UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

RIVERSIDE DIVISION

In re: VICTORIA MARIE COOPMAN Debtor	Case No.: 6:21-bk-13994-MH Chapter: 7 Adv. No.: 6:21-ap-01118-MH
CAPFLOW FUNDING GROUP MANAGERS LLC, Plaintiff v. VICTORIA MARIE COOPMAN, Defendant	**MEMORANDUM DECISION AFTER TRIAL ON COMPLAINT PURSUANT TO 11 U.S.C. §§ 523(a)(2)(A), 523(a)(6), 727(a)(3), and 727(a)(4)** Trial Dates: September 19 & 20, 2023 Time: 9:30 a.m. Courtroom: 301 Post-Trial Briefing Filed: October 19 & 20, 2023 Taken under Submission: December 13, 2023

I. PROCEDURAL BACKGROUND

On November 19, 2020 ("Petition Date"), Innovation Pet, Inc., ("Innovation Pet") filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. [Case No. 8:20-bk-13223-SC]. ("Bankruptcy Petition"). Victoria Coopman ("Coopman" or "Defendant") signed the Bankruptcy Petition in her capacity as the chief executive officer of Innovation Pet. In schedule D filed with the Bankruptcy Petition, Capflow Funding Group Managers LLC ("Plaintiff") was identified as a secured creditor holding a disputed claim in the amount of $0. Innovation Pet's schedule B listed a cause of action against Plaintiff for a sum of $405,883.00, resulting from Plaintiff's alleged appropriation of account receivable cash receipts.

On May 21, 2021, Innovation Pet's bankruptcy case was converted to chapter 7. On July 23, 2021, Coopman filed her own voluntary petition for relief under chapter 7. [Case No. 6:21-bk-13994-MH]. On December 6, 2021, Plaintiff filed a proof of claim in Coopman's bankruptcy case in the amount of $957,713.99.

On October 19, 2021, Plaintiff filed this adversary proceeding, requesting that its claim of $957,713.99 be declared nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(A) and 523(a)(6), and her discharge denied pursuant to § 727(a)(3) and 727(a)(4). [Adv. No. 6:21-ap-01118-MH]. Coopman filed an answer on November 19, 2021.

On July 20, 2023, the parties filed a pretrial stipulation. On September 6, 2023, the parties filed trial briefs and Plaintiff filed its trial exhibits (the latter, "Plaintiff's Tr. Ex."). On September 19

and 20, 2023, the Court held a two-day trial, where Coopman testified as did Ms. Melissa Darpino ("Plaintiff's Witness"), who is Plaintiff's account executive. Defendant's exhibits were submitted during the trial on September 20, 2023 ("Defendant's Tr. Ex."). On October 4, 2023, and October 11, 2023, the transcripts of the two-day trial were docketed (hereinafter, "Tr. of Trial"). On October 19 and 20, 2023, the parties filed post-trial briefs.

II. FACTUAL BACKGROUND

On December 21, 2015, Plaintiff and Coopman, on behalf of Innovation Pet, executed a factoring and security agreement ("Factoring Agreement") and a purchase order assignment agreement ("Assignment Agreement") [Dkt. No. 43, Plaintiff's Tr. Ex. pgs. 91 and 113] (collectively the "Agreements"). Coopman also executed an indemnity and guaranty of validity ("Guaranty") in connection with the Agreements, thereby assuming personal liability for Innovation Pet's debts to Plaintiff. [Dkt. No. 43, Plaintiff's Tr. Ex. pg. 144].

By way of background, Plaintiff is in the business of private commercial lending, whereby Plaintiff provides commercial financing to businesses through factoring agreements. As part of its factoring business, Plaintiff purchases a company's future receivables at a discount from face value for an agreed, fixed amount. In this case, pursuant to the Agreements, when Innovation Pet desired funding, it sold invoices/future receivables to Plaintiff, and in exchange Plaintiff would advance 80% of the invoice amount to Innovation Pet.

Innovation Pet had been founded in 2012 by Coopman and Timothy Taft. Coopman was the CEO of Innovation Pet since its founding and handled most aspects of Innovation Pet's business

including operations, marketing, and supply chain matters, while Mr. Taft's role in Innovation Pet was limited to sales. In this regard, Coopman testified as follows:

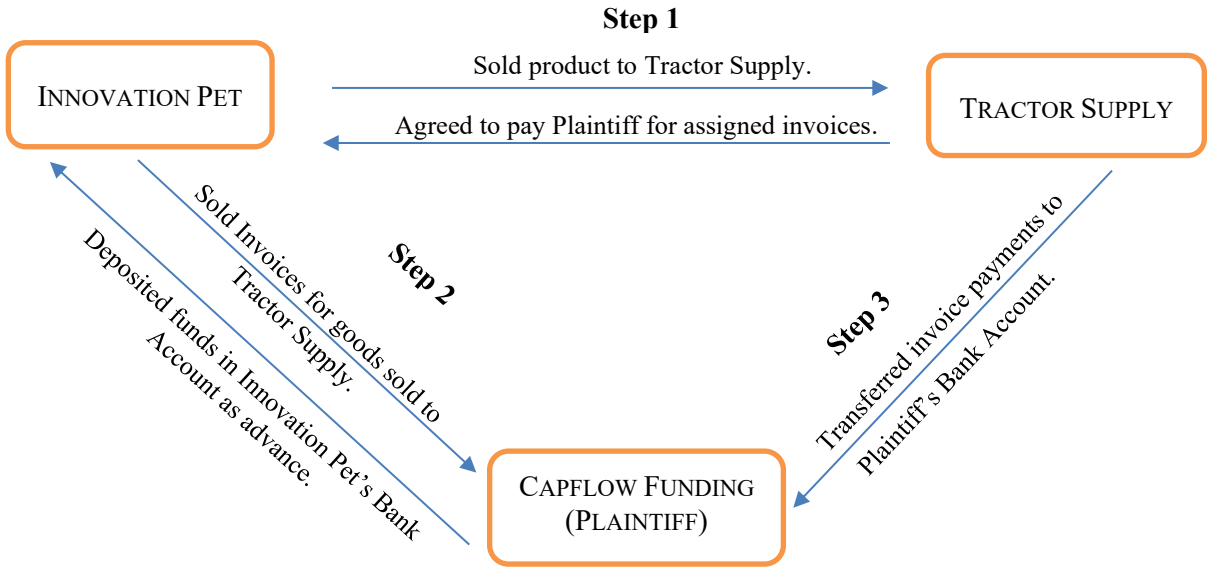
> "Counsel: Can you explain to us briefly what your relationship was to Innovation Pet?
> Coopman: I was a stockholder in the company and had a title of CEO, but also did many other functions, marketing, sales, supply chain, that kind of thing.
> Counsel: Were you one of the founders of that company?
> Coopman: Yes.
> Counsel: Who else was a founder with you?
> Coopman: Timothy Taft.
> Counsel: So it was just the two of you?
> Coopman: To begin with, yes.
> Counsel: Okay. And what was Mr. Taft's role with respect to the company?
> Coopman: Sales.
> Counsel: He handled just sales?
> Coopman: Pretty much, yes.
> Counsel: And then you handled pretty much everything else?
> Coopman: Pretty much, yes."

