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7 **UNITED STATES BANKRUPTCY COURT**  
8 **CENTRAL DISTRICT OF CALIFORNIA**  
9 **LOS ANGELES DIVISION**

10  
11 In re:

12 SHANT JOHN MARKARIAN,

13  
14 Debtor.

Case No. 2:19-bk-13111-RK

Chapter 7

**MEMORANDUM DECISION ON DEBTOR'S  
MOTION TO HOLD RESPONDENTS  
MERCHANTS ACQUISITION GROUP, LLC,  
BRUCE JACKMAN AND RICHARD W.  
SNYDER IN CONTEMPT AND ON  
RESPONDENTS' MOTION FOR  
SUMMARY ADJUDICATION OF ISSUES**

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19 This Chapter 7 bankruptcy case came on for trial on April 6 and 7, 2022 before  
20 the undersigned United States Bankruptcy Judge in the contested matter of the motion  
21 of Debtor Shant Markarian ("Markarian") to hold Respondents Merchants Acquisition  
22 Group LLC, Bruce Jackman and Richard W. Snyder ("Respondents") in contempt of  
23 court for violating the discharge injunction in this case. Sevan Gorginian, Law Office of  
24 Seven Gorginian, appeared for Debtor, and Richard W. Snyder, Law Office of Richard  
25 W. Snyder, appeared for Respondents.

26 After the close of evidence, the court stated its tentative ruling that it would find  
27 that Respondents should not be held in contempt and instructed Respondents to lodge  
28 proposed findings of fact and conclusions of law. However, the court did not state a

1 tentative ruling on the renewed motion of Respondents for summary adjudication of  
2 issues, which was orally renewed at trial. On May 6, 2022, Respondents lodged their  
3 proposed findings of fact and conclusions of law and their post-trial brief in support of  
4 their renewed motion for summary adjudication. On May 19, 2022, Markarian filed his  
5 post-trial brief in opposition to Respondent's post-trial brief in support of their renewed  
6 motion for summary adjudication. On May 27, 2022, Respondents filed their reply brief  
7 in response to Markarian's post-trial brief in opposition to their motion for summary  
8 adjudication. After the close of this briefing, the court took the contested matters of  
9 Markarian's contempt motion and Respondents' renewed motion for summary  
10 adjudication under submission.

11 In the contempt motion, Markarian seeks an order finding Respondents in  
12 contempt for: "(a) continually harassing the *pro se* Debtor for over 2 years via phone call  
13 and messages, (b) threatening Debtor's father with collection action, and (c) filing the  
14 State Court Action to seek damages against the Debtor personally." Notice of Motion &  
15 Motion for an Order to Show Cause Why Merchants Acquisition Group LLC, Bruce  
16 Jackman and Richard W. Snyder Should Not Be Held in Contempt for Violating the  
17 Discharge Injunction; Memorandum of Points and Authorities; Declarations of Shant  
18 Markarian, Wife Elyana Markarian & Counsel Seven Gorginian, Docket No. 31, filed on  
19 October 5, 2021, at 4. Markarian alleges that the court has authority to hold  
20 Respondents in contempt pursuant to 11 U.S.C. § 105(a) and Federal Rule of  
21 Bankruptcy Procedure 9020 for knowingly and willfully attempting to collect a  
22 discharged prepetition debt from him personally and to impose sanctions against them  
23 of a minimum of \$50,000, consisting of actual damages to his mental health and  
24 punitive damages. *Id.* at 4, 20.

25 Having considered the evidence received at trial and the oral and written  
26 arguments of the parties, including the proposed findings of fact and conclusions of law,  
27 and the post-trial briefing, the court issues this memorandum decision, which sets forth  
28 its findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52

1 made applicable to the contested matter of Markarian's contempt motion pursuant to  
2 Federal Rules of Bankruptcy Procedure 7052 and 9014 and its ruling on Respondents'  
3 motion for summary adjudication pursuant to Federal Rule of Bankruptcy Procedure  
4 7056 relating to Markarian's contempt motion.

### 5 **JURISDICTION**

6 The court has jurisdiction over the contested matter of Markarian's contempt  
7 motion within the meaning of Federal Rule of Bankruptcy Procedure 9014 pursuant to  
8 28 U.S.C. §§ 157 and 1334. This contested matter is a core proceeding under 28  
9 U.S.C. § 157(b)(2)(A) and (O). Venue is proper pursuant to 28 U.S.C. § 1409(a) as this  
10 bankruptcy case is pending in this federal judicial district.

### 11 **FACTS**

12 On or about February 19, 2016, Markarian purchased a Rolex watch from Ben  
13 Bridge Jewelers at the price of \$9,319.50. Markarian made a cash payment of  
14 \$2,800.00, but applied to Ben Bridge for a loan to cover the balance of the purchase  
15 price of \$6,519.50 by completing an electronic credit application to Ben Bridge. Ben  
16 Bridge approved Markarian's credit application, and he executed an agreement with  
17 Ben Bridge to pay the balance in monthly installment payments and to give Ben Bridge  
18 a purchase money security interest in the watch.<sup>1</sup> After executing the credit agreement  
19 with Ben Bridge, Markarian only made one monthly installment payment of \$340.00 on  
20 March 28, 2016. Markarian defaulted on the agreement when he failed to make the  
21 next installment payment due on April 30, 2016 and to make any further payments on  
22 the loan. These facts relating to Markarian's purchase of the Rolex Watch on credit  
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24 <sup>1</sup> There is no dispute that Ben Bridge received a purchase money security interest in the Rolex watch  
25 when Markarian purchased it on credit from Ben Bridge as acknowledged by him on page 9 of the  
26 contempt motion. The electronic sales receipt signed by Markarian acknowledged that Markarian as the  
27 signer agreed to the following: "I understand that Ben Bridge Jeweler retains a security interest in the  
28 goods purchased on this account until the unpaid balance of each separate purchase is fully paid.  
Payments will be applied to the earlier unpaid purchase. I agree not to dispose of the goods, remove  
them from the address listed, or encumber them without written consent of Ben Bridge Jeweler, and will  
protect Ben Bridge Jeweler against all loss or damages to the goods from the time they are delivered until  
I have paid for them in full." Rolex Sales Receipt, Respondents' Trial Exhibit R-2. These facts establish  
Ben Bridge's purchase money security interest in the watch. See California Commercial Code § 9103.

1 from Ben Bridge, the creation of Ben Bridge's purchase money security interest in the  
2 watch and Markarian's default on his credit account with Ben Bridge are not disputed.

3 The Ben Bridge account records for Markarian's purchase of the watch covered  
4 the time period from the opening of the credit account on February 19, 2016 to the date  
5 that Ben Bridge received notice of Markarian's Chapter 7 bankruptcy case on March 30,  
6 2019. Trial Exhibit R-3; see *also*, Trial Declaration of Aaron R. Sheehan, Docket No.  
7 53, filed on March 1, 2022 (the Ben Bridge account representative who spoke with  
8 Markarian twice on June 28, 2016 and September 15, 2016 and who made five other  
9 unsuccessful calls to Markarian between June and December 2016); Trial Declaration  
10 of Irene Hansen, Docket No. 54, filed on March 1, 2022 (Ben Bridge credit manager and  
11 custodian of records). These account records contained electronic notes by account  
12 representatives regarding their contacts with Markarian during this time period between  
13 February 2016 and March 2019. Ben Bridge account representative Sheehan in his trial  
14 declaration as reflected in his electronic account notes stated that on June 28, 2016, he  
15 spoke with Markarian who told him (Sheehan) that he (Markarian) had set up automatic  
16 payments with someone in the Ben Bridge office, but according to Sheehan, the Ben  
17 Bridge account records did not reflect any request to set up automatic payments that  
18 was made. According to Sheehan in his trial declaration, Markarian told Sheehan that  
19 he (Markarian) would call back and make his payment after he checked his bank  
20 account. As Sheehan stated in his trial declaration, Markarian never called back and  
21 made a payment. According to Sheehan, "[m]y notes do not reflect that we discussed  
22 the location or disposition of the Collateral. If Markarian had advised me during our  
23 brief conversation that he sold or disposed of the Collateral, the sale or disposal would  
24 have been a big issue and I would have made a note of such representation in my  
25 account notes." Sheehan Trial Declaration, Docket No. 53 at 2.

26 Sheehan's account notes for his telephone conversation with Markarian on June  
27 28, 2016 reflected that "the customer [Markarian] said he set up auto[matic] payments  
28 with someone in our office" and "he (Markarian) said he would need to call us back to

1 make a payment after he checks his bank.” Trial Exhibit R-3 at 1.

2 Sheehan in his trial declaration as reflected in his account notes stated that he  
3 called Markarian on July 21, 2016 and August 26, 2016, was not able to reach him and  
4 left a message for Markarian to call him back (i.e., “LMTCB”), and called Markarian  
5 again on September 15, 2016, and spoke with Markarian on that call, who said that “he  
6 (Markarian) will speak to his spouse about the account.” Sheehan in his trial declaration  
7 as reflected in his account notes stated that he attempted to call Markarian on October  
8 12, 2016, November 18, 2016 and December 23, 2016 and was not able to reach him  
9 and left a message for Markarian to call him back (i.e., “LMTCB”). Sheehan in his trial  
10 declaration stated that as reflected in his account notes, he did not receive a call back  
11 from Markarian after these calls. On December 31, 2016, Ben Bridge charged off the  
12 balance of the loan owed by Markarian under the agreement in the amount of  
13 \$7,107.07.

