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CLERK U.S. BANKRUPTCY COURT
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**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION**

In re:

TAREL DESHUN MEEKS,
fdba Last Kings,

Debtor.

Case No. 2:19-bk-23548-RK

Chapter 7

Adv. No. 2:21-ap-01035-RK

UNITED STATES TRUSTEE FOR
REGION 16,

Plaintiff,

v.

TAREL DESHUN MEEKS,
fdba Last Kings,

Defendant.

**FINDINGS OF FACT AND CONCLUSIONS
OF LAW**

Trial:

Date: April 27, 2022
Time: 9:00 a.m.
Place: Courtroom 1675
Roybal Federal Building
255 East Temple St.
Los Angeles, CA 90012

This adversary proceeding came on for trial before the undersigned United States Bankruptcy Judge on April 27, 2022. Eryk R. Escobar, Trial Attorney, Office of the United States Trustee, appeared for Plaintiff United States Trustee ("United States Trustee" or

1 “Plaintiff”). Christine A. Kingston, of Surf City Lawyers, appeared for Defendant Tarel
2 Deshun Meeks (“Meeks,” “Debtor” or “Defendant”).¹

3 Having considered the testimony of the witnesses and documentary evidence
4 received at trial and the written and oral arguments of the parties, and the proposed
5 findings of fact and conclusions of law lodged by the parties and objections thereto, the
6 court issues the following findings of fact and conclusions of law pursuant to Federal Rule
7 of Bankruptcy Procedure 7052.

8 **FINDINGS OF FACT**

9 **BACKGROUND**

10 1. This adversary proceeding, Adv. No. 2:21-ap-01035-RK (the “Adversary
11 Proceeding”), arises out of and is related to the Chapter 7 bankruptcy case, Case No.
12 2:19-bk-23548-RK Chapter 7 (the “Bankruptcy Case”) filed by Tarel Deshun Meeks, fdba
13 Last Kings.²

14 2. The Adversary Proceeding was timely filed and service of process was
15 proper, which are not disputed.³

16 3. Meeks was 38 years old as of the date of trial on April 27, 2022.⁴ He is not
17 married, but is and has been engaged to be married to Heather Sanders, his fiancée,
18 since 2010.⁵ Meeks has four children.⁶ Meeks’s highest level of education is a high
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21 ¹ Ms. Kingston was counsel for Defendant in this adversary proceeding and was not his counsel who filed his
22 bankruptcy petition and schedules and appeared at the meeting of creditors under 11 U.S.C. § 341(a) in the
main bankruptcy case.

23 ² Joint Pre-Trial Stipulation, Docket No. 28 (“JPTS”), ¶ 1, which was approved by the court by order entered
24 on February 18, 2022; Order Approving Joint Pre-Trial Stipulation (Docket No. 31).

25 ³ Trial Exhibit 2 (Defendant’s Answer to Plaintiff’s Complaint (the “Answer”)), ¶¶ 3, 5.

26 ⁴ Defendant Tarel Deshun Meeks Direct Testimony Trial Declaration (“Meeks Trial Declaration”), Docket No.
35, ¶ 1.

27 ⁵ Meeks Trial Declaration, ¶¶ 2, 3 and 7; Plaintiff’s Trial Exhibit 22 (transcript of Meeks’s deposition) at
28 [page:line] 18:12-19:12, 42:12-17.

⁶ Meeks Trial Declaration, ¶ 4.

1 school diploma.⁷ Meeks operated a business by the name of Last Kings, LLC, from 2012-
2 2015, a clothing company.⁸ Since 2015, Meeks has been self-employed as a social media
3 influencer.⁹

4 **THE BANKRUPTCY CASE AND THE BANKRUPTCY DOCUMENTS**

5 4. On November 18, 2019 (the “Petition Date”), Meeks commenced this
6 bankruptcy case by filing a voluntary petition for relief under Chapter 7 of the Bankruptcy
7 Code, 11 U.S.C., and related schedules and statements (the “Bankruptcy Documents”).
8 Brad D. Krasnoff was appointed as the Chapter 7 Trustee (the “Chapter 7 Trustee”).¹⁰
9 Page 1 of the voluntary petition for relief under Chapter 7 of the Bankruptcy Code that
10 Meeks signed and filed, instructed him in filling out the Bankruptcy Documents as follows:
11 “Be as complete and accurate as possible.”¹¹

12 5. Meeks signed the Bankruptcy Documents under penalty of perjury.¹² Meeks
13 knew and understood when he signed his Bankruptcy Documents that he needed to list all
14 of his assets, and he knew and understood when he signed his Bankruptcy Documents
15 that they were executed under penalty of perjury.¹³
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19 ⁷ JPTS, ¶ 7; Meeks Trial Declaration, ¶ 5.

20 ⁸ Trial Testimony of Tarel Deshun Meeks on cross-examination; Plaintiff’s Trial Exhibit 11 (Meeks’s verified
response to interrogatories, no. 3).

21 ⁹ Plaintiff’s Trial Exhibit 22 (transcript of Meeks’s deposition) at 9:5-10:2.

22 ¹⁰ JPTS at ¶ 8.

23 ¹¹ Plaintiff’s Trial Exhibit 23 (Petition, Schedules & Statements) at 1.

24 ¹² JPTS at ¶¶ 8, 48; Plaintiff’s Trial Exhibit 23 (Petition, Schedules & Statements).

25 ¹³ JPTS at ¶ 40; Plaintiff’s Trial Exhibit 23 (Petition, Schedules & Statements); Plaintiff’s Trial Exhibit 6
26 (Defendant[s] Responses to United States Trustee’s First Set of Requests for Admissions Propounded to
27 Defendant Tarel Deshun Meeks, Responses to Requests for Admission Nos. 3 and 4); Plaintiff’s Trial Exhibit
28 7 (Defendant[s] Supplemental Responses to United States Trustee’s First Set of Requests for Admissions
Propounded to Defendant Tarel Deshun Meeks, Responses to Requests for Admission Nos. 3 and 4).

1 6. On the Bankruptcy Documents, Meeks listed the following address as the
2 address where he lived: 712 North Orange Grove, Los Angeles, CA 90046 (the “Orange
3 Grove Residence”), and no separate mailing address was provided.¹⁴

4 7. The Official Form 106Sum: Summary of Your Assets and Liabilities and
5 Certain Statistical Information, which was included in the voluntary petition for relief under
6 Chapter 7 of the Bankruptcy Code that Meeks signed and filed, instructed him in filling out
7 this form as follows: “Be as complete and accurate as possible.”¹⁵ On his Official Form
8 106Sum, Meeks listed the total value of his assets at \$17,055.63.¹⁶

9 8. The Official Form 106A/B: Schedule A/B: Property, which was included in the
10 voluntary petition for relief under Chapter 7 of the Bankruptcy Code that Meeks signed and
11 filed, instructed him in filling out this form as follows: “Be as complete and accurate as
12 possible.”¹⁷ On Schedule A/B: Property, Meeks listed a total value of \$17,055.63 for his
13 assets, including:¹⁸

14 a. In response to question 7, which requires a debtor to disclose
15 ownership of, or any legal or equitable interest in electronics, miscellaneous
16 electronics with a then-current value of \$1,000.00.

17 b. In response to question 9, which requires a debtor to disclose
18 ownership of, or any legal or equitable interest in equipment for sports and hobbies,
19 Meeks checked the “No” box, indicating he did not own or hold any such interests in
20 the same.

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23 ¹⁴ JPTS at ¶ 10; Plaintiff’s Trial Exhibit 23 (Petition, Schedules & Statements); Plaintiff’s Trial Exhibit 6
24 (Defendant[s] Responses to United States Trustee’s First Set of Requests for Admissions Propounded to
25 Defendant Tarel Deshun Meeks, Responses to Requests for Admission Nos. 3 and 4); Plaintiff’s Trial Exhibit
7 (Defendant[s] Supplemental Responses to United States Trustee’s First Set of Requests for Admissions
Propounded to Defendant Tarel Deshun Meeks, Responses to Requests for Admission Nos. 3 and 4).

26 ¹⁵ Plaintiff’s Trial Exhibit 23 (Petition, Schedules & Statements).

27 ¹⁶ JPTS at ¶ 11; Plaintiff’s Trial Exhibit 23 (Petition, Schedules & Statements).

28 ¹⁷ Plaintiff’s Trial Exhibit 23 (Petition, Schedules & Statements).

¹⁸ JPTS at ¶¶ 12a-12i; Plaintiff’s Trial Exhibit 23 (Petition, Schedules & Statements).

1 c. In response to question 11, which requires a debtor to disclose
2 ownership of, or any legal or equitable interest in clothes, clothes with a then-
3 current value of \$1,000.00.

4 d. In response to question 12, which requires a debtor to disclose
5 ownership of, or any legal or equitable interest in jewelry, Meeks checked the "No"
6 box, indicating he did not own or hold any such interests, and did not list an interest
7 in an engagement ring.

8 e. In response to question 14, which requires a debtor to list any
9 ownership of, or any legal or equitable interest in "any other personal and
10 household items you did not already list . . .," Meeks checked the "No" box,
11 indicating he did not own or hold any such interests.

12 f. In response to question 17, which requires a debtor to list any
13 ownership of, or any legal or equitable interest in any "deposits of money," Meeks
14 listed four accounts with the following balances: (\$234.00), \$3.63, (\$7.00), and
15 (\$342.13).

16 g. In response to question 30, which requires a debtor to list any
17 ownership of, or any legal or equitable interest in "other amounts someone owes
18 you," Meeks checked the "No" box, indicating he did not own or hold any such
19 interests.

20 h. In response to question 31, which requires a debtor to list any
21 ownership of, or any legal or equitable interest in "interests in insurance policies,"
22 specifically referring to renter's insurance, Meeks only listed a life insurance cash
23 value with a then-current value of \$704.00 and did not list any interest in a renter's
24 insurance policy.

25 i. In response to question 33, which requires a debtor to list any
26 ownership of, or any legal or equitable interest in "claims against third parties,
27 whether or not you have filed a lawsuit or made a demand for payment," Meeks
28

1 checked the “No” box, indicating he did not own or hold any such interests in the
2 same.

3 9. On Schedule I to his bankruptcy petition, Meeks listed a combined monthly
4 income of \$1,476.80. In Schedule J, after deducting monthly expenses, Meeks listed
5 monthly net income of negative \$162.20.¹⁹

6 10. The Official Form 107: Statement of Financial Affairs for Individuals Filing for
7 Bankruptcy, which was included in the voluntary petition for relief under Chapter 7 of the
8 Bankruptcy Code that Meeks signed and filed, instructed him in filling out this form as
9 follows: “Be as complete and accurate as possible. . . . Answer every question.”²⁰ On the
10 Statement of Financial Affairs (the “SOFA”) in Meeks’s bankruptcy petition, in response to
11 question 13, which requires a debtor to list any gifts the debtor has given within 2 years
12 before filing for bankruptcy with a total value of more than \$600 per person, Meeks
13 checked the “No” box, attesting that within two years of filing for bankruptcy (i.e., on or
14 after November 18, 2017), he did not make any gifts with a total value of more than \$600
15 per person.²¹

16 11. Meeks hired a law firm to assist him with filing his bankruptcy case, including
17 helping him prepare the Bankruptcy Documents, but he now believes that he made a
18 mistake in hiring this firm, saying because he “never had an actual lawyer go over
19 anything with me, only his assistant” and that: “A lot was unclear to me.”²² According to
20 Meeks, he only “partly” understood the Bankruptcy Documents prepared by the law firm
21 that he signed under penalty of perjury because he never had an actual lawyer review the
22 documents with him before they were filed, but only the lawyer’s assistant, and that he
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25 ¹⁹ JPTS at ¶ 13; Plaintiff’s Trial Exhibit 23 (Petition, Schedules & Statements).

26 ²⁰ Plaintiff’s Trial Exhibit 23 (Petition, Schedules & Statements).

27 ²¹ JPTS at ¶ 14; Plaintiff’s Trial Exhibit 23 (Petition, Schedules & Statements).

28 ²² Meeks Trial Declaration, ¶¶ 15 and 16.

1 “just understood that I was trying to get the debt taken out of my name.”²³ In his trial
2 testimony, Meeks stated that he had gone to the law office, met only with a secretary who
3 asked him to fill out paperwork, that is, forms to list his assets, and spent about 30 minutes
4 at the law office, filling out paperwork.²⁴ At trial, Meeks acknowledged that the bankruptcy
5 attorney’s office emailed the bankruptcy papers to him before he signed them and that he
6 did not review them before he actually signed them in the law office.²⁵ In his trial
7 declaration, Meeks admitted that he signed the Bankruptcy Documents under penalty of
8 perjury, but that he “spent only five minutes with an assistant when I did sign my
9 bankruptcy papers and did not thoroughly read them before signing them.”²⁶ However,
10 Meeks testified at trial that no lawyer reviewed the Bankruptcy Documents with him before
11 he signed them and that no lawyer ever advised him about asset protection and
12 exemption planning.²⁷

13 12. The initial meeting of creditors pursuant to 11 U.S.C. § 341(a) (the “Meeting
14 of Creditors”) set by the court in the Bankruptcy Case for December 19, 2019 and was
15 conducted and concluded on that same day.²⁸

16 13. At the Meeting of Creditors, Meeks appeared and testified under oath as
17 follows in response to the Chapter 7 Trustee Brad D. Krasnoff’s questions:²⁹

18 **KRASNOFF:** Okay. The home address in your papers, is it correct?

19 **MEEKS:** Yes, sir.
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22 ²³ Plaintiff’s Trial Exhibit 22 (transcript of Meeks’s deposition) at 12:16-13:10; Meeks Trial Declaration, ¶ 17-21.

23 ²⁴ Meeks Trial Testimony on redirect examination.

24 ²⁵ Meeks Trial Testimony on redirect examination; Plaintiff’s Trial Exhibit 22 (transcript of Meeks’s deposition) at 21:16-22.

25 ²⁶ Meeks Trial Declaration, ¶ 17.

26 ²⁷ Meeks Trial Testimony on redirect examination.

27 ²⁸ JPTS at ¶ 15.

28 ²⁹ JPTS at ¶ 16; Plaintiff’s Trial Exhibit 16a (Meeting of Creditors transcript) at UST000005-07.

1 **KRASNOFF:** Did you read the green pamphlet?

2 **MEEKS:** Yes, sir.

3 **KRASNOFF:** All right. Did you sign your bankruptcy papers?

4 **MEEKS:** Yes, sir

5 **KRASNOFF:** Did you read the - - did you read these papers carefully before signing
6 them?

7 **MEEKS:** Yes, sir.

8 **KRASNOFF:** Are you familiar with the contents of these papers?

9 **MEEKS:** Yes, sir.

10 **KRASNOFF:** Is everything in the papers to the best of your knowledge true and
11 correct?

12 **MEEKS:** Yes, sir.

13 **KRASNOFF:** Okay. Any mistakes or anything left out?

14 **MEEKS:** No, sir.

15 **KRASNOFF:** Did you list all of your assets?

16 **MEEKS:** Yes, sir.

17 ***

18 **KRASNOFF:** Okay. I'm not going to return it since I didn't print it. And have you
19 transferred anything worth more than \$5,000 in value to anyone over the last four years?

20 **MEEKS:** No, sir.

21 14. Meeks admitted at his deposition that his answers to the questions of the
22 Chapter 7 Trustee at the Meeting of Creditors were not accurate, that is, specifically,
23 Meeks at his deposition testified that he did not carefully read the Bankruptcy Documents,
24 so he erroneously told the Chapter 7 Trustee when he testified at the Meeting of Creditors
25 that he had in fact carefully read the Bankruptcy Documents.³⁰ Meeks at his deposition
26 further admitted that he was not familiar with the contents of the Bankruptcy Documents
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28 ³⁰ JPTS at ¶ 58; Plaintiff's Trial Exhibit 22 (transcript of Meeks's deposition) at 34:4-12.

1 and that his testimony at the meeting of creditors that he was familiar with the contents of
2 the Bankruptcy Documents was inaccurate.³¹ When asked why he had told the trustee
3 that he had carefully read the Bankruptcy Documents, Meeks admitted at his deposition
4 that he answered the way he did so he could “get the process over with.”³²

5 15. On December 20, 2019, the Chapter 7 Trustee filed a report stating that
6 there were no assets to be administered in the Bankruptcy Case.³³

7 16. As of February 18, 2020, the deadline for filing objections to discharge, no
8 complaint objecting to Meeks’s discharge had been filed.³⁴

9 17. On February 24, 2020, the court entered an order for Meeks’s discharge.³⁵

10 18. On February 25, 2020, the court entered an order closing the bankruptcy
11 case, discharging the Chapter 7 Trustee from his duties in this case, and exonerating the
12 Trustee’s bond.³⁶

13 19. On or about March 10, 2020, after the discharge was entered, the Chapter 7
14 Trustee received information from a representative of Farmers Insurance Company
15 (“Farmers Insurance”) regarding the existence of a pending theft loss claim, submitted by
16 Meeks on January 31, 2020, related to his reported loss of a ring and other stolen items
17 such as photo equipment and hobby items (the “Theft Loss Claim”).³⁷ The Chapter 7
18 Trustee then consulted with the United States Trustee regarding this post-discharge
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22 ³¹ JPTS at ¶ 58; Plaintiff’s Trial Exhibit 22 (transcript of Meeks’s deposition) at 34:13-20.

23 ³² JPTS at ¶ 58; Plaintiff’s Trial Exhibit 22 (transcript of Meeks’s deposition) at 34:4-20.

24 ³³ JPTS at ¶ 17.

25 ³⁴ JPTS at ¶ 18; see also, Federal Rule of Bankruptcy Procedure 4004(a), setting the deadline for objecting to
discharge 50 days after the first date set for the meeting of creditors, which was December 19, 2019..

26 ³⁵ JPTS at ¶ 19.

27 ³⁶ JPTS at ¶ 20.

28 ³⁷ JPTS at ¶ 21; Plaintiff’s Trial Exhibit 16b (Theft Loss Claim).

1 disclosure of apparent property of the Estate.³⁸ Prior to this, the United States Trustee
2 had no knowledge of these matters.³⁹

3 20. On March 13, 2020, the United States Trustee filed a motion to reopen the
4 Bankruptcy Case based on the facts discussed in paragraph 19 above and authorizing the
5 appointment of a Chapter 7 Trustee.⁴⁰

6 21. On March 18, 2020, the court entered an order reopening the Bankruptcy
7 Case and directing the appointment of a Chapter 7 Trustee.⁴¹

8 22. On March 23, 2020, the Chapter 7 Trustee was reappointed in the
9 bankruptcy case.⁴²

10 23. On April 14, 2020, the Chapter 7 Trustee withdrew his previously filed report
11 of no distribution in the bankruptcy case, and, on December 18, 2020, the trustee filed a
12 notice of assets.⁴³

13 **THE ENGAGEMENT RING**

14 24. On January 23, 2017, pre-petition, Meeks purchased an 18 carat white gold
15 ring (the “Engagement Ring”) from XIV Karats Ltd. in Beverly Hills, California for a
16 purchase price of \$14,900.00, which was paid with a check ending in No. 6354.⁴⁴ At the
17 time of Meeks’ purchase of the ring, the seller, XIV Karats Ltd. issued to Meeks an
18 “Appraisal for Insurance Purposes” dated January 23, 2017 that the ring had a value of
19 \$50,000.00.⁴⁵ On the same day, January 23, 2017, Meeks purchased a renter’s insurance
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21 ³⁸ JPTS at ¶ 21.

22 ³⁹ JPTS at ¶ 21.

23 ⁴⁰ JPTS at ¶ 22.

24 ⁴¹ JPTS at ¶ 23.

25 ⁴² JPTS at ¶ 24.

26 ⁴³ JPTS at ¶ 25.

27 ⁴⁴ JPTS at ¶ 26.

28 ⁴⁵ Plaintiff’s Trial Exhibit 20 (Engagement Ring Appraisal).

1 policy with Farmers Insurance, in which he scheduled the Engagement Ring on an
2 endorsement at the so-called “appraised” value of \$50,000.00 (the “Insurance Policy”).⁴⁶
3 Meeks testified at trial he had proposed to his fiancée, Heather Sanders, and gave her the
4 Engagement Ring on February 2, 2017.⁴⁷ Meeks is still engaged to his fiancée, Heather
5 Sanders, as he stated in his trial declaration.⁴⁸ Meeks had testified at his deposition that
6 he and Heather Sanders had been together for 11 years as of the date of the deposition in
7 2021.⁴⁹ The United States Trustee did not offer any evidence to dispute the fact that
8 Meeks and Heather Sanders were and are engaged to be married and that the
9 Engagement Ring was a gift made by Meeks to his fiancée, Heather Sanders, in
10 contemplation of marriage.

11 25. Meeks did not list the Engagement Ring or the Insurance Policy as an asset
12 on Schedule A/B: Property to his bankruptcy petition.⁵⁰

13 26. Meeks in answering the Chapter 7 Trustee’s question at the Meeting of
14 Creditors whether he made any transfers of anything worth \$5,000 or more to anyone
15 within four years before the Petition Date, Meeks answered no that there were no such
16 transfers and did not disclose in his answer to the Chapter 7 Trustee’s question that he
17 gave his fiancée the Engagement Ring as a gift or transfer on February 2, 2017, which
18 was within four years before the Petition Date on November 18, 2019.⁵¹

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22 ⁴⁶ JPTS at ¶ 26.

23 ⁴⁷ JPTS at ¶ 50; Plaintiff’s Trial Exhibit 22 (transcript of Meeks’s deposition) at 38:5-20.

24 ⁴⁸ Meeks Trial Declaration, ¶ 3.

25 ⁴⁹ Plaintiff’s Trial Exhibit 22 (transcript of Meeks’s deposition) at 42:12-14.

26 ⁵⁰ JPTS at ¶ 26; Plaintiff’s Trial Exhibit 23 (Petition, Schedules & Statements).

27 ⁵¹ Plaintiff’s Exhibit 16a (Meeting of Creditors transcript) at p. UST000007 (Meeks testifying he had not
28 transferred anything worth more than \$5,000 in value to anyone over the last four years).

THE THEFT LOSS CLAIM

27. On January 31, 2020, Meeks filed the Theft Loss Claim with Farmers Insurance in connection with a burglary that occurred on January 29, 2020 at a residence located at 5261 Elvira Road, Woodland Hills, CA 91364 (the “Elvira Road Residence”). While the Elvira Road Residence was rented in the name of Meeks’s fiancée, Meeks stipulated in the Joint Pre-Trial Stipulation to the fact that the Elvira Road Residence is his primary residence and has been his primary residence since around 2017 or 2018, and he stated in his deposition that he lived there “probably about 98% of the time.”⁵² Meeks did not disclose the Elvira Road Residence in the Bankruptcy Documents or at the Meeting of Creditors.⁵³

28. As part of the Theft Loss Claim, on February 17, 2020, Meeks submitted a proof of loss form (the “Proof of Loss”) to his insurer, Farmers Insurance, in which he claimed a loss in excess of \$69,000.00 in personal property, and listed the following personal property (together with the Insurance Policy, are referred to herein as the “Undisclosed Assets”), amongst others, and their claimed values on the Proof of Loss:⁵⁴

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⁵² JPTS at ¶¶ 10, 27, 60; see Plaintiff’s Exhibit 16a (Meeting of Creditors transcript) at p. UST000005 (Meeks testifying that the home address in the Bankruptcy Documents was correct), Plaintiff’s Trial Exhibit 23 (Petition, Schedules & Statements) (listing only the Orange Grove Residence). At his deposition, Meeks stated that he had two residences, at Orange Grove and Elvira Road, but admitted that he lived at the Elvira Road Residence “probably about 98% of the time,” but sometimes stayed at the Orange Grove Residence if he or his fiancée were working late in Los Angeles. Plaintiff’s Trial Exhibit 22 (transcript of Meeks’s deposition) at 29:7-30:23.

⁵³ JPTS at ¶¶ 10, 27, 60; see Plaintiff’s Exhibit 16a (Meeting of Creditors transcript) at p. UST000005 (Meeks testifying that the home address in the Bankruptcy Documents was correct), Plaintiff’s Trial Exhibit 23 (Petition, Schedules & Statements) (listing only the Orange Grove Residence).

⁵⁴ See JPTS at ¶¶ 28, 34; see also Plaintiff’s Trial Exhibit 16b (Theft Loss Claim) at p. UST000048 (letter from Farmers Insurance acknowledging receipt of Proof of Loss).

