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CLERK U.S. BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
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CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY CLERK

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re

KATAYONE ADELI,

Adeli.

RICHARD B. SACHS,

Plaintiff,

v.

KATAYONE ADELI,

Defendant.

) Case No. 2:05-30583-TD

) Chapter 7

) Adv. No. 2:05-02644-TD

) **FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

) **TRIAL:**

) Date: October 25, 2007

) Time: 10:00 a.m.

) **CLOSING ARGUMENTS:**

) Date: December 21, 2007

) Time: 10:00 a.m.

) Place: Courtroom 1345
255 E. Temple St.
Los Angeles, CA

) **FINAL BRIEFING DATE:**

) February 1, 2008

1 On October 25, 2007, at the above-referenced date, time and
2 location, the court conducted a trial (the "Trial") regarding the
3 claims for relief arising under 11 U.S.C. § 727¹ (the "727 Claims")
4 asserted by Richard B. Sachs, plaintiff herein ("Sachs"), against
5 Katayone Adeli, the Chapter 7 debtor and defendant herein
6 ("Adeli"), in Sachs' First Amended Complaint Seeking (I) Denial of
7 Adeli's Discharge Pursuant to 11 U.S.C. § 727; or, in the
8 Alternative, (II) Denial of Adeli's Discharge as to Sachs' Claims
9 Pursuant to 11 U.S.C. § 523 (the "FAC").²

10 Craig M. Rankin and Todd M. Arnold of Levene, Neale, Bender,
11 Rankin & Brill L.L.P. appeared on behalf of Adeli. Frank A. Merola
12 and Nathan A. Schultz of Stutman, Treister & Glatt, Professional
13 Corporation, appeared on behalf of Sachs.

14 Upon consideration of (A) the Joint Pretrial Order entered by
15 the court on August 14, 2007 (the "PTO"); (B) the Trial testimony
16 of Adeli, Paul Brent, Esq. ("Brent"), Paul Samuels, Esq.
17 ("Samuels"), Carl Waldman, Esq. ("Waldman"), and Roxanne Modjallal
18 ("Modjallal"); (C) the deposition transcripts of Adeli [Tr. Ex.
19 29], Brent [Tr. Ex. 31], Samuels [Tr. Ex. 37], Waldman [Tr. Ex.
20 36], Modjallal [Tr. Ex. 28], Mehri Majidi ("Majidi") [Tr. Ex. 30],
21 Gloria L. Pica ("Pica") [Tr. Ex. 38], Lynne Van Auken ("Auken")
22 [Tr. Ex. 39], Susan Schneiderman, Esq. ("Schneiderman") [Tr. Ex.
23 32], Howard Bader, Esq. ("Bader") [Tr. Ex. 35], Chris Mulardelis,
24 Esq. ("Mulardelis") [Tr. Ex. 33], and Michael Shepard ("Sheppard")

25 _____
26 ¹ All section references herein are to 11 U.S.C. § 101 et seq. (the "Bankruptcy
Code")

27 ² Sachs' claims for relief against Adeli arising under 11 U.S.C. § 523 that
28 were asserted in the FAC were severed for the purposes of the Trial and
deferred for later hearing.

and, together with Schneiderman, Bader, Mulardelis, the "New York Lawyers") [Tr. Ex. 34], together with all exhibits to such transcripts; (D) the following additional Trial exhibits;

Exhibit No.	Description
1	9/21/2005 Application for Leave to Employ Attorney Under General Retainer Agreement; Declaration of Non-Adversity; Statement of Disinterestedness.
2	5/17/2005 Washington Mutual Bank Official Check No. 078227263 to Steinberg, Nutter & Brent Trust Acct. for \$35,000.00. (WM - 001110)
3	Excerpt of 11/22/2005 Transcript of §341(a) Meeting of Creditors.
4	Excerpt of 12/6/2005 Transcript of §341(a) Meeting of Creditors.
5	12/8/2005 Check No. 2973 from Roxanne Modjallal to Katayone Adeli for \$37,000.00. 12/8/2005 Check No. 2974 from Roxanne Modjallal to Katayone Adeli for \$356.19.
6	1/1/2004 Kader, Inc. Defined Benefit Pension Plan and Trust.
7	10/21/2005 Filing of Debtor's Schedules, Statement of Financial Affairs, and Lists.
8	4/7/2005 Judgment in Richard B. Sachs vs. Katayone Adeli, Sean P. Barron, Klothes, LLC, Klothes (NY), LLC, and John Does, 1-10.
9	Washington Mutual Bank Account Number 871-124124-4 Statement from 3/12/2005 thru 4/13/2005 for Katayone Adeli. (WM - 000172 to WM - 000173)
10	3/31/2005 Valley National Bank Statement of Account for Kader Inc. (VN 000049, VN 000053, VN 000056, VN 000059, VN 000062, VN 000064)
11	10/23/2007 Fax from L. Holland to N. Schultz. Attaching Katayone Adeli Official Checks.
12	8/19/2006 Declaration of Katayone Adeli in Support of Debtor's Opposition to Motion for Summary Judgment Denying Debtor a Discharge Pursuant to 11 U.S.C. § 727(A)(2).
13	Excerpt of 4/12/2007 Deposition of Susan Schneiderman.
14	Excerpt of 4/12/2007 Deposition of Chris Mularadelis.
15	Excerpt of 4/12/2007 Deposition of Michael Sheppard.
16	Excerpt of 4/12/2007 Deposition of Howard Bader.

17	6/27/2005 Bank of America Check Number 0999 from Katayone Adeli to Kader Inc. for \$100,000.00.
18	Excerpt of 11/22/2005 Transcript of §341(a) Meeting of Creditors.
19	Declaration of Katayone Adeli.
20	Excerpt of 1/16/2006 Rule 2004 Examination of Katayone Adeli.
21	8/17/2006 Settlement Agreement.
22	Spreadsheet from Roxanne Modjallal for K. Adeli Account: 03927-03492.
23	U.S. Trustee Operating Report for Katayone Adeli for the Month Ending 9/30/2005.
24	U.S. Trustee Operating Report for Katayone Adeli for the Month Ending 10/31/2005.
25	U.S. Trustee Operating Report for Katayone Adeli for the Month Ending 11/30/2005.
26	U.S. Trustee Operating Report for Katayone Adeli for the Month Ending 12/31/2005.
27	Demonstrative Trial Exhibit - Chart of Adeli Accounts.
40	11/22/2005 Transcript of §341(a) Meeting of Creditors.
41	12/6/2005 Transcript of §341(a) Meeting of Creditors.
42	1/16/2006 Rule 2004 Examination of Katayone Adeli.

(E) Sachs' Opening Trial Brief; (F) Adeli's Trial Brief; (G) Sachs' Reply to Adeli's Trial Brief; (H) the arguments of counsel made at the Trial; (J) the closing arguments of counsel presented to the court on December 21, 2007; and further briefing provided by both Sachs and Adeli on both January 25, 2008, and February 1, 2008; and further based on the court's conclusion that Adeli's Trial testimony was credible and in all material ways consistent with the Trial testimony of Brent, Samuels, Waldman, and Modjallal, the court hereby makes the following Findings of Fact and Conclusions of Law:

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1 5. On or about December 17, 2003, Sachs commenced a lawsuit
2 against Adeli and other defendants in the Supreme Court of the
3 State of New York, County of New York (the "New York Trial Court"),
4 Index No. 603930/03 (the "State Court Action"). [PTOAF, ¶ A.3]

5 6. The State Court Action involved many claims and numerous
6 defendants other than Adeli, including Klothes, LLC ("Klothes"), an
7 entity co-owned by Sachs and Adeli. One State Court Action claim
8 involved Sachs' attempt to recover over \$700,000 from Adeli,
9 resulting from his purchase of bank debt owed by Klothes, which
10 Sachs and Adeli had co-guarantied. (the "Guaranty Claim").