[Dkt. No. 53, Tr. of Trial, pg. 186].

One of the retail stores that purchased Innovation Pet's products and resold them was Tractor Supply Co. ("Tractor Supply"). Innovation Pet began selling Tractor Supply's invoices/future receivables to Plaintiff starting in October of 2016. Pursuant to the terms of the Agreements and a written assignment notice ("Notice of Assignment"), Coopman directed Tractor Supply to pay all future payments on assigned Innovation Pet invoices ("Invoice Payments") to Plaintiff. [Dkt. No. 43, Plaintiff's Tr. Ex. pg. 153]. This Notice of Assignment contained explicit payment instructions directing Tractor Supply to remit the Invoice Payments to Plaintiff's First Republic Bank account ("Plaintiff's Bank Account"). Moreover, the Notice of Assignment explicitly stipulated that the assignment of Plaintiff's rights to the Invoice Payments was irrevocable, and that any instructions to change payee (Plaintiff's Bank Account) could only be initiated by

Plaintiff. From October 2016 through August 2019, Tractor Supply consistently directed all Invoice Payments to Plaintiff's Bank Account.

For clarity, below is an illustration of the original framework of the transaction:



Notwithstanding the foregoing arrangement and contrary to the requirements of the Agreements and Notice of Assignment, and without notice to or agreement with Plaintiff, on August 12, 2019, Coopman executed a funds transfer agreement with Tractor Supply ("New Funds Transfer Agreement"), whereby Coopman, on behalf of Innovation Pet, instructed Tractor Supply to now transfer future Invoice Payments to Innovation Pet's Pacific Premiere Bank account ("Innovation Pet's Bank Account") instead of Plaintiff's Bank Account. [Dkt. No. 43, Plaintiff's Tr. Ex. pg. 155]. As a result, over the period from September 2019 to February 2020, Invoice Payments totaling $756,434.27 were deposited by Tractor Supply into Innovation Pet's Bank Account instead of Plaintiff's Bank Account. Importantly, the underlying invoices and the rights to the

Invoice Payments had previously been purchased by Plaintiff, and Innovation Pet had received advance funding from Plaintiff. [Dkt. No. 43, Plaintiff's Tr. Ex. pgs. 316-547]. Nonetheless, with Plaintiff unaware of the New Funds Transfer Agreement, Plaintiff continued to provide financing to Innovation Pet through beginning of 2020. [Dkt. No. 53, Tr. Of Trial, pg. 165].

On September 17, 2019, Plaintiff's CEO, Andrew Coon, emailed Coopman and inquired about certain short payments on Tractor Supply invoices and expressed his concern about continuing to factor Tractor Supply invoices. Mr. Coon stated, "*We never got a detailed accounting of what happened with Tractor Supply and why they took so many credits at the end. I am concerned about funding TS without an understanding of what happened.*" [Dkt. No. 43, Plaintiff's Tr. Ex., pg. 583]. In her response, Coopman did not mention the New Funds Transfer Agreement or its effect, but merely informed Plaintiff that she was "reconciling" and "requesting more back up" from Tractor Supply. [*Id*.]. Again, on December 10, 2019, Mr. Coon emailed Coopman and inquired into the payment status of certain unpaid Tractor Supply invoices in the amount of $91,265.60. [Dkt. No. 43, Plaintiff's Tr. Ex., pgs. 580-581]. In her response on December 10, 2019, Coopman again did not disclose the New Funds Transfer Agreement, but instead informed Plaintiff that she was "waiting on the TSC [Tractor Supply] payment status of 91K, will provide that to CFF [Plaintiff] when received." [*Id*.]

In the beginning of February 2020, Plaintiff's senior underwriter, Jimmy Whelan, met with Coopman in California. [Dkt. No. 53, Tr. Of Trial, pg. 76]. During that meeting, Coopman gave Plaintiff access to Innovation Pet's Bank Account statements. On January 30, 2020, Plaintiff's Witness emailed Tractor Supply to inquire about the status of Invoice Payments. [Dkt. No. 43,

Plaintiff's Tr. Ex. pg. 574]. During this inquiry, Plaintiff's Witness was given access to Tractor Supply's online portal[1] ("Tractor Supply Portal"). After reviewing the Tractor Supply Portal, Plaintiff's Witness discovered the payments that had been misdirected to Innovation Pet's Bank Account and the execution of New Funds Transfer Agreement. [Dkt. No. 53, Tr. of Trial, pgs. 35, 109]. Plaintiff subsequently requested that Coopman submit a formal letter to Tractor Supply, irrevocably assigning the Invoice Payments back to Plaintiff's Bank Account. [Dkt. No. 53, Tr. of Trial, pg. 104]. On February 11, 2020, Coopman executed a corrected notice of assignment in favor of Plaintiff ("Corrected Notice of Assignment"). [Dkt. No. 43, Plaintiff's Tr. Ex., pg.158]. However, on February 18, 2020, Innovation Pet received three new payments from Tractor Supply, none of which were remitted by Innovation Pet to Plaintiff. [Dkt. No. 43, Plaintiff's Tr. Ex., pgs. 240-241].