Description of Item	Approximate Price Per Item	Approximate Purchase Date
Louis Vuitton Duffle ⁵⁵	\$5,500.00	6/17/2016 (gift)
The Engagement Ring	\$50,000.00	1/23/2017
Canon Mark IV Camera	\$3,097.45	8/17/2017
Gucci Duffle	\$3,600.00	12/25/2017 (gift)
Kino Flo Light Kit	\$2,873.00	12/19/2018
Sennheiser Microphone	\$999.00	1/15/2019
Zoom Portable Recorder	\$329.00	1/15/2019
Total Price Claimed for these "Undisclosed Assets" ⁵⁶	\$66,398.45	

29. On the Proof of Loss, Meeks listed only himself as the "Named Insured(s) and persons owning items being claimed." Meeks also stated on the Proof of Loss that he was the "sole owner of all the property" being claimed in the Theft Loss Claim.⁵⁷ When Meeks was asked why he made this representation on the Proof of Loss, when he was claiming in this Adversary Proceeding that he had transferred the Undisclosed Assets to his fiancée pre-petition, he testified at his deposition that he was trying to hurry the process along so that it would be over fast.⁵⁸ Specifically, Meeks testified as follows:⁵⁹

⁵⁵ At trial, Meeks disclosed that he found and recovered the Louis Vuitton Duffle bag in the trash a few days after the burglary, that is, it was not lost. Meeks Trial Testimony on redirect examination. Meeks did not inform Farmers Insurance of this fact when he reported the bag as a stolen item in the Proof of Loss submitted over two weeks after the burglary or any time afterwards. *Id.*

⁵⁶ There were other items on the Proof of Loss claimed by Meeks which are not listed in this chart.

⁵⁷ JPTS at ¶¶ 29, 33; Plaintiff's Trial Exhibit 16b (Theft Loss Claim) at UST000077 (listing only himself as a named insured and as person owning items being claimed), UST000079 (claiming to be sole owner of Undisclosed Assets in Proof of Loss).

⁵⁸ JPTS at ¶ 59; Plaintiff's Trial Exhibit 22 (transcript of Meeks's deposition) at 31:6-25.

⁵⁹ JPTS at ¶ 59; Plaintiff's Trial Exhibit 22 (transcript of Meeks's deposition) at 31:6-25.

1 **MEEKS:** They were asking a lot of questions, and I was just trying to hurry up
2 the process and tell them that I owned everything. It was stuff in my
3 house, yeah, I owned it, and just hurry up the process.

4 **ESCOBAR:** And when you say they were asking a lot of questions, who is they?

5 **MEEKS:** The insurance agents or whoever was on the phone at the time.

6 30. According to Meeks, he had asked the insurance agent to add his fiancée to
7 the policy, but the agent failed to do so, and Meeks did not learn of this failure until the
8 burglary.⁶⁰

9 31. On March 13, 2020, Farmers Insurance informed Meeks that its counsel
10 intended to examine Meeks under oath concerning the assertions made in the Theft Loss
11 Claim.⁶¹ As set forth in the Joint Pre-Trial Stipulation, Meeks has stipulated that he
12 informed Farmers Insurance that he would not attend this examination and that he was
13 withdrawing his insurance claim.⁶² According to Meeks in his trial declaration and at his
14 deposition, he asserted that he withdrew his insurance claim because the insurance
15 claims adjuster had made accusations about the claim that made Meeks feel
16 uncomfortable and badly treated, that is, the agent started to belittle him after the agent
17 found out that Meeks had filed for bankruptcy.⁶³ In his trial testimony, Meeks denied that
18 he withdrew his insurance claim only after Farmers Insurance notified him that its lawyers
19 intended to examine him about the insurance claim.⁶⁴

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23 ⁶⁰ Meeks Trial Declaration, ¶¶ 30-31.

24 ⁶¹ JPTS at ¶ 34; Plaintiff's Trial Exhibit 16b (Theft Loss Claim) at UST000053-54 (Farmers Insurance letter to
25 Meeks).

26 ⁶² JPTS at ¶ 34; Plaintiff's Trial Exhibit 16b (Theft Loss Claim) at UST000063-64 (email correspondence
27 between Meeks and Farmers Insurance regarding withdrawal of the Theft Loss Claim).

28 ⁶³ Meeks Trial Declaration, ¶ 32; Plaintiff's Trial Exhibit 22 (transcript of Meeks's deposition) at 35:15-36:10.

⁶⁴ Meeks Trial Testimony on redirect examination.

1 32. On March 19, 2020, Farmers Insurance denied and closed Meeks's Theft
2 Loss Claim.⁶⁵

3 33. Meeks did not inform the Chapter 7 Trustee of the Theft Loss Claim.⁶⁶

4 **THE UNDISCLOSED ASSETS AND PURPORTED TRANSFERS**

5 34. The Undisclosed Assets were acquired by Meeks pre-petition, and Meeks
6 has stipulated that they are property of the estate in this bankruptcy case (the "Estate").⁶⁷

7 35. The Louis Vuitton Duffle Bag was a gift to Meeks from a former friend, and
8 Meeks in his trial declaration stated that he then regifted it to his fiancée, Heather
9 Sanders.⁶⁸ The price of \$5,500 stated by Meeks for the Louis Vuitton Duffle Bag on the
10 Proof of Loss was based on a Google search he made.⁶⁹ In his trial declaration, Meeks
11 stated he would value the resale value of the Louis Vuitton Duffle Bag at \$1,500.00.⁷⁰

12 36. The Gucci Duffle Bag was also a gift to Meeks.⁷¹ The price of \$3,600 stated
13 by Meeks for the Gucci Duffle Bag on the Proof of Loss was based on a Google search he
14 made.⁷² In his trial declaration, Meeks stated he would value the resale value of the Gucci
15 Duffle Bag at \$1,200.00.⁷³

16 37. The Canon Mark IV Camera was a purchase by Meeks from B&H Photo in
17 the amount of \$3,097.45 on or about August 17, 2017 as shown on a screenshot of the
18 order submitted with the Proof of Loss, and Meeks testified at his deposition that he gifted
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20 ⁶⁵ JPTS at ¶ 35; Plaintiff's Trial Exhibit 16b (Theft Loss Claim) at pp. UST000055-57.

21 ⁶⁶ JPTS at ¶ 59.

22 ⁶⁷ JPTS at ¶¶ 26, 28, 36-39; Meeks Trial Declaration, ¶¶ 34-38

23 ⁶⁸ Meeks Trial Declaration, ¶ 34.

24 ⁶⁹ Meeks Trial Testimony on redirect examination.

25 ⁷⁰ Meeks Trial Declaration, ¶ 34.

26 ⁷¹ Meeks Trial Declaration, ¶ 37.

27 ⁷² Meeks Trial Testimony on redirect examination.

28 ⁷³ Meeks Trial Declaration, ¶ 34.

1 the camera to his fiancée at the time it was purchased.⁷⁴ In his trial declaration, Meeks
2 stated he would value the resale value of the camera at \$1,000.00.⁷⁵

3 38. The Kino Flight Kit was a purchase by Meeks from B&H Photo on December
4 19, 2018, which had a listed price of \$2,873.00 based on a screenshot of the item on the
5 B&H Photo website submitted with the Proof of Loss, and Meeks testified at his deposition
6 that he gifted the flight kit to his fiancée at the time it was purchased.⁷⁶ In his trial
7 declaration, Meeks stated he would value the resale value of the flight kit at \$900.00.⁷⁷

8 39. The Sennheiser Microphone was a purchase by Meeks from Amazon.com
9 on January 15, 2019, which had a listed price of \$999.00 based on a screenshot of the
10 item on the Amazon.com website submitted with the Proof of Loss, and Meeks testified at
11 his deposition that he gifted the microphone to his fiancée at the time it was purchased.⁷⁸
12 Meeks in his trial declaration and testimony did not give an alternate value for this item.⁷⁹

13 40. The Zoom portable recorder was a purchase by Meeks from Amazon.com on
14 January 15, 2019, which had a listed price of \$329.00 based on a screenshot of the item
15 on the Amazon.com website submitted with the Proof of Loss, and Meeks testified at his
16 deposition that he gifted the recorder to his fiancée before he filed for bankruptcy.⁸⁰
17 Meeks in his trial declaration and testimony did not give an alternate value for this item.⁸¹

19 ⁷⁴ Meeks Trial Declaration, ¶ 36; Plaintiff's Trial Exhibit 22 (transcript of Meeks's deposition) at 25:1-11;
20 Plaintiff's Trial Exhibit 16b (Theft Loss Claim) at UST000086 (screenshot of past order for camera); Plaintiff's
21 Trial Exhibit 22 (transcript of Meeks's deposition) at 25:1-11.

22 ⁷⁵ Meeks Trial Declaration, ¶ 36.

23 ⁷⁶ Meeks Trial Declaration, ¶ 38; Plaintiff's Trial Exhibit 22 (transcript of Meeks's deposition) at 25:21-26:7;
24 Plaintiff's Trial Exhibit 16b (Theft Loss Claim) at UST000087 (screenshot of item on vendor's website).

25 ⁷⁷ Meeks Trial Declaration, ¶ 38.

26 ⁷⁸ Plaintiff's Trial Exhibit 22 (transcript of Meeks's deposition) at 27:8-23; Plaintiff's Trial Exhibit 16b (Theft Loss
27 Claim) at UST000088 (screenshot of item on vendor's website).

28 ⁷⁹ Meeks Trial Declaration; Meeks Trial Testimony.

⁸⁰ Plaintiff's Trial Exhibit 22 (transcript of Meeks's deposition) at 27:24-28:7; Plaintiff's Trial Exhibit 16b (Theft
Loss Claim) at UST000089 (screenshot of item on vendor's website).

⁸¹ Meeks Trial Declaration; Meeks Trial Testimony.

1 41. The Insurance Policy was a renter's insurance policy that Meeks purchased
2 from Farmers Insurance on January 23, 2017, which did not have a cash or surrender
3 value.⁸²

4 42. Meeks has taken inconsistent positions in this case on whether he owned
5 and disclosed the Undisclosed Assets as of the Petition Date. In Defendant's Answer to
6 Plaintiff's Complaint (Docket No. 7) (the "Answer") and Meeks's deposition testimony, he
7 has asserted that some, or all, of the Undisclosed Assets were transferred to his fiancée
8 pre-petition, but these assertions are inconsistent with his factual admission in the Joint
9 Pre-Trial Stipulation that the Undisclosed Assets are property of the estate.⁸³

10 43. For example, as to the Louis Vuitton and Gucci duffle bags, Meeks asserted
11 in his discovery responses that he had gifted them away to his fiancée pre-petition, but he
12 stipulated in the Joint Pre-Trial Statement to the fact that they are property of the estate.⁸⁴

13 44. In the Answer, Meeks was deemed to have admitted in the Answer that he
14 did not disclose the Canon Mark IV camera on Schedule A/B: Property to his bankruptcy
15 petition as he did not directly respond to Plaintiff's allegation in the Complaint that he failed
16 to disclose it, and Meeks did not claim to have transferred it to his fiancée pre-petition.⁸⁵
17 Later, at his deposition, Meeks testified that he transferred the camera to his fiancée pre-
18 petition.⁸⁶

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22 ⁸² JPTS, ¶ 26; Plaintiff's Trial Exhibit 22 (transcript of Meeks's deposition) at 17:6-24; Plaintiff's Trial Exhibits
18 and 19 (insurance policy renewals).

23 ⁸³ Compare Plaintiff's Trial Exhibit 2 (the Answer) with Plaintiff's Trial Exhibit 22 (transcript of Defendant's
24 deposition); see also JPTS at ¶¶ 37-39, 50-56; Declaration of Marlene Fouche for Trial, Docket No. 34, ¶ 30;
25 Plaintiff's Trial Exhibit 16b (Theft Loss Claim) at [page(s)] UST000031-000033 (police report listing the
Defendant as the only victim), UST000079 (Meeks claimed to be sole owner of Undisclosed Assets in Proof
of Loss).

26 ⁸⁴ JPTS at ¶¶ 28, 36, 45, 51 and 52.

27 ⁸⁵ JPTS at ¶ 38.

28 ⁸⁶ JPTS at ¶ 53.

1 45. Meeks also initially denied in the Answer that he failed to disclose the Kino
2 Flo light kit, Sennheiser microphone, and Zoom portable recorder on Schedule A/B:
3 Property.⁸⁷ Specifically, Meeks averred in the Answer that he included the same as the
4 “Misc[ellaneous] electronics” listed in response to question 7 in Schedule A/B: Property.⁸⁸
5 Later, however, in his verified response to the requests for admission, Meeks admitted that
6 the only items included as “miscellaneous electronics” in response to question 7 in
7 Schedule A/B (Property) were a cell phone and personal computer.⁸⁹ At his deposition,
8 Meeks testified that he transferred these three items to his fiancée pre-petition, which is
9 consistent with his averments in his Answer.⁹⁰

10 46. However, Meeks has given contradictory testimony. For example, at his
11 deposition, Meeks testified that he gave items, the Louis Vuitton and Gucci Duffle Bags, to
12 his fiancée before he filed for bankruptcy, yet also testified that he still owned these items
13 on the day that he filed for bankruptcy.⁹¹

14 47. Meeks stipulated to the fact that the Undisclosed Assets were not disclosed
15 in the Bankruptcy Documents (i.e., the bankruptcy petition, schedules and statements) in
16 the Joint Pre-Trial Stipulation.⁹²

17 48. If Meeks had transferred all the Undisclosed Assets to his fiancée pre-
18 petition, then these items would have been transferred within four years of the Petition
19 Date.⁹³ None of these alleged transfers was disclosed at the Meeting of Creditors in
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21 ⁸⁷ JPTS at ¶ 39.

22 ⁸⁸ JPTS at ¶ 39.

23 ⁸⁹ JPTS at ¶ 46.

24 ⁹⁰ JPTS at ¶¶ 51-52; Plaintiff’s Trial Exhibit 22 (transcript of Meeks’s deposition) at 21:8-23:21.

25 ⁹¹ JPTS at ¶¶ 54-56; Plaintiff’s Trial Exhibit 22 (transcript of Meeks’s deposition) at 21:8-23:21.

26 ⁹² JPTS at ¶¶ 26 (the Engagement Ring and Insurance Policy), 38(a) and (b) (camera), 51-56 (Louis Vuitton
27 & Gucci duffle bags, camera, light kit, microphone, and portable recorder).

28 ⁹³ JPTS at ¶¶ 28 (Undisclosed Assets acquired by Meeks within 4 years of the Petition Date), 50-56 (discussing
when Undisclosed Assets were transferred).

1 response to the Chapter 7 Trustee's questions.⁹⁴ Similarly, of the Undisclosed Assets, the
2 Gucci duffle bag, the light kit, the microphone, and the portable recorder would have been
3 transferred within two years before the Petition Date.⁹⁵ These alleged transfers within two
4 years of the Petition Date were not disclosed in the SOFA in response to question 13.⁹⁶

5 49. When asked at his deposition why he did not disclose any alleged transfers
6 at the Meeting of Creditors in response to the Chapter 7 Trustee's questioning, Meeks
7 stated that he did not understand the word transfer to include "gifts."⁹⁷ As to the failure to
8 list any gifts in response to question 13 in the SOFA, Meeks has admitted in his trial brief
9 that he did not carefully review the Bankruptcy Documents and asserted that he had
10 ineffective representation from his attorney.⁹⁸

11 50. Based on the information provided by Meeks at the Meeting of Creditors and
12 before entry of Meeks's discharge, the Chapter 7 Trustee testified that he was not able to
13 perform an analysis of the Undisclosed Assets (or of the purported pre-petition transfers)
14 to arrive at a business judgment because the Undisclosed Assets (and transfers) were not
15 disclosed.⁹⁹

16 51. In his trial declaration, the Chapter 7 Trustee explained his rationale for
17 asking Meeks the question about asset transfers within four years of bankruptcy: "Another
18 question I asked the Debtor is whether he had transferred anything worth more than
19 \$5,000.00 in the four years before the bankruptcy. The Debtor answered no. This is a
20 routine question asked by me of all debtors to uncover possible assets for the estate.
21

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23 ⁹⁴ JPTS at ¶ 16; see *generally* Plaintiff's Trial Exhibit 16a (Meeting of Creditors transcript).

24 ⁹⁵ JPTS at ¶¶ 28 (listing when acquired by Defendant), 52 (discussing when transferred by Meeks), 54-56 (same).

25 ⁹⁶ JPTS at ¶ 16; see *generally* Plaintiff's Trial Exhibit 23 (Petition, Schedules & Statements).

26 ⁹⁷ JPTS at ¶ 58.

27 ⁹⁸ Trial Brief for Defendant Tarel Deshun Meeks, Docket No. 36 at 9.

28 ⁹⁹ Trustee's testimony at trial during re-direct examination.

1 When I have a case in which a Chapter 7 debtor has transferred more than \$5,000.00 in
2 the last four years, I evaluate whether it would be advantageous for the estate to pursue
3 an avoidance action.”¹⁰⁰

4 **EXEMPTIONS**

5 52. Meeks had testified at trial that his prior bankruptcy attorney did not provide
6 him with any counseling about asset protection or exemption planning.¹⁰¹ In his trial
7 declaration and testimony, Meeks stated that had he been counseled about asset
8 protection and exemption planning, he could have listed and protected the Undisclosed
9 Assets from the bankruptcy trustee through exemptions as the assets would have been
10 valued at resale value and would have been fully protected by exemptions.¹⁰²

11 53. After the trial, on July 12, 2022, Meeks filed an Amended Schedule A/B:
12 Property, and an Amended Schedule C: The Property You Claim as Exempt. On the
13 Amended Schedule A/B (Property), part 2, paragraph 7, Meeks listed as personal property
14 assets: “Misc. Electronics including microphone, Canon Mark IV camera, Kino Flo light kit,
15 zoom portable recorder” with a current value of \$4,329.00. In paragraph 11 of Amended
16 Schedule A/B: Property, Meeks listed, “Clothing and accessories including Louis Vuitton
17 duffle; Gucci Duffle bag” with a current value of \$3,700.00. In paragraph 12 of Amended
18 Schedule A/B (Property), Meeks listed an “Engagement ring” valued at \$10,000.¹⁰³

19 54. In Amended Schedule C: The Property You Claim as Exempt, Meeks
20 claimed: (1) that the value of “Misc. Electronics,” not including the Canon camera, was
21 \$3,329 and that property was exempt in that amount under California Code of Civil
22 Procedure § 703.140(b)(3); (2) that the value of the Canon camera was \$1,000.00 and
23 that property was exempt in that amount under California Code of Civil Procedure
24

25 ¹⁰⁰ Declaration of Brad D. Krasnoff for Trial, Docket No. 33, ¶ 4.

26 ¹⁰¹ Meeks Trial Testimony on redirect examination.

27 ¹⁰² Meeks Trial Declaration, ¶¶ 18, 22-24 and 34- 39; Meeks Trial Testimony on redirect examination.

28 ¹⁰³ Main Bankruptcy Case, No. 2:19-bk-23548, Docket No. 30.

1 § 703.140(b)(5); (3) the value of the Gucci Duffle Bag was \$1,200.00 and that property
2 was exempt in that amount under California Code of Civil Procedure § 703.140(b)(3); (4)
3 the value of the Louis Vuitton Duffle Bag was \$1,500.00 and that property was exempt in
4 that amount under California Code of Civil Procedure § 703.140(b)(3); and the value of the
5 Engagement Ring was \$10,000.00 and that property was exempt in the amount of
6 \$1,425.00 under California Code of Civil Procedure § 703.140(b)(4) and in the amount of
7 \$8,575.00 under California Code of Civil Procedure § 703.140(b)(5) for the engagement
8 ring.¹⁰⁴ No objection has been filed to Meeks's Amended Schedule A/B: Property and
9 Schedule C: The Property You Claim as Exempt.

10 **VALUE OF UNDISCLOSED ASSETS, TRANSFERS AND EXEMPTIONS**

11 55. The court gives effect to the stipulation of fact that the Undisclosed Assets
12 are property of the bankruptcy estate pursuant to Federal Rule of Civil Procedure 16(e),
13 the court finds that Meeks owned, but failed to disclose on his bankruptcy schedules,
14 specifically Schedule A/B: Property, the following Undisclosed Assets: (1) the Louis
15 Vuitton Duffle Bag; (2) the Gucci Duffle Bag; (3) the Canon Mark IV Camera; (4) the Kino
16 Flo Flight Kit; (5) the Sennheiser Microphone; (6) the Zoom Portable Recorder; and (7) the
17 Insurance Policy. However, as these items were property of the estate, they were not gifts
18 for purposes of question 13 on the SOFA or transfers within the meaning of the Chapter 7
19 Trustee's question to Meeks about transfers within four years before the Petition Date.

20 56. Although the stipulation of fact that the Undisclosed Assets are property of
21 the bankruptcy estate included the Engagement Ring, the court excludes the Engagement
22 Ring from the binding effect of Federal Rule of Civil Procedure 16(e) to prevent manifest
23 injustice in that the overwhelming and uncontested evidence in this adversary proceeding
24 shows that the ring was a prepetition gift to Meeks's fiancée and was not property of the
25 bankruptcy estate. Because the ring was not property of the bankruptcy estate, the court
26 finds that it is not an Undisclosed Asset for purposes of this adversary proceeding and that
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28 ¹⁰⁴ Main Bankruptcy Case, No. 2:19-bk-23548, Docket No. 30.

1 Meeks failed to disclose the gift as a transfer within four years before the Petition Date as
2 he was asked by the Chapter 7 Trustee at the meeting of creditors.

3 57. Based on the foregoing findings of fact and evidence in support thereof,
4 including the valuations of the owner, Meeks, in his trial declaration and his post-trial
5 amended schedules, which the court finds credible, the court finds that the current
6 reportable values as of the Petition Date for the Undisclosed Assets that Meeks owned,
7 but failed to disclose on his bankruptcy schedules, the following Undisclosed Assets: (1)
8 the Louis Vuitton Duffle Bag, \$1,500.00 based on Meeks's valuation; (2) the Gucci Duffle
9 Bag, \$1,200.00 based on Meeks's valuation; (3) the Canon Mark IV Camera, \$1,000.00
10 based on Meeks's valuation; (4) Kino Flo Flight Kit, \$900.00 based on Meeks's valuation;
11 (5) the Sennheiser Microphone, \$999.00 based on the price listed by Meeks on the Proof
12 of Loss in absence of other valuation testimony or evidence; (6) the Zoom Portable
13 Recorder, \$329.00 based on the price listed by Meeks on the Proof of Loss in the absence
14 of other valuation testimony or evidence; and (7) the Insurance Policy, \$0.00 based on the
15 court's review of the insurance policy premium statements in the absence of other
16 valuation testimony or evidence. The court further finds that the total current value of the
17 Undisclosed Assets as of the Petition Date was \$5,928.00. In so valuing the Undisclosed
18 Assets, the court does not adopt the approximate prices of these assets listed on Meeks's
19 Proof of Loss because the prices reflecting approximate purchase prices do not reflect the
20 current value of the assets as of the Petition Date, particularly since the assets were used,
21 not new, assets on the Petition Date, and considerably depreciated from their original
22 markup cost through daily use, and ordinary wear and tear.¹⁰⁵

23 58. For purposes of this adversary proceeding, based on the amended
24 schedules and claim of exemption by Meeks, the court finds that the Undisclosed Assets
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27 ¹⁰⁵ See *Layng v. Sgambati (In re Sgambati)*, 584 B.R. 865, (Bankr. E.D. Wis. 2018), citing, *In re Noland*, 13
28 B.R. 766, 771 (Bankr. D. Kan. 1981); *In re Bishop*, 420 B.R. 841, 855 (Bankr. N.D. Ala. 2009); and *In re Blanchard*, 201 B.R. 108, 129-130 (Bankr. E.D. Pa. 1996).

1 with a total value of \$5,928.00 are exempt pursuant to California Code of Civil Procedure §
2 703.140(b)(3) and (5).

3 59. Based on the foregoing findings of fact and evidence in support thereof, the
4 court finds that the value of the Engagement Ring at the time that Meeks gave it to his
5 fiancée, Heather Sanders, as a gift on February 2, 2017, was \$10,000.00. In valuing the
6 ring at \$10,000.00, the court has considered the purchase price of the ring at \$14,900.00
7 as full retail value, and applies as discount for fair market value of the ring. The court
8 disregards the so-called insurance appraisal value of \$50,000.00 as unsubstantiated. For
9 purposes of this adversary proceeding, the court would find that the value of the ring gifted
10 and transferred to Meeks's fiancée on February 2, 2017 was \$10,000.00. Moreover, the
11 evidence shows that Meeks inaccurately stated on the Proof of Loss filed with Farmers
12 Insurance that he owned the ring, having gifted it to his fiancée, and that the approximate
13 price of the ring on the Proof of Loss was \$50,000.00, the insurance appraisal value,
14 because the price he actually paid for the ring was \$14,900.00 and that he should have
15 stated the actual purchase price of the ring if he was claiming it as a loss.

