UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

In re: CARLTON ROARK, Debtor. CARLTON ROARK, Appellant, v. SAN DIEGO COUNTY CREDIT UNION, Appellee.	No. 23-55750 D.C. No. 3:22-cv-01962-TWR-WVG Southern District of California, San Diego ORDER

Before: CANBY, TALLMAN, and CLIFTON, Circuit Judges.

The panel has voted to deny the petition for panel rehearing.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 40.

Roark's petition for panel rehearing and petition for rehearing en banc (Docket Entry Nos. 21, 22, and 23) are denied.

No further filings will be entertained in this closed case.

NOT FOR PUBLICATION

FILED

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

In re: CARLTON ROARK, Debtor. CARLTON ROARK, Appellant, v. SAN DIEGO COUNTY CREDIT UNION, Appellee.	No. 23-55750 D.C. No. 3:22-cv-01962-TWR-WVG MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Todd W. Robinson, District Judge, Presiding

Submitted November 20, 2024**

Before: CANBY, TALLMAN, and CLIFTON, Circuit Judges.

Chapter 7 debtor Carlton Roark appeals pro se from the district court's judgment affirming the bankruptcy court's orders denying Roark's motions arising

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

under Federal Rules of Civil Procedure 60(d)(3) and 59(e). We have jurisdiction under 28 U.S.C. § 158(d)(1). We review de novo a district court's decision on appeal from a bankruptcy court and apply the same standard of review applied by the district court. *Decker v. Tramiel (In re JTS Corp.)*, 617 F.3d 1102, 1109 (9th Cir. 2010). We affirm.

The bankruptcy court did not abuse its discretion by denying Roark's Rule 60(d)(3) motion because Roark failed to set forth clear and convincing evidence of "an unconscionable plan or scheme . . . designed to improperly influence the court in its decision." *Pizzuto v. Ramirez*, 783 F.3d 1171, 1180 (9th Cir. 2015) (internal quotation marks omitted) (explaining the "high burden" for proving fraud on the court); *see also United States v. Sierra Pac. Indus., Inc.*, 862 F.3d 1157, 1166-67 (9th Cir. 2017) (standard of review).

The bankruptcy court did not abuse its discretion by denying Roark's Rule 59(e) motion to alter or amend the judgment because Roark failed to establish any basis for relief. *See Turner v. Burlington N. Santa Fe R.R. Co.*, 338 F.3d 1058, 1063 (9th Cir. 2003) (setting forth standard of review and grounds upon which a Rule 59(e) motion may be granted).

We do not consider matters not specifically and distinctly raised and argued

in the opening brief, or arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

AFFIRMED.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

In re CARLTON ROARK, Debtor. CARLTON ROARK, Appellant, v. SAN DIEGO COUNTY CREDIT UNION, Appellee.	Case No.: 22-CV-1962 TWR (WVG) Bankruptcy Case No.: 18-4093-LT7 Adversary Case No.: 18-90158-CL **ORDER AND JUDGMENT AFFIRMING BANKRUPTCY COURT** (ECF Nos. 1, 10, 13, 14)

Presently before the Court is Debtor-Defendant and Appellant Carlton Roark's Notice of Appeal from two of the Honorable Christopher B. Latham's orders: (1) Judge Latham's October 12, 2022 Order on Defendant's Motion to Vacate Judgment (the "First Underlying Order"); and (2) Judge Latham's December 9, 2022 Order Denying Defendant's Motion for Further Reconsideration (the "Second Underlying Order"). (*See*

generally ECF No. 1 ("NOA").) The Court is in receipt of Roark's Opening Brief ("AOB," ECF No. 10), the Responsive Brief ("RB," ECF No. 13) filed by Appellee San Diego County Credit Union ("SDCCU"), and Roark's Reply Brief ("ARB," ECF No. 14).

The Court previously determined that this appeal was suitable for determination on the papers without oral argument pursuant to Civil Local Rule 7.1(d)(1). (*See* ECF No. 9.) Having carefully considered the Parties' arguments, the record, and the applicable law, the Court **AFFIRMS** the rulings of the bankruptcy court.

BACKGROUND

I. The San Diego County Credit Union Litigation

A. Underlying Facts

SDCCU employed Roark as a loan officer from 2003 to mid-August 2012, at which time Roark was let go. *See SDCCU v. Roark*, No. D065117, 2015 WL 1311511, at *1 (Cal. Ct. App. Mar. 23, 2015) (the "Anti-SLAPP Appeal"). Roark then found a position with North Island Financial Credit Union ("NIFCU"). *See id.*

Meanwhile, beginning in late December 2011, an anonymous individual later identified as Roark began disseminating defamatory statements regarding SDCCU through blogs, customer review sites, and email. (*See* Judgment Against Defendant Carlton Roark and in Favor of Plaintiff San Diego County Credit Union at 6, *Halleck v. Doe*, No. 37-2011-00100322-CU-DF-CTL (Cal. Super. Ct. filed Dec. 16, 2016) (the "Default Judgment").[1]) The defamatory statements accused SDCCU of mortgage fraud, ATM theft, racial discrimination, and financing gay pornography, among other things. (*See id.*)

Teresa Halleck, SDCCU's then-CEO, filed a complaint in the Superior Court of California, County of San Diego, against doe defendants for defamation, *Halleck v. Doe*,

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[1] The Default Judgment is attached as Exhibit A to Roark's Motion to Vacate the 2011 State Trial Court Default Judgment Based on **New Evidence** Proving It Was Secured by Extrinsic Fraud Scheme on the Court and for Damages, Sanctions, and Other Relief ("Mot. to Vacate"), which was filed at ECF No. 71 in SDCCU's underlying adversary proceeding. To avoid ambiguity, pin citations to the exhibits appended to Roark's Motion to Vacate refer to the Exhibit letter and page numbers provided by Roark at the bottom of each page.

No. 37-2011-00100322-CU-DF-CTL (Cal. Super. filed Nov. 1, 2011) (the "State Court Action"). (*See* AOB at 1; RB at 10.) In 2013, after discovering that Roark was behind the defamatory statements, Halleck amended the complaint to substitute SDCCU as the plaintiff and name Roark and NIFCU as defendants. (*See* AOB at 1–2; RB at 10.) SDCCU asserted claims for defamation per se, defamation per quod, breach of employment agreement, breach of separation agreement, misappropriation of trade secrets, and unfair competition against Roark. *See SDCCU v. Roark*, No. D071960, 2018 WL 1663204, at *1 (Cal. Ct. App. Apr. 6, 2018) (the "Default Judgment Appeal").

B. Discovery

1. The Preservation Order and Imaging of Roark's Hard Drive

On July 3, 2013, San Diego Superior Court Judge Joel Pressman issued an evidence preservation order (the "Preservation Order"), ordering Appellant to "protect and preserve *all potentially relevant* evidence in th[e SDCCU] action, including but not limited to electronic information stored on his personal and/or work computers, laptops, PDAs, smart phones, tablets and/or other electronic devices." (Default Judgment at 11 (emphasis in original).) Appellant admitted to receiving a copy of the Preservation Order. (*See id.*)

In February 2014, NIFCU's insurer, CUNA Mutual, suggested Jim Sevel as Roark's forensic expert. (*See* Mot. to Vacate Ex. B at 2.) On March 4, 2014, Roark's counsel arranged for Sevel to image Roark's hard drive on the afternoon of March 7, 2014 (the "March Image"). (*See* Mot. to Vacate Ex. C at 2; Ex. D at 1–2.) On March 8, 2014, Sevel confirmed he had successfully imaged Roark's computer. (*See* Mot. to Vacate Ex. E at 2.)

On April 8, 2014, however, Roark's counsel sent a letter confirming Sevel's immediate termination in light of a previously undisclosed conflict of interest. (*See* Mot. to Vacate Ex. G at 3.) Specifically, CUNA Mutual and/or Roark's counsel discovered that Sevel or his employer, San Diego Computer Forensics, LLC, had previously performed computer forensics services for SDCCU through an intermediary in the same action. (*See id.*) Roark received a copy of the letter by email. (*See id.* at 1.) Roark's counsel therefore engaged Daniel Libby of Digital Forensics Inc. (*See* Mot. to Vacate Ex. I at 13.)

