
16 contract. Vargas obtained a \$34,101 default judgment on March 11, 2010, representing \$29,500 in  
17 principal damages, \$4,195.50 in prejudgment interest and \$405.50 in costs. In addition, the  
18 commercial landlord won a \$75,000 judgment against Guinn and Jason Gillet in May 2011. The  
19 landlord also enlisted the San Diego County Sheriff to garnish Guinn's wages to satisfy the judgment,  
20 which had grown to \$90,471.99 by June 3, 2013.

21       Guinn filed a Chapter 7 petition on July 16, 2013. Vargas brought the instant adversary  
22 proceeding on August 28, 2013. In this action, Vargas essentially argues that Guinn used the \$30,000  
23 fund for his personal expenses rather than to operate the business. He also contends that Guinn refused  
24 to communicate with him during the business's short life and failed to account for several unauthorized  
25 expenditures.

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<sup>3</sup> Trial. Tr., 129:11, ECF No. 25.



1 proceeding. Fourth, the decision in the former proceeding must be final and on the  
2 merits. Finally, the party against whom preclusion is sought must be the same as, or in  
3 privity with, the party to the former proceeding.

4 *Pemstein v. Pemstein (In re Pemstein)*, 492 B.R. 274, 281 (B.A.P. 9th Cir. 2013) (citation omitted).  
5 Even if these factors are present, the court must still look to the “public policies underlying the  
6 doctrine before concluding that collateral estoppel should be applied in a particular setting.” *Lucido v.*  
7 *Sup. Ct.*, 51 Cal. 3d 335, 342-43 (1990). In the nondischargeability context, “[r]easonable doubts  
8 about what was decided in the prior action should be resolved against the party seeking to assert  
9 preclusion.” *Honkanen v. Hopper (In re Honkanen)*, 446 B.R. 373, 382 (B.A.P. 9th Cir. 2011).

10 Here, the parties to both proceedings are the same. And the default judgment qualifies as a  
11 final order on the merits because Guinn clearly had notice of the state court action. *See Baldwin v.*  
12 *Kilpatrick (In re Baldwin)*, 249 F.3d 912, 918-19 (9th Cir. 2001). But the court cannot conclude that  
13 the issues addressed in the state court action are identical to those presented here. Notably, Vargas  
14 filed his earlier lawsuit using a California Judicial Council form, which did not include any specific  
15 allegations beyond the existence of a contract, a corresponding breach and damages. Although the  
16 judgment indicates the court relied on a declaration, neither party produced it in this case. And the  
17 record contains no further information regarding that action. Thus, the court cannot ascertain whether  
18 the Superior Court considered the \$30,000 to be loan proceeds or investment capital. Further the  
19 judgment does not contain a finding with respect to fraud or Guinn’s intent in breaching the contract.  
20 Since the court has significant doubts about exactly what the Superior Court decided, it will not give  
21 the state court judgment preclusive effect in this case.

22 **B. First Claim for Relief Under § 523(a)(2)(A)**

23 Vargas claims that Guinn fraudulently induced him to provide the \$30,000 for the business.  
24 Section 523(a)(2)(A) renders a debt nondischargeable if it has been “obtained by ... false pretenses, a  
25 false representation, or actual fraud . . .” This exception to discharge requires that the fraud at issue be  
26 an “actual fraud, and not constructive fraud or fraud implied in law.” *Tsurukawa v. Nikon Precision,*  
27 *Inc. (In re Tsurukawa)*, 287 B.R. 515, 520 (B.A.P. 9th Cir. 2002). To prevail, the plaintiff must show  
28 the elements of common law fraud: “1) misrepresentation of a material fact; 2) knowledge of the

1 falsity of the representation; 3) intent to induce reliance; 4) justifiable reliance; and 5) damages.” *Id.* at  
2 524; *see also Ghomeshi v. Sabban (In re Sabban)*, 600 F.3d 1219, 1222 (9th Cir. 2010).

3 Vargas alleges that the Guinn misrepresented that he would use the start up capital solely for  
4 business purposes. Vargas contends that this promise was knowingly false because Guinn immediately  
5 commingled the business capital with his personal funds and used it for personal needs. He also points  
6 to the fact that Guinn burned through the \$30,000 in just over four months. Alternatively, Vargas  
7 asserts that Guinn, shortly after accepting Vargas’s check, realized the business would fail and seized  
8 the first opportunity to use the funds for his personal benefit.