14 As reflected in the Ben Bridge account representative’s notes, on May 30, 2017,  
15 Markarian called Ben Bridge and advised another account representative named  
16 Veronica that he (Markarian) wanted to start making payments on the agreement again.  
17 Trial Exhibit R-3 at 1-2. Ben Bridge account representative Veronica’s notes stated that  
18 the customer [i.e. Markarian] called and “said he just got out of jail and wanted to get  
19 started on making payments against” and “said he would be making a payment either  
20 today or tomorrow.” Veronica’s account notes also stated that she consulted with  
21 Sheehan about the account, and they agreed on behalf of Ben Bridge to reinstate  
22 Markarian’s credit account and extended the term of the payment plan under the credit  
23 agreement from 24 to 48 months, which reduced Markarian’s monthly installment  
24 payment from \$340.00 to \$205.00. Trial Exhibit R-3 at 2; Sheehan Trial Declaration at  
25 1-2. Even though Ben Bridge agreed to reinstate Markarian’s credit account and  
26 modified the terms of the credit agreement, Markarian failed to make any further  
27 payments on the account. Veronica’s account notes of her telephone conversation with  
28 Markarian on May 30, 2017 do not reflect that he told her that he had disposed of the

1 watch. Trial Exhibit R-3 at 1-2.

2 The Ben Bridge's account representative notes in the account records indicate  
3 numerous attempts to contact Markarian about the account delinquency between June  
4 2016 and March 2019, but Ben Bridge was only able to have three telephone  
5 conversations with Markarian because he was generally not responding to Ben Bridge's  
6 telephone calls to him, and when its account representatives were able to reach him,  
7 Markarian made statements to deflect their requests for payment, such as he needed to  
8 check with his bank or his spouse or he would make a payment "today or tomorrow," but  
9 no payment was made.

10 The above-recited facts relating to the Ben Bridge's charge-off, Markarian's  
11 request for reinstatement of his account and modification of the credit agreement,  
12 Markarian's continued failure to make payments under the agreement and continuing  
13 contacts and conversations between Markarian and Ben Bridge are reflected in Ben  
14 Bridge account representative notes in the Ben Bridge business records for the  
15 Markarian's credit account, which were received into evidence and are not disputed.

16 On March 21, 2019, Markarian commenced this bankruptcy case by filing a  
17 voluntary petition for relief under Chapter 7 of the Bankruptcy Code, 11 U.S.C., and an  
18 order for relief was entered on the petition. Movant's Trial Exhibits M-1 through M-3.  
19 Markarian filed his bankruptcy petition *pro se* as a self-represented litigant. Ben  
20 Bridge's account records reflect that it received notice of Markarian's bankruptcy case  
21 on March 30, 2019. Trial Exhibit R-3; Sheehan Trial Declaration at 3. Upon the entry of  
22 the order for relief in this case, the automatic stay against action to collect prepetition  
23 debts owed by Markarian pursuant to 11 U.S.C. § 362 went into effect, and Ben Bridge  
24 was stayed from undertaking collection activity on the Markarian account relating to the  
25 purchase of the Rolex watch.

26 According to Respondent Jackman in his trial declaration, on or about April 17,  
27 2019, Ben Bridge contacted Respondent Merchants Acquisition Group LLC (Merchants)  
28 and placed the Markarian account relating to the Rolex watch with Merchants to

1 ascertain the location and/or disposition of the watch, Ben Bridge's collateral, and/or  
2 settle or compromise Ben Bridge's contractual rights in the account. Declaration of  
3 Bruce Jackman, Docket No. 51, filed on February 22, 2022. According to Jackman in  
4 his trial declaration and oral testimony at trial, he is the director of operations at  
5 Merchants, and Merchants represents clients like Ben Bridge in attempting to locate  
6 collateral held by bankruptcy debtors after a bankruptcy case is filed and to settle or  
7 compromise the client's contractual rights in unpaid credit accounts owed by bankruptcy  
8 debtors. Respondent Snyder represents Merchants as its counsel. According to  
9 Jackman, Merchants's business relationship with Ben Bridge since 2016 was always for  
10 the exclusive purpose of assisting Ben Bridge with its rights in assigned accounts after  
11 an account holder filed a bankruptcy case, and Merchants has never handled an  
12 account from Ben Bridge until the account holder filed for bankruptcy. When Ben  
13 Bridge placed the Markarian account with Merchants on or about April 17, 2019,  
14 Merchants started to work on the account. According to Jackman, neither he nor  
15 Merchants had any interaction or involvement with Markarian or Ben Bridge's account  
16 relating to Markarian before April 17, 2019 when Ben Bridge placed the account with  
17 Merchants. The court finds Jackman's testimony on these points to be credible and  
18 supported by the trial declaration of Ben Bridge account representative, Sheehan, and  
19 the documentary evidence, especially the Ben Bridge account records, showing that  
20 Ben Bridge had continuing contact with Markarian until it placed the account with  
21 Merchants in April 2019 after Markarian filed for bankruptcy in March 2019. Thus, the  
22 court can infer that Markarian's contacts prepetition about his account for the watch was  
23 with Ben Bridge, not Merchants.

24 Markarian in his trial declaration stated that when he bought the watch in  
25 February 19, 2016, he was employed, working and staying on top of his obligations, but  
26 that three months afterwards, he lost his job and relying on credit cards to support his  
27 family, that he also fell behind in the rent he owed to his father, Paul Markarian, for the  
28 house he was renting, that his father threatened eviction if he did not cure the rent

1 arrears of about \$8,000.00, that he decided to give the watch to his father in exchange  
2 for payment of the rent arrears and that his father agreed and took the watch.  
3 Declaration of Shant Paul Markarian, Docket No. 48, filed on February 18, 2022.  
4 According to Markarian in his trial declaration, this led to his default on his loan from  
5 Ben Bridge. Markarian stated in his trial declaration that after that, Ben Bridge called  
6 him for the late payments, and he told the Ben Bridge representatives that he gave the  
7 watch away. Markarian in his trial declaration then stated that he spoke with Jackman  
8 several times, telling Jackman each time that he gave the watch to his father on account  
9 of back rent. According to Markarian in his trial declaration, Jackman became  
10 aggressive and kept telling him (Markarian) that he (Jackman) was an attorney for Ben  
11 Bridge, and that they can sue him (Markarian) if the watch was not given up. Markarian  
12 asserted that Jackman posed as an attorney to him and that Jackman threatened to sue  
13 his father. According to Markarian in his trial declaration, this “cruel behavior” continued  
14 for months until he decided to finally file for bankruptcy to stop the harassment.

15 Having heard the written testimony of both Jackman and Markarian in their trial  
16 declaration and their oral testimony at trial, the court finds that Jackman’s testimony  
17 regarding the lack of prepetition contact with Markarian by him and Merchants is  
18 credible and that Markarian’s testimony that there was such contact is not credible.  
19 While Markarian’s testimony that he was having financial distress from loss of his job  
20 and income to support his family and to pay rent to his father is credible, his testimony  
21 about prepetition contact with Jackman and Merchants is not generally credible.  
22 Markarian’s testimony is not consistent with Ben Bridge account representative  
23 Sheehan’s testimony in his trial declaration, which the court finds credible, and Ben  
24 Bridge’s account records showing that its representatives had continuing contact with  
25 Markarian until he filed for bankruptcy in March 2019, specifically indicating that Ben  
26 Bridge agreed to reinstate his credit account and modify the payment terms after  
27 Markarian contacted Ben Bridge in May 2017. Moreover, as noted by Respondents, the  
28 Ben Bridge account records do not reflect any conversation between its account



1 representatives and Markarian about any transfer or other disposition of the watch. It  
2 seems to the court that if Markarian had told Ben Bridge that he had disposed of the  
3 collateral by giving it to his father as he stated in his trial declaration, Ben Bridge would  
4 not have agreed to reinstate the account and give him more favorable repayment terms.  
5 Markarian testified that when he bought the watch in February 2016 he was working  
6 and staying on top of his obligation, but this all changed when he lost his job three  
7 months later because, as shown by the Ben Bridge account records, he only made one  
8 monthly payment on the watch and defaulted in failing to make the second monthly  
9 payment in April 2016, two months after buying the watch. Markarian's credibility also  
10 suffers because as reflected in the numerous attempts of Ben Bridge account  
11 representatives to contact him about the delinquent account, he either made inaccurate  
12 statements to them or failed to return their calls, and as Markarian admitted in his  
13 testimony at trial, he represented his current monthly income to Ben Bridge in applying  
14 for credit was \$12,000.00 from his business, although he never actually received that  
15 much.

16 The court finds Markarian's testimony that Respondents engaged in harassing  
17 behavior to collect the Ben Bridge account before he filed for bankruptcy is not credible  
18 as he could not remember specifically with whom he talked to about the account before  
19 bankruptcy, and thus it appears that Markarian mixed up his prepetition contacts with  
20 Ben Bridge and his postpetition contacts with Merchants. While the parties  
21 acknowledge that prepetition collection action cannot be considered a violation of the  
22 bankruptcy discharge injunction pursuant to 11 U.S.C. § 524, Markarian's testimony  
23 does not show that Respondents engaged in a continuing pattern of harassment, which  
24 started prepetition. Moreover, as to Respondent Snyder, there is no credible evidence  
25 that he had any contact or involvement with Markarian or the Ben Bridge account  
26 prepetition as he has represented Merchants, not Ben Bridge, and thus, had no reason  
27 to be involved with the account before Ben Bridge's placement of the account with  
28 Merchants in April 2019. Therefore, the court finds that Respondents Merchants,

1 Jackman and Snyder had no contact or involvement with Markarian or his credit  
2 account until Ben Bridge placed the account with Merchants on or about April 17, 2019.  
3 As to Markarian's assertion that Jackman misrepresented to him that he (Jackman) was  
4 an attorney, having heard testimony of both of them, the court finds that Markarian's  
5 testimony on this point not to be credible and that his assertion is unfounded.

