

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA**

In re

**ROBERT N. SHEARBURN, and
MARGARET SHEARBURN,**

Debtors.

Case No. **04-61472-7**

STATE OF CALIFORNIA,

Plaintiff.

-vs-

ROBERT N. SHEARBURN,

Defendant.

Adv No. **06-00092**

MEMORANDUM OF DECISION

At Butte in said District this 6th day of November, 2006.

In this adversary proceeding the Plaintiff, State of California, represented by James K. Openshaw, of Sacramento, California, filed a motion for summary judgment on August 25, 2006, seeking a judgment excepting from the Defendant/Debtor Robert N. Shearburn's ("Shearburn")

discharge the sum of \$19,492,991.64 pursuant to 11 U.S.C. § 523(a)(19)¹. Plaintiff's motion includes a memorandum of law with a separate Statement of Uncontroverted Facts which satisfies the requirements of Mont. LBR 7056-1(a)(1). The Defendant Shearburn, *in propria persona*, filed a response on October 4, 2006, contending that Plaintiff's claim was listed in his Schedules and discharged, and that Plaintiff's complaint was filed untimely under Rule 4007, F.R.B.P. Defendant's response did not request a hearing, and did not include a "Statement of Genuine Issues" as required by Montana Local Bankruptcy Rule ("Mont. LBR") 7056-1(a)(2) setting forth specific facts that Defendant asserts would establish a genuine issue of material fact precluding summary judgment. Accordingly, pursuant to Mont. LBR 7056-1(a)(3) the Court deems all material facts in the Plaintiff's Statement of Uncontroverted Facts admitted and Plaintiff's motion for summary judgment fully submitted and ready for decision.

This Court has jurisdiction of this adversary proceeding under 28 U.S.C. § 1334(b). The parties agree this is a core proceeding under 28 U.S.C. § 157(b)(2)(I) to determine dischargeability of a particular debt under § 523(a)(19). For the reasons set forth below a

¹All references to the Bankruptcy Code and Federal Rules of Bankruptcy Procedure ("F.R.B.P.") herein are to statutes and rules in effect prior to enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Pub. L. 109-8), most of which took effect on October 17, 2005, long after the instant Chapter 7 case commenced. However, § 1404 of S.B. 256, Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, as enrolled by the Congress and signed by the President provides:

SEC. 1404. DEBTS NONDISCHARGEABLE IF INCURRED IN VIOLATION OF SECURITIES FRAUD LAWS.

(a) PREPETITION AND POSTPETITION EFFECT- Section 523(a)(19)(B) of title 11, United States Code, is amended by inserting ' , before, on, or after the date on which the petition was filed, ' after 'results'.

(b) EFFECTIVE DATE UPON ENACTMENT OF SARBANES-OXLEY ACT- The amendment made by subsection (a) is effective beginning July 30, 2002.

separate Order and Judgment will be entered granting Plaintiff's motion for summary judgment and excepting from the Defendant Robert N. Shearburn's discharge the sum of \$19,492,991.64. This Memorandum of Decision includes the Court's Findings of Fact and Conclusions of Law pursuant to F.R.B.P. 7052.

FINDINGS OF FACT

Local Bankruptcy Rule ("LBR") 7056-1(a)(3) provides: "All material facts in the moving party's Statement of Uncontroverted Facts are deemed admitted unless controverted by a Statement of Genuine Issues filed by the opposing party." Defendant failed to file a Statement of Genuine Issues setting forth specific facts establishing any genuine issues of material fact. Instead, Defendant's response sets forth its own set of uncontroverted facts. Therefore, by operation of LBR 7056-1(a)(3) the following Plaintiff's uncontroverted facts are deemed admitted:

1. Plaintiff is the regulatory agency for the State of California in charge of overseeing and administering the Corporate Securities Laws of 1968 found at section 25000 *et seq.* of the California Corporations Code ("Corporations Code").

2. On September 16, 2004, following an investigation of Defendant leading to the filing of a civil action alleging violation of the Corporate Securities Law, the state completed a four-day bench trial in the San Diego County Superior Court, State of California. The court entered a Final Judgment against the Defendant, Robert N. Shearburn, and his company, Innovative Financial Services, Inc., for violations of sections 25110, 25210, and 25401 of the Corporations Code. (Exhibit ("Ex.") 1 attached to the Plaintiff's memorandum of law, Docket No. 11).