11 7. On or about July 15, 2004, the New York Court denied
12 Sachs' motion for partial summary judgment in the State Court
13 Action and dismissed the Guaranty Claim (the "Initial State Court
14 Decision"). [PTOAF, ¶ A.4; Tr. Ex. 8]

15 8. On or about July 26, 2004, Sachs appealed the Initial
16 State Court Decision to the New York Supreme Court, Appellate
17 Division (the "Appellate Division"). [PTOAF, ¶ A.5]

18 9. Prior to February 14, 2005, Adeli took out a mortgage
19 (the "First Mortgage") secured by a first priority trust deed on
20 the Condo for Washington Mutual Bank ("Washington Mutual") for
21 approximately \$146,000. [PTOAF, ¶ A.6]

22 10. On or about February 14, 2005, Washington Mutual approved
23 Adeli for an equity credit line authorizing her to draw up to
24 approximately \$193,000 (the "Equity Line"). [PTOAF, ¶ A.7]

25 11. A second priority trust deed on the Condo secured the
26 Equity Line. [PTOAF, ¶ A.8]

27 12. On March 10, 2005, the Appellate Division reversed the
28 Initial State Court Decision, instructing the New York Trial Court

1 to enter partial summary judgment in the State Court action on the
2 Guaranty Claim in Sachs' favor (the "March 10 Decision"). [See
3 PTOAF, ¶ A.11; Tr. Ex. 8]

4 13. Adeli's New York Lawyers believed that the March 10
5 Decision contradicted applicable California law regarding co-
6 guarantors' rights and obligations.

7 14. On or about April 7, 2005 (the "Judgment Date"), pursuant
8 to the March 10 Decision, the New York Court entered in the State
9 Court Action a partial judgment favoring Sachs (the "Judgment").
10 [PTOAF, ¶ A.12]

11 15. The Judgment was for \$727,358.52, exclusive of interest
12 and attorneys' fees. [PTOAF, ¶ A.13]

13 16. On April 11, 2005, Adeli filed a motion seeking leave to
14 appeal the March 10 Decision and the Judgment (the "Appeal
15 Motion"). [PTOAF, ¶ A.18]

16 17. On April 11, 2005, the Appellate Division granted an
17 interim stay of execution on the Judgment (the "Interim Stay")
18 pending determination of Adeli's Appeal Motion. [PTOAF, ¶ A.19]

19 18. Adeli understood that, after the Judgment Date, her New
20 York Lawyers advised her to temporarily move her funds and Kader's
21 funds out of New York and into the name of a family member or
22 trusted friend in California so that Sachs would not improperly
23 levy on Adeli's or Kader's assets in violation of the Interim Stay.
24 Adeli had moved to California from New York prior to the Judgment
25 Date.

26 19. Prior to the Judgment Date, Adeli maintained a checking
27 account in her name at Valley National Bank, Account Number
28 83232435 (the "Adeli Valley National Account"). [PTOAF, ¶ A.20]

1 20. Prior to the Judgment Date, Adeli maintained an
2 investment account in her name at Bear Stearns, Account Number 720-
3 56777 38G (the "Bear Stearns Account"). [PTOAF, ¶ A.23]

4 21. Prior to the Judgment Date, Adeli, as manager of Kader,
5 controlled a checking account in the name of "Kader, Inc." at
6 Valley National Bank, Account Number 45400229 (the "Kader Valley
7 National Account"). [PTOAF, ¶ A.24]

8 22. On April 11, 2005, Adeli drew \$150,000 on the Equity Line
9 (the "Equity Line Funds"). [PTOAF, ¶ A.25]

10 23. Adeli drew the \$150,000 in Equity Line Funds to pay her
11 ordinary, regular, and personal living expenses, to assist in the
12 payment of her mother's living expenses, to re-establish herself as
13 a designer through Kader or otherwise, to fund a potential business
14 venture with Modjallal, to pay attorney fees and expenses related
15 to the State Court Action, which was still pending, and to pay
16 legal fees and expenses related to dealing with the Judgment.

17 24. Adeli did not draw on the Equity Line at an earlier date
18 because she did not want to draw on the Equity Line and pay
19 interest until it became necessary to use these funds to pay her
20 personal and business expenses.

21 25. On April 12, 2005, Adeli and Modjallal opened a checking
22 account in Modjallal's name at Bank of America, Account Number
23 20070-40107 (the "Shared Modjallal Account"). [PTOAF, ¶ A.26]

24 26. On April 12, 2005, Adeli deposited the Equity Line Funds
25 in the Shared Modjallal Account (the "Equity Line Deposit").
26 [PTOAF, ¶ A.27]

1 27. On April 11, 2005, Adeli transferred \$33,000 from Adeli
2 Valley National Account to the Kader Valley National Account (the
3 "\$33,000 Valley National Transfer"). [PTOAF, ¶ A.31]

4 28. On April 19, 2005, Adeli wired (the "\$58,000 Wire
5 Transfer") \$58,000 (the "Valley National Funds") from the Kader
6 Valley National Account to a Bank of America checking account in
7 Modjallal's name, Account Number 03927-03492 (the "Personal
8 Modjallal Account"). [PTOAF, ¶ A.36]

9 29. On or about April 14, 2005, Adeli sold the securities in
10 the Bear Stearns Account (the "Bear Stearns Sale"). [PTOAF, ¶
11 A.39]

12 30. On or about April 19, 2005, Adeli withdrew \$15,406.36
13 from the Bear Stearns Account (the "Bear Stearns Withdrawal").
14 This amount represented the Bear Stearns Sale proceeds. [PTOAF, ¶
15 A.41]

16 31. On May 12, 2005, the Appellate Division denied the Appeal
17 Motion (the "May 12 Decision"). [PTOAF, ¶ A.45]

18 32. On or about May 16, 2005, Sachs filed a motion in the
19 Appellate Division seeking to vacate and/or modify any remaining
20 stay of the Appellate Division dated April 11, 2005 based upon the
21 May 12 Decision (the "Stay [Vacation] Motion"). [PTOAF, ¶ A.55]
22 On June 23, 2005, the Appellate Division rendered a decision (the
23 "June 23 Decision") denying Sachs' Stay [Vacation] Motion as
24 "unnecessary," and referencing the May 12 decision which denied
25 Adeli's Appeal Motion. [PTOAF, ¶ A.56]

26 33. The Interim Stay was in effect from April 11, 2005, until
27 May 12, 2005, and may have been in effect thereafter. Sachs
28 threatened criminal contempt actions against Adeli, according to

1 Brent. These threats were discussed by counsel for Sachs and
2 Adeli, particularly Brent, in hearings before me in the fall of
3 2005 shortly after Adeli commenced her bankruptcy case in September
4 2005 as a Chapter 11 voluntary debtor. I take judicial notice of
5 the discussion, though I am unaware that any sanction was ordered.

6 34. Sachs' counsel and Adeli's New York Lawyers, according to
7 Brent, disagreed whether the Interim Stay remained effective after
8 May 12, 2005.

9 35. Adeli's New York Lawyers advised her at the time that
10 Sachs and his counsel were highly aggressive and might levy on her
11 assets or on Kader's New York assets despite the Interim Stay and
12 the fact that the Judgment named only Adeli, not Kader.

13 36. For the following transfers, the Interim Stay was
14 effective or, at minimum, Adeli reasonably believed based on her
15 good faith reliance on her New York Lawyers' advice that the
16 Interim Stay was effective and prohibited Sachs from levying on her
17 assets: (1) when Adeli drew \$150,000 on the Equity Line; (2) when
18 she made the \$150,000 Equity Line Deposit into the Shared Modjallal
19 Account; (3) when she made the \$33,000 Valley National Transfer
20 from the Adeli Valley National Account to the Kader Valley National
21 Account; (4) when she made the \$58,000 Wire Transfer to the
22 Personal Modjallal Account; and (5) when she made the Bear Stearns
23 Withdrawal (collectively the "First 2005 Transfers"). Based on the
24 evidence, Sachs did not levy on Adeli's assets, either in New York
25 or in California, pursuant to the New York Judgment at any time
26 prior to Adeli filing her Chapter 11 bankruptcy petition on
27 September 8, 2005.

1 37. There was a great deal of disagreement in the trial and
2 deposition testimony and legal argument about Adeli's New York
3 Lawyers' advice. In the end, I find Adeli's trial and deposition
4 testimony highly credible and persuasive. Samuels' trial testimony
5 corroborates Adeli's trial and deposition testimony regarding the
6 advice Adeli received from her New York Lawyers shortly after the
7 April 7, 2005 New York Judgment. I find her New York Lawyers'
8 deposition testimony self-serving and not persuasive; it is not
9 consistent with my view of the totality of the evidence.

