**IT IS SO ORDERED.**

**Dated: January 21, 2025**

Mina Nami Khorrami
United States Bankruptcy Judge

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**UNITED STATES BANKRUPTCY COURT**
**SOUTHERN DISTRICT OF OHIO**
**EASTERN DIVISION**

| | | |
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| *In re*: | : | |
| | : | Case No. 23-51471 |
| PETER FITCH, | : | Chapter 7 |
| | : | Judge Nami Khorrami |
| *Debtor.* | : | |
| | : | |
| EDIN IMSIROVIC, | : | |
| | : | |
| *Plaintiff*, | : | |
| | : | |
| v. | : | Adv. Pro No. 23-02063 |
| | : | |
| PETER FITCH, | : | |
| | : | |
| *Defendant*. | : | |

**MEMORANDUM OPINION AND ORDER GRANTING EDIN IMSIROVIC'S MOTION FOR SUMMARY JUDGMENT (DOC. #18)**

Before the Court is the *Motion by Edin Imsirovic for the Entry of an Order Granting Summary Judgment* (Doc. #18) (the "Motion"), *Defendant's Response to Plaintiff's Motion for Summary Judgment* (Doc. #19) (the "Response"), the *Reply by Edin Imsirovic to Response of Peter*

*Fitch to Motion for the Entry of an Order Granting Summary Judgment* (Doc. #20) (the "Reply"), and the *Stipulation of Facts Regarding Motions*[1] *for Summary Judgment* (Doc. #17) (the "Stipulations").

The Court held a status conference on September 25, 2024 (the "Status Conference"), to address concerns it had regarding the redaction of certain exhibits that were attached to the Reply and the need for the entire state court record to be filed in this adversary proceeding, as required by *Spilman v. Harley*, 656 F.2d. 224, 228 (6th Cir. 1981). At the Status Conference, David Whittaker ("Mr. Whittaker") appeared on behalf of Edin Imsirovic ("Plaintiff") and no appearance was made by or on behalf of Peter Fitch ("Defendant").[2] In addressing the Court's concerns regarding the redaction of certain exhibits, Mr. Whittaker explained that the criminal case and record against Defendant was expunged, and as a result, any reference to the criminal case was redacted from the exhibits before being filed with the Court. Based on Mr. Whittaker's explanation and to preserve Defendant's rights, the Court did not require any further action and accepted the record with the redaction. With respect to the issue of the state court record, the Court requested that the entire record from the state court proceeding be made part of this Court's record, and specifically the video evidence that was presented at the damages hearing held by the state court. Thereafter, the Court entered the *Order Regarding Submission of Additional Documents from State Court Case* (Doc. #26) (the "Status Conference Order") which directed Mr. Whittaker to obtain copies of all the documents, pleadings, or videos that were of record in the state court proceeding which were not already in the Court's record (the "Additional State Court Documents") and file them in the adversary proceeding no later than November 25, 2024, and serve a copy of same on

[1] Contrary to the title of this document, only one motion for summary judgment is of record before this Court.
[2] An *Order Granting Motion to Withdraw as Case Attorney (Doc.21)* (Doc. #22) was entered on August 7, 2024, so Defendant was proceeding pro se in the adversary case at the time of the Status Conference.

Defendant. In addition, the Status Conference Order permitted the redaction of the Additional State Court Documents with respect to any reference to the criminal case against Defendant. On November 22, 2024, Plaintiff filed the *Amended Notice of Filing of Full Record of State Court Case* (Doc. #30) with all the documents, pleadings, or videos from the state court proceeding attached.[3] Thereafter, on January 17, 2025, the *Declaration of Catherine Stogdill on the Verification of the Pleadings and Documents from the Iowa State Court Case* (Doc. #32) was filed pursuant to Federal Rule of Civil Procedure 56(c)(4) authenticating the documents contained in the state court record. Decl. ¶¶ 1-6, ECF No. 32.[4] Accordingly, the Court considered the Motion, the Response, the Reply, the Stipulations, and the entire record of the state court proceeding before issuing a decision in this case.

Plaintiff seeks a determination that a debt resulting from a state court judgment against Defendant, who is also the Debtor in this bankruptcy case, arose from a willful and malicious injury, and thus, is excepted from Defendant's bankruptcy discharge under 11 U.S.C. § 523(a)(6). Compl. 1, ECF No. 1. Plaintiff wants this Court to apply the doctrine of issue preclusion to the state court judgment and determine as a matter of law that the debt is nondischargeable. Pl.'s Mot. Summ. J. 2, ECF No. 18. More specifically, Plaintiff argues that the state court judgment establishes that Defendant's conduct was willful and malicious as required by § 523(a)(6). Pl.'s Mot. Summ. J. ¶ 25, ECF No. 18. In response, Defendant contends that because the state court judgment was entered by default, the issue of whether Defendant's conduct was willful and

[3] The case management system that allows federal courts, including this Court, to maintain electronic case files and offer electronic filing over the internet could not support the filing of the video exhibit that was presented at the damages hearing. Consequently, the copy of the video exhibit was delivered by Mr. Whittaker in person to the Court and is under the custody and control of the courtroom deputy assigned. Am. Notice of State Ct. R. ¶ 2, ECF No. 30.
[4] Plaintiff filed an *Amendment to Certificate of Service of Declaration of Catherine Stogdill on the Verification of the Pleadings and Documents from the Iowa State Court Case* (Doc. #33) on January 17, 2025, to reflect service on Defendant at the address on record with the Court. Am. Cert. of Service 1, ECF No. 33.

malicious was never actually litigated and thus, is not entitled to any preclusive effect. Def.'s Resp. ¶ 8, ECF No. 19. For the reasons stated below, the Court concludes that the state court judgment is entitled to preclusive effect and Plaintiff is entitled to judgment as a matter of law that the debt for willful and malicious injury is excepted from discharge under § 523(a)(6).

## I. Jurisdiction

The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the Amended General Order 05-02 entered by the United States District Court for the Southern District of Ohio, referring all bankruptcy matters to this Court. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I). Venue is properly before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

## II. Findings of Facts

Based on this Court's review of the pleadings, answers to interrogatories, admissions on file, affidavits, the Stipulations, and other materials submitted with the Motion, the Response, the Reply, and the entire record in the state court proceeding, the Court makes the following findings of fact.

This adversary proceeding arises out of events that occurred in West Des Moines, Iowa, on the evening of October 17, 2015, and the early morning hours of October 18, 2015. Stip. ¶ 9, ECF No. 17. During that time, Plaintiff and Defendant (collectively the "Parties") were both patronizing a local restaurant and sports bar (the "Sports Bar"). *Id*. While at the Sports Bar, the Parties were involved in a physical altercation which resulted in Plaintiff suffering personal injuries (the "Incident"). *Id*. ¶ 10, ECF No. 17.