6       Regarding Merchants' handling of Markarian's credit account for Ben Bridge, on  
7 or about April 18, 2022, Jackman on behalf of Merchants first reviewed Markarian's  
8 bankruptcy petition, schedules and Statement of Financial Affairs filed in this bankruptcy  
9 case. Jackman Declaration at 4-5. Jackman noted that Markarian had stated on  
10 Schedule A/B to his bankruptcy petition asking him to list his personal property assets  
11 that he owned or had a legal or equitable interest in that he had a "Men's watch".  
12 Jackman also noted that Markarian in response to inquiries regarding his assets stated  
13 under penalty of perjury on his Statement of Financial Affairs that in the one year before  
14 bankruptcy, no property had been repossessed, foreclosed, garnished, attached, levied  
15 or seized, in the two years before bankruptcy, no property valued in excess of \$600.00  
16 was given as a gift or donated to charity, in the one year before bankruptcy, no property  
17 was lost due to theft, fire, other disaster or gambling, and in the two years before  
18 bankruptcy no property was sold, traded or otherwise transferred to Markarian. Based  
19 on his review of these disclosures by Markarian in his bankruptcy petition and  
20 schedules, Jackman testified that the evidence was inconclusive as to whether  
21 Markarian still owned the watch at the time of his bankruptcy and decided to contact  
22 Markarian to inquire about the status of the watch. As Jackman explained in his trial  
23 declaration, on one hand, Markarian listed a "Men's watch" as a personal property asset  
24 owned when he filed his bankruptcy petition, but the disclosures regarding gifts,  
25 transfers and other dispositions of assets before bankruptcy did not cover the entire  
26 period of three years and one month between the date of purchase in February 2016  
27 and the date of the bankruptcy filing in March 2019. The court finds that it was  
28 reasonable for Jackman on behalf of Merchants acting for its client, Ben Bridge, to

1 conclude that it was proper to contact Markarian about the status of the watch, Ben  
2 Bridge's collateral as a secured creditor, as Markarian's listing of a watch as an asset  
3 on his bankruptcy schedules and his statements on his Statement of Financial Affairs  
4 that he did not make any transfers of personal property within two years of bankruptcy  
5 and his contact with Ben Bridge to reinstate his creditor account in May 2017 within that  
6 same two year period suggested that he still owned the Rolex watch that he bought  
7 from Ben Bridge.

8 On or about April 19, 2019, Jackman on behalf of Merchants mailed a letter he  
9 wrote to Markarian acknowledging the latter's bankruptcy filing, but advising Markarian  
10 of Ben Bridge's security interest in the watch as its collateral for the loan it made to  
11 Markarian and the default status of the credit account. Trial Exhibit R-7. Jackman's  
12 letter further advised Markarian that Markarian did not have the right to retain the watch,  
13 Ben Bridge's collateral, without bringing the credit account current and proposed that  
14 Markarian either execute an agreement to reaffirm the debt or surrender the collateral to  
15 Ben Bridge. According to Jackman in his trial declaration, Merchants did not receive  
16 any response to this letter.

17 Receiving no response to the April 19, 2019 letter, on or about April 29, 2019,  
18 Jackman on behalf of Merchants mailed a letter he wrote to Markarian again advising  
19 Markarian of Ben Bridge's security interest in the watch as its collateral for the loan it  
20 made to Markarian and demanding that Markarian comply with 11 U.S.C. § 521(2)(A)  
21 requiring disclosure of his intention regarding the watch, Ben Bridge's collateral, that is,  
22 whether Markarian intended to redeem, reaffirm or surrender the collateral. Trial Exhibit  
23 R-8. According to Jackman in his trial declaration, Merchants did not receive any  
24 response to this letter as well.

25 Receiving no response to his two letters of April 19, 2019 and April 29, 2019  
26 letter, on or about May 14, 2019, Jackman on behalf of Merchants requested its  
27 attorney, Snyder, to prepare and mail a letter to Markarian demanding that Markarian  
28 contact Merchants, comply with 11 U.S.C. § 521(a)(2)(A) requiring disclosure of his

1 intention regarding the watch, Ben Bridge's collateral, that is, whether Markarian  
2 intended to redeem, reaffirm or surrender the collateral, and to disclose the present  
3 location of the watch. Snyder prepared and mailed this letter to Markarian and further  
4 advised Markarian in this letter that if Markarian continued to ignore Merchants's letters,  
5 it would have no alternative, but to apply to the bankruptcy court for an order authorizing  
6 his examination pursuant to Federal Rule of Bankruptcy Procedure 2004. Trial Exhibit  
7 R-9. According to Jackman in his trial declaration, neither Merchants nor Snyder  
8 received any response to this letter.

9       Based on Markarian's lack of response to Merchants's letters by Jackman and  
10 Snyder, Jackman concluded that Markarian was not going to disclose the location  
11 and/or disposition of Ben Bridge's collateral, the watch, and that an examination of  
12 Markarian would be necessary to obtain that information. Jackman then requested that  
13 Ben Bridge assign the credit account for the watch to Merchants, which was executed  
14 by Ben Bridge on May 24, 2019. Trial Exhibit R-10. On May 29, 2019, at Jackman's  
15 direction, Merchants filed a motion in this bankruptcy case for an order authorizing  
16 Markarian's examination pursuant to Federal Rule of Bankruptcy Procedure 2004,  
17 requesting that the examination be scheduled for June 24, 2019, which was the last  
18 date to file a nondischargeability action against Markarian. Trial Exhibit R-11.

19       On June 3, 2019, Markarian called Merchants, and Jackman spoke with him.  
20 Jackman stated in his trial declaration that in this telephone conversation, Markarian  
21 told him that he rented a house from his father, Paul Markarian, and he fell behind in the  
22 rent, that in December 2018, he and his father went to a Rolex dealer to get an  
23 appraisal of the watch, that the dealer appraised the watch at \$6,000.00 to \$7,000.00,  
24 and that after the appraisal, he gave the watch to his father to secure payment of the  
25 back rent to his father. Jackman Declaration at 6-7. Jackman stated in his trial  
26 declaration that he specifically recalled that the transfer by Markarian to his father was  
27 not a sale but a pledge. Jackman stated in his trial declaration that he suggested to  
28 Markarian that he go to his father and request the father to return the watch so that the

1 collection matter over the watch would be resolved. According to Jackman in his trial  
2 declaration, Markarian wanted to avoid the Rule 2004 examination, and Jackman  
3 responded and advised Markarian that if he surrendered the collateral, the examination  
4 would not be necessary. Based on this telephone conversation, Jackman determined  
5 that Markarian's statements to him in the conversation were truthful and that it would be  
6 best for Merchants to forgo any nondischargeability action and focus on recovery of the  
7 collateral from Paul. Having considered Jackman's testimony in his trial declaration and  
8 live at trial, the court finds that his testimony on these points is credible and that he  
9 accurately recited the telephone conversation between him and Markarian on June 3,  
10 2019.

11 On June 4, 2019, the court denied Merchants's motion for a Rule 2004  
12 examination of Markarian on technical grounds, finding that Merchants did not satisfy  
13 the prefiling meet and confer requirements of Local Bankruptcy Rule 2004-1. Trial  
14 Declaration R-12. Since the motion was denied without prejudice and Markarian  
15 disclosed the location and disposition of the collateral, Jackman determined that the  
16 need for a Rule 2004 examination was moot and therefore did not request Merchants's  
17 counsel to file another motion. Jackman Declaration at 7-8.

18 On June 17, 2019, Jackman telephoned Markarian to inquire whether he had  
19 obtained the collateral back from his father. However, as Jackman stated in his trial  
20 declaration, Markarian answered the phone and told Jackman that he had a bad  
21 connection and asked Jackman to call back later. Jackman Declaration at 8. Having  
22 heard the testimony of both Jackman and Markarian at trial, the court finds that  
23 Jackman's testimony on this point is credible.

24 On June 20, 2019, Jackman telephoned Markarian again to inquire whether he  
25 obtained the collateral back from his father, but there was no answer, and Jackman was  
26 forced to leave a message for a return call. Jackman Declaration at 8. Having heard  
27 the testimony of both Jackman and Markarian at trial, the court finds that Jackman's  
28 testimony on this point is credible.

1 On June 24, 2019, Jackman concluded that Markarian was not going to return  
2 his calls and that Markarian was not going to get the collateral back from his father to  
3 turn over to Merchants as Jackman suggested to Markarian in their June 3, 2019  
4 telephone call. Jackman Declaration at 8. Jackman on behalf of Merchants then sent a  
5 letter to Paul Markarian, which demanded the immediate surrender of the collateral, the  
6 watch, but Merchants did not receive any response to this letter. *Id.*; Trial Exhibit R-13.

7 On June 25, 2019, the court entered an order closing this bankruptcy case  
8 without discharge. Trial Exhibit R-14. Because the automatic stay was lifted upon  
9 closure of the case, on June 28, 2019, Merchants sent a letter to Markarian, informing  
10 him of the balance due on the credit account and requested that he make a payment  
11 arrangement. Trial Exhibit R-15.

12 On September 6, 2019, Merchants sent another letter to Markarian demanding  
13 that he begin making payments on the credit account or otherwise make some  
14 arrangement to resolve the default on the loan agreement or surrender the collateral.  
15 Trial Exhibit R-16. Also, on that same day, Merchants sent a letter to Paul Markarian  
16 demanding him to immediately surrender the collateral. Trial Exhibit R-17.

17 On September 19, 2019, Markarian called Merchants, and Jackman spoke with  
18 him. Jackman took detailed notes of their telephone conversation and immediately  
19 thereafter made an electronic notation in his account notes of this telephone  
20 conversation. Jackman Declaration at 9-10. According to Jackman, Markarian told him  
21 that he (Markarian) lied to him in their June 3, 2019 telephone conversation, that  
22 instead, he (Markarian) took the watch to Las Vegas and met a woman there who stole  
23 the watch from him, and that he (Markarian) concocted the story of the pledge to his  
24 father in order to deceive his wife. According to Jackman, he told Markarian that he  
25 (Jackman) did not believe him (Markarian). Then according to Jackman, Markarian  
26 offered to pay \$5,000.00 in full settlement of the account, and Jackman counteroffered  
27 that Markarian pay \$7,500.00 with \$5,000.00 down and five monthly installment  
28 payments of \$500.00. Then according to Jackman, Markarian made his counteroffer of

1 \$6,000.00 with \$5,000.00 down and \$1,000.00 in monthly payments, and in response,  
2 Jackman reiterated his original counteroffer, advising Markarian that the counteroffer  
3 would remain open for two weeks. According to Jackman, Markarian told him that he  
4 would speak to a friend about a loan and would call Jackman back. Having heard the  
5 testimony of both Jackman and Markarian at trial, the court finds that Jackman's  
6 testimony about their telephone conversation on September 19, 2019 is credible.

