

FOR PUBLICATION

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UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

RIVERSIDE DIVISION

CLERK U.S. BANKRUPTCY COURT
Central District of California
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In re: Case No. 6:10-bk-36672-MW
HEATHER R. CACCIATORI, Chapter 7
Debtor. Adversary No. 6:10-ap-01699-MW

FIRST MUTUAL SALES FINANCE,
Plaintiff,
v.
HEATHER R. CACCIATORI,
Defendant-Debtor.

MEMORANDUM DECISION

Kenrick Young, Esq., for First Mutual Sales Finance

Heather R. Cacciatori, Pro Se

WALLACE, J.

This adversary proceeding came on for trial on January 23, 2012, to determine the dischargeability of a debt owed to plaintiff First Mutual Sales Finance, a Delaware corporation ("First Mutual") by defendant-debtor Heather R. Cacciatori ("Ms. Cacciatori").

The Court has subject matter jurisdiction over this proceeding pursuant to 28 U.S.C. § 1334 and the General Order, filed July 23, 1984, of the United States District Court for the Central District of California. This is a core proceeding under 28 U.S.C. § 157(b)(2)(I).

FINDINGS OF FACT

Ms. Cacciatori met at her residence in Riverside, California with a sales representative for Clearview Home Improvements ("Clearview") on June 8, 2007 to arrange for the purchase and installation of replacement windows. The sales representative informed Ms. Cacciatori that the sale could be financed, subject to credit approval. The sales representative produced a credit application form from Viewtech Financial Services, Inc. and began filling it out in response to information supplied by Ms. Cacciatori. When the application was completed, he gave it to Ms. Cacciatori who, after reviewing it, signed and dated it.¹

At the time of these events Ms. Cacciatori was a self-employed website designer (and had been since 2001). The credit application form had three boxes to check – Full Time Employee, Part Time Employee and Self-Employed – and the sales representative checked "Self-Employed." Another space on the credit application called for "Applicant's Gross Salary*" along with blanks to check for Monthly, Hourly, Weekly and Annually. The asterisk text for the word "Salary*" stated that "Alimony, child support or separate maintenance income need not be revealed if you do not have it considered as a basis for repaying the obligation."² The term "salary" would not ordinarily be viewed as including within its ambit income from alimony or child support.³ The asterisk text creates the implication that alimony, child support or separate maintenance should be included under "Applicant's Gross Salary*" – even though such items are not salary—if the applicant wants them considered as a basis for repaying the obligation.

Ms. Cacciatori told the sales representative that her projected weekly income for the year was \$900. At that time Ms. Cacciatori was regularly depositing \$900 per week in her bank account. The sales representative told Ms. Cacciatori that she could get a lower rate of interest on the loan if she were able to state more income on the credit application. Ms. Cacciatori responded that her partner, Tania Wilson,⁴ who lived in the same household, was contributing \$2,200 per month to the household's operation. The sales representative then

¹ Reporter's Transcript of Proceedings ("R.T.") at 31 (line 2), 52, 54-55, 57, 66, 73.

² Exhibit A (credit application); R. T. at 37.

³ R.T. at 39.

⁴ Ms. Wilson was Ms. Cacciatori's partner in 2007 but is no longer her partner. R.T. at 50, 73.

1 filled in the "Applicant's Gross Salary*" blank with "\$5500.00" and checked the box indicating
2 this was a Monthly rate. Ms. Cacciatori understood the "\$5500.00" to be the sum of her
3 monthly income of \$3,300 and her partner's monthly contribution of \$2,200.⁵ Ms. Cacciatori
4 believed this was a true and correct response in the "Applicant's Gross Salary*" blank at the
5 time she signed the credit application form.

6 Immediately below the box on the credit application form for "Applicant's Gross
7 Salary*" is a box for "Other Sources of Income." This box does not specify whether such
8 income is the applicant's income or income of another person. Nor does the box or any other
9 text on the application form indicate the relationship between "Applicant's Gross Salary*" and
10 "Other Sources of Income" or address the potential problem of a double counting of income.⁶
11 The sales representative entered "\$2200.00" in this box and, in the line next to it, wrote
12 "Partner Income."⁷ Ms. Cacciatori believed this was a true and correct entry in the "Other
13 Sources of Income" blank at the time she signed the credit application form.