In May 2014, Roark and SDDCU stipulated to a protocol for inspecting Roark's hard drive (the "Stipulated Protocol"). (*See* Default Judgment at 11.) Pursuant to the Stipulated Protocol, Roark's forensic expert (presumably Libby), while being monitored by SDCCU's forensic expert, would extract a forensically sound copy of the hard drive of Roark's personal computer. (*See id.*) To identify relevant information, Roark's expert, monitored by SDCCU's expert, would run searches on the replicated hard drive of 87 stipulated key words. (*See id.* at 11–12.)

Beginning May 8, 2014, Roark's counsel arranged for Libby to re-image Roark's hard drive on the morning of May 12, 2014 (the "May Image"). (*See* Mot. to Vacate Ex. I at 15–20.)

2. Forensic Analysis of Roark's Hard Drive

On June 11, 2014, while running the keyword search on the May Image, Roark's expert found evidence that Roark had used a wiping device to delete files unilaterally prior to production of his hard drive in violation of the Preservation Order and Stipulated Protocol. (*See* Default Judgment at 11–12.) This led to two developments: First, in July 2014, Roark's counsel privately hired James Vaughn of iDiscovery Solutions to compare the then-unproduced March and produced May Images of Roark's hard drive. (*See* Mot. to Vacate Ex. J at 4.) Second, Judge Pressman held a discovery conference on July 22, 2014, at which time the court instructed the parties to agree to a neutral forensic expert to examine the May Image. (*See* Default Judgment at 12.) The parties chose Bruce Pixley. (*See id.*)

In his report dated August 29, 2014, Pixley concluded that "it was clear that someone intentionally used software to wipe data" in May 2014. (*See id.*) Pixley found that over 210,000 files had been permanently destroyed, many of them only hours prior to Roark's production of his hard drive. (*See id.*) Indeed, just hours before the hard drive had been produced, somebody had downloaded data to USB devices and then used software known as "USBOblivion" to delete evidence of the USB download. (*See id.*) Although it is not

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clear precisely what data had been deleted, some of the files appeared to relate to Roark's internet activity and certain NIFCU loan files. (*See id.*)

Pixley requested production of the USBs used for the download from Roark's hard drive. (*See id.*) In response, Roark produced a single USB on September 4, 2014, (*see id.*), despite reporting to his attorney that he had "found" it on August 19, 2014. (*See* SDCCU Adversary Proceeding, ECF No. 78 ("Supp. Exs.") Ex. R at 2.) In a supplemental report dated September 14, 2014, Pixley concluded that wiping software had also been used to wipe data from the USB, including on September 3, 2013, the day before the USB had been produced. (*See* Default Judgment at 12.)

Although Pixley was able to recover approximately 33,000 destroyed files, there was additional data that he could not recover. (*See id.*) Roark did not dispute that he had deleted the 33,000 files that Pixley recovered, contending only that he had not deleted any "relevant" files. (*See id.*)

In January 2015, Roark produced the March Image for the first time. (*See id.*) Pixley again found evidence that wiping software had been used and that data had been deleted in the days before the hard drive had been imaged. (*See id.*) Based on a comparison of the March and May Images of Roark's hard drive, Pixley concluded that Roark had deleted data responsive to 50 of the 87 stipulated search terms. (*See id.* at 13.)

C. Sanctions and Default

In light of Roark's apparent spoliation, SDCCU requested terminating sanctions. (*See id.* at 11.) Following oral argument and supplemental briefing, Judge Pressman granted SDCCU's motion on August 18, 2015. (*See id.*) He consequently struck Roark's answer and entered default against him. (*See id.* at 13.)

On December 16, 2016, Judge Pressman held a hearing on SDCCU's application for default judgment. (*See id.* at 6.) Judge Pressman concluded that SDCCU's operative third

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amended complaint and evidence supported its claims for defamation against Roark.[2] (*See id.*) Judge Pressman therefore awarded SDCCU compensatory damages in the amount of $442,500 for reputational harm, $318,641 in wage expenses, and $134,260 for the services of outside vendors and consultants, totaling $802,901. (*See id.* at 6–7.) Judge Pressman additionally awarded SDCCU $1,000 in punitive damages, $13,415.71 in expert fees, and $40,396.50 in attorneys' fees. (*See id.* at 8.) Accordingly, on December 16, 2016, Judge Pressman entered judgment in favor of SDCCU and against Roark in the amount of $857,713.21. (*See id.* at 8–9.)

D. Appeal

Roark appealed, but the California Court of Appeal affirmed both the issuance of terminating sanctions and the entry of the Default Judgment. *See generally SDCCU*, 2018 WL 1663204. With regard to the terminating sanctions, the Court of Appeal noted that, "[c]entral to SDCCU's ability to prove its case was its need to examine Roark's computer files[,]" but "[b]y deleting those files in violation of the court's protective order and the parties' protocol for handling his hard drive, Roark diminished SDCCU's ability to pursue its case as it was impossible to ascertain what data Roark had deleted." *See id.* at *5. The court also "infer[red] Roark [had] acted willfully in destroying the files and taking actions to cover up his deletions[,]" including "us[ing] a software program designed to delete the files. . . [and] delet[ing] files from both a hard drive and a USB drive hours before they were to be examined by experts under the protective order." *See id.* Further, "some of the recovered files included matters responsive to the parties' list of keywords to be searched." *See id.* The court therefore "conclude[d] this [wa]s one of the unusual cases requiring terminating sanctions as a first measure" because "[n]o lesser remedy would have sufficed to protect SDCCU's interests in the face of Roark's willful efforts to sabotage SDCCU's

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[2] The Anti-SLAPP Appeal, which concluded that "SDCCU [had] made a prima facie showing the defamatory statements are false for purposes of the defamation causes of action," *SDCCU*, 2015 WL 1311511, at *11, bolstered Judge Pressman's conclusion. (*See* Default Judgment at 6.)

case against him." *See id.* at *7. The court also rejected Roark's arguments that the amount of the Default Judgment was excessive. *See id.* at *7–8.

The California Supreme Court denied Roark's petition for review on June 7, 2018. (*See* RB at 14 (citing Cal. Supreme Ct. No. S248735).)

II. The Bankruptcy and Adversary Proceedings

On July 9, 2018, Roark filed a voluntary Chapter 7 bankruptcy petition, *In re Roark*, No. 18-bk-4093-LT7 (Bankr. S.D. Cal. filed July 9, 2018) (the "Bankruptcy Proceeding"). Roark and SDCCU each filed an adversary proceeding against the other in the bankruptcy court concerning the dischargeability of the Default Judgment, *Roark v. SDCCU*, No. 18-ap-90109-LA (Bankr. S.D. Cal. filed Aug. 2, 2018) (the "Roark Adversary Proceeding"), and *SDCCU v. Roark*, No. 18-ap-90158-LA (Bankr. S.D. Cal. filed Sept. 27, 2018) (the "SDCCU Adversary Proceeding"). The Honorable Louise DeCarl Adler dismissed the Roark Adversary proceeding for failure to prosecute on September 12, 2019. (*See generally* Order Dismissing Adversary Proceeding Without Prejudice for Want of Prosecution, Roark Adversary Proceeding, ECF No. 36.)

As for the SDCCU Adversary Proceeding, Judge Adler granted summary judgment in SDCCU's favor on February 25, 2019. (*See generally* Order on Motion for Summary Judgment on Claim for Determination of Non-Dischargeability of Debt Pursuant to 11 U.S.C. § 523(a)(6), SDCCU Adversary Proceeding, ECF No. 50.) Judge Adler specifically found that the Default Judgment was entitled to collateral estoppel and that Roark's affirmative defenses were barred by the *Rooker-Feldman* doctrine. (*See id.* at 2.) Judge Adler also concluded that "th[e] extrinsic fraud exception to the Rooker-Feldman [doctrine] does not apply, and does not preclude summary judgment in favor of SDCCU[,]" because "[t]here is no evidence of any extrinsic fraud on the Court that led to the terminating sanctions, which would need to be shown for the extrinsic fraud exception to apply." (*See id.* at 3.)