On May 8, 2020, Coopman terminated Plaintiff's access to Innovation Pet's Bank Account, and on May 12, 2020, Plaintiff declared Innovation Pet in default. [Dkt. No. 54, Tr. of Trial, pg. 5]. In response, as noted above, Innovation Pet filed a chapter 11 case on November 19, 2020, which was converted to a chapter 7 liquidation on May 21, 2021, and on July 23, 2021, Coopman filed her own chapter 7 case.

[1] Tractor Supply maintained an online portal which contained detailed information regarding Innovation Pet's invoices and associated payments on those invoices. This was a secured portal and Coopman had access to it with her unique password and ID.

III. LEGAL ANALYSIS

A. Plaintiff Has Met Its Burden to Show that the Debt is Nondischargeable Pursuant to 11 U.S.C. § 523(a)(2)(A)

11 U.S.C. § 523(a)(2)(A) provides that "a discharge . . . does not discharge an individual debtor from any debt . . . for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained, by . . . false pretenses, a false representation, or actual fraud." "The elements of actual fraud under "§ 523(a)(2)(A) match the elements of common law fraud and actual fraud under California Law." *In re Jung Sup Lee*, 335 B.R. 130, 136 (B.A.P. 9th Cir. 2005).

> "In order to establish that a debt is nondischargeable under § 523(a)(2)(A), a creditor must establish five elements by a preponderance of the evidence:
>
> > (1) misrepresentation, fraudulent omission or deceptive conduct by the debtor; (2) knowledge of the falsity or deceptiveness of his statement or conduct; (3) an intent to deceive; (4) justifiable reliance by the creditor on the debtor's statement or conduct; and (5) damage to the creditor proximately caused by its reliance on the debtor's statement or conduct."

Harmon v. Kobrin (In re Harmon), 250 F.3d 1240, 1246 (9th Cir. 2001)

1. Defendant's Affirmative Disclosures and Omissions Regarding Pending Payment Status and Failure to Disclose Execution of the New Funds Transfer Agreement are Actionable Under 11 U.S.C. § 523(a)(2)(A)

Plaintiff's first cause of action pertains to Coopman's misrepresentations based on affirmative disclosures and fraudulent omissions. Plaintiff contends that Coopman made misrepresentations and false pretenses by (1) affirmatively declaring that she did not receive any Invoice Payments from Tractor Supply; and (2) by failing to disclose the execution of New Funds Transfer Agreement.

(a) Affirmative Disclosures

The Court finds that Coopman's representations constitute false pretenses. False pretenses in the context of § 523(a)(2)(A) "refers to an implied misrepresentation or conduct intended to create or foster a false impression." *Reingold v. Shaffer (In re Reingold)*, 2013 Bankr. LEXIS 1660, at *9 n.4 (B.A.P. 9th Cir. 2013). "A false pretense does not necessarily require overt misrepresentations. Instead, omissions or a failure to disclose on the part of the debtor can constitute misrepresentations where the circumstances are such that omissions or failure to disclose create a false impression which is known by the debtor." *Muhammad v. Sneed (In re Sneed)*, 543 B.R. 848, 859 (Bankr. N.D. Ill. 2015) (citation omitted). Given the vagueness of Coopman's responses in September 2019, and December 2019, each response is sufficient to foster an impression that payments were simply pending with Tractor Supply in the ordinary course of business, especially when (unbeknownst to Plaintiff) Coopman had already effectuated

the New Funds Transfer Agreement and Innovation Pet had started receiving Invoice Payments. Given the subtle distinction between a representation and false pretenses, and the vagueness of Coopman's responses, the Court finds that her evasive responses were intended to create a false impression and thus are actionable as false pretenses under § 523(a)(2)(A).

(b) Non-Disclosure:

"An omission of a material fact can constitute a false representation actionable under section 523(a)(2)(A). However, there must be a duty to disclose." *Bershadskiy v. Rodeo Realty, Inc. (In re Bershadskiy)*, 2013 Bankr. LEXIS 4597, at *17 (B.A.P. 9th Cir. Oct. 15, 2013) (*citing Citibank (South Dakota) N.A. v. Eashai (In re Eashai)*, 87 F.3d 1082, 1089 (9th Cir. 1996)).

> "For an omission to be actionable under section 523(a)(2)(A), the defendant must be under a duty to disclose the omitted information. Under California law, there are four circumstances in which a duty to disclose material facts may arise: (1) when the defendant is in a fiduciary relationship with the plaintiff; (2) when the defendant had exclusive knowledge of material facts not known to the plaintiff; (3) when the defendant actively conceals a material fact from the plaintiff; or (4) when the defendant makes partial representations but also suppresses some material facts. The last three circumstances do not require a fiduciary relationship, so long as there exists some relationship between the defendant and plaintiff, such as one between seller and buyer, employer and prospective employee, doctor and patient, or parties entering into any kind of contractual agreement."

Jadallah v. Carroll (In re Carroll), 549 B.R. 375, 382 (Bankr. N.D. Cal. 2016) (*citations omitted*) "Omitting critical facts which a debtor has a duty to disclose may lead to a finding of fraud." *Daniel v. Del Valle (In re Del Valle)*, 577 B.R. 789, 802 (Bankr. C.D. Cal. 2017)

In this case, the Agreements established a seller-buyer relationship between Plaintiff and Innovation Pet. Plaintiff bought the invoices/future receivables from Innovation Pet and Innovation Pet sold the invoices/future receivables to Plaintiff in exchange for funding, thereby giving rise to a duty to disclose. Here, Coopman, as the CEO of Innovation Pet and an insider/person in control, possessed exclusive knowledge of material facts not known to Plaintiff. The transaction was structured in a way that made Coopman Plaintiff's sole point of contact with Tractor Supply as well as the sole source of information, a fact corroborated by Plaintiff's Witness testimony. [Dkt. No. 53, Tr. of Trial, pgs. 54 and 80]. The arrangement did not establish any contractual or communication link between Tractor Supply and Plaintiff. [Dkt. No. 53, Tr. Of Trial, pg. 35]. Therefore, Plaintiff could not have known about any changes made to the invoice payment instructions or any payment made by Tractor Supply, unless Coopman conveyed such information to Plaintiff. This exclusivity imposes a duty of disclosure on Coopman to disclose material facts, including facts regarding changes to payment instructions, as well as facts regarding any payments received from Tractor Supply in violation of the Notice of Assignment and the Agreements.