3. Defendant was found to have unlawfully offered and sold unqualified non-exempt

securities involving purported investments in life insurance policy death benefits, without the required license and by means of misrepresentations and omissions of material facts, ultimately defrauding 226 investors of millions of dollars, in violation of the California securities laws.

(Ex. 1 attached to Docket No. 11).

4. The trial court entered Judgment against Defendant in the amount of \$19,492,991.64, comprised of \$14,512,025 in restitution, \$4,972,500 in civil penalties, and \$8,466.64 in costs.

(Ex. 1).

5. Defendant filed his bankruptcy petition on May 14², 2004 (Ex. 2 attached to Docket 11).

6. The Plaintiff's pre-filing claim was brought to trial after the commencement of the bankruptcy case, following an Order entered by this Court on June 9, 2004, granting relief from the automatic stay. (Ex. 3 attached to Docket No. 11).

7. Plaintiff filed its Proof of Claim on October 8, 2004 (Proof of Claim No. 92). (Ex. 4 attached to Docket No. 11). There has been no objection to Plaintiff's Proof of Claim filed by the Defendant or Trustee.

8. Defendant appealed the superior court Judgment to the Fourth District Court of Appeal, Division 1, which affirmed the Judgment in a non-published written decision on December 6, 2005, as amended and filed on February 17, 2006. (Ex. 5 attached to Docket No. 11).

²The Plaintiff's Statement of Uncontroverted Facts states that the filing date of the petition is May 1, 2004, which is the date on Ex. 2. However, the docket in Defendant's Chapter 7 bankruptcy Case No. 04-61472-7 shows that the petition was filed on May 14, 2004, and the Court finds that the petition date is as reflected on the docket.

9. Defendant then filed a Petition for Review with the California Supreme Court, which was denied without a decision on the merits on May 10, 2006 (Ex. 6 attached to Docket No. 11)

10. Plaintiff filed a Complaint for Determination of Dischargeability pursuant to 11 U.S.C. § 523(a)(19)(A)(i) and § 523(a)(19)(B)(iii) on June 27, 2006.

11. Defendant filed his answer to the Complaint on July 26, 2006.

Additional undisputed facts gleaned from the docket of Case No. 04-61472-7, include that the deadline for filing dischargeability complaints was extended and expired on March 10, 2005. A Discharge of Joint Debtors under 11 U.S.C. § 727 was entered in Case No. 04-61472-7 on November 17, 2005 (Docket No. 114). The back page of the Discharge lists certain “Debts that are Not Discharged” including: “e. Debts for most fines, penalties, forfeitures, or criminal restitution obligations; . . . h. Debts that the bankruptcy court specifically has decided or will decide in this bankruptcy case are not discharged”.

DISCUSSION

A. Contentions of the Parties.

Plaintiff moves for summary judgment excepting its claim in the amount of \$19,492,991.64 from Defendant’s discharge as a matter of law under § 523(a)(19)(A)(i) and § 523(a)(19)(B)(iii) based upon the California court judgment, which was based on violations of the California Corporate Securities law. Plaintiff argues that its § 523(a)(19) claims may be brought at any time under F.R.B.P. 4007 since the complaint is not brought under § 523(c) of the Bankruptcy Code. Plaintiff contends that the parties actually litigated the issues in the California Superior Court and the judgment was affirmed and is final and therefore Plaintiff is entitled to summary judgment.

Defendant contends that Plaintiff's attorney "is a very vindictive attorney and has a vendetta against me". Defendant also argues this Court's comment that he moved to Montana to file bankruptcy is legally prejudicial to him because he planned on retiring in Montana. Defendant contends that Plaintiff's complaint is untimely because it was filed after the deadline for filing dischargeability complaints under F.R.B.P. 4007(c) and § 523(a)(19) "is not a saving provision", and that the Plaintiff's claim therefore is discharged consistent with Defendant's "fresh start".