10 38. At the time Adeli made the First 2005 Transfers, she
11 reasonably and in good faith believed that her New York Lawyers had
12 advised her to move her funds and Kader's funds out of New York and
13 into the name of a family member or trusted friend in California to
14 protect them from the possibility of an improper levy by Sachs.

15 39. Adeli did not make any of the First 2005 Transfers with
16 the intent to hinder or delay improperly or to defraud Sachs.

17 40. Adeli intended the First 2005 Transfers as a temporary
18 measure, to protect her assets (which collectively were
19 insufficient to pay the Judgment) from what Adeli reasonably
20 believed was a threatened and improper levy by Sachs.

21 41. Adeli made the following transfers to protect her assets
22 from unreasonable and unlawful conduct by Sachs and his lawyers
23 while she appealed the Sachs Judgment: the Equity Line Deposit, the
24 \$33,000 Valley National Transfer, the \$58,000 Wire Transfer, the
25 Bear Stearns Transfer, the \$100,000 Kader Deposit, the \$80,000
26 Gilmore Deposit, the July 28 Deposit, the \$40,000 Gilmore Transfer,
27 the Condo Interest Transfer, and the \$30,000 Payment Transfer. She
28 made these transfers based on the advice of her New York litigation

1 lawyers and, perhaps, partly under the New York Court's stay
2 issued in her favor. Adeli did not act with fraudulent intent.
3 She did not materially impede any proper Sachs collection effort.

4 42. Sachs did not levy on any Adeli assets, which he was
5 entitled to pursue, at any time prior to Adeli's bankruptcy.

6 43. Prior to the Judgment and after, Adeli employed Samuels
7 as her general legal counsel and strongly relied on his
8 professional training, judgment, and advice in making many of her
9 legal decisions.

10 44. After making the First 2005 Transfers, Adeli contacted
11 Samuels. Adeli fully disclosed to Samuels all of the First 2005
12 Transfers at her first post-Judgment meeting with him. At that
13 time, Adeli also informed Samuels that she had made the First 2005
14 Transfers based on advice she received from her New York Lawyers.
15 Adeli further informed Samuels at that meeting with Samuels that
16 she was concerned about the legal ramifications of the First 2005
17 Transfers.

18 45. In May 2005, Samuels referred Adeli to Brent, whom
19 Samuels regarded as an experienced and knowledgeable bankruptcy
20 lawyer, to advise her on the First 2005 Transfers and bankruptcy
21 issues and to represent her in any bankruptcy case that she might
22 file. Brent has represented several Chapter 11 debtors in my
23 courtroom over the past 14 years. Brent is an experienced,
24 resourceful, and effective Chapter 11 debtor's lawyer in my
25 judgment.

26 46. In May 2005, Adeli retained Brent to advise her regarding
27 the First 2005 Transfers and bankruptcy issues and to represent her
28 in any bankruptcy case that she might file.

1 47. Adeli fully disclosed all of the First 2005 Transfers to
2 Brent at her first meeting with him. At that time, Adeli also
3 fully informed Brent that she had made the First 2005 Transfers
4 based on advice she received from her New York Lawyers. Adeli
5 further informed Brent that she was worried about the First 2005
6 Transfers and knew that such transfers would be scrutinized and
7 attacked by Sachs and his counsel if there were any apparent or
8 actual improprieties. There was conflict between Adeli's testimony
9 and Brent's recollections of his early discussions with Adeli. On
10 balance, I found both of them to be highly credible witnesses.
11 Where there was a conflict between Adeli and Brent in their
12 testimony, I found Adeli's testimony to be the most credible and
13 persuasive. In the end, Brent advised Adeli not to undo the
14 transfers.

15 48. To avoid bankruptcy, Brent worked in conjunction with
16 Adeli's New York Lawyers to settle both Sachs' and Adeli's claims
17 in the State Action resulting from the Judgment. The parties did
18 not settle, though Brent treated settlement with Sachs as his
19 primary goal. Brent also concerned himself with Adeli's practical
20 needs to find new work, to earn money, and to reestablish herself
21 in her chosen line of work outside of New York. Brent also was
22 mindful of a possible Adeli bankruptcy filing, the Sachs Judgment,
23 and Adeli's asset deficiency related to the New York Judgment.
24 Additionally, Brent was cognizant of Adeli's ongoing personal,
25 family, and financial obligations, and of Adeli's ongoing business
26 needs.

1 49. Because Adeli and Brent could not settle with Sachs, both
2 Adeli and Brent understood that Sachs would continue to pursue his
3 collection rights, even if Adeli filed bankruptcy.

4 50. The evidence and the witnesses' demeanor demonstrates
5 that Adeli relied heavily on Samuels and Brent for legal guidance
6 regarding the First 2005 Transfers and in Adeli's efforts to be
7 sure that her conduct and financial records were beyond reproach by
8 Sachs or any other creditor.

9 51. Neither Brent nor Samuels advised Adeli to undue the
10 First 2005 Transfers. Regardless of his apprehensions, Brent
11 advised Adeli that she should leave the funds where they were and
12 that she could use the funds in the Shared Modjallal Account and
13 the Personal Modjallal account for Kader's business expenses and
14 Adeli's personal expenses. Brent advised Adeli that she should not
15 transfer all of the funds in the Personal Modjallal account to a
16 Kader account or all of the funds in the Shared Modjallal account
17 to a personal Adeli account. As he testified, Brent advised Adeli
18 in the foregoing manner because he believed that further transfers
19 would exacerbate existing problems with the transfers and increase
20 Sachs' suspicions.

21 52. Brent testified that he was unaware in 2005 of First
22 Beverly Bank v. Adeeb (In re Adeeb), 787 F.2d 1339, 1343-46 (9th
23 Cir. 1986), but that in retrospect, if he had been aware of the
24 decision he would have advised Adeli to transfer all of the funds
25 in the Personal Modjallal account to a Kader account and all of the
26 funds in the Shared Modjallal account to a personal Adeli account.

27 53. If Brent or Samuels had advised Adeli to transfer all of
28 the funds in the Personal Modjallal account to a Kader account or

1 all of the funds in the Shared Modjallal account to a personal
2 Adeli account, I am convinced by the evidence that Adeli would have
3 done so. In managing her accounts, Adeli did not interfere with or
4 deprive Sachs of any legal right he had; she did not cheat or
5 deceive Sachs. Rather, she sought to pursue her personal goals of
6 reestablishing herself in California, confronting and resolving her
7 debt to Sachs and her differences with Sachs, and employing her
8 California legal advisors to achieve what she believed were proper
9 and responsible reorganization purposes. She did this by
10 attempting to settle with Sachs, by filing for bankruptcy, and by
11 pursuing her normal ongoing personal and business activities.
12 These activities were undertaken to benefit all of her prepetition
13 creditors, including Sachs, as well as to make her fresh start
14 after the disappointment of her New York business failure with
15 Sachs.

16 54. Shortly after retaining Brent, Adeli informed him that
17 one of her goals was to protect her mother's residence in the Condo
18 by selling her mother an interest in the Condo. Adeli informed
19 Brent that she wanted to ensure that any sale of an interest in the
20 Condo to her mother was legal and would not jeopardize her right to
21 a bankruptcy discharge.

22 55. In the spring and summer of 2005, Adeli acted honestly
23 and in good faith with these goals in mind. She believed that she
24 listened to and followed the advice of each of her seven lawyers
25 (four in New York and three in California) advising her at the
26 time. She cooperated with each of her lawyers, giving them full,
27 complete, consistent, and accurate information about her assets,
28 liabilities, and affairs.

1 56. Samuels assisted Adeli to evaluate, negotiate, and
2 document selling the Condo interest to Adeli's mother, Mehri Majidi
3 ("Majidi"). Adeli retained California attorneys Weintraub & Selth
4 to represent Majidi in the sale.

5 57. On or about June 1, 2005, Adeli and her mother entered
6 into a Purchase Agreement, providing for Adeli to transfer a 25
7 percent interest in her Condo to her mother in return for a \$30,000
8 payment (the "Condo Purchase Agreement"). [PTOAF, ¶ A.48] At the
9 time, and under the circumstances, Adeli reasonably believed that
10 the price fairly approximated the market value of her 25 percent
11 equity interest in the Condo.

