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CLERK, U.S. BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY 128 DEPUTY

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

In re EDWARD EARL PETTINGILL, Debtor.	Bankruptcy No. 04-05772-JM7 Adversary No. 04-90427
IVAN BODGE, Plaintiff, v. EDWARD EARL PETTINGILL, Defendant.	MEMORANDUM DECISION

The plaintiff, Ivan Bodge ("Plaintiff"), brought a complaint for nondischargeability of a debt pursuant to Bankruptcy Code Section 523(a)(6). He asserted that the defendant, Edward Earl Pettingill ("Defendant"), engaged in stalking behavior that led to the Defendant being charged with a crime pursuant to Cal. Penal Code §646.9.

The Defendant pleaded "Guilty/No Contest" to a felony stalking charge in September 2003. The Plaintiff then brought a civil action against the Defendant in state court. On November 3, 2003, the state court entered a default judgment ("Judgment") in that action. On

April 26, 2004, the state court denied Defendant's motion to set aside the Judgment.

The Defendant filed for relief under Chapter 7 of the Bankruptcy Code ("Code") on June 29, 2004. The Plaintiff filed his nondischargeability complaint on September 27, 2004, and then on December 6, 2004, the Plaintiff filed a motion for summary judgment ("Motion") contending that the plea to felony stalking, as well as the underlying Judgment, supported a nondischargeability judgment under Code Section 523(a)(6).

Essentially, the Plaintiff's argument was that the Court should give collateral estoppel effect to the criminal plea and the civil Judgment, though he did not specifically use that term. The Defendant did not file written opposition, but he did appear at the hearing to oppose the Motion. The Motion was heard by the Court on January 20, 2005, and taken under submission at that time. The Plaintiff supplemented the record on May 12, 2005, pursuant to the Court's Memorandum Decision filed on May 2, 2005.

The record establishes that the debt in question flows from the Defendant's criminal act under Cal. Penal Code §646.9 for stalking. That statute provides:

> Any person who willfully, maliciously and repeatedly follows or willfully and maliciously harasses another person and who makes a credible threat with intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family is guilty of the crime of stalking.

The Defendant pleaded "Guilty/No Contest" to a felony charge of stalking. The default judgment subsequently obtained by the Plaintiff in the civil action was based on the stalking plea. The Court is satisfied that the admission of felony stalking satisfies the

requirements of Bankruptcy Code Section 523(a)(6). The Plaintiff's motion for summary judgment is GRANTED.

Date: JUN 30 2005

Hon. James W. Meyers
UNITED STATES BANKRUPTCY JUDGE