B. Standard for Summary Judgment.

Summary judgment is governed by FED. R. BANKR. P. 7056. Rule 7056, incorporating FED. R. CIV. P. 56(c), states that summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." "The proponent of a summary judgment motion bears a heavy burden to show that there are no disputed facts warranting disposition of the case on the law without trial." *Younie v. Gonya (In re Younie)*, 211 B.R. 367, 373 (9th Cir. BAP 1997) (quoting *Grzybowski v. Aquaslide "N" Dive Corp. (In re Aquaslide "N" Dive Corp.)*, 85 B.R. 545, 547 (9th Cir. BAP 1987)). The manner in which this burden is proven depends on which party has the burden on a particular claim or defense at the time of trial.

If the *moving* party will bear the burden of persuasion at trial, that party must support its motion with credible evidence—using any of the materials specified in Rule 56(c)—that would entitle it to a directed verdict if not controverted at trial. Such an affirmative showing shifts the burden of production to the party opposing the motion and requires that party either to produce evidentiary materials that demonstrate the existence of a "genuine issue" for trial or to submit an affidavit requesting additional time for discovery. If the burden of persuasion at trial would be on the *non-moving* party, the party moving for summary judgment may satisfy

Rule 56's burden of production in either of two ways. First, the moving party may submit affirmative evidence that negates an essential element of the nonmoving party's claim. Second, the moving party may demonstrate to the Court that the nonmoving party's evidence is insufficient to establish an essential element of the nonmoving party's claim.

Celotex Corp. v. Catrett, 477 U.S. 317, 330-34, 106 S.Ct. 2548, 2557, 91 L.Ed.2d 265 (1986) (Brennan dissent) (citations omitted). *See also Nissan Fire & Marine Ins. Co., Ltd. v. Fritz Companies, Inc.*, 210 F.3d 1099, 1102-06 (9th Cir. 2000) (discussing burdens for withstanding summary judgment).

When seeking summary judgment, the moving party must initially identify those portions of the record before the Court which it believes establish an absence of material fact. *T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Ass'n.*, 809 F.2d 626, 630 (9th Cir. 1987). If the moving party adequately carries its burden, the party opposing summary judgment must then “set forth specific facts showing that there is a genuine issue for trial.” *Kaiser Cement Corp. v. Fischback & Moore, Inc.*, 793 F.2d 1100, 1103-04 (9th Cir. 1986), *cert. denied*, 469 U.S. 949 (1986); FED. R. CIV. P. 56(e). *See also Frederick S. Wyle Prof'l. Corp. v. Texaco, Inc.*, 764 F.2d 604, 608 (9th Cir. 1985) (“the opponent must affirmatively show that a material issue of fact remains in dispute”). That is, the opponent cannot assert the “mere existence of some alleged factual dispute between the parties.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48, 106 S.Ct. 2505, 2510, 91 L.Ed.2d 202 (1986). Moreover, “[a] party opposing summary judgment may not simply question the credibility of the movant to foreclose summary judgment.” *Far Out Prods., Inc. v. Oskar*, 247 F.3d 986, 997 (9th Cir. 2001).

To demonstrate that a genuine factual issue exists, the objector must produce affidavits which are based on personal knowledge and the facts set forth therein must be admissible into

evidence. *Aquaslide*, 85 B.R. at 547. All reasonable doubt as to the existence of genuine issues of material fact must be resolved against the moving party. *Liberty Lobby*, 477 U.S. at 247-48, 106 S.Ct. at 2509. However, “[d]isputes over irrelevant or unnecessary facts will not preclude a grant of summary judgment.” *T.W. Elec. Serv.*, 809 F.2d at 630 (citing *Liberty Lobby*, 477 U.S. at 248, 106 S.Ct. at 2510). “A ‘material’ fact is one that is relevant to an element of a claim or defense and whose existence might affect the outcome of the suit. The materiality of a fact is thus determined by the substantive law governing the claim or defense.” *Id.*

If a rational trier of fact might resolve disputes raised during summary judgment proceedings in favor of the nonmoving party, summary judgment must be denied. *T.W. Elec. Serv.*, 809 F.2d at 630; *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S.Ct. 1348, 1356, 89 L.Ed.2d 202 (1986). Thus, the Court’s ultimate inquiry is to determine whether the “specific facts” set forth by the nonmoving party, viewed along with the undisputed background or contextual facts, are such that a rational or reasonable jury might return a verdict in its favor based on that evidence. *T.W. Elec. Serv.*, 809 F.2d at 631.