12 58. Adeli did not dictate the specific terms of the Condo
13 Purchase Agreement; the professionals retained to represent Adeli
14 and Majidi drafted it. They based its drafting on financial
15 realities and the overriding direction from Adeli that she wanted a
16 legal transaction, beyond reproach by Sachs or any other creditor,
17 notwithstanding her legal and financial difficulties with Sachs.
18 This was so even though Adeli paid Majidi's lawyer and sat with
19 Majidi to translate and explain the advice and documents provided
20 to Majidi, who does not speak English, from Majidi's lawyers.

21 59. On August 25, 2005 (the "Condo Transfer Date"), Adeli
22 executed a Grant Deed (the "Grant Deed") transferring a 25 percent
23 interest in the Condo (the "Condo Interest") to Majidi (the "Condo
24 Interest Transfer"). [PTOAF, ¶ A.80]

25 60. The Condo Interest Transfer and its terms were based on
26 Brent's and Samuel's advice. The Condo Interest Transfer was made
27 on behalf of Majidi, at Adeli's specific request, and with Adeli's
28 help, as well as with help from Weintraub & Selth.

1 61. Adeli's brother and sister gave Adeli two checks totaling
2 \$30,000 (the "\$30,000 Payment") in payment for Adeli's transfer of
3 the Condo Interest to Adeli's mother. [PTOAF, ¶ A.84]

4 62. The \$30,000 Payment consisted of (i) a \$20,000 check (the
5 "\$20,000 Check"), dated August 25, 2005 from Max Adeli, Adeli's
6 brother, to Adeli, and (ii) a \$10,000 check (the "\$10,000 Check"),
7 dated August 25, 2005 from Homa Adeli, Adeli's sister, to Adeli.
8 [PTOAF, ¶ A.85]

9 63. Adeli endorsed the \$20,000 Check and the \$10,000 Check to
10 Paul H. Samuels, or his office, to pay him to represent her with
11 respect to Sachs' efforts to domesticate the Judgment in California
12 and for related matters (the "\$30,000 Payment Transfer"). [See
13 PTOAF, ¶ A.87]

14 64. The \$30,000 Payment is arguably less than the value of 25
15 percent of Adeli's equity in the Condo at the time of the Condo
16 Interest Transfer (JPTO ¶¶ 6-7, 49-50; Plaintiff's Trial Exhibit 7
17 at Schedule A). That claim, however, as articulated by Sachs, was
18 disputed by Adeli and has been settled amicably between Adeli and
19 Adeli's Chapter 7 Trustee, a fact of which I take judicial notice
20 based on Adeli's bankruptcy case record.

21 65. As part of what Brent considered appropriate pre-
22 bankruptcy planning, he advised Adeli to set up a pension through
23 Kader. On or about May 28, 2005, Adeli retained Waldman (her third
24 California lawyer), an attorney specializing in estates, tax, and
25 business planning. Waldman assisted Adeli in domesticating Kader
26 in California and creating a Kader pension plan for Adeli's
27 benefit. [PTOAF, ¶ A.47] Waldman advised Adeli that she could
28 make the Pension Plan effective as of 2004, which would allow for a

1 contribution for 2004 and 2005 because Kader's 2004 tax returns had
2 not yet been filed. Waldman prepared the Pension Plan and all
3 related Pension Plan documents, including the Pension
4 Certification, based on his professional knowledge and expertise.

5 66. On or about June 8, 2005, Adeli executed a "Kader, Inc.
6 Defined Benefit Pension Plan and Trust" (the "Pension Plan", which
7 included a certification that the Pension Plan was adopted by
8 resolution executed "on" December 31, 2004 (the "Pension
9 Certification"). [PTOAF, ¶ A.51] Waldman credibly and
10 convincingly explained in his testimony that "on" was [his]
11 scrivener's error and that he should have said "as of December 31,
12 2004."

13 67. Waldman advised Adeli to fund a general bank account and
14 a Kader pension fund account. He also advised Adeli to contribute
15 \$80,000 to the pension fund account. Waldman concluded that this
16 was the maximum allowable contribution for 2004 and 2005, as
17 determined by actuaries Waldman employed for that purpose.

18 68. On June 27, 2005, Adeli opened a business checking
19 account in Kader's name at Gilmore Bank, Account Number 1197010
20 (the "First Gilmore Checking Account"). [PTOAF, ¶ A.58]

21 69. On June 27, 2005, Adeli opened an additional business
22 checking account in Kader's name at Gilmore Bank, Account Number
23 1197029 (the "Second Gilmore Checking Account"). [PTOAF, ¶ A.59]

24 70. On June 27, 2005, Adeli wrote a \$100,000 check drawn on
25 the Shared Modjallal Account, payable to Kader, Inc. (the "\$100,000
26 Kader Check"). [PTOAF, ¶ A.61]

1 71. On June 27, 2005, Adeli deposited the \$100,000 Kader
2 Check into the First Gilmore Checking Account (the "\$100,000 Kader
3 Deposit"). [PTOAF, ¶ A.62]

4 72. On June 27, 2005, Adeli wrote an \$80,000 check, drawn on
5 the First Gilmore Checking Account, payable to Kader (the "\$80,000
6 Check"). [PTOAF, ¶ A.65]

7 73. On June 27, 2005, Adeli deposited the \$80,000 Check into
8 the Second Gilmore Checking Account (the "\$80,000 Gilmore
9 Deposit"). [PTOAF, ¶ A.66] She made the \$80,000 Gilmore Deposit
10 to fund the Pension Plan. These transactions were based directly
11 on Waldman's advice.

12 74. Paul Brent testified that he was unaware that Adeli
13 funded the Pension Plan with proceeds from the \$100,000 Kader
14 Deposit (Transcript of Trial Proceedings, October 25, 2007, Brent
15 testimony, at 47:25-48:17), but Adeli testified persuasively that
16 she told both Samuels and Brent about her funding of the Pension
17 Plan in May 2005. I am persuaded by the evidence that Brent, whose
18 employment was terminated by Adeli in 2006, simply forgot this
19 detail by the time he testified in the October 25, 2007 trial of
20 this adversary. Brent's memory lapse seems understandable given
21 the many details he discussed with Adeli in 2005 as he tried,
22 unsuccessfully, to settle with Sachs and to avoid an Adeli
23 bankruptcy.

24 75. On July 28, 2005, Adeli deposited \$4,589.21 into the
25 Shared Modjallal Account (the "July 28 Deposit"). [PTOAF, ¶ A.69]

26 76. On August 12, 2005, Adeli transferred \$40,000 from the
27 Second Gilmore Checking Account to the First Gilmore Checking
28

1 Account via two checks, each for \$20,000 (the "\$40,000 Gilmore
2 Transfer"). [PTOAF, ¶ A.74]

3 77. Adeli made the \$40,000 Gilmore Transfer because she
4 needed the money to pay normal expenses.

5 78. Adeli at all times had unfettered access to the Shared
6 Modjallal Account; she either devoted all of the funds in the
7 account to her normal, ongoing expenses before she filed her
8 bankruptcy petition, or she accounted for them when they became
9 assets of her bankruptcy estate.

10 79. Adeli made the following prepetition transfers based on
11 her lawyers' advice: the \$100,000 Kader Deposit into the First
12 Gilmore Account, the \$80,000 Gilmore Deposit into the Second
13 Gilmore Account, the \$40,000 Gilmore Transfer from the Second
14 Gilmore Account to the First Gilmore Account, the July 28 Deposit,
15 the Condo Interest Transfer, the \$30,000 Payment Transfer, as well
16 as all withdrawals from the Personal Modjallal Account, the Shared
17 Modjallal Account, and the First Gilmore Account (collectively the
18 "Second 2005 Transfers"). Brent was aware of these transfers and
19 did not advise Adeli that she could not make them or should undo
20 transfers previously made. Samuels was aware of the transfers
21 establishing the Kader Pension Plan and he discussed them with
22 Brent. These transfers appeared to be normal and proper to Adeli's
23 lawyers.