14 Below these lines on the credit application was a section for "Co-Applicant
15 Information." The sales representative did not fill out any of the information requested by the
16 form with respect to a "Co-Applicant," such information being the co-applicant's name, mailing
17 address, social security number, job position or title and, importantly, "Co-Applicant's Gross
18 Salary*."

19 Ms. Cacciatori reviewed the form after it was filled out by the sales
20 representative. She did not find it unusual that the "Co-Applicant Information" section of the
21 credit application was not filled out because she did not intend that Ms. Tania Wilson be a loan
22 applicant.⁸ Ms. Tania Wilson did not sign the credit application. Ms. Cacciatori believed it was
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24 ⁵ R.T. at 66.

25 ⁶ Mr. Michael Sanford, an officer of First Mutual, testified that the purpose of the asterisk text was to inform
26 persons filling out the loan application form "if you want other income to be considered, it should be put in the
27 space where it says other sources of income." R.T. at 38-39. This explanation makes little sense. If such was
28 First Mutual's intention, it is manifest that the asterisk should have been placed next to "Other Sources of
Income," not next to "Applicant's Gross Salary*." Mr. Sanford's testimony leads the Court to wonder whether the
placement of the asterisk and the asterisk text was a typographical error on the loan application form.

⁷ R.T. at 55-56.

⁸ R.T. at 51, 53.

1 true, accurate and proper to leave the "Co-Applicant Information" section blank at the time she
2 signed the credit application form.

3 Ms. Cacciatori offered to substantiate and corroborate the financial information
4 on the credit application by providing the sales representative access to her bank statements,
5 books of account and 2006 tax returns. The sales representative declined the opportunity to
6 inspect these documents.⁹

7 The filled out and signed credit application was faxed on June 11, 2007 and then
8 faxed again on June 14, 2007, presumably to some person who had the authority to grant or
9 deny credit.¹⁰ The decision was to grant credit, and, on June 18, 2007, Ms. Cacciatori signed
10 a Retail Installment Contract promising to pay Clearview 144 consecutive monthly payments of
11 principal and interest, each in the amount of \$190.79. The original principal amount of the loan
12 was \$13,886 and the annual percentage rate was 12.99 percent. An endorsement indicates
13 that on June 14, 2007 Clearview assigned the contract to Vision Financial Inc., who in turn
14 assigned it on June 21, 2007 to First Mutual Bank (a predecessor in interest of First Mutual).

15 First Mutual and its predecessor in interest First Mutual Bank are in the business
16 of originating consumer sales finance loans for home improvements. First Mutual relies
17 heavily on the accuracy of written financial statements (which would appear to include credit
18 applications stating financial information about the loan applicant) from the consumer in
19 deciding whether to extend credit. In this case, First Mutual (or its predecessor) used a
20 proprietary formula based upon income represented in writing by the consumer, the
21 consumer's credit score, the consumer's debt-to-income ratio and residual gross income. In
22 reviewing Ms. Cacciatori's credit application, First Mutual came to the conclusion that Ms.
23 Cacciatori had a gross monthly income of \$5,500.00.¹¹

24 Ms. Cacciatori's website design business went into a severe downturn in the
25 latter months of 2007 when parties who were doing business with her cancelled their contracts.

27 ⁹ R.T. at 66-68. Mr. Sanford explained that First Mutual's loan program was a stated income program pursuant to
28 which no verification documentation was requested or required. R.T. at 35-36.

¹⁰ Exhibit A.

¹¹ R.T. at 17, 27-30 (" . . . the \$5,500 per month that she represented . . . ").

As a result, the gross receipts reported on Schedule C of her federal income tax return dropped from \$46,800 in 2006 (an average rate of \$900 per week) to \$37,913 in 2007 (an average rate of \$729 per week).¹² Other income-type metrics on her tax returns declined more sharply. Adjusted gross income fell from \$11,657 in 2006 to \$43 in 2007. Taxable income remained at zero in both tax years because of the effect of the personal exemption and substantial itemized deductions.

Despite these financial reversals Ms. Cacciatori continued to make loan payments until August 2009. She filed a chapter 7 petition on August 20, 2010. First Mutual commenced this adversary proceeding by filing a complaint on November 29, 2010 seeking a determination that the debt owed to it by Ms. Cacciatori is nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(B).

