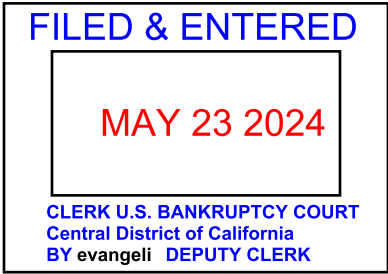


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**UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA**

In re:

Sherrie Nicole Lockhart-Johnson,

Case No.: 2:20-bk-10969-BB

Chapter: 7

Adversary No.: 2:20-ap-01073-BB

Debtor(s),

**FINDINGS OF FACT AND CONCLUSIONS  
OF LAW IN SUPPORT OF JUDGMENT IN  
FAVOR OF DEFENDANTS**

Sharlene Willard,

Plaintiff(s),

Trial Date (Phase I)  
Date: May 23, 2024  
Time: 10:00 AM  
Courtroom 1539

vs.

Sherrie Nicole Lockhart-Johnson, et al.,

Defendant(s).

The Court hereby makes the following findings of fact and conclusions of law in support of the judgment entered in the above adversary proceeding concurrently herewith:

**FINDINGS OF FACT**

1  
2 1. Defendant Sherrie Nicole Lockhart-Johnson (the “Debtor”) commenced the  
3 above chapter 7 case by filing a voluntary petition on January 29, 2020 (the “Petition Date”).

4 2. Plaintiff Sharlene Willard (“Plaintiff”) commenced the above adversary  
5 proceeding (the “Action”) against the Debtor (the “Debtor”) on March 26, 2020.

6 3. On December 28, 2021, Plaintiff filed an amended complaint (the “Amended  
7 Complaint”), adding the Debtor’s nondebtor spouse Steve Todd Johnson (“Johnson”) as a  
8 defendant.

9 4. No attorney has ever appeared in the Action on behalf of any of the parties.

10 5. The Amended Complaint seeks to have amounts that Johnson owes Plaintiff  
11 under a default judgment entered against him in Los Angeles Superior Court case no.  
12 17IWSC00998 (the “State Court Judgment”) excepted from the “community property  
13 discharge” of Bankruptcy Code section 524(a)(3) on the ground that amounts due under the  
14 State Court Judgment (the “Claim”) would have been excepted from the discharge under  
15 Bankruptcy Code sections 523(a)(2)(A) and 523(a)(6) if Johnson had filed his own bankruptcy  
16 case on the Petition Date.<sup>1</sup>

17 6. Plaintiff did not plead (or obtain a judgment for) fraud or any intentional tort in the  
18 state court action.

19 7. Plaintiff’s claim under section 523(a)(2)(A) is based on her contention that  
20 Johnson falsely represented to her that he was a licensed contractor and that, but for this false  
21 representation, she never would have agreed to work with him and the company he claimed to  
22 work for/with – Pro-Team Contractors.

23 8. Plaintiff’s claim under section 523(a)(6) is based on her contention that, despite  
24 continual requests and receipt of payments, Johnson did not complete the work that he had  
25 agreed to complete and instead caused damage to her home by (a) cutting through a water  
26 pipe, causing water to stream down from the upstairs bathroom into Plaintiff’s attic and down  
27 the downstairs walls, (b) performing work in a substandard manner, (c) smearing large black  
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<sup>1</sup> The Amended Complaint also contained a claim under Bankruptcy Code section 523(a)(4), but, in its March 15, 2023 Order [Docket No. 127] at par. 7, the Court found that any such claim was not well founded and dismissed it.

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plotches of some substance across the front of her home and (d) making an enormous mess by piling debris in the bedrooms and throwing trash out of the windows.<sup>2</sup>

9. Plaintiff has never claimed that the Debtor herself made any misrepresentations to Plaintiff or engaged in any wrongful conduct.