7 On October 16, 2019, Markarian filed a motion in this bankruptcy case for an  
8 order reopening the case so he could file his certificate of completion of a financial  
9 management course to obtain his discharge, which the court granted. Trial Exhibit R-  
10 18. On October 21, 2019, the court entered an order of discharge in this bankruptcy  
11 case. Trial Exhibit R-20. The order of discharge contained an explanation of the order  
12 which stated in part: "However, a creditor with a lien may enforce a claim against the  
13 debtors' property subject to that lien unless the lien was avoided or eliminated. For  
14 example, a creditor may have the right to foreclose a home mortgage or repossess an  
15 automobile."

16 On or about November 8, 2019, Snyder, Merchants's attorney, mailed a letter he  
17 wrote to Paul Markarian informing him of Merchants's lien on the watch, its collateral,  
18 and stating that Merchants had been informed that he (Paul Markarian) was in  
19 possession of the collateral. Trial Exhibit R-21. Snyder in this letter notified Paul  
20 Markarian that Merchants may sue him to recover the collateral. Merchants did not  
21 receive a response to this letter.

22 On or about January 10, 2020, Jackman on behalf of Merchants mailed a letter  
23 he wrote to Markarian, advising Markarian of Merchants's lien on the collateral, the  
24 watch, and demanding Markarian immediately surrender the collateral. Trial Exhibit R-  
25 22. Jackman's letter to Markarian offered him an option to retain the collateral through  
26 a settlement, which would effectively allow him to purchase the watch in lieu of  
27 surrender. According to Jackman in his trial declaration, Merchants did not receive any  
28 response to this letter.

1 On or about September 18, 2020, Snyder, Merchants's attorney, mailed a letter  
2 he wrote to Markarian informing him of Merchants's lien on the watch, its collateral, and  
3 stating that Merchants had been informed that he (Markarian) was in possession of the  
4 collateral. Trial Exhibit R-25. Snyder in this letter demanded that Markarian produce  
5 the collateral pursuant to Uniform Commercial Code § 9-603(c). Merchants did not  
6 receive a response to this letter.

7 On or about October 2, 2020, Jackman on behalf of Merchants mailed a letter he  
8 wrote to Markarian, providing Markarian with information on how to make arrangements  
9 for the surrender of the collateral. Trial Exhibit R-26. According to Jackman in his trial  
10 declaration, Merchants did not receive any response to this letter.

11 On or about November 30, 2020, Snyder, Merchants's attorney, mailed another  
12 letter he wrote to Markarian informing him of Merchants's lien on the watch, its  
13 collateral, and stating that Merchants had been informed that he (Markarian) was in  
14 possession of the collateral. Trial Exhibit R-27. Snyder in this letter again demanded  
15 that Markarian surrender the collateral. Merchants again did not receive a response to  
16 this letter.

17 On or about February 1, 2021, Jackman on behalf of Merchants mailed a letter  
18 he wrote to Markarian, informing Markarian with information on his failure to surrender  
19 the collateral, and offering to settle the matter. Trial Exhibit R-28. According to  
20 Jackman in his trial declaration, Merchants did not receive any response to this letter.

21 On July 21, 2021, Merchants commenced a lawsuit against Markarian in the  
22 Superior Court of California for the County of Los Angeles by filing a complaint for  
23 recovery of personal property pursuant to California Code of Civil Procedure § 667.  
24 Trial Exhibit R-29. The complaint alleged that Merchants is the assignee of Ben Bridge  
25 which had sold personal property, the watch, to Markarian who purchased it on credit,  
26 executing a contract which gave Ben Bridge a purchase money security interest in the  
27 watch as collateral to secure the balance of the purchase price, that Markarian  
28 defaulted on the contract by failing to make the installment payments under the contract



1 and that Markarian had filed for bankruptcy, which resulted in a discharge order being  
2 entered by this court. The complaint further alleged that “[a]ll conditions precedent to  
3 the enforcement of Ben Bridge’s rights under the Contract, and all acts to be performed  
4 by Ben Bridge under the Contract have occurred in substantially the form and manner  
5 required by the contract or otherwise.” Merchants in the prayer for relief in the  
6 complaint requested a money judgment under California Code of Civil Procedure § 667  
7 “for the value of [Merchants’s] interest in the Collateral in the sum of \$9,319.50 in case  
8 delivery thereof cannot be had as a result of Defendant’s conversion of the Collateral  
9 after the commencement of the bankruptcy case,” for interest from the time of  
10 conversion, for costs of suit and for other and further relief as the court may deem just  
11 and proper.

12 On August 26, 2021, Merchants served Markarian with the state court complaint,  
13 and Markarian does not dispute that he was served. Trial Exhibit R-30; Markarian’s  
14 Contempt Motion, Docket No. 31 at 13. After being served, Markarian attempted to call  
15 Snyder between September 9 and 14, 2021, and finally, on September 14, 2021,  
16 Markarian spoke with Snyder, and Markarian in his trial declaration said that he told  
17 Snyder that he did not have the watch, that Snyder told him to “do what you need to do,”  
18 “[i]f you do not have the watch, then we can get a judgment” and “you can make an offer  
19 and I will take it to my client.” Markarian Trial Declaration, Docket No. 48 at 6.

20 Markarian did not file an answer to Merchant’s complaint in the state court action,  
21 but rather, on October 1, 2021, he filed a motion in this court to reopen the bankruptcy  
22 case for the purpose of filing the contempt motion against Respondents. On October 5,  
23 2021, Markarian commenced this contested matter by filing his motion for issuance of  
24 an order to show cause to hold Respondents in contempt. Markarian’s Contempt  
25 Motion, Docket No. 31.

26 On October 12, 2021, Respondents filed an opposition to Markarian’s motion for  
27 issuance of an order to show cause to hold them in contempt, contending that the state  
28 court action did not violate the discharge injunction because Merchants was seeking to

1 recover its collateral which they alleged Markarian had converted postpetition.

2 Also, on October 12, 2021, Merchants filed a request for entry of default  
3 judgment against Markarian in the state court action. Trial Exhibits R-33, R-34 and R-  
4 36.

5 On October 18, 2022, the court in this bankruptcy case entered an order on  
6 Markarian's motion for issuance of an order to show cause to hold Respondents in  
7 contempt that stated that the court would consider the contempt motion as a contested  
8 matter and set the matter for a status conference to schedule further proceedings.

9 On October 25, 2021, the state court entered a default judgment in favor of  
10 Merchants and against Markarian in the amount of \$10,029.67, including the asserted  
11 value of the collateral of \$9,319.50, prejudgment interest of \$372.77 and costs of suit of  
12 \$337.40. Trial Exhibit R-37. However, in granting default judgment, the state court did  
13 not make any express factual findings in favor of Merchants or against Markarian,  
14 including whether Merchants was entitled to possession of the collateral and whether  
15 Markarian was in possession of the collateral at the time the complaint was filed.

16 On November 16, 2021, the court conducted a status conference on the  
17 contested matter of Markarian's contempt motion and set the matter for trial on March 2  
18 and 3, 2022. By subsequent stipulation and order, the court continued the trial from  
19 March 2 and 3, 2022 to April 6 and 7, 2022.

20 On March 9, 2022, Respondents filed their motion for summary adjudication of  
21 issues, which they noticed for hearing on April 5, 2022. On March 18, 2022, the court  
22 entered an order denying Respondents' motion for summary adjudication of issues  
23 without prejudice because they did not provide 42 days notice of hearing as required by  
24 Local Bankruptcy Rule 7056-1 in noticing the motion for hearing on April 5, 2022, the  
25 day before the start of the trial. However, the court ruled that Respondents could renew  
26 their summary adjudication motion orally at trial, which they did. Markarian filed an  
27 opposition to Respondents' summary adjudication motion. The parties filed further post-  
28 trial briefs on the summary adjudication motion.

1 On April 6 and 7, 2022, the court conducted the trial of the contested matter of  
2 Markarian's contempt motion, and the court received the testimony of Markarian, his  
3 father, Paul Markarian, Jackman and Snyder and the exhibits offered by the parties.  
4 Markarian and his father, Paul Markarian, testified that Markarian gave the watch, Ben  
5 Bridge's collateral, to the father in exchange for past due rent of the house that the  
6 father owned and Markarian and his family had rented from the father to live. Markarian  
7 testified that Markarian fell behind in the rent owed to his father, that his father  
8 demanded payment, that Markarian offered the watch as payment of the back rent, that  
9 Markarian and his father went to a Rolex dealer to have the watch appraised, that the  
10 watch was appraised at about \$7,000 and that the father after visiting the Rolex dealer  
11 agreed to take the watch in exchange for the past due rent. Markarian testified at trial  
12 that he gave his father the watch outright, and not as a pledge to secure payment of the  
13 past due rent in the future.

14 Paul Markarian testified that at trial his son was always late on payment of rent to  
15 him and that he took the watch in exchange for credit for three months back rent by the  
16 end of 2016 after threatening to evict his son. However, Paul Markarian could not  
17 remember when asked about specific amounts of how much rent was due at a given  
18 time during the 2016 to 2018 time period as he did not keep a ledger or other written  
19 record of the rent account. That is, he said he remembered that his son was delinquent  
20 three months rent in 2016, but could not remember specifically how much rent was past  
21 due in 2017 or 2018. The best that Paul Markarian could remember is that his son was  
22 always late.