Appellant appealed to this Court, *Roark v. SDCCU (In re Roark)*, No. 19-CV-344 AJB (MSB) (S.D. Cal. filed Feb. 20, 2019) (the "Prior Bankruptcy Appeal"). On

August 15, 2019, the Honorable Anthony J. Battaglia affirmed Judge Adler's determination that the Default Judgment was nondischargeable. (*See generally* Order Affirming the Bankruptcy Court's Ruling and Dismissing Debtor's Appeal, Prior Bankr. Appeal, ECF No. 14.) Judge Battaglia concluded that Roark had waived any challenge to the bankruptcy court's decision regarding his affirmative defenses, (*see id.* at 3–4), and that "the state court's findings [of willfulness and maliciousness] were entitled to collateral estoppel effect and the bankruptcy court was correct in granting summary judgment to SDCCU on these grounds." (*See id.* at 4–6.) Finally, Judge Battaglia determined that Roark had failed to introduce sufficient evidence that NIFCU had committed any external fraud on the court such that the *Rooker-Feldman* doctrine would not apply. (*See id.* at 6–8.)

Roark did not appeal Judge Battaglia's Order. (*See generally* Prior Bankr. Appeal, Docket.)

III. The Underlying Motions

A. Motion to Vacate

On July 11, 2022, nearly two years after Judge Battaglia's affirmance and the closing of the SDCCU Adversary Proceeding, (*see* SDCCU Adversary Proceeding, ECF Nos. 68, 69, respectively), Roark filed the underlying Motion to Vacate. (*See* SDCCU Adversary Proceeding, ECF No. 71.) In light of Judge Adler's retirement, the SDCCU Adversary Proceeding was reassigned to the Honorable Laura S. Taylor. (*See* Notice of Change in Assigned Judge and Number, SDCCU Adversary Proceeding, ECF No. 70.)

In his Motion to Vacate, Roark purported to introduce new evidence of extrinsic fraud on the court in the nature of emails showing a "conspir[acy]" by NIFCU, SDCCU, and CUNA Mutual "to have Roark's home PC hard drive **first accessed (and tampered with)** by a non-neutral computer forensic expert[, *i.e.*, Sevel] who concealed his conflict of interest for SDCCU." (*See* Mot. to Vacate at 1–2 (emphasis in original).) Further, "those same officers of the court then conspired to perpetrate an unconscionable scheme to conceal their use of a non-neutral computer expert[, *i.e.*, Sevel] from the court." (*See id.*

at 2 (emphasis in original).) SDCCU opposed the Motion to Vacate, (*see* SDCCU Adversary Proceeding, ECF No. 74), and Roark filed a reply in support of his Motion to Vacate. (*See* SDCCU Adversary Proceeding, ECF No. 75.) Roark filed his Supplemental Exhibits on July 29, 2022. (*See* Brief in Support of Supplemental Evidence to Debtor's Motion, Dkt #71, and Reply, Dkt #75, SDCCU Adversary Proceeding, ECF No. 78.)

The case was then reassigned to Judge Latham, (*see* Order Referring Adversary Proceeding for All Further Proceedings to Judge Christopher B. Latham, SDCCU Adversary Proceeding, ECF No. 80), who held a hearing on September 14, 2022. (*See* Minute Order, SDCCU Adversary Proceeding, ECF No. 86.) Judge Latham's "two main concerns" were res judicata and the *Rooker-Feldman* doctrine. (*See* Transcript at 4:13–5:2, SDCCU Adversary Proceeding, ECF No. 87.)

On October 12, 2022, Judge Latham denied Roark's Motion to Vacate, (*see generally* Order on Defendant's Motion to Vacate Judgment, SDCCU Adversary Proceeding, ECF No. 89 (the "First Underlying Order")), concluding that, "[e]ven if [Roark]'s allegations held merit (and they do not), at least four legal grounds prevent the court from ruling in his favor." (*See id.* at 5.) First, Judge Latham concluded that Roark's motion was not timely under Federal Rule of Civil Procedure 60. (*See* First Underlying Order at 5–6.) Further, even if his motion had been timely, Roark failed to establish that he was entitled to relief because his purportedly new evidence consisted of emails that he had been copied on in 2014, meaning he could reasonably have introduced his evidence earlier. (*See id.* at 6 n.2.) Second, Judge Latham found that the Default Judgment was claim preclusive because Roark could have—but failed to—raise his extrinsic fraud claims before Judge Pressman. (*See id.* at 6.) Third, Judge Latham determined that, under the law-of-the-case doctrine, he could not revisit Roark's allegations of extrinsic fraud on the court, (*see id.* at 6–7), and that no exceptions to the doctrine applied. (*See id.* at 7 n.3.) Finally, Judge Latham decided that the *Rooker-Feldman* doctrine barred Roark's motion and that res judicata and the law of the case prevented Roark from arguing that any fraud occurred such that the exception should apply. (*See id.* at 7.)

B. Motion for Reconsideration

On October 21, 2022, Roark moved for reconsideration of Judge Latham's First Underlying Order on the basis of "clear court error." (*See generally* SDCCU Adversary Proceeding, ECF No. 92 ("Mot. for Reconsideration") (emphasis omitted).) Generally, Roark contended that Judge Latham erred in two respects: First, Judge Latham conflated Roark's new extrinsic fraud on the court argument regarding Sevel's conflict of interest with Roark's previously rejected arguments concerning NIFCU's misrepresentations to Judge Pressman regarding Roark's work-from-home privileges and home computer. (*See id.* at 1–18.) Second, Judge Latham wrongly concluded that Roark's Motion to Vacate had not been timely. (*See id.* at 18–21.) SDCCU filed an opposition on November 4, 2022, (*see* SDCCU Adversary Proceeding, ECF No. 95), and Roark filed a reply on November 7, 2022. (*See* SDCCU Adversary Proceeding ECF No. 96.)

After taking the Motion for Reconsideration under submission without oral argument, (*see* Termination of Hearing, SDCCU Adversary Proceeding, ECF No. 97), Judge Latham issued an order denying Roark's Motion for Reconsideration on December 9, 2022. (*See* Order Denying Defendant's Motion for Further Reconsideration, SDCCU Adversary Proceeding, ECF No. 98 (the "Second Underlying Order").) Specifically, Judge Latham concluded that Roark "ha[d] not pointed to any new evidence, clear error, or intervening change in law" that would warrant reconsideration of the First Underlying Order under Federal Rule of Civil Procedure 59(e). (*See* Second Underlying Order at 2 (citing *Ybarra v. McDaniel*, 656 F.3d 984, 998 (9th Cir. 2011)).) In any event, "[Roark]'s admissions of evidence spoliation provided [the Superior Court] independent grounds to enter default." (*See id.*)

JURISDICTION

Roark timely filed the instant appeal of the Underlying Orders on December 12, 2022, (*see generally* ECF No. 1), pursuant to Federal Rules of Bankruptcy Procedure 8002(a)(1) and (b)(1)(B). The Court has jurisdiction under 28 U.S.C. § 158(a).