As to materiality of these facts, "Immaterial facts cannot serve as the predicate for a finding of fraud. But a material fact is simply one that a reasonable investor might have considered important in the making of the investment decision." *Wickam v. Ivar (In re Werner)*, 817 F. App'x 432, 436 (9th Cir. 2020) (citation and quotation omitted). The Court finds that execution of New Funds Transfer Agreement and subsequent diversion of Invoice Payments to Innovation Pet each qualify as material facts that Plaintiff would have considered important in its decision to

continue buying/factoring Tractor Supply invoices. Further, Plaintiff's CEO, Andrew Coon, in his email dated September 17, 2019, explicitly expressed concern about funding Tractor Supply invoices. That email reads:

> "Victoria,
> Are you free to speak at 2 pm EST today? We never got a detailed accounting of what happened with Tractor Supply and why they took so many credits at the end. I am concerned about funding TS without an understanding of what happened. Also, what is your total expected sales volume for TS this season? Please advise. Thanks
> AC"

[Dkt. No. 43, Plaintiff's Tr. Ex. 17, pg. 583]. Plaintiff's response supports that Coopman's failure to disclose the status of the Invoice Payments was material to Plaintiff. Thus, the Court finds that Coopman's affirmative misleading statements about pending status of Tractor Supply payments and failure to disclose the execution of New Funds Transfer Agreement constitute fraudulent omissions and false pretenses within the meaning of 11 U.S.C. § 523(a)(2)(A).

2. Defendant Had Knowledge of the Falsity of Her Representations.

The second element of § 523(a)(2)(A) is whether at the time of making a representation, Coopman knew it was false. "Direct evidence of knowledge and fraudulent intent is rarely present; instead, plaintiff may prove knowledge and intent through circumstantial evidence." *DOL v. Slonim (In re Slonim)*, 2023 Bankr. LEXIS 2648, at *6 (Bankr. D. Idaho 2023) (quotation omitted). "Reckless indifference to the actual facts, without examining the available source of knowledge which lay at hand, and with no reasonable ground to believe that it was in fact correct is sufficient to establish the knowledge element." *Houtman v. Mann (In re Houtman)*, 568 F.2d 651, 656 (9th Cir. 1978).

As discussed below, Coopman's testimony regarding the circumstances surrounding the New Funds Transfer Agreement lacks credibility. The record reflects that Invoice Payments from Tractor Supply to Plaintiff had been made directly to Plaintiff's lockbox though August 2019, as contemplated by the Agreements and the Notice of Assignment. However, approximately 23 days after Coopman concedes she signed the New Funds Transfer Agreement in August 2019, the next fourteen Invoice Payments made by Tractor Supply, in the amount of $756,434.27, which had been assigned to Plaintiff, were instead paid to Innovation Pet. The connection between the New Funds Transfer Agreement and the immediate redirection of payments by Tractor Supply to Innovation Pet cannot be ignored, as there is no other basis in the record to explain the diversion of the payments.

Moreover, Coopman's testimony, which otherwise describes a high level of knowledge about and control over the actions of the company, is notably vague and unknowing as to the effect of the New Funds Transfer Agreement. In her testimony, Coopman asserts that she misunderstood the purpose of executing New Funds Transfer Agreement, denies altering the remittance information, and attributes the inclusion of Innovation Pet's Bank Account details in the New Funds Transfer Agreement to a 'force of habit.' [Dkt. No. 54, Tr. of Trial, pgs. 8 and 113-114]. She asserts that the sole purpose of executing the New Funds Transfer Agreement was to modify a vendor code for a new facility in Mexico, rather than directing payments to Innovation Pet's Bank Account. [Dkt. No. 54, Tr. of Trial, pgs. 6-9]. Glaringly, however, Coopman acknowledges that the vendor code notations on the form were placed there after she signed it. As such, there is nothing on the face of New Funds Transfer Agreement to connect it to vendor codes. Instead, on

its face it simply directs Tractor Supply to send payments to Innovation Pet. Moreover, Coopman's email accompanying the New Funds Transfer Agreement was titled "Urgent: ACH Authorization: Innovation Pet", which was sent to Tractor Supply from Coopman's official Innovation Pet email address, and the body of the email notably omitted any mention of a vendor code. [Dkt. No. 43, Plaintiff's Tr. Ex., pg. 165]. The email reads:

> "TSC AP,
> Please find attached the authorization for ACH. We are requesting this is urgently processed for all remittance. We have not been receiving your payments timely and it seems as thou there is also lost checks. We request we have this set up immediately please to remedy this situation.
> Victoria Coopman, CEO
> Innovation Pet, Inc."

Id. The instructions in this email make clear that Coopman did not intend to change any vendor code, but that the purpose of the email and the attached New Funds Transfer Agreement was to instruct Tractor Supply to redirect Invoice Payments to Innovation Pet's Bank Account instead of Plaintiff's Bank Account. Coopman, as CEO of Innovation Pet since 2012, was a seasoned businesswoman who had significant experience with factoring agreements and supply chain matters. The evidence presented establishes her significant level of knowledge of and control over the business operations of Innovation Pet, and there is no evidence of Coopman's clear delegation of duties to other employees. Given her experience, the Court finds it unpersuasive that Coopman, who signed the New Funds Transfer Agreement, did not understand its purpose, especially considering the New Funds Transfer Agreement was merely one page in length, required filling of extensive details of Innovation Pet's Bank Account, and carried explicit instructions for Tractor Supply to redirect payments to Innovation Pet. [Dkt. No. 43, Plaintiff's Tr., pg. 155]. The Court finds Coopman's assertions regarding the New Funds Transfer

Agreement unpersuasive and self-serving, and Coopman's credibility lacking. In her defense, Coopman asserts that it was possibly another employee of Innovation Pet, "Andrea", a customer service representative, who sent this email to Tractor Supply. [Dkt. No. 54, Tr. of Trial, pgs. 11-14]. The Court finds this testimony also lacking credibility in light of the record viewed in its entirety, particularly where for the purpose of effectuating New Funds Transfer Agreement, Coopman and Tractor Supply exchanged over twelve emails in span of a week. [Dkt. No. 43, Plaintiff's Tr. Ex., pgs. 161-165].