16 60. Based on the foregoing findings of fact and evidence in support thereof, the
17 evidence shows that Meeks inaccurately stated on the Proof of Loss filed with Farmers
18 Insurance that the Louis Vuitton Duffle Bag was lost due to theft because he recovered it a
19 few days after the burglary, that Meeks either should not have claimed a loss for the Louis
20 Vuitton Duffle Bag or should have informed Farmers Insurance that he recovered it while
21 the insurance claim was pending, and that the only Undisclosed Assets for which he could
22 properly claimed a loss were: (1) the Gucci Duffle Bag; (2) the Canon Mark IV Camera; (3)
23 the Kino Flo Flight Kit; (4) the Sennheiser Microphone; and (5) the Zoom Portable
24 Recorder. While the court does not determine whether Meeks's Proof of Loss should have
25 been approved, the court determines what value a proper Proof of Loss might have had as
26 a postpetition asset of the estate. The Proof of Loss if properly stated would have
27 included: (1) the Gucci Duffle Bag valued at \$1,200.00; (2) the Canon Mark IV Camera
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1 valued at \$1,000.00; (3) the Kino Flo Flight Kit valued at \$900.00; (4) the Sennheiser
2 Microphone valued at \$999.00; and (5) the Zoom Portable Recorder valued at \$329.00.
3 Thus, the evidence shows that the total value of the loss of the Undisclosed Assets from
4 the burglary was \$4,428.00, and the court adopts as a factual finding this amount as the
5 potential value of the insurance claim to the bankruptcy estate. That is, if Meeks had
6 informed the Chapter 7 Trustee, the amount of \$4,428.00 was the potential value of the
7 insurance claim as a postpetition asset of the estate.

8 61. Based on the foregoing findings of fact and evidence in support thereof, the
9 court finds that Meeks in his Bankruptcy Documents signed under penalty of perjury failed
10 to disclose on Schedule A/B: Property by omission the following assets of the bankruptcy
11 estate: (1) the Louis Vuitton Duffle Bag valued at \$1,500.00; (2) the Gucci Duffle Bag
12 valued at \$1,200.00; (3) the Canon Mark IV Camera valued at \$1,000.00; (4) the Kino Flo
13 Flight Kit valued at \$900.00; (5) the Sennheiser Microphone valued at \$999.00; (5) the
14 Zoom Portable Recorder valued at \$329.00; and (6) the Insurance Policy valued at \$0.00.
15 The total value of these undisclosed assets is \$5,928.00.

16 62. Based on the foregoing findings of fact and evidence in support thereof, the
17 court, the court finds that Meeks in his Bankruptcy Documents signed under penalty of
18 perjury did not fail to disclose by omission alleged gifts in response to question 13 on the
19 SOFA the following assets: (1) the Engagement Ring valued at \$10,000.00; (2) the Louis
20 Vuitton Duffle Bag valued at \$1,500.00; (3) the Gucci Duffle Bag valued at \$1,200.00; (4)
21 the Canon Mark IV Camera valued at \$1,000.00; (5) the Kino Flo Flight Kit valued at
22 \$900.00; (6) the Sennheiser Microphone valued at \$999.00; and (7) the Zoom Portable
23 Recorder valued at \$329.00. Meeks did not fail to disclose his gift of the Engagement
24 Ring in response to question 13 of the SOFA because the gift was made on February 2,
25 2017 more than two years before the Petition Date on November 18, 2019. Meeks did not
26 fail to disclose alleged gifts of these other assets because as stipulated, the other assets
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28

1 were property of the bankruptcy estate owned by him on the Petition Date, and thus, were
2 not gifted.

3 63. Based on the foregoing findings of fact and evidence in support thereof, the
4 court finds that Meeks in his testimony given under penalty of perjury at the meeting of
5 creditors on December 19, 2019 give inaccurate answers to the questions of the Chapter 7
6 Trustee whether the home address in the Bankruptcy Documents was correct, whether he
7 (Meeks) read the Bankruptcy Documents very carefully before signing them, whether he
8 (Meeks) was familiar with the contents of the Bankruptcy Documents, whether everything
9 in the Bankruptcy Documents to the best of his (Meeks's) knowledge was true and correct,
10 whether there were any mistakes or anything left out, and whether he (Meeks) listed all of
11 his assets. Meeks answered yes when the evidence has shown that he should have
12 answered no.

13 64. Based on the foregoing findings of fact and evidence in support thereof, the
14 court finds that Meeks in his testimony given under penalty of perjury at the meeting of
15 creditors on December 19, 2019 failed to disclose by omission the transfer of the
16 Engagement Ring valued at \$10,000.00 that he made by gift to his fiancée, Heather
17 Sanders, on February 2, 2017 in response to the question of the Chapter 7 Trustee
18 whether he (Meeks) transferred anything worth more than \$5,000.00 to anyone over the
19 last four years. Meeks answered no when the evidence has shown that he should have
20 answered yes and disclosed the gift of the ring valued at \$10,000.00.

21 65. Based on the foregoing findings of fact and evidence in support thereof, the
22 court finds that Meeks failed to disclose to the Chapter 7 Trustee by omission that he had
23 acquired postpetition property of the bankruptcy estate in the insurance claim for the loss
24 of his assets which were stolen in the burglary of his residence on January 29, 2020 in the
25 form of the Proof of Loss that he filed with Farmers Insurance on or about February 10,
26 2020. The Proof of Loss if properly stated would have included: (1) the Gucci Duffle Bag
27 valued at \$1,200.00; (2) the Canon Mark IV Camera valued at \$1,000.00; (3) the Kino Flo
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1 Flight Kit valued at \$900.00; (4) the Sennheiser Microphone valued at \$999.00; and (5) the
2 Zoom Portable Recorder valued at \$329.00. The value of the loss of these assets was
3 \$4,428.00.

4 **SUBSTANTIAL PRE-PETITION DEBTS OWED BY MEEKS**

5 66. In his trial declaration, Meeks stated that at the time he filed for bankruptcy,
6 he owed a total of more than \$2.8 million in unsecured debts, primarily from lawsuits.¹⁰⁶

7 67. Meeks had listed on his Schedule E/F to his bankruptcy petition debts owed
8 to creditors, Chuon Guen Lee, a judgment creditor, F&S Investment Properties, a
9 judgment creditor, Goodman Mooney, LLP, a creditor, and Krongold Law Corp., a
10 judgment creditor.¹⁰⁷ However, Meeks only listed the amounts owed to these creditors on
11 Schedule F as “Unknown” and indicated that all of these claims were unliquidated and that
12 they were contingent and disputed as well, except for Krongold Law Corp.”¹⁰⁸

13 68. In his trial declaration, Meeks stated that the judgment against him in favor of
14 Chuon Guen Lee was in the amount of \$2,171,562.64.¹⁰⁹

15 69. In his trial declaration, Meeks stated that the judgment against him in favor
16 of F&S Investment Properties was in the amount of \$207,000.00.¹¹⁰

17 70. In his trial declaration, Meeks stated that he owes Goodman Mooney, LLP,
18 the amount of \$197,004.85.

19 71. In his trial declaration, Meeks stated that the judgment against him in favor
20 of Krongold Law Corp. was in the amount of \$184,307.97.¹¹¹

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23 ¹⁰⁶ Meeks Trial Declaration, ¶12.

24 ¹⁰⁷ Meeks Trial Declaration, ¶¶ 8-11, 42.

25 ¹⁰⁸ Plaintiff's Trial Exhibit 23 (Petition, Schedules & Statements), Schedule E/F: Creditors Who Have
26 Unsecured Claims.

27 ¹⁰⁹ Meeks Trial Declaration, ¶ 8.

28 ¹¹⁰ Meeks Trial Declaration, ¶ 9.

¹¹¹ Trial Declaration of Tarel Meeks, ¶ 11.

1 72. In his trial declaration, Meeks stated that he filed a Chapter 7 bankruptcy
2 case because he could never repay what he owed and “because my business partners left
3 a lot of debt on the table that was affecting me long-term with my family, that I knew I
4 couldn’t handle on my own.”¹¹²

5 73. In his trial testimony, Meeks stated that he disclosed the amounts of his
6 debts from these judgments to his bankruptcy attorney, but the amounts are not stated on
7 his bankruptcy petition, and he further stated that he did not recognize the version of the
8 bankruptcy petition that was actually filed, and that he had received a different version of
9 the petition listing the amounts of the judgment debts.¹¹³ The court does not find that this
10 testimony of Meeks that there was a different version of the bankruptcy petition that he
11 reviewed and signed to be credible because the actually filed petition has his signatures
12 on it. Meeks did not offer into evidence a different version of the petition listing the
13 judgment debt amounts, and he has not otherwise given a plausible explanation why the
14 bankruptcy attorney would have filed a different version of the petition from the one he
15 thought he was filing.

16 **MEEKS’S STATEMENTS OF INTENT**

17 74. Meeks was asked at his deposition why he listed the 712 North Orange
18 Grove address in Los Angeles on his bankruptcy petition in response to the question,
19 “Where you live,” rather than the Elvira Road address in Woodland Hills where he and his
20 family (including his fiancée and three minor children) actually live, and his answer was:
21 “That’s usually the address that I give for credit. That’s what’s on my credit application, so
22 I just make sure I use it all the time.”¹¹⁴ Right before Meeks answered that question, he
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26 ¹¹² Meeks Trial Declaration, ¶¶ 12-13.

27 ¹¹³ Meeks’s Trial Testimony on redirect examination.

28 ¹¹⁴ Plaintiff’s Trial Exhibit 22 (transcript of Meeks’s deposition) at 14:20-15:1.

1 was asked where he was living when he filed his bankruptcy petition, and he answered
2 Elvira Road in Woodland Hills.¹¹⁵

3 75. Meeks was asked at his deposition why he did not list the Louis Vuitton
4 Duffle Bag on his bankruptcy schedules, and his answer was: "I was unaware that I had to
5 list the Louis Vuitton duffel bag. I didn't think it would be worth anything to you guys."¹¹⁶

6 76. Meeks was asked at his deposition why he did not list the Gucci Duffle Bag
7 on his bankruptcy schedules, and his answer was: "Just like the Louis bag - - the Louis
8 bag and the Gucci bag, I actually gifted to my fiancée, and still I just felt like it wasn't worth
9 anything for me to put on there."¹¹⁷

10 77. Meeks was asked at his deposition why he did not list the Canon Mark IV
11 camera on his bankruptcy schedules, and his answer was: "Just along the lines with the
12 bags, either I really wasn't aware that I had to list all of these miscellaneous things. It was
13 only told to me about a car and stocks and bonds and stuff like that, but I don't even have
14 all that that I'm aware of."¹¹⁸

15 78. Meeks was asked at his deposition why he did not list the Kino Flo Light Kit
16 on his bankruptcy schedules, and his answer was: "I was just unaware that I had to, first,
17 list gifts that were ultimately for my fiancée. I was just unaware about the whole thing
18 about what I had to list and what I didn't have to list. And, again, I didn't think - - even if I
19 did list it, I didn't think it was worth anything."¹¹⁹

20 79. Meeks was asked at his deposition why he did not list the Sennheiser
21 microphone and the Zoom remote recorder on his bankruptcy schedules and whether it
22
23

24 ¹¹⁵ Plaintiff's Trial Exhibit 22 (transcript of Meeks's deposition) at 14:13-19.

25 ¹¹⁶ Plaintiff's Trial Exhibit 22 (transcript of Meeks's deposition) at 21:16-22.

26 ¹¹⁷ Plaintiff's Trial Exhibit 22 (transcript of Meeks's deposition) at 22:17-24.

27 ¹¹⁸ Plaintiff's Trial Exhibit 22 (transcript of Meeks's deposition) at 25:14-20.

28 ¹¹⁹ Plaintiff's Trial Exhibit 22 (transcript of Meeks's deposition) at 25:21-26:22.

1 was the same answer that he had given before as to the other items, and his answers
2 were: "Yes, sir" and "Yes." ¹²⁰

3 80. Meeks was asked at his deposition why on the Proof of Loss, the insurance
4 claim, he claimed the items as lost if he was contending that he had gifted the items to his
5 fiancée, Heather Sanders, and his testimony was as follows:

6 A: . . . But in the claim they asked me did I own them, so I assumed that everything
7 in my house I owned so I said yes.

8 Q: Because you had access to it or –

9 A: Yes.

10 Q: Okay. Is there any other understanding of the items that are in your home and
11 who owns what?

12 A: Other than - - no, that's the complete understanding that I had. Those are hers.
13 I have mine. But in the claim, I just figured, you know, whatever is there is our
14 property.

15 Q: How long have you been with Heather?

16 A: I've been with Heather for 11 years. Don't tell her that. We ain't married.

17 Q: Okay. So you've been with her for a long time?

18 A: Yeah.

19 Q: So there's a lot of hers, yours and ours going on; is that what that is?

20 A: There's a lot of that. ¹²¹

21 **CONCLUSIONS OF LAW**

22 Plaintiff United States Trustee commenced this adversary proceeding pursuant to
23 Federal Rule of Bankruptcy Procedure 7001(4) by filing his complaint to revoke the
24 discharge of Defendant Tarel Deshun Meeks under 11 U.S.C. §§ 727(d)(1) and (2). The
25

26
27 ¹²⁰ Plaintiff's Trial Exhibit 22 (transcript of Meeks's deposition) at 27:18-28:13.

28 ¹²¹ Plaintiff's Trial Exhibit 22 (transcript of Meeks's deposition) at 41:2-20.

1 United States Trustee has standing under 11 U.S.C. § 727(d) to bring this adversary
2 proceeding. JPTS, ¶ 6.

3 This court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§
4 157 and 1334. This adversary proceeding is a core proceeding within the meaning of 28
5 U.S.C. § 157(b)(2)(J). Venue is proper pursuant to 28 U.S.C. § 1409 as the bankruptcy
6 case is pending in this federal judicial district.

7 The United States Trustee timely filed the complaint, and service of process on
8 Meeks was proper. JPTS, ¶ 5.

9 The complaint alleges two claims for relief. The first claim for relief is under 11
10 U.S.C. § 727(d)(1), and the second claim for relief is under 11 U.S.C. § 727(d)(2). The
11 text of 11 U.S.C. §§ 727(d)(1) and (2) states as follows:

12 (d) On request of the trustee, a creditor, or the United States trustee, and
13 after notice and hearing, the court shall revoke a discharge granted under
14 subsection (a) of this section if—

15 (1) such discharge was obtained through the fraud of the debtor, and the
16 reporting party did not know of such fraud until after the granting of such
discharge;

17 (2) the debtor acquired property that is property of the estate, or became
18 entitled to acquire property that would be property of the estate, and
19 knowingly and fraudulently failed to report the acquisition of or entitlement
to such property, or to deliver or surrender such property to the trustee; . . .

20 As to his claim for relief under 11 U.S.C. § 727(d)(1) to revoke Meeks's discharge,
21 in the complaint, the United States Trustee alleges that Meeks obtained his discharge
22 through fraud based on his conduct, including but not limited to, his false oaths concerning
23 his ownership interest in the Undisclosed Assets, as well as his concealment of estate
24 property and transfers of the same from the Chapter 7 Trustee. Complaint, ¶¶ 1-38. The
25 United States Trustee further alleges that he had no knowledge of the false oaths or
26 concealment of estate property as of February 18, 2020, the last day objections to
27 Meeks's discharge could have been filed, and only after the discharge was entered did the
28

1 United States Trustee become aware of the false oaths and concealment of estate
2 property. *Id.*, ¶ 39.

3 As to his claim for relief under 11 U.S.C. § 727(d)(2) to revoke Meeks's discharge,
4 in the complaint, the United States Trustee alleges that Meeks knowingly and fraudulently
5 failed to deliver to the Chapter 7 Trustee the Undisclosed Assets based on his conduct,
6 including but not limited to, his false oaths concerning his ownership interest in the
7 Undisclosed Assets, as well as his concealment of estate property and transfers of the
8 same from the Chapter 7 Trustee. Complaint, ¶¶ 1-35, 41-44.

9 The burden of proof is on the United States Trustee to prove each of his claims
10 under 11 U.S.C. §§727(d)(1) and 727(d)(2) to revoke a bankruptcy discharge by a
11 preponderance of the evidence. *In re Searles*, 317 B.R. 368, 376 (9th Cir. BAP 2004)
12 (preponderance of the evidence standard for objections to discharge under 11 U.S.C. §
13 727), *citing inter alia*, *Grogan v. Garner*, 498 U.S. 279, 289 (1991); *see also*, *United States*
14 *Trustee v. Valencia (In re Guadarrama)*, 284 B.R. 463, 469 (C.D. Cal. 2002).

15 "The purpose of a [bankruptcy] discharge is to 'release an honest debtor from his
16 financial burdens and to facilitate the debtor's unencumbered fresh start'." *Bowman v. Belt*
17 *Valley Bank (In re Bowman)*, 173 B.R. 922, 924 (9th Cir. BAP 1994) (citations and internal
18 quotation marks omitted). Consequently, "[s]ection 727's [revocation] of discharge is
19 construed liberally in favor of the debtor and strictly against those objecting to discharge."
20 *In re Guadarrama*, 284 B.R. at 469, *citing and quoting*, *In re Adeeb*, 787 F.2d 1339, 1342
21 (9th Cir.1986) and *In re Devers*, 759 F.2d 751, 753 (9th Cir.1985) ("The statute is to be
22 construed liberally in favor of debtors and strictly against the objector.").

23 Revocation of discharge is an extraordinary remedy. *In re Bowman*, 173 B.R. at
24 924. This is because revocation of discharge in this bankruptcy case would render the
25 prepetition debts that the debtor, Meeks, seeks to discharge, including \$2.8 million in
26 judgment debts, nondischargeable in subsequent bankruptcy cases as well pursuant to 11
27 U.S.C. § 523(a)(10). *In re Klapp*, 706 F.2d 998, 999-1000 (9th Cir. 1983). As Meeks
28

1 argues, “[t]he taking of a Discharge is akin to capital punishment.” [Proposed] Findings of
2 Fact and Conclusions of Law after Trial for Defendant Tarel Deshun Meeks, Docket No. 43
3 at 10. That is, as Meeks argues, “Denial of a debtor’s discharge is an extraordinary
4 remedy ‘akin to financial capital punishment [and] . . . is reserved for the most egregious
5 misconduct by a debtor.” *Id.* at 4, *citing and quoting, In re Watkins*, 474 B.R. 625, 630
6 (Bankr. N.D. Ind. 2012) (citation omitted). However, as one court has stated, 11 U.S.C. §
7 523(a)(1) serves “the need to protect bankruptcy from itself, by preserving *denial* of
8 discharge through successive bankruptcies.” *In re Szafranski*, 147 B.R. 976, 981 (Bankr.
9 N.D. Okla. 1992), *citing and quoted in*, March and Shapiro, *Rutter Group California*
10 *Practice Guide: Bankruptcy*, ¶ 22:430 (online edition December 2022 update).

11 The United States Court of Appeals for the Fourth Circuit has examined the delicate
12 balance of policy considerations for determining whether a discharge should be denied
13 under 11 U.S.C. § 727 in *Robinson v. Worley*, 849 F.3d 577 (4th Cir. 2017), which this
14 court finds instructive and quotes at length:

15 The primary benefit of filing for bankruptcy under Chapter 7 is that discharge
16 offers the debtor “a fresh start unhampered by the pressure and
17 discouragement of preexisting debt.” *Farouki v. Emirates Bank Int’l, Ltd.*, 14
18 F.3d 244, 249 (4th Cir. 1994). This privilege, however, is reserved for the
19 “honest but unfortunate debtor.” *Grogan v. Garner*, 498 U.S. 279, 287, 111
20 S.Ct. 654, 112 L.Ed.2d 755 (1991). Section 727(a) of the Bankruptcy Code
provides that a bankruptcy court “shall grant the debtor a discharge,” but
then describes twelve scenarios where a debtor is not entitled to such relief.
11 U.S.C. § 727(a) (2012).

21 One of those exceptions, found in § 727(a)(4), provides that the court should
22 deny discharge if “the debtor knowingly and fraudulently, in or in connection
23 with the case[,] made a false oath or account.” 11 U.S.C. § 727(a)(4)(A). To
24 run afoul of this provision, “the debtor must have made a statement under
oath which he knew to be false, ... he must have made the statement
willfully, with intent to defraud,” and the statement “must have related to a
25 material matter.” *Williamson v. Fireman’s Fund Ins. Co.*, 828 F.2d 249, 251
(4th Cir. 1987).

26 The statute invites the bankruptcy court to strike a balance between two
27 competing objectives. At bottom, bankruptcy is an equitable remedy that
28 elevates “substantial justice” over “technical considerations.” *Pepper v.*
Litton, 308 U.S. 295, 305, 60 S.Ct. 238, 84 L.Ed. 281 (1939). Given the

1 harsh consequences of a denial of discharge, the statute is ordinarily
2 construed liberally in the debtor's favor. *Smith v. Jordan (In re Jordan)*, 521
3 F.3d 430, 433 (4th Cir. 2008). “The reasons for denying a discharge to a
4 bankrupt must be real and substantial, not merely technical and conjectural.”
5 *Boroff v. Tully (In re Tully)*, 818 F.2d 106, 110 (1st Cir. 1987). In this vein,
6 the provision—although a civil statute with civil sanctions—incorporates a
classic criminal law element of mens rea that involves an assessment of
whether the debtor made the false statement “knowingly and fraudulently,”
as opposed to carelessly. 11 U.S.C. § 727(a)(4)(A).

7 At the same time, the statute reflects the equitable doctrine of unclean
8 hands. The purpose of the false oath exception is to ensure that “those who
9 play fast and loose with their assets or with the reality of their affairs” do not
10 profit from the liberating shelter of the Bankruptcy Code. *Farouki*, 14 F.3d at
11 249. The implicit bargain for discharge is simple: candid, good faith
12 disclosure of the debtor's financial affairs in return for the freedom of a clean
13 slate. *In re Kestell*, 99 F.3d 146, 149 (4th Cir. 1996). The goal is to spare
14 trustees and creditors from having to undertake time-consuming
investigations into the existence of every asset or costly audits of property
whose value cannot be fixed at a glance. After all, “[t]he successful
functioning of the bankruptcy act hinges upon both the bankrupt's veracity
and his willingness to make a full disclosure.” *In re Mascolo*, 505 F.2d 274,
278 (1st Cir. 1974).

15 849 F.3d at 582-583

16 Against this legal backdrop, the court considers the contentions of the parties in
17 light of the evidence adduced at trial.

18 In his proposed findings of fact and conclusions of law, the United States Trustee
19 summarized his position as follows:

20 Meeks 1) failed to disclose the Undisclosed Assets in the Bankruptcy
21 Documents; 2) failed to disclose the Theft Loss Claim to the Trustee; 3)
22 falsely testified at his Meeting of Creditors that he had not transferred more
23 than \$5,000.00 in value over the last four years; and 4) falsely testified at his
24 Meeting of Creditors that everything in his Bankruptcy Documents was true
25 and correct. The preponderance of the evidence also shows that Meeks's
conduct was done knowingly and fraudulently as demonstrated by multiple
false oaths, his pattern of reckless disregard for the truth, and his
inconsistent testimony throughout the Adversary Proceeding, which was a
moving target from the start.

26 Plaintiff's Proposed Findings of Fact and Conclusions of Law, Docket No. 42 at 26.

27 In his proposed findings of fact and conclusions of law, in opposition to the position
28 of the United States Trustee, Meeks summarized his position as follows:

1 Tarel Deshun Meeks (“Meeks”) asserts that based upon the facts
2 presented at trial, the United States Trustee (“UST”) failed, as a matter of law
3 to prove that Mr. Meek[s]’s discharge should be revoked under any cause of
4 action set forth in t their Complaint. [Exhibit 1] At trial, the Court surmised
5 one possible theory; that Mr. Meeks made false oaths in connection with his
6 bankruptcy case per 11 U.S.C §727(d)(1), which requires a finding of fraud
7 pursuant to 11 U.S.C §727(a)(4).