10. By order entered April 12, 2023 [Docket No. 149], the Court entered an order granting in part the Debtor's motion for summary judgment (the "Motion"). That order provided, in pertinent part, as follows:

1. Subject to the provisions of paragraphs 2 and 3 below, the Motion is GRANTED to the extent that it seeks a determination that any claims asserted by Plaintiff are dischargeable as against the debtor Sherrie Nicole Lockhart-Johnson;
2. To the extent that the Motion seeks a determination that any claims asserted by Plaintiff would be dischargeable in a hypothetical bankruptcy case filed by or with regard to defendant Steve Johnson, the motion is DENIED.

11. To streamline the issues in the Action for the purposes of discovery and trial and in the interests of efficiency and economy, the Court entered its March 15, 2023 "Order Granting in Part and Denying in Part Plaintiff's Motion to Compel Responses to Discovery Requests and Bifurcating Issues for Discovery and Trial" [Docket No. 127] (the "Bifurcation Order"), which provided, in pertinent part (emphasis in original),

**6. In light of the difficulties that the parties have had in dealing with one another in this adversary proceeding, the Court hereby bifurcates for both the purposes of discovery and trial (a) the issue of whether any amounts due Plaintiff are nondischargeable under Bankruptcy Code sections 523(a)(2)(A) and/or 523(a)(6) (the "Nondischargeability Issue") from (b) the issue of whether the debt in question is a community obligation (the "Community Property Issue"). First, the parties should conduct and complete (if they have not done so already) any discovery necessary for them to proceed to trial with regard to Nondischargeability Issue, and, with the exception of providing the further responses required by this Order, should refrain from propounding or responding to any further discovery concerning the Community Property Issue, including**

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<sup>2</sup> This paragraph summarizes the contentions that Plaintiff made in the parties' Stipulation, as defined below. Pursuant to the final paragraph of the Stipulation and Local Bankruptcy Rule 7016-1(b)(2)(J), these contentions supersede any that may have been made in the parties' pleadings or elsewhere in this Action.

1 **without limitation the extent to which the Defendants are separated, until further**  
2 **order of the Court authorizing such discovery.**

3 \* \* \*

4 **8. Court will adjudicate the Nondischargeability Issue first, as this may**  
5 **moot the remaining issues in this case. If the Court concludes that plaintiff**  
6 **cannot make the showing necessary to have her claim excepted from the**  
7 **discharge, she will be estopped to deny that the obligation is a community claim.**  
8 **Therefore, she will be enjoined from attempting to enforce the claim as against**  
9 **the Debtor, the property of the Debtor and any community property that may**  
10 **exist. If the Court concludes that the claim is not dischargeable, the extent to**  
11 **which any property held/earned by the Debtor may be considered community**  
12 **property will be an open issue. The Court will assess at that time how best to**  
13 **proceed with any remaining issues.**

14 12. By order entered March 20, 2024 [Docket No. 202] (the “Trial Procedures  
15 Order”), the Court scheduled an evidentiary hearing on the Nondischargeability Issue (“Phase  
16 1”) for May 23, 2024 at 10:00 a.m. in Courtroom 1539 of the above-entitled Court and directed  
17 both Plaintiff and Johnson to “attend the trial in person and not by Zoom or telephone.” See  
18 Docket No. 202, at p. 2, lines 2-3. In paragraph A of the Trial Procedures Order, the Court  
19 further advised the parties that “[a]ll witnesses that either party may wish to call to offer  
20 testimony must appear in person and not by Zoom or telephone” at the May 23, 2024 trial.

21 13. The Trial Procedures Order did not provide for the parties to submit direct  
22 testimony by declaration. Instead, the Court advised the parties at the March 19, 2024 pretrial  
23 conference (the “Pretrial Conference”) that all testimony would be presented orally at the May  
24 23, 2024 evidentiary hearing.

25 14. The Trial Procedures Order further advised the parties that any trial briefs that  
26 either elected to submit were to have been filed and served not later than May 16, 2024.