24 80. While Sachs points to many "suspicious" prepetition
25 transfers, claiming that Adeli transferred her property intending
26 to "hinder, delay, or defraud" him in violation of § 727 (a)(2)(A),
27 the Supreme Court in an earlier statutory dispute warned against
28 reading the bankruptcy statutes mechanically. Bank of Marin v.

1 England, 385 U.S. 99 at 103 (1966) ("we do not read . . . statutory
2 words with the ease of a computer. There is an overriding
3 consideration that equitable principles govern the exercise of
4 bankruptcy jurisdiction.")

5 81. Adeli did not make any of the Second 2005 Transfers
6 intending to hinder, delay, or defraud any creditor. Rather, she
7 sought to temporarily protect her assets from Sachs and his "very
8 aggressive" New York lawyers' improper collection efforts while she
9 tried to fulfill her personal and business needs, which included
10 facing up to the Sachs Judgment in a responsible way.

11 82. Any transfers between Adeli and Kader had no material
12 effect on Sachs' efforts to collect on his judgment or on the value
13 of Adeli's bankruptcy estate. In fact, there is no evidence of any
14 collection action by Sachs prior to Adeli's bankruptcy petition,
15 other than domesticating the New York Judgment in California
16 shortly before Adeli filed her Chapter 11 petition. Transfers from
17 Adeli to Kader increased the always uncertain value of Adeli's 100
18 percent equity interest in Kader which was acknowledged in Adeli's
19 Schedules. Transfers from Adeli to Kader maintained the value of
20 Adeli's estate on a dollar for dollar basis. None of the transfers
21 between Adeli and Kader actually hindered, delayed, or defrauded
22 Sachs or any other Adeli creditor. No Adeli or Kader transfer
23 hindered, delayed, or defrauded Sachs, or in any way cheated him
24 out of any lawful process that he properly asserted against Adeli
25 prepetition.

26 83. Adeli made all withdrawals from the Personal Modjallal
27 Account, the Shared Modjallal Account, and the First Gilmore
28 Account to pay her personal and business expenses that were

1 ordinary, reasonable, and, for the most part, well documented. She
2 withdrew cash prepetition in relatively nominal amounts to pay for
3 her normal personal and business needs.

4 84. Modjallal used none of the Adeli money for Modjallal
5 purposes.

6 85. In connection with her bankruptcy case, including
7 prepetition and postpetition expenditures, Adeli made no false
8 oath, knowingly or fraudulently, at any time. She acted to keep
9 her financial affairs private. Most people do before they file a
10 voluntary bankruptcy. When she filed her bankruptcy papers she
11 accounted for all of her assets, liabilities, and financial
12 transactions truthfully and under oath.

13 86. Adeli made all withdrawals from the Personal Modjallal
14 Account, the Shared Modjallal Account, and the First Gilmore
15 Account based on Brent's advice and with Samuel's knowledge.

16 87. Adeli commenced her bankruptcy case by filing a voluntary
17 petition under Chapter 11 on September 8, 2005 (the "Petition
18 Date"). [PTOAF, ¶ A.122]

19 88. Shortly after the Petition Date, Brent asked Modjallal to
20 turn over all remaining funds belonging to Adeli. Modjallal
21 promptly turned over all such funds by delivering to Brent two
22 checks drawn on the Personal Modjallal Account and the Shared
23 Modjallal Account. Brent lost these checks, but promptly after he
24 discovered his error and notified Modjallal, she replaced them.

25 89. Thus, on November 18, 2005, Brent sent a letter to
26 Modjallal making a second request that Modjallal turn over all
27 monies belonging to Adeli. [PTOAF, ¶ A.106]

1 90. On December 8, 2005, Modjallal wrote a \$37,000 check (the
2 "\$37,000 Check") on the Personal Modjallal Account payable to
3 Adeli. [PTOAF, ¶ A.110]

4 91. Modjallal sent the \$37,000 Check to Brent, who
5 subsequently turned over the funds to Adeli's Chapter 7 trustee.
6 [PTOAF, ¶ A.112]

7 92. On December 8, 2005, Modjallal wrote a \$356.19 check (the
8 "\$356.19 Check") on the Shared Modjallal Account payable to Adeli.
9 [PTOAF, ¶ A.107]

10 93. Modjallal sent the \$356.19 Check to Brent, who
11 subsequently turned over the funds to Adeli's Chapter 7 trustee.
12 [PTOAF, ¶ A.109]

13 94. Adeli timely filed her Schedules of Assets and
14 Liabilities (the "Schedules" and each, "Schedule") and her
15 Statement of Financial Affairs (the "SOFA"), with my written
16 consent, on October 21, 2005. [PTOAF, ¶ A.123]

17 95. Adeli made an oath under penalty of perjury that she read
18 the answers contained in her SOFA, and any attachments, and that
19 such answers were true and correct to the best of her knowledge.
20 [PTOAF, ¶ A.124]

21 96. Adeli made an oath under penalty of perjury that she read
22 her Schedules and that they were true and correct to the best of
23 her knowledge, information, and belief. [PTOAF, ¶ A.125]

24 97. Brent prepared Adeli's Schedules and SOFA after Adeli's
25 full and accurate disclosure. He did so with full knowledge of the
26 First 2005 Transfers, the Second 2005 Transfers, and all matters
27 material to the preparation of Adeli's Schedules and SOFA. Brent
28 conferred with Samuels regarding the content of the Schedules and

1 SOFA. Adeli relied on her highly experienced bankruptcy lawyer's,
2 and to some extent, her general California lawyer's, training and
3 experience when she signed her Schedules and SOFA. She did so
4 carefully and in good faith, with no intent to conceal, evade, or
5 deceive Sachs or her creditors.

6 98. Brent's recollections at trial, more than two years after
7 representing Adeli, were understandably imperfect. Adeli's
8 testimony regarding her discussions with each of her seven lawyers
9 in 2005 was thorough, consistent, highly credible, and persuasive.
10 I am persuaded that any discrepancies between Adeli's and Brent's
11 testimony resulted from Brent's prolonged absence from involvement
12 with Adeli's legal affairs.

13 99. Adeli reasonably relied on her lawyers to prepare
14 accurate Schedules and to prepare an accurate SOFA. She reasonably
15 believed that these papers properly reflected all of the
16 information that she disclosed to and discussed with her lawyers.
17 Adeli disclosed and discussed this information with her lawyers to
18 avoid any question of a § 727 violation that any creditor or
19 trustee might later assert.

20 100. On Question 9 of her SOFA, Adeli disclosed the \$30,000
21 Payment Transfer.

22 101. On Question 10 of her SOFA, Adeli disclosed the Condo
23 Interest Transfer.

24 102. On Question 10 of her SOFA, Adeli acknowledged the April
25 1, 2005 \$208,000 transfer to Modjallal, including the \$150,000
26 Equity Line Deposit into the Shared Modjallal Account and the
27 \$58,000 Wire Transfer into the Personal Modjallal Account.

1 103. Adeli responded accurately to Question 10 of her SOFA
2 which asks: "List all other property . . . transferred within one
3 year immediately preceding the commencement date of this case," not
4 "what was the net amount of funds transferred within one year
5 before commencement after deducting expenditures." Adeli fully
6 accounted for her prepetition expenditures from the Shared
7 Modjallal Account. Adeli used those funds for proper purposes.
8 She answered every question put to her in this bankruptcy case and
9 adversary truthfully and properly under the circumstances. Adeli
10 did not deceive Sachs.

11 104. On Question 11 of her SOFA, Adeli properly disclosed
12 closing the Adeli Valley National Account, the Kader Valley
13 National Account, the Bear Stearns Account, and the Bank of America
14 Account.

15 105. Adeli's Schedule A lists the current market value ("CMV")
16 of Adeli's Condo interest at \$525,000, without deducting any
17 secured claim or exemption. [PTOAF, ¶ A.126]

18 106. Item No. 2 on Adeli's Schedule B lists the following
19 items as having a \$360 CMV: Adeli's checking, savings, or other
20 financial accounts, certificates of deposit, or shares in banks,
21 savings and loan, thrift, building and loan, homestead
22 associations, credit unions, or brokerage houses. [PTOAF, ¶ A.127]
23 This disclosure was accurate and proper. Brent intended it to
24 convey the balance remaining in the Shared Modjallal Account as of
25 the Petition Date.