8 Plaintiff failed to meet its burden of proof because Mr. Meeks lacked
9 the requisite knowledge or intent to conceal assets or knowingly made false
10 statements either in his petition, schedules or statement of financial affairs
11 with actual intent to defraud his creditors or this Court. Mr. Meeks holds in
12 his possession, a right to his wildcard exemption, which he did not use. This
13 fact alone negates fraud. This material fact, coupled with the distinction
14 between “insurance replacement costs,” and “fair market value” for
15 liquidation purposes in bankruptcy explains that Mr. Meeks could have
16 included all of the alleged undisclosed assets as claimed by the Plaintiff in its
17 Complaint and they still would not have exceeded his exemptions, which
18 would be insufficient to deny this Debtor his discharge.

19 [Proposed] Findings of Fact and Conclusions of Law After Trial for Defendant Tarel
20 Deshun Meeks, Docket No. 43 at 14-15.

21 **First Claim for Relief under 11 U.S.C. § 727(d)(1)**

22 11 U.S.C. § 727(d)(1) provides that the court shall revoke a discharge if “such
23 discharge was obtained through the fraud of the debtor, and the requesting party did not
24 know of such fraud until after the granting of such discharge.” To prove his claim under 11
25 U.S.C. § 727(d)(1), the United States Trustee must show by a preponderance of the
26 evidence that (1) the debtor obtained the discharge through fraud; and (2) the creditor or
27 trustee seeking to revoke the discharge did not learn of the fraud until after the discharge
28 was granted. *In re Gilliam*, No. CC-11-1248-MkHKi, 2012 WL 1191854 (9th Cir. BAP Apr.
6, 2012), slip op. at *10, *cited with approval*, *Jones v. United States Trustee, Eugene*, 736
F.3d 897, 899-900 (9th Cir. 2013).

29 Citing *Yules v. Gillis (In re Gillis)*, 403 B.R. 137 (1st Cir. BAP 2009), Meeks argues
30 that there are three elements to a cause of action to revoke a discharge under 11 U.S.C. §
727(d)(1). [Proposed] Findings of Fact and Conclusions of Law after Trial for Defendant
Tarel Deshun Meeks, Docket No. 43 at 4. The Bankruptcy Appellate Panel of the First
Circuit in *In re Gillis* stated:

1 Section 727(d)(1) allows a court to revoke discharge if the following elements
2 have been satisfied: (1) the debtor obtained the discharge through fraud; (2)
3 the creditor possessed no knowledge of the debtor's fraud prior to the
4 granting of the discharge; and (3) the fraud, if known, would have resulted in
5 denial of discharge under § 727(a). See 11 U.S.C. § 727(d)(1).

6 403 B.R. at 144-145. The court recognizes that this statement of the standard listing three
7 elements to establish a claim under 11 U.S.C. § 727(d)(1) by the Bankruptcy Appellate
8 Panel of the First Circuit is one formulation of the standard, but it is not the formulation that
9 is used in the Ninth Circuit, where this case is situated. The court follows the formulation
10 of the standard of two elements to establish a claim under 11 U.S.C. § 727(d)(1) as
11 articulated by the Bankruptcy Appellate Panel of the Ninth Circuit in *In re Gillam* as
12 approved by the Ninth Circuit in *Jones v. United States Trustee, Eugene* as stated above
13 because the Ninth Circuit's formulation is controlling whereas the out of circuit formulation
14 by the First Circuit Bankruptcy Appellate Panel is not.

15 Regarding the first element of a claim under 11 U.S.C. § 727(d)(1), the United
16 States Court of Appeals for the Ninth Circuit (the "Ninth Circuit") has stated that fraud must
17 be a "but for" cause of the discharge. *In re Nielsen*, 383 F.3d 922, 925 (9th Cir. 2004)
18 ("[Plaintiff] must at least show that, but for the fraud, the discharge would not have been
19 granted."); accord, *Jones v. United States Trustee, Eugene*, 736 F.3d at 900. Evidence of
20 some conduct that under 11 U.S.C. § 727(a) would have been sufficient grounds for
21 denying a discharge in the first instance demonstrates fraud in the procurement of a
22 discharge. *Jones v. United States Trustee, Eugene*, 736 F.3d at 900 (citation omitted).
23 The fraud must be material, meaning the fraud "must have been sufficient to cause the
24 discharge to be refused if it were known at the time of discharge." *Id.*

25 As the Ninth Circuit observed with approval in *Jones v. United States Trustee,*
26 *Eugene*, the Bankruptcy Appellate Panel "has repeatedly held that a discharge may be
27 revoked upon a showing that the debtor made false oaths that would have caused the
28 bankruptcy court to deny the discharge under Section 727(a) had the fraud been timely
known." *Jones v. United States Trustee, Eugene*, 736 F.3d at 900, citing, *In re Gilliam*,
No. CC-11-1248-MkHKi, 2012 WL 1191854, at *10 (9th Cir. BAP Apr. 6, 2012) ("Thus, a

1 finding of fraud in the procurement requires evidence of some conduct that under § 727(a)
2 would have been sufficient grounds for denying a discharge in the first instance, such as
3 the debtor knowingly and fraudulently making a false oath in connection with the
4 bankruptcy case.”); and *In re Wahl*, No. CC-08-1218-MkPaD, 2009 WL 7751412, at *5 (9th
5 Cir. BAP June 22, 2009) (“[T]he trustee established that Mr. Wahl should not retain his
6 discharge under the standard for denial of a discharge.”). In this regard, the Ninth Circuit
7 also cited with approval the holding in *In re Guadarrama*, 284 B.R. 463, 469 (C.D. Cal.
8 2002) (“Thus, to secure revocation of Valencia’s discharge, the Trustee was required to
9 show that the fraud in which Valencia engaged would have caused the bankruptcy court to
10 deny her a discharge under § 727(a)(4)(A) had it been known at the time.”). *Id.*

11 As the Ninth Circuit recognized in *Jones v. United States Trustee, Eugene*, a
12 discharge may be revoked under 11 U.S.C. § 727(d)(1) that would have resulted in a
13 denial of discharge for making of a false oath under 11 U.S.C. § 727(a)(4) if such conduct
14 had been known before discharge had been entered based on the standard set forth in *In*
15 *re Retz*, 606 F.3d 1189, 1197 (9th Cir. 2010)). In *Retz*, the Ninth Circuit stated that to
16 prove a claim under 11 U.S.C. § 727(a)(4), “a plaintiff must show, by a preponderance of
17 the evidence, that: ‘(1) the debtor made a false oath in connection with the case; (2) the
18 oath related to a material fact; (3) the oath was made knowingly; and (4) the oath was
19 made fraudulently.’” 606 F.3d at 1197, *citing and quoting, Roberts v. Erhard (In re*
20 *Roberts)*, 331 B.R. 876, 882 (9th Cir. BAP 2005), *aff’d*, 241 Fed.Appx. 420 (9th Cir. 2007).
21 This is what the United States Trustee has alleged in his complaint that Meeks made
22 multiple false oaths that would have supported a claim under 11 U.S.C. § 727(a)(4) had
23 such false oaths been known by him before discharge.

24 As found in *Retz*, the first element of a claim under 11 U.S.C. § 727(a)(4)(A) that
25 the debtor made a false oath in connection with the bankruptcy case was met when “[t]he
26 bankruptcy court found numerous errors and omissions in Retz’s Schedules and SOFA,
27 which can qualify as false oaths under § 727(a)(4)(A).” 606 F.3d at 1197, *citing, Khalili v.*
28

1 *Developers Surety & Indemnity Co. (In re Khalil)*, 379 B.R. 163, 172 (9th Cir. BAP 2007),
2 *aff'd*, 578 F.3d 1167 (9th Cir. 2009). In *Khalil*, the Bankruptcy Appellate Panel of the Ninth
3 Circuit had stated: “A false statement or an omission in the debtor's bankruptcy schedules
4 or statement of financial affairs can constitute a false oath.” 379 B.R. at 172, *citing, In re*
5 *Searles*, 317 B.R. at 377; and *In re Roberts*, 331 B.R. at 882. As to a debtor's bankruptcy
6 schedules and statements, the Bankruptcy Appellate Panel of the Ninth Circuit has also
7 recognized that the undervaluation of an asset on the bankruptcy schedules or statement
8 of financial affairs can constitute a false oath. *Weiner v. Percy Settles & Lawson, Inc. (In*
9 *re Weiner)*, 208 B.R. 69, 71-72 (9th Cir. BAP 1997) (denying discharge on the basis of
10 undervalued jewelry), *reversed on other grounds*, 161 F.3d 1216 (9th Cir. 1988).

11 The United States Trustee contends that Meeks made multiple false oaths in his
12 responses to questions on his bankruptcy schedules which failed to list the Undisclosed
13 Assets, in his responses to questions on his statement of financial affairs which failed to
14 list gifts that he made within two years of the petition date and in his testimony at the
15 meeting of creditors in which he gave incorrect answers to the questions asked by the
16 Chapter 7 Trustee whether he reviewed the petition before filing it and whether he made
17 any transfers within four years of the petition date. All of these responses to questions on
18 the bankruptcy schedules and statement of financial affairs and responses in oral
19 testimony at the meeting of creditors were statements under penalty of perjury and thus
20 statements under oath.

21 Regarding his claim under 11 U.S.C. § 727(d)(1), the United States Trustee
22 contends that Meeks committed fraud in the procurement of his discharge by (1) failing to
23 disclose the Undisclosed Assets in the Bankruptcy Documents; (2) failing to disclose the
24 Theft Loss Claim to the Trustee; (3) testifying at his Meeting of Creditors that he had not
25 transferred anything worth more than \$5,000.00 in value over the last four years; and (4)
26 testifying at his Meeting of Creditors that everything in his Bankruptcy Documents was true
27 and correct. The United States Trustee further contends that Meeks made multiple false
28

1 oaths, whether the court believes Meeks's claims that he transferred some, or all, of the
2 Undisclosed Assets to his fiancée pre-petition.

3 Regarding the first allegation of the United States Trustee that Meeks failed to
4 disclose the Undisclosed Assets in the Bankruptcy Documents, that is, the United States
5 Trustee alleges that Meeks made false oaths on his bankruptcy schedules in failing to
6 disclose the Undisclosed Assets on the Bankruptcy Documents. As discussed in the
7 findings of fact, the term "Undisclosed Assets" refers to the Engagement Ring, the Louis
8 Vuitton Duffle Bag, the Gucci Duffle Bag, the Canon Mark IV camera, the Sennheiser
9 microphone, the Kino Flo flight kit and the Zoom portable recorder.

10 According to the United States Trustee, as shown in the Bankruptcy Documents
11 filed in the Bankruptcy Case, Meeks did not disclose any of the Undisclosed Assets. That
12 is, the United States Trustee contends that these assets were not disclosed on Schedule
13 A/B: Property in the Meeks's bankruptcy petition.

14 Meeks in the joint pretrial stipulation in this adversary proceeding stipulated to the
15 fact that the Undisclosed Assets are property of the bankruptcy estate, which stipulation is
16 consistent with the representations that he was the owner of the Undisclosed Assets on
17 the insurance proof of loss, but is inconsistent with not listing these assets in his
18 representations on his bankruptcy petition and schedules, which required that he disclose
19 the assets that he owned on the petition date.

20 Meeks did not list the Undisclosed Assets on his bankruptcy petition and schedules
21 filed on November 18, 2019 as he admitted in the Joint Pre-Trial Stipulation and at his
22 deposition, that is, these items were not disclosed on his Schedule A/B: Property under
23 the appropriate categories of household goods, miscellaneous electronics, jewelry or any
24 other property, which were very explicit.

25 The Engagement Ring was not listed on Schedule A/B: Property as Meeks
26 answered no to item no. 12 on Schedule A/B: Property inquiring about jewelry.

1 The Louis Vuitton Duffle Bag was not listed on Schedule A/B: Property as Meeks
2 answered yes, only listing "Furniture" valued at \$800.00, to item no. 6 on Schedule A/B:
3 Property inquiring about household goods and furnishings, answered no to other
4 categories that could have been used for this asset, that is, item no. 8 on Schedule A/B:
5 Property inquiring about collectibles of value, item no. 8 on Schedule A/B: Property
6 inquiring about equipment for sports and hobbies, and item no. 14 on Schedule A/B:
7 Property inquiring about any other personal and household items you did not already list.

8 The Gucci Duffle Bag was not listed on Schedule A/B: Property as Meeks answered
9 yes, only listing "Furniture" valued at \$800.00, to item no. 6 on Schedule A/B: Property
10 inquiring about household goods and furnishings, answered no to other categories that
11 could have been used for this asset, that is, item no. 8 on Schedule A/B: Property inquiring
12 about collectibles of value, item no. 9 on Schedule A/B: Property inquiring about
13 equipment for sports and hobbies, and item no. 14 on Schedule A/B: Property inquiring
14 about any other personal and household items you did not already list.

15 The Canon Mark IV camera was not listed on Schedule A/B: Property as Meeks
16 answered yes, only listing "Misc. Electronics" valued at \$1,000.00, to item no. 7 on
17 Schedule A/B (Property) inquiring about electronics, admitting at his deposition that this
18 asset was not included in "Misc. Electronics," which referred only to a cell phone and a
19 computer, answered no to the other category that could have been used for this asset,
20 that is, item no. 14 on Schedule A/B: Property inquiring about any other personal and
21 household items you did not already list.

22 The Sennheiser microphone was not listed on Schedule A/B: Property as Meeks
23 answered yes, only listing "Misc. Electronics" valued at \$1,000.00, to item no. 7 on
24 Schedule A/B (Property) inquiring about electronics, admitting at his deposition that this
25 asset was not included in "Misc. Electronics," answered no to the other category that could
26 have been used for this asset, that is, item no. 14 on Schedule A/B: Property inquiring
27 about any other personal and household items you did not already list.
28

1 The Kino Flo flight kit was not listed on Schedule A/B: Property as Meeks answered
2 yes, only listing "Misc. Electronics" valued at \$1,000.00, to item no. 7 on Schedule A/B:
3 Property inquiring about electronics, admitting at his deposition that this asset was not
4 included in "Misc. Electronics," answered no to the other category that could have been
5 used for this asset, that is, item no. 14 on Schedule A/B: Property inquiring about any
6 other personal and household items you did not already list.

7 The Zoom portable recorder was not listed on Schedule A/B: Property as Meeks
8 answered yes, only listing "Misc. Electronics" valued at \$1,000.00, to item no. 7 on
9 Schedule A/B: Property inquiring about electronics, admitting at his deposition that this
10 asset was not included in "Misc. Electronics," answered no to the other category that could
11 have been used for this asset, that is, item no. 14 on Schedule A/B: Property inquiring
12 about any other personal and household items you did not already list.

13 The renter's insurance policy was not listed on Schedule A/B: Property as Meeks
14 answered yes, only listing "Life insurance cash value" valued at \$704.00, to item no. 31 on
15 Schedule A/B: Property inquiring about interests in insurance policies, specifically listing
16 renter's insurance as an example of such an interest, answered no to the other category
17 that could have been used for this asset, that is, item no. 35 on Schedule A/B: Property
18 inquiring about any financial assets you did not already list, and admitting by stipulation in
19 the Joint Pre-Trial Stipulation that the renter's insurance policy was not included on
20 Schedule A/B: Property.

21 In his trial testimony and in his responses to the United States Trustee's discovery
22 requests, Meeks stated that he gifted the Undisclosed Assets to his fiancée prepetition. If
23 Meeks had given the Undisclosed Assets to his fiancée prepetition as he testified, he
24 would not have owned them on the petition date, and those assets would not be property
25 of the bankruptcy estate under 11 U.S.C. § 541. However, in January 2020, Meeks filed a
26 proof of loss with his insurer, Farmers Insurance, claiming as the owner of the Undisclosed
27 Assets an insurance loss of the value of Undisclosed Assets on grounds that these assets
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1 were stolen from him in a residential burglary. Meeks's statements on the insurance proof
2 of loss that he was the owner of the Undisclosed Assets are inconsistent with his
3 nondisclosure of the Undisclosed Assets on his bankruptcy petition and schedule.

4 Question 13 on Meeks's statement of financial affairs required that he list gifts
5 made within two years of the petition date, and he answered the question on the
6 statement of financial affairs that there were no such gifts. This statement is inconsistent
7 with Meeks's trial testimony and discovery responses that he gifted some of the
8 Undisclosed Assets to his fiancée within two years of the petition date.

9 Meeks also gave sworn testimony at his meeting of creditors at which the Chapter 7
10 Trustee asked Meeks whether he made any transfers within four years of the petition date,
11 and Meeks answered no. However, Meeks testified at trial that he made gifts of some of
12 the Undisclosed Assets, the engagement ring in particular, to his fiancée within the four-
13 year time period.

14 At the meeting of creditors, the Chapter 7 Trustee also asked Meeks questions
15 whether his home address was correct, whether he had carefully reviewed his bankruptcy
16 petition and schedules, whether he was familiar with their contents, whether everything in
17 his bankruptcy papers were true and correct, whether there were any mistakes or anything
18 left out in these papers and whether he listed all of his assets, and Meeks answered yes to
19 the trustee's questions. However, Meeks subsequently admitted at his deposition and in
20 his trial testimony that his answers to the trustee's questions were not correct. Meeks's
21 answer to the Chapter 7 Trustee's question that his home address was North Orange
22 Grove as stated in his bankruptcy petition, and not Elvira Road was incorrect as he lived
23 for the most part (i.e., 98% of the time) at his Elvira Road residence. Meeks admitted in
24 discovery or at trial that he had not reviewed the petition and schedules carefully, that not
25 everything in his bankruptcy papers was true and correct and that he did not list all of his
26 assets, including the Louis Vuitton and Gucci duffle bags, the Canon Mark IV camera, the
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1 Kino Flo flight kit, the Sennheiser microphone, the Zoom portable recorder and the renter's
2 insurance policy.

3 Whether Meeks made false oaths depends on whether the court gives effect to his
4 stipulation that the Undisclosed Assets are property of the bankruptcy estate or gives
5 credence to his trial testimony that he gifted them to his fiancée. After hearing Meeks's
6 testimony that he gifted the Undisclosed Assets to his fiancée, the court was inclined to
7 give credence to it. In his proposed findings of fact and conclusions of law, Meeks
8 proposed that the court find as follows:

9
10 Plaintiff argues that all of the undisclosed assets are property of the
11 estate. The Court accepts Defendant's testimony as credible, that he had
12 given the alleged undisclosed assets to his fiancé[e] Heather Sanders prior
13 to his contemplation of filing for bankruptcy. This fact removes many of the
14 Plaintiff's alleged undisclosed assets that are outside the scope of the statute
15 and therefore beyond the scope of this court as follows:

16 Under the Statement of Financial Affairs, Question #13, which states,
17 "Within 2 years before you filed for bankruptcy, did you give any gifts with a
18 total value of more than \$600.00 per person?" In fact, the following assets
19 are clearly outside the scope of the bankruptcy estate inquiry here: (1) the
20 engagement ring purchased on January 23, 2017 and given to Heather
21 Sanders upon a proposal of marriage on or about February 2, 2017
22 (Heather's Birthday); (2) Louis Vuitton duffle bag was [a] gift to Defendant on
23 his birthday [on] June 17, 2016 and was immediately re-gifted to Heather
24 Sanders; (3) Canon Mark IV Camera purchased on August 17, 2017 and
25 immediately gifted to Heather Sanders; and (4) the portable recorder, which
26 was of no value listed at \$329.00. As to these undisclosed assets the court
27 finds there can be no fraud where the Court has no authority to act.

28 [Proposed] Findings of Fact and Conclusions of Law after Trial for Defendant Tarel
Deshun Meeks, Docket No. 43 at 5-6.¹²²

¹²² Because the court noted the inconsistency between Meeks's trial testimony that he gifted the Undisclosed Assets to his fiancée and his stipulation that the assets were property of the bankruptcy estate, the court requested briefing from the parties as to the effect of the stipulated fact approved by the final pretrial order. Meeks's response was as follows:

However, due to the de minimus liquidation values of the undisclosed assets, there appears to be no manifest injustice by following paragraph #36 of the JPTS as the liquidation value of the undisclosed assets taken in their entirety could have been exempted and thus would have been of no value to the estate even if they had come to light during the Debtor's case. Defendant's liquidation values remain undisputed. Defendant understands that this Court will give proper weight to the evidence presented. As the court in *Malhiot* opined, A pretrial order will be modified only to prevent manifest

1 However, the court cannot adopt this finding of fact proposed by Meeks because he
2 had stipulated to the fact that the Undisclosed Assets were property of the bankruptcy
3 estate, which was adopted by the final pretrial order, and the court must give effect to the
4 stipulation, though with one exception, because Federal Rule of Civil Procedure 16(e),
5 made applicable in this adversary proceeding by Federal Rule of Bankruptcy Procedure
6 7016, provides that the court's order issued after the final pretrial conference order
7 approving the Joint Pre-Trial Stipulation may not be modified unless there is manifest
8 injustice, and thus the factual stipulations in the Joint Pre-Trial Stipulation approved in the
9 final pretrial order are binding on the parties. There is no manifest injustice in giving effect
10 to the stipulation, except as the court determines as to the engagement ring as discussed
11 below. Thus, the court finds that the Undisclosed Assets were property of the bankruptcy
12 estate, and Meeks should have disclosed them on his bankruptcy petition and schedules
13 because each item was covered by categories of assets on Schedule A/B: Property, and
14 he made false oaths on his petition and schedules when he failed to disclose them. That
15 is, Meeks made false oaths on his Schedule A/B: Property by omission when he failed to
16 disclose all of his assets, including the Louis Vuitton Duffle Bag (category of household
17 goods and furnishings or category on Schedule A/B: Property, or category of equipment
18 for sports and hobbies, or category of "any other personal and household items you did
19 not already list"), the Gucci Duffle Bag (same categories), the Canon Mark IV camera
20 (category of electronics, or category of "any other personal and household items you did
21

22 _____
23 injustice. Fed.R.Civ.P. 16(e). Even if there had been an error, amendment of the pretrial order would
24 not have changed the evidence that was before the trustees and therefore would not have affected
25 the outcome of the action. The district court's denial of the Malhiots' motion to amend the pretrial
26 order was proper. The same analysis applies to the district court's denial of the Malhiots' motion for
27 a new trial. A new trial is warranted only when an error has caused substantial harm to the losing
28 party. Fed.R.Civ.P. 61. No such error existed here." See *Malhiot v. Southern California Retail Clerks*
Union, 735 F.2d 1133 (9th Cir. 1984) Therefore, Defendant does not dispute the inclusion of the
Louis Vuitton bag with a liquidated value of \$1,500.00; the Camera valued at \$1,000.00; and the
Recorder valued at \$329.00 so long as their inclusion does not cause substantial harm to Defendant
and does not create manifest injustice.

28 Defendant's Response to Tentative Ruling on Issue Whether the Alleged Undisclosed Assets Are Not
Property of the Estate Due to Gifts, Docket No. 48 at 2, filed on June 23, 2022.

1 not already list”), the Sennheiser microphone (same categories), the Kino Flo Flight Kit
2 (same categories), the Zoom remote recorder (same categories) and the renter’s
3 insurance policy, or the Insurance Policy (category of insurance, or category of “any other
4 personal and household items you did not already list”).

5 Meeks contends that he did not know what assets to list on his bankruptcy petition
6 and schedules and that he was not told what to list. The court finds such contentions to
7 lack merit because the forms that Meeks need to fill out to file his bankruptcy petition and
8 schedules instructed him to “[be as complete and accurate as possible]” and were very
9 explicit in listing what assets in specific categories that had to be listed and disclosed, and
10 Meeks knew that what assets he had to list and disclosed him because he listed and
11 disclosed assets in the same categories as the assets not listed and disclosed. That is,
12 Meeks listed and disclosed electronics, a cell phone and a computer, but not the camera,
13 microphone, flight kit and recorder. He listed and disclosed household goods and
14 furnishings, furniture, but not the duffle bags. He listed and disclosed interests in
15 insurance policies, the cash value of his life insurance, but not the renter’s insurance.

16 The lone exception is as to the Engagement Ring because there is overwhelming
17 and uncontroverted evidence in Meeks’s testimony and documentary evidence of the
18 purchase of the ring that he gave it to his fiancée as an engagement gift in 2017, and thus,
19 the nondisclosure of the ring as an asset on the bankruptcy petition and schedules was
20 not a false oath. Regarding the Engagement Ring, the court modifies its order issued after
21 the final pretrial conference approving the Joint Pre-Trial Stipulation to determine that the
22 ring, one of the Undisclosed Assets, is not property of the bankruptcy estate because the
23 uncontroverted evidence shows that it was previously gifted to Meeks’s fiancée, Heather
24 Sanders. Federal Rule of Civil Procedure 16(e), which is applicable to this adversary
25 proceeding pursuant to Federal Rule of Bankruptcy Procedure 7016, provides: “The court
26 may modify the order issued after a final pretrial conference only to prevent manifest
27 injustice.” “A pretrial order governs the subsequent course of the action unless modified to
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1 prevent manifest injustice.” *Bristol Locknut Co. v. SPS Technologies, Inc.* 677 F.2d 1277,
2 1279 (9th Cir. 1982), *citing*, *Higgins v. Harden*, 644 F.2d 1348, 1353 (9th Cir. 1981).