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ISSUES ON APPEAL

Appellant designates the following issues on appeal:

1. Does a scheme (proven by authenticated emails) by attorneys as officers of the court for all opposing parties in conspiracy with each other, in a state trial court action, to propound the deceptive fallacy that neutral computer forensics experts were used, in order to conceal from the court they were all used to analyze a home computer and hard drive (and copies thereof), after it was first accessed (**and tampered with**) by a non-neutral computer forensic expert with an undisclosed conflict of interest for the opposing party, to assert spoliation and secure terminating sanctions to strip one of due process and a trial, **qualify as an extrinsic fraud *on the court* scheme** (which caused a corrupted state trial court default judgment imposed on the aggrieved party), and;

2. Does the use, by attorneys as officers of the court, of that corrupted state trial court default judgement in Bankruptcy Court adversary proceeding to secure summary judgment against that aggrieved party to prevent them from presenting evidence in an adversary trial (proving it was the result of terminating sanctions secured by extrinsic fraud *on the court* scheme in the state trial court), **qualify as an extrinsic fraud *on the court* scheme in Bankruptcy Court** and, **preclude** that aggrieved party from later filing his evidence as new evidence in Bankruptcy Court after his appeals on other matters that include requests to supplement[] the record were all denied, when pursuant to legal authorities[:]

a. The new evidence and current claim for extrinsic fraud *on the court* schemes by officers of the court in a state and federal court, is not time-barred, and;

b. The new evidence and current claim for extrinsic fraud *on the court* schemes by officers of the court in a state and federal court, was not, and could not be, previously filed or adjudicated in any court due to extrinsic and other fraud *on the court* schemes in state and federal courts by attorneys as officers of the court, and;

c. The new evidence and current claim for extrinsic fraud *on the court* schemes by attorneys as officers of the court in a state and federal court, is not barred by FRCP Rule 60, the Rooker-Feldman doctrine, Res Judicata, Judicial Notice and the Law of the Case Doctrine?

(*See* ECF No. 5 at 5–6 (emphasis in original).)

STANDARD OF REVIEW

A bankruptcy court's denial of a motion for reconsideration is reviewed for abuse of discretion. *Alexander v. Bleau (In re Negrete)*, 183 B.R. 195, 197 (B.A.P. 9th Cir. 1995) (citing *S.G. Wilson Co. v. Cleanmaster Indus., Inc. (In re Cleanmaster Indus., Inc.)*, 106 B.R. 628, 630 (B.A.P. 9th Cir. 1989); *Martinelli v. Valley Bank of Nev. (In re Martinelli)*, 96 B.R. 1011, 1012 (B.A.P. 9th Cir. 1988)), *aff'd*, 103 F.3d 139 (9th Cir. 1996). Under this standard, the reviewing court "first 'determine[s] de novo whether the [bankruptcy] court identified the correct legal rule to apply to the relief requested.'" *Clinton v. Deutsche Bank Nat'l Tr. Co. (In re Clinton)*, 449 B.R. 79, 82 (B.A.P. 9th Cir. 2011) (second alteration in original) (quoting *United States v. Hinkson*, 585 F.3d 1247, 1262 (9th Cir. 2009)). "If the bankruptcy court identified the correct legal rule, [the reviewing court] then determine[s] under the clearly erroneous standard whether its factual findings and its application of the facts to the relevant law were: '(1) illogical, (2) implausible, or (3) without support in inferences that may be drawn from the facts in the record.'" *Id.* (quoting *Hinkson*, 585 F.3d at 1262).

ANALYSIS

Roark challenges both Judge Latham's First Underlying Order, which denied Roark's Motion to Vacate the Default Judgment, and Judge Latham's Second Underlying Order, which denied Roark's Motion for Reconsideration of the First Underlying Order. (*See generally* AOB.) The Court addresses each in turn.

I. The First Underlying Order Denying Roark's Motion to Vacate

Roark advances several purported errors in the First Underlying Order. (*See generally* AOB at 12–25.)

A. Federal Rule of Civil Procedure 60

Roark first contends that Judge Latham erroneously concluded that Roark's Motion to Vacate was untimely under Rule 60, (*see* AOB at 14–21), which is made applicable to bankruptcy proceedings through Federal Rule of Bankruptcy Procedure 9024. Rule 60(b) provides for reconsideration where one or more of the following is shown: (1) mistake,

inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that by due diligence could not have been discovered before the court's decision; (3) fraud by the adverse party; (4) the judgment is void; (5) the judgment has been satisfied; and (6) any other reason justifying relief. *See* Fed. R. Civ. P. 60(b); *see also School Dist. No. 1J v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993). A motion predicated on reasons (1), (2), or (3) must be brought "no more than a year after entry of judgment." Fed. R. Civ. P. 60(c). Rule 60, however, "does not limit a court's power to . . . set aside a judgment for fraud on the court." *See* Fed. R. Civ. P. 60(d)(3).

Contrary to Plaintiff's assertion, Judge Latham did address the merits of Plaintiff's Motion to Vacate under Rule 60(d)(3):

> Even if Rule 60(c) did not bar any Rule 60(b)(2) or (3) motion, [Roark] still would not be entitled to relief. As in his Ninth Circuit appeal,[3] [Roark] has

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[3] Roark's appeal to the Ninth Circuit was from another appeal from the Bankruptcy Litigation. As the undersigned explained in addressing Plaintiff's initial underlying appeal to this Court, *see In re Roark*, No. 19-CV-2117 TWR (WVG), 2020 WL 7869485, at *1–3 (S.D. Cal. Dec. 31, 2020), *aff'd*, No. 21-55040, 2022 WL 885155 (9th Cir. Mar. 25, 2022), NIFCU terminated Roark after Judge Pressman had issued terminating sanctions. Roark therefore sued NIFCU for discrimination, harassment, retaliation, wrongful termination, among other things, and for failure to compensate Roark for the costs of the State Court Action and denial of coverage for the Default Judgment pursuant to its management insurance policy, *Roark v. NIFCU*, No. 37-2018-00016182-CU-WT-CTL (Cal. Super. filed Apr. 2, 2018) (the "NIFCU Litigation").

Because the NIFCU Litigation was an asset of Roark's estate, the Trustee investigated and eventually settled Roark's claims against NIFCU for $152,000. Judge Adler approved the settlement on February 25, 2019, over Roark's strenuous objection. In light of the settlement, the Superior Court dismissed with prejudice the NIFCU Litigation. Roark did not appeal Judge Adler's approval of the settlement.

As the Bankruptcy Proceeding was winding down, Roark moved to invalidate the Trustee's settlement on the grounds that the Default Judgment had been procured through fraud on the court. Judge Adler denied his request, finding that Roark's evidence of fraud "was previously filed and necessarily known to him before the hearing on the settlement motion."

Roark appealed to this Court, also seeking to supplement the record with further evidence of purported fraud. The Court affirmed Judge Adler's order, also denying Roark's request to supplement the record for the following reasons:

> To the extent Appellant seeks to relitigate his contention of fraud before the Superior Court, Judge Battaglia concluded in the prior appeal that Appellant had failed to introduce

> "failed to establish any basis for relief" and is trying to raise argument and present evidence when he could have reasonably done so earlier. [*In re*] *Roark*, [No. 21-55040,] 2022 WL 885155, at *1 [(9th Cir. Mar. 25, 2022)] (citing *Kona Enters.[, Inc. v. Est. of Bishop]*, 229 F.3d [877,] 890 [(9th Cir. 2000)]). Specifically, [Roark] fails to show "newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b)." FED. R. CIV. P. 60(b)(2). For supposed new evidence, he mainly offers emails between attorneys and the computer experts during the State Court Action – emails he was copied on and received (ECF Nos. 71 & 78). Thus[,] it cannot be newly discovered because "it was in the moving party's possession at the time of trial." *Coastal Transfer Co. v. Toyota Motor Sales, U.S.A.*, 833 F.2d 208, 212 (9th Cir. 1987).

(1st Underlying Order at 6 n.2.) Judge Latham did not clearly err in concluding that Roark's purportedly "new" evidence did not constitute an acceptable basis for reconsideration, even under Rule 60(d)(3).

Even if the Court were to examine Roark's "new" evidence, Roark fails to carry his "high burden in seeking to prove fraud on the court, which must involve an unconscionable plan or scheme which is designed to improperly influence the court in its decision." *See Pizzuto v. Ramirez*, 783 F.3d 1171, 1180 (9th Cir. 2015) (internal quotation marks omitted). Indeed, fraud on the court must be established by clear and convincing evidence. *See United States v. Stonehill*, 660 F.3d 415, 443 (9th Cir. 2011). "In determining whether fraud constitutes fraud on the court, the relevant inquiry is not whether fraudulent conduct 'prejudiced the opposing party,' but whether it 'harm[ed]' the integrity of the

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> evidence of extrinsic fraud to Judge Adler. . . . Appellant failed to appeal Judge Battaglia's Order, rendering it final. Because Appellant cannot now challenge that ruling, the evidence Appellant seeks to introduce is not material to the instant appeal. To the extent Appellant contends that Judge Adler violated bankruptcy and non-bankruptcy laws by approving the Trustee's settlement with NIFCU, further evidence of SDCCU's alleged fraud before the Superior Court is not material to those arguments.