Next, Coopman asserts that she was unaware of any misdirected payments in Innovation Pet's Bank Account since she did not check Innovation Pet's Bank Account statement on a regular basis due to the overall volume of transactions that took place in Innovation Pet's Bank Account, and her being overseas on business. Coopman claims she only became aware of the misdirected payments on March 3, 2020, when Jimmy Whelan, a representative of Plaintiff met with her. [Dkt. No. 54, Tr. of Trial, pg. 19].

It is uncontroverted that Coopman had access to both the Tractor Supply Portal and Innovation Pet's Bank Account, resources which would have confirmed the status of Tractor Supply's Invoice Payments, and the Innovation Pet's Bank Account had accumulated over $756,434.27 in wrongfully diverted Invoice Payments during the seven months between August 2019 to February 2020. Further, when questioned during trial if she became aware of the $320,668.77 that was misdirected by Tractor Supply to Innovation Pet's Bank Account in December 2019, when she drew checks to herself, Coopman responded as follows:

"Counsel: Did you look at your bank statements on a regular basis?

Coopman: No.
Counsel: Did you issue payments out of this bank account in December of 2019?
Coopman: Yes
Counsel: How did you know that you had money in the bank to issue those payments?
Coopman: I would have probably received some kind of balance notification by email from the bank of what the balances were. I basically kind of kept track of balances and what was going on, but during this time I was travelling probably two or three weeks out of the month...."

. . .

"Counsel: Let's look at last page of that December bank statement. Those are three checks, is that your handwriting?
Coopman: Yes.
Counsel: Are they all made out to you?
Coopman: Yes.
Counsel: How did you know when you made these checks that there would be funds sufficient in the bank account to cover them?
Coopman: I would have looked at the bank deposit – well not the deposit record, but the balance record that I had. I usually got some kind of email or ongoing of bank balances.
Counsel: So you would figure out how much was in your bank account by looking at some email that you got somehow and not actually log onto your bank account or refer to a bank statement?
Coopman: Not—would very rarely log into the bank statements until I was ready to do bank reconciliation and then I would pull three, four, five months and do a bank rec like that.
Counsel: Okay. So you didn't do bank reconciliations on a regular basis.
Coopman: No."

[Dkt. No. 54, Tr. of Trial, pgs. 28, 34-35].

Given that length of time and the amount of these payments relative to Innovation Pet's total bank account balance, Coopman's claims that she did not realize that Invoice Payments were being sent to Innovation Pet instead of Plaintiff are implausible. In December 2019 alone, Innovation Pet's Bank Account had total deposits of $336,629.26, and of that amount, $320,668.77 (or 95% of all deposits), came from Invoice Payments improperly diverted to

Innovation Pet for invoices sold to Plaintiff. Notably, without the improperly diverted funds from Tractor Supply, there would not have been sufficient funds in the Innovation Pet bank account to cover the payments Coopman made to herself and others from Innovation Pet's Bank Account in December 2019. Under the circumstances of Innovation Pet's finances in December 2019, it is implausible that, as CEO with the experience and control that Coopman professed, she would not be aware that the only way Innovation Pet had enough funds to pay her was with funds wrongfully diverted from Plaintiff. Given, among other things, Coopman's extent of control over Innovation Pet and its operations, and the magnitude of the Invoice Payments to Innovation Pet's revenue, her professed lack of knowledge is simply not believable.

In summation, Coopman's testimony as to the circumstances surrounding the New Funds Transfer Agreement and her alleged lack of knowledge about the redirection of payments from Tractor Supply is inconsistent and conflicts with, among other things, the express language of the New Funds Transfer Agreement and the correspondence from Coopman. Given the record in total, it is simply implausible that Coopman was not aware of the effect of the New Funds Transfer Agreement and that funds transferred from Tractor Supply to Innovation Pet pursuant to the New Funds Transfer Agreement were in violation of the Agreements and the Notice of Assignment. Coopman's testimony in this regard is completely lacking in credibility. The Court thus finds that (1) Coopman knew the purpose of execution of the New Funds Transfer Agreement was to wrongfully redirect Invoice Payments to Innovation Pet's Bank Account in contravention of the Agreements and the Notice of Assignment, (2) that Coopman sent misleading responses to Plaintiff in September 2019 and December 2019 knowing that Invoice Payments were being wrongfully diverted to Innovation Pet's Bank Account, and (3) Coopman

did so to keep Plaintiff from learning the truth. Therefore, that Court finds that Coopman had knowledge of falsity and deceptiveness of her representations, thus establishing the knowledge element actionable under *§* 523(a)(2)(A).

3. Defendant's Knowledge of Falsity Imputes Intent Under 11 U.S.C. § 523(a)(2)(A)

The intent to deceive requirement may be established by showing "either actual knowledge of the falsity of a statement, or reckless disregard for its truth." *In re Houtman*, 568 F.2d 651, 656 (9th Cir. 1978). "Because direct evidence of intent to deceive is rarely available, 'intent to deceive can be inferred from the totality of the circumstances, including reckless disregard for truth.'" *In re Kraemer*, 22011 Bankr. LEXIS 1783, at *12 (B.A.P. 9th Cir.2011) (*quoting In re Gertsch*, 237 B.R. at 167-68).

As discussed in detail in the preceding subsection, based on the totality of the evidence, including Coopman's lack of credibility, the Court finds that Coopman knew the purpose and effect of the New Funds Transfer Agreement was to redirect Invoice Payments to Innovation Pet in violation of the Agreements and Notice of Assignment, and that her misleading responses to Plaintiff here intended to keep Plaintiff from discovering this.

As such, based on the evidence in record viewed in its entirety, including in particular Coopman's lack of credibility, the Court finds that Coopman had an intent to deceive under

§ 523(a)(2)(A) based on Coopman's actual knowledge of falsity, or in the alternative, her reckless disregard for the truth.

