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JUN 29 2018

CLERK U.S. BANKRUPTCY COURT  
Central District of California  
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**NOT FOR PUBLICATION**

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

In re:	)	Case No. 9:16-bk-11049-PC
	)	
HERSHEL G. KEEL,	)	Chapter 7
	)	
Debtor.	)	Adversary No. 9:16-ap-01072-PC
<hr/>		
KATE BURKHARDT,	)	<b>MEMORANDUM DECISION</b>
	)	
Plaintiff,	)	
v.	)	Date: June 12, 2018
HERSHEL G. KEEL,	)	Time: 9:00 a.m.
	)	Place: United States Bankruptcy Court
	)	Courtroom # 202
Defendant.	)	1415 State Street
	)	Santa Barbara, CA 93101

Kate Burkhardt (“Burkhardt”) seeks a judgment against Hershel G. Keel (“Keel”) declaring that the balance due under a Judgment Pursuant to the Settlement Agreement entered in Case No. CV 070511, Burkhardt v. Keel, in the Superior Court of California, County of San Luis Obispo, on September 11, 2015 (the “Judgment”) is nondischargeable under 11 U.S.C. §

1 523(a)(2)(A).<sup>1</sup> Trial of this adversary proceeding was commenced and concluded on June 12,  
2 2018. Having considered the parties' Pre-Trial Stipulation, the evidentiary record and arguments  
3 of counsel, the court will enter a judgment in favor of Keel based upon the following findings of  
4 fact and conclusions of law made pursuant to F.R.Civ.P. 52(a), as incorporated into FRBP 7052.

5 I. STATEMENT OF FACTS

6 On June 6, 2007, Burkhardt filed a lawsuit against Keel in Case No. CV 070511,  
7 Burkhardt v. Keel, in the Superior Court of California, County of San Luis Obispo, seeking,  
8 among other things, damages in excess of \$200,000 for alleged fraud. After nearly two years of  
9 litigation, Burkhardt and Keel executed a document entitled "Settlement Agreement and General  
10 Releases" dated March 18, 2009 (the "Agreement") under the terms of which Burkhardt agreed  
11 to dismiss the state court action in exchange for, and conditioned upon, Keel's promise to pay to  
12 Burkhardt the sum of \$50,000, plus interest, in accordance with the Agreement. Pursuant to the  
13 Agreement, Keel conveyed to Burkhardt a 50% interest in the real property and improvements  
14 owned by Keel at 505 Almond Drive, Paso Robles, CA (the "Property") pending either payment  
15 of the \$50,000, with interest, in full in 60 months or a sale of the Property, whichever occurred  
16 first. Paragraph 15 of the Agreement states:

17 Character of Plaintiff's Underlying Claim Not Changed. The parties to this  
18 Agreement acknowledge and agree that no decision is being made in this  
19 proceeding concerning the "dischargeability" or "nondischargeability" of  
20 Burkhardt's underlying claims against Keel under the United States Bankruptcy  
21 Code. However, the parties to this agreement acknowledge and agree, as  
22 provided by Archer v. Warner, 538 U.S. 314 (2003) and Arcadia Farms Limited  
23 v. Rollinson, 322 B.R. 879 (Bankr. D. Ariz. 2005), that entering into this  
24 Settlement Agreement and the Stipulated Judgment does not change the  
25 dischargeability character of Plaintiff's underlying claim(s) giving rise to this  
26 debt.<sup>2</sup>

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24 <sup>1</sup> Unless otherwise indicated, all "Code," "chapter" and "section" references are to the  
25 Bankruptcy Code, 11 U.S.C. §§ 101-1330 after its amendment by the Bankruptcy Abuse  
26 Prevention and Consumer Protection Act of 2005, Pub. L. 109-8, 119 Stat. 23 (2005). "Rule"  
27 references are to the Federal Rules of Bankruptcy Procedure ("FRBP"), which make applicable  
28 certain Federal Rules of Civil Procedure ("F.R.Civ.P."). "LBR" references are to the Local  
Bankruptcy Rules of the United States Bankruptcy Court for the Central District of California  
("LBR").