Because Defendant failed to submit a statement of genuine factual issues, and because his response otherwise lists his own Statement of Uncontroverted Facts, the Court concludes that no disputed facts exist and the facts are admitted as set forth above by operation of LBR 7056-1(a)(3). In the absence of any disputed material facts, the inquiry shifts to whether the moving party is entitled to judgment as a matter of law. *Celotex*, 477 U.S. at 323, 106 S.Ct. at 2552-53.

C. § 523(a)(19) and Standard for Issue Preclusion (Collateral Estoppel).

Plaintiff seeks summary judgment under § 523(a)(19)(A)(i) and § 523(a)(19)(B)(iii) based on the California state court Final Judgment against the Defendant, Ex. 1, finding

violations of California Corporate Securities Law sections 25110, 25210, and 25401 of the Corporations Code. Section 523(a)(19) provides in pertinent part:

(a) A discharge under section 727, . . . of this title does not discharge an individual debtor from any debt –

* * * *

(19) that —

(A) is for —

(i) the violation of any of the Federal securities laws . . . , *any of the State securities laws*, or any regulation or order issued under such Federal or State securities laws;

* * * *; and

(B) results from, before, on, or after the date on which the petition was filed —

* * * *

(iii) any court or administrative order for any damages, fine, penalty, citation, restitutionary payment, disgorgement payment, attorney fee, cost, or other payment owed by the debtor.

Section 523(a)(19) was added to § 523 by the Sarbanes-Oxley Act passed on July 30, 2002, Pub.L. No. 107-204, § 803(3), 116 Stat. 745. *In re Sherman*, 441 F.3d 794, 817 n.34 (9th Cir. 2006). Section 523(a)(19) applies to all bankruptcies pending at the time it was enacted, and thus applies to the instant Chapter 7 and adversary proceeding. *Id.*; *Smith v. Gibbons*, 289 B.R. 588, 591-97 (Bankr. S.D. N.Y. 2003), *aff'd*, 311 B.R. 402 (S.D. N.Y. 2004), *aff'd*, 155 Fed. Appx 534 (2d Cir. 2005) (unpublished). Congress added this exception to bankruptcy discharge to “disallow debts incurred in violation of securities fraud laws from being discharged in bankruptcy.” *In re McClung*, 304 B.R. 419, 424 (Bankr. D. Idaho 2004) (quoting *Gibbons*).

Ex. 1 shows that Defendant violated of California Corporate Securities Law sections 25110, 25210, and 25401. Ex. 1, pp. 9, 15-16. Thus, the state court Judgment based on California securities law, Ex. 1, may satisfy the requirement of § 523(a)(19)(A)(i) for

nondischargeability upon a showing of violation of “State securities laws”, and the fines, restitution and costs awarded by the state court at Ex. 1, pp. 19-21, may satisfy § 523(a)(19)(B)(iii).

As explained by the BAP in *In re Baldwin*, 245 B.R. 131, 134 (9th Cir. BAP 2000), *aff’d*, 249 F.3d 912 (9th Cir. 2001):

The doctrine of collateral estoppel, or issue preclusion, is intended to protect parties from multiple lawsuits and the possibility of inconsistent decisions, and to preserve judicial resources. *See Kelly v. Okoye (In re Kelly)*, 182 B.R. 255, 258 (9th Cir. BAP 1995), *aff’d*, 100 F.3d 110 (9th Cir.1996). Collateral estoppel applies in dischargeability proceedings. *See Grogan v. Garner*, 498 U.S. 279, 284-85, 111 S.Ct. 654, 112 L.Ed.2d 755 (1991). The burden of proof is on the party seeking to assert collateral estoppel and in order to sustain this burden, "a party must introduce a record sufficient to reveal the controlling facts and pinpoint the exact issues litigated in the prior action." *Kelly*, 182 B.R. at 258. "Any reasonable doubt as to what was decided by a prior judgment should be resolved against allowing the collateral estoppel effect." *Id.*

The preclusive effect of a state court judgment in a subsequent federal action is determined by the law of the state in which the judgment was entered. *See Gayden v. Nourbakhsh (In re Nourbakhsh)*, 67 F.3d 798, 800 (9th Cir.1995). In order for a prior judgment to be entitled to collateral estoppel effect under California law³, the following five elements must be met:

- (1) The issue sought to be precluded from relitigation must be identical to that decided in a former proceeding;
- (2) The issue must have been actually litigated in the former proceeding;
- (3) It must have been necessarily decided in the former proceeding;
- (4) The decision in the former proceeding must be final and on the merits; and
- (5) The party against whom preclusion is sought must be the same as, or in privity with, the party to the former proceeding.