See id. at *5.

Finally, Roark appealed to the Ninth Circuit, which again affirmed, finding that "Roark had failed to establish any basis for relief." *See In re Roark*, 2022 WL 885155, at *1.

judicial process." *Id.* at 444 (alteration in original) (quoting *Alexander v. Robertson*, 882 F.2d 421, 424 (9th Cir. 1989)).

Roark contends that emails between his counsel and opposing counsel during the Superior Court Action suffice to establish fraud on the court because his initial forensic computer expert, Sevel, only revealed a disqualifying conflict of interest after obtaining the March Image of Roark's personal hard drive. (*See* AOB at 4–12.) They do not—all that the emails reveal is that Sevel had a conflict of interest that he had failed to disclose before imaging Roark's personal hard drive. In short, Roark's purportedly "new" evidence does not support Roark's speculation that Sevel had "tampered" with his hard drive.

Even if Sevel had "tampered" with Roark's hard drive—again, a showing that Roark fails to make—Judge Latham was correct that Judge Pressman had an independent basis to enter the Default Judgment unrelated to the supposed "fraud." (*See* 2d Underlying Order at 2.) Indeed, through examining the March Image, Pixley determined that somebody had deleted files from Roark's hard drive in the days immediately preceding Sevel's access to Roark's hard drive. (*See* Default Judgment at 12.) Similarly, an inspection of the May Image revealed that "many" of the hundreds of thousands of destroyed files had been deleted long after Sevel's access had ended and only hours before Roark provided the hard drive to his second expert, Libby, for imaging. (*See id.*) One of the USBs used before the May Image was found in Roark's possession and had also been wiped. (*See id.*) Further, as Judge Pressman noted, "Roark d[id] not dispute he had deleted . . . 33,000 files, including 11,486 emails[,] prior to producing" his hard drive for Libby to image. (*See id.*) Indeed, although Roark now attempts to dispute his prior admission, (*see* ARB at 6 ("Roark did not admit to deleting evidence related to the 2011 state trial court action . . . .")), Roark explicitly admitted in his September 2, 2014 deposition that he had "used wiping software to permanently delete data on [his] hard drive prior to [its] production" to Libby in May 2014. (*See* SDCCU Adversary Proceeding, ECF No. 74-4 at 203:12–14.)

Given these facts, Roark's purportedly "new" evidence does not establish by a preponderance of the evidence that the integrity of the Default Judgment was undermined

in any way. *See Stonehill*, 660 F.3d at 443–44. The Court therefore concludes that Judge Latham did not clearly err in denying Roark's Motion to Vacate under Rule 60(d)(3).[4]

B. Additional Arguments

Roark also contends that Judge Latham erred in denying his Motion to Vacate on several other grounds, including res judicata, the law-of-the-case doctrine, and the *Rooker-Feldman* doctrine. (*See* AOB at 22–25.)

First, Roark contends that there can be no res judicata here because the Default Judgment was procured through fraud of collusion. (*See id.* at 22.) Assuming that California does recognize such an exception, *see Lee v. JPMorgan Chase Bank, N.A.*, No. 2:15-cv-04061-CAS(GJSx), 2015 WL 5554006, at *5 n.2 (C.D. Cal. Sep. 21, 2015) ("[I]t is not clear that either the Ninth Circuit or California state courts have recognized a fraud exception to res judicata." (citing *Bailey v. United States*, 42 F. App'x 79, 80 (9th Cir. 2002))), for the reasons discussed above, *see supra* pages 12–16, Judge Latham properly concluded that Roark had failed to establish fraud or collusion and therefore did not clearly err in concluding that the Default Judgment constituted res judicata, as did Roark's subsequent appeals to the California Court of Appeal and California Supreme Court and various additional orders and appeals from subsequent proceedings before Judge Adler, Judge Battaglia, and others, including the Ninth Circuit. (*See* 1st Underlying Order at 6.)

Second, Roark argues that "[n]ew evidence is an exception to the law of the case doctrine." (*See* AOB at 22.) Be that as it may, Judge Latham properly concluded that Roark had failed to introduce "new" evidence such that departure from the—by now well-settled—law of the case was permitted. (*See* 1st Underlying Order at 6 n.2.)

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[4] To be clear, although not at issue in the instant appeal, Judge Latham also did not err in denying Roark's Motion to Vacate under Rule 60(b)(2) and (3) and Rule 60(c) given that all of the decisions Roark challenged—Judge Pressman's December 16, 2016 Default Judgment, Judge Adler's February 26, 2019 summary adjudication of non-dischargeability, and Judge Adler's February 25, 2019 approval of the Trustee's settlement of Roark's employment-related claims—occurred more than a year before Roark filed his Motion to Vacate on July 12, 2022. (*See* 1st Underlying Order at 5–6.)

Third, Roark asserts that fraud on the court is an exception to the *Rooker-Feldman* doctrine. (*See* AOB a 22–23.) Again, however, Judge Latham properly concluded that Roark had failed to make the requisite showing. (*See* 1st Underlying Order at 7.)

Fourth, Roark appears to challenge Judge Latham's decision to take judicial notice of certain records from the Superior Court Action. (*See* AOB at 23.) Judge Latham, however, properly took judicial "notice of proceedings in other courts, both within and without the federal judicial system, [given] those proceedings ha[d] a direct relation to matters at issue." *See Whiting v. City of Cathedral City*, No. CV1300250BROCWX, 2014 WL 12852451, at *4 (C.D. Cal. Oct. 30, 2014) (quoting *United States ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992)).

Finally, Roark appeals to the "strong judicial preference for deciding cases on their merits." (*See* AOB at 23–25.) This is true, but the California Court of Appeal agreed with Judge Pressman that the Superior Court Action was "one of the unusual cases requiring terminating sanctions as a first measure." *See SDCCU*, 2018 WL 1663204, at *7. As the California Court of Appeal explained, "[b]y deleting . . . files in violation of the court's protective order and the parties' protocol for handling his hard drive, Roark diminished SDCCU's ability to pursue its case as it was impossible to ascertain what data Roark had deleted." *See id.* at *5. Accordingly, "Roark cannot be heard to complain that 'the court deprived him' of a chance to raise certain defenses at a trial because his own willful actions brought about that result, and the court was not obligated to protected him from those consequences even at SDCCU's expense." *See id.* at *7.

For all these reasons, the Court concludes that Judge Latham did not abuse his discretion in denying Roark's Motion to Vacate.

II. The Second Underlying Order Denying Roark's Motion for Reconsideration

Roark also contends that Judge Latham erred in denying his Motion for Reconsideration of the First Underlying Order. (*See* AOB at 26–27.) Because Roark filed his Motion for Reconsideration on October 21, 2022, less than fourteen days after Judge Latham issued the First Underlying Order on October 12, 2022, Judge Latham treated it

"as a motion to alter or amend judgment under [Federal Rule of Civil Procedure] 59(e)." (2d Underlying Order at 2 (quoting *In re Lee*, Nos. CC-15-1240 & CC-15-1272, 2016 WL 1450210, at *7 (B.A.P. 9th Cir. Apr. 11, 2016)).) As Judge Latham correctly explained, "Rule 59(e) – made applicable [to the SDCCU Adversary Proceeding] through Bankruptcy Rule 9023 – permits the court to reconsider and amend a previous order if: '(1) the district court is presented with newly discovered evidence, (2) the district court committed clear error or made an initial decision that was manifestly unjust, or (3) there is an intervening change in controlling law.'" (*See id.* (quoting *Ybarra*, 656 F.3d at 998).)

Judge Latham did not clearly err in finding that Roark "ha[d] not pointed to any new evidence, clear error, or intervening change in law" in his Motion for Reconsideration. (*See id.* at 2 (citing *Ybarra*, 656 F.3d at 998).) The Court therefore concludes that Judge Latham did abuse his discretion in denying Roark's Motion for Reconsideration.