9 The court finds that Vargas has failed to sustain his burden of proof that Guinn either made a  
10 misrepresentation or had knowledge of its falsity when it was made. Further, Vargas has not proven  
11 that Guinn made the promise with intent deceive or induce reliance. Vargas notably omitted any  
12 allegation, and presented no proof, that Guinn knew or should have known that the business would fail.  
13 Moreover, the evidence at trial clearly established that Guinn lacked intent to use the entire start up  
14 fund for personal expenses when he signed the Agreement. Indeed, he worked long hours diligently  
15 running the store. Guinn testified that his personal expenses had necessarily to be covered so that he  
16 could devote his working week to operating the store. The court credits his testimony and accepts that  
17 Guinn directed his efforts with the desire for the business to succeed.

18 Further, Vargas has failed to prove that he justifiably relied upon Guinn’s representations.  
19 When the parties signed the agreement, they both expected Guinn to work full-time at the store.  
20 Unfortunately, they neglected to discuss wages or compensation for his labor if the business was not  
21 profitable. But the evidence established that Vargas must have strongly suspected Guinn lacked  
22 another source of funds for personal expenses. Thus, he could not have justifiably believed that Guinn  
23 would be able to sustain himself and run the business without using the partnership funds.

24 At trial, Vargas also asserted that Guinn never intended to fulfill the June 2008 promise to  
25 repay Vargas. According to Vargas, Guinn made this promise after the business failed and while  
26 lacking sufficient means to make payments. He adverted to Guinn’s failure to make payments despite  
27 obtaining employment. Even so, Vargas failed to show that Guinn made a material misrepresentation  
28 at the time he sent the letter or that Vargas justifiably relied on it. In fact, the evidence established the

1 opposite. Vargas never responded to the letter and instead continued to pursue legal process against  
2 Guinn. For all of these reasons, Vargas has failed to sustain his burden of proof under § 523(a)(2).

3 **C. Second Claim Under § 523(a)(4)**

4 Vargas also submits that the debt is nondischargeable under § 523(a)(4). A debt is  
5 nondischargeable under § 523(a)(4) if: “1) an express trust existed, 2) the debt was caused by fraud or  
6 defalcation, and 3) the debtor acted as a fiduciary to the creditor at the time the debt was created.”  
7 *Otto v. Niles (In re Niles)*, 106 F.3d 1456, 1459 (9th Cir. 1997); *Maxwell v. Maxwell (In re Maxwell)*,  
8 509 B.R. 286, 289 (Bankr. E.D. Cal. 2014). The creditor bears the burden to prove by a preponderance  
9 of evidence that the debtor “was acting in a fiduciary capacity and that, while doing so, he committed  
10 defalcation.” *Pemstein v. Pemstein (In re Pemstein)*, 492 B.R. 274, 280 (B.A.P. 9th Cir. 2013) (citing  
11 *In re Niles*, 106 F.3d at 1462). At that point, the burden shifts to the debtor to render an accounting.  
12 *Id.*

13 “The fiduciary relationship must be one arising from an express or technical trust that was  
14 imposed before and without reference to the wrongdoing that caused the debt.” *Ragsdale v. Haller*,  
15 780 F.2d 794, 795 (9th Cir. 1986). In California, a “partner has a duty to hold as trustee any ‘property,  
16 profit, or benefit derived’ from partnership business or use of partnership property.” *In re Pemstein*,  
17 492 B.R. at 281-82 (quoting Cal. Corp. Code § 16404(b)(1)). As such, “California partners are  
18 fiduciaries within the meaning of § 523(a)(4).” *Haller*, 780 F.2d at 796; *In re Pemstein*, 492 B.R. at  
19 282.

20 The second element requires the court to assess whether a defalcation occurred. “Defalcation  
21 itself has two elements: a breach of a fiduciary duty and wrongful intent.” *In re Maxwell*, 509 B.R. at  
22 289. Breach of fiduciary duty entails “misappropriation of trust funds or money held in any fiduciary  
23 capacity [or the] failure to properly account for such funds.” *In re Niles*, 106 F.3d at 1460 (quoting  
24 *Lewis*, 97 F.3d at 1186). Personal unauthorized use of corporate funds clearly qualifies under this  
25 rubric. *See Nahman v. Jacks (In re Jacks)*, 266 B.R. 728, 737 (B.A.P. 9th Cir. 2001). Further, breach  
26 of fiduciary duty includes “wrongfully taking trust property, engaging in self-dealing with trust  
27 property for [the fiduciary’s] own profit, and failing to provide a full accounting.” *Tomasi v. Savannah*  
28

1 *N. Denoce Trust (In re Tomasi)*, No. CC-12-1401-KiTAD, 2013 Bankr. LEXIS 4596 at 33 (B.A.P. 9th  
2 Cir. Aug. 15, 2013); *In re Pemstein* 492 B.R. at 282-83.