Younie v. Gonya (In re Younie), 211 B.R. 367, 373 (9th Cir. BAP 1997) (citation omitted), *aff’d*, 163 F.3d 609 (9th Cir.1998).

See also Harmon v. Kobrin (In re Harmon), 250 F.3d 1240, 1245 (9th Cir. 2001) (stating California

³The elements for collateral estoppel are the same under either California or federal law. *Kelly*, 182 B.R. at 258 n.3.

collateral estoppel law), and *Paine v. Griffin (In re Paine)*, 283 B.R. 33, 38-39 (9th Cir. BAP 2002) (clarifying terms of res judicata and collateral estoppel under evolution of concepts from the RESTATEMENT (SECOND) OF JUDGMENTS.

Applying the California test for collateral estoppel, with the burden on the Plaintiff State of California, this Court concludes that the Plaintiff has satisfied its burden of establishing the five requirements. The issues sought to be precluded from relitigation in the instant adversary proceeding, Defendant's alleged violations of California state securities laws, are identical to that decided in the former proceeding in the California courts. Plaintiff seeks exception from Defendant's discharge based on Defendant's violations of California Corporate Securities Law sections 25110, 25210, and 25401. Second, those issues were actually litigated in the former proceeding in San Diego Superior Court, Case No. GIC 785226.

Third, that court necessarily decided Defendant's violations of California Corporate Securities Law sections 25110, 25210, and 25401. Ex. 1, pp. 15-16. Defendant is the same party as Robert N. Shearburn in Case No. GIC 785226. Ex. 1. Lastly, Ex. 5 and 6 show that the Defendant's appeal of the state court judgment were unsuccessful and the decision in Ex. 1 is now final and on the merits. All the California requirements for collateral estoppel are established and therefore Ex. 1 is entitled to collateral estoppel with respect to Plaintiff's claims for exception from Defendant's discharge under § 523(a)(19)(A)(i) for violation of "State securities laws", and under satisfy § 523(a)(19)(B)(iii) for the fines, restitution and costs awarded by the state court at Ex. 1, pp. 19-21.

D. § 523(c) and F.R.B.P. 4007.

Defendant contends that Plaintiff's claim was discharged and that its complaint was filed

after the deadline for dischargeability complaints had expired under Rule 4007(c). This rule provides:

A complaint to determine the dischargeability of any debt pursuant to § 523(c) of the Code shall be filed not later than 60 days following the first date set for the meeting of creditors held pursuant to § 341(a). The Court shall give all creditors not less than 30 days of the time so fixed in the manner provided in Rule 2002. On motion of any party in interest, after hearing on notice, the court may for cause extend the time fixed under this subdivision. The motion shall be filed before the time has expired.

Slagle v. Eagen (In re Eagen), 17 Mont. B.R. 65, 66 (Bankr. D. Mont. 1998).

Section 523(c)(1) provides:

Except as provided in subsection (a)(3)(B) of this section, the debtor shall be discharged from a debt of a kind specified in paragraph (2), (4), (6), or (15) of subsection (a) of this section, unless, on request of the creditor to whom such debt is owed, and after notice and a hearing, the court determines such debt to be excepted from discharge under paragraph (2), (4), (6), or (15) of subsection (a) of this section.