On February 10, 2017, Plaintiff filed a lawsuit against Defendant in the Iowa District Court for Polk County (the "State Court") which was assigned Case No. LACL137166 (the "State

Case"). *Id*. ¶ 11, ECF No. 17. In the State Case, Plaintiff sought judgment against Defendant for actual and punitive damages based on claims for intentional and malicious assault and battery and for intentional infliction of emotional distress. *Id*. ¶ 12, ECF No. 17. At some point during the State Case, Plaintiff filed a motion for default judgment, and the State Court held a hearing on May 23, 2017 (the "Default Hearing") to consider the motion for default judgment. Pl.'s Reply Ex. A 16, ECF No. 20; Pl.'s Reply Ex. H ¶ 7, ECF No. 20. Defendant learned about the Default Hearing after receiving an email on May 22, 2017, from Plaintiff's counsel in the State Case. *Id*. Defendant attended the Default Hearing telephonically. *Id*. At the conclusion of the Default Hearing, the State Court entered the *Order Re: Motion for Default Judgment* (the "MDJ Order") that memorialized the Default Hearing and established certain deadlines in the State Case. *Id*. The MDJ Order provides as follows:

> The court has before it a motion for default judgment filed by plaintiff, Edin Imsirovic on April 24, 2017. Appearing at the hearing by telephone was defendant, Peter Fitch. Appearing personally was Edin Imsirovic and his attorney Chandler Maxon. After hearing arguments from Ms. Maxon and Mr. Fitch the court finds and orders as follows:
>
> Fitcch [sic] was served with the original notice at his address of 906 Polaris Crossing Blvd., Westerville, OH 43081 on March 8, 2017. Fitch acknowledged that he was served with the original notice and petition. He contacted an attorney in Des Moines for the purpsoe [sic] of representation but that attorney did not handle the kind of case involved here. Since service was made on March 8, 2017 Fitch has moved twice and presently lives at 283 E. 1st Avenue, Unit 106, Columbus, OH 43215. The notice of intent to file for default judgment was sent to Fitch's Westerville, Ohio address. Fitch learned about the hearing today becuase [sic] counsel for Imsirovic sent him an email on May 22, 2017.
>
> Maxon indicated that prior to filing the notice of intent to seek a default judgment she had a conversation with Fitch where he indicated he did not plan to retain counsel.
>
> The court finds that Fitcch [sic] should be given some time to retain counsel or file a responsive pleading in this matter on his own behalf.

> IT IS THEREFORE ORDERED that the plaintiff's motion for default judgment will be held in abeyance at this time.
>
> IT IS FURTHER ORDERED that Fitch shall retain counsel and counsel shall file a responsive pleading to the petition on behalf of Fitch by June 16, 2017. If Fitch decides to represent himself then he shall file the responsive pleading by June 16, 2017.
>
> IT IS FURTHER ORDERED that if Fitch or an attorney representing him does not file a responsive pleading by June 16, 2017 the court will re-schedule Imsirovic's motion for default judgment for hearing.

Pl.'s Reply Ex. A 16, ECF No. 20; Pl.'s Reply Ex. H ¶ 7, ECF No. 20.

On June 16, 2017, Defendant electronically filed an answer (the "Answer") pro se in the State Case. Stip. ¶ 13, ECF No. 17; Def.'s Resp. Ex. ¶ 8, ECF No. 19-1. Consequently, Plaintiff withdrew his motion for default judgment after the Answer was filed by Defendant. Am. Notice of State Ct. R. Bookmark 26, ECF No. 30-6. As part of the process of filing the Answer electronically, Defendant registered for the Iowa Electronic Document Management System ("EDMS"). Stip. ¶ 14, ECF No. 17. Pursuant to EDMS, Defendant was served copies of the notices and pleadings filed in the State Case through his personal email. *Id*. Due to registering for EDMS, service upon Defendant through his personal email was considered effective service. *Id*. After Defendant filed the Answer, the State Court entered the *Order to Self-Represented Litigants* (the "Pro Se Order") that provides as follows:

> The Court finds that Defendant, Peter Scott Fitch, is representing himself in this case. You are encouraged to hire a lawyer. Your legal rights, property, and earnings may be affected by this proceeding.
>
> **You are advised that the Court system is now "paperless"**. Documents are created on computers using word processing and filed with the Court over the internet. The Court rules now prohibit the Clerk of Court from accepting paper documents except if authorized by a Judge.
>
> For you to represent yourself and to file and receive electronic documents, **you need to first set up an "ACCOUNT" with the Court.** To do this, you must use a

computer and go to the Iowa Supreme Court internet website: www.iowacourts.state.ia.us/EFILE/

Once that eFiling page comes up you can either log in if you already have a "user name" and "password" or click on the "Request Account" button to obtain a "username" and "password". Read and follow all of the rules and instructions on this site. Once you are registered you may file and will receive copies of all electronic documents in this case. All documents will be sent to the e-mail address you register. If you do not have access to a computer with Internet service, you may use one of the "public" computers located in the courthouse, or possible located at your local public library.

As a last resort, you may obtain permission from a Judge to submit written documents to the Clerk of Court, which will be scanned (converted to an electronic document) and filed in this manner.

While representing yourself, this Court orders you to do the following:

**Document You [sic] File**

- **You are required to register/file with the Clerk of Court (an "Appearance"), which has your name, residential address, email address and telephone number.** If you move, change telephone numbers or change email addresses while this case is pending, you are required to file immediately another document notifying the Clerk of Court with your new information.
- Any document you file must contain the above-caption, case number, your full name, address and telephone number and must be signed by you.
- **A copy of any document that you file with the Clerk of Court must be mailed by you to all other attorneys or parties (if not represented by an attorney) in this case. You** must certify on the last page of the original document you file with the Clerk of Court that you have mailed copies, listing the names and addresses of all attorneys or parties to whom you mailed a copy. A failure to comply with these provisions may result in the Clerk of Court refusing to accept your document, a dismissal of your claim or entry of default against you.
- You are required to file all documents (pleadings and motions) with the Clerk of Court. You do this by either: (1) going to the Clerk of Court's office (Room 115) and presenting the document for filing; or (2) mailing the documents to the Clerk of Court with directions to the Clerk on what you want done. If you do this by mail, and you want a file stamped copy of your document returned to you, you will also have to send the Clerk of Court an extra copy of the document and a self-addressed, postage pre-paid (stamped) envelope.
- You must sign all pleadings or motions. By signing, you certify to the Court that the documents are well grounded in fact or warranted by existing law, or there is a good faith argument for the extension, modification, or reversal of existing law; and that is not being filed for an improper purpose such as to harass, or cause an

unnecessary delay, or needless increase in the cost of litigation. A failure to follow this rule may result in sanctions being imposed by the Court (I.R.Civ.P. 1.413(1)) .

**Knowledge of Court Rules**

• You are required to be familiar with and follow the Iowa Rules of Civil Procedure and the Rules of Practice of the Fifth Judicial District (Local Rules). Failure to follow these rules may result in sanctions, which include the dismissal of your claim, a default, judgment and costs assessed against you, fines, striking of claims of defenses, inability to use witnesses or evidence, or other sanctions.

**Attendance in Court**

• You are required to attend all hearings and the trial when scheduled by the Court. You must be available to attend during Court hours (8:00 a.m. to 4:30 p.m.). All matters are scheduled based upon the Court's calendar and schedule and not necessarily your availability. Notices of hearings are sent to you by mail to the address you file with the Clerk of Court and will be the only notice that you will receive.
• At any hearing or trial, you will be treated the same as any other advocate. Out of fairness, all who appear before the Court are treated equal.
• You may represent yourself, but since you are not a licensed attorney, you may not represent any other person, including your spouse, or a business or corporation, unless it is solely owned by you.