3 However, as recognized in *Bristol Locknut Co. v. SPS Technologies, Inc.*, the trial court
4 has discretion to depart from a pretrial order that was mistaken. 677 F.2d at 1280.

5 “Stipulations entered into at the pretrial conference that are embodied in the pretrial
6 order are binding at trial.” Philips and Stevenson, *Rutter Group Practice Guide: Federal*
7 *Civil Procedure Before Trial*, California & Ninth Circuit Edition, ¶ 15:66 (online edition, April
8 2022 update), *citing inter alia*, *Malhiot v. Southern Calif. Retail Clerks Union*, 735 F.2d
9 1133, 1137 (9th Cir. 1984); *but see Bristol Locknut Co. v. SPS Technologies, Inc.*, 677
10 F.2d at 1280 (trial court properly departed from pretrial order which was mistaken). The
11 stipulated fact that the Undisclosed Assets are property of the bankruptcy estate as to the
12 engagement ring is contravened by the uncontroverted evidence that Meeks gave the ring
13 to his fiancée, Heather Sanders, and proposed marriage, and she accepted the proposal
14 and the ring, and there is no evidence that the engagement has been terminated. Thus,
15 the stipulation as to the ring that it is property of the estate is contrary to the evidence at
16 trial and should be disregarded as a mistake.

17 As stated by the Ninth Circuit in *United States v. Alcaraz-Garcia*, 79 F.3d 769 (9th
18 Cir. 1996), “[i]n California, a gift is “a transfer of personal property, made voluntarily, and
19 without consideration.” *Id.* at 775, *citing and quoting*, California Civil Code § 1146.
20 According to the Ninth Circuit, under California law, the elements of a gift are: (1)
21 competency of the donor to contract; (2) a voluntary intent on the part of the donor to
22 make a gift; (3) delivery, either actual or symbolic; (4) acceptance, actual or imputed; (5)
23 complete divestment of control by the donor; and (6) lack of consideration for the gift. *Id.*,
24 *citing inter alia*, *Jaffe v. Carroll*, 35 Cal.App.3d 53, 59, 110 Cal.Rptr. 435 (1973) and
25 *Turnbull v. Thomsen*, 171 Cal.App.2d 779, 783, 341 P.2d 69 (1959). A gift in
26 contemplation of marriage, such as an engagement ring, is still a gift as recognized by
27 statutory law as set forth in California Civil Code § 1509, which provides: “Where either
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1 party to a contemplated marriage in this State makes a gift of money or property to the
2 other on the basis or assumption that the marriage will take place, in the event that the
3 donee refuses to enter into the marriage as contemplated or that it is given up by mutual
4 consent, the donor may recover such gift or such part of its value as may, under all of the
5 circumstances of the case, be found by a court or jury to be just.” That is, such a gift is still
6 a gift, but if the donee can bring an action to recover the gift if the donee refuses to enter
7 into marriage as contemplated or the parties give up the contemplated marriage by mutual
8 consent.

9 The evidence based on Meeks’ trial testimony is undisputed that Meeks made a gift
10 of the engagement ring to his fiancée, Heather Sanders, when he proposed marriage and
11 she accepted, that is, his gift of the ring was a transfer of personal property, made
12 voluntarily, and without consideration within the meaning of California Civil Code § 1146.
13 Based on this evidence, the court can infer the elements of gift are met regarding the ring,
14 that is, Meeks had the competency of a donor to contract, he had the voluntary intent as a
15 donor to make the gift to his fiancée, he delivered the ring as a gift to her, she accepted
16 the gift, he divested himself of control by giving her the ring and she gave no consideration
17 for the ring. Given this uncontroverted evidence, the court modifies the joint pretrial order
18 and excludes the engagement ring and its value from the Undisclosed Assets to avoid
19 manifest injustice. Thus, the court finds that Meeks did not make a false oath in failing to
20 list the ring on Schedule A/B: Property.

21 However, Meeks’s answer to the Chapter 7 Trustee’s question whether Meeks had
22 made any transfers of assets within four years of the petition date was a false oath. Based
23 on Meeks’s testimony that he gave the engagement ring to his fiancée in 2017, this was a
24 transfer within four years of the petition date, yet Meeks answered no when the trustee
25 asked him if there were such transfers, which was a false statement under oath, or a false
26 oath.

1 Regarding the Undisclosed Assets, Meeks has admitted in the Joint Pre-Trial
2 Stipulation that the Undisclosed Assets are property of the bankruptcy estate and that he
3 failed to disclose the Undisclosed Assets. Meeks has also testified in his trial declaration
4 that he now knows that he should have disclosed the Undisclosed Assets in the
5 Bankruptcy Documents.

6 Regarding the value of the Undisclosed Assets not disclosed in the Bankruptcy
7 Documents, the value of the Undisclosed Assets claimed on Meeks's Amended Schedule
8 A/B: Property and Amended Schedule C: The Property You Claim as Exempt totaled
9 \$17,029.00, including \$3,329.00 for "Misc. Electronics," including the Sennheiser
10 microphone valued at \$999.00, Kino Flo flight kit valued at \$900.00, Zoom portable
11 recorder valued at \$329.00, and other electronics (i.e., a cell phone and a computer not
12 asserted by the United States Trustee to be Undisclosed Assets), the Canon Mark IV
13 camera valued at \$1,000.00, the Louis Vuitton Duffle Bag valued at \$1,500.00, the Gucci
14 Duffle Bag, and \$10,000.00 for the engagement ring. Excluding the claimed value of the
15 ring in the amount of \$10,000.00 and other assets not included as "Undisclosed Assets,"
16 the total value of the Undisclosed Assets on Meeks's Amended Schedule A/B: Property
17 would be \$5,928.00. On his Amended Schedule C: The Property You Claim as Exempt,
18 Meeks claimed that the entire value of these assets were exempt under the California
19 Code of Civil Procedure, and no objection has been filed to Meeks's claimed exemptions
20 on his Amended Schedule C: The Property You Claim as Exempt. The court determines
21 that based on Meeks's unobjected-to amended bankruptcy schedules, the value of the
22 Undisclosed Assets is \$5,928.00 which should have been disclosed on his bankruptcy
23 petition and original schedules, including Schedule A/B: Property. Accordingly, the court
24 determines that Meeks made false oaths on his Schedule A/B: Property by omitting his
25 prepetition assets, namely, the Louis Vuitton Duffle Bag, the Gucci Duffle Bag, the Canon
26 Mark IV Camera, the Kino Flo Flight Kit, the Sennheiser Microphone, the Zoom Portable
27 Recorder, and the Insurance Policy, with a total value of \$5,928.00.
28

1 According to the United States Trustee, assuming *arguendo* that as Meeks claims,
2 he transferred some, or all, of the Undisclosed Assets to his fiancée pre-petition, he would
3 have made false oaths in connection with the case. Specifically, in the SOFA, in response
4 to question 13, which requires a debtor to list any gifts the debtor has given within two
5 years before filing for bankruptcy with a total value of more than \$600 per person, Meeks
6 checked the “No” box, indicating he did not make any gifts with a total value of more than
7 \$600 per person since November 18, 2017. The United States Trustee argues that
8 however, depending on whether one looks to Meeks’s Answer or deposition testimony, he
9 claims that some, or all, of the Undisclosed Assets were transferred to his fiancée pre-
10 petition. According to the United States Trustee, a review of Meeks’s testimony in
11 conjunction with the Proof of Loss demonstrates that he claims to have transferred the
12 Gucci duffle bag, the Kino Flo light kit, the Sennheiser microphone, and the Zoom portable
13 recorder to his fiancée within the 2 years before the date of filing of the bankruptcy
14 petition. The total “approximate price” of these items as Meeks stated in the Proof of Loss
15 was \$7,801.00. Thus, the United States Trustee argues, if Meeks had transferred the
16 Undisclosed Assets to his fiancée, he would have failed to disclose these four Undisclosed
17 Assets in the Bankruptcy Documents as having been gifted in response to question 13 in
18 the SOFA. However, there was no false oath in Meeks’s response to question 13 in the
19 SOFA as to these assets because as admitted property of the bankruptcy estate, there
20 was no gift of these assets to disclose.

21 The United States Trustee argues that even assuming *arguendo* as Meeks claims
22 that he transferred some, or all, of the Undisclosed Assets to his fiancée pre-petition, his
23 failure to notify the Chapter 7 Trustee of the Theft Loss Claim is still a false oath in
24 connection with the Bankruptcy Case. See Plaintiff’s Trial Brief, Docket No. 40 at 6-8.
25 The court believes that this is not technically correct as the alleged false oath is not
26 identified, through presumably the United States Trustee is referring to Meeks’s
27 bankruptcy schedules to list prepetition assets. The Theft Loss Claim arose postpetition
28

1 and is a postpetition asset of the bankruptcy estate acquired by Meeks postpetition, and
2 not disclosable on the bankruptcy petition or at the meeting of creditors held before the
3 Theft Loss Claim arose, so the failure to notify the Chapter 7 Trustee is not technically a
4 false oath for purposes of 11 U.S.C. § 727(d)(1). See *In re Searles*, 317 B.R. at 377-378.
5 Thus, the court determines that Meeks did not make a false oath as to the Theft Loss
6 Claim. However, as discussed below, the failure to report the postpetition asset of the
7 claim relating to theft of prepetition assets if Meeks knowingly and fraudulently failed to
8 report the acquisition of such postpetition asset to the Chapter 7 Trustee may be grounds
9 for revocation of the discharge pursuant to 11 U.S.C. § 727(d)(2). *In re Searles*, 317 B.R.
10 at 378.

11 Finally, as to his testimony at the Meeting of Creditors that everything in his
12 Bankruptcy Documents was true and correct, Meeks admitted in his testimony at trial that
13 this was incorrect. Despite testifying under oath at the Meeting of Creditors that he
14 carefully read the Bankruptcy Documents before signing them in response to questions of
15 the Chapter 7 Trustee, that he was familiar with the contents of the Bankruptcy
16 Documents, and that everything in the same was true and correct, Meeks admitted at trial
17 that these were not truthful statements and these statements in response to the Chapter 7
18 Trustee's questions were false oaths.

19 The second element of a claim under 11 U.S.C. § 727(a)(4) is that the false oath
20 must relate to a material fact. Regarding materiality of a false oath for purposes of 11
21 U.S.C. § 727(a)(4), the Ninth Circuit in *In re Retz* stated:

22
23 Section 727(a)(4)(A) requires that the relevant false oath relate to a material
24 fact. *In re Roberts*, 331 B.R. at 882; see also 11 U.S.C. § 727(a)(4)(A). "A
25 fact is material 'if it bears a relationship to the debtor's business transactions
26 or estate, or concerns the discovery of assets, business dealings, or the
27 existence and disposition of the debtor's property.'" *In re Khalil*, 379 B.R. at
28 173 (quoting *In re Wills*, 243 B.R. at 62). An omission or misstatement that
"detrimentally affects administration of the estate" is material. *In re Wills*, 243
B.R. at 63 (citing 6 Lawrence P. King et al., *Collier on Bankruptcy* ¶
727.04[1][b] (15th ed. rev.1998)).

606 F.3d at 1197.

1 In *In re Wills*, the Bankruptcy Appellate Panel of the Ninth Circuit discussed
2 materiality of a false oath under 11 U.S.C. § 724(a)(4) at length:

3
4 Materiality is broadly defined. A false statement is material if it bears a
5 relationship to the debtor's business transactions or estate, or concerns the
6 discovery of assets, business dealings, or the existence and disposition of
7 the debtor's property. *In re Chalik*, 748 F.2d 616, 618 (11th Cir.1984). See
8 also *In re Weiner*, 208 B.R. 69, 72 (9th Cir. BAP 1997), *rev'd on other*
9 grounds, 161 F.3d 1216 (9th Cir.1998) (*citing Chalik* and holding that a false
10 statement is material if it "bears a relationship to the debtor's estate, and
11 concerns the discovery of assets, or the existence and disposition of his
12 property").

13
14 A false statement or omission may be material even if it does not cause
15 direct financial prejudice to creditors. See *Weiner*, 208 B.R. at 72; *Chalik*,
16 748 F.2d at 618. See also *In re Hoblitzell*, 223 B.R. 211, 215-16 (Bankr. E.D.
17 Cal.1998) (omission of asset may be material even if it did not financially
18 prejudice the estate or creditors "if it aids in understanding the debtor's
19 financial affairs and transactions"); [*Ford v. Ford (In re)*] *Ford*, 159 B.R. [590,]
20 at 593 [Bankr. D. Ore. 1992]](omission or false statement may be material if
21 it is relevant to the discovery of past transactions—value of omitted assets
22 does not have to be significant to be material and no detriment to creditors
23 need be shown); *In re Haverland*, 150 B.R. 768, 771 (Bankr. S.D. Cal. 1993)
24 (applying standard set forth in *Chalik* and noting that materiality of false oath
25 does not depend on whether the falsehood is detrimental to creditors).

26
27 The fundamental purpose of § 727(a)(4)(A) is to insure that the trustee and
28 creditors have accurate information without having to conduct costly
investigations. *Aubrey [v. Thomas (In re Aubrey)]*, 111 B.R. [268,] at 274
[(9th Cir. BAP 1990)]. "[T]he opportunity to obtain a fresh start is ...
conditioned upon truthful disclosure." *Id.* "The entire thrust of an objection to
discharge because of a false oath or account is to prevent knowing fraud or
perjury in the bankruptcy case. As a result, the objection should not apply to
minor errors or deviations in testimony under oath." William L. Norton, Jr.,
NORTON BANKRUPTCY LAW AND PRACTICE 2D § 74.11 (1997). A false
statement or omission that has no impact on a bankruptcy case is not
grounds for denial of a discharge under § 727(a)(4)(A). 6 Lawrence P. King
et al., COLLIER ON BANKRUPTCY ¶ 727.04[1][b] (15th ed. Rev.1998)(*citing*
In re Fischer, 4 B.R. 517 (Bankr. S.D.Fla.1980)). As a result, omissions or
misstatements relating to assets having little or no value may be considered
immaterial. See, e.g., *In re Waddle*, 29 B.R. 100 (Bankr. W.D. Ky.1983).
Likewise, omissions or misstatements concerning property that would not be
property of the estate may not meet the materiality requirement of §
727(a)(4)(A). See, e.g., *In re Swanson*, 36 B.R. 99 (9th Cir. BAP 1984).
However, an omission or misstatement relating to an asset that is of little
value or that would not be property of the estate is material if the omission or
misstatement detrimentally affects administration of the estate.

1 In determining whether or not an omission is material, the issue
2 is not merely the value of the omitted assets or whether the
3 omission was detrimental to creditors. Even if the debtor can
4 show that the assets were of little value or that a full and
5 truthful answer would not have directly increased the estate
6 assets, a discharge may be denied if the omission adversely
7 affects the trustee's or creditors' ability to discover other assets
8 or to fully investigate the debtor's pre-bankruptcy dealing and
9 financial condition. Similarly, if the omission interferes with the
10 possibility of a preference or fraudulent conveyance action the
11 omission may be considered material.

12 6 King, COLLIER ON BANKRUPTCY ¶ 727.04[1][b].

13 *In re Wills*, 243 B.R. at 62-63 (footnote omitted).

14 In *Wills*, the Bankruptcy Appellate Panel of the Ninth Circuit reversed the
15 bankruptcy court for applying an erroneous standard of materiality in holding that false
16 statements and omissions in the debtors' bankruptcy petition were not material solely
17 because the creditor did not show that the assets had sufficient value to increase the
18 amount paid to creditors. *Id.* at 63. In reversing the bankruptcy court, the Bankruptcy
19 Appellate Panel in *Wills* held that “a statement or omission relating to an asset that is of
20 little value or that would not be property of the estate can be material if it detrimentally
21 affects the administration of the estate.” *Id.* at 64. The court quotes the opinion on *In re*
22 *Wills* at length since it is instructive on the issue of materiality of Meeks’s false oaths.

23 Regarding materiality, the United States Trustee argues that “the Defendant’s false
24 oaths relate to material facts as they relate to the Defendant’s estate, assets, and the
25 existence and disposition of the Defendant’s property.” Plaintiff’s Proposed Findings of
26 Fact and Conclusions of Law, Docket No. 42 at 18. The United States Trustee further
27 argues that the false oaths were material in this case as follows:

28 The issue is not whether the Undisclosed Assets—had they been
disclosed—would have been administered by the Trustee and resulted in
unsecured creditors receiving a distribution, as the Defendant would have
the Court hold. See *Khalil*, 317 B.R. at 177 (direct financial prejudice to
creditors not required); *Wills*, 243 B.R. at 63-4 (to be material, false oaths
need not relate to assets with sufficient value to increase the amount paid to
creditors). Rather, the point is, that the Defendant, through his false oaths,

1 cut off a line of inquiry for the Trustee. He deprived the Trustee of the ability
2 to analyze the Undisclosed Assets and/or transfers of the same so that he
3 might arrive at a business judgment as to their administration. While the
4 Defendant contends that the Undisclosed Assets have little to no value for
5 the Estate and thus for this reason his false oaths are simply no harm no
6 foul, our bankruptcy system does not work that way. That is, debtors do not
7 get to decide for themselves which assets they believe have sufficient value
8 for an estate such that they should be disclosed in their bankruptcy case. A
9 debtor's duty is that of full and accurate disclosure. See *Searles* [], 317 B.R.
10 at 378. Whether creditors would benefit from administration of an asset or
11 avoidance of a pre-petition transfer is an analysis that belongs to the chapter
12 7 trustee, not a chapter 7 debtor.

13 *Id.* at 18-19.

14 In opposition, Meeks argues that the alleged false oaths were not material because
15 they did not have a detrimental impact on the administration of the bankruptcy estate, that
16 is, the omission of assets had no impact on the administration of the bankruptcy estate as
17 he could have claimed all of the omitted assets as exempt, and the Chapter 7 Trustee
18 would not have a different understanding of Meeks's financial condition whether he made
19 proper disclosures or not. [Proposed] Findings of Fact and Conclusions of Law after Trial
20 for Defendant Tarel Deshun Meeks, Docket No. 43 at 11-12. Meeks specifically argues as
21 follows:

22 A false statement or omission that has no impact on a bankruptcy
23 case is not grounds for denial of a discharge under § 727(a)(4)(A). 6
24 Lawrence P. King et al., COLLIER ON BANKRUPTCY ¶ 727.041b (15th ed.
25 Rev.1998) (*citing In re Fischer*, 4 B.R. 517 (Bankr.S.D.Fla.1980)).

26 As a result, omissions or misstatements relating to assets having little
27 or no value may be considered immaterial. Likewise, omissions or
28 misstatements concerning property that would not be property of the estate
may not meet the materiality requirement of § 727(a)(4)(A). See, e.g., *In re Swanson*, 36 B.R. 99 (9th Cir. BAP 1984). An omission or misstatement relating to an asset that is of little value or that would not be property of the estate is material if the omission or misstatement detrimentally affects administration of the estate.

The Trustee's understanding of Defendant's financial condition would be no different with or without these omissions. Plaintiff identified no asset, transfer, cause of action or anything else the Trustee would have been able to discover had Defendant scheduled the undisclosed gifts on his Statement of Financial Affairs under Question No. 13. Had the Debtor testified that his

1 schedules were not accurate at his Section 341a hearing, he could have
2 freely amended them accordingly and only failed to do because he was not
3 informed of his exemption rights by his attorney. Plaintiff has failed to meet
4 its burden of proof that Debtor's testimony at his Section 341a hearing was
5 knowingly false at the time those statements were made and even if the
6 Defendant knew them to be false, the record does not show he intended to
7 hinder, delay or defraud his creditors.

8 *Id.* at 12 (footnotes and citations omitted).

9 As stated above, the court has determined that Meeks made false oaths: first, on
10 his Schedule A/B: Property by omitting his prepetition assets, namely, the Louis Vuitton
11 Duffle Bag, the Gucci Duffle Bag, the Canon Mark IV camera, the Sennheiser microphone,
12 the Kino Flo flight kit, the Zoom portable recorder and the renter's insurance policy, with a
13 total value of \$5,928.00; second, in his testimony at the Meeting of Creditors that
14 answering the Chapter 7 Trustee's questions whether his home address was correct on
15 his bankruptcy petition, whether he had carefully reviewed his petition and schedules,
16 whether he was familiar with their contents, whether everything in his bankruptcy papers
17 were true and correct, whether there were any mistakes or anything left out in these
18 papers and whether he listed all of his assets by incorrectly stating yes to the trustee's
19 questions; and third, stating no when asked whether he made any transfers of anything
20 worth more than \$5,000.00 to anyone within four years and not disclosing his gift of the
21 engagement ring to his fiancée with an admitted value of \$10,000.00.

22 Because materiality is broadly defined, Meeks's false oaths as found by the court
23 were material because they concerned the discovery of assets, business dealings, or the
24 existence and disposition of the debtor's property, that is, assets admittedly worth
25 \$5,928.00 and a transfer of property admittedly worth \$10,000.00 omitted on the
26 Bankruptcy Documents and in the debtor's testimony at the meeting of creditors, and thus,
27 not disclosed to the Chapter 7 Trustee and creditors due to the false oaths. It is true that a
28 false statement or omission that has no impact on a bankruptcy case should not be
grounds to deny or revoke a discharge and that as a result, omissions or misstatements
relating to assets having little or no value may be considered immaterial. For example,

1 Meeks failed to disclose the renter's insurance policy as an asset on his bankruptcy
2 schedules, although the policy had no cash or surrender value to report, the Chapter 7
3 Trustee could have inquired about the assets covered by the insurance policy, which were
4 not disclosed on the schedules, to ascertain the existence of such assets.

5 Falsely omitting the Elvira Road address on the bankruptcy petition in response to
6 the question, "Where you live," and falsely confirming that his home address was correctly
7 stated on the petition were material because Meeks's omissions relate to the ability of the
8 Chapter 7 Trustee and the creditors to inquire about, and discover, the true nature,
9 location and value of Meeks's personal property. *Beer Shiva Realty Corp. v.*
10 *Pongvitayapanu (In re Pongvitayapanu)*, 487 B.R. 130, 143-144 (Bankr. E.D. N.Y. 2018).
11 Meeks's explanation about listing the address where he lives as the Orange Grove
12 address rather than the Elvira Road address because that is the address that he usually
13 "gives for credit" is not as innocent as it may sound because it indicates that the one
14 address that he provides creditors is one where they will not be able to find him and the
15 other address which he does not disclose to them is where he actually lives and can be
16 usually found. This explanation indicates that in requesting creditors to extend him credit,
17 Meeks gives creditors an address where they cannot find him if he fails to pay back on
18 credit extended to him, and the explanation certainly does not absolve him from not giving
19 a correct answer to the simple and straightforward question asked of him of "where you
20 live" on the bankruptcy petition.

21 While it may be is hard to say whether the false statements and omissions would
22 cause direct financial prejudice to creditors in this case, given the nature and values of the
23 omitted assets and transfers, the court cannot conclusively say that the Chapter 7 Trustee
24 would have exercised his business judgment not to administer these assets. That is, the
25 court cannot conclusively determine that the undisclosed assets valued at \$5,928.00 were
26 of so little or no value to be immaterial or that the undisclosed transfer of an asset worth
27 \$10,000.00 to be immaterial as it would not have been likely that the trustee would pursue
28

1 a fraudulent transfer claim to recover that asset. As the United States Trustee argues, the
2 false oaths resulting in the lack of disclosure of assets and transfers deprived the Chapter
3 7 Trustee of the opportunity to have a complete and accurate picture of the property of the
4 bankruptcy estate and to exercise his business judgment as to the undisclosed assets and
5 transfer. *In re Murray*, 249 B.R. 223, 230 (E.D.N.Y. 2000) (“Lying about assets that are
6 part of the estate---even if possibly exempt---certainly bears a relationship to the estate.
7 Indeed, the lies were about estate property.”), *citing and quoting*, *Mertz v. Rott*, 955 F.2d
8 596, 598 (8th Cir. 1992) (non-disclosure of exempt tax refund was material because it was
9 an “asset” of the estate [and] therefore bore a “relationship” to the estate) and *In re Sapru*,
10 127 B.R. 306, 316 (Bankr. E.D.N.Y. 1991) (non-disclosure of exempt or worthless assets
11 was material because the falsehoods “relate to the Debtor’s assets and business dealings,
12 and taken as a whole are misleading to both the court and the creditors as to the nature
13 and extent of the Debtor’s business transactions and estate.”).