1  
2 Keel eventually lost the Property through a foreclosure. The Judgment was entered after Keel  
3 made no payments to Burkhardt pursuant to the Agreement.

4 On June 6, 2016, Keel filed a voluntary petition under chapter 7 of the Bankruptcy Code.  
5 Jeremy W. Faith (“Faith”) was appointed trustee. Faith concluded the meeting of creditors on  
6 August 1, 2016, and filed a Trustee’s Report of No Assets on August 3, 2016. Keel received a  
7 discharge on September 19, 2016, and the case was closed on September 20, 2016.

8 On August 25, 2016, Burkhardt timely filed a complaint seeking a determination that the  
9 balance due by Keel under the Judgment is nondischargeable under 11 U.S.C. § 523(a)(2)(A).  
10 Keel filed his answer to the complaint on September 26, 2016. After a trial on June 12, 2018, the  
11 matter was taken under submission.

## 12 II. DISCUSSION

13 This court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§  
14 157(b) and 1334(b). This matter is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (I) and  
15 (O).<sup>3</sup> Venue is appropriate in this court. 28 U.S.C. § 1409(a). Objections to the  
16 dischargeability of a debt are literally and strictly construed against the objector and liberally  
17 construed in favor of the debtor. See Quarre v. Saylor (In re Saylor), 108 F.3d 219, 221 (9th  
18 Cir. 1997).

### 19 A. Fraud Claims Under 11 U.S.C. § 523(a)(2)(A).

20 Section 523(a)(2)(A) excepts from discharge in bankruptcy “any debt for money,  
21 property, services, or an extension, renewal, or refinancing of credit to the extent obtained by

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22 <sup>2</sup> Plaintiffs’ Exh. 1, at 5.

23 <sup>3</sup> Although it does not appear that any of the claims made the basis of Burkhardt’s complaint  
24 constitute “Stern claims,” the parties at trial nevertheless expressly consented to the entry of a  
25 final judgment by the bankruptcy court. “Stern claims,” so named after the Supreme Court’s  
26 decision in Stern v. Marshall, \_\_\_ U.S., \_\_\_, 131 S.Ct. 2594, 180 L.Ed.2d 475 (2011), “are  
27 claims ‘designated for final adjudication in the bankruptcy court as a statutory matter, but  
28 prohibited from proceeding in that way as a constitutional matter.’” Mastro v. Rigby, 764 F.3d  
1090, 1093 (9th Cir. 2014) (citation omitted).

1 false pretenses, a false representation, or actual fraud.” 11 U.S.C. § 523(a)(2)(A).<sup>4</sup> To establish  
2 that a debt is nondischargeable under § 523(a)(2)(A), the plaintiff must show by a preponderance  
3 of the evidence that (a) debtor made a representation; (b) at the time, debtor knew the  
4 representation was false; (c) debtor made the representation with the intention and purpose of  
5 deceiving the creditor; (d) the creditor justifiably relied on the debtor’s representation, and (e)  
6 the creditor sustained the alleged loss and damage as the proximate result of such representation.  
7 Ghomeshi v. Sabban (In re Sabban), 600 F.3d 1219, 1222 (9th Cir. 2010); Diamond v. Kolcum  
8 (In re Diamond), 285 F.3d 822, 827 (9th Cir. 2002).

9 The creditor must establish by a preponderance of the evidence all five elements to  
10 prevail. See Glucoma Am., Inc. v. Ardisson (In re Ardisson), 272 B.R. 346, 357 (Bankr. N.D.  
11 Ill. 2001). “The burden of showing something by a ‘preponderance of the evidence,’ . . . ‘simply  
12 requires the trier of fact to believe that the existence of a fact is more probable than its  
13 nonexistence before [he] may find in favor of the party who has the burden to persuade the  
14 [judge] of the fact’s existence.” Concrete Pipe & Prods. of Cal., Inc. v. Constr. Laborers  
15 Pension Trust for S. Cal., 508 U.S. 602, 622 (1993) (citation omitted).