4. Plaintiff Justifiably Relied on Defendant's Representations.

"To be actionable under § 523(a)(2)(A), the prescribed conduct must have occurred before the debtor obtains the money. Prescribed conduct that occurs after the debtor obtains money does not count and will not support a nondischargeability claim under § 523(a)(2)(A)." *Darienzo v. Barretto (In re Barretto)*, 2020 Bankr. LEXIS 2898, at *7 (Bankr. D. Haw. 2020) (quotation omitted). "The alleged misrepresentation must have occurred at the inception of the debt as an inducement for the debt." *Undon Paik v. Kenneth Keun Sung Lee (In re Kenneth Keun Sung Lee)*, 536 B.R. 848, 855 (Bankr. N.D. Cal. 2015).

Coopman contests the element of reliance, asserting that Plaintiff had already extended credit to Innovation Pet before the misdirected funds were deposited into Innovation Pet's Bank Account. This argument is misplaced. Plaintiff's Witness affirmed that Plaintiff continued to factor invoices and extend loans to Innovation Pets after the execution of the New Funds Transfer Agreement in August 2019. [Dkt. No. 53, Tr. of Trial, pgs. 161 and 169].

Exhibit 13[2] reflects that following the execution of New Funds Transfer Agreement on August 12, 2019, Coopman continued to submit Tractor Supply invoices to and obtain loans from

[2] Plaintiff's Exhibit 13 details a summary of misdirected payments and related invoices. This summary was prepared by Plaintiff's Witness (Ms. Melissa Darpino) using information from Tractor Supply Portal and Innovation Pet's Bank Account statements. [Dkt. No. 53, Tr. of Trial, pg. 35]. Exhibit 13 and its sub-exhibits were admitted into evidence in entirety without objection. [Dkt. No. 53, Tr. of Trial, pg. 45]. Exhibit 13 provides a chronological overview of the dates on which Plaintiff extended loans on Tractor Supply invoices to Innovation Pet, as well as the corresponding dates of payments on these invoices by Tractor Supply.

Plaintiff through September 13, 2019, to November 25, 2019. The payment for these invoices was made by Tractor Supply from November 2019 to February 2020. Coopman's misrepresentations and omissions regarding payment status in her emails in September 2019 occurred prior to the funding of the payments in question.

As confirmed by Plaintiff's Witness testimony, if Plaintiff had known that, pursuant to the New Funds Transfer Agreement, payments from Tractor Supply were redirected to Innovation Pet, it would not have continued providing funds to Innovation Pet and/or would have taken other measures to cover its exposure. This concern is also reflected in Andrew Coon's email dated September 17, 2019, where he explicitly expressed concern about funding Tractor Supply invoices due to missing payments. [Dkt. No. 43, Plaintiff's Tr. Ex., pg. 583]. Thus, the Court finds that Plaintiff justifiably relied on Coopman's representations and omissions in continuing to factor Innovation Pet invoices from September 2019 to November 2019, and that Plaintiff has satisfied the element of reliance under § 523(a)(2)(A).

5. Plaintiff Suffered Damages by Relying on Defendant's Representations.

The final element for proving fraud under § 523(a)(2)(A) requires that "the creditor sustained a loss or injury as a proximate result of the misrepresentations having been made." *In re Vidov*, 2014 Bankr. Lexis 3268, at *23-24 (B.A.P. 9th Cir. 2014); *see also In re Malyzsek*, 2017 Bankr. LEXIS 192, at *13-14 (Bankr. C.D. Cal. 2017) ("[T]his [c]ourt can determine . . . that the damages awarded . . . were proximately caused by fraud, since the fraud itself induced the [p]laintiff to enter into the contract that was breached."). "[T]he language of [Section 523(a)(2)]

suggests that the subsection limits nondischargeability to the amount of benefit to the debtor or loss to the creditor the act of fraud itself created." *In re Levy* 951 F.2d 196, 198. (9th Cir. 1991).

Here, the execution of New Funds Transfer Agreement was the proximate cause behind diversion of Invoice Payments into Innovation Pet's Bank Account instead of Plaintiff's Bank Account. The Court finds that Plaintiff sustained damages in the amount of $756,434.27, being the total of funds diverted into Innovation Pet's Bank Account as a direct result of Coopman's execution of New Funds Transfer Agreement. [Dkt. No. 53, Tr. of Trial, pgs. 99-100 and 111].

Plaintiff's argument in its post-trial brief is unhelpful. First, without analysis or authority, Plaintiff appears to alternately asserts that it is somehow sentitled to either $485,085 in interest from March 1, 2020, to October 20, 2023, calculated at 24% pursue to the terms of the Factoring Agreement, or $149,885.25 for the same period at 5.44% pursued to the federal judgment interest rate. The Court notes, first, the appropriateness of applying the federal judgment rate before a judgment is entered. Then Plaintiff argues it is entitled to exemplary (punitive) damages, however without explaining any basis for awarding exemplary damages. Next, Plaintiff asserts that its damages for liability under §§ 523(a)(2(A) and 523(a)(6) should be $957,713.99 as reflected in its proof of claim, but without providing any analysis or explanation reflecting how the proof of claim amount reconciles with the $756,434.27 of Invoice Payments converted by Coopman. While there was some testimony at trial regarding the calculation of the proof of claim amounts, that discussion was inconclusive and did not clearly explain what part of the proof of claim amount was specifically attributed to the Invoice Payments, and notwithstanding its

opportunity to clarify those amounts in its post-trial brief, Plaintiff failed to do so.[3] Last, as reflected by the final paragraph in the conclusion of Plaintiff's post-trial brief, Plaintiff appears to request $756,434.27 as damages in addition to the alleged contractual interest due of $485,085 without explaining how those two amounts in turn reconcile with the $957,713.99 that Plaintiff ultimately requests as damages.

As such, based on Plaintiff's failure to provide clear legal or factual support for any damage request in excess of the actual amounts wrongfully converted by Coopman, the Courts awards damages in the amount of $756,434.27, and otherwise finds that Plaintiff has not met its burden of establishing entitlement to damages in excess of that amount. Accordingly, Plaintiff has satisfied the criteria for damages under § 523(a)(2)(A).