**Deadlines**

• You are required to follow all orders, including those setting any deadlines for action by you. Failure to follow the Court's orders, failure to appear promptly for hearings, or failure to comply with deadlines set by rule or Court orders, may result in sanctions being imposed on you by the Court.

**IT IS SO ORDERED** 20th day of June, 2017.

Pl.'s Reply Ex. B 19-21, ECF No. 20; Pl.'s Reply Ex. H ¶ 7, ECF No. 20. Even though Defendant failed to take any other action in the State Case or respond to any other pleading or State Court order after he filed the Answer, he continued to be served copies of additional documents that were filed in the case. Stip. ¶ 15, ECF No. 17; Def.'s Resp. Ex. ¶ 11, ECF No. 19-1; Pl.'s Reply Ex. H ¶ 5, ECF No. 20.

Counsel for Plaintiff filed and served the following documents in the State Case which were served electronically on Defendant through EDMS and through regular mail[5]: "discovery requests, a letter to Mr. Fitch regarding his failure to respond to discovery requests, a Motion for Summary Judgment including supporting Briefs and Exhibits, . . . a Motion in Limine, Plaintiff's Witness and Exhibit List, and Plaintiff's Trial Brief and Plaintiff's Proposed Jury Instructions." Pl.'s Reply Ex. H ¶ 5, ECF No. 20. And specifically, on October 26, 2017, counsel for Plaintiff filed a motion for summary judgment in the State Case which was supported by exhibits and an affidavit. Am. Notice of State Ct. R. Bookmarks 36-44, ECF Nos. 30-8 and 30-9. Defendant failed to file a response or otherwise defend against Plaintiff's request for summary judgment in the State Case. Stip. ¶ 15, ECF No. 17; Stip. Ex. B 13, ECF No. 17. The State Court made certain findings and conclusions based on its review of the motion for summary judgment and the supporting documentation for it; consequently, the State Court entered the *Order Re: Motion for Summary Judgment* (the "MSJ Order") on December 18, 2017, granting partial summary judgment in favor of Plaintiff and against Defendant. Pl.'s Reply Ex. F 47-50, ECF No. 20; Pl.'s Reply Ex. H ¶ 7, ECF No. 20. The State Court, among other things, made the following findings regarding the Incident: (1) Defendant, using his fist, struck Plaintiff on the left side of his face; (2) Plaintiff lost consciousness and was transported to a hospital; (3) Plaintiff was "diagnosed with a left subarachnoid hemorrhage, left temporal and parietal bone fractures and hemotympanum;" (4) Defendant "admitted that he struck [Plaintiff] in the head resulting in serious injury to [him];" and (5) Plaintiff "suffered pain and suffering from the assault." Pl.'s Reply Ex. F 47-48, ECF No. 20; Pl.'s Reply Ex. H ¶ 7, ECF No. 20. In addition, the State Court further determined that:

[5] None of the documents that were served by Plaintiff's counsel in the State Case by regular U.S. mail were returned by the U.S. Postal Service as undeliverable. Pl.'s Reply Ex. H ¶ 6, ECF No. 20.

> Fitch was served with the original notice and petition on March 8, 2017. He never filed an answer until June 16, 2017. He filed his answer pro se. Fitch did not provide his initial disclosures and did not respond to requests for admissions sent to him by Imsirovic. The requests for admissions were sent on July 31, 2017. The court finds, pursuant to Iowa Rules of Civil Procedure 1.510(2) and 1.511, those requests are deemed conclusively admitted.

Pl.'s Reply Ex. F 48, ECF No. 20; Pl.'s Reply Ex. H ¶ 7, ECF No. 20. The State Court granted partial summary judgment and ordered the following relief:

> IT IS THEREFORE ORDERED that Imsirovic is entitled to partial summary judgment against Fitch in which Imsirovic established that Fitch assaulted him and caused him personal injury which includes damages of $11,713.44 for past medical expenses and $3,838.16 for past lost wages.
>
> IT IS FURTHER ORDERED that he is entitled to damages in an amount to be determined at trial for past and future pain and suffering and past and future loss of function.
>
> IT IS FURTHER ORDERED that he may present evidence to establish his claim for punitive damages and the amount of any to which he may be entitled at the time of trial.

Pl.'s Reply Ex. F 49, ECF No. 20; Pl.'s Reply Ex. H ¶ 7, ECF No. 20.

On August 3, 2018, the State Court held a final pretrial in the State Case and entered the *Order on Default and Setting Hearing on Damages* (the "Default Order") noting the procedural history of the State Case and Defendant's failures to comply with the State Court orders.[6] Stip. ¶ 16, ECF No. 17; Stip. Ex. B 13, ECF No. 17. The Default Order specifically provides that:

> This matter came before the Court for the Final Pretrial Conference. At the time of the Conference, Chandler Surrency appeared on behalf of the Plaintiff. The Defendant failed to appear.
>
> In reviewing the court file, the Court notes that the Defendant did file an Answer on June 16, 2017. After answering, the Defendant has failed to respond to any discovery, failed to resist the Plaintiff's Motion for Summary Judgment, failed to

[6] The Stipulations filed by the Parties represent that the State Court held a final pretrial on August 3, 2017, and entered the Default Order the same day. Stip. ¶ 16, ECF No. 17. Upon closer examination of the copy of the Default Order, it is apparent that the reference to 2017 by the Parties is an inadvertent typographical error because the Default Order specifies that it was "[e]lectronically signed on 2018-08-03 14:52:07." Stip. Ex. B 14, ECF No. 17. Accordingly, the final pretrial and the entry of the Default Order occurred on August 3, 2018. *Id.*

> appear for a Status Conference held on July 20, 2018, and failed to make any of the necessary pretrial filings outlined in the Court's Trial Scheduling Order. The Defendant has now failed to appear at the Final Pretrial Conference held on August 3, 2017. The Defendant is registered with the EDMS system, and as a result, the Court assumes that he received notice of the Final Pretrial Conference.
>
> THE COURT THEREFORE enters a Default against Defendant Peter Scott Fitch under Iowa Rule of Civil Procedure 1.971(4). The Defendant has failed to comply the Court's Orders to appear and the Pretrial Conference, and as a result, the default is warranted under the rule.
>
> FURTHERMORE, THE COURT orders a hearing on damages under Iowa Rule of Civil Procedure 1.973(2) to be held at the time previously set for trial, August 6, 2018, at 9:00.
>
> Hearing is scheduled on 08/06/2018 at 09:00 AM at the Polk Co Crthouse [Courthouse], CtRm [Courtroom] 413, 500 Mulberry St, DSM, IA 50309.

Stip. Ex. B 13, ECF No. 17.