23 As a factual matter, the court finds that Paul Markarian's testimony is credible in  
24 part that Markarian gave the watch to his father, Paul Markarian, in exchange for past  
25 due rent outright as opposed to just pledging the watch as collateral to secure future  
26 payment of the past due rent. Paul Markarian's testimony is credible that he took the  
27 watch outright as he was giving his son three months credit for past due rent at \$2,200  
28 per month for the value of the watch based on a valuation by a third party, which was

1 either a pawn shop as he remembered in his testimony or a Rolex dealer as Markarian  
2 testified, and that this testimony of the father supports a finding that this transaction was  
3 an exchange or outright transfer and not just a pledge of collateral.

4 Having heard the testimony of Paul Markarian that he took the watch outright,  
5 and not as a pledge for future payment, the court finds that his testimony was very  
6 credible on that point.

7 Regarding the timing of Markarian's transfer of the watch to his father, Markarian  
8 and his father, Paul Markarian, testified that the transfer was in 2016 rather than in 2018  
9 as Markarian told Jackman in their telephone conversation on June 3, 2019. On this  
10 point, the court finds that the testimony of Markarian and his father not to be credible  
11 and that the testimony of Jackman to be credible. Markarian's testimony lacks  
12 credibility because he gave inconsistent statements to Jackman during their telephone  
13 conversations about the status and disposition of the watch, his statements given to  
14 Ben Bridge as reflected in its account history were deceptive about his intent to repay  
15 Ben Bridge as shown by his repeated broken promises to make payment on the  
16 account and that the transfer of the watch in 2018 is more consistent with other facts in  
17 the case. A 2018 transfer is more consistent with the sequence of events after the  
18 charge-off of the account in 2016, specifically, in May 2017, Markarian contacted Ben  
19 Bridge to request reinstatement of the credit account, and Ben Bridge agreed to  
20 reinstate the account and gave Markarian more favorable credit terms. It is unlikely that  
21 Ben Bridge would have reinstated the account, giving more liberal repayment terms, if  
22 Markarian had informed it that he disposed of the collateral by giving it to his father.  
23 (The Ben Bridge account representative, Sheehan, in speaking with Markarian in May  
24 2017, Markarian never told Sheehan that Markarian had sold or disposed of the watch,  
25 which would have been a "big deal" for Ben Bridge as disposing or encumbering the  
26 watch was a breach of the credit agreement. Sheehan Trial Declaration, Docket No. 53,  
27 at 2; Trial Exhibit R-2 at 1.) By contacting Ben Bridge in May 2017 to request  
28 reinstatement of the account and promising to make payments, Markarian evinced an

1 interest in retaining the watch, which seems inconsistent with a transfer of the watch to  
2 his father. The photos of Markarian wearing a Rolex watch posted on Facebook in  
3 2016, 2017, 2018 and 2021 introduced by Respondents into evidence indicate that  
4 Markarian enjoyed showing that he was wearing a Rolex watch, Trial Exhibits R-38  
5 through R-47, though he had given testimony at trial that the watch shown in these  
6 photos was a fake watch he bought in Hong Kong.<sup>2</sup> Nevertheless, Markarian's  
7 contacts with Ben Bridge and Merchants about making repayment arrangements  
8 indicate a continuing interest and possession of the Rolex watch that he purchased from  
9 Ben Bridge. The timing of the filing of Markarian's bankruptcy case in 2019 indicates  
10 that the financial distress that he was having occurred later in the 2018 time period  
11 rather than in the 2016 time period. Regarding Paul Markarian's testimony that his son  
12 gave him the watch at the end of 2016, the court finds that this testimony had credibility  
13 problems due to his inability to recall details about specific times, apparently due to  
14 memory problems from age (Paul Markarian testified at trial that he was 74 years old).  
15 The other evidence described above regarding Markarian's contacts with Ben Bridge  
16 and Merchants regarding the credit account supports a finding that his transfer of the  
17 watch to his father was in 2018 as he told Jackman.

18 At trial, Respondents orally renewed their motion for summary adjudication, and  
19 the court heard arguments on that motion. The parties filed post-trial briefing on this  
20 motion, which is discussed below.

21 ///

22 ///

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24  
25 <sup>2</sup> Respondents' exhibits include photos posted by Markarian in 2018 and 2021 showing him wearing a  
26 Rolex watch, which he argues do not necessarily indicate the year when the photos were taken and  
27 which were taken of him wearing a fake Rolex watch as opposed to the real Rolex watch, the collateral.  
28 The photos indicate Markarian's continuing interest in being shown wearing a Rolex watch to the outside  
world, which may be probative of possession and continuing interest in possession. Trial Exhibits R-  
39(a), R-39(b), 40 and 41. As indicated earlier, the court finds that Markarian possessed the watch until  
he gave it to his father in 2018 in exchange for back rent, which is consistent with Markarian's continuing  
interest in possessing the watch by contacting Ben Bridge to reestablish the credit account in May 2017.

1 **DISCUSSION**

2 **Contempt**

3 Bankruptcy courts have authority over civil contempt proceedings under 11  
4 U.S.C. § 105 and Federal Rule of Bankruptcy Procedure 9020. *Caldwell v. Unified*  
5 *Capital Corp. (In re Rainbow Magazine)*, 77 F.3d 278, 284-285 (9th Cir. 1996). In civil  
6 contempt proceedings, “[t]he moving party has the burden of showing by clear and  
7 convincing evidence that the contemnors violated a specific and definite order of the  
8 court.” *Dyer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1190-1191 (9th Cir. 2003)  
9 (quoting *Renwick v. Bennett (In re Bennett)*, 298 F.3d 1059, 1069 (9th Cir. 2002)).  
10 Clear and convincing evidence is a “higher standard than the preponderance of the  
11 evidence standard but less stringent than beyond a reasonable doubt.” *United States v.*  
12 *Powers*, 629 F.2d 619, 626 n. 6 (9th Cir. 1980).

13 “[A] court may hold a creditor in civil contempt for violating a discharge order if  
14 there is no fair ground of doubt as to whether the order barred the creditor’s conduct.”  
15 *Taggart v. Lorenzen*, 139 S.Ct. 1795, 1799 (2019) (emphasis in original). “In other  
16 words, civil contempt may be appropriate if there is no objectively reasonable basis for  
17 concluding that the creditor’s conduct might be lawful.” *Id.* The Ninth Circuit recently  
18 considered the *Taggart* case on remand, applying the objective reasonableness  
19 standard directed by the Supreme Court. *In re Taggart*, 980 F.3d 1340 (9th Cir. 2020).  
20 234. As the Ninth Circuit stated in *Taggart* on remand, “Civil contempt is a ‘severe  
21 remedy’ and, correspondingly, the Supreme Court has set a significantly high hurdle for  
22 when it is imposed.” *Id.* at 1347, citing *Taggart v. Lorenzen*, 139 S.Ct. at 1802. As the  
23 Ninth Circuit further observed, “[t]he standard is rooted in the concept that ‘basic  
24 fairness requir[es] that those enjoined receive explicit notice of what conduct is  
25 outlawed before being held in civil contempt.’” *Id.* (internal quotation marks and citation  
26 omitted). Thus, the appropriate standard is, as observed by the Ninth Circuit, quoting  
27 the Supreme Court, “civil contempt may be appropriate if there is no objectively  
28 reasonable basis for concluding that the creditor’s conduct might be lawful.” *Id.*, citing

1 *and quoting, Taggart v. Lorenzen*, 139 S.Ct at 1799.

2 Here, the court must apply the Supreme Court's standard as recently considered  
3 by the Ninth Circuit in *In re Taggart*, that is, the court must determine whether  
4 Respondents had any objectively reasonable basis for concluding that their  
5 enforcement of Merchants' lien against the collateral might be lawful and thus, might not  
6 violate the discharge injunction from this case. *In re Taggart*, 980 F.3d at 1348.

7 Under this objective standard of *Taggart*, the court finds that as discussed herein,  
8 Markarian has not proven by clear and convincing evidence that Respondents violated  
9 the discharge injunction in this case by taking action to collect a discharged prepetition  
10 debt against Markarian. The court finds that Markarian's allegations that Respondents  
11 engaged in harassing communications to him before his bankruptcy case was filed to be  
12 unsubstantiated as the evidence indicates that Respondents were only involved with  
13 Markarian's account after he filed for bankruptcy. Moreover, the court finds that the  
14 evidence of Respondents' written and oral communications with Markarian indicates  
15 that Respondents acted carefully in enforcing the rights of Merchants post-bankruptcy  
16 as the assignee of Ben Bridge's lien rights in the watch, the collateral for the loan that  
17 Ben Bridge made to Markarian to purchase the watch. The postpetition  
18 communications that Respondents had with Markarian stated that they were acting on  
19 behalf of Merchants to enforce its rights to the collateral which they reasonably believed  
20 that Markarian had in his possession because he gave Merchants conflicting stories of  
21 what happened to the collateral and who had it, that is, Markarian first told Jackman that  
22 he pledged it to his father to secure payment of delinquent rent and later told Jackman  
23 that he took the watch to Las Vegas in the company of a woman who was not his wife  
24 and who stole it from him, and Markarian was attempting to negotiate a payment  
25 arrangement with Jackman. The contents of the postpetition communications of  
26 Respondents show that they were to obtain a return of Merchants' collateral from  
27 Markarian or his father, or voluntary payment in lieu of return of the collateral, and not  
28 for enforcement of a prepetition *in personam* debt against Markarian. Thus,

1 Respondents had an objectively reasonable basis for concluding that Markarian had  
2 possession of the collateral and for asking him to return the collateral by retrieving it  
3 from his father or otherwise. If as Markarian told Jackman once, Markarian had given  
4 the watch to his father as a pledge for payment of the back rent, it was objectively  
5 reasonable and lawful for Respondents to ask Markarian to retrieve the watch from his  
6 father or ask his father directly for the return of the watch, Merchants' collateral. The  
7 court finds that oral and written testimony of Jackman and Snyder regarding their  
8 actions to enforce Merchants's lien rights in the watch were credible and corroborated  
9 by the written correspondence they had with Markarian and his father.