14 As previously stated, “[t]he fundamental purpose of [11 U.S.C.] § 727(a)(4)(A) is to
15 insure that the trustee and creditors have accurate information without having to conduct
16 costly investigations.” *In re Wills*, 243 B.R. at 63 (citation omitted). This purpose is
17 frustrated if the debtor does not make complete and accurate disclosures of his assets and
18 financial affairs. “[T]he opportunity to obtain a fresh start is . . . conditioned upon truthful
19 disclosure.” *Id.* “Moreover, an omission or misstatement relating to an asset that is of little
20 value or that would not be property of the estate is material if the omission or misstatement
21 detrimentally affects administration of the estate.” *Id.* Here, the Chapter 7 Trustee had to
22 pursue the reopening of the bankruptcy case and to resume his duties in order for the truth
23 to come out about the debtor’s assets and financial affairs, including asset transfers within
24 the statute of limitations for voidable transfers so he could properly administer this case.
25 Meeks’s false oaths in answering the Chapter 7 Trustee’s questions at the meeting of
26 creditors whether his home address was correct on his bankruptcy petition, whether he
27 had carefully reviewed his petition and schedules, whether he was familiar with their
28

1 contents, whether everything in his bankruptcy papers were true and correct, whether
2 there were any mistakes or anything left out in these papers and whether he listed all of
3 his assets were material because his answers misled the trustee to lull him into
4 complacency to not further inquire of Meeks to obtain a complete and accurate accounting
5 of his (Meeks's) assets and financial affairs for a proper administration of the bankruptcy
6 estate.

7 Regarding Meeks's argument that there is no detrimental impact on the
8 administration of the bankruptcy case because he had his exemption rights and could
9 have exercised these rights to exempt the value of all of the undisclosed assets if he had
10 been properly advised by his bankruptcy attorney and disclosed the assets. While
11 Meeks's "no harm, no foul" argument has some appeal, it does not address the purpose of
12 the statutory language of 11 U.S.C. § 727 to require truthful disclosure by the debtor of his
13 assets and financial affairs. See *In re Weldon*, 184 B.R. 710, 715 (Bankr. D. S.C. 1995).
14 As cogently stated by the court in *In re Weldon*, 184 B.R. at 715:

15
16 The Debtor argues that there should be a "no-harm, no-foul" exception here,
17 because the dollar amounts involved are not significant enough to justify denying
18 discharge. The Court disagrees. The critical time for disclosure is at the time of the
19 filing of a petition and the Debtor has the responsibility to do so. Bankruptcy law
20 requires debtors to be honest and to take seriously the obligation to disclose all
21 matters. The bankruptcy schedules and statements of financial affairs are carefully
22 designed to elicit certain information necessary in the proper administration and
23 adjudication of the case. To allow the Debtor to use his discretion in determining
24 the relevant information to disclose would create an end-run around this strictly
25 crafted system.

26 Despite the fact that it cannot be shown that there would have not been any direct
27 financial prejudice to creditors from Meeks's failures to disclose his assets and personal
28 information, given the values of the undisclosed assets and the undisclosed transfer, there
was a detrimental impact on the administration of the bankruptcy estate in having the
Chapter 7 Trustee conduct further administration of the bankruptcy case and the United
States Trustee to conduct litigation in this adversary proceeding to obtain full and complete
disclosure of the debtor's assets and financial affairs. The full extent of Meeks's failures to

1 disclose on his bankruptcy petition and schedules and in the meeting of creditors was not
2 brought to light until the discovery was undertaken by the United States Trustee in this
3 adversary proceeding and then the adversary proceeding fully litigated at trial. Therefore,
4 the court concludes that Meeks's false oaths were material.

5 The third element of a claim under 11 U.S.C. § 727(a)(4) is that it must be shown
6 that the debtor made the false oath knowingly. Regarding the element of knowledge of a
7 claim under 11 U.S.C. § 727(a)(4), the Ninth Circuit in *In re Retz* stated:

8
9 The third element required by § 727(a)(4)(A) is that the debtor act knowingly
10 in making the false oath. *In re Roberts*, 331 B.R. at 882; see also 11 U.S.C.
11 § 727(a)(4)(A). "A debtor 'acts knowingly if he or she acts deliberately and
12 consciously.'" *In re Khalil*, 379 B.R. at 173 (*quoting In re Roberts*, 331 B.R. at
13 883). Retz deliberately and consciously signed the Schedules and SOFA
14 knowing that they were incomplete. Furthermore, he admitted at trial that
15 even if all the information from his worksheets had been included in the
16 Schedules and SOFA they still would have been incomplete. This is
17 sufficient to support the bankruptcy court's finding that Retz acted knowingly.
18 606 F.3d at 1198 (footnote omitted). Thus, as stated by the Ninth Circuit in *Retz*, it must
19 be shown that the debtor's actions were deliberate and conscious to be knowingly and not
20 merely careless or reckless. *Id.*; see also, *Stutzman v. Heinle (In re Heinle)*, 646 B.R. 306,
21 315 (Bankr. D. Mont. 2022). As stated by the court in *In re Heinle*,

22 . . . Consequently, carelessness and recklessness are a lower standard
23 than "knowing" and do not meet the statutory requirement. *In re Roberts*,
24 331 B.R. 876 at 884. Indeed, the three standards are distinct:

25 A person acts knowingly if he or she acts deliberately and consciously
26 ... "Careless and reckless" is a lower standard than "knowing." An
27 action is careless if it is "engaged in without reasonable care." This is
28 a negligence standard, not a knowing misconduct standard. A false
statement resulting from ignorance or carelessness does not rise to
the level of "knowing and fraudulent." Similarly, recklessness does not
measure up to the statutory requirement of "knowing" misconduct. An
action is reckless if it creates, "a substantial and unjustifiable risk of
harm to others [through] a conscious (and sometimes deliberate)
disregard for or indifference to that risk."

646 B.R. at 315, *citing and quoting, In re Roberts*, 331 B.R. at 883-84 (internal citations
omitted). Nevertheless, recklessness is probative of knowledge and fraudulent intent. *Id.*

1 That is, a court may find that “multiple omissions or material assets or information may
2 well support an inference of fraud if the nature of the assets or transactions suggests that
3 the debtor was aware of them at the time of preparing the schedules and that there was
4 something about the assets or transactions which, because of their size or nature, a
5 debtor may want to conceal.” *In re Heinle*, 646 B.R. at 315, *citing and quoting, In re Khalil*,
6 379 B.R. at 173. However, recklessness by itself does not meet the standard of knowing
7 behavior because that would be “equating recklessness with a knowing and fraudulent
8 intent,” which “goes too far.” *Id.*, *citing and quoting, In re Khalil*, 379 B.R. at 173-174.

9 Regarding Meeks’s knowledge of his false oaths, the United States Trustee argues:

10
11 The Defendant admits that he knew and understood when he signed
12 the Bankruptcy Documents that he needed to list all his assets and that he
13 knew and understood when he signed his Bankruptcy Documents that they
14 were executed under penalty of perjury. Further, the Defendant admits that
15 he knew and understood when testifying at his Meeting of Creditors that he
16 was testifying under penalty of perjury. Notwithstanding this knowledge and
17 understanding, the Defendant concedes that he lied to the Trustee when he
18 testified at his Meeting of Creditors that he had carefully read his Bankruptcy
19 Documents before signing them and that he was familiar with their content.
20 When asked why he made these false oaths, the Defendant admitted that he
21 testified in this manner so he could “get the process over with.” The
22 Defendant did not value the significance of his oath and instead placed his
23 desire for his discharge above full and accurate disclosures. Were this the
24 only incident of this kind, perhaps the Court might be inclined to dismiss
25 these undisputed lies to the Trustee (which the Court should not do), but this
26 is not the only time the Defendant has provided answers in such a way as to
27 help “get the process over with” so that he might benefit for himself.

28 Plaintiff’s Proposed Findings of Fact and Conclusions of Law, Docket No. 42 at 11
(footnotes and citations omitted).

Regarding the knowledge element, Meeks makes various claims that his false
oaths were not knowingly made. First, he argues that he did not knowingly make a false
statement at the meeting of creditors when he erroneously omitted testimony about the
engagement ring because he did not understand the word “transfer” in the Chapter 7
Trustee’s question also meant gifts. [Proposed] Findings of Fact and Conclusions of Law
after Trial for Defendant Tarel Deshun Meeks, Docket No. 43 at 7. Second, Meeks argues

1 that he did not knowingly divest himself of assets in contemplation of bankruptcy as he did
2 not contemplate filing for bankruptcy until 2019 when he was having debt problems left by
3 his business partners and the gifts that he made to his fiancée took place before then. *Id.*
4 at 8. Third, Meeks argues that he did not knowingly waive his exemption rights to
5 allegedly knowingly conceal assets that are of no consequence to the bankruptcy estate,
6 and thus, he did not knowingly make the false oaths. *Id.* at 9-10. Fourth, Meeks argues
7 that he did not knowingly make false oaths because he did not understand that he was
8 signing his bankruptcy papers under penalty of perjury and only understood that he was
9 trying to get debt taken away from his name in filing for bankruptcy. *Id.* at 10.

10 The court determines that the evidence shows that Meeks knowingly made the
11 false oaths. Regarding the false oaths on the bankruptcy petition and schedules, the
12 Ninth Circuit has stated, “[T]he debtor has a duty to prepare schedules carefully,
13 completely, and accurately.” *Cusano v. Klein*, 264 F.3d 936, 946 (9th Cir. 2001) (citations
14 omitted). “To ensure complete candor, a debtor is required to sign the [bankruptcy]
15 petition [and schedules] under penalty of perjury.” *In re Pongvitayapanu*, 487 B.R. at 138.
16 “That oath ‘must be regarded as serious business.’” *Id.*, citing and quoting, *Boroff v. Tully*
17 (*In re Tully*), 818 F.2d 106, 112 (1st Cir. 1987); see also, 18 U.S.C. §§ 1621-1623 (federal
18 criminal perjury statutes). Likewise, the same admonition about complete candor applies
19 to oral testimony given under oath. *Id.* “Debtors who are dishonest or reckless with the
20 truth proceed at their own peril.” *In re Pongvitayapanu*, 487 B.R. at 138.

21 As the United States Trustee argues, Meeks has admitted that he knew and
22 understood when he signed the Bankruptcy Documents that he needed to list all his
23 assets and that he knew and understood when he signed his Bankruptcy Documents that
24 they were executed under penalty of perjury. Meeks in his trial testimony explained that
25 he did not list the undisclosed assets on his bankruptcy schedules because he did not
26 think they would be worth anything to the Chapter 7 Trustee or of value to the bankruptcy
27 estate and the creditors, and not that he did not know that they existed. Meeks certainly
28 knew about the existence of the assets as shown by his postpetition insurance claim that

1 he filed with Farmers Insurance filed in February 2020 only three months after he filed his
2 bankruptcy petition in November 2019. As Meeks testified at trial, he filled out his
3 bankruptcy paperwork at his bankruptcy lawyer's office, which included listing his assets
4 for inclusion on Schedule A/B: Property to the bankruptcy petition, which asked him to list
5 his household goods, electronics, insurance policy and any other items. As Meeks also
6 testified at trial, the law office emailed a draft of the bankruptcy petition and schedules to
7 review, but he did not review these documents before he went to the law office to sign
8 them. Meeks further testified that he signed his bankruptcy petition and schedules under
9 penalty of perjury without carefully reviewing them.

10 The bankruptcy petition and schedules required Meeks to list on Schedule A/B:
11 Property all of his assets owned as of the petition filing date under various categories,
12 including household goods and furnishings, electronics and other personal and household
13 items not already listed, and in several places, in the petition and schedules, the forms
14 repeatedly instructed the debtor: "Be as complete and accurate as possible." Meeks's
15 bankruptcy petition and schedules did not list all of his assets owned as of the petition
16 date, that is, the Undisclosed Assets, the Louis Vuitton and Gucci Duffle Bags, the Canon
17 Mark IV Camera, the Kino Flo Flight Kit, the Sennheiser Microphone, the Zoom Portable
18 Recorder and the Insurance Policy. Schedule A/B: Property specifically requested Meeks
19 to list his renter's insurance policy. It appears that Meeks either did not list the
20 Undisclosed Assets on his bankruptcy paperwork that he gave to the law office to prepare
21 his bankruptcy petition and schedules or otherwise tell the law office about these assets.
22 Meeks gave no testimony stating that he had informed the law office of the existence of
23 these assets so they could be disclosed on the petition and schedules.

24 Meeks's testimony as to why these assets were not listed was that he did not think
25 they had value to the bankruptcy trustee and the creditors and that he had given them to
26 his fiancée, though he has stipulated that he owned them on the petition date. This
27 testimony shows that Meeks thought about listing these assets, which indicates that their
28 exclusion from the bankruptcy petition and schedules was conscious and deliberate and
beyond careless. Meeks had opportunities to correct the omission of these assets on his

1 bankruptcy petition and schedules prepared by the law office because the law office had
2 emailed the draft documents to him for review and he could have made corrections in the
3 documents at the law office when he came to the law office to sign the documents. Meeks
4 did not avail himself of these opportunities because he did not review them either before
5 he went to the law office or at the law office. Meeks blames the law office for the
6 omissions because there was no attorney who reviewed the documents with him before he
7 signed them. However, Meeks could have made a request for an attorney to review the
8 documents with him, but there is no evidence that he made any such request.

9 As further argued by the United States Trustee, Meeks has admitted that he knew
10 and understood when testifying at the meeting of creditors that he was testifying under
11 penalty of perjury, and notwithstanding this knowledge and understanding, Meeks has
12 admitted that he did not give truthful answers to the questions of the Chapter 7 Trustee
13 whether he (Meeks) had carefully read his Bankruptcy Documents before signing them
14 and that he was familiar with their content. Meeks in his trial testimony explained that he
15 gave the untruthful answers to the questions as he did because he could “get the process
16 over with.” Meeks’s admissions in his testimony indicates that he knew that he was giving
17 untruthful answers to the Chapter 7 Trustee’s questions, but chose to do so because it
18 was more convenient for him not to give truthful answers to expedite the processing of his
19 bankruptcy case by cutting off further inquiry by the Chapter 7 Trustee about Meeks’s
20 assets and financial affairs. This testimony shows that Meeks thought he did not have to
21 give truthful answers to the Chapter 7 Trustee’s questions, which indicates that his giving
22 untruthful answers was conscious and deliberate, and beyond careless.

23 The court has considered and denies Meeks’s various claims that his false oaths
24 were not knowingly made. First, the court rejects Meeks’ claim that he did not knowingly
25 make a false statement at the meeting of creditors when he erroneously omitted testimony
26 about the engagement ring because he did not understand the word “transfer” in the
27 Chapter 7 Trustee’s question also meant gifts. The court does not find his testimony in
28 support of this claim to be credible in that Meeks was a high school graduate, had been in
business for a number of years and should have had an understanding that the meaning

1 of the word “transfer” with a value of over \$5,000.00 would have included any item of value
2 conveyed by him to anyone, such as his gift of the engagement ring made to his fiancée
3 made right after he purchased for \$14,900.00 and he now values at \$10,000.00. Second,
4 the court rejects Meeks’s claim that he did not knowingly make false oaths because he did
5 not knowingly divest himself of assets in contemplation of bankruptcy as he did not
6 contemplate filing for bankruptcy until 2019 when he was having debt problems left by his
7 business partners and the gifts that he made to his fiancée took place before then
8 because this claimed defense is not responsive to whether or not he accurately disclosed
9 his assets on his bankruptcy schedules. As previously noted, Meeks has admitted that he
10 knew he was signing his bankruptcy petition and schedules under penalty of perjury, that
11 he knew he had to list all of his assets and that he knew he was not listing all of his assets
12 as he explained that he did not think the omitted assets would be of value to the trustee.
13 These omissions were impermissible as the court in *In re Bailey*, 147 B.R. at 162-163 has
14 stated:

15 . . . [d]ebtors have an absolute duty to report whatever interests they hold in
16 property, even if they believe their assets are worthless or unavailable to the
17 bankruptcy estate. . . . This is because the bankruptcy court, not the debtor,
decides what property is exempt from the bankruptcy estate.

18 *Id.*, cited and quoted in *In re Coombs*, 193 B.R. 557, 565 (Bankr. S.D. Cal. 1996).

19 As the court in *In re Bailey* further stated:

20 Allowing debtors the discretion to not report exempt or worthless property usurps
21 the role of the trustee, creditors and the court in denying them the opportunity to
22 review the factual and legal basis of debtors’ claims. It also permits dishonest
23 debtors to shield questionable claims concerning an asset’s value and status as an
exemption from scrutiny. Therefore, the mere fact that unreported property is
thought to be worthless or exempt is not a per se defense in a § 727(a)(4) action.

24 However, while the assertion that property is worthless or exempt is not a per se
25 defense, it is a factor in determining materiality, and several courts have found
minor omissions from debtors’ schedules to be immaterial.

26 *Id.* (citations omitted).

27 Third, the court rejects Meeks’s claim that he did not knowingly waive his exemption
28 rights to have allegedly knowingly concealed assets that are of no consequence to the

1 bankruptcy estate, and thus, he did not knowingly make the false oaths, because as
2 previously noted, he knew he had to list all of his assets on his bankruptcy petition and
3 schedules and he did not do so. As to not knowingly waiving his exemption rights, while
4 Meeks may not have been advised by his bankruptcy attorney of his exemption rights as
5 to assets that he did not disclosed on his schedules, there is no evidence indicating that
6 he disclosed the undisclosed assets to the attorney for consideration to claim as exempt.
7 As previously noted, it would seem if Meeks had told the attorney of the assets, they would
8 have been listed on the schedules so they could be claimed as exempt. Meeks must have
9 been generally aware of his exemption rights in general because as shown by his signed
10 bankruptcy petition and schedules, he did claim exemptions in assets which he had listed
11 on his bankruptcy schedules.

12 Fourth, the court rejects Meeks's claim that he did not knowingly make false oaths
13 because he did not understand that he was signing his bankruptcy papers under penalty
14 of perjury and only understood that he was trying to get debt taken away from his name in
15 filing for bankruptcy because as previously noted, Meeks has admitted that he knew he
16 was signing his bankruptcy petition and schedules under penalty of perjury, that he knew
17 he had to list all of his assets and that he knew that he did not list all of his assets.

18 Based on this evidence, the court finds that Meeks knowingly made his false oaths
19 because he deliberately and consciously signed his bankruptcy petition and schedules
20 omitting assets, he did not carefully review them to ensure that there were no omissions or
21 errors, and he deliberately and consciously gave testimony in response to the Chapter 7
22 Trustee's questions which he knew was not truthful. Meeks's omissions and
23 misrepresentations were not inadvertent, but were knowing.

24 Regarding the fourth element of fraudulent intent for a false oath under 11 U.S.C. §
25 727(a)(4), as stated by the Ninth Circuit in *In re Retz*, the plaintiff must show that: (1) the
26 debtor made a misrepresentation; (2) that at the time he or she knew was false; and (3)
27 with the intention and purpose of deceiving creditors. 606 F.3d at 1198-1199, *citing inter*
28 *alia*, *In re Khalil*, 379 B.R. at 173. Fraudulent intent is typically proven by circumstantial

1 evidence or by inferences drawn from the debtor's conduct. *Id.* at 1199, *citing inter alia, In*
2 *re Devers*, 759 F.2d 751, 753-754 (9th Cir. 1985). Circumstantial evidence may include
3 showing a reckless indifference or disregard for the truth. *Id.* (citation omitted); *see also,*
4 *In re Wills*, 243 B.R. at 64 (intent may be established by a pattern of falsity, debtor's
5 reckless indifference, or disregard of the truth). However, as the Ninth Circuit cautioned:
6 "Reckless indifference or disregard for the truth may be circumstantial evidence of intent,
7 but is not sufficient, alone, to constitute fraudulent intent." *In re Retz*, 606 F.3d at 1199,
8 *citing In re Khalil*, 379 B.R. at 173-175.

9 In *In re Wills*, the Bankruptcy Appellate Panel of the Ninth Circuit elaborated on
10 establishing the element of fraudulent intent under 11 U.S.C. § 727(a)(4):

11 A debtor's fraudulent intent may be established by circumstantial evidence or
12 by inferences drawn from his or her course of conduct. *Devers*, 759 F.2d at 753-54;
13 [*In re*] *Hoblitzell*, 223 B.R. [211,] at 215 [(Bankr. E.D. Cal. 1998)]. The requisite
14 intent may be found from the surrounding circumstances and certain "badges of
15 fraud" including (1) a close relationship between the transferor and the transferee;
16 (2) that the transfer was in anticipation of a pending suit; (3) that the debtor was in
17 poor financial condition at the time of the transfer; (4) that the debtor transferred all
18 or substantially all of his property; (5) that the transfer left no assets to satisfy
19 creditors; and (6) that the debtor received inadequate consideration. *See In re*
20 *Woodfield*, 978 F.2d 516, 518-19 (9th Cir.1992). Not all of these factors need be
21 present in order to find that a debtor acted with the requisite intent. *Id.* A court may
22 find the requisite intent where there has been a pattern of falsity or from a debtor's
23 reckless indifference to or disregard of the truth. *In re Coombs*, 193 B.R. 557, 564
(Bankr.S.D.Cal.1996).

24 *In re Wills*, 243 B.R. at 64 (footnote omitted). The so-called "badges of fraud" generally
25 relate to analyzing whether alleged fraudulent transfers have occurred, and may not be
26 indicative of fraudulent intent if there were no relevant transfers to base a denial of
27 discharge. *See In re Woodfield*, 978 F.2d at 518-519.

28 Regarding whether Meeks made the false oath with fraudulent intent, the United
States Trustee argues: "Here, intent is evident from the numerous false oaths, the
Defendant's pattern of reckless disregard for the truth, and the Defendant's testimony
throughout the Adversary Proceeding, which has been a moving target from the start."
Plaintiff's Proposed Findings of Fact and Conclusions of Law, Docket No. 42 at 19.

1 According to the United States Trustee, “[t]he sheer number of false oaths in the
2 Bankruptcy Case supports a finding of the requisite intent.” *Id.* at 20. By this, the United
3 States Trustee means:

4 The Defendant now concedes that he should have disclosed the
5 Undisclosed Assets (or the transfer of the same) in his Bankruptcy Case, which
6 include several luxury items that the Defendant himself valued in excess of
7 \$60,000.00 in the Theft Loss Claim. It does not escape this Court, that the various
8 items that are the subject of the Theft Loss Claim were all located at the
9 undisclosed Elvira Road Residence, where they were allegedly stolen. Even
10 though the Defendant spends 98% of his time at the Elvira Road Residence and
11 admits that the same is his primary residence, the Defendant only disclosed the
12 Orange Grove Residence in his Bankruptcy Documents. Even when given the
13 opportunity to correct any possible confusion or inadvertent error at the Meeting of
14 Creditors, when the Defendant was asked by the Trustee if his address in his
15 Bankruptcy Documents was true and correct, he failed to disclose the Elvira Road
16 Residence as his then primary residence.

17 Even if the Court were to find the Defendant’s story credible—that is that he
18 transferred some, or all, of the Undisclosed Assets to his fiancée pre-petition—the
19 number of false oaths is still overwhelming. The Defendant failed to disclose any
20 transfers at his Meeting of Creditors when expressly questioned about the same by
21 the Trustee and in the SOFA. Either the Defendant owned the Undisclosed Assets
22 in which case they should have been disclosed in Schedule A/B or they were
23 transferred and should have been disclosed at the Meeting of Creditors and in the
24 SOFA. The Defendant did neither.

25 *Id.* (footnotes and citations omitted). As discussed above, the court has not found that all
26 of the Undisclosed Assets or the transfers of these assets should have been disclosed as
27 argued by the United States Trustee, but the court has found that Meeks should have
28 disclosed on his bankruptcy petition and schedules the following assets of value: the Louis
Vuitton and Gucci duffle bags, the camera, the flight kit, the microphone, the portable
recorder and the renter’s insurance policy, which had a total value of \$5,928.00. While
Meeks has testified that he did not think these assets had value to the trustee and
creditors in not listing them on his bankruptcy petition schedules filed in November 2019,
he certainly considered that they had value to him as he claimed compensation for their
loss on the Theft Loss Claim that he filed with Farmers Insurance less than three months
later in February 2020.