CONCLUSION

In light of the foregoing, the Court **DENIES** Roark's appeal and **AFFIRMS** the rulings of the bankruptcy court. Accordingly, the Clerk of Court **SHALL CLOSE** the file.

IT IS SO ORDERED.

Dated: August 22, 2023

Honorable Todd W. Robinson
United States District Judge

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA
325 West "F" Street, San Diego, California 92101-6991

In re: CARLTON ROARK, Debtor.	BANKRUPTCY NO. 18-04093-LT7
SAN DIEGO COUNTY CREDIT UNION, Plaintiff.	ADVERSARY NO. 18-90158-CL
v. CARLTON ROARK, Defendant.	Name of Judge: Christopher B. Latham

ORDER DENYING DEFENDANT'S MOTION FOR FURTHER RECONSIDERATION

IT IS HEREBY ORDERED as set forth on the continuation page(s) attached, numbered two (2) through three (3).

DATED: December 9, 2022

Judge, United States Bankruptcy Court

The court has considered Defendant Carlton Roark's most recent motion for reconsideration (ECF No. 92), the Chapter 7 Trustee's opposition (ECF No. 93), North Island Federal Credit Union ("NIFCU")'s opposition (ECF No. 94), Plaintiff San Diego County Credit Union's opposition (ECF No. 95), Defendant's reply (ECF No. 96), and its own docket. For the following reasons, the court will **deny** the motion.

On July 12, 2022, Defendant moved to: (1) vacate a San Diego Superior Court judgment; (2) set aside the court's finding of nondischargeability based on that; (3) set aside its approval of the Trustee's settlement in his main bankruptcy case; and (4) award him $19,750,000 in compensatory damages (ECF No. 71). The Trustee, Plaintiff, and NIFCU opposed (ECF Nos. 73, 74, & 77). After carefully considering the parties' papers and oral arguments at the September 14, 2022 hearing, the court denied the motion (ECF No. 89). Defendant now moves to reconsider that order (ECF No. 92). The Trustee, Plaintiff, and NIFCU again oppose (ECF Nos. 93, 94, & 95). The court then determined the matter suitable for disposition on the papers under Local Civil Rule 7.1(d)(1) and Local Bankruptcy Rule 9013-4 (ECF No. 97).

Defendant's earlier motion to vacate sought relief under Rule 60(b) (ECF No. 71). Because he filed his current reconsideration motion within 14 days of the order denying that it "is treated as a motion to alter or amend judgment under Civil Rule 59(e)." *In re Lee*, BAP Nos. CC-15-1240 & CC-15-1272, 2016 WL1450210, at *7 (B.A.P. 9th Cir. April 11, 2016). Rule 59(e) – made applicable here through Bankruptcy Rule 9023 – permits the court to reconsider and amend a previous order if: "(1) the district court is presented with newly discovered evidence, (2) the district court committed clear error or made an initial decision that was manifestly unjust, or (3) there is an intervening change in controlling law." *Ybarra v. McDaniel*, 656 F.3d 984, 998 (9th Cir. 2011) (internal citation marks omitted) (quoting *Zimmerman v. City of Oakland*, 255 F.3d 734, 740 (9th Cir. 2001)).

While two different procedural standards govern Defendant's motions, there is no substantive difference between them. Both allege the same fraudulent conspiracy (*see* ECF Nos. 71 & 92). So Defendant essentially is moving the court to reconsider its order denying reconsideration. This is without merit. Reconsideration is an "extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources." *Kona Enter., Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000) (quotations omitted). And it is unwarranted here.[1]

The court helpfully directs Defendant to its previous order on his motion to vacate (ECF No. 89). For similar reasons articulated there, it will deny this reconsideration motion. In short, Defendant has shown no entitlement to Rule 59 relief. Despite his philippics to the contrary, he has not pointed to any new evidence, clear error, or intervening change in law. *See Ybarra*, 656 F.3d at 998. Federal courts have ruled that there was no fraud on the Superior Court – and that Defendant's admissions of evidence spoliation provided it independent grounds to enter default. *See id.* And

[1] While serial reconsideration motions are assuredly not in the interests of finality and judicial economy, Defendant remains free to exercise any appellate rights he may have.

since there was no fraud on the Superior Court, there can be no subsequent conspiracies to hide that nonexistent fraud from other courts. All prior judgments, decisions, and orders in the earlier state and federal cases stand. Rules 59 and 60, res judicata, the law of the case, and the *Rooker-Feldman* doctrine all bar reconsideration of those. Defendant's motion is accordingly **denied**.

IT IS SO ORDERED.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA
325 West "F" Street, San Diego, California 92101-6991

In re: CARLTON ROARK, Debtor.	BANKRUPTCY NO. 18-04093-LT7
SAN DIEGO COUNTY CREDIT UNION, Plaintiff.	ADVERSARY NO. 18-90158-CL
v. CARLTON ROARK, Defendant.	Date of Hearing: 09/14/2022 Time of Hearing: 10:00 a.m. Name of Judge: Christopher B. Latham

ORDER ON DEFENDANT'S MOTION TO VACATE JUDGMENT

IT IS HEREBY ORDERED as set forth on the continuation page(s) attached, numbered two (2) through eight (8).

DATED: October 12, 2022

Judge, United States Bankruptcy Court

The court has considered Defendant Carlton Roark's motion to vacate judgment (ECF No. 71), the Chapter 7 Trustee's opposition (ECF No. 73), Plaintiff San Diego County Credit Union's opposition (ECF No. 74), North Island Federal Credit Union's ("NIFCU") response (ECF No. 77); Defendant's replies (ECF Nos. 75, 76, & 78), the parties' arguments at the September 14, 2022 hearing, and its docket. For the following reasons, the court will **deny** the motion.

Background

History Pre-Bankruptcy

In 2011 Defendant anonymously began posting defamatory comments about Plaintiff on the Internet (ECF No. 74). Plaintiff sued a John Doe defendant in San Diego Superior Court, eventually joining Defendant and his then-employer NIFCU. *See* Case No. 37-2011-00100322-CU-DF-CTL (the "State Court Action"). Defendant and NIFCU's attorneys hired a computer forensics expert, Mr. James Sevel, to examine and image Defendant's hard drive (ECF No. 71). After doing so, Mr. Sevel and Defendant's counsel realized he had a conflict of interest with Plaintiff from a different case. *Id.* So Defendant's counsel fired him and retained a new, neutral expert to re-examine the computer (ECF No. 74).

This new expert discovered that Defendant had deleted *tens of thousands* of potentially relevant files and emails from the computer (ECF No. 74). Defendant admitted to deleting some 33,000 files before Mr. Sevel examined his computer. *Id.* He claimed that Mr. Sevel – while colluding with Plaintiff, his co-defendants, and his own counsel – deleted another 10,000 files to frame him for spoliation (ECF No. 71). The second expert contradicted this, stating that all deletion happened *before* and *after* Mr. Sevel had the computer, not *while* he did (ECF No. 74). Based on this and Defendant's own admissions, the state court found that he violated its protective order, issued terminating sanctions, and struck his answer. *See* Case No. 37-2011-00100322-CU-DF-CTL. On December 16, 2016, it entered a default judgment against him. *Id.* Defendant appealed. But the Court of Appeal affirmed, and the California Supreme Court denied review (ECF No. 73). *See San Diego County Credit Union v. Roark*, 2018 WL1663204 (Cal. Ct. App. Apr. 6, 2018); Case No. S248735.

Defendant's Bankruptcy

Defendant then filed for Chapter 7 relief. *See* Case No. 18-04093-LT7. He listed one disputed liability (the default judgment) and one asset (an employment claim against his now former employer NIFCU) (ECF No. 74). He brought an adversary proceeding against Plaintiff for abuse of process, which the court dismissed. *See* AP No. 18-90109-LA. Plaintiff then filed its own adversary proceeding seeking to hold its default judgment nondischargeable (ECF No. 1). The court found for Plaintiff on summary judgment (ECF No. 50). Defendant appealed, and the District Court affirmed (ECF No. 68). *See also* Case No. 3:19-cv-0344-AJB-MSB.