16 Not only must a representation be false, but the creditor must prove that the debtor knew  
17 the representation was false and made it with the subjective intent to deceive her at the time the  
18 representation was made. See Gasunas v. Yotis (In re Yotis), 548 B.R. 485, 495 (Bankr. N.D.  
19 Ill. 2016). Because direct evidence of intent to deceive is rarely available, “the intent to deceive  
20 can be inferred from the totality of circumstances, including reckless disregard for the truth.”  
21 Gertsch v. Johnson & Johnson Fin. Corp. (In re Gertsch), 237 B.R. 160, 167-68 (9th Cir. BAP  
22 1999); see Nahman v. Jacks (In re Jacks), 266 B.R. 728, 742 (9th Cir. BAP 2001) (“Because  
23 fraud lurks in the shadows, it must usually be brought to light by consideration of circumstantial  
24 evidence.” (internal quotation marks and citation omitted)).

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26 <sup>4</sup> “A false representation is an express representation, while a false pretense refers to an implied  
27 representation or ‘conduct intended to create and foster a false impression.’” Nat’l Bank of N.  
28 Am. V. Newark (In re Newark), 20 B.R. 842, 854 (Bankr. E.D.N.Y. 1982) (quoting H.C. Prange  
Co. v. Schnore (In re Schnore), 13 B.R. 249, 251 (Bankr. W.D. Wis. 1981).

1 Finally, to be actionable, a misrepresentation must induce justifiable reliance and  
2 resulting damage. “Justifiable reliance is an essential element of a claim for fraudulent  
3 misrepresentation[.]” Guido v. Koopman, 1 Cal.App.4th 837, 843 (1991). “Reliance exists  
4 when the misrepresentation or nondisclosure was an immediate cause of the plaintiff’s conduct  
5 which altered his or her legal relations, and when without such misrepresentation or  
6 nondisclosure he or she would not, in all reasonable probability, have entered into the contract or  
7 other transaction.” S. Union Co. v. Sw. Gas Corp., 180 F. Supp.2d 1021, 1033 (D. Ariz. 2002).  
8 “In other words, a party must be ‘thoroughly induced’ by a fraudulent misrepresentation that,  
9 ‘judging from the ordinary experience of mankind, in the absence of it he would not, in all  
10 reasonable probability, have entered into the contract or other transaction.’” Id. (citation  
11 omitted). “Justification is a matter of the qualities and characteristics of the particular plaintiff,  
12 and the circumstances of the particular case.” Field v. Mans, 516 U.S. 59, 71 (1995). “[A]  
13 person is justified in relying on a factual representation without conducting an investigation, so  
14 long as the falsity of the representation would not be patent upon cursory examination.” Id. at  
15 60. “In determining whether one can reasonably or justifiably rely on an alleged  
16 misrepresentation, the knowledge, education and experience of the person claiming reliance must  
17 be considered.” Guido, 1 Cal.App.4th at 843.

18 B. Bankruptcy Courts Are Permitted to Look Behind a Settlement Agreement When  
19 Determining the Dischargeability of a Fraud Claim.

20 In Archer v. Warner, 538 U.S. 314 (2003) and Brown v. Felsen, 442 U.S. 127 (1979), the  
21 Supreme Court concluded that a bankruptcy court can look behind a settlement agreement to the  
22 underlying facts to determine whether the original debt was obtained by fraud and whether that  
23 original fraud so infects the debt settled as to render it nondischargeable. See Archer, 538 U.S.  
24 at 318-19 (holding that a settlement agreement entered into before the debtor’s bankruptcy filing  
25 did not preclude the bankruptcy court from considering fraud claims, even where the settlement  
26 agreement “completely addressed and released each and every underlying state law claim.”);  
27 Brown, 442 U.S. at 138-39 (“[W]e hold that the bankruptcy court is not confined to a review of  
28

1 the judgment and record in the prior state-court proceeding when considering the  
2 dischargeability of respondent's debt.”).

