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Monday, August 26, 2002  
ANDREW and MARY MUSAE LIAN,

No. 02-11458

[Debtor](#)  (s).

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### **Memorandum on Motion to Dismiss**

Debtor Andrew Musaelian is a process server. Before bankruptcy, he was sued by [creditor](#)  Joseph Reiter based on an altercation during an attempt to serve him. After a trial, the state court rendered a judgment against Musaelian for \$81,720.65 which was entered on October 23, 2001. The judgment assessed \$14,922.00 in compensatory damages, \$10,000.00 in general damages, and \$9,000.00 in punitive damages; the balance was for attorneys' fees and costs.

In the same action, some two years before the trial, a default judgment has been entered against Musaelian, individually and doing business as Attorney's Legal Research. Attorney's Legal Research is a fictitious business name used by Musaelian. On March 17, 2000, the state court vacated the default judgment.

On July 18, 2001, Reiter brought a motion in the state court "to reinstate default and default judgment against Attorney's Legal Research." Apparently, something in the pro se answer Musaelian had filed had alleged that Attorney's Legal Research was a separate entity, which was not the case. Relying on the answer and apparently applying principles of judicial estoppel, the state court granted the motion.

For some reason which counsel for Reiter is unable to explain, the form of order submitted by him and entered by the state court reinstated the default judgment as to "Andrew Musaelian doing business as Attorney's Legal Research." This order was made on the day of trial, and about two months before entry of the judgment after trial.

Reiter argues that he now has two judgments against Musaelian in the same case: the judgment for \$81,760.25 rendered after trial and the earlier default judgment for \$488,000.00. Relying on the default judgment and ignoring the judgment rendered after trial, he argues that Musaelian is over the debt limit for [Chapter 13](#)<sup>(1)</sup> eligibility and the case must therefore be dismissed.

Although the parties have centered their arguments around the Rooker- Feldman doctrine, the court does not see the case the same way. That doctrine merely states that lower federal courts have no jurisdiction over direct appeals from state court decisions. See *In re Gruntz*, 202 F.3d 1074, 1078n1 (9th Cir. 2000). Since the issue now before the court is not a direct appeal from the state court judgments but rather whether they render the debtors ineligible for Chapter 13 relief, the related principle of collateral estoppel is applicable to this case. See *Gruntz*, at 1084.

In applying collateral estoppel, federal courts apply state law. *In re Nourbakhsh*, 67 F.3d 798, 800 (9th Cir.1995). Under California law, judgments are not given collateral estoppel effect unless they are final and on the merits. *In re Harmon*, 250 F.3d 1240, 1245 (9th Cir.2001). It does not appear that there is a final judgment in this case.

Under California law, there can be only one final judgment in a case against the same party. A judgment is not appealable, and therefore not final, if any further action on the part of the court is essential to a final determination of the rights of the parties. 4 Cal.Jur.3d, Appellate Review, § § 36, 37. In this case, the state court still needs to merge its two judgments into a single judgment before it can be reviewed.<sup>(1)</sup>

Reiter argues that both judgments he obtained are final because one judgment is against "Andrew Musaelian" and the other is against "Andrew Musaelian doing business as Attorney's Legal Research." Whatever tortured logic leads him to this conclusion, it is not shared by the court. Nor does the court understand why Reiter should get to choose which judgment is applicable to this Chapter 13 case.

The court ends its analysis by noting that this is clearly a case which was intended by Congress to be properly brought under Chapter 13. After a full trial, the court rendered a judgment for \$81,000.00, keeping the debtors well within the debt limits of § 109(e). It is only by ignoring this judgment on the merits and focusing on the earlier default judgment - possibly procured by some sort of legal legerdemain<sup>(2)</sup>- that Reiter is able to argue that Musaelian is not eligible for Chapter 13 relief. Collateral estoppel is not supposed to be applied blindly by the court where injustice results or public policy - in this case, access to relief under the [Bankruptcy Code](#)<sup>(1)</sup> - is thwarted. *Lucido v. Superior Court* (1990) 51 Cal.3d 335, 343.

Reiter's fall-back position is that even if the two judgments are not given preclusive effect, they are still "liquidated" and therefore counted for purposes of eligibility. However, the survival of the larger judgment is contingent on a finding that by the state court that this is the proper judgment amount, even though it subsequently held a full trial and determined that the damages - including punitive damages - were far less. While the role of the court in adjudicating claims for purposes of eligibility is limited, some scrutiny of the basis for a [claim](#)

 is proper where a legal issue is involved and contested evidentiary hearing is not required. In re Ho, 274 B.R. 867, 875 (9th Cir.BAP 2002); In re Nicholes, 184 B.R. 82, 90 (9th Cir.BAP 1994); In re Loyola, 123 B.R. 338, 341 (9th Cir. 1991).

For the foregoing reasons, Reiter's motion to dismiss will be denied. Counsel for Musealian shall submit an appropriate form of order.

Dated: August 26, 2002

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Alan Jaroslovsky  
U.S. [Bankruptcy Judge](#) 

1. The record reflects that Musaelian sought relief by an extraordinary writ in the state appellate courts. While this was denied, it does not appear to preclude normal appellate review from a final judgment.

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