3         Additionally, defalcation requires a culpable state of mind “involving knowledge of, or gross  
4 recklessness in respect to, the improper nature of the relevant fiduciary behavior.” *Bullock v.*  
5 *Bankchampaign, N.A.*, --- U.S. ----, 133 S. Ct. 1754, 1757 (2013). Specifically, the *Bullock* Court  
6 stated, “Where actual knowledge of wrongdoing is lacking, we consider conduct as equivalent if the  
7 fiduciary ‘consciously disregards’ (or is willfully blind to) ‘a substantial and unjustifiable risk’ that his  
8 conduct will turn out to violate a fiduciary duty.” *Id.* at 1759 (quoting ALI, Model Penal Code  
9 § 2.02(2)(c), p. 226 (1985)). Further, the risk “must be of such a nature and degree that, considering  
10 the nature and purpose of the actor's conduct and the circumstances known to him, its disregard  
11 involves a gross deviation from the standard of conduct that a law-abiding person would observe in the  
12 actor's situation.” *Id.*

13         Here, Guinn does not seriously dispute the first and third elements. In fact, he admits that he  
14 and Vargas were partners at all relevant times. These two elements are therefore satisfied. The  
15 parties’ primary disagreement lies with whether Guinn’s dissipation of the partnership fund constituted  
16 defalcation. Vargas’s essential argument is that Guinn used the business funds for his own personal  
17 gain and failed to account to Vargas for them. He submits that Guinn’s recourse to the funds for food  
18 purchases, gasoline, car insurance and housing costs clearly demonstrates Guinn’s intent to violate his  
19 fiduciary duties.

20         The evidence at trial established that the business agreement, despite being hopelessly vague,  
21 did not contemplate Guinn’s use of the funds during business’s the initial phase. Nor did the parties  
22 discuss Guinn’s right to use partnership funds for personal expenses if the business did not turn a  
23 profit. Thus, Guinn knew or should have known that his use of partnership assets for his sole benefit  
24 would violate his fiduciary obligations to Vargas.

25         The court finds Guinn’s testimony credible and accepts his rendition of the facts. Guinn admits  
26 to having spent \$7,163.72 on personal expenses not related to the business. This figure includes the  
27 amount Guinn spent from his Comerica and PayPal accounts on food, gas, his personal car insurance  
28

1 and his personal rent. Specifically, the court arrived at this number by tallying expenditures from  
2 Guinn's ledgers in the following categories:

- 3           • Personal/Miscellaneous:       \$2,793.73
- 4           • Wallet:                               \$492.63
- 5           • Clothing:                             \$16.09
- 6           • Food/Groceries:                   \$1,106.45
- 7           • Gasoline/Travel:                   \$1,166.82
- 8           • Personal Insurance:               \$488.00

9  
10 Additionally, the court must add \$1,100 for Guinn's March 2008 personal rent that he erroneously  
11 delineated as "Cost of Goods Sold" on the Comerica account ledger.

12           Although Guinn argued that he incurred some of the fuel expenses for business purposes, he  
13 could not differentiate between personal and business use. The court finds that Debtor failed to  
14 properly segregate personal from business fuel costs in conscious disregard of the risk that it would  
15 violate his fiduciary duties. The court therefore excludes the entire \$7,163.72 spent on personal  
16 expenses from Debtor's discharge under § 523(a)(4).

17           Vargas has not sustained his burden, however, with respect to the unidentified expenses. He  
18 did establish that he entrusted Guinn with \$30,000 for the business and that Guinn failed to adequately  
19 account for the expenses marked as unidentified. Guinn's accounting method was unorthodox, at best.  
20 And the court does not have the benefit of examining the POS system data because Guinn left the  
21 system in the store when he closed the business.

22           But Vargas did not demonstrate that Guinn acted with wrongful intent or gross recklessness.  
23 Rather, the trial testimony revealed that Guinn worked industriously with the company's best interests  
24 in mind. For instance, Guinn adequately explained that the \$4,000 check he cashed went directly to  
25 purchasing inventory for the business. The court cannot find that Guinn's failure to meticulously  
26 catalogue each business expenditure, while possibly negligent, rises to the level of culpability required  
27 for § 523(a)(4) liability.

1 Finally, the court concludes that Guinn has adequately accounted for the remaining partnership  
2 funds. Though Cala Gaming failed under Guinn's stewardship, the great majority of the financial  
3 transactions Guinn entered into had a direct business purpose and thus did not violate his fiduciary  
4 duties.

#### 6 IV. AMOUNT EXCLUDED FROM DISCHARGE

7 Having determined that Guinn committed a defalcation, the court must calculate the proper  
8 amount to exclude from Debtor's discharge.<sup>4</sup> The nondischargeable debt includes the principal amount  
9 and any ancillary liability, including interest and costs. *See In re Niles*, 106 F.3d at 1463; *see also*  
10 *Cohen v. de la Cruz*, 523 U.S. 213, 223 (1998) (holding that all liability arising from nondischargeable  
11 debt, including treble damages and award of attorney's fees and costs, should be excluded from the  
12 debtor's discharge.).