27 15. Subject to certain modifications set forth in its March 12, 2024 “Order Approving  
28 Pretrial Stipulation, with Modifications” [Docket No. 198], the Court approved and accepted the  
contentions and admissions made by the parties in their February 21, 2024 Pretrial Stipulation  
[Docket No. 189] (the “Stipulation”).

16. Pursuant to Local Bankruptcy Rule 7016-1(b)(2)(J), the final paragraph of the  
Stipulation provides as follows: “The foregoing admissions have been made by the parties,

1 and the parties have specified the foregoing issues of fact and law remaining to be litigated.  
2 Therefore, this order supersedes the pleadings and governs the course of trial of this cause,  
3 unless modified to prevent manifest injustice.”

4 17. Based on the representations made by the parties at the Pretrial Conference, the  
5 Court included in its March 12, 2024 order [Docket No. 198] the names of the witnesses that  
6 each of the parties intended to call at trial on May 23, 2024. The following is the list of  
7 witnesses that Plaintiff advised the Court she intended to call at the May 23 trial:

- 8 i. Tamika Johnson (who was present at the property to let workmen in) (can  
9 testify as to what occurred at the property during construction);
- 10 ii. Marcus Curry (plaintiff's son, also present at the property every day) (can  
11 testify as to what occurred at the property during construction);
- 12 iii. Joe Powell (can testify as to Johnson's relationship with his company, how  
13 his company did business, nature and extent of contract with plaintiff);
- 14 iv. Steve Johnson (defendant); and
- 15 v. Sharlene Willard (plaintiff).

16 18. Trial of Phase I commenced at approximately 10:13 a.m. on May 23, 2024 in  
17 Courtroom 1539 of the above-entitled Court and concluded at approximately 10:40 a.m. on  
18 that date. In the tentative ruling that the Court posted in connection with this hearing, it again  
19 advised the parties that it intended to resolve at that hearing (a) whether any amounts that may  
20 be due Plaintiff are nondischargeable under Bankruptcy Code section 523(a)(2)(A) [for fraud];  
21 and (b) whether any amounts that may be due Plaintiff are nondischargeable under  
22 Bankruptcy Code section 523(a)(6) [for willful and malicious injury].

23 19. Defendants Sherrie Nicole Lockhard-Johnson and Steve Todd Johnson  
24 appeared for trial on May 23, 2024. Joe Powell (who is married to Johnson's aunt) also  
25 appeared. Plaintiff did not appear, either in person or through counsel. None of the other  
26 witnesses identified in the Court's March 12, 2024 order [Docket No. 198] were present in  
27 Court. Both at the beginning of the trial and at the end, Judge Bluebond's chambers staff  
28 checked both voicemail and email to see whether Plaintiff had tried to contact chambers to  
advise the Court that she was running late or that an emergency had arisen and did not find

1 any communications from Plaintiff. At approximately 10:50 a.m., Plaintiff telephoned a  
2 member of Judge Bluebond's chambers staff to advise that she was on her way to court.  
3 Chambers staff advised Plaintiff that there was no longer any reason for her to appear, as trial  
4 had already concluded.

5 20. Based on the Stipulation, the Court finds that there is no dispute between the  
6 parties as to the following facts: (a) when Johnson and Plaintiff met in person to discuss the  
7 prospect of entering into an agreement for work to be performed at Plaintiff's property,  
8 Johnson gave Plaintiff the contractor's license number for Pro-Team Contractors; (b) Plaintiff  
9 used her mobile phone to check the license number through the CCLB and saw that it was, in  
10 fact, legitimate; (c) the license number that Johnson provided Plaintiff was that of Pro-Team  
11 Contractors, which was valid at all times relevant herein.