Thereafter, the State Court conducted an evidentiary hearing on August 6, 2018, to determine the appropriate damages that should be awarded, including but not limited to whether punitive damages were warranted. Stip. ¶ 19, ECF No. 17; Pl.'s Reply Ex. F 49, ECF No. 20. Defendant failed to appear at the hearing. Stip. Ex. C 15, ECF No. 17. The State Court considered both testimony and documentary evidence in determining the amount and type of damages to be awarded, and at the conclusion of the damages hearing, the State Court entered the following *Order* (the "Judgment") regarding damages:

> On August 6, 2018, this matter came before the Court for a Hearing to Set Damages pursuant to Iowa Rule of Civil Procedure 1.973(2).
>
> The Court previously entered a default against the Defendant for failure to comply with the Court's order. The Hearing to Set Damages was held at the time and date previously reserved for the trial. Again, the Defendant did not appear. After hearing testimony and evidence from the Plaintiff as to damages, the Court awards damages as follows:
>
> 1) Past Pain and Suffering, $30,000;
> 2) Future Pain and Suffering, $20,000;
> 3) Past Loss of Function of the Mind and Body $15,000;

> 4) Future Loss of Function of the Mind and Body $10,000; and
> 5) Punitive Damages $100,000.
>
> As to the punitive damages, the Court further finds that pursuant to Iowa Code 668A.1 the conduct of the Defendant was directed specifically at the Plaintiff.
>
> Interest on the damages will accrue as set by law. Court cost [sic] are assessed against the Defendant.
>
> IT IS SO ORDERED

Stip. Ex. C 15, ECF No. 17. Following the hearing on damages, the State Court entered the *Order Concerning Maintenance of Exhibits* that lists the exhibits that were presented as evidence during the hearing, one such exhibit was a "Video of [the] Incident" (the "Video"). Pl.'s Reply Ex. I 59, ECF No. 20. The Video provides actual footage of the Incident. Am. Notice of State Ct. R. Bookmark 91, ECF No. 30. The Video shows Defendant striking Plaintiff with his fist and Plaintiff collapsing to the floor of the Sports Bar unable to move. *Id*. It is apparent from the Video that Plaintiff lost consciousness after being struck by Defendant. *Id*. In addition to the Video, the State Court also considered, among other things, the following evidence when determining the amount of damages and whether punitive damages were appropriate: (1) an incident report from the West Des Moines Police Department; (2) Plaintiff's requests for admission that were directed to Defendant; and (3) Defendant's LinkedIn profile. Am. Notice of State Ct. R. Bookmarks 84-88, ECF No. 30-17 at 5-10 and ECF No. 30-18 at 1-2 and 4-8.

Sometime after 2016, Defendant moved to Ohio for his job. Stip. ¶ 8, ECF No. 17; Def.'s Resp. Ex. ¶ 6, ECF No. 19-1. In response, Plaintiff filed the Judgment in the Court of Common Pleas in Cuyahoga County, Ohio, on August 19, 2019, as a foreign judgment.[7] Stip. ¶ 22, ECF No. 17. In May 2021, Defendant's wages began to be garnished. Def.'s Resp. Ex. ¶ 9, ECF No.

[7] As of August 3, 2023, the balance of the Judgment owed by Defendant to Plaintiff was $222,122.71, plus continuing interest, and costs. Stip. ¶ 23, ECF No. 17.

19-1. Consequently, Defendant filed for relief under Chapter 7 of the Bankruptcy Code on May 2, 2023. Def.'s Resp. Ex. ¶ 9, ECF No. 19-1.

**III. Arguments of the Parties**

Plaintiff contends that the State Court's findings and conclusions in the Judgment establish that Defendant's conduct with respect to the Incident was willful and malicious. Pl.'s Mot. Summ. J. ¶ 25, ECF No. 18. Plaintiff argues that the Judgment includes an award of punitive damages which, pursuant to Iowa law, necessarily requires a finding that the conduct giving rise to the claim is willful and malicious. Pl.'s Mot. Summ. J. ¶ 24, ECF No. 18. Plaintiff further argues that the Judgment is entitled to preclusive effect in this adversary proceeding, and Defendant should be estopped from arguing that the Incident was not willful and malicious. Pl.'s Mot. Summ. J. ¶ 53, ECF No. 18. Accordingly, Plaintiff asserts that the Judgment should be excepted from discharge under § 523(a)(6) as a matter of law based on the doctrine of issue preclusion. *Id*.

In contrast, Defendant argues that under Iowa law default judgments are not entitled to preclusive effect because issues are not actually litigated in a true default judgment case, and thus, Plaintiff cannot establish the required elements for the doctrine of issue preclusion to apply. Def.'s Resp. ¶ 7, ECF No. 19. Specifically, Defendant argues that Plaintiff cannot prove that the issue of willful and malicious was actually litigated in the State Court. *Id.* Therefore, Defendant asserts that the Judgment is not entitled to preclusive effect and as a result Plaintiff is not entitled to judgment as a matter of law. Def.'s Resp. 1, ECF No. 19.

## IV. Legal Analysis

### A. Summary Judgment Standard

Federal Rule of Civil Procedure 56[8] governs a request for summary judgment and provides that "[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The party requesting summary judgment bears the burden of establishing the absence of a genuine issue of material fact. *See Celotex Corp. v. Catrett* , 477 U.S. 317, 323, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986). The opposing party must then "come forward with specific facts showing that there is a genuine issue for trial." *Mounts v. Grand Trunk W. R.R.*, 198 F.3d 578, 580 (6th Cir. 2000) (citation omitted).

When considering a motion for summary judgment, "[t]he court must view the evidence in the light most favorable to the nonmoving party. However, the party opposing the summary judgment motion must do more than simply show that there is some metaphysical doubt as to the material facts." *Amini v. Oberlin Coll.*, 440 F.3d 350, 357 (6th Cir. 2006) (citations and internal quotation marks omitted). "[A] mere 'scintilla' of evidence in support of the non-moving party's position is insufficient to defeat summary judgment; rather, the non-moving party must present evidence upon which a reasonable jury could find in her favor." *Tingle v. Arbors at Hilliard*, 692 F.3d 523, 529 (6th Cir. 2012) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986)).

[8] Federal Rule of Civil Procedure 56 is made applicable to adversary proceedings pursuant to Federal Rule of Bankruptcy Procedure 7056.

**B. 11 U.S.C. § 523(a)(6) –Willful and Malicious Injury Exception to Discharge**

"The principal purpose of the Bankruptcy Code is 'to grant a fresh start to the honest but unfortunate debtor.'" *Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365, 367, 127 S. Ct. 1105, 166 L. Ed. 2d 956 (2007) (citing *Grogan v. Garner,* 498 U.S. 279, 286, 287, 111 S. Ct. 654, 112 L. Ed. 2d 755 (1991) (internal quotation marks omitted)). To that end, Chapter 7 provides a broad discharge of the debtor's prepetition debts in exchange for having her nonexempt assets liquidated by a trustee and distributed to creditors. *Marrama*, 549 U.S. at 367. The Supreme Court, however, also recognizes that although the fresh start is the principal purpose of the Bankruptcy Code, "no statute pursues a single policy at all costs." *Bartenwerfer v. Buckley*, 598 U.S. 69, 81, 143 S. Ct. 655, 214 L. Ed. 2d 434 (2023). Rather, the Bankruptcy Code balances multiple interests which often compete with each other. *Id*.

This balancing of interests is reflected in the scope of the bankruptcy discharge. Although the discharge is broad, it is subject to exceptions for particular types of debts. "The Bankruptcy Code strikes a balance between the interests of insolvent debtors and their creditors. It generally allows debtors to discharge all prebankruptcy liabilities, but it makes exceptions when, in Congress's judgment, the creditor's interest in recovering a particular debt outweighs the debtor's interest in a fresh start." *Bartenwerfer*, 598 U.S. at 72. These exceptions to discharge, as set forth in § 523(a), limit the fresh start and are therefore strictly construed against the creditor and in favor of the debtor. *See, e.g. In re Padzierz*, 718 F.3d 582, 586 (6th Cir. 2013) (citing *AT&T Universal Card Svcs., Inc. v. Rembert (In re Rembert))*, 141 F.3d 277, 280 (6th Cir. 1998)). Further, the creditor bears the burden of proving that an exception to discharge applies by a preponderance of the evidence. *Garner*, 498 U.S. at 291.