B. Plaintiff Has Met Its Burden To Show The Debt Is Nondischargeable Pursuant To 11 U.S.C. § 523(A)(6)

11 U.S.C. § 523(a)(6) provides that "a discharge under §727 . . . does not discharge an individual debtor from any debt . . . for willful and malicious injury by the debtor to another entity or to the property of another entity." 11 U.S.C. § 523(a)(6). To prevail on a claim under § 523(a)(6), a creditor must show three elements: (1) willful conduct; (2) malice; and (3) causation. *See In re Apte*, 180 B.R. 223, 230 (B.A.P. 9th Cir. 1995); *see also In re Barboza*, 545 F.3d 702, 206 (9th

[3] Plaintiff's post-trial brief also fails to correct the total amount of misdirected funds. During the trial, the Court pointed out the typographical error in Plaintiff's pre-trial brief [Dkt. No. 53, Tr. of Trial, pgs. 89 and 100], where the Invoice Payment deposited by Tractor Supply on January 30, 2020, was incorrectly quoted as $42,525.58 instead of $42,252.58. This error changed the total misdirected funds from $756,434.27 to $756,707.27. Plaintiff was directed to correct this amount in its post-trial brief, which Plaintiff failed to do as well. The Court, however, has utilized the $756,434.27 as the total misdirected payments in its analysis.

Cir. 2008) (holding that the malicious injury requirement is separate from the willful injury requirement); *Ormsby v. First American Title Company of Nevada*, 591 F.3d 1199, 1206 (9th Cir. 2010) (holding that "willful" and "malicious" are both required elements to establish nondischargeability under § 523(a)(6)). A willful and malicious injury under this provision requires proof of a "deliberate or intentional injury, not merely a deliberate or intentional act that leads to injury." *Kawaauhau v. Geiger*, 523 U.S. 57, 61 (1998).

In this case, Plaintiff seeks to base its § 523(a)(6) claim on a showing that Coopman wrongfully converted Plaintiff's property. The Ninth Circuit has held that "an intentional breach of contract cannot give rise to nondischargeability under § 523(a)(6) unless it is accompanied by conduct that constitutes a tort under state law." *Lockerby v. Sierra*, 535 F.3d 1038, 1040 (9th Cir. 2008). The Bankruptcy Appellate Panel provided a helpful expansion of this principle:

> There are at least two relevant ways a creditor may take a judgment consisting of damages for breach of contract and prove that it is nondischargeable under § 523(a)(6). The first would be to establish that the breach of contract also constituted a tort such as conversion that the debtor undertook willfully and maliciously within the meaning of § 523(a)(6) …
>
> Alternatively, the creditor could prove a tortious breach of contract. But to do so, the creditor would need to show not only tortious conduct, but also that the debtor's conduct violated a fundamental public policy of the state.

In re Zeeb, BAP No. CC-19-1019-SKuTa, 2019 WL 3778360, at *6 (B.A.P. 9th Cir. 2019) (quotations and styling omitted); *see also Transamerica Comm. Fin. Corp. v. Littleton*, 942 F.2d 551, 554 (9th Cir. 1991) ("The conversion of another's property without his knowledge or consent, done intentionally and without justification and excuse, to the other's injury, constitutes a willful and malicious injury within the meaning of § 523(a)(6)").

1. Defendant Tortiously Converted Plaintiff's Property.

"In California, the elements of a conversion are (1) the creditor's ownership or right to possession of the property at the time of the conversion; (2) the debtor's conversion by a wrongful act or disposition of property rights; and (3) damages." *Zeeb v. Farah (In re Zeeb)*, at *6 (*quoting Farmers Ins. Exch. V. Zerin*, 53 Cal. App. 4th 445, 451 (1997)). "To maintain a conversion action, it is not essential that the plaintiff shall be the absolute owner of the property converted but she must show that she was entitled to immediate possession at the time of conversion." *Del Bino v. Bailey (In re Bailey)*, 197 F.3d 997 (9th Cir. 1999) (quotation omitted).

(a) Plaintiff Was the Owner of and Had Right to Possession of Invoice Payments at the Time of the Conversion.

Under the provisions of Agreements and Notice of Assignment, Plaintiff possessed the legal right to receive payments from the Tractor Supply invoices. [Dkt. No. 43, Plaintiff's Tr. Ex., pgs. 95 and 98]. Under the arrangement, Tractor Supply's Invoices Payments were purchased by and assigned to Plaintiff by Innovation Pet. During her testimony, Coopman explicitly acknowledges Plaintiff's ownership of Tractor Supply's payments and admits to knowing that Innovation Pet's accounts receivables were sold to Plaintiff and constituted a complete transfer of ownership of those accounts. [Dkt. No. 54, Tr. of Trial, pgs. 64-65]. The Court finds Plaintiff was the owner of the Invoice Payments and had right of possession at the time of conversion.

(b) Defendant's Conversion was Wrongful.

Here, the Notice of Assignment established an irrevocable assignment instruction, instructing Tractor Supply to direct Invoice Payments to Plaintiff's Bank Account and provisions preventing modification of the payee except upon written instructions from Plaintiff. [Dkt. No. 43, Plaintiff's Tr. Ex. 7, pg. 153]. As discussed in detail in the preceding section analyzing Coopman's knowledge under 11 U.S.C. § 523(a)(2)(A), on August 14, 2019, Coopman, in violation of the Agreements and the Notice of Assignment, and without prior written authorization from or notice to Plaintiff, executed and delivered to Tractor Supply the New Funds Transfer Agreement, resulting in Tractor Supply redirecting payments to Innovation Pet's Bank Account. [Dkt. No. 43, Plaintiff's Tr. Ex. 10, pg. 165, and Plaintiff's Tr. Ex. 8, pg. 155]. As noted above, the Court finds that Coopman's conversion of the Invoice Payments without notice to or agreement from Plaintiff, and in violation of the Notice of Assignment, was inconsistent with Plaintiff's ownership rights to the Invoice Payments and otherwise wrongful.

(c) Plaintiff Suffered Damages as a Result of the Conversion.