10 Respondents' actions to recover possession of Merchants' collateral, the watch,  
11 from Paul Markarian, the father, does not implicate the discharge injunction in this case  
12 as Respondents were not attempting to collect a discharged prepetition debt owed by  
13 Markarian through his father as he contends. That is, Respondents acted to enforce  
14 Merchants's lien rights in its collateral, the watch. The only actions Respondents took  
15 with respect to Paul Markarian was to send him demand letters for the return of  
16 Merchants' collateral, to which he (Paul Markarian) never responded.<sup>3</sup> Thus, by not  
17 responding to Respondents' letters, Paul Markarian did not put them on notice that he  
18 received the watch in exchange for past due rent as he testified at trial, and thus, Paul  
19 Markarian's testimony does not corroborate Markarian's contention at trial that Paul  
20 Markarian told Merchants that Markarian no longer possessed the watch when he filed  
21 for bankruptcy. Therefore, the court determines that Respondents' actions as to Paul

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22  
23 <sup>3</sup> Paul Markarian in his trial declaration stated that he spoke to someone at Merchants "who made me feel  
24 they wanted me to tell my son to pay but he couldn't." Paul Markarian Declaration at 2. This declaration  
25 further stated: "The representative whom I spoke with, I believe it was Bruce Jackman or someone else,  
26 told me that if my son paid them then it would all go away. They were constantly trying to pressure me to  
27 then pressure my son to pay them. This was inappropriate pressure." *Id.* The declaration further stated:  
28 "When asked about the watch, I told the representative that I have the watch and my son gave me the  
watch before he filed for bankruptcy because he owed me money for rent." *Id.* Then the declaration  
stated: "This happened for many years, and I kept hearing stories from my son about how Merchants  
Credit Solutions continued to harass him. Merchants Credit Solutions knew that my son gave the watch  
to me and no longer had it." *Id.* at 3. Upon cross-examination at trial, Paul Markarian admitted that while  
he received Merchants's letters, he did not remember any conversation he had with anyone at Merchants.  
Based on these admissions, the court finds that the written testimony regarding Paul Markarian's oral  
communications with Merchants not to be credible.



1 Markarian, sending demand letters to him to return of Merchants's collateral, did not  
2 violate the discharge injunction in his son's bankruptcy case.

3 Accordingly, the court determines that Markarian has failed to carry his burden of  
4 proving by clear and convincing evidence that there is no fair ground of doubt as to  
5 whether the discharge injunction in this case barred Respondents from taking the  
6 actions that they took to recover possession of the watch or its value in enforcing  
7 Merchants' lien rights in the watch, and the court will deny Markarian's motion to hold  
8 Respondents in contempt of the discharge injunction.

9 Having tried the contested matter of Markarian's contempt motion against  
10 Respondents and determined that Respondents should not be held in contempt of the  
11 court's discharge injunction, it is not necessary to resolve Respondents' motion for  
12 summary adjudication that they cannot be held in contempt based on the preclusive  
13 effect of the prior state court default judgment in Merchants's favor against Markarian.  
14 According to Respondents, it was not necessary to decide the contempt motion at trial  
15 because of the preclusive effect of the prior state court judgment. That is, apparently, it  
16 is Respondents' position that deciding their motion for summary adjudication precludes  
17 the court from ruling in favor of Markarian on the contempt motion. Unfortunately for  
18 Respondents, their motion for summary adjudication was not timely filed to be heard  
19 before trial, so the court may properly hear the contested matter of Markarian's  
20 contempt motion at trial without first ruling on Respondents' motion for summary  
21 adjudication. However, as an exercise of judicial discretion, the court granted leave for  
22 Respondents to renew their motion for summary adjudication orally at trial without  
23 renouncing it for hearing pursuant to Local Bankruptcy Rule 7056-1 and now addresses  
24 the motion for summary adjudication as an alternative basis for decision.

### 25 **Summary Adjudication**

26 Merchants in renewing its motion for summary adjudication of issues seeks a  
27 determination that the state court's default judgment in its favor against Markarian on its  
28 claim under California Code of Civil Procedure § 667 has preclusive effect on the factual

1 issue of whether Markarian converted the collateral, the watch, after he filed for  
2 bankruptcy. Markarian disputes that he converted the watch postpetition and argues  
3 that his and his father's trial testimony supports his position that he gave the watch to  
4 his father prepetition to satisfy his rent arrearages. Merchants contends that in entering  
5 default judgment on its claim under California Code of Civil Procedure § 667, the state  
6 court determined that Markarian had possession of the collateral when it filed suit  
7 postpetition, and that such determination is binding on this court.

8 In Respondents' supplemental trial brief filed on March 15, 2022, they first argue  
9 that Markarian's bankruptcy discharge had no effect on Merchants' surviving *in rem*  
10 right to possession of the collateral, the Rolex watch, and the discharge order did not  
11 somehow grant Markarian an exemption from personal liability for damages resulting  
12 from any postpetition acts. Supplemental Trial Brief at 9, *citing inter alia*, *Dewsnup v.*  
13 *Timm*, 502 U.S. 291, 297 (1991) (stating "Ordinarily, liens and other secured interests  
14 survive bankruptcy."). Respondents argue:

15 Absent a bankruptcy filing, where a debtor is in default and has  
16 possession of his creditor's collateral, he is obligated to comply with California  
17 Commercial Code ("Comm. Code") § 9609(c), which provides: "If so agreed, and  
18 in any event after default, a secured party may require the debtor to assemble  
19 the collateral and make it available to the secured party at a place to be  
20 designated by the secured party which is reasonably convenient to both parties."  
21 In the case where the debtor refuses to comply with Comm Code § 9609(c),  
22 California Civil Code ("Civil Code") § 667 provides in part as follows: "In an  
23 action to recover the possession of personal property, judgment for the plaintiff  
24 may be for possession or the value thereof, in case a delivery cannot be had,  
25 and damages for the detention." (emphasis added). The remedy for failing to  
26 surrender collateral is an action for possession of the collateral or its value if the  
27 debtor fails to produce the property pursuant to Cal Civ. Code § 667. After entry  
28 of a bankruptcy discharge order, where a debtor is in default and has possession  
of his creditor's collateral, the debtor must have the same obligation under  
Comm. Code § 9609(c) to make the collateral available to the creditor. Likewise,  
he must face the same remedy pursuant to Cal Civ. Code § 667 if he engages in  
the same illegal conduct in refusing to surrender the collateral.

Supplemental Trial Brief at 10, *citing inter alia*, *Aruda v. Sears Roebuck & Co.*, 310 F.3d  
13, 22 (1st Cir. 2002) and *In re Mullen*, 200 B.R. 352, 355 (Bankr. C.D. Cal. 1996). The

1 court does not dispute that given the conflicting and incomplete information about the  
2 status of the collateral from Markarian, Merchants was within its rights to require him to  
3 make the collateral available to it as the secured party pursuant to California  
4 Commercial Code § 9609, and Merchants did not violate the discharge injunction in  
5 bringing the suit in state court under California Civil Code § 667 praying for relief for  
6 possession of the collateral or its value if Markarian had possession at the time he filed  
7 for bankruptcy, that is, as argued by Respondents, the “location and/or disposition of the  
8 collateral was ambiguous and unresolved.” Supplemental Trial Brief at 11.

9 In support of their motion for summary adjudication, Respondents further argue  
10 that after the entry of the bankruptcy discharge order and the case closing order, the  
11 proper court to resolve any post-discharge state law claims involving possession of the  
12 collateral was the state court, not the federal bankruptcy court, that Merchants filed its  
13 lawsuit in state court containing only one cause of action seeking a judgment based on  
14 Markarian’s post-bankruptcy failure to comply with California Civil Code § 667 by  
15 concealing his possession of the collateral and thereby refusing to surrender it, that  
16 Markarian was served with the summons and complaint in the state court action, but  
17 refused to answer the complaint, resulting in default being entered against him, that the  
18 state court entered a default judgment on October 25, 2021 based exclusively on purely  
19 the in rem action for possession or the value thereof, that full faith and credit pursuant to  
20 28 U.S.C. § 1738 bars this bankruptcy court from reviewing the issues decided in the  
21 state court judgment and that the six factor test for issue preclusion under California law  
22 is met. Supplemental Trial Brief at 11-23.

23 As Merchants observes in its supplemental trial brief, the Ninth Circuit in *White v.*  
24 *City of Pasadena*, 671 F.3d 918 (9th Cir. 2012), recited the legal standard for applying  
25 the doctrine of issue preclusion in California as set forth by the California Supreme  
26 Court:

27 The California Supreme Court established its general rules for issue preclusion in  
28 the seminal case of *Lucido v. Superior Court*, 51 Cal.3d 335, 272 Cal.Rptr. 767,  
795 P.2d 1223 (1990). According to *Lucido*, the doctrine of issue preclusion  
“precludes relitigation of issues argued and decided in prior proceedings,” when

1 six criteria are met. *Id.* at 1225. These criteria are: (1) “the issue sought to be  
2 precluded from relitigation must be identical to that decided in a former  
3 proceeding”; (2) the issue to be precluded “must have been actually litigated in  
4 the former proceeding”; (3) the issue to be precluded “must have been  
5 necessarily decided in the former proceeding”; (4) “the decision in the former  
6 proceeding must be final and on the merits”; (5) “the party against whom  
7 preclusion is sought must be the same as, or in privity with, the party to the  
8 former proceeding”; and (6) application of issue preclusion must be consistent  
9 with the public policies of “preservation of the integrity of the judicial system,  
10 promotion of judicial economy, and protection of litigants from harassment by  
11 vexatious litigation.” *Id.* at 1225-27.