13 The court determines that \$7,163.72 of the total amount spent by Guinn is nondischargeable  
14 under § 523(a)(4). Because the predicate liability arose under California state law, California law  
15 governs an award of prejudgment interest. *See In re Niles*, 106 F.3d at 1463. "Under California law,  
16 prejudgment interest is a matter of right where there is a vested right to recover 'damages certain' as of  
17 a particular day." *Id.* (quoting Cal. Civ. Code § 3287(a)). The court will accordingly apply  
18 California's legal rate of 10% to the offensive transfers from the dates they occurred until judgment in  
19 this case. Because this action arises under a federal statute, however, postjudgment interest will accrue  
20 at the federal rate. *See* 28 U.S.C. § 1961.

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21  
22 <sup>4</sup> It is ordinarily inappropriate for a bankruptcy court to enter a money judgment in conjunction with a  
23 nondischargeability order if a corresponding state court judgment exists. *See Gertsch v. Johnson &*  
24 *Johnson, Fin. Corp. (In re Gertsch)*, 237 B.R. 160, 171-72 (B.A.P. 9th Cir. 1999). This enhances the  
25 risk of giving "the plaintiff a windfall, by rolling post-judgment interest into the principal of the new  
26 federal money judgment, on which post-judgment interest runs, transmuting the state court post-  
27 judgment simple interest into compound interest." *Id.* at 172. Thus, the BAP concluded, "Where the  
28 debt at issue has been reduced to judgment, the bankruptcy court's judgment in a nondischargeability  
action should merely declare the prior judgment nondischargeable (or not) in whole or in part." *Id.*  
Although the court has authority to enter a money judgment, it should not "except under unusual  
circumstances." *Sasson v. Sokoloff (In re Sasson)*, 424 F.3d 864, 874 (9th Cir. 2005) (quoting *Local*  
*Loan Co. v. Hunt*, 292 U.S. 234, 241 (1934)). Here, the court is not giving preclusive effect to the state  
court judgment. Moreover, the court only finds part of the sum prayed for nondischargeable. A  
separate judgment is therefore appropriate.

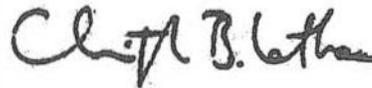
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V. CONCLUSION

For the foregoing reasons, the court finds that Guinn is entitled to judgment on Vargas's § 523(a)(2) claim. But the court further concludes that Guinn committed a defalcation within the meaning of § 523(a)(4). The court therefore finds Vargas's debt partially nondischargeable in the principal amount of \$7,163.72, plus simple interest calculated at the California prejudgment rate of 10% from the dates of the transfers to the date of this judgment. Postjudgment, interest shall accrue at the federal rate. Finally, Vargas is awarded his costs of suit. The court will issue a separate judgment.

IT IS SO ORDERED.

Dated: August 21, 2014



CHRISTOPHER B. LATHAM, JUDGE  
United States Bankruptcy Court

In re Sean M. Guinn, Bk. No. 13-07239-CL7  
Ernest R. Vargas v. Sean M. Guinn, Adv. No. 13-90232-CL

**CERTIFICATE OF MAILING**

The undersigned, a regularly appointed and qualified clerk in the office of the United States Bankruptcy Court for the Southern District of California, at San Diego, hereby certifies that a true copy of the attached document, to wit:

**MEMORANDUM DECISION AND ORDER  
GRANTING PARTIAL NONDISCHARGEABILITY**

was enclosed in a sealed envelope bearing the lawful frank of the bankruptcy judges and mailed via first class mail to the parties at their respective addresses listed below:

Robert H. Lynn  
2534 State Street, #308  
San Diego CA 92101  
(Attorney for Plaintiff)

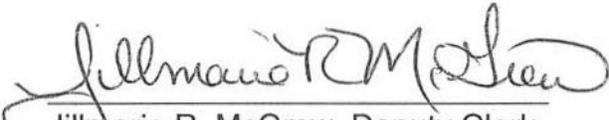
Ernest R. Vargas  
4230 Keeler Avenue  
San Diego CA 92113  
(Plaintiff)

Kathryn U. Tokarska  
Tokarska Law Center  
185 West "F" Street, Suite 100  
San Diego CA 92101  
(Attorney for Defendant)

Sean M. Guinn  
5123 Long Branch  
San Diego CA 92107  
(Defendant)

Sean M. Guinn  
4303 Banning Street  
San Diego CA 92107  
(Defendant)

Said envelope(s) containing such document was deposited by me in the City of San Diego, in said District on August 21, 2014.

  
Jillmarie R. McGrew, Deputy Clerk