CONCLUSIONS OF LAW

11 U.S.C. § 523(a)(2)(B) provides in relevant part that a discharge under 11 U.S.C. § 727 does not discharge an individual debtor from any debt for money obtained by use of a statement in writing (i) that is materially false, (ii) respecting the debtor's financial condition, (iii) on which the creditor to whom the debtor is liable for such money or credit reasonably relied, and (iv) that the debtor caused to be made or published with intent to deceive. The Ninth Circuit has reworded these requirements as follows: (1) a representation of fact by the debtor, (2) that was material, (3) that the debtor knew at the time to be false, (4) that the debtor made with the intention of deceiving the creditor, (5) upon which the creditor relied, (6) that the creditor's reliance was reasonable, and (7) that damage proximately resulted from the representation. *Candland v. Ins. Co. of N. Am. (In re Candland)*, 90 F.3d 1466, 1469 (9th Cir. 1996).

First Mutual has the burden of proving by a preponderance of the evidence the foregoing elements of its cause of action. *Grogan v. Garner*, 498 U.S. 279, 291 (1991);

¹² Trial Exhibit 3 (2006 U.S. Individual Income Tax Return) at Schedule C, line 7; Trial Exhibit E (2007 U.S. Individual Income Tax Return) at Schedule C, line 7.

1 *Candland*, 90 F.3d at 1469. First Mutual has proven by a preponderance of the evidence
2 items (1), (2), (5) and (7). Ms. Cacciatori represented a number of facts on the credit
3 application, most importantly her “Applicant’s Gross Salary*” and “Other Sources of Income.”
4 These facts were material in light of the nature and purposes of a credit application. The
5 testimony of Mr. Michael Sanford, an officer of First Mutual, makes it clear that First Mutual
6 relied on these facts in making the decision to extend credit or purchase by assignment a retail
7 installment sales contract. First Mutual’s damages proximately resulted from the
8 representations on the credit application in the sense that the representations induced First
9 Mutual to purchase or make the loan, and the resulting nonpayment of the loan caused
10 damage to First Mutual.

11 Nevertheless, First Mutual’s case has failed to prove items (3), (4) and (6) by a
12 preponderance of the evidence and thus its cause of action cannot be sustained. Below, the
13 Court discusses each of these items in turn.

14 **A. “. . . That the Debtor Knew At the Time to Be False . . .”**

15 This element looks to a defendant-debtor’s contemporaneous knowledge of the
16 falsity of representations made in connection with a lending transaction. *Gertsch v. Johnson &*
17 *Johnson (In re Gertsch)*, 237 B.R. 160, 167-68 (B.A.P. 9th Cir. 1999 (citing *Candland*)).
18 Knowledge is justified true belief.¹³ In order to “know” something, it is commonly accepted that
19 three conditions must be satisfied: (1) the person must believe it to be true, (2) the person
20 must have justifying reasons for believing it to be true, and (3) it must in fact be true.
21 Therefore, Ms. Cacciatori would have known the representations on the credit application to be
22 false if (1) Ms. Cacciatori believed them to be false, (2) she had justifying reasons for believing
23 them to be false, and (3) the representations were in fact false.

24 The Court has found as a fact, based upon Ms. Cacciatori’s testimony and
25 demeanor as a witness, that she believed to be true the representations made on the credit
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27 ¹³ This definition has come down through the centuries. Plato, *Theaetetus* 187a-201c; G. Dawson, *Justified True*
28 *Belief Is Knowledge*, 31 *The Philosophical Quarterly* 125, 315-29 (October 1981); Matthias Stetup, *The Analysis*
of Knowledge, *The Stanford Encyclopedia of Philosophy* (Edward N. Zalta ed., Fall 2008) (“knowledge is justified
true belief”).

1 application regarding “Applicant’s Gross Salary*”, “Other Sources of Income” and all other
2 material facts set forth on the credit application. Additionally, based upon the loan application
3 form’s vague and confusing nature and as discussed below, it cannot be concluded that those
4 representations were in fact false. Because Ms. Cacciatori did not believe the representations
5 given to be false and because these representations were not in fact false (taking into account
6 the form’s vague and confusing nature), it is clear she did not “know” the representations were
7 false.