Meanwhile, in the main bankruptcy case the Trustee settled Defendant's employment claim and brought $152,000 into the estate (ECF No. 73). Defendant balked at the settlement and asserted that the Trustee was now involved in the conspiracy against him. *Id.* This stemmed from one Ms. Angela Brill – who worked for NIFCU during the State Court Action – working for the Trustee from 2005 to 2006 (ECF No. 71). So he appealed this as well (ECF No. 73). Both the District Court and the Ninth Circuit affirmed. *See* Case Nos. 19-cv-2117-TWR-WVG; *Roark v. Gladstone (In re Roark)*, 2022 WL885155 (9th Cir. March 25, 2022).

Plaintiff now moves to: (1) vacate the State Court Action's judgment; (2) set aside the court's finding of nondischargeability based on that; (3) set aside its approval of the Trustee's settlement in his main bankruptcy case; and (4) award him $19,750,000 in compensatory damages. *Id.* The Trustee, Plaintiff, and NIFCU oppose (ECF Nos. 73, 74, & 77).[1]

Legal Standards

Rule 60

The Federal Rules of Civil Procedure "do not recognize a motion for reconsideration." *In re Captain Blythers, Inc.*, 311 B.R. 530, 539 (B.A.P. 9th Cir. 2004), *aff'd*, 182 F. App'x 708, 709 (9th Cir. 2006). There are instead "two types of motions to obtain post-judgment relief: a motion to alter or amend judgment, FED. R. CIV. P. 59(e), and a motion for relief from judgment, FED. R. CIV. P. 60." *In re Walker*, 332 B.R. 820, 826 (Bankr. D. Nev. 2005).

"When a party files a motion for reconsideration within 14 days after the entry of judgment, the motion is treated as a motion to alter or amend judgment under Civil Rule 59(e)." *In re Lee*, BAP Nos. CC-15-1240 & CC-15-1272, 2016 WL1450210, at *7 (B.A.P. 9th Cir. Apr. 11, 2016) (citing *Am. Ironworks & Erectors, Inc. v. N. Am. Constr. Corp.*, 248 F.3d 892, 898-99 (9th Cir. 2001)). *See also* FED. R. BANKR. P. 9023. "Otherwise, it is treated as a Rule 60(b) motion for relief from judgment or order." *Am. Ironworks & Erectors, Inc.*, 248 F.3d at 899.

Relief from an order under Rule 60(b), incorporated by Bankruptcy Rule 9024, is available "only upon a showing of: (1) mistake, surprise, or excusable neglect; (2) newly discovered evidence; (3) fraud; (4) a void judgment; (5) a satisfied or discharged judgment; or (6) 'extraordinary circumstances' which would justify relief." *In re Safarian*, BAP No. CC-09-1335, 2010 WL6259763, *5 (B.A.P. 9th Cir. Apr. 13, 2010) (quoting *Fuller v. M.G. Jewelry*, 950 F.2d 1437, 1442 (9th Cir. 1991)).

Reconsideration is an "extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources." *Kona Enter., Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000) (quotations omitted).

[1] NIFCU opposes only to state that it has never been a party to this adversary proceeding (ECF No. 77). The court sees this and notes that Defendant need not have named NIFCU in his motion (*see* ECF No. 71).

Res Judicata

Res judicata – or claim preclusion – "provides that 'a final judgment on the merits bars further claims by parties or their privies based on the same cause of action.'" *United States v. Schimmels (In re Schimmels)*, 127 F.3d 875, 881 (9th Cir. 1997) (quoting *Montana v. United States*, 440 U.S. 147, 153 (1979)). "Res judicata applies when there is: (1) an identity of claims; (2) a final judgment on the merits; and (3) identity or privity between parties." *Ruiz v. Snohomish Cnty. Pub. Util. Dist. No. 1*, 824 F.3d 1161, 1164 (9th Cir. 2016). Further, res judicata "prevents parties from raising issues that could have been raised and decided in a prior action – even if they were not actually litigated." *Lucky Brand Dungarees, Inc. v. Marcel Fashions Group, Inc.*, 140 S.Ct. 1589, 1594 (2020) (quoting *Brown v. Felsen*, 442 U.S. 127, 131 (1979)). And "[d]efault judgments are considered 'final judgments on the merits' and are thus effective for the purposes of claim preclusion." *In re Garcia*, 313 B.R. 307, 311 (B.A.P. 9th Cir. 2004) (citing *Howard v. Lewis*, 905 F.2d 1318, 1323 (9th Cir. 1990)).

The Law of the Case Doctrine

Under the law of the case doctrine, "a court is generally precluded from reconsidering an issue that has already been decided by the same court, or a higher court in the identical case." *Thomas v. Bible*, 983 F.2d 152, 154 (9th Cir. 1993), *see also U.S. v. Alexander*, 106 F.3d 874, 876 (9th Cir. 1997). The doctrine is not a limitation on a tribunal's power, but rather a guide to discretion. *Arizona v. California*, 460 U.S. 605, 618 (1983). It "is a judicial invention designed to aid in the efficient operation of court affairs." *Milgard Tempering, Inc. v. Selas Corp. of Am.*, 902 F.2d 703, 715 (9th Cir. 1990) (citing *Lockert v. United States Dep't of Labor*, 867 F.2d 513, 518 (9th Cir. 1989)). And the doctrine "states that the decision of an appellate court on a legal issue must be followed in all subsequent proceedings in the same case." *Alaimalo v. U.S.*, 645 F.3d 1042, 1049 (9th Cir. 2011).

The Rooker-Feldman Doctrine

"The *Rooker-Feldman* doctrine, established by two Supreme Court decisions handed down sixty years apart, provides that a federal district court lacks the jurisdiction to hear a collateral attack on a state court judgment or to review final determinations of state court decisions." *In re Audre, Inc.*, 216 B.R. 19, 26 (B.A.P. 9th Cir. 1997) (first citing *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923); and then citing *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, (1983)). Federal courts are barred from deciding "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005).

If a federal bankruptcy court were to intervene in a state court judgment, it could only do so if the state proceedings were void *ab initio*. *In re Audre, Inc.*, 216 B.R. at 29. That said, the "doctrine applies even when a state court judgment may be in error." *In re Roussos*, 251 B.R. 86, 95 (B.A.P. 9th Cir. 2000) (quoting *In re Audre, Inc.*, 216 B.R. at 29); *see also In re Pardee*, 218 B.R. 916,

924 (B.A.P. 9th Cir. 1998) ("[A] final order that is not appealed cannot be collaterally attacked in a later proceeding even if the order was entered in error.").

"The collateral attack doctrine precludes litigants from collaterally attacking the judgments of other courts." *Rein v. Providian Fin. Corp.*, 270 F.3d 895, 902 (9th Cir. 2001). *See Celotex Corp. v. Edwards*, 514 U.S. 300, 313 (1995) ("We have made clear that [i]t is for the court of first instance to determine the question of the validity of the law, and until its decision is reversed for error by orderly review, either by itself or by a higher court, its orders based on its decisions are to be respected.") (internal quotation marks omitted) (alteration in original). For the court to apply the doctrine, "the relevant claims must have been directly ruled on in the prior proceeding." *In re RCS Capital Dev., LLC*, BAP No. AZ-12-1626, 2013 WL 3619172, at *7 (B.A.P. 9th Cir. July 16, 2013) (citing *Skokomish Indian Tribe v. United States*, 332 F.3d 551, 560 (9th Cir. 2003)).

Legal Analysis and Discussion

Judicial Notice

In its opposition, Plaintiff asks the court to judicially notice: (1) its third amended complaint from the State Court Action; (2) that court's preservation order; (3) its terminating sanctions order; (4) its judgment; and (5) two stipulated protocols for the inspection of Defendant's hard drive (ECF No. 74). Under Federal Rule of Evidence 201, the court may take judicial notice of "matters of public record." *Id.* at 688-89. Those include other court proceedings. *See U.S. ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992); *Grant v. Aurora Loan Services, Inc.*, 736 F. Supp. 2d 1257, 1263 (C.D. Cal. 2010). All of Plaintiff's documents qualify as such and are appropriate for judicial notice. The court will accordingly **grant** Plaintiff's request.