12 *Id.* at 927.

13 In opposition to Respondents’ motion for summary adjudication, Markarian  
14 argues as follows:

15 The simple fact is the state court judgment was based on a default entry.  
16 There was no trial or any hearing based on evidence in the state court. That  
17 explicitly means that if there was no trial or hearing on the elements in the state  
18 court complaint, then there could not have been any findings either – whether  
19 explicitly or implicitly. The Respondents, after being on notice of the Motion for  
20 Contempt, rushed through and procured the default judgment in order to use it as  
21 a sword for summary adjudication.

22 The fact remains that the state court made absolutely no findings  
23 otherwise there would have been a separate memorandum or opinion of findings  
24 of facts and conclusions of law. There wasn’t any and this supports this Court’s  
25 position that the state court did not “necessarily find” that either.

26 Moreover, the Court should note the state court complaint contains a total  
27 of 12 basic, boilerplate allegations. To summarize, the allegations alleged in the  
28 state court complaint state basically that Markarian bought a watch, took a loan  
from Ben Bridges, made a payment then defaulted, the debt was charged off,  
Markarian filed for bankruptcy, Respondents purchased the charged off debt, and  
Markarian resides in Los Angeles County. That is it – nothing more. There were  
no allegation pleaded in the state court complaint that Markarian converted the  
collateral before or after the petition date. As such, the state court had no  
information or facts in front of it to even make any findings. How can the state  
court have made any findings, whether explicit or necessary or implied, that  
Markarian converted the collateral before or after the petition date when the state  
court complaint makes no mention of that allegation?

Movant’s Opposition and Brief to Respondent’s Motion for Summary Adjudication,  
Docket No. 78, filed on May 19, 2022 at 1-2.

Regarding the six factors for issue preclusion under California law, arguably,

1 factor (1), “the issue sought to be precluded from relitigation must be identical to that  
2 decided in a former proceeding”, is met as to the issue whether Markarian had  
3 possession of the collateral. As well, factor (5), “the party against whom preclusion is  
4 sought must be the same as, or in privity with, the party to the former proceeding”, is  
5 met as this would be Markarian in the prior state court action and in the contested  
6 matter now before this court. Moreover, factor (4), “the decision in the former  
7 proceeding must be final and on the merits”, is met as the state court default judgment  
8 is final and on the merits where as here, the defendant had actual knowledge of the  
9 lawsuit. See *Cal-Micro, Inc. v. Cantrell (In re Cantrell)*, 329 F.3d 1119, 1123-1124 (9th  
10 Cir. 2003).

11 The other three of six factors are questionable, namely, factor (2), the issue to be  
12 precluded “must have been actually litigated in the former proceeding”; factor (3), the  
13 issue to be precluded “must have been necessarily decided in the former proceeding”;  
14 and factor (6), application of issue preclusion must be consistent with the public policies  
15 of “preservation of the integrity of the judicial system, promotion of judicial economy,  
16 and protection of litigants from harassment by vexatious litigation.”

17 Regarding whether the state court made actual and necessary findings for the  
18 default judgment to have preclusive effect, as the court previously noted, the state court  
19 in entering default judgment in favor of Merchants and against Markarian did not make  
20 any express factual findings. Therefore, the court will examine whether the state court  
21 made any implicit factual findings in entering default judgment by considering the  
22 requirements for entry of judgment on the claim under California Code of Civil  
23 Procedure § 667, which were actually and necessarily made.

24 California Code of Civil Procedure § 667 states:

25 In an action to recover the possession of personal property, judgment for the  
26 plaintiff may be for the possession or the value thereof, in case a delivery cannot  
27 be had, and damages for the detention. If the property has been delivered to the  
28 plaintiff, and the defendant claim a return thereof judgment for the defendant may  
be for a return of the property or the value thereof, in case a return cannot be  
had, and damages for taking and withholding the same.

1 In their supplemental trial brief, Respondents argue that the state court in its  
2 default judgment actually and necessarily decided the issue of Markarian's conversion  
3 of the collateral post-bankruptcy as Merchants's state court complaint only contained  
4 one cause of action under California Code of Civil Procedure § 667. According to  
5 Respondents, "Based on the Complaint and the Default Brief, exactly as in *Baldwin*,  
6 *supra*, the court could not have granted judgment to MAG [Merchants] unless it found  
7 that Markarian converted the Collateral post bankruptcy, therefore the issues were  
8 necessarily decided." Supplemental Trial Brief at 19-20, *citing In re Baldwin*, 249 F.3d  
9 912, 919 (9th Cir. 2001).

10 In its state court complaint, Merchants carefully requested in its prayer for relief  
11 "[f]or a money judgment under § 667 of the [California] Code of Civil Procedure for the  
12 value of Plaintiff's interest in the Collateral, in the sum of \$9,319.50 in case delivery  
13 cannot be had as a result of Defendants conversion of the Collateral after the  
14 commencement of the bankruptcy case." State Court Complaint, Trial Exhibit R-29 at 3.  
15 Merchants had to be careful in its request for relief because if it alleged that Markarian  
16 converted the property before the petition, arguably, it would be seeking a money  
17 judgment *in personam* against him in violation of the discharge injunction as to  
18 collection of prepetition debts as he contends. However, as Markarian contends in his  
19 opposition to Respondents' motion for summary adjudication, Merchants did not make  
20 any factual allegations in the state court complaint that he converted the collateral  
21 postpetition. That is, Merchants's state court complaint contains no allegation of  
22 material fact that Markarian had possession of the collateral either at the time of filing of  
23 his bankruptcy petition or at the commencement of Merchants's state court lawsuit,  
24 which is problematic as discussed below. State Court Complaint, Trial Exhibit R-29 at  
25 1-3 (Factual Allegations, ¶¶ 1-13).

26 The court determines that Respondents have not met their burden of showing  
27 that summary adjudication should be granted under Federal Rules of Bankruptcy  
28 Procedure 7056 and 9014, making Federal Rule of Civil Procedure 56 applicable to the

1 contested matter of Markarian’s contempt motion based on issue preclusion because  
2 they have not demonstrated that the state court in rendering a default judgment actually  
3 and necessarily decided that Markarian converted the collateral post-bankruptcy.

4 As the Ninth Circuit stated in *In re Baldwin*, “under California law, in order for us  
5 to conclude that the issue had been actually litigated in the prior proceeding, we must  
6 either find that the court made an express finding on the issue or we must conclude that  
7 the issue was necessarily decided in the prior proceeding. See [*In re Harmon*, 250 F.3d  
8 1240 (9th Cir. 2001)] *id.* at 1248 (discussing the express finding requirement); *id.* at  
9 1249 (explaining that, as a conceptual matter, if an issue was necessarily decided in a  
10 prior proceeding, it was actually litigated in that proceeding).” *In re Baldwin*, 249 F.3d at  
11 919. Respondents do not meet this standard.

12 First, as noted previously, the state court did not make any express factual  
13 finding that Markarian possessed or converted the collateral post-bankruptcy.

14 Second, the state court did not make an implicit factual finding necessary to its  
15 default judgment that Markarian possessed or converted the collateral post-bankruptcy.  
16 The state court could have entered a judgment on Merchants’ cause of action for claim  
17 and delivery of personal property under California Code of Civil Procedure § 667 if as a  
18 factual matter, Markarian had transferred the collateral pre-bankruptcy without  
19 knowledge of Ben Bridge, Merchants’s predecessor-in-interest. Regarding a cause of  
20 action for claim and delivery, such as under California Code of Civil Procedure § 667,  
21 the treatise, *California Jurisprudence*, has observed: “The general rule is that an action  
22 in claim and delivery to recover the possession of personal property will not lie unless,  
23 at the time the action is commenced, the defendant has the possession of the property  
24 or the power to deliver it in satisfaction of a judgment for its possession.” 16A  
25 *Cal.Jur.3d Creditors’ Rights and Remedies* § 446 (online edition, May 2022 update),  
26 *citing inter alia, Richards v. Moray*, 133 Cal. 437 (1901). *California Jurisprudence* has  
27 also noted an exception to this general rule that a cause of action for claim and delivery  
28 will not lie unless the defendant is in possession of the property at the commencement

1 of the lawsuit: “The general rule as to the necessity of the defendant’s possession does  
2 not obtain where the defendant has been in possession of the property and has,  
3 unknown to the plaintiff, wrongfully disposed of it prior to the commencement of the  
4 action, for a defendant will not be allowed to part with the property in bad faith and then  
5 plead his or her own bad faith as a defense to the plaintiff’s cause of action.” 16A  
6 Cal.Jur.3d Creditors’ Rights and Remedies § 447, *citing inter alia, Rathbun v. Hill*, 129  
7 Cal.App. 601 (1933) and *Law v. Heiniger*, 132 Cal.App.2d Supp. 898 (1955); *see also,*  
8 *G and G Productions LLC v. Rusic*. 902 F.3d 940, 953 (9th Cir. 2018) (noting exception  
9 in *Law v. Heiniger, supra*).

10 In *Rathbun v. Hill*, the appellate court rejected the claim of the defendant that a  
11 cause of action for claim and delivery could not be maintained against him since he  
12 dispossessed himself of the property at issue, holding that the cause of action was  
13 maintainable where the defendant wrongfully transferred the property without the  
14 knowledge of the plaintiff (though the court reversed on grounds that the trial court gave  
15 an erroneous jury instruction regarding damages for claim and delivery). 129 Cal.App.  
16 at 606-609. The court stated:

17 While the general rule prevails, as stated by this court in the case of  
18 *California Packing Corporation v. Stone*, [64 Cal.App. 488 (1923)] *supra*, that an  
19 action in replevin will not lie against one not in possession at the time of the  
20 bringing of the suit, yet there is a well-defined exception thereto. The exception  
21 is stated as follows in a number of the cases, to wit: “The rule that an action to  
22 recover the possession of personal property does not lie against one not in  
23 possession of the property, does not obtain where the defendant had been in  
24 possession and wrongfully disposed of the property prior to the commencement  
25 of the action without the knowledge of the plaintiff at the time.”