In this case, Plaintiff seeks to except the Judgment from discharge pursuant to § 523(a)(6) which provides that a debtor is not discharged from any debt "for willful and malicious injury by the debtor to another entity or to the property of another entity." 11 U.S.C. § 523(a)(6). Pl.'s Mot. Summ. J. ¶ 3, ECF No. 18. To prevail under 11 U.S.C. § 523(a)(6), Plaintiff must prove that the injury from which the alleged debt arises was both willful and malicious. The Sixth Circuit has held that the two terms have distinct meanings so that the Court must undertake a "two-pronged inquiry." *MarketGraphics Rsch. Grp., Inc. v. Berge (In re Berge)*, 953 F.3d 907, 914-16 (6th Cir. 2020). While the same evidence that would support a finding of willful conduct will often also support a finding that the debtor acted with malice, that will not always be the case, as the two concepts are distinct and each must be proven. *Berge*, 953 F.3d at 916.

Because the word "willful" in the statute modifies the word "injury," the United States Supreme Court has concluded that § 523(a)(6) requires a "deliberate or intentional *injury*, not merely a deliberate or intentional act that leads to injury." *Kawaauhau v. Geiger*, 523 U.S. 57, 61, 118 S. Ct. 974, 140 L. Ed. 2d (1998). "[T]he actor must intend the *consequences* of an act, not simply the act itself." *Id.* at 61-62 (citation and internal quotation marks omitted). Moreover, the Supreme Court noted that "the (a)(6) formulation triggers in the lawyer's mind the category '*intentional torts*,' as distinguished from negligent or reckless torts." *Kawaauhau*, 523 U.S. at 61 (emphasis added).

As used in 11 U.S.C. § 523(a)(6), "malicious" means "in conscious disregard of one's duties or without just cause or excuse . . . ." *Berge*, 953 F.3d at 915 (quoting *Wheeler v. Laudani*, 783 F.2d 610, 615 (6th Cir. 1986)). "Maliciousness is conduct targeted at the creditor . . . at least in the sense that the conduct is certain or almost certain to cause . . . harm." *Berge* at 915 (quoting

*Sells v. Porter (In re Porter)*, 539 F.3d 889, 894 (8th Cir. 2008)) (internal quotation marks omitted).

In addition, the Sixth Circuit Court of Appeals observed:

> Debts arising out of these types of misconduct satisfy the willful and malicious injury standard: intentional infliction of emotional distress, malicious prosecution, conversion, assault, false arrest, intentional libel, and deliberately vandalizing the creditor's premises.

*Steier v. Best (In re Best)*, 109 Fed. App'x 1, 5 (6th Cir. 2004) (footnote and citations omitted).

**C. Applicability of Issue Preclusion to the Judgment**

Plaintiff seeks summary judgment on his nondischargeability claim under § 523(a)(6) on the basis that the State Court determined in the State Case that Defendant's conduct was willful and wanton when it entered the Judgment, and as such, Defendant is now precluded from relitigating that issue. Pl.'s Mot. Summ. J. ¶ 3, ECF No. 18. The doctrine of issue preclusion, which is sometimes referred to as collateral estoppel, "prevents parties to a prior action in which judgment has been entered from relitigating in a subsequent action issues raised and resolved in the previous action." *Hunter v. Des Moines*, 300 N.W.2d 121, 123 (Iowa 1981). "[C]ollateral estoppel principles . . . apply in discharge exception proceedings pursuant to § 523(a)." *Grogan v. Garner*, 498 U.S. 279, 285, n.11, 111 S. Ct. 654, 658, 112 L. Ed. 2d 755 (1991).

The full faith and credit statute requires a federal court to determine the preclusive effect of a state court judgment in a subsequent federal cause of action by applying the preclusion law of the state that entered the judgment. 28 U.S.C. § 1738; *see also Marrese v. Am. Acad. of Orthopaedic Surgeons*, 470 U.S. 373, 380, 105 S. Ct. 1327, 84 L. Ed. 2d 274 (1985). In this case, the preclusive effect of the Judgment is governed by Iowa law.

For issue preclusion to apply under Iowa law, the following four elements must be established:

> (1) the issue concluded must be identical; (2) the issue must have been raised and litigated in the prior action; (3) the issue must have been material and relevant to the disposition of the prior action; and (4) the determination made of the issue in the prior action must have been necessary and essential to the resulting judgment.

*Clark v. State*, 955 N.W.2d 459, 465-466 (Iowa 2021) (quoting *Hunter*, 300 N.W.2d at 123). When mutuality is lacking, Iowa law requires the following two additional elements be satisfied before a judgment can be afforded preclusive effect with respect to the offensive use[9] of issue preclusion: "the party sought to be precluded was afforded a full and fair opportunity to litigate the issue in the action relied upon and that no other circumstances justify affording him an opportunity to relitigate that issue." *Hunter*, 300 N.W.2d at 126. The Parties in this case are the same as they were in the State Case, so mutuality is not lacking here. Further, the party invoking the doctrine of issue preclusion "has the burden of proof on all four prerequisites." *In re Marriage of Van Veen*, 545 N.W.2d 263, 266 (Iowa 1996) (citation omitted). Accordingly, Plaintiff need only establish the first four elements for issue preclusion to apply.[10]

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[9] Iowa law requires additional elements be established depending on whether a party is defensively or offensively using the doctrine of issue preclusion. *Clarke*, 955 N.W.2d at 465-466. The difference between the two uses is explained as follows:

> The phrase "defensive use" of the doctrine of collateral estoppel is used here to mean that a stranger to the judgment, ordinarily the defendant in the second action, relies upon a former judgment as conclusively establishing in his favor an issue which he must prove as an element of his defense.
>
> On the other hand, the phrase "offensive use" or "affirmative use" of the doctrine is used to mean that a stranger to the judgment, ordinarily the plaintiff in the second action, relies upon a former judgment as conclusively establishing in his favor an issue which he must prove as an essential element of his cause of action or claim.
>
> In other words, defensively a judgment is used as a "shield" and offensively as a "sword."
>
> The phrase "stranger to the judgment" is used to signify a party to the proceeding involving an issue as to the collateral estoppel effect of a former judgment who was neither a party to, nor in privity with, "a party to the judgment."

*Goolsby v. Derby*, 189 N.W.2d 909, 913 (Iowa 1971) (citation omitted).