8 However, this does not end the matter. Courts have held that a reckless
9 disregard for the truth will satisfy this part of the *Candland* seven-part test. *Gertsch*, 237 B.R.
10 at 167-68; *The Callaway Bank v. Asbury (In re Asbury)*, 441 B.R. 629, 634 (Bankr. W.D. Mo.
11 2010); *Avco Fin. Servs. of Billings v. Kidd (In re Kidd)*, 219 B.R. 278, 282 (Bankr. D. Mont.
12 1998); *Beneficial Cal., Inc. v. Brown (In re Brown)*, 217 B.R. 857, 863 (Bankr. S.D. Cal. 1998).
13 Consequently, the Court now turns to the issues of whether the material facts represented by
14 Ms. Cacciatori on the credit application were true or false and, if they were false, whether Ms.
15 Cacciatori was reckless in believing them to be true.

16 The sales representative who filled out the credit application in this case was not
17 called by First Mutual as a witness. Neither First Mutual nor Ms. Cacciatori could supply his
18 name to the Court. About all that is known about this individual is that he is a male.¹⁴

19 The credit application filled out by the sales representative is a confusing, vague
20 and at certain points self-contradicting document. It calls for the loan applicant to state the
21 “Applicant’s Gross Salary*,” a term that is nowhere defined in the credit application and that is
22 subject to considerable uncertainty.¹⁵ Of special note is that the asterisk text appears to
23 include alimony, child support and separate maintenance within the definition of “Applicant’s
24 Gross Salary*” even though neither alimony, child support nor separate maintenance is within
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26 ¹⁴ R.T. at 52.

27 ¹⁵ As but one example, how should an employee who participates in a so-called “cafeteria plan” or a 401(k) plan
28 treat the would-be salary that is withheld from the employee’s paycheck and deposited into the plan? Technically,
it is not part of the employee’s salary because the employee has validly elected to reduce his salary by the
amount of the plan contribution. However, a broad interpretation of the word “Gross” might lead a loan applicant
to include the withheld amount in stating the “Applicant’s Gross Salary*.”

1 the definition of the word “salary”.¹⁶ Having included as “salary” items that are not “salary,” one
2 is left to wonder what other items not within the definition of the word “salary” are or should be
3 included when stating “Applicant’s Gross Salary*” so as to remain truthful and not render the
4 application misleading.

5 As mentioned earlier, the sales representative who filled out the application
6 chose to include the income of Ms. Cacciatori’s partner.¹⁷ Without deciding whether such
7 inclusion is untruthful, it was not reckless for Ms. Cacciatori to believe that this inclusion was
8 proper, given the asterisk text’s inclusion of alimony, child support and separate maintenance
9 within the definition of “Applicant’s Gross Salary*.” Like alimony, child support and separate
10 maintenance, the income of Ms. Cacciatori’s partner was income available to pay household
11 expenses and, in that limited sense, not much different from alimony, child support or separate
12 maintenance.

13 Moreover, it was not Ms. Cacciatori who proposed the use of this particular form
14 of credit application; it was the sales representative. Under these circumstances it would not
15 have been reckless for Ms. Cacciatori to believe that the sales representative knew more than
16 she did about the form and how it should be prepared – and, importantly, how to deal with the
17 form’s inherent vagueness and self-contradictory references. Therefore, after having truthfully
18 informed the sales representative that she was projecting 2007 income at \$900 per week and
19 that her partner was contributing \$2,200 per month, it was not reckless for her to have believed
20 – as she testified that she did believe-- that \$5,500 was a true and correct entry in the blank
21 calling for “Applicant’s Gross Salary*.”

22 First Mutual also argues that Ms. Cacciatori’s salary was not \$3,300 per month
23 during 2007 but a much lower number. Mr. Michael Sanford, an officer of First Mutual, testified
24 that he believed that in the case of a self-employed individual the number listed for “Applicant’s
25 Gross Salary*” should have been such individual’s adjusted gross income for federal income
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28 ¹⁶ *Webster’s Third New International Dictionary* defines “salary” as “fixed compensation paid regularly (as by the
year, quarter, month or week) for services.”