1 In support of his argument, the United States Trustee refers to the total value of
2 \$60,000 of the Undisclosed Assets on the Theft Loss Claim, but in mitigation, the court
3 notes that the values stated by Meeks on the Theft Loss Claim were the approximate
4 purchase prices of the missing items, not the values of the items. However, the total
5 purchase price of the Undisclosed Items on the Theft Loss Claim was overstated because
6 Meeks did not use the purchase price of \$14,900.00 for the engagement ring, but the so-
7 called insurance appraisal value of \$50,000.00. Inclusion of the insurance appraisal value
8 of the ring perhaps exaggerated the magnitude of the understatement of value of the items
9 omitted from the bankruptcy schedules in the eyes of the Chapter 7 Trustee and the
10 United States Trustee to request reopening of the case. Moreover, because the court
11 finds that the ring had been gifted to the fiancée, the ring should not be properly
12 considered an Undisclosed Asset, and Meeks was not required to disclose it on his
13 bankruptcy schedules. However, as discussed above, the court has found that Meeks
14 should have disclosed his gift of the ring valued at \$10,000.00 as that transfer was within
15 the scope of the Chapter 7 Trustee's question at the meeting of creditors inquiring about
16 transfers of anything worth more than \$5,000.00 within four years before the date of the
17 filing of the bankruptcy case.

18 The United States Trustee further argues that fraudulent intent is shown based on
19 statements that Meeks made in reckless disregard for the truth:

20 The Defendant's pattern of reckless disregard for the truth further
21 demonstrates he had the requisite intent. The Defendant admits that he knew and
22 understood when he signed the Bankruptcy Documents that he needed to list all his
23 assets and that he knew and understood when he signed his Bankruptcy
24 Documents that they were executed under penalty of perjury. Further, the
25 Defendant admits that he knew and understood when testifying at his Meeting of
26 Creditors that he was testifying under penalty of perjury. Notwithstanding this
27 knowledge and understanding, the Defendant concedes that he lied to the Trustee
28 when he testified at his Meeting of Creditors that he had carefully read his
Bankruptcy Documents before signing them and that he was familiar with their
content. When asked why he made these false oaths, the Defendant admitted that
he testified in this manner so he could "get the process over with." The Defendant
did not value the significance of his oath and instead placed his desire for his
discharge above full and accurate disclosures. Were this the only incident of this
kind, perhaps the Court might be inclined to dismiss these undisputed lies to the
Trustee, but this is not the only time the Defendant has provided answers in such a
way as to help "get the process over with" so that he might benefit for himself.

1 Plaintiff's Proposed Findings of Fact and Conclusions of Law, Docket No. 42 at 21
2 (footnotes and citations omitted). The court agrees with the United States Trustee that
3 Meeks's representations in his bankruptcy petition and schedules and testimony at the
4 meeting of creditors indicate a pattern of reckless disregard for the truth because Meeks
5 made statements he knew were not carefully made or were untrue in listing his assets on
6 his bankruptcy petition and schedules and in answering the Chapter 7 Trustee's questions
7 at the meeting of creditors. That is, Meeks made these representations that were intended
8 by him to avoid further scrutiny by the Chapter 7 trustee and his creditors in order to obtain
9 his discharge.

10 The United States Trustee cites the Theft Loss Claim submitted to Meeks's insurer,
11 Farmers Insurance, as another example of fraudulent intent in this case:

12 The Defendant ultimately admitted that, in the Theft Loss Claim, he listed
13 only himself as the person insured under the Insurance Policy and as the sole
14 owner of all the Undisclosed Assets. The Defendant also testified that he believed
15 his fiancée was named on the Insurance Policy and that she was in fact the owner
16 of the Undisclosed Assets. When asked why then he only listed himself as the
17 named insured and as the sole owner of the Undisclosed Assets, he admitted that
18 he was trying to hurry the process along so that it would be over fast. Farmers
Insurance was simply asking a lot of questions and he was just trying to hurry up
the process and tell them he owned everything. This is yet another example of the
Defendant making statements that he believes will bring about a desired result,
without regard to the truth.

19 Plaintiff's Proposed Findings of Fact and Conclusions of Law, Docket No. 42 at 21-22
20 (footnotes and citations omitted).

21 Regarding the Theft Loss Claim, Meeks testified that the insurance adjuster told
22 him that he should sign and file the Proof of Loss because he was the owner and insured
23 on the policy and his fiancée who owned the property was not. Meeks did not call any
24 witness, including his fiancée or the insurance adjuster, to corroborate his testimony.
25 Meeks explained in his testimony that he had an existing renter's insurance policy in his
26 name, he had requested that his fiancée be added to the policy as an insured, and to his
27 surprise, he found later that she was not added to the policy. The court does not find this
28 explanation to be credible because it appears that he never apparently checked the policy

1 statements to see that the change to put his fiancée on the policy was made as he
2 allegedly requested as shown by the renter's insurance renewal statement dated October
3 15, 2019 for 2019-2020 policy year, which is Plaintiff's Exhibit 18, only showing Meeks as
4 the insured. If the policy renewal statement did not list Meeks's fiancée as an insured, it
5 would seem that Meeks would not have paid the insurance premium until it was corrected
6 as he allegedly requested. Nevertheless, Meeks signed and filed the Proof of Loss
7 representing that the Undisclosed Assets were his, and only his, which indicates that he
8 had not gifted them to his fiancée and that he still owned them, and as the owner, he
9 should have disclosed them on his bankruptcy petition and schedules. Thus, the evidence
10 of the Proof of Loss has some relevance to this adversary proceeding as showing his
11 ownership of the Undisclosed Assets as well as showing a pattern of making
12 representations not well-founded in fact for the sake of expediency.¹²³

13 The United States Trustee argues that the inconsistency of Meeks's statements in
14 this case evidence fraudulent intent for the false oaths:

15 Even while facing the revocation of his discharge the Defendant continues to
16 provide false and inconsistent testimony. Starting with the Answer, the Defendant
17 initially stated that only the Louis Vuitton and Gucci duffle bags and Engagement
18 Ring were transferred to his fiancée pre-petition. He did not claim that he also
19 transferred the Canon Mark IV camera, Kino Flo light kit, Sennheiser microphone,
20 and Zoom portable recorder to his fiancée. By the time of his deposition, however,
21 the Defendant testified that all of the Undisclosed Assets were transferred to his
22 fiancée pre-petition. Continuing even more with the internal inconsistency of his
23 own testimony, the Defendant testified that as to the Louis Vuitton and Gucci duffle

24 ¹²³ However, Meeks did not go through with his insurance claim as he withdrew it after Farmers Insurance
25 sent him a letter notifying him that he appear for examination by its counsel under oath. Meeks testified that
26 he withdrew his insurance claim because he felt that the insurance company was treating him rudely and
27 that his claim was not going to go through anyway, and not because the insurance company's lawyers
28 intended to examine him about his claim. The fact that Meeks withdrew his insurance claim does
corroborate his trial testimony that he had gifted the items to his fiancée and was not the owner of the items.
That is, proceeding with an examination under oath would have been problematic for Meeks if he was
claiming a loss for property he did not own any longer if he had given it to his fiancée and she was not an
insured on the policy. An examination under oath would also have been problematic for Meeks because
there was no loss as to the Louis Vuitton Duffle Bag because he recovered it in the trash a few days after the
burglary and did not tell the insurance company that there was no loss after he filed his proof of loss which
included the Louis Vuitton Duffle Bag as he admitted in his trial testimony.

1 bag he both owned the bags on the Petition Date and had gifted them away to his
2 fiancée. Certainly both cannot be true.

3 Yet another example of the Defendant's inconsistent testimony relates to the
4 light kit, the microphone, and the portable recorder. In his Answer, the Defendant
5 stated that he listed each in Schedule A/B in response to question number 7, as
6 "miscellaneous electronics." In his supplemental verified response to
7 interrogatories, however, the Defendant concedes that the only property he
8 scheduled as "miscellaneous electronics" in response to question 7 in Schedule A/B
9 were a cell phone and personal computer. The light kit, microphone, and recorder
are absent from his verified response. Given the number of inconsistencies in the
Defendant's testimony it is apparent that he does not value the significance of an
oath and believes that his testimony can be a moving target. These inconsistencies
in the Defendant's testimony cast doubt on the Defendant's entire testimony and
call into question his credibility.

10 Plaintiff's Proposed Findings of Fact and Conclusions of Law, Docket No. 42 at 22-23
11 (footnotes and citations omitted).

12 The court detects a tone of consternation in the argument of the United States
13 Trustee regarding the inconsistent positions taken by Meeks in this case, that is, testifying
14 that he gifted the Undisclosed Assets to his fiancée and stipulating that those assets are
15 property of the bankruptcy estate, and likewise, the court cannot reconcile the
16 inconsistencies. Perhaps the inconsistencies can be explained by Meeks's testimony
17 regarding the insurance claim that he had given the items to his fiancée, but he felt
18 because they were living together in the same house, everything in the house was his as
19 well as their property, whether it was his property or her property. Meeks gave that
20 explanation in his trial testimony, though specifically, it was given for purposes of
21 explaining the insurance claim. However, there cannot be one explanation of the assets
22 for insurance purposes and a different one for bankruptcy purposes. If the assets were
23 owned by Meeks, whether on his own or jointly owned with his fiancée, he needed to
24 disclose them on his bankruptcy petition and schedules. If Meeks had gifted them away to
25 his fiancée and no longer owned them, he needed to disclose the gifts as transfers on his
26 bankruptcy petition and schedules, that is, the SOFA, and in his answers to the Chapter 7
27 Trustee's questions about transfers. The problem here is that Meeks did neither, that is,
28 he knew of assets owned by him stipulated to as property of the estate, or of transfers of
assets, which he was required to disclose on his bankruptcy petition and schedules under

1 penalty of perjury or in testimony under penalty of perjury at the meeting of creditors, and
2 the evidence shows that he failed to make these disclosures by omission. “A debtor acts
3 with the requisite intent to deceive when his statement is ‘incompatible with his own
4 knowledge.’” *Robinson v. Worley*, 849 F.3d at 585, *citing and quoting, Saslow v. Michael*
5 (*In re Michael*), 452 B.R. 908, 919 (Bankr. M.D.N.C. 2011). Accordingly, the court finds
6 that the United States Trustee has made a *prima facie* showing of fraudulent intent of
7 Meeks regarding the false oaths for purposes of 11 U.S.C. §§ 727(a)(4) and (d)(1).

8 In response to the showing of fraudulent intent by the United States Trustee,
9 Meeks’s initial argument asserted in his proposed findings of fact and conclusions of law
10 that he had no fraudulent intent is that he had given the undisclosed assets to his fiancée,
11 Heather Sanders, and that there can be no fraudulent intent to conceal assets if he was
12 not required to disclose them. [Proposed] Findings of Fact and Conclusions of Law after
13 Trial for Defendant Tarel Deshun Meeks, Docket No. 43 at 5. This argument fails because
14 as Meeks has stipulated in this adversary proceeding, the undisclosed assets were
15 property of the bankruptcy estate, and thus, implicitly there were no gifts to his fiancée
16 based on this admission, that is, with the exception of the engagement ring.

17 Meeks’s second argument asserted in his proposed findings of fact and conclusions
18 of law that he had no fraudulent intent is that his testimonial omissions do not rise to the
19 level of actual fraud because the omissions were neither knowing nor intentional.
20 [Proposed] Findings of Fact and Conclusions of Law after Trial for Defendant Tarel
21 Deshun Meeks, Docket No. 43 at 6-10. Regarding the testimonial omission of the
22 engagement ring in Meeks’s answer to the Chapter 7 Trustee’s question whether he had
23 transferred anything worth \$5,000 or more to anyone within the prior four years, Meeks did
24 not understand the word “transfer” to include a gift. *Id.* at 7. Meeks also argues that he
25 had no actual intent to defraud to conceal his assets because he could have asserted his
26 exemption rights and would have done had his bankruptcy attorney made a reasonable
27 inquiry and advised him of his exemption rights. *Id.* at 8. Meeks further argues that he did
28 not have an intent to defraud in filing for bankruptcy because he only filed for bankruptcy

1 because his business partners burdened him and his family with a lot of debt and he
2 wanted to get married without debt and that he did not knowingly or intentionally divest
3 himself of his assets in contemplation of filing for bankruptcy. *Id.*

4 Regarding Meeks's answer to the Chapter 7 Trustee's question to elicit information
5 about transfers of any property worth more than \$5,000.00 within the prior four years, the
6 court considers that the word "transfer" is to be generally understood as the The Merriam-
7 Webster Dictionary, for example, gives a definition for the word "transfer," a verb, as
8 follows: "to convey from one person, place, or situation to another: MOVE, SHIFT."
9 Merriam-Webster Dictionary (online edition accessed on January 5, 2023, at
10 <https://www.merriam-webster.com/dictionary/transfer>). Thus, as a high school graduate
11 and a business person, Meeks knew or should have known that a gift by him would be
12 within the meaning of the word transfer as used by the Chapter 7 Trustee in his question
13 about transfers of property worth more than \$5,000.00 within the prior four years. In
14 isolation, the transfer question of the Chapter 7 Trustee might be considered only one
15 question about the transfers, but Meeks gave untruthful answers to the series of questions
16 that the trustee had asked Meeks which led to the transfer question. As Meeks admitted
17 in this case, he answered the way he did at the meeting of creditors because he just
18 wanted to get the process over with, which indicates reckless or intentional indifference to
19 the truth when he gave his answers to the Chapter 7 Trustee's questions, which supports
20 an inference of fraudulent intent. *In re Retz*, 606 F.3d at 1199, *citing*, *In re Khalil*, 379 B.R.
21 at 173-175 ("Reckless indifference or disregard for the truth may be circumstantial
22 evidence of intent . . ."); *In re Wills*, 243 B.R. at 64, *citing*, *In re Coombs*, 193 B.R. at 564
23 ("A court may find the requisite intent where there has been a pattern of falsity or from a
24 debtor's reckless indifference or disregard of the truth.").

25 Regarding Meeks's argument that he had no actual intent to defraud to conceal his
26 assets because he could have asserted his exemption rights and would have done had his
27 bankruptcy attorney made a reasonable inquiry and advised him of his exemption rights,
28

1 which is the basis of one of his affirmative defenses, the argument fails because Meeks
2 needed to list the undisclosed assets on his bankruptcy petition and schedules, which was
3 his duty as the debtor in a bankruptcy case, and then the attorney could have advised him
4 on whether to claim exemptions in these assets. As stated by the court in *In re Murray*,
5 249 B.R. at 230-231,

6
7 . . . [C]laiming an asset need not be disclosed because it is exempt puts the cart
8 before the horse. “Before an exemption can be claimed, it must be estate
9 property”. [*In re*] *Yonikus*, 996 F.2d at 869. “Section 522(1) of the Bankruptcy
10 Code specifically directs a debtor to file a list of property that the debtor claims as
11 exempt.” [*In re*] *Sapru*, 127 B.R. [306,] at 314 [(Bankr. E.D.N.Y. 1991)]. Property is
12 not exempt by fiat of the debtor, but only through a process of compliance with the
13 statutory disclosures and then by order of the bankruptcy court:

14 “Debtors have an absolute duty to report whatever interests they hold in
15 property, even if they believe their assets are worthless or unavailable to the
16 bankruptcy estate.” This is because “[t]he bankruptcy court, not the debtor,
17 decides what property is exempt from the bankruptcy estate.” Section
18 522(1) of the Bankruptcy Code and Fed.R.Bankr.P. 4003 require debtors
19 claiming exemptions to list the allegedly exempt property in their schedule of
20 assets. The claims of exemptions are then open to scrutiny by the trustee
21 and the court. The bankruptcy process provides that the debtor must first list
22 such property and claim such exemptions. Next, the trustee has an
23 opportunity to review the claim for exemptions. Then, upon the trustee’s
24 objections, the bankruptcy court determines the legitimacy of the claim or, if
25 the trustee has no objections, the exemption is then granted.

19 *Id.*, citing and quoting, *In re Bailey*, 147 B.R. 157, 163 (Bankr. N.D. Ill. 1992) (quoting *In re*
20 *Yonikus*, 974 F.2d 901, 904 (7th Cir. 1992) and citing *inter alia*, *Mertz v. Rott*, 955 F.2d at
21 598 (denying discharge for non-disclosure of allegedly exempt property).

22 There is no evidence before the court that Meeks informed the bankruptcy attorney
23 who prepared the bankruptcy petition and schedules for Meeks about the undisclosed
24 assets, so that they would be listed on the schedules of assets and exemptions. The
25 evidence indicates that Meeks was given advice about his exemption rights as the
26 bankruptcy petition and schedules, namely, Schedule C: The Property You Claim as
27 Exempt, lists assets which Meeks claimed as exempt. As shown on the petition and
28

1 schedules, Meeks claimed exemptions in disclosed assets, but not on undisclosed assets,
2 probably because he did not disclose them to the attorney. Meeks did not give testimony
3 at trial that he informed the attorney of the undisclosed assets and that the attorney failed
4 to list them on the schedules, and if that was the situation, Meeks could have carefully
5 reviewed the schedules himself to make sure the undisclosed assets were listed and
6 claimed as exempt. As Meeks admitted in his trial testimony, he did not carefully review
7 the schedules before he signed them under penalty of perjury.

8 Regarding Meeks's argument that he did not have an intent to defraud in filing for
9 bankruptcy because he only filed for bankruptcy because his business partners burdened
10 him and his family with a lot of debt and he wanted to get married without debt and that he
11 did not knowingly or intentionally divest himself of his assets in contemplation of filing for
12 bankruptcy. This argument also fails because Meeks's motive for filing for bankruptcy is
13 irrelevant to whether he made false oaths in his disclosures on his bankruptcy petition and
14 schedules and in his testimony in the bankruptcy case.

15 Regarding Meeks's argument that he did not divest himself of assets in
16 contemplation of bankruptcy, the thrust of this argument is perhaps that there is no
17 indication that he made fraudulent transfers that would serve as a basis for denying his
18 discharge as shown by the "badges of fraud" in a fraudulent transfer analysis, including (1)
19 a close relationship between the transferor and the transferee; (2) that the transfer was in
20 anticipation of a pending suit; (3) that the debtor was in poor financial condition at the time
21 of the transfer; (4) that the debtor transferred all or substantially all of his property; (5) that
22 the transfer left no assets to satisfy creditors; and (6) that the debtor received inadequate
23 consideration. The so-called "badges of fraud" are not applicable here, and the United
24 States Trustee has not so argued. Meeks's argument that he has not made improper
25 prepetition transfers is somewhat beside the point because it is irrelevant to the issue of
26 whether he made false oaths in his disclosures on his bankruptcy petition and schedules
27
28

1 and in his testimony in the bankruptcy case, which is what the United States Trustee is
2 claiming here.

3 Meeks's third argument that he did not have a fraudulent intent is that he was a
4 victim of ineffective assistance of counsel who failed to adequately advise him of his
5 exemption rights and his requirement to disclose his gifts to his fiancée, Heather Sanders.

6 [Proposed] Findings of Fact and Conclusions of Law after Trial for Defendant Tarel
7 Deshun Meeks, Docket No. 43 at 10-11.

8 Regarding the effect of reliance on counsel on the element of fraudulent intent
9 under 11 U.S.C. § 727(a)(4), the Ninth Circuit stated in *In re Retz*:

10 "Generally, a debtor who acts in reliance on the advice of his attorney lacks the
11 intent required to deny him a discharge of his debts." *In re Adeeb*, 787 F.2d at
12 1343. "However, the debtor's reliance must be in good faith." *Id.* The advice of
13 counsel is not a defense when the erroneous information should have been evident
14 to the debtor. *Boroff v. Tully (In re Tully)*, 818 F.2d 106, 111 (1st Cir. 1987). "A
debtor cannot, merely by playing ostrich and burying his head deeply enough in the
sand, disclaim all responsibility for statements which he has made under oath." *Id.*

15 *In re Retz*, 606 F.3d at 1199.

16 Meeks argues that he was not adequately counseled by his bankruptcy attorney
17 about his bankruptcy petition and schedules because no attorney reviewed them with him
18 before he signed them and about asset protection and his exemption rights. In response
19 to Meeks's defense of detrimental reliance on counsel, the United States Trustee argues:

20 The Defendant's attempt to place blame on his bankruptcy counsel is a red
21 herring and falls short of negating the Defendant's intent. Indeed, the Defendant
22 had the opportunity to come clean and correct any purported confusion, inadvertent
23 mistakes, or omissions when questioned by the Trustee at the Meeting of Creditors.
24 Instead, the Defendant intentionally and knowingly averred that he had carefully
25 reviewed the Bankruptcy Documents before signing them, that he was familiar with
26 the contents of the same, and that they were true and correct so that he could "get
27 the process over with." The Defendant was indifferent to the truth and chose to
answer in a manner that would allow him to fly under the Trustee's radar so that he
could obtain his discharge without being questioned about the pre-petition
dissipation of the Undisclosed Assets. A debtor cannot simply bury his head in the
sand in the hope of obtaining his discharge. The Court cannot condone such
behavior.

1 Plaintiff's Proposed Findings of Fact and Conclusions of Law, Docket No. 42 at 23
2 (footnotes and citations omitted).

3 Regarding Meeks's claim of inadequate counseling by the bankruptcy attorney
4 about the bankruptcy petition and schedules, this argument fails because Meeks has not
5 shown that he provided the information about the undisclosed assets to his bankruptcy
6 attorney for inclusion in the petition and schedules. "A debtor must demonstrate that he
7 provided the attorney with all of the necessary facts and documentation." *Robinson v.*
8 *Worley*, 849 F.3d at 586. Meeks has not demonstrated that he told the bankruptcy
9 attorney about the Undisclosed Assets as indicated by his deposition testimony that he did
10 not list these assets on his bankruptcy petition and schedules because he thought they
11 were not worth anything to the trustee or the bankruptcy estate and creditors in the
12 bankruptcy case. Meeks has admitted in his testimony that he was given paperwork to fill
13 out to list all of his assets so the attorney could prepare the petition and schedules, that
14 the attorney's office emailed a draft petition and schedules to him for review in advance of
15 signing them at the law office, that he did not review the draft petition and schedules
16 before going to the law office to sign them and that he did not carefully review the petition
17 and schedules before he signed them under penalty of perjury. "A debtor cannot, merely
18 playing ostrich and burying his head deeply in the sand, disclaim all responsibility for
19 statements which he has made under oath." *Id.*, citing and quoting, *In re Tully*, 818 F.2d at
20 111. As the Ninth Circuit stated in *In re Retz*, "the reason that the debtor is required to
21 attest that he has read the Schedules and SOFA [is] to ensure to the greatest extent
22 possible that the information turned over to the bankruptcy court is accurate." *In re Retz*,
23 606 F.3d at 1199, citing, *In re Searles*, 317 B.R. at 378 ("The continuing nature of the duty
24 to assure accurate schedules of assets is fundamental because the viability of the system
25 of voluntary bankruptcy depends on full, candid, and complete disclosure by debtors of
26 their financial affairs."). Meeks had the duty to carefully read the petition and schedules
27 himself for accuracy and completeness before signing them under penalty of perjury, and
28

1 he cannot claim reliance on counsel for his failure to fulfill this duty. Meeks could have
2 requested his bankruptcy attorney to review the bankruptcy documents with him if he had
3 concerns or questions, but there is no evidence that he did. Meeks on his own chose to
4 sign the petition and schedules without reading them carefully, and he chose not to list the
5 Undisclosed Assets on the petition and schedules because in his opinion, they were not
6 worth anything to the trustee and the bankruptcy estate and creditors.

7 Given the court's analysis of the value of the assets not properly disclosed on
8 Meeks's bankruptcy petition and schedules or the value of the asset not properly disclosed
9 in answer to the Chapter 7 Trustee's question about prepetition transfers at the meeting of
10 creditors, the court has given serious consideration as to whether the value of the
11 undisclosed assets and transfer did not meet the threshold for materiality or fraudulent
12 intent. As stated by the Bankruptcy Appellate Panel of the Ninth Circuit in *In re Wills*,
13 "omissions or misstatements relating to assets having little or no value may be considered
14 immaterial," but "an omission or misstatement relating to an asset that is of little value or
15 that would not be property of the estate is material if the omission or misstatement
16 detrimentally affects administration of the estate." 243 B.R. at 63. The value of an
17 undisclosed asset has some bearing on whether the debtor had acted with a fraudulent
18 intent as explained by the court in *In re Wagner*, 492 B.R. 43 (Bankr. D. Colo. 2013):

19 To be sure, the value of a[n] undisclosed asset is always a relevant factor in a
20 court's analysis of the surrounding facts and circumstances. The less the value of a
21 concealed assets, the more likely a court is to regard the omission as an honest
22 mistake. In many cases, it is reasonable to infer that the debtor has less motive to
conceal an asset of little value.