3 C. Keel's Alleged False Representations.

4 The fraud at issue in this adversary proceeding, as stated by Burkhardt's counsel in  
5 closing argument, is Keel's alleged "promise" to Burkhardt "of a forever relationship in  
6 exchange for the payment of his debt." Burkhardt and Keel met in 2002 while both were  
7 employed at the California Mens' Colony in San Luis Obispo, CA. Burkhardt, who holds a Ph.D  
8 in Clinical Adult Psychology, was employed as a psychology intern by the California  
9 Department of Corrections at the prison. Keel, who was married at the time, was employed as a  
10 Correctional Officer. They became involved romantically in the spring of 2003, began living  
11 together in April 2004, and terminated their relationship on February 13, 2007.

12 Burkhardt claims that, during their three and one-half year relationship, Keel repeatedly  
13 stated that he loved her and falsely promised her that "they would be together 'forever.'"<sup>5</sup> As  
14 evidence of Keel's representations, the court accepted into evidence Burkhardt's Exhibit 3 which  
15 contains copies of a series of undated cards and love letters. There was no evidence of the time,  
16 date, place or specific reason for each of the items in Exhibit 3, but there was no dispute that they  
17 were cards and love letters given by Keel to Burkhardt during their relationship. Burkhardt  
18 claims that Keel's representations in the cards and letters were false, and that they were made by  
19 him intentionally and for the specific purpose of inducing her to expend over \$130,000 of her  
20 personal salary and savings while they lived together to pay debt incurred by Keel before their  
21 relationship. Keel's pre-existing debt included among other things (1) mortgage payments to  
22 CitiMortgage secured by a first lien on the Property; (2) payments to Homecomings on a line of  
23 credit secured by a second lien on the Property; (3) payment of Keel's credit card debt with  
24 Capital One; (4) payment of two loans with Beneficial Finance; (5) payment of Keel's  
25 automobile insurance; and (6) payment of improvements and repairs to the Property.

26 According to Burkhardt, "Keel acquired her money by false pretenses and . . . never  
27 intended to marry her but, instead, wanted her to bail him out of a financial crisis of his own

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28 <sup>5</sup> Plaintiff's Trial Brief, 2:12.

1 making and, when that mission was accomplished and [she] had no additional funds, ended the  
2 relationship.”<sup>6</sup> Keel denies that he defrauded Burkhardt, claiming that “this was a relationship in  
3 which both parties contributed financially to living expenses, and that the eventual decision to  
4 break off the relationship was solely the result of two parties being completely incompatible.”<sup>7</sup>

5 D. The Testimony.

6 At trial the court heard the conflicting testimony of Burkhardt and Keel, together with the  
7 testimony of Darren Davis and Keel’s sister, Jennifer Keel. Keel admitted that he commenced a  
8 romantic relationship with Burkhardt in the spring of 2003, and that he lived with her from April  
9 2004 to February 13, 2007. Keel concedes that he wrote each of the cards and love letters  
10 evidenced by Exhibit 3 and gave them to Burkhardt during their three and one-half year  
11 relationship. When Burkhardt moved to Canada in August 2003 for a brief period before  
12 returning in April 2004, Keel testified that he had wanted the relationship to continue before she  
13 departed, but that they had discussed not continuing the relationship after she left for Canada and  
14 that he had terminated the relationship by phone before she returned from Canada. However,  
15 Keel and Burkhardt resumed their romantic relationship when she returned from Canada in April  
16 2004 and began living together in a condominium at 709 Creston Road, Unit D, Paso Robles,  
17 CA.

18 Burkhardt testified that, after moving into the condominium, the relationship went very  
19 well until they had a dispute one month later in May 2004. She testified that she went for a walk  
20 and Keel left for about three days. Keel testified that he was “scared to get into a new  
21 relationship.” He left the condominium and returned to his primary residence for about a week,  
22 but returned to try to make the relationship work. Burkhardt and Keel then traveled to Las Vegas  
23 and stayed at the Mandalay Bay Resort. On May 24, 2004, Burkhardt and Keel signed an  
24 agreement handwritten on hotel stationery, which states:

25 Prior to either one of us making a decision to leave or break-up with the other,  
26 we agree to complete the following 5 steps:

27 <sup>6</sup> Id. at 7:7-12.