26 107. Item No. 11 on Adeli's Schedule B lists an "Interest in
27 ERISA Qualified Pension" as having a \$40,000 CMV. [PTOAF, ¶ A.128]
28

1 108. Item No. 12 on Adeli's Schedule B lists a "100 Interest
2 in Kader, Inc." as having an "unknown" CMV. [PTOAF, ¶ A.129]

3 109. Brent listed Adeli's 100 percent Interest in Kader, Inc.,
4 this was based on his opinion that "Kader was a personal services
5 company and its value was, therefore, not necessarily the balance
6 of assets after deducting liabilities." The Schedule B answer was
7 accurate, proper, and not intended to deceive Sachs; the answer did
8 not deceive Sachs.

9 110. Item No. 33 on Adeli's Schedule B lists "other personal
10 property of any kind not already listed" as having a \$35,000 CMV.
11 With this disclosure, Brent intended to convey the Personal
12 Modjallal Account's remaining balance as of the Petition Date. The
13 disclosure was reasonably accurate.

14 111. Schedule C lists a \$40,000 claimed exemption for an
15 "Interest in [an] ERISA Qualified Pension". [PTOAF, ¶ A.130]

16 112. Schedule C lists an exemption of 0.00 for a "100%
17 Interest in Kader, Inc." [PTOAF, ¶ A.131]

18 113. None of the information in Adeli's Schedules and SOFA was
19 improper, inaccurate, intended to deceive Sachs or any other Adeli
20 creditor, her Chapter 7 Trustee, or the United States Trustee.
21 Adeli did not knowingly or fraudulently make any false oath in her
22 bankruptcy papers.

23 114. With the \$37,000 Check and \$356.19 Check, Adeli recovered
24 for her estate, promptly and in a business-like manner, the funds
25 remaining in the Personal Modjallal Account and the Shared
26 Modjallal Account as of the Petition Date. Any previous
27 withdrawals were made by Adeli to pay Adeli's normal personal and
28 business, prepetition and debtor in possession, expenses.

1 115. On January 17, 2006, Adeli filed with the Office of the
2 United States Trustee (the "OUST") monthly operating reports
3 ("MOR") for September, October, November, and December 2005
4 (collectively the "MORs"). [PTOAF, ¶ A.139]

5 116. Adeli timely provided her attorneys and accountants full
6 access to her bank accounts and records to help them prepare the
7 MORs.

8 117. Adeli's accountants prepared the MORs, and Brent reviewed
9 them before they were filed.

10 118. Any alleged inaccuracies in the MORs resulted from
11 mistake or inadvertence by Adeli, or by the professionals retained
12 by Adeli. Inaccuracies may have also resulted from Adeli's fall
13 2005 business travels to the Far East.

14 119. None of the statements regarding material facts in the
15 MORs were both false and made either knowingly or fraudulently by
16 Adeli. Rather, Adeli's business travel, her stays in China, and
17 her reliance on lawyers and accountants caused some errors. These
18 errors stemmed from practical difficulties that Adeli and her
19 professionals faced while preparing and filing the MORs. Further
20 problems resulted from commonly experienced and understandable,
21 debtor-in-possession-banking-difficulties, which Brent persuasively
22 explained at trial. Adeli and her professionals faced these
23 difficulties during the early phase of her bankruptcy case. There
24 was no wrongdoing. None of the errors were material, especially
25 considering the favorable earnings and business results that Adeli
26 achieved as a Chapter 11 debtor and debtor in possession during
27 that time period, including the November 2005 commencement of her
28

1 \$41,667 monthly salary from her new employment with Seven for All
2 Mankind ("Seven"), a clothing manufacturer, as discussed below.

3 120. Adeli did not knowingly or fraudulently make any false
4 oath in her MORs. Sachs was not deceived.

5 121. All Adeli transfers were made in the ordinary course of
6 Adeli's circumstances. They were not wrongful, false, or
7 fraudulent concerning Sachs. Adeli acted properly to facilitate
8 her changed circumstances. These circumstances included Adeli's
9 relocation to California to search for a new job and other business
10 opportunities as a successful, sought after clothes designer.

11 122. There was nothing that was knowingly false or fraudulent
12 about any of Adeli's postpetition conduct, her testimony or
13 statements in this litigation, or in Adeli's bankruptcy papers.
14 From May 2005 through the date immediately preceding the Petition
15 Date, Adeli spent about \$150,000 of the funds that she had
16 deposited in the Shared Modjallal Account (JPTO ¶101) for ordinary,
17 personal, business, and legal expenses. Such expenses were
18 necessary, especially when considering her goals of supporting
19 herself and pursuing legitimate business opportunities.

20 123. Shortly after filing her Chapter 11 petition, Adeli
21 negotiated and received an important written contract proposal with
22 a three-year term from Seven. As an independent contractor,
23 Adeli's monthly salary was proposed to be \$41,667. She received
24 her first monthly salary payment from Seven in November 2005, as
25 reflected in her monthly operating report (MOR) filed with the
26 United States Trustee's Office (Ex. 25). The proposed Seven
27 contract included significant royalty opportunities for Adeli, who
28 was then a debtor in possession pursuing a Chapter 11

1 reorganization of her liabilities. Adeli's contract was approved
2 by Adeli's Chapter 7 Trustee and by my order in due course. The
3 foregoing is based on the record in Adeli's bankruptcy case, later
4 converted to Chapter 7, on Sachs' motion, as to all of which I take
5 judicial notice. By October 2006, Adeli had voluntarily settled
6 with her Chapter 7 Trustee essentially all of the financial
7 wrongdoing claims asserted in this lawsuit, as asserted by Sachs.
8 The settlement between Adeli and her Chapter 7 Trustee represented
9 a reasonable plan to repay Adeli's creditors from the proceeds of
10 Adeli's Seven contract. I approved this settlement over Sachs'
11 vigorous objection in an oral ruling and in an order entered in
12 Adeli's bankruptcy case on October 11, 2006. See Exhibit 21.

13 124. The Sachs Judgment rendered Adeli insolvent. Each of
14 what Sachs has characterized as a "Transfer" was made while Adeli
15 was insolvent. The evidence here could lead to conflicting
16 inferences, but I conclude that Adeli did not move funds
17 fraudulently or with an intent to avoid paying Sachs the money she
18 owed him.

19 125. While the Sachs pleadings and briefs in this adversary
20 speak repeatedly about "fraud," there is no evidence of conduct on
21 Adeli's part that Adeli intended to deceive, cheat, or defraud
22 Sachs (meaning, generally in a bankruptcy context,
23 "misrepresentation of material fact intended to deceive, that the
24 victim justifiably relied on, and that proximately resulted in
25 damage to the victim").

26 126. The evidence reveals that, pre-petition, Adeli acted
27 privately, as most people do with regard to their financial
28 matters. She made a series of private decisions to rearrange her

1 affairs to reflect her lack of success in her New York business
2 activities, to facilitate her ongoing efforts to get back on her
3 feet, and to secure new business opportunities from a California
4 base. There is no evidence that any Adeli act from April 2005
5 until her bankruptcy filing in September 2005 was intended to, or
6 did, deprive Sachs of any remedy that he was entitled to and
7 properly sought through any legal process.

8 127. While Sachs asserts that Adeli acted with actual intent
9 to hinder, delay, or defraud him and that he has established by the
10 evidence many of the "badges of fraud" recognized in Emmett Valley
11 Assoc. v. Woodfield (In re Woodfield), 978 F.2d 516 (9th Cir. 1992),
12 Sachs has failed to prove by a preponderance of the evidence that
13 Adeli is guilty of any wrongdoing.

14 128. Adeli never placed anything beyond Sachs' reach; she
15 never hindered, delayed, or defrauded Sachs. Cf. id. at 519. In
16 Woodfield, the court found active wrongdoing towards creditors on
17 the debtor's part that was clearly material. By contrast, Adeli
18 acknowledged her financial difficulties by filing bankruptcy under
19 Chapter 11 and pursuing business opportunities as a Chapter 11
20 debtor and debtor in possession. Adeli did not cheat Sachs out of
21 recovering on the New York Judgment. Repayment of Sachs was
22 reasonably provided out of Adeli's assets through Adeli's business
23 efforts. Such a recovery was provided for, if not guaranteed, by
24 the settlement agreement with Adeli's Chapter 7 Trustee, which I
25 approved by my October 11, 2006 order in Adeli's bankruptcy case.