26 *Id.* at 606-607.

27 In *Law v. Heiniger*, the appellate court reversed the trial court’s holding that a  
28 defendant was not liable on a claim and delivery cause of action for lack of possession  
of property where he admittedly had possession before the action was brought and did  
not have a satisfactory explanation of the disposition of the property. 132 Cal.App.2d



1 Supp. at 899-901. The court stated: “An exception to the rule, that a cause of action in  
2 ‘claim and delivery’ (replevin) does not exist against one who does not have possession  
3 at the commencement of the action, is made in those cases (detinue) where possession  
4 had been in the defendant but was wrongfully given to another.” 132 Cal.App.2d Supp.  
5 at 900, *citing, Faulkner v. First National Bank*, 130 Cal. 258, 264-266 (1900) and *Teter*  
6 *v. Thompson*, 57 Cal.App. 329, 331-332 (1922).

7 As discussed above, the state court could have entered its default judgment on  
8 Merchants’s claim under California Code of Civil Procedure § 667 based on alternative  
9 findings, that either finding that Markarian had possession of the collateral at the time  
10 Merchants filed the state court lawsuit or finding that Markarian had disposed of the  
11 collateral without Ben Bridge’s knowledge pre-bankruptcy, which the evidence adduced  
12 at trial indicates, or post-bankruptcy.<sup>4</sup> The state court in its default judgment did not  
13 indicate that it was making a finding either way. Therefore, it cannot be determined that  
14 the state court necessarily determined that Markarian had possession of the collateral at  
15 the commencement of the state court lawsuit or during the post-bankruptcy time period.

16 Third, Merchants’ default judgment does not meet the standard for preclusive  
17 effect in any event because its state court complaint did not allege the material facts of  
18 Markarian’s possession or conversion of the collateral post-bankruptcy, and the court  
19 should not apply the doctrine of issue preclusion due to this defect in pleading.

20 As cogently stated by the California Court of Appeal in *Kim v. Westmoore*  
21 *Partners, Inc.*, 201 Cal.App.4<sup>th</sup> 267 (2011), the basic guidelines for analyzing the legal  
22 effect of a default or default judgment are:

23 Substantively, “[t]he *judgment by default* is said to ‘confess’ the material facts  
24 alleged by the plaintiff, i.e., the defendant’s failure to answer has the same effect

25 <sup>4</sup> As discussed previously, the evidence in this case seems to fit the pattern of the exception to the  
26 general rule of necessity of the defendant’s possession on a claim and delivery cause of action because  
27 here, Markarian had been in possession of the property, the watch, and had, unknown to Ben Bridge, or  
28 its assignee, Merchants, wrongfully disposed of it prior to the commencement of the action by Merchants,  
prepetition in 2018, and under the exception, the claim and delivery cause of action will still lie “for a  
defendant will not be allowed to part with the property in bad faith and then plead his or her own bad faith  
as a defense to the plaintiff’s cause of action.” See 16A Cal.Jur.3d Creditors’ Rights and Remedies §  
447, *citing inter alia, Rathbun v. Hill, supra* and *Law v. Heiniger, supra*.

1 as an express admission of *the matters well pleaded in the complaint.*” (*Steven*  
2 *M. Garber & Associates v. Eskandarian* (2007) 150 Cal.App.4<sup>th</sup> 813, 823, 59  
3 Cal.Rptr.3d 1, second italics added). The “well-pleaded allegations” of a  
4 complaint refer “to all material facts properly pleaded, but not contentions,  
5 deductions or conclusions of fact or law.” (*Evans v. City of Berkeley* (2006) 38  
6 Cal.4<sup>th</sup> 1, 6, 40 Cal.Rptr.3d 205, 129 P.3d 394, quoting *Serrano v. Priest* (1971) 5  
7 Cal.3d 584, 591, 96 Cal.Rptr. 601, 487 P.2d 1241.).

8 Because the default confesses those properly pleaded facts, a plaintiff has no  
9 responsibility to provide the court with sufficient evidence to prove them---they  
10 are treated true for purposes of obtaining a default judgment. (*Ostling v. Loring*  
11 (1994) 27 Cal.App.4<sup>th</sup> 1731, 1746, 33 Cal.Rptr.2d 391.) But that is all the default  
12 does. There is no penalty for defaulting. “A defendant has the right to elect not  
13 to answer the complaint. (*Greenup v. Rodman* (1986) 42 Cal.3d 822, 829 [231  
14 Cal.Rptr. 220, 726 P.2d 1295].) Although this may have been a tactical move by  
15 defendant, it is a permissible tactic. (*Stein v. York* (2010) 181 Cal.App.4<sup>th</sup> 320,  
16 325, 105 Cal.Rptr.3d 1.)

17 And if the well-pleaded allegations of the complaint do not state any proper  
18 cause of action, the default judgment in the plaintiff’s favor cannot stand. On  
19 appeal from the default judgment, “[a]n objection that the complaint failed to state  
20 facts sufficient to constitute a cause of action may be considered.” See (*Martin v.*  
21 *Lawrence*, 156 Cal. 191, 103 P. 913; *Bristol Convalescent Hops. v. Stone*, (1968)  
22 258 Cal.App.2<sup>nd</sup> 848, 859, 66 Cal.Rptr. 404.) Moreover, “[w]hen considering the  
23 legal effect of those facts, we disregard any erroneous or confusing labels  
24 employed by the plaintiff.” (*Mead. Sanwa Bank California* (1998) 61 Cal.App.4<sup>th</sup>  
25 561, 564, 71 Cal.Rptr.2d 625, citing *Saunders v. Cariss* (1990) 224 Cal.App.3d  
26 905, 908, 274 Cal.Rptr.186.)

27 *Kim v. Westmoore Partners, Inc.*, 201 Cal.App.4<sup>th</sup> at 281-282 (italics in original); see  
28 *also*, Witkin, *California Procedure*, Proceedings Without Trial, § 216 (6<sup>th</sup> edition, online  
edition, May 2022 update)(“The judgment by default is said to ‘confess’ the material  
facts alleged by the plaintiff, i.e., the defendant's failure to answer has the same effect  
as an express admission of the matters well pleaded in the complaint.”), *citing inter alia*,  
*Brown v. Brown*, 170 Cal. 1, 5 (1915).

In the court’s view, the material facts alleged Merchants’ complaint in the state  
court action are not well-pleaded in order for its judgment of default to be said to  
“confess” the material fact of possession of the collateral by Markarian as required to  
properly plead a cause of action for claim and delivery under California Code of Civil  
Procedure § 667. According to California Jurisprudence, the ultimate facts which must

1 be pleaded in a claim and delivery action, such as under California Code of Civil  
2 Procedure § 667 are:

3 (1) that the plaintiff is, at the time of commencement of the action, the owner of  
4 the property, or the possessor of some special interest in the property;

5 (2) that his or her ownership or special interest is coupled with a right of  
6 immediate possession; and

7 (3) that the property is, at that time, wrongfully in the defendant's possession.

8 16A Cal.Jur.3d Creditors Rights and Remedies, § 163, *citing inter alia*, *Commercial*  
9 *Credit Co. v. Peak*, 195 Cal. 27 (1924), *Fredericks v. Tracy*, 98 Cal. 658 (1893) and  
10 *Nudd v. Thompson*, 34 Cal. 39 (1867).

11 The confession implied from Markarian's default is limited to the material  
12 allegations in the complaint, which did not include allegations of possession or  
13 conversion by Markarian post-bankruptcy as he argued in his brief opposing  
14 Respondents' motion for summary adjudication. See Docket No. 78 at 2-3. Because  
15 Markarian's post-bankruptcy possession or conversion of the collateral were not  
16 material facts alleged in Merchants's complaint in the prior state court action,<sup>5</sup> the  
17 doctrine of conclusive admission of material facts through default judgment is not  
18 applicable. *Kim v. Westmoore Partners, Inc.*, 201 Cal.App.4<sup>th</sup> at 281-282. Thus, the  
19 court should not give effect to a default judgment in a prior action on a complaint which  
20 is not based on well-pleaded facts and declines to apply issue preclusion based on the  
21 default judgment obtained by Merchants in the state court action to hold that Markarian  
22 is precluded or estopped from contending that he did not have possession of the  
23 collateral at the time he filed for bankruptcy or that the court must so find based on the

24 \_\_\_\_\_  
25 <sup>5</sup> The court acknowledges that Merchants' papers requesting entry of default judgment in the state court  
26 action, Exhibit 33 (request for entry of default), Exhibit 34 (request for entry of default judgment) and  
27 Exhibit 36 (Declaration of Bruce Jackman in support of request for entry of default and default judgment)  
28 do assert as a material fact that on information and belief Markarian had possession of the collateral post-  
bankruptcy. However, as recognized by the case law, such as *Kim v. Westmoore Partners, Inc.*, 201  
Cal.App.4<sup>th</sup> at 281-282, the operative document for determining whether there were conclusive  
admissions of material facts through default judgment is the complaint in the prior action. The default  
judgment papers were not the complaint and are not the operative documents for determining the  
existence of conclusive admissions of material facts through default judgment.

1 effect of the default judgment in the state court action.

2 For the foregoing reasons, the court will deny Respondents' motion for summary  
3 adjudication of issues.

4 Based on the foregoing, the court will deny Markarian's motion for contempt and  
5 Respondents' motion for summary adjudication of issues. The court will enter a  
6 separate final order concurrently herewith.

7 IT IS SO ORDERED.

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25 Date: July 5, 2022

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Robert Kwan  
United States Bankruptcy Judge