¹⁷ See n.7 and accompanying text.

1 tax purposes ("AGI")¹⁸. Under this analysis, the \$3,300 component of the \$5,500 "Applicant's
2 Gross Salary*" is untruthful because Ms. Cacciatori's AGI for 2006 was only \$11,657 and for
3 2007 was only \$43.

4 Once again, however, the self-contradictory nature of the credit application
5 becomes apparent. The application clearly contemplates the use of the form by a self-
6 employed individual because it contains a box to be checked as self-employed, full-time
7 employee or part-time employee. A self-employed individual, though, does not have a salary.
8 A self-employed individual has income from a sole proprietorship. Such income comes in
9 different forms with different meanings. A self-employed person may have gross receipts or
10 gross income, AGI, taxable income or, in an accounting rather than tax sense, gross revenues,
11 earnings before income, taxes, depreciation and amortization ("EBITDA"), earnings before
12 income and taxes ("EBIT"), and other income metrics. Which of these metrics is the self-
13 employed loan applicant supposed to use in the blank for "Applicant's Gross Income*"? Not a
14 single one of these items is salary, but choose one anyway and put in the blank. According to
15 Mr. Sanford, Ms. Cacciatori should have chosen AGI among all these many income metrics as
16 the correct metric to use to fill in the blank. However, when Ms. Cacciatori signed the filled-in
17 credit application in June 2007 she could not have been expected to divine that the lender
18 wanted AGI to be used, especially when AGI is nowhere mentioned on the application form
19 and the sales representative who filled out the form did not tell her to use AGI.¹⁹

20 As mentioned earlier, Ms. Cacciatori was putting approximately \$900 in the bank
21 each week at the time the credit application was prepared. These funds were in the nature of
22 gross receipts – they were what her customers were paying her. She then used these funds to
23 pay both business and household expenses. Because of the application form's failure to
24 specify the particular income metric a self-employed individual was supposed to use in filling in
25 the blank for "Applicant's Gross Salary*" and because \$3,300 was in fact the true amount of
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28 ¹⁸ R.T. at 18.

¹⁹ R.T. at 54-55.

1 the gross income from her business at the time the credit application was prepared, it was not
2 reckless for Ms. Cacciatori to include in this category the amount of \$3,300.

3 Finally, First Mutual argues that the credit application is untruthful because there
4 was a double counting of Ms. Wilson's income, first under "Applicant's Gross Salary*" and then
5 under "Other Sources of Income." However, the application form contains no statement
6 instructing the person who prepares the form that "Other Sources of Income" is intended to be
7 exclusive of income listed or included under "Applicant's Gross Salary." Because, as
8 explained earlier, the category "Applicant's Gross Salary*" includes items that are not "salary"
9 (namely, "alimony, child support and separate maintenance") it would not have been reckless
10 for a person preparing the form to believe that "Other Sources of Income" was supposed to
11 state non-salary items that were included in "Applicant's Gross Salary*." The sales
12 representative filling out the form apparently interpreted "Other Sources of Income" in this
13 fashion.²⁰ Ms. Cacciatori testified that she believed this was the proper space on the
14 application form to list her partner's income so that the lender would be aware that not all of
15 the \$5,500 listed in "Applicant's Gross Salary*" was Ms. Cacciatori's income.²¹ Given the
16 circumstances, it was not reckless for Ms. Cacciatori to believe this was the correct manner
17 in which to state her partner's income on the application form.

18 To summarize, it was not reckless for Ms. Cacciatori to believe that all the
19 material representations she made on the credit application were true. When it is unclear
20 what question on a credit application is asking for, there may well be a wide range of truthful
21 answers to the question. A person who supplies an answer within that range should not be
22 branded reckless or a liar merely because she was unable to read the lender's mind and
23 determine which of the several possible meanings or interpretations the lender intended.

24 Based upon the foregoing analysis, Ms. Cacciatori did not know at the time that
25 any representation made on the credit application was false within the meaning of the seven
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²⁰ R.T. at 55.

28 ²¹ R.T. at 55 ("When I reviewed this and I asked him about it, and I did ask him about it, he stated that that's
saying \$2,200 of the \$5,500 is from the partner's income").

