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Friday, July 5, 2002  
DENISE STUART,

No. 01-12186

[Debtor](#)  (s).

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GARY HABERMAN,

[Plaintiff](#)  (s),

v.

A.P. No. 01-1151

DENISE STUART,

[Defendant](#)  (s).

\_\_\_\_\_/

### **Memorandum**

At the commencement of trial in this [adversary proceeding](#) , the court reviewed a state court judgment finding that debtor and defendant Denise Stuart had cashed in three certificates of deposit after her separation from her husband, Gary Haberman, and failed to account for the proceeds. The state court had entered a judgment against Denise for the amount of the certificates, about \$15,000.00. Based on this judgment, the court ruled summarily that the debt was nondischargeable pursuant to § 523(a)(4) of the [Bankruptcy Code](#) . Thereafter, the parties entered into a settlement.

While the court will not undo the settlement, it was obvious that Denise was upset when she left the court. The court accordingly issues this memorandum to explain to her why the

obligation arising out of the certificates was nondischargeable.

Under California law, spouses are considered fiduciaries for each other as to marital property in their possession. In re Stanifer, 236 B.R. 709, 719 (9th Cir.BAP 1999). A defalcation occurs any time a fiduciary fails to account for money held in such a capacity. In re Lewis, 97 F.3d 1182, 1186 (9th Cir. 1996). State court judgments must be given collateral estoppel effect in subsequent dischargeability proceedings, even if made by default. In re Nourbakhsh, 67 F.3d 798 (9th Cir. 1995). Accordingly, there was no defense as to Haberman's [claim](#) of nondischargeability as to the certificates.

The court reminds Haberman that since part of the settlement involves waiver of his objection to Denise's [discharge](#), he must give notice pursuant to FRBP 7041.

Dated: July 5, 2002

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

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