12 21. Although Plaintiff has at times argued that there was no contract between herself,  
13 on the one hand, and Johnson and/or Pro-Team Contractors, on the other, to perform work at  
14 her property, she sued Johnson and Pro-Team Contractors for breach of contract in Los  
15 Angeles Superior Court and eventually obtained a default judgment for damages for breach of  
16 contract.<sup>3</sup> Joe Powell testified at his deposition and in an earlier declaration that Johnson had,  
17 at various points in time, worked with Pro-Team Contractors to secure contracts for them and  
18 was authorized to enter into a contract with Plaintiff on Pro-Team Contractors' behalf for work  
19 to be performed at Plaintiff's home. See Transcript of Powell Deposition, pp. 13-15 [Exhibit 7  
20 to Plaintiff's Pretrial [Proposed] Order, Docket No. 180].

21 22. Based on the foregoing, the Court finds that Johnson did not make a false  
22 representation to Plaintiff. Plaintiff has not provided any evidence that Johnson ever  
23 represented that he personally, as distinguished from Pro-Team Contractors, had a  
24 contractor's license. And the contractor's license number that Johnson provided to Plaintiff  
25 was a valid contractor's license number.

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<sup>3</sup> Perhaps Plaintiff is under the mistaken belief that the term, "contract," can only refer to a written agreement? This is only true when the contract in question falls within the Statute of Frauds, Cal. Civ. Code section 1624, which does not appear to be the case here.

1           23. Based on the foregoing, the Court finds further that, even if Johnson had  
2 represented that the license number that he provided was his own license number (rather than  
3 that of Pro-Team Contractors), Plaintiff could not have justifiably relied on any such  
4 representation as, before hiring Pro-Team Contractors, she looked up the license number to  
5 confirm that it was valid. In the course of so doing, she would have seen that Pro-Team  
6 Contractors was the license holder and not Johnson himself.

7           24. In response to discovery requests, Plaintiff never provided copies of any  
8 documents (checks, bank statements, receipts, etc.) to evidence any payments made to  
9 Johnson or Pro-Team Contractors.

10           25. In response to discovery requests, Plaintiff never provided copies of any  
11 documents to evidence that she hired or paid anyone to repair any damage that she claims  
12 Johnson caused. Instead, she first asserted in "Plaintiff's Response to Defendant's Motion to  
13 Compel Discovery Documents and Responses" [Docket No. 195, at p. 5, par. 3(b)], that  
14 "Plaintiff has not hired anyone to complete any of the astronomical damage done by Johnson  
15 and associates or do any related repairs." Later, when ordered by the Court to supplement her  
16 discovery responses, Plaintiff submitted a "Supplemental Declaration of Sharlene Willard"  
17 [Docket No. 211], in which she states that "c. The damage to the outside, bathroom and closet  
18 was repaired around August/September 2019, approximately \$23,000. James Miller,  
19 Riverside, CA, hired the contractors to complete the repairs. He was provided cash to pay the  
20 majority of the cost to the contractors. d. The last known address for James Miller is  
21 Riverside, CA. I no longer have James Miller's phone number or exact address, and I have  
22 never had an email address." This is the only evidence Plaintiff has ever provided concerning  
23 the extent of the damage she claims to have suffered as a result of Johnson's actions or  
24 inactions, and she has never provided any documentation of any kind to evidence that any  
25 repair or remediation work was performed at the property or that she paid anyone anything to  
26 perform repairs or remediation work at the property.

27           26. Plaintiff has never provided any evidence to support her contention that Johnson  
28 was the cause of any damage to her property or that any alleged damage was willful or  
malicious. Nor has she provided any evidence to support her contention that Johnson

1 intended to cause her harm or knew that harm was substantially certain to occur from his  
2 actions.

3 27. The Court takes judicial notice of the fact that, throughout the pendency of this  
4 Action, whenever the Court questioned the Plaintiff concerning the facts and circumstances  
5 that led to the commencement of the Action (which it did frequently), Plaintiff's explanations  
6 were always difficult to follow. The Court was never able to obtain from Plaintiff a coherent  
7 narrative of what transpired or of the precise nature of her contentions. It was for this reason  
8 that the Court in its November 29, 2023 order [Docket No. 183] ordered the parties to  
9 participate in the Court's mediation program "for the purpose of preparing a proposed joint  
10 pretrial order." This mediation produced the Stipulation defined above.