[10] In the Response, Defendant argues that Plaintiff failed to establish the two additional elements that are required when the doctrine of issue preclusion is being used offensively. Def.'s Resp. ¶ 13, ECF No. 19. As stated previously,

Defendant concedes that the Judgment satisfies the first, third, and fourth elements that are required for issue preclusion to apply and only contests the second element — that the issue must have been raised and litigated in the prior action. Def.'s Resp. ¶ 7, ECF No. 19. Defendant contends that the Judgment is not entitled to preclusive effect under Iowa law because it was obtained by default. *Id*.; Def.'s Resp. ¶ 11, ECF No. 19. More specifically, Defendant argues that the issue of whether he willfully and maliciously injured Plaintiff was never actually litigated. Def.'s Resp. ¶ 13, ECF No. 19

Under Iowa law, issue preclusion "is usually not available in default cases" because "it must appear that the particular matter was considered and passed on in the former suit, or the adjudication will not operate as a bar to a subsequent action." *Lynch v. Lynch*, 94 N.W.2d 105, 108 (Iowa 1959) (internal quotation marks omitted) (quoting *Matson v. Poncin*, 132 N.W. 970, 971 (Iowa 1911)). As such, a true default judgment obtained in a civil proceeding based on the failure of a defendant to plead or move is generally not afforded preclusive effect in Iowa. *Luedtke v. Hodges (In re Hodges)*, 271 B.R. 347, 352 (Bankr. N.D. Iowa 2000) (citing *Ideal Mut. Ins. Co. v. Winker*, 319 N.W.2d 289, 295 (Iowa 1982)). Notwithstanding this general rule, preclusive effect of a default judgment may occur under Iowa law "even if an issue is not 'actually litigated', when the party sought to be estopped had a full and fair opportunity and an adequate incentive to litigate the particular issue in the first action." *Hodges*, 271 B.R. at 351 (citing *Ideal Mutual*, 319 N.W.2d at 292).

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however, the Parties in this case are the same as in the State Case; the additional elements required for offensive use of issue preclusion are not applicable here. Notwithstanding, the Court finds that the two additional elements are satisfied in this case. As discussed *infra*, Defendant was afforded a full and fair opportunity to litigate the issue of willful and malicious in the State Case, and choosing to proceed pro se and the resulting consequences of that do not constitute circumstances that warrant allowing Defendant an opportunity to relitigate issues that have been decided by the State Court.

In other words, "[a] full trial upon the merits is not necessary" for the application of issue preclusion under Iowa law. *Hodges*, 271 B.R. at 352. "An issue is raised and litigated when submitted for determination through a motion to dismiss for failure to state a claim, a motion for judgment on the pleadings, *a motion for summary judgment*, a motion for directed verdict, or their equivalents, as well as on a judgment entered on a verdict." *Soults Farms, Inc. v. Schafer*, 797 N.W.2d 92, 105 (Iowa 2011) (emphasis added) (citations and internal quotation marks omitted); *see also Bond v. Cedar Rapids Television Co.*, 518 N.W.2d 352, 358 (Iowa 1994) (recognizing that issue preclusion applies to a party that is subject to summary judgment). The Iowa Supreme Court recognizes that the "actually litigated" element of issue preclusion can be satisfied even when summary judgment is granted:

> The apparent purpose of [the actual litigation] requirement is to preclude relitigation only after the parties have obtained a judicial determination of an issue following the exploration of that issue through the litigative process. Judgment entered after trial, however, is not the only type of determination which will satisfy the purpose of the actual litigation requirement. That purpose can also be satisfied by a determination made without the full exploration that an issue receives during trial on the merits -- by a motion for summary judgment, a motion to dismiss, or their equivalents.

*Ideal Mut. Ins. Co. v. Winker*, 319 N.W.2d 289, 296 (Iowa 1982) (citation omitted).

One bankruptcy court aptly noted the following with respect to determining the preclusive effect of a prior judgment:

> [I]ssue preclusion does not apply where a default judgment is entered and the defendant *never appeared*, as opposed to a judgment after a full blown trial which precludes subsequent litigation. In between these two extremes is a twilight zone courts must address on a case-by-case basis.

*Zio Johnos Inc. v. Ziadeh (In re Ziadeh)*, 276 B.R. 614, 619-620 (Bankr. N.D. Iowa 2002) (emphasis added) (internal citations omitted) (citing *Forrester v. Staggs (In re Staggs)*, 178 B.R. 767, 777 (Bankr. N.D. Ind. 1994)). Accordingly, under Iowa law, the preclusive effect of a

judgment will depend on where that judgment falls on the spectrum of variations under which a judgment may be entered -— from default for failing to ever appear in a proceeding being on one end and the conclusion of a full-blown trial on the other. *Ziadeh*, 276 B.R. at 619-20; *see also S & S Plumbing & Heating (In re Stone)*, 2007 Bankr. LEXIS 2626, *12 (Bankr. M.D. Fla. 2007) ("Iowa bankruptcy courts use a sliding scale to determine whether the facts surrounding a state court judgment permit the application of collateral estoppel.") (citing *Ziadeh*, 276 B.R. at 619-20)). This Court thus must decide where the Judgment entered in the State Case falls on the spectrum of judgments under Iowa law.

The bankruptcy court in *Luedtke v. Hodges (In re Hodges)*, 271 B.R. 347 (Bankr. N.D. Iowa 2000), determined that a default judgment entered as a sanction for not complying with discovery requests was entitled to preclusive effect. In *Hodges*, a judgment creditor sought a determination of nondischargeability under 11 U.S.C. § 523(a)(6) for willful and malicious injury. Prior to the bankruptcy filing, the creditor obtained a judgment in state court arising from a civil action against the debtor for assault. The debtor appeared through counsel in the state court proceeding and filed an answer. Thereafter, counsel for the debtor withdrew from the case leaving the debtor to continue pro se in the state court matter. The state court and former counsel advised the debtor of the need to follow the Iowa Rules of Civil Procedure in defending the action without the assistance of counsel. Subsequently, the debtor failed to comply with the state court rules of procedure, and more specifically, the debtor failed to comply with numerous discovery requests. The creditor then filed a motion for sanctions based on the failure of the debtor to comply with discovery and requested that the state court enter default judgment as a result. The state court entered an order finding the debtor in default and included in the order a finding that "the evidence presented established that [the debtor] had beaten [the creditor]." *Hodges*, 271 B.R. at 350.

Thereafter, the state court held a hearing to determine damages. At that damages hearing, the debtor contended that he was innocent but failed to offer any evidence relevant to the determination of damages; the debtor failed to present any evidence to rebut the allegations of assault and made no arguments regarding the creditor's evidence prior to the damages hearing. In addition, the judge presiding over the damages hearing prohibited the debtor from presenting any evidence as to whether he actually committed the assault. Consequently, the state court entered a final judgment in favor of the creditor and awarded damages in the amount of $31,681.87. The debtor filed a request to modify the state court judgment, but his request was denied.

After the debtor filed for relief under Chapter 7 of the Bankruptcy Code, the creditor requested that the bankruptcy court apply the doctrine of issue preclusion with respect to the state court judgment and find that the debt was nondischargeable under § 523(a)(6). The debtor argued that the issue of whether his conduct constituted a willful and malicious injury under § 523(a)(6) was never fully litigated in the state court proceeding because he was unrepresented by counsel and prohibited from presenting evidence to rebut the allegations by creditor at the damages hearing.