Defendant argues that Plaintiff's claim is discharged and that its complaint based upon § 523(a)(19) is untimely because it was not filed before the expiration of the deadline for filing dischargeability complaints. However, it is clear that subsection 523(a)(19) is not among the listed paragraphs (2), (4), (6), or (15) of subsection (a) of § 523(c). The bankruptcy court in *McClung* wrote that § 523(c)(1) does not apply to proceedings to determine the dischargeability of debts under § 523(a)(19). 304 B.R. at 424. Thus, Rule 4007(c) governing complaints filed under § 503(c) does not apply. Rule 4007(b), "Time for Commencing Proceeding Other than under § 523(c)" applies and states in pertinent part: "A complaint other than under § 523(c) may be filed at any time." See *Fife v. Keating (In re Fife)*, 20 Mont. B.R. 134, 137 (Bankr. D. Mont. 2002). Because Rule 4007(b) and not 4007(c) applies, Defendant's contention that the Plaintiff's

complaint is after the deadline and its claim is discharged lacks merit.

Lastly, Plaintiff's complaint requests in addition to the \$19,492,991.64 an award of costs and attorney's fees. However, there is no discussion in the Plaintiff's motion for summary judgment or supporting brief showing authority under § 523(a)(19) or state statute. Ex. 1 did not include an award of attorney's fees. The American Rule denies attorney's fees in the absence of contract, applicable statute, or other exceptional circumstances, and any exceptions to the American Rule are narrowly circumscribed. *In re Acequia, Inc.*, 34 F.3d 800, 819 (9th Cir. 1994) (quoting *Richardson v. Alaska Airlines, Inc.*, 750 F.2d 763, 765 (9th Cir. 1984)). The Court deems Plaintiff's prayer for attorney's fees in its complaint abandoned, and based on the American Rule Plaintiff's request for attorney's fees is denied.

CONCLUSIONS OF LAW

1. This Court has jurisdiction of this adversary proceeding under 28 U.S.C. § 1334(b).
2. This is a core proceeding under 28 U.S.C. § 157(b)(2)(I) to determine the dischargeability of the Plaintiff's particular debt.
3. The Plaintiff satisfied its burden of showing that there are no genuine issues of material fact.
4. The Plaintiff satisfied its burden under the five-part test for determining whether issue preclusion (collateral estoppel) applies: (1) The issues sought to be precluded from relitigation are identical to those decided in the former proceeding in the California Superior Court, San Diego County, Case No. GIC 785226, Ex. 1, which were affirmed on appeal; (2) The issues of violation of state securities law and fines, restitution and costs resulting from the former proceeding, were actually litigated in the former proceeding, Ex. 1; (3) The issues were necessarily decided in the

former proceeding, Ex. 1; (4) The decision in the former proceeding is final and was on the merits, Ex. 5, 6; and (5) The Defendant – party against whom preclusion is sought in the instant adversary proceeding – is the same as a party to the former proceeding.

5. The state court Judgment, Ex. 1, is entitled to issue preclusion (collateral estoppel) with respect to Plaintiff’s claims for exception from Defendant’s discharge under § 523(a)(19)(A)(i) for violation of “State securities laws”, and under § 523(a)(19)(B)(iii) for the fines, restitution and costs awarded by the state court at Ex. 1, pp. 19-21.

6. Section 523(a)(19) is not among the listed paragraphs (2), (4), (6), or (15) of subsection (a) of § 523(c). Therefore § 523(c)(1) does not apply to proceedings to determine the dischargeability of debts under § 523(a)(19) and F.R.B.P. Rule 4007(c) governing complaints filed under § 523(c) does not apply.

7. Plaintiff’s claim against Defendant was not discharged and its complaint based upon § 523(a)(19) may be filed at any time under F.R.B.P. Rule 4007(b) and was neither untimely nor time-barred.

8. Plaintiff’s prayer for attorney’s fees in its complaint is denied based upon waiver and the American Rule.

IT IS ORDERED a separate Order shall be entered in accordance with the above, overruling the Defendant’s objection (Docket No. 22), granting Plaintiff’s motion for summary judgment (Docket Nos. 9/10), denying the State of California an award for attorney’s fees, and ordering Judgment entered against Defendant Robert N. Shearburn in favor of the Plaintiff State of California excepting from Defendant’s discharge the amount of \$19,492,991.64 under 11 U.S.C. § 523(a)(19)(A)(i) and 11 U.S.C. § 523(a)(19)(B)(iii).

BY THE COURT

A handwritten signature in cursive script that reads "Ralph B. Kirscher". The signature is written in black ink and is positioned above a horizontal line.

HON. RALPH B. KIRSCHER
U.S. Bankruptcy Judge
United States Bankruptcy Court
District of Montana