### 11 12 **CONCLUSIONS OF LAW**

13 1. Bankruptcy Code section 523(a)(2)(A) excepts from a discharge in bankruptcy  
14 debts for money, property, services, or an extension or renewal or refinancing of credit, to the  
15 extent obtained by false pretenses, a false representation or actual fraud (other than a  
16 statement concerning debtor's or an insider's financial condition).

17 2. In order to have a claim excepted from discharge under Bankruptcy Code section  
18 523(a)(2)(A), plaintiff must establish the following elements:

- 19 a. that the debtor made a representation;
- 20 b. that the debtor knew at the time that the representation was false;
- 21 c. that the debtor made the misrepresentation with the intention/purpose of  
22 deceiving the creditor;
- 23 d. that the creditor justifiably relied on the representation; and
- 24 e. that the creditor sustained damage as proximate result of her reliance on the  
25 misrepresentation.

26 Apte v. Japra (In re Apte), 96 F.3d 1322 (9th Cir. 1996).

27 3. Plaintiff bears the burden of proof, and the foregoing elements must be proven by  
28 a preponderance of the evidence. In re Demarest, 124 F.3d 211 (9th Cir. 1997) citing Grogan  
v Garner, 498 U.S. 279, 291 (1991).



1 4. The Supreme Court has held that reliance by creditor need only be justifiable, it  
2 need not be reasonable. A person is justified in relying upon misrepresentation even if he  
3 might have ascertained falsity of information through investigation, but one cannot close his  
4 eyes and blindly rely. See Apte v. Japra (In re Apte), 96 F.3d 1322 (9th Cir. 1996).

5 5. With regard to her claim under Bankruptcy Code section 523(a)(2)(A), Plaintiff  
6 has failed to establish any of the elements necessary to state a claim.

7 6. Bankruptcy Code section 523(a)(6) excepts from a discharge in bankruptcy debts  
8 for “willful and malicious injury by the debtor to another entity or to the property of another  
9 entity.”

10 7. The “willful and malicious” conduct must result in a deliberate or intentional injury,  
11 It is not sufficient that the defendant have performed a deliberate or intentional act that led to  
12 injury. Kawaauhau v. Geiger, 523 U.S. 57 (1998) (overruling Ninth Circuit that a wrongful act,  
13 done intentionally, that necessarily produces harm was sufficient without specific intent to  
14 injure). Debts arising from recklessly or negligently inflicted injuries do not fall within section  
15 523(a)(6). Id.

16 8. The debtor must desire to cause the consequences or believe that the  
17 consequences are substantially certain to result from his conduct. Baldwin v. Kilpatrick (In re  
18 Baldwin), 245 B.R. 131 (Bankr. 9th Cir. 2000). Intentional torts fall within section 523(a)(6),  
19 which generally require that the actor intend the consequences of the act, not merely the act  
20 itself; however, when an actor knows or is substantially certain of the consequences that will  
21 result from his act and continues despite this knowledge, the law will treat the actor the same  
22 as if he had meant to produce the result.

23 9. Section 523(a)(6)’s willful injury requirement is met only when the debtor has a  
24 subjective motive to inflict injury or when the debtor believes that injury is substantially certain  
25 to result from his own conduct. Petralia v. Jercich (In re Jercich), 238 F.3d 1202 (9th Cir.),  
26 cert. denied, 533 U.S. 930 (2001). It is not sufficient that, under an objective standard, there is  
27 a substantial certainty that the debtor’s conduct will cause harm. Carrillo v. Su (In re Su), 290  
28 F.3d 1140 (9th Cir. May 20, 2002) (affirming BAP’s decision at 259 B.R. 909).