Defendant's Motion

Defendant seeks to vacate or set aside: (1) the State Court Action's default judgment; (2) the bankruptcy court's nondischargeability finding at summary judgment; and (3) its approval of the Trustee's settlement. (ECF No. 71). He bases his request on purported new evidence proving the alleged conspiracy against him, extrinsic fraud, and fraud on the court. *Id.* The motion is not well taken and must be denied. Even if Defendant's allegations held merit (and they do not), at least four legal grounds prevent the court from ruling in his favor.

Rule 60(b)

One, Rule 60 – made applicable here by Federal Rule of Bankruptcy Procedure 9024 – itself bars aspects of Defendant's requested relief. True, Rule 60(b)(2) and (3) allow for relief from judgments based on new evidence or extrinsic fraud, respectively. But motions predicated on either must be brought "no more than a year after the entry of judgment." FED. R. CIV. P. 60(c). The court approved the Trustee's settlement on February 25, 2019 (Bankr. ECF No. 88) and entered its summary judgment order a day later (ECF No. 50). And the state court entered default

judgment on December 16, 2016. *See* Case No. 37-2011-00100322-CU-DF-CTL. Yet Defendant filed his motion on July 12, 2022 (ECF No. 71). All three decisions were final well over a year before then. Thus Rule 60(c) bars the motion insofar as it seeks relief under Rule 60(b)(2) or (3).[2] Reconsideration for fraud on the court is not time-barred under the rule. *See* FED. R. CIV. P. 60(d)(3) ("This rule does not limit a court's power to . . . set aside judgment for fraud on the court."). But the remaining grounds prohibit it as well.

Res Judicata

Two, res judicata precludes the court from reconsidering any further claims based on a final judgment. Three elements must exist: "(1) an identity of claims; (2) a final judgment on the merits; and (3) identity or privity between parties." *Snohomish Cnty.*, 824 F.3d at 1164. This doctrine applies to the myriad final judgments that have been entered against Defendant. The State Court Action is claim preclusive against Defendant. There is an identity of claims – the underlying dispute between Plaintiff and Defendant (ECF Nos. 71 & 74). This includes any fraud allegations Defendant could have but failed to raise there. *Lucky Brand Dungarees*, 140 S.Ct. at 1594. The State Court Action resulted in a final judgment on the merits; namely, the December 16, 2016 default judgment upheld on appeal. *See Garcia*, 313 B.R. at 311. And there is an identity of parties – both Plaintiff and Defendant litigated there.

Likewise, both the bankruptcy court's settlement and nondischargeability rulings have preclusive effect. Claim identity exists, specifically Defendant's allegations of a conspiracy against him and fraud on the court. These were raised – or could have been – during those disputes or their appeals (*see* ECF No. 50 & Bankr. ECF No. 73). Both are final judgments on the merits. *Quality of Judgments Entitled to Res Judicata*, 18A FED. PRAC. & PROC. JURIS. (WRIGHT & MILLER) § 4427 (3d ed.) The orders affirming them on appeal are as well (ECF No. 68; Bankr. ECF Nos. 177 & 193). Again, there is an identity of parties, whether between Plaintiff and Defendant or him and the Trustee (ECF No. 50 & Bankr. ECF No. 73). Thus all those orders and judgments retain their effects against Defendant and bind the court. *Schimmels*, 127 F.3d at 881.

The Law of the Case Doctrine

Three, the law of the case doctrine generally precludes a court from reconsidering an issue it (or a higher court in the same case) has already decided. *U.S. v. Alexander*, 106 F.3d 874, 876 (9th Cir.

[2] Even if Rule 60(c) did not bar any Rule 60(b)(2) or (3) motion, Defendant still would not be entitled to relief. As in his Ninth Circuit appeal, Defendant has "failed to establish any basis for relief" and is trying to raise argument and present evidence when he could have reasonably done so earlier. *Roark*, 2022 WL 885155, at *1 (citing *Kona Enters.*, 229 F.3d at 890). Specifically, Defendant fails to show "newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b)." FED. R. CIV. P. 60(b)(2). For supposed new evidence, he mainly offers emails between attorneys and the computer experts during the State Court Action – emails he was copied on and received (ECF Nos. 71 & 78). Thus it cannot be newly discovered because "it was in the moving party's possession at the time of trial." *Coastal Transfer Co. v. Toyota Motor Sales, U.S.A.*, 833 F.2d 208, 212 (9th Cir. 1987).

1997). The issue must have been "decided either expressly or by necessary implication in [the] previous disposition." *Thomas v. Bible*, 983 F.2d 152, 154 (9th Cir. 1993). This court previously found that "[t]here is no evidence of any extrinsic fraud on the [c]ourt that led to the terminating sanctions" (ECF No. 50). Because of this, no exception to the *Rooker-Feldman* doctrine existed, and the State Court Action's default judgment has collateral estoppel effect. *Id.* The district court affirmed that decision and held that Defendant offered insufficient evidence to prove his "conclusory inferences" of fraud (ECF No. 68). The issue of whether there was any fraud on the court was expressly decided by this court and the district court. *See Thomas*, 983 F.2d at 154. Under law of the case, the court cannot now revisit it. Similarly, this court approved the Trustee's settlement (Bankr. ECF No. 73). And both the district court and the Ninth Circuit affirmed that, dismissing Defendant's allegations of fraud and conspiracy (Bankr. ECF Nos. 176 & 193). The law of this case bars reconsidering those issues as well.[3]

The *Rooker-Feldman* Doctrine

And four, even if Rule 60(b), res judicata, and law of the case all weighed in Defendant's favor, the *Rooker-Feldman* doctrine would bar his motion to vacate the State Court Action's default judgment. This provides that federal trial courts lack jurisdiction to entertain collateral attacks on state court judgments. *In re Audre, Inc.*, 216 B.R. 19, 26 (B.A.P. 9th Cir. 1997). The court is consequently precluded from entertaining Defendant's arguments. After presenting his case to the San Diego Superior Court, the Court of Appeal, and the California Supreme Court, he asks this court to vacate a default judgment entered years ago. He is a "state-court loser[] complaining of injuries caused by [a] state-court judgment[] rendered" before his bankruptcy. *Exxon Mobil*, 544 U.S. at 284. So under *Rooker-Feldman*, the court cannot undo the state court's terminating sanctions order and its resulting default judgment.

Defendant correctly states that there is a limited exception to this doctrine for extrinsic fraud (ECF No. 71). *See Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1140–41 (9th Cir. 2004). But as discussed above, res judicata and the law of the case prevent Defendant from arguing that any fraud occurred. Other federal courts have decided that Defendant did not show sufficient evidence of fraud, that he could have raised the issue in the state appellate courts, and that the state court had an independent ground to issue terminating sanctions because he admitted to destroying evidence. (ECF No. 50 & 68; Bankr. ECF No. 176). Defendant's attempt to recycle his earlier allegations does not justify a collateral attack on the State Court Action. This court lacks jurisdiction to vacate that default judgment. *See Audre*, 216 B.R. at 26 (first citing *Rooker*, 263 U.S. 413; and then citing *Feldman*, 460 U.S. 462).

[3] Nor do any exceptions to the doctrine apply. The court does not see: (1) a clearly erroneous decision; (2) an intervening change in law; (3) substantially different evidence on remand; (4) other changed circumstances; or (5) manifest injustice. *Alexander*, 106 F.3d at 876.

Appendix E

Conclusion

Under Rule 60(c), Defendant cannot argue that there is newly discovered evidence or extrinsic fraud. Res judicata and the law of the case preclude reconsideration of the circuit, district, or bankruptcy court rulings on the nondischargeability of Plaintiff's judgment, the approval of the Trustee's settlement, and Defendant's fraud and conspiracy allegations. And the *Rooker-Feldman* doctrine bars his collateral attack on the State Court Action. For the foregoing reasons, the court **grants** Plaintiff's judicial notice request and **denies** Defendant's motion.

IT IS SO ORDERED.

Appendix E