26 129. In the end, the evidence proves conclusively that Adeli
27 used her pre-New York Judgment resources lawfully prepetition; she
28 used all her resources postpetition to pay Sachs and her creditors.

1 She worked to exploit her talent for clothes design to benefit
2 herself, her family, and her creditors. She continued these
3 efforts during her Chapter 11 bankruptcy case and even after
4 conversion of her bankruptcy to Chapter 7.

5 130. At the same time, it is telling that Sachs' closing brief
6 filed on February 1, 2008 repeatedly invokes the term "fraud," or
7 some derivative thereof, to characterize Adeli's conduct. After
8 fully considering all of the evidence and testimony, however, I
9 find as follows: nothing in the record establishes (1) that Adeli
10 tried to cheat or deceive Sachs; (2) that she misrepresented any
11 material fact to him; (3) that she failed to account for her assets
12 or activities; or (4) that she caused Sachs any loss through
13 wrongful conduct. Sachs overstates, especially in his use of the
14 term "fraud."

15 131. I note finally that Sachs did not testify, either by
16 deposition (to my knowledge) or in the trial of this matter.

17 132. As a footnote, I take judicial notice from the record in
18 Adeli's bankruptcy case of the following: Adeli's contract with
19 Seven was terminated June 27, 2007. That apparently left Adeli
20 unable to make ongoing payments to her Chapter 7 Trustee as
21 required by her 2006 settlement agreement with the Trustee.
22 Shortly after, the Trustee sued Adeli, Kader, and Sachs in August
23 2007, in order to exercise the Trustee's right to collateral
24 pledged by Adeli under the settlement agreement. Those lawsuits
25 were settled this year in simultaneous, cross-referenced agreements
26 between the Trustee and Adeli and between the Trustee and Sachs.
27 Before the 2008 settlements, the Trustee had recovered about
28

1 \$265,000 in cash payments received from Adeli under the 2006
2 settlement. Under the latest settlements, the Trustee believes she
3 will recover about \$200,000 more from Adeli's pledged assets. This
4 will bring the Trustee's total recovery for the estate to about
5 \$465,000. Sachs agreed to waive his claim to a prepetition lien
6 against Adeli's assets while reserving all his unsecured claims
7 against Adeli, including his § 523 claims. (Sachs' 523 claims in
8 this adversary were severed for possible later trial.) Releases
9 were exchanged in each agreement. Adeli received the right to any
10 claim she has to royalties due to her under her now-terminated
11 Seven contract. The recent settlements were approved on the
12 Trustee's motion, after notice, without objection or hearing. An
13 order was entered to that effect on March 11, 2008.

14 133. The Trustee's prospective recovery of \$465,000 from Adeli
15 exceeds the approximate \$400,000 liquidation value of Adeli's
16 prepetition assets as of the Sachs Judgment date, April 12, 2005.
17 It would appear from the foregoing that Adeli, as a bankruptcy
18 debtor, has acted responsibly toward Sachs and her other creditors.
19

20 CONCLUSIONS OF LAW

21 JURISDICTION

22 A. This court has jurisdiction over this adversary
23 proceeding pursuant to 28 U.S.C. §§ 151, 157, and 1334.

24 B. Venue in this court is proper pursuant to 28 U.S.C. §
25 1409, as this adversary proceeding arises under and in connection
26 with a case under Title 11 which is pending in this District.
27
28

1 C. This is a core proceeding as defined by 28 U.S.C. §
2 157(b) (2) (J).

3 **WAIVER OF CLAIMS**

4 D. By way of the Joint Pretrial Order, Sachs only sought to
5 prove his § 727(a)(2)(A) Claims based on the following
6 transactions: (1) the Equity Line Deposit; (2) the \$33,000 Valley
7 National Transfer; (3) the \$58,000 Wire Transfer; (4) the Bear
8 Stearns Withdrawal; (5) the \$100,000 Kader Deposit; (6) the \$80,000
9 Gilmore Deposit; (7) the July 28 Deposit; (8) the \$40,000 Gilmore
10 Transfer; (9) the Condo Interest Transfer; and (10) the \$30,000
11 Payment Transfer (collectively the "Subject Transfers"). PTO, at
12 ¶¶ C.1 - C.21 & B.1 - B.10.
13

14 E. By way of the Joint Pretrial Order, Sachs only sought to
15 prove his § 727(a)(4)(A) Claims based on the following evidence:
16 (1) Adeli's SOFA Question 10 Response; (2) statements in the MORs
17 signed by Adeli; and (3) Adeli's statements regarding the Equity
18 Line, the Wire Transfer, the \$100,000 Kader Deposit, the \$80,000
19 Gilmore Deposit, her use of the funds in the Personal Modjallal
20 Account and the Shared Modjallal Account for "ordinary," "regular,"
21 and/or "personal" expenses, and Adeli's statements regarding the
22 balance of funds remaining in the Personal Modjallal Account and
23 the Shared Modjallal Account as of the Petition Date (collectively,
24 the "Subject Statements").
25
26
27
28

1 F. By way of the Joint Pretrial Order, Sachs only sought to
2 prove causes of action under §§ 727(a)(2)(A) and 727(a)(4). PTO,
3 at ¶ C.1 - C.21.

4 G. The Joint Pretrial Order supersedes the pleadings. PTO,
5 at ¶ J; Local Bankruptcy Rule 7016-1(b)(2)(J).
6

7 H. Based on the foregoing, (1) Sachs waived his right to
8 prove his § 727(a)(2)(A) Claims based on transfers other than the
9 Subject Transfers; (2) Sachs waived his right to prove his §
10 727(a)(2)(A) Claims based on statements other than the Subject
11 Statements; and (3) Sachs waived his right to seek a denial of
12 Adeli's discharge pursuant to all other subsections of § 727,
13 including, but not limited to, §§ 727(a)(3) and 727(a)(5).
14

15 I. It clearly appears from the Joint Pretrial Order that
16 Sachs waived his claims under § 727(a)(3) concerning Adeli's
17 previously alleged failure to keep records and to document
18 information from which Adeli's financial condition and business
19 transactions might be ascertained [to paraphrase § 727(a)(3)].
20 Regardless of that waiver, Adeli thoroughly explained any loss of
21 assets and deficiency of assets to meet her liabilities. In
22 addition, Adeli made voluntary, thorough, and court-approved
23 written settlement agreements in 2006 and 2008, which reasonably
24 will lead to recovery by Sachs and any other Adeli creditor for any
25 loss of assets or deficiency in Adeli's assets to meet her
26 prepetition liabilities.
27
28

1 **SECTION 727(a)(2)(A) CLAIMS**

2 J. Sachs has the burden of proving his objections to
3 Adeli's discharge pursuant to § 727(a)(2)(A). Fed. R. Bankr. P.
4 4005; accord Aubrey v. Thomas (In re Aubrey), 111 B.R. 268, 272 (9th
5 Cir. BAP 1990).

6 K. Section 727(a)(2)(A) "must be construed liberally in
7 favor of [Adeli] and strictly against [Sachs]." Beauchamp v. Hoose
8 (In re Beauchamp), 236 B.R. 727, 730 (9th Cir BAP 1999); Devers v.
9 Bank of Sheridan, Montana (In re Devers), 759 F.2d 751, 754 (9th
10 Cir. 1985).

11 L. To prevail on his claims under § 727(a)(2)(A), Sachs must
12 prove that: (1) Adeli transferred or concealed property; (2) the
13 subject property belonged to Adeli; (3) the transfer occurred
14 within one year of Adeli's Petition Date; and (4) Adeli executed
15 the transfer with the intent to hinder, delay, or defraud a
16 creditor. Aubrey, 111 B.R. at 273.

17 M. A debtor does not violate § 727(a)(2)(A) by establishing
18 and funding a pension plan in conjunction with pre-bankruptcy
19 exemption planning. Gill v. Stern (In re Stern), 345 F.3d 1036,
20 1044-1045 (9th Cir. 2003).