The parties stipulated that a total of $756,434.27 was misdirected to Innovation Pet's Bank Account pursuant to the execution of New Funds Transfer Agreement. [Dkt. No. 53, Tr. of Trial, pgs. 99-100 and 111]. The Court finds that the damage to Plaintiff was directly caused by Coopman's wrongful conversion of the Invoice Payments.

The facts at hand establish the three elements requisite to establish the tort of conversion. To wit, Plaintiff had the right to Invoice Payments from Tractor Supply, which Coopman wrongfully directed to Innovation Pet's Bank Account, resulting in damage to Plaintiff in the amount of the Invoice Payments. The analysis then turns on whether Coopman engaged in this conversion willfully and maliciously.

2. Defendant's Conversion of the Invoice Payments was Willful.

An injury is willful when "the debtor subjectively intended to cause injury to the creditor, or the debtor subjectively believed that the injury was substantially certain to occur to the creditor as a result of her actions." *In re Chunchai Yu*, 2016 WL 4261655, at *3 (B.A.P. 9th Cir. 2016); *see also In re Ormsby*, 591 F.3d 1199, 1207 (9th Cir. 2010) ("The [d]ebtor is charged with the knowledge of the natural consequences of his actions."); *Bankers Healthcare Grp., LLC v. Moss (In re Moss)*, 598 B.R. 508, 518 (Bankr. N.D. Ga. 2019) ("For a failure to pay loans, the debtor must have 'acted with a specific intent to cause economic injury, or knew injury was substantially certain to result, from his failing to remit payment on the subject loans,' for § 523(a)(6) to be indicated.") (quotation omitted). If the act was intentional and the debtor knew that it would necessarily cause injury, "willful" intent does not require that the debtor has had the specific intent to injure the creditor. *See, e.g.*, *In re Jercich*, 238 F.3d, 1202 1208 (9th Cir. 2001).

Coopman contests the element of intent, asserting that she never made an intentional decision to use the Invoice Payments received in Innovation Pet's Bank Account and that she only became

aware of the technical conversion after the funds had been utilized in the general operations of Innovation Pet.

However, incorporating herein the Court's findings in the knowledge analysis under § 523(a)(2)(A) in the preceding section, considering the totality of the record, and given Coopman's lack of credibility, the Court finds that (1) Coopman intended the New Funds Transfer Agreement to wrongfully divert the Invoice Payments owned by Plaintiff, (2) Coopman intentionally engaged in conduct intended to keep Plaintiff from discovering the truth while her fraudulent scheme was ongoing, and (3) Coopman subjectively believed that, based on her actions, injury was substantially certain to occur to Plaintiff. Thus, the Court finds that the willful element of § 523(a)(6) has been satisfied.

3. Defendant's Conversion of the Invoice Payments was Malicious.

An injury is malicious when it involves: "(1) a wrongful act; (2) done intentionally; (3) which necessarily causes injury; and (4) is done without just cause or excuse." *In re Barboza*, 545 F.3d 702,706 (9th Cir. 2008) (*quoting In re Jercich*, 238 F.3d 1202,1209 (9th Cir. 2001)). This definition "does not require a showing of biblical malice, i.e., personal hatred, spite, or ill will." *In re Bammer*, 131 F.3d 788, 791 (9th Cir. 1997).

Finally, as reflected in the Court's analysis in the subsection above and the Court's findings in the knowledge analysis under § 523(a)(2)(A) in the preceding section, based on the full record before the Court, including Coopman's lack of credibility, the Court finds that Coopman intentionally diverted the Invoice Payments from Plaintiff's Bank Account, which necessarily

caused Plaintiff injury. Moreover, Coopman has not established any just cause or excuse for the actions taken in wrongfully converting the Invoice Payments from Plaintiff.

Based on the foregoing, the Court finds that Coopman maliciously caused injury to Plaintiff by wrongly diverting the Invoice Payments to Innovation Pet's Bank Account from Plaintiff's Bank Account, and thus concludes that Plaintiff has established Coopman's liability under 11 U.S.C. § 523(a)(6) by showing that Coopman's breach of contract was accompanied by a conversion done willfully and maliciously. Finding liability under § 523(a)(6), as to damages the Court incorporates herein the analysis in the preceding section as to damages for § 523(a)(2)(A), finding no basis to award additional damages in excess of $756,434.27.

C. Plaintiff Has Not Established That Defendant's Discharge Should be Denied Pursuant to 11 U.S.C. § 727(A)(3) and § 727(A)(4)

As to 11 U.S.C. § 727 (a)(3), while the Complaint includes a claim under that section, Plaintiff has failed to prosecute that claim or provide sufficient evidence to establish liability, and the Court deems it abandoned. As to 11 U.S.C. § 727 (a)(4), that section provides that "The court shall grant the debtor a discharge, unless—(4) the debtor knowingly and fraudulently, in or in connection with the case— (A) made a false oath or account; …."

> The fundamental purpose of § 727(a)(4)(A) is to insure that the trustee and creditors have accurate information without having to conduct costly investigations. The opportunity to obtain a fresh start is . . . conditioned upon truthful disclosure. 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. 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).

Fogal Legwear of Switz., Inc. v. Wills (In re Wills), 243 B.R. 58, 63 (B.A.P. 9th Cir. 1999) (citation and quotation omitted.).

"In order to bring a successful § 727(a)(4)(A) claim for false oath, the plaintiff must show: (1) the debtor made a false oath in connection with the case; (2) the oath related to a material fact; (3) the oath was made knowingly; and (4) the oath was made fraudulently." *Roberts v. Erhard (In re Roberts)*, 331 B.R. 876, 882 (B.A.P. 9th Cir. 2005). As explained below, Plaintiff has not carried its burden of proving the elements of materiality, knowledge, and fraud in relation to Coopman's false oath in Bankruptcy Petition.

1. Defendant's Oath Does Not Relate to a Material Fact.

"Materiality is broadly defined. A false statement is material if it bears a relationship to the debtor's business transactions or estate, or concerns the discovery of assets, business dealings, or the existence and disposition of the debtor's property." In re Wills, 243 B.R. at 62. "Although a false statement or omission need not cause direct financial prejudice to creditors for it to be