1 part *Candland* test. Although this conclusion of law standing alone disposes of the case, the
2 Court will nonetheless proceed to rule on the application of items (4) and (6) of the *Candland*
3 test as separate and independent reasons for its decision in this case.

4 **B. “. . . That the Debtor Made With the Intention of Deceiving the Creditor . . .”**

5 Intent to deceive a creditor can be inferred from circumstances or from a debtor's
6 conduct. *United States v. Sandman (In re Sandman)*, 68 B.R. 784, 786-87 (Bankr. D. Mont.
7 1987). An intent to deceive can also be established by a debtor's reckless indifference and
8 reckless disregard of accuracy of information on a financial statement. *Se. Neb. Coop. Corp.*
9 *v. Schnuelle (In re Schnuelle)*, 441 B.R. 616, 624 (B.A.P. 8th Cir. 2011). Based upon the
10 foregoing, the Court concludes that Ms. Cacciatori had no intention of deceiving First Mutual.
11 She made what she believed to be truthful representations on the credit application form and
12 the making of such representations was not reckless in view of the form's vagueness and
13 uncertain and self-contradictory nature. First Mutual misinterpreted these representations, but
14 that was not any fault of Ms. Cacciatori's. Rather, such misinterpretation is at least partly
15 attributable to underlying faults in the credit application form itself.

16 **C. “. . . That the Creditor's Reliance Was Reasonable . . .”**

17 The “reasonable reliance” standard of 11 U.S.C. § 523(a)(2)(B) is a more
18 demanding standard than “justifiable reliance.” *In re Morris*, 223 F.3d 548, 552 (7th Cir. 2000)
19 (citing *Field v. Mans*, 516 U.S. 59 (1995)); *Douglas v. Kosinski (In re Kosinski)*, 424 B.R. 599,
20 611 n.11 (B.A.P. 1st Cir. 2010). This standard requires the court to objectively assess the
21 circumstances to determine whether the creditor exercised that degree of care which would be
22 exercised by a reasonably cautious person in the same business transaction under similar
23 circumstances. *Andresen & Arronte PLLC v. Hill (In re Hill)*, 425 B.R. 766, 779 (Bankr.
24 W.D.N.C. 2010).

25 This was a low five-figure loan, not a \$100 million loan. The Court recognizes
26 the need for streamlined and expedited procedures in making a credit decision on a loan of
27 this magnitude. An involved and complicated credit review could impose costs that would
28 swallow up a lender's profit in making such a loan. Nevertheless, it would not have been

1 burdensome or unduly expensive for First Mutual to have added written instructions to the
2 credit application form addressing the particular income metric (whether AGI or some other
3 metric) that it wanted a self-employed person to state on the form.

4 Because the credit application form itself is confusing, vague and self-
5 contradictory, it was not reasonable for First Mutual to have relied upon it in the case of the
6 loan made to Ms. Cacciatori. First Mutual should have recognized that a self-employed
7 individual does not have a salary and that if First Mutual wanted information about a self-
8 employed person's income, it needed to specify which among the many income metrics it was
9 seeking, whether gross receipts, AGI, taxable income, EBITDA, EBIT or some other metric.
10 It could not reasonably have expected a loan applicant to read the corporate mind of First
11 Mutual and divine which income metric to use.

12 13 **THE PROPOSED SETTLEMENT STIPULATION**

14 Shortly after the trial commenced, counsel for First Mutual asked for a brief
15 recess to determine if the parties could settle the case. The Court granted a recess, and the
16 parties met, conferred and returned to Court to propose a settlement whereby Ms. Cacciatori
17 would stipulate to entry of a judgment for \$32,853.87, with a proviso that the judgment would
18 not be executed so long as Ms. Cacciatori paid First Mutual \$100.00 per month until the full
19 amount was paid (without postjudgment interest).²² Counsel for First Mutual stated on the
20 record that one of the reasons Ms. Cacciatori was willing to settle the matter on these terms
21 was that she did not want a judgment of fraud entered against her.²³

22 The Court refused to accept such proposed settlement stipulation for two
23 separate and independent reasons. First, there was no reasonable basis for such a settlement
24 based upon a review of the pleadings and the Court's record. "The inherent powers of this
25 Court, embodied in 11 U.S.C. § 105(a), impose a duty on this Court to ensure that the
26 provisions of the [Bankruptcy] Code are carried out and to prevent an abuse of process. In
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28 ²² At \$100.00 per month it would have taken Ms. Cacciatori more than 27 years to pay off this obligation.
²³ R.T. at 41.