After noting the general rule in Iowa that collateral estoppel or issue preclusion is not available in default cases, the bankruptcy court ultimately determined that the state court judgment was in fact entitled to preclusive effect irrespective of the default nature of its entry. In so doing, the bankruptcy court focused on the fact that the default judgment was entered by the state court as a sanction for not complying with discovery requests. The bankruptcy court specifically found that:

> Debtor was informed by [his former counsel and the state court judge] of the conclusive effect of his failure to respond to discovery requests and the need to follow the Iowa Rules of Civil Procedure. In light of these warnings, this Court can only conclude that Debtor's discovery abuses were deliberate. The Court deems

> Debtor to have actually litigated the issues in state court for purposes of collateral estoppel application by deliberately precluding resolution of factual issues through normal adjudicative procedures.

*Hodges*, 271 B.R. at 354. Accordingly, the bankruptcy court concluded that the creditor established all of the elements for application of issue preclusion including the "actually litigated" element with respect to the default judgment entered by the state court and determined the debt to be nondischargeable under § 523(a)(6).

In contrast, the bankruptcy court in *Zio Johnos Inc. v. Ziadeh (In re Ziadeh)*, 276 B.R. 614 (Bankr. N.D. Iowa 2002) determined that summary judgment entered by a state court after the debtor failed to appear or plead in the case was not entitled to any preclusive effect because it was essentially the same as a default judgment. In *Ziadeh*, a judgment creditor sought a determination of nondischargeability under 11 U.S.C. § 523(a)(2)(A), (4), and (6) for a debt related to a judgment that was entered after the debtor failed to respond to a motion for summary judgment in a state court cause of action. In the state court case, the creditor alleged that the debtor failed to pay subcontractors as required by the construction contract between the parties and used payment advances under the contract for improper purposes. The debtor did not appear or file an answer or any other pleading or motion in the state court case. After the state court entered judgment in favor of the creditor, the state court scheduled a judgment debtor examination. Prior to the judgment debtor exam being held, the debtor filed for relief under Chapter 7 of the Bankruptcy Code.

In determining whether the application of the state court judgment was entitled to preclusive effect, the bankruptcy court noted that "[a] party may . . . actually litigate an issue on summary judgment." *Ziadeh*, 276 B.R. at 619 (citation omitted). Nonetheless, the bankruptcy court ultimately determined that the state court judgment was not entitled to preclusive effect because the "judgment is not qualitatively different than a default judgment." *Ziadeh*, 276 B.R. at

620. In reaching this conclusion, the bankruptcy court noted that the debtor never appeared in the state court proceeding, and the judgment was "based solely on the allegations of [the creditor's] petition and arguments and affidavits in the summary judgment proceedings, without any involvement by [the debtor]." *Id*.

In this case, Defendant contends that the Judgment should not be afforded preclusive effect in this adversary proceeding because the Judgment is not qualitatively different than an ordinary default judgment that is entered for failure to answer or plead. Def.'s Resp. ¶ 11, ECF No. 19. This Court disagrees. First, Defendant appeared in the State Case, which that fact alone distinguishes the Judgment from that of a traditional default judgment. Pl.'s Reply Ex. A 16, ECF No. 20; Pl's Reply Ex. H ¶ 7, ECF No. 20; Stip. ¶ 13, ECF No. 17. Defendant communicated with Plaintiff's counsel during the initial stages of the State Case and received email communication from counsel regarding the Default Hearing. Pl.'s Reply Ex. A 16, ECF No. 20; Pl's Reply Ex. H ¶ 7, ECF No. 20. Defendant appeared telephonically at the Default Hearing. *Id*. Defendant filed an answer pro se in the State Case and by doing so registered for EDMS whereby notices and pleadings filed in the State Case were sent to Defendant's personal email. Stip. ¶ 14, ECF No. 17. Defendant received the Pro Se Order in the State Case that contained three pages of information that advised Defendant of various matters, including but not limited to, the requirements to (1) know and follow the Iowa Rules of Civil Procedure and (2) follow all orders; the Pro Se Order also advised Defendant that his failure to comply could result in sanctions being imposed in the form of a default or judgment and costs being assessed. *Id*.

Furthermore, the following documents were filed by Plaintiff's counsel in the State Case and served on Defendant: "discovery requests, a letter to Mr. Fitch regarding his failure to respond to discovery requests, a Motion for Summary Judgment including . . . Briefs and Exhibits, . . . a

Motion in Limine, Plaintiff's Witness and Exhibit List, and Plaintiff's Trial Brief and Plaintiff's Proposed Jury Instructions." Pl.'s Reply Ex. H ¶ 5, ECF No. 20. The number of filings that were served on Defendant in the State Case also distinguishes it procedurally from a traditional default judgment case; a traditional default case usually involves a complaint being filed to initiate the action which is then followed by a motion for default being filed after expiration of the answer deadline, and then a default judgment is entered. In contrast, several documents were filed in the State Case which correspondingly resulted in several opportunities for Defendant to defend against Plaintiff's allegations. Am. Notice of State Ct. R., ECF No. 30. In addition, the documents that were filed by counsel for Plaintiff in the State Case were served on Defendant both electronically through EDMS and by regular U.S. mail; thus, Defendant received notice of those documents twice. Pl.'s Reply Ex. H ¶ 5, ECF No. 20. And the Judgment was entered after the State Court granted partial summary judgment in favor of Plaintiff and held a hearing to determine damages, both of which were supported by evidentiary presentation. Pl.'s Reply Ex. F 47, ECF No. 20; Pl's Reply Ex. H ¶ 7, ECF No. 20; Am. Notice of State Ct. R. Bookmarks 36-44, ECF Nos. 30-8 and 30-9. Considering the various distinctions noted between a traditional default judgment and the Judgment from the State Case, this Court finds that the Judgment is qualitatively different from a traditional default judgment.

Having determined that the Judgment differs from a true default judgment that would not be entitled to preclusive effect, this Court is still tasked with determining where exactly the Judgment falls on the preclusion spectrum under Iowa law. The Court finds that the Judgment and the facts of the State Case align most closely with those presented in *Luedtke v. Hodges (In re Hodges)*, 271 B.R. 347, 352 (Bankr. N.D. Iowa 2000). Defendant, however, contends that the Judgment and the State Case are distinguishable from *Hodges* on the following bases: (1) the

Judgment was not entered pursuant to a sanctions request by Plaintiff; (2) Defendant did not have counsel participating in the State Case that advised Defendant of his duties and obligations as a pro se litigant; and (3) the findings in the Default Order do not indicate that the State Court advised Defendant of his duties and obligations as a pro se litigant either. Def.'s Resp. ¶ 12. The Court finds these distinctions unpersuasive.

Though it is true that Plaintiff did not specifically request that sanctions be issued in the form of entering a default judgment, the Default Order clearly shows that the State Court entered the default in response to Defendant's repeated failures to comply with the State Court's orders. Stip. Ex. B 13, ECF No. 17. The Default Order cites to the following failures by Defendant: (1) failure to respond to any discovery; (2) failure to resist Plaintiff's motion for summary judgment; (3) failure to appear for a status conference; (4) failure to make any of the necessary pretrial filings; and (5) failure to appear at the final pretrial conference. *Id*. The Default Order further provides that the State Court "enters a Default against Defendant Peter Scott Fitch under Iowa Rule of Civil Procedure 1.971(4). Defendant has failed to comply [with] the Court's Orders to appear and the Pretrial Conference, and as a result, the default is warranted under the rule." Stip. Ex. B 13, ECF No. 17. Iowa Rule of Civil Procedure 1.971(4) provides that "[a] party shall be in default whenever that party does any of the following: (4) Fails to comply with any order of court." Iowa R. Civ. P. 1.971(4). It is clear then that the State Court entered default against Defendant based on his repeated noncompliance with court orders which is analogous to a default judgment being entered for failing to comply with discovery rules or orders as was the case in *Hodges*.