23 492 B.R. at 58.

24 In considering the evidence at trial, the magnitude of the understatement of value
25 on Meeks's bankruptcy petition and schedules due to the omission of the Undisclosed
26 Assets is not as great as suggested by the argument of the United States Trustee that
27 "[t]he Defendant now concedes that he should have disclosed the Assets in his
28 Bankruptcy Case, which include several luxury items that the Defendant himself valued in

1 excess of \$60,000.00 in the Theft Loss Claim.” Plaintiff’s Proposed Findings of Fact and
2 Conclusions of Law, Docket No. 42 at 10 (footnote and citation omitted). As discussed
3 herein, the court has found that the value of the assets that Meeks failed to disclose on his
4 bankruptcy petition and schedules totaled \$5,928.00 and that the value of the asset that
5 he failed to disclose as transferred by him within the prior four years in his testimony at the
6 meeting of creditors was \$10,000.00. Thus, the impact of Meeks’s failures to disclose
7 assets and asset transfers on the administration of the bankruptcy estate in terms of
8 realizing value for creditors is perhaps less than suggested by the approximate purchase
9 prices of the undisclosed assets totaling \$69,362.00 on the Theft Loss Claim, which he
10 was claiming as his loss. That is, the benefit of recovering the value of \$5,928.00 in
11 undisclosed assets which were the subject of the Theft Loss Claim filed with Farmers
12 Insurance and the value of the \$10,000 engagement ring as a fraudulent transfer might
13 not have been worth the cost of administration and litigation, and thus of arguably little
14 value to the estate itself, but the issue here is the matter of the integrity of the bankruptcy
15 system which requires complete and voluntary disclosure by debtors of their assets and
16 financial affairs and the cost and burden on those who administer the system if debtors fail
17 to meet their duties of disclosure, which includes the Chapter 7 Trustee, the United States
18 Trustee and the court. As the United States Trustee argues, “Section 727 insures ‘that the
19 trustee and creditors have accurate information without having to conduct costly
20 investigations.’” Plaintiff’s Brief in Response to Court’s Tentative Ruling on Whether
21 Undisclosed Assets Are Property of the Estate, Docket No. 49 at 8, *citing and quoting, In*
22 *re Khalil*, 379 B.R. at 172. Thus, even though the values of the undisclosed assets and
23 the undisclosed transfer may be little, particularly in relation to the debtor’s liabilities, the
24 values are not insubstantial. Moreover, while the court may consider the fact that the
25 assets and transfers at issue have little value in determining the debtor’s intent under 11
26 U.S.C. §§ 727(a)(4) and 727(d)(1), the court cannot per se find that he had no fraudulent
27 intent because the assets and transfers had little value as that would be inconsistent with
28 the applicable case law as stated in *In re Wills*, 243 B.R. at 64. As discussed in *Wills*, the
court must consider all the relevant factors in determining the debtor’s intent. *Id.*

1 The court also considered whether the debtor now being able to claim an amended
2 exemption of the undisclosed assets would have an impact on materiality and intent.
3 However, late amendment of the schedules to list undisclosed assets and claim
4 exemptions does not cure the original failure to disclose. *In re Sgambati*, 584 B.R. 865,
5 885 (Bankr. E.D. Wis. 2018), *citing In re Freese*, No. 09-9140, 2011 WL 2604750 (Bankr.
6 N.D. Iowa June 20, 2011) (whether or not transferred property would be exempt is
7 irrelevant to whether the debtor ought to have disclosed it on his schedules). As stated by
8 the court in *In re Sgambati*,

9 The case law cautions: “[A debtor] may not excise a false oath, however, by
10 making subsequent corrections to his bankruptcy petition.” *In re Costello*, 299 B.R.
11 882, 899-900 (Bankr. N.D. Ill. 2003). This does not mean that all amendments are
12 in vain, but that the court still must consider the intent element. “Allowing a debtor
13 to submit false schedules and then, on discovery, avoid the negative consequence
14 of his dishonesty by amending those schedules is contrary to the spirit of the law
which aims to relieve honest debtors only.” *Id.* A small number of initial omissions
may not warrant denial of discharge, where there is no evidence of intent to
defraud, or no pattern of omission. *In re Rosenzweig*, 237 B.R. 453, 457 (Bankr.
N.D. Ill. 1999).

15 *Id.* at 872. In this case, in contrast, there has been a pattern of omission from filling out
16 and completing the bankruptcy petition and schedules without listing assets of value,
17 answering questions at the meeting of creditors not disclosing a transfer of value and
18 giving untruthful answers to questions to elicit confirmation of the accuracy and
19 completeness of the petition and schedules, and not reporting the existence of post-
20 petition acquisition of an asset of the estate of value.

21 Having considered the evidence and argument of the parties whether Meeks had a
22 fraudulent intent in making false oaths, the court finds that the United States Trustee has
23 proven fraudulent intent by a preponderance of the evidence. The court also finds that the
24 United States Trustee has proven by preponderance of the evidence all of the elements of
25 a claim for denial of discharge under 11 U.S.C. § 727(a)(4) based on false oaths that if he
26 had known of Meeks’s false oaths before the entry of discharge would have objected to
27 the discharge, and that this in turn proves the first element of a claim under 11 U.S.C. §
28 727(d)(1) that the discharge was obtained by the fraud of the debtor.

1 The first element of a claim under 11 U.S.C. § 727(d)(1) that the discharge was
2 obtained through the fraud of the debtor is met by showing that Meeks's conduct would
3 have violated 11 U.S.C. § 727(a)(4) had it been known before discharge. The second
4 element is also met because the reporting party did not know of such fraud until after the
5 discharge was deemed granted after the deadline of February 18, 2020 for objecting to
6 discharge had passed on or about March 10, 2020 and the Chapter 7 Trustee received
7 information about the Theft Loss Claim from Farmers Insurance relating to the
8 Undisclosed Assets resulting in a post-discharge disclosure of apparent property of the
9 estate, of which the United States Trustee did not have prior knowledge. JPTS, ¶¶ 19 and
10 21; *see also, In re Dietz*, 914 F.2d 161, 163-164 (9th Cir. 1990) (discharge deemed
11 granted as of the deadline for objecting to discharge for purposes of determining
12 revocation of discharge pursuant to 11 U.S.C. § 727(d)). This second element is not
13 disputed by Meeks as he acknowledged in his proposed findings of fact and conclusions
14 of law. [Proposed] Findings of Fact and Conclusions of Law after Trial for Defendant Tarel
15 Deshun Meeks, Docket No. 43 at 13 ("Defendant does not dispute this element.").
16 Regarding the "third" element of the claim asserted by Meeks as set forth in *In re Gillis*,
17 403 B.R. at 144, the court rejects his argument that the United States Trustee has failed to
18 satisfy this "third" element because such a "third" element is not required by applicable
19 Ninth Circuit case law, e.g., *Jones v. United States Trustee, Eugene*, 736 F.3d at 899-900.

20 Based on the foregoing, the United States Trustee has proven his claim under 11
21 U.S.C. § 727(d) to revoke Meeks's discharge by a preponderance of the evidence.

22 **Second Claim for Relief under 11 U.S.C. § 727(d)(2)**

23 The second claim asserted by the United States Trustee is under 11 U.S.C. §
24 727(d)(2), which states as follows: "(d) On request of the trustee, a creditor, or the United
25 States trustee, and after notice and a hearing, the court shall revoke a discharge granted
26 under subsection (a) of this section if --- . . . (2) the debtor acquired property that is
27 property of the estate, or became entitled to acquire property that would be property of the
28

1 estate, and knowingly and fraudulently failed to report the acquisition of or entitlement to
2 such property, or to deliver or surrender such property to the trustee; . . .”

3 The elements of a claim under 11 U.S.C. § 727(d)(2) that a plaintiff must prove are:
4 (1) the debtor acquired or became entitled to acquire property of the estate; and (2) the
5 debtor knowingly and fraudulently failed to report or deliver the property to the trustee. *In*
6 *re Bowman*, 173 B.R. at 925, *citing Matter of Yonikus*, 974 F.2d 901, 905 (7th Cir. 1992).
7 Both elements must be met to establish a claim under 11 U.S.C. § 727(d)(2).

8 In support of the claim under 11 U.S.C. § 727(d)(2), the United States Trustee
9 argues:

10 Here, it is undisputed that the Undisclosed Assets are property of the Estate.
11 The Theft Loss Claim, which sought compensation for the stolen Undisclosed
12 Assets under the Insurance Policy, and any proceeds therefrom were also property
13 of the Estate. Yet, Meeks failed to alert the Trustee of the same. “[T]he Bankruptcy
14 Code is not ambiguous about the consequences of not reporting the receipt of
15 property of the estate: discharge may be revoked pursuant to 11 U.S.C. §
16 727(d)(2). The continuing nature of the duty to assure accurate schedules of
17 assets is fundamental because the viability of the system of voluntary bankruptcy
18 depends upon full, candid, and complete disclosure by debtors of their financial
19 affairs.” *Searles*, 317 B.R. at 378. As discussed above, it is indisputable that
20 Meeks had the requisite intent. Accordingly, as a matter of law, the United States
21 Trustee is entitled to judgment revoking the Defendant’s discharge under 11 U.S.C.
22 § 727(d)(2).

23 Plaintiff’s Proposed Findings of Fact and Conclusions of Law, Docket No. 42 at 25
24 (footnotes and citations omitted).

25 In opposition, Meeks argues in his defense:

26 Plaintiff will fail to meet its burden because Plaintiff will produce no evidence
27 of a failure by Mr. Meeks to report any acquisition of property to the Trustee
28 because Mr. Meeks never received any proceeds from the insurance claim. Mr.
Meeks never became entitled to the insurance proceeds from his insurance claim
since he asserts he chose to withdraw his claim. [See Exhibit 16b, Page
UST000064] He will maintain that he was unaware, nor was he ever informed that
he held an ongoing obligation to notify the Trustee of his insurance claim. In fact,
the Chapter 7 Trustee never gave Mr. Meeks any notice of his alleged ongoing
obligation. [See Plaintiff’s Exhibit 15 generally].

[Proposed] Findings of Fact and Conclusions of Law after Trial for Defendant Tarel
Deshun Meeks, Docket No. 43 at 14.

1 Regarding the first element under 11 U.S.C. § 727(d)(2), the claim of the United
2 States Trustee is that the Theft Loss Claim was property of the bankruptcy estate that
3 Meeks acquired and failed to report to the Chapter 7 Trustee, and the defense of Meeks is
4 that there was no such failure to report because Meeks did not acquire any reportable
5 property as he withdrew the Theft Loss Claim and did not receive any proceeds from the
6 claim.

7 The court agrees with the position of the United States Trustee because the
8 insurance policy was a prepetition asset of the bankruptcy estate, which Meeks owned as
9 before bankruptcy he purchased the policy which was in his name as the insured, and the
10 Theft Loss Claim was based on his ownership of the policy and the assets he owned
11 before bankruptcy, which were covered by the policy, including the Undisclosed Assets.
12 The insurance policy and the assets covered by the policy, the other Undisclosed Assets,
13 were property of the bankruptcy estate which includes all legal or equitable interests of the
14 debtor in property as of the commencement of the bankruptcy case pursuant to 11 U.S.C.
15 § 541(a)(1). The Theft Loss Claim was property of the bankruptcy estate pursuant to 11
16 U.S.C. § 541(a)(6) as “[p]roceeds, product, offspring, rents or profits of or from property of
17 the estate” and/or pursuant to 11 U.S.C. § 541(a)(7) as “[a]ny interest in property that the
18 estate acquires after the commencement of the case.” The Theft Loss Claim is Meeks’
19 claim based on the insurance policy for the loss of the covered assets, the other
20 Undisclosed Assets, to recover the value of the other Undisclosed Assets, which were
21 property of the estate as stipulated, after those assets were stolen in the burglary. Meeks
22 acquired the Theft Loss Claim as property of the estate after the commencement of the
23 bankruptcy case when his residence was burglarized in January 2020 after he filed for
24 bankruptcy in November 2019 and the assets covered by the insurance policy were lost
25 through theft. The fact that Meeks withdrew the Theft Loss Claim from consideration by
26 the insurance company does not change the character of the Theft Loss Claim as property
27 of the estate. As the court has found as stated above, the Theft Loss Claim had value
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1 based on the value of the stolen assets, which the court had deemed to be valued at
2 \$4,428.00 as of the Petition Date. The United States Trustee argues that the Chapter 7
3 Trustee should have been given an opportunity to analyze the Theft Loss Claim asset and
4 arrive at a business judgment regarding administration of that asset, and Meeks deprived
5 the Chapter 7 Trustee of that opportunity and caused the Theft Loss Claim to be denied.
6 See Plaintiff's Trial Brief, Docket No. 40 at 6-8.

7 Based on the foregoing, the court finds that the United States Trustee has proven
8 by a preponderance of the evidence the first element of a claim under 11 U.S.C. §
9 727(d)(2) that the debtor acquired or became entitled to acquire property of the estate.

10 As stated previously, the United States Trustee argues that Meeks is liable under
11 11 U.S.C. § 727(d)(2) because:

12 Here, it is undisputed that the Undisclosed Assets are property of the Estate.
13 The Theft Loss Claim, which sought compensation for the stolen Undisclosed
14 Assets under the Insurance Policy, and any proceeds therefrom were also property
15 of the Estate. Yet, Meeks failed to alert the Trustee of the same. "[T]he Bankruptcy
16 Code is not ambiguous about the consequences of not reporting the receipt of
17 property of the estate: discharge may be revoked pursuant to 11 U.S.C. §
18 727(d)(2). The continuing nature of the duty to assure accurate schedules of
19 assets is fundamental because the viability of the system of voluntary bankruptcy
20 depends upon full, candid, and complete disclosure by debtors of their financial
21 affairs." *Searles*, 317 B.R. at 378. As discussed above, it is indisputable that
22 Meeks had the requisite intent. Accordingly, as a matter of law, the United States
23 Trustee is entitled to judgment revoking the Defendant's discharge under 11 U.S.C.
24 § 727(d)(2).

25 Plaintiff's Proposed Findings of Fact and Conclusions of Law, Docket No. 42 at 25
26 (footnotes and citations omitted). With respect to the second element of a claim under 11
27 U.S.C. § 727(d)(2) that the debtor knowingly and fraudulently failed to report or deliver the
28 property to the trustee, the court gleans from the above-stated argument that it is the
position of the United States Trustee that this element is shown by Meeks's failure to alert
the Chapter 7 Trustee about the acquisition of the Theft Loss Claim, that such failure to
alert the trustee and report the acquisition of this asset was not in compliance with

1 Meeks's continuing duty to assure accurate schedules of assets and that based on these
2 circumstances, "it is indisputable that Meeks had the requisite intent." *Id.*

3 Meeks argues that the United States Trustee cannot prove the second element of
4 knowledge and fraudulent intent because the evidence shows that Meeks was unaware of,
5 and was never informed of, "an ongoing obligation to notify the Trustee of his insurance
6 claim," that is, the trustee never gave him any notice of any such alleged ongoing
7 obligation.

8 Although the argument of the United States Trustee on the second element is
9 somewhat abbreviated and not well-articulated, in the court's view, the court agrees with
10 the United States Trustee that the element is met. As the court has found, Meeks's
11 bankruptcy schedules were not accurate and complete because he made a number of
12 materially false oaths in his Bankruptcy Documents by omitting assets on his bankruptcy
13 schedules. As stated by the Bankruptcy Appellate Panel of the Ninth Circuit in *In re*
14 *Searles*, "[e]very debtor has a continuing duty to assure the accuracy and completeness of
15 schedules." 377 B.R. at 378. The Bankruptcy Appellate Panel further stated in *Searles*:
16 "Where the offending oath is contained in the schedules or required statements, the
17 debtor's continuing duty to assure the accuracy of such schedules and statements means
18 that the proper method of correction is a formal amendment of the schedules." *Id.* at 377.
19 "The fact of prompt correction of an inaccuracy or omission may be evidence probative of
20 lack of fraudulent intent." *Id.* (citation omitted).

21 In this case, there was no prompt correction of inaccuracies or omissions in the
22 schedules which might be evidence probative of a lack of fraudulent intent as Meeks did
23 not formally amend the schedules to list the omitted assets until well after this litigation to
24 revoke his discharge based on the false oaths was initiated. Moreover, these false oaths
25 in the bankruptcy schedules were compounded by additional materially false oaths by
26 Meeks in his testimony at the meeting of creditors which pertained to the accuracy of the
27 Bankruptcy Documents and transfers of a certain value of assets that he transferred
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1 prepetition. That is, Meeks in answering the Chapter 7 Trustee's questions at the meeting
2 of creditors falsely testified that he had carefully reviewed the Bankruptcy Documents, that
3 all assets were listed in the Bankruptcy Documents, that there were no mistakes in the
4 Bankruptcy Documents and that there were no assets worth more than \$5,000.00
5 transferred to anyone within the prior four years. Meeks's testimony was inconsistent with
6 his continuing duty as a bankruptcy debtor to assure the accuracy and completeness of
7 his bankruptcy schedules.

8 Regarding Meeks's postpetition acquisition of the Theft Loss Claim, which was
9 property of the bankruptcy estate as discussed above, related to the insurance policy,
10 which was an Undisclosed Asset, and the assets covered by the policy, the other
11 Undisclosed Assets. As the Bankruptcy Appellate Panel of the Ninth Circuit also stated in
12 *In re Searles*,

13 . . . Postpetition discovery of rights that actually existed at the time of filing must be
14 addressed in the schedules. This implies a duty to amend.

15 Although the rules may be inexact about this continuing duty to amend the
16 schedules to reflect property of the estate accurately, the Bankruptcy Code is not
17 ambiguous about the consequences of not reporting the receipt of property of the
estate: discharge may be revoked pursuant to 11 U.S.C. § 727(D)(2).

18 The continuing nature of the duty to assure accurate schedules of assets is
19 fundamental because the viability of the system of voluntary bankruptcy depends
20 upon full, candid, and complete disclosure by debtors of their financial affairs.
317 B.R. at 378.

21 The continuing duty to disclose assets is reinforced by Federal Rule of Bankruptcy
22 Procedure 4002(3) as observed by the Bankruptcy Appellate Panel in *In re Searles*:

23 Moreover, Rule 4002(3) commands all debtors to inform the trustee
24 immediately in writing of the name and address of everyone holding money or
25 property subject to the debtor's withdrawal or order if a schedule of property has not
yet been filed pursuant to Fed. R. Bankr. P. 4002(3).

26 We construe the clause in Rule 4002(3) "if a schedule of property has not yet
27 been filed" to mean a schedule, including an amended schedule, that lists the
28 specific property. Otherwise, the purpose of the rule---which assures that trustees
receive prompt notice of the existence of property that has not yet been scheduled

1 ---would be subverted by the stratagem of filing an incomplete schedule and then
2 being lackadaisical about communicating the “oh? By the ways” to the trustee.

3 *Id.*

4 The above-stated observations of the Bankruptcy Appellate Panel in *In re Searles*
5 are applicable in this case. Meeks knew that his schedules were not accurate and
6 complete when he signed and filed them in November 2019, but he had a continuing duty
7 to assure that they were accurate and complete. That is, Meeks knew of the existence of
8 the Undisclosed Assets that he did not list on his schedules, but had a continuing duty to
9 list these assets on his schedules, which meant that he was under a duty to promptly
10 amend his schedules to list them. A month later in December 2019 at the meeting of
11 creditors, Meeks had the opportunity to rectify his omissions of assets on his schedules by
12 truthfully answering the Chapter 7 Trustee’s questions about the assets listed on his
13 schedules and the accuracy of the schedules, he knowingly gave untruthful answers.
14 When Meeks acquired the Theft Loss Claim to invoke his rights to compensation under the
15 insurance policy for his theft loss in January 2020, he had to have been reminded that he
16 had not listed assets on his then recently filed bankruptcy schedules filed only two months
17 earlier in November 2019, namely, the policy, a prepetition asset he owned as of the
18 Petition Date, and the other Undisclosed Assets, which were covered by the insurance
19 policy. Meeks did not report the acquisition of the Theft Loss Claim, which he knew
20 derived from the prepetition assets that he owned as of the Petition Date, the insurance
21 policy and the other Undisclosed Assets. Meeks could have reported the Theft Loss Claim
22 to the Chapter 7 Trustee once he made the claim, and the trustee could have pursued it
23 as an asset of the estate. Thus, Meeks did not comply with his duty as a bankruptcy
24 debtor under Federal Rule of Bankruptcy Procedure 4002(3) to immediately report to the
25 Chapter 7 Trustee the identity of persons who hold or possess money or property subject
26 to Meeks’s withdrawal or order, namely, Farmers Insurance which held money to pay off
27 the Theft Loss Claim.
28

1 While the value of the Theft Loss Claim was not likely \$68,000 as suggested by the
2 argument of the United States Trustee based on the total approximate purchase price of
3 the lost assets listed by Meeks on the Proof of Loss, the claim may have been worth the
4 \$4,428 in value as determined by the court based on Meeks's valuation. As argued by the
5 United States Trustee, the Chapter 7 Trustee was deprived of the opportunity to exercise
6 his business judgment to evaluate and pursue this asset on behalf of the estate. These
7 circumstances indicate a course of conduct by Meeks of making representations in this
8 case in his bankruptcy petition and schedules and in his testimony at the meeting of
9 creditors that he knew to be false or made in reckless disregard of the truth. Accordingly,
10 the court determines that the evidence shows that Meeks's failure to report the existence
11 of the Theft Loss Claim, which was property of the estate that he acquired postpetition,
12 was beyond careless and was knowing and fraudulent.

13 Based on the foregoing, the court finds that the United States Trustee has proven
14 his claim against Meeks under 11 U.S.C. § 727(d)(2) by a preponderance of the evidence.

15 **Meeks's Affirmative Defenses**

16 In the Answer to the Complaint, Meeks asserted nine affirmative defenses: (1)
17 failure to state a claim upon which relief can be granted; (2) setoff/recoupment; (3) failure
18 to plead fraud with particularity; (4) exemption rights; (5) estoppel; (6) comparative fault of
19 third parties; (7) mistake; (8) waiver; and (9) reservation of rights. As the party asserting
20 affirmative defenses, Meeks bears the burden of proving these defenses. *Meacham v.*
21 *Knolls Atomic Power Laboratory*, 554 U.S. 84, 94-95 (2008). Meeks does not discuss any
22 of his affirmative defenses in his trial brief or his proposed findings of fact and conclusions
23 of law and has not otherwise shown how he has proven any of his affirmative defenses
24 with the exception of his fourth affirmative defense of exemption rights discussed in his
25 proposed findings of fact and conclusions of law. Thus, the court determines that Meeks
26 has not satisfied his burden of proving his affirmative defenses for failure to show how he
27 has proven them, except as to his fourth affirmative defense of exemption rights, which the
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1 court has addressed separately above, and for the reasons stated herein, the court finds
2 that he has not met his burden of proving this affirmative defense.

3 **Final Ruling**

4 Because denial or revocation of discharge is such a harsh sanction, it “should be
5 reserved for instances in which the debtor contravenes the basic compact underlying the
6 [Bankruptcy] Code’s promise of a ‘fresh start.’” *Robinson v. Worley*, 849 F.3d at 587-588.
7 That is, “[t]he implicit bargain for discharge is simple: candid, good faith disclosure of the
8 debtor’s financial affairs in return for the freedom of a clean slate.” *Id.* at 583. The court
9 has carefully reviewed and considered the evidence and the arguments of the parties and
10 concludes that the preponderance of the evidence shows that Meeks’s discharge should
11 be revoked pursuant to 11 U.S.C. §§ 727(d)(1) and (2) because he did not live up to his
12 side of the simple bargain for a discharge in not making a candid, good faith disclosure of
13 his financial affairs in exchange for the freedom of a clean slate in a bankruptcy discharge.

14 Based on the foregoing findings of fact and conclusions of law, the court determines
15 that the United States Trustee has proven his claims under 11 U.S.C. §§ 727(d)(1) and (2)
16 to revoke Meeks’s bankruptcy discharge by a preponderance of the evidence. The United
17 States Trustee is ordered to lodge a proposed judgment consistent with these findings of
18 fact and conclusions of law within 14 days of the date of entry of these findings of fact and
19 conclusions of law.

20 IT IS SO ORDERED.

21 ###

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23
24 Date: January 20, 2023

25 Robert Kwan
United States Bankruptcy Judge