1 10. As with any exception to discharge under section 523(a), Plaintiff bears the  
2 burden of proof.

3 11. Plaintiff has failed to establish any of the elements of her claim under Bankruptcy  
4 Code section 523(a)(6).

5 12. The Ninth Circuit and numerous district courts in California have held that the  
6 failure to appear for trial warrants dismissal of an action with prejudice. See e.g., Huey v.  
7 Teledyne, Inc., 608 F.2d 1234, 1237-38 (9th Cir. 1979) (finding the district court had discretion  
8 to dismiss case with prejudice when plaintiff's counsel failed to appear for trial); Anderson v.  
9 Hughes Helicopters, Inc., 865 F.2d 263 (9th Cir. 1988) (affirming dismissal of action when the  
10 pro se plaintiff failed to appear for trial); Al-Torki v. Kaempfen, 78 F.3d 1381, 1385 (9th Cir.  
11 1996) ("Failure to appear for trial ... prejudices an adversary and interferes with the court's  
12 docket about as much as any procedural default can."); Beard-Williams v. Palmdale Sch. Dist.  
13 (PSD), 65 F. App'x 114, 115 (9th Cir. 2003) (affirming dismissal of action when pro se plaintiff  
14 failed to appear for sixth day of her jury trial); Thompson, 2022 U.S. Dist. LEXIS 189546, 2022  
15 WL 10140852, at \*1 (dismissing action because pro se plaintiff failed to appear for his jury  
16 [\*16] trial). Arellano v. Hodge, 2024 U.S. Dist. LEXIS 54003, \*15-16 (S.D. Cal. March 25,  
17 2024).

18 13. This Action has been pending for more than four years. Plaintiff had more than  
19 ample notice of the Court's intention to conduct an evidentiary hearing on May 23, 2024 in  
20 Courtroom 1539 of the above-entitled Court. She did not request a continuance of this date or  
21 otherwise report to the Court any reason that she would not be able to appear in a timely  
22 manner on the morning of trial. There was no weather condition or other natural disaster that  
23 would have interfered with her attending court in a timely manner on the day of trial.

24 14. Having failed to put on her case in chief, Plaintiff has failed to carry her burden of  
25 proof on either of the remaining theories asserted in the Amended Complaint.

26 15. In light of the foregoing, the Court finds that judgment should and will be entered  
27 in favor of Johnson and against the Plaintiff concurrently herewith.

28 16. The Court noted in the Bifurcation Order at paragraph 8 that adjudication of the  
Nondischargeability Issue may moot the remaining issues in this Action. The Court finds that

1 this is the case. Any issues that may remain as between the parties are not yet ripe for  
2 decision and may or may not be within this Court's jurisdiction.

3 17. Having failed to prevail under any subpart of section 523, the provisions of  
4 Bankruptcy Code section 524(a)(3) apply to the Claim, and, pursuant to section 524(a)(3), the  
5 discharge that Debtor obtained in the above chapter 7 case operates as an injunction against  
6 the commencement or continuation of an action, the employment of process, or any act to  
7 collect or recover from, or offset against, property of the Debtor or community property of the  
8 Debtor and Johnson on account of the Claim.

9 18. As Plaintiff attempted to have her claims against Johnson excepted from the  
10 discharge in the Debtor's bankruptcy case pursuant to Bankruptcy Code section 524(a)(3) (the  
11 "community property discharge"), and the Court has devoted its resources to the adjudication  
12 of this claim for more than 4 years, Plaintiff is judicially estopped to deny that her claim against  
13 Johnson (the "Claim") is a community claim subject to section 524(a)(3).

14 19. Notwithstanding the foregoing, the Claim remains enforceable (solely) as against  
15 any separate property that Johnson may have, and not as against any community property in  
16 the possession of either Johnson and/or the Debtor.

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25 Date: May 23, 2024



26 Sheri Bluebond  
27 United States Bankruptcy Judge  
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