Defendant further attempts to distinguish this case from *Hodges* on the basis that Defendant was not informed by the State Court or counsel on his behalf of the conclusive effect of his failure to comply with his duties and obligations as a pro se litigant. Def.'s Resp. ¶ 12, ECF No. 19.

Again, the Court is not persuaded. First, the State Court entered the Pro Se Order in the State Case that advised Defendant of his duties and obligations as a pro se litigant. Pl.'s Reply Ex. B 19-21, ECF No. 20; Pl.'s Reply Ex. H ¶ 7, ECF No. 20. More specifically, the order advised Defendant of his need to comply with all court orders, among other things, and that the failure to do so could result in sanctions being imposed. *Id*. Furthermore, Defendant's choice not to seek assistance of counsel in the State Case was a voluntary decision on his part and with that decision came the expectation that he would familiarize himself with the applicable rules and be held accountable in the same manner as a party that did have representation. *See Conkey v. Hoak Motors, Inc.*, 637 N.W.2d 170, 173 (Iowa 2001) ("As a pro se [litigant], plaintiff . . . undertook responsibility for litigating his own cause. No part of that obligation devolved upon the court.") (citation omitted); *Metro. Jacobson Dev. Venture v. Bd. of Rev.*, 476 N.W.2d 726, 729 (Iowa Ct. App. 1991) ("The law does not judge by two standards, one for lawyers and the other for lay persons. Rather, all are expected to act with equal competence. If lay persons chose to proceed pro se, they do so at their own risk."); *see also*, *Jourdan v. Jabe*, 951 F.2d 108, 109 (6th Cir. 1991) ("[W]hile pro se litigants may be entitled to some latitude when dealing with sophisticated legal issues, acknowledging their lack of formal training, there is no cause for extending this margin to straightforward procedural requirements that a layperson can comprehend as easily as a lawyer.").

Although Defendant never presented evidence in his defense in the State Case, he did have a full and fair opportunity to do so which was also true of the debtor in the *Hodges* case. Stip. ¶ 15, ECF No. 17. Defendant filed the Answer in the State Case, so clearly he was aware of the need to defend the allegations against him. *Id*. In addition, the fact that Defendant filed the Answer also supports the finding that there was adequate incentive to litigate the issues in the State Case. Defendant participated telephonically in the Default Hearing. Defendant was served with

numerous pleadings and documents in the State Case, each of which provided Defendant another opportunity to defend against a judgment being entered and further incentive to do so. Am. Notice of State Ct. R., ECF No. 30. For whatever reason, however, Defendant chose not to comply with the State Court orders and stopped appearing in the State Case after the Answer was filed. Stip. ¶ 15, ECF No. 17. This Court, like the *Hodges* court, can only conclude that Defendant's noncompliance was deliberate. *See Luedtke v. Hodges (In re Hodges*), 271 B.R. 347, 354 (Bankr. N.D. Iowa 2000) ("[T]his Court can only conclude that Debtor's discovery abuses were deliberate."). The record in the State Case clearly shows in this case that Defendant had a full and fair opportunity to litigate the issue of whether his conduct was willful and malicious, and he chose not to do so. Am. Notice of State Ct. R., ECF No. 30.

Furthermore, the language of the Judgment shows that the State Court considered and ruled on the issue of whether Defendant's conduct was willful and malicious. Specifically, the Judgment awards, among other things, $100,000 for punitive damages and provides that "[a]s to the punitive damages, the Court further finds that pursuant to Iowa Code 668A.1 the conduct of the Defendant was directed specifically at the Plaintiff." Stip. Ex. C 15, ECF No. 17. Iowa Code § 668A.1 provides in pertinent part as follows:

> 1. In a trial of a claim involving the request for punitive or exemplary damages, the court shall instruct the jury to answer special interrogatories or, if there is no jury, shall make findings, indicating all of the following:
>
> a. Whether, by a preponderance of clear, convincing, and satisfactory evidence, the conduct of the defendant from which the claim arose constituted willful and wanton disregard for the rights or safety of another.
>
> b. Whether the conduct of the defendant was directed specifically at the claimant, or at the person from which the claimant's claim is derived.

Iowa Code § 668A.1(1). "While § 668A.1 requires a 'willful and wanton' standard Iowa courts have held that to make this showing, malice must be proven." *In re Tovar*, 2012 Bankr. LEXIS 4777, *11 (Bankr. N.D. Iowa October 10, 2012). Accordingly, although the wording of Iowa Code

§ 668A.1(1)'s "willful and wanton" formulation is slightly different from 526(a)(6)'s "willful and malicious" standard, in effect they are the same. Both standards require a showing that the defendant intended harm to the plaintiff and also that the defendant acted with disregard for the defendant's duties and for the rights and safety of another. *Tovar*, at *11; *MarketGraphics Rsch. Grp., Inc. v. Berge (In re Berge)*, 953 F.3d 907, 915 (6th Cir. 2020) ("Maliciousness is conduct targeted at the creditor . . . at least in the sense that the conduct is certain or almost certain to cause . . . harm.") (quoting *Sells v. Porter (In re Porter)*, 539 F.3d 889, 894 (8th Cir. 2008)) (internal quotation marks omitted).

The State Court determined that "the conduct of the Defendant was directed specifically at the Plaintiff," but the Judgment did not include a specific finding that Defendant's conduct constituted willful and wanton disregard for the rights or safety of Plaintiff. Stip. Ex. C 15, ECF No. 17. Nonetheless, such a finding is implicit to the Judgment being entered because both elements — conduct being willful and wanton and directed specifically at the claimant — must be present for a court to award punitive damages in Iowa. *See* Iowa Code § 668A.1(1). Accordingly, the issuance of punitive damages by the State Court shows that the issue of willful and malicious injury was considered and ruled on in the State Case.

Moreover, the Judgment was entered after an evidentiary hearing was held at which Plaintiff submitted exhibits for the State Court's consideration, one of which was the Video. As a result, the State Court judge was able to witness the Incident himself by watching the Video. This Court cannot think of a better method for being able to determine whether the Incident was willful and malicious than for the State Court judge as the trier of fact to watch the Incident and be able to draw conclusions accordingly as opposed to being limited to hearing testimony from witnesses about the Incident and then assessing the credibility of that testimony. The fact that the State Court

judge was able to see a recording of the Incident prior to assessing punitive damages clearly establishes that the matter of willful and malicious injury was considered and ruled on in the State Case. Accordingly, the Court finds that the Judgment is entitled to preclusive effect because the issue of whether Defendant's conduct was willful and malicious was considered and ruled on in the State Case and Defendant had a full and fair opportunity and adequate incentive to litigate the issue.

## V. Conclusion

For the foregoing reasons, it is ORDERED that the Motion is GRANTED. The Judgment is hereby excepted from discharge under 11 U.S.C. § 523(a)(6). Counsel for Plaintiff shall submit a proposed judgment entry consistent with this Memorandum Opinion and Order.

**IT IS SO ORDERED.**

Service List:

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