21 N. No § 727(a)(2) claims exist where the debtor (1) made the
22 subject transfers in good faith reliance on the advice of counsel
23 (the "Advice of Counsel Exception"), or (2) has disclosed the
24 subject transfers, made an effort to recover the property that was
25

1 transferred and actually does recover the property (the "Disclose
2 and Recover Exception"). First Beverly Bank v. Adeeb (In re
3 Adeeb), 787 F.2d 1339, 1343-46 (9th Cir. 1986); see also Avco Fin.
4 Services of Billings v. Sullivan (In re Sullivan), 111 B.R. 317,
5 322 (Bankr. D. Mont. 1990) ("Incorrect advice of counsel should not
6 be imputed against the Debtor under § 727."); Rice v. Creative
7 National Systems, Inc. (In re Rice), 109 B.R. 405 (Bankr. E.D. Cal.
8 1989). In addition, Adeli clearly employed her assets properly,
9 for normal prepetition and postpetition expenses. She fully
10 accounted for her use of assets. None of Adeli's expenditures or
11 her written or testimonial accounts of them were knowingly false or
12 fraudulent. Nowhere in this bankruptcy case did she make a false
13 oath or account.

14
15
16 O. Adeeb states that in a voluntary bankruptcy case,
17 transfers must be recovered before the petition date; in an
18 involuntary bankruptcy case, transfers can be recovered after the
19 petition date. In this case, the principles of Adeeb and § 727
20 should be interpreted broadly enough to include Adeli's exculpatory
21 pre- and postpetition conduct. See Bank of Marin v. England, 385
22 U.S. at 103. First, the prepetition conduct was no worse than
23 suspicious; none of it was materially wrongful. Adeli's post-
24 transfer and postpetition conduct has been exemplary. The essence
25 of Adeeb's holding is that disclosure should be voluntary and
26 complete and that all disclosed assets should be made available to
27
28

1 the estate's creditors. None of Adeli's transfers was material.
2 None resulted in a wrongful diminution of Adeli's prepetition
3 assets. None of Adeli's prepetition transfers was fraudulent,
4 deceitful, or designed to cheat Sachs. All of Adeli's assets were
5 fully disclosed and made available to creditors of the estate
6 promptly and cooperatively by Adeli. Adeli and Adeli's Chapter 7
7 Trustee quickly settled any doubts or claims against Adeli in a
8 businesslike manner. A full recovery for Adeli's prepetition
9 creditors is in prospect.
10

11 P. I take judicial notice, sua sponte, of the fact that in
12 2006, Adeli settled several significant avoidance claims with her
13 Chapter 7 Trustee, over Sachs' objections and after a hearing. The
14 net effect of the settlement was to return to the Adeli bankruptcy
15 estate every transfer questioned by the Trustee. I approved the
16 settlement in a ruling that I outlined orally on the record at the
17 hearing and in an order entered October 11, 2006. Adeli's conduct
18 differs significantly in Adeli's favor from the debtor's culpable
19 conduct as discussed in Devers, 75 F.3d at 754.
20

21 Q. The court should take into account a debtor's lack of
22 sophistication and the totality of the debtor's conduct when
23 determining whether the debtor possessed the intent required to be
24 proved by a preponderance of the evidence by a creditor seeking
25 denial of discharge under § 727(a)(2)(A). See In re Greene, 340
26 B.R. 93 (Bankr. M.D. Fla. 2006); see also Citibank South Dakota v.
27
28

1 Dougherty (In re Dougherty), 84 B.R. 653, 657 (9th Cir. BAP 1988)(a
2 debtor's level of financial sophistication is one of the facts
3 relevant to determining intent in the context of
4 nondischargeability actions); accord American Express Travel
5 Related Servs. Co. Inc. v. Hashemi (In re Hashemi), 104 F.3d 1122,
6 1125 (9th Cir. 1996), cert. denied, 520 U.S. 1230, 117 S.Ct. 1824,
7 137 L.Ed.2d 1031 (1997).

8
9 R. Based upon my Findings of Fact, and after balancing all
10 the possible inferences from the evidence, I conclude that Sachs
11 did not meet his burden and that no basis exists to deny Adeli's
12 discharge under § 727(a)(2)(A). None of the Subject Transfers was
13 intended to hinder, delay, or defraud Sachs or any other Adeli
14 creditor. Each was, or led directly to, an ordinary and proper
15 expenditure by Adeli, was made with the knowledge and advice of
16 counsel, or was properly accounted for, and recovered, to the
17 extent necessary to exonerate Adeli.

18
19 **SECTION 727(a)(4)(A) CLAIMS**

20 S. Sachs has the burden of proving his objection to Adeli's
21 discharge pursuant to § 727(a)(4)(A). Fed. R. Bankr. P. 4005;
22 accord Aubrey 111 B.R. at 272.

23
24 T. Section 727(a)(4)(A) "must be construed liberally in
25 favor of [Adeli] and strictly against [Sachs]." Beauchamp, 236
26 B.R. at 730; accord Devers, 759 F.2d at 754.

1 U. In order to prevail on his claim under § 727(a)(4)(A),
2 Sachs must prove that: (1) Adeli knowingly and fraudulently made a
3 false oath; and (2) the oath related to a material fact. 11 U.S.C.
4 § 727(a)(4)(A). Aubrey, 111 B.R. at 274.

5 V. A person acts knowingly only if she acts deliberately and
6 consciously. Roberts v. Erhard (In re Roberts), 331 B.R. 876, 884
7 (9th Cir. BAP 2005). Accordingly, "[a] debtor will not be denied a
8 discharge if a false statement is due to mistake or inadvertence."
9 Brown, 108 F.3d at 1293; see Roberts, 331 B.R. at 884 (a careless
10 and reckless approach to a reporting duty does not rise to the
11 level of "knowing"). "Moreover, an honest error or mere inaccuracy
12 is not a proper basis for denial of a discharge." Id. The
13 evidence before me stands in sharp contrast to the evidence of
14 wrongdoing that the court had before it in Khalil v. Developers
15 Sur. & Indem. Co. (In re Khalil), 379 B.R. 163 (9th Cir. BAP 2007);
16 in Hansen v. Moore (In re Hansen), 368 B.R. 868 at 877-78; and in
17 Aubrey, 11 B.R. at 273-74.

18 W. Based upon the Findings of Fact, I conclude that Sachs
19 did not meet his burden and that there exists no basis for denying
20 Adeli's discharge under § 727(a)(4)(A). Roberts, 331 B.R. at 883-
21 85. None of the Subject Statements were (1) false, and (2) made
22 knowingly and fraudulently, and (3) related to a material fact.

23 X. There were many unusual or suspicious Adeli transfers
24 post-Judgment and prepetition, but upon careful examination of all
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26
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28

1 the evidence and circumstances in this dispute, I conclude that
2 Adeli acted in good faith and on the advice of her attorneys. At
3 the same time, Sachs did not initiate any enforcement action during
4 Adeli's prepetition period that was interrupted or frustrated by
5 Adeli's conduct. When Adeli filed bankruptcy she honestly
6 disclosed her assets. Adeli conducted her bankruptcy case
7 truthfully and without deception. Adeli cooperated with her
8 Chapter 7 Trustee and settled voluntarily the allegations of
9 misconduct against her, with my approval, after notice and a
10 hearing and over Sachs' objection. Adeli has voluntarily met her
11 prepetition obligations to Sachs and her other creditors.
12

13 Y. Judgment on Sachs' 727 claims in this adversary should be
14 entered in favor of Adeli.
15

16 March 27, 2008
17

18 _____
THOMAS B. DONOVAN
19 BANKRUPTCY JUDGE
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1 NOTICE OF ENTRY OF JUDGMENT OR ORDER
2 AND CERTIFICATE OF MAILING

3 TO ALL PARTIES IN INTEREST LISTED BELOW:

4 1. You are hereby notified that a judgment or order entitled:

5 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

6 was entered on 3/27/08.

7 2. I hereby certify that I mailed a true copy of the order or judgment to the persons and
8 entities listed below on 3/27/08.

9 Plaintiff's Attorneys

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11 Frank Merola
12 Nathan Schultz
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22 Debtor/Defendant's Attorneys


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28 Chapter 7 Trustee

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Dated: 3/27/08


Clerk