28 <sup>7</sup> Defendant’s Trial Brief, 3:6-10.

- 1 1. 12 weeks of couple counseling;
- 2 2. Write a statement that truthfully/honestly describes why we are making the
- 3 choice to leave and give this to the other person;
- 4 3. Read the book The Five Love Languages together;
- 5 4. Not be with anyone else for the duration of this period; and
- 6 5. During this period communicate respectfully and honestly.
- 7 6. I won't threaten to leave.<sup>8</sup>

8 Burkhardt and Keel resumed their relationship and continued to cohabitate at 709 Creston Road,  
9 Unit D, Paso Robles, CA until they moved to the Property in June or July of 2004. Keel testified  
10 that, after moving to the Property, they had two or three short break-ups that he initiated  
11 following disagreements or fights which he attributed to Burkhardt's "controlling behavior."

12 Burkhardt and Keel gave conflicting testimony regarding Keel's adherence to the May  
13 24th agreement. Burkhardt testified that Keel did not adhere to any of the five steps before  
14 leaving on February 13, 2007, and that he did not read The Five Love Languages. Keel  
15 disagreed, testifying that he had read the book, discussed with Burkhardt what languages applied  
16 to their relationship, and concluded that words of affirmation were important to Burkhardt.  
17 According to Keel, the cards and letters given to Burkhardt "partially resulted" from his  
18 understanding of the book. Burkhardt on cross-examination, however, denied that words of  
19 affirmation was "one of her love languages." Burkhardt testified that Keel did not attend any  
20 counseling sessions before breaking up with her. On cross-examination, however, Burkhardt  
21 acknowledged that they attended four sessions of pre-marital counseling with a "Dr. Lucas."  
22 Burkhardt testified that they stopped attending the sessions because Keel would not do the  
23 required homework to prepare for each session. Keel testified that he attended four sessions of  
24 pre-marital counseling and quit after the counselor concluded that they should reconsider their  
25 relationship.

26 Burkhardt testified that she and Keel did not break-up prior to February 13, 2007. Keel  
27 testified to the contrary, stating that they had two or three short break-ups initiated by him after  
28 May 24, 2004. He testified that none of the break-ups had to do with finances. Keel testified

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<sup>8</sup> Plaintiffs' Exh. 4.



1 that he intended a long-term relationship with Burkhardt when they began cohabitating in April  
2 2004, and that he tried to make it work because he did not want another failed relationship after  
3 his marriage had ended.

4 With respect to the bills paid during their relationship, Keel testified that his net income  
5 was approximately the same as Burkhardt's; and that, after his small expense for child support,  
6 the balance of his net income was used collectively with Burkhardt's net income to pay ongoing  
7 expenses while they lived together. Burkhardt testified that Keel specifically asked her for  
8 money to pay debt that he had incurred prior to their relationship, including the CitiMortgage,  
9 Beneficial and Homecomings loans. On cross-examination, Burkhardt admitted that she had no  
10 written documentation or proof that Keel made these requests and later testified that she  
11 voluntarily paid such debt believing that the couple would eventually be married and that they  
12 should be "debt free" when they got married. Burkhardt testified that she had not begun  
13 contributing funds to pay any of Keel's pre-existing debt before May 24, 2004. Evidence shows  
14 that Burkhardt contributed substantial funds between June 2004 and February 2007 to pay  
15 monthly living expenses and to reduce Keel's pre-existing debt. She made at least eight  
16 mortgage payments to CitiMortgage, paid Keel's two loans from Beneficial Finance, and  
17 substantially reduced the balance owing by Keel to Homecomings and Capital One. Keel  
18 testified that he never asked Burkhardt to use her funds to pay debt he incurred prior to their  
19 relationship, but acknowledged that he was aware she was doing so because he provided the  
20 account information so she could make the payments. Keel further acknowledged that  
21 Burkhardt's help improved his financial condition between 2004 and 2007. Keel testified that he  
22 never asked Burkhardt for any financial contributions or assistance other than to pay a share of  
23 the monthly living expenses. With respect to debt incurred prior to their relationship, Keel  
24 testified that he had sufficient income of his own to keep those bills current.