1 effect, this Court, if it does not review the terms and conditions of a submitted stipulation . . .
2 abdicates its duties.” *MBNA Amer. Bank v. Panem (In re Panem)*, 352 B.R. 269, 278 (Bankr.
3 D. Colorado 2006). A court is authorized to satisfy itself that there is a reasonable basis for the
4 entry of a consent judgment. *AT&T Universal Card Service v. Bermingham (In re*
5 *Bermingham)*, 201 B.R. 808, 817 (Bankr. W.D. Mo. 1996). Here, there was no reasonable
6 basis for such entry.

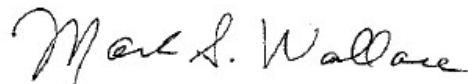
7 Second, the Court cannot and should not approve a settlement stipulation in a
8 section 523(a)(2) matter that does not stipulate that fraud has been committed. *MBNA Amer.*
9 *Bank*, 352 B.R. at 278; *FIA Card Services v. Moore (In re Moore)*, 2008 WL 2874368 (Bankr.
10 E.D. Ky. 2008). Ms. Cacciatori’s adamant (and, in the Court’s view, totally justified) refusal to
11 admit to fraud²⁴ precluded the Court from accepting the proposed stipulated settlement.

12 13 CONCLUSION

14 Judgment will be entered in favor of Ms. Cacciatori. The indebtedness of Ms.
15 Cacciatori to First Mutual is ordered, decreed and adjudged to be dischargeable in its entirety.

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25 DATED: February 15, 2012

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United States Bankruptcy Judge

²⁴ R.T. at 12-13.

NOTE TO USERS OF THIS FORM:

- 1) Attach this form to the last page of a proposed Order or Judgment. Do not file as a separate document.
- 2) The title of the judgment or order and all service information must be filled in by the party lodging the order.
- 3) **Category I.** below: The United States trustee and case trustee (if any) will always be in this category.
- 4) **Category II.** below: List ONLY addresses for debtor (and attorney), movant (or attorney) and person/entity (or attorney) who filed an opposition to the requested relief. DO NOT list an address if person/entity is listed in category I.

NOTICE OF ENTERED ORDER AND SERVICE LIST

Notice is given by the court that a judgment or order entitled (*specify*) **MEMORANDUM DECISION** was entered on the date indicated as "Entered" on the first page of this judgment or order and will be served in the manner indicated below:

I. SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF") – Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s), the foregoing document was served on the following person(s) by the court via NEF and hyperlink to the judgment or order. As of **Februray 15, 2012**, the following person(s) are currently on the Electronic Mail Notice List for this bankruptcy case or adversary proceeding to receive NEF transmission at the email address(es) indicated below.

Sandra L Bendon (TR)
sandra.bendon@att.net, sbendon@ecf.epiqsystems.com

United States Trustee (RS)
ustregion16.rs.ecf@usdoj.gov

Kenrick W Young on behalf of Plaintiff First Mutual Sales Finance c/o Law Offices Of Kenrick Young
kenrick.young@gmail.com

☐ Service information continued on attached page

II. SERVED BY THE COURT VIA U.S. MAIL: A copy of this notice and a true copy of this judgment or order was sent by United States Mail, first class, postage prepaid, to the following person(s) and/or entity(ies) at the address(es) indicated below:

Heather R Cacciatori
PO Box 3543
Crestline, CA 92325

First Mutual Sales Finance
c/o Law Offices Of Kenrick Young
52 Seraspi Court
Sacramento, CA 95834

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III. TO BE SERVED BY THE LODGING PARTY: Within 72 hours after receipt of a copy of this judgment or order which bears an "Entered" stamp, the party lodging the judgment or order will serve a complete copy bearing an "Entered" stamp by U.S. Mail, overnight mail, facsimile transmission or email and file a proof of service of the entered order on the following person(s) and/or entity(ies) at the address(es), facsimile transmission number(s), and/or email address(es) indicated below:

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This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.