25 On September 10, 2006, Keel purchased a wedding ring and made a marriage proposal to  
26 Burkhardt which she accepted. Burkhardt understood from Keel that they would be married the  
27 following year. Burkhardt accepted his ring and marriage proposal, but testified that Keel would  
28 not set a wedding date though she requested him to do so.

1 On February 13, 2007, Keel terminated his relationship with Burkhardt. Burkhardt  
2 testified that Keel left her on February 13, 2007, after she depleted her savings and rejected his  
3 requests in January 2007 that she delve into her retirement accounts for more funds to pay his  
4 bills. Keel denies ever asking Burkhardt to use her retirement funds to pay his debt. Keel  
5 testified that he left Burkhardt on February 13, 2007, due to her “controlling behavior,” stating  
6 that “living with someone in [her] profession is exhausting” and that the “questioning over  
7 everything you do creates this overwhelming animosity toward the person and I had just reached  
8 the limit.”

9 Darren Davis, a fellow Correctional Officer at the California Mens Colony at San Luis  
10 Obispo, testified that he knew Burkhardt and Keel and was familiar with their relationship.  
11 Davis testified that Keel had stayed at his house during the two or three break-ups with  
12 Burkhardt, including the final one on February 13, 2007. He testified that Keel was in love with  
13 Burkhardt in the beginning, but that he saw less of Keel as the relationship progressed. Davis  
14 testified that he thought Burkhardt was “controlling” and further, that he had advised Keel on a  
15 couple of occasions to “break off” his relationship with her.

16 Jennifer Keel, who retired from the California Mens Colony at San Luis Obispo, testified  
17 that she knew Burkhardt having met her as Keel’s girlfriend. She testified that she had had the  
18 opportunity to observe her brother and a change in his demeanor over the course of his  
19 relationship with Burkhardt. She testified that “he was extremely happy in the beginning, and  
20 during about the middle, he was a little less happy and more preoccupied; and at the end he was  
21 unhappy.” She also testified that the relationship between Burkhardt and Keel changed as well --  
22 from “happy to less than that.” Jennifer Keel testified that she spoke to Keel by telephone on  
23 February 13, 2007. In response to his call, Jennifer Keel told her brother “to get in his car and  
24 leave.” She further testified that she had advised Keel two or three times during their  
25 relationship to end it because he was unhappy and so was his son, Tommy.  
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1 E. Evidence Does Not Support A Finding of Nondischargeability Under 11 U.S.C. §  
2 523(a)(2)(A).

3 The record does not support a finding that Keel falsely promised Burkhardt a forever  
4 relationship in exchange for the payment of his debt. “A promise of future conduct is actionable  
5 as fraud only if made without a present intention to perform.” S. Union Co., 180 F.Supp.2d at  
6 1031 (quoting Magpali v. Farmers Group, Inc., 48 Cal.App.4th 471, 481 (1996)). “A declaration  
7 of intention, although in the nature of a promise, made in good faith, without the intention to  
8 deceive, and in the honest expectation that it will be fulfilled, even though it is not carried out,  
9 does not constitute fraud.” Edmunds v. Valley Circle Estates, 16 Cal.App.4th 1290, 1301 (1993)  
10 (quoting Church of Merciful Saviour v. Volunteers of Am., 184 Cal.App.2d 851, 859 (1960)).

11 The test may be stated as follows. If, at the time he made his promise, the debtor  
12 did not intend to perform, then he has made a false representation (false as to his  
13 intent) and the debt that arose as a result thereof is not dischargeable (if the other  
14 elements of § 523(a)(2)(A) are met). If he did so intend at the time he made his  
15 promise, but subsequently decided that he could not or would not perform, then  
16 his initial representation was not false when made.

17 Palmacci v. Umpierrez, 121 F.3d 781, 787 (1st Cir. 1997). In other words, “if, at the time he  
18 makes a promise, the maker honestly intends to keep it but later changes his mind or fails or  
19 refuses to carry his expressed intention into effect, there has been no misrepresentation.” Id.

20 “[F]raud may be inferred from an immediate failure to perform a promise,” but “initial  
21 performance in accordance with [a] promise negates any possible inference of fraud.” Kaylor v.  
22 Crown Zellerbach, Inc., 643 F.2d 1362, 1368 (9th Cir. 1981) (emphasis added). “[S]omething  
23 more than nonperformance is required to prove the defendant’s intent not to perform his  
24 promise.” Tenzer v. Superscope, Inc., 39 Cal.3d 18, 30-31 (1985) (citation omitted). “[I]f [a]  
25 plaintiff adduces no further evidence of fraudulent intent than proof of nonperformance of an  
26 oral promise, he will never reach a jury.” Magpali, 48 Cal.App.4th at 481 (quoting Tenzer, 39  
27 Cal.3d at 31).

28 Keel’s cards and letters contain expressions of love and affection, and express a desire  
that his relationship with Burkhardt last forever. However, there is no credible evidence that

1 Keel's representations to Burkhardt were not true when made. Nor can the court infer an intent  
2 to defraud from the totality of circumstances based on the evidentiary record concerning their  
3 three and one-half year relationship. Burkhardt offered no written evidence that Keel requested  
4 payment of his pre-existing debt to commence and continue their relationship. She admitted that  
5 she had no such evidence. The testimony of Burkhardt and Keel conflicts on the issue of  
6 whether Keel ever specifically requested that she pay his pre-existing debt. Keel and Burkhardt  
7 were engaged to be married. Burkhardt testified that she voluntarily contributed her funds to pay  
8 much of his pre-existing debt believing that the couple would eventually be married and that they  
9 should be "debt free" when they got married. The relationship failed after three and one-half  
10 years because the parties were incompatible. The evidence supports a finding that Keel was in  
11 love with Burkhardt at the beginning of their relationship, that he tried to make the relationship  
12 last, and that he left on February 13, 2007, when he concluded that he could live with her no  
13 longer. The fact that Burkhardt during the relationship sought in good faith to make their  
14 relationship debt free before a marriage that was contemplated by both parties does not make  
15 Keel's representations of love and affection made to her during the relationship fraudulent.

16 For the debt to be declared nondischargeable, Burkhardt had the burden to establish all  
17 five elements under 11 U.S.C. § 523(a)(2)(A). The court as the trier of fact must judge the  
18 credibility of witnesses and weigh the evidence accordingly. See, e.g., Bose Corp. v. Consumers  
19 Union of U.S., Inc., 466 U.S. 485, 512 (1984) ("When the testimony of a witness is not believed,  
20 the trier of fact may simply disregard it."); Moore v. Chesapeake & O. Ry. Co., 340 U.S. 573,  
21 576 ("[I]t is the jury's function to credit or discredit all or part of the testimony."). Having  
22 parsed through the conflicting testimony and documentary evidence and in light of the policy  
23 requiring that objections to the dischargeability of a debt be construed literally and strictly  
24 against the objector and liberally in favor of the debtor, the court finds that Burkhardt has failed  
25 to establish by a preponderance of the evidence that Keel's promise "of a forever relationship" to  
26 Burkhardt, made through cards and letters exchanged during their relationship, was false or that  
27 Keel made the representations specifically to deceive Burkhardt during their three and one-half  
28 year relationship and to induce her to pay debt which he had incurred prior to April 2004.

1 III. CONCLUSION

2 For the reasons stated, the court will enter a judgment in favor of Keel denying the relief  
3 requested by Burkhardt and dismissing this adversary proceeding with prejudice.

4 A separate judgment will be entered consistent with this memorandum.

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24 Date: June 29, 2018



25 Peter H. Carroll  
26 United States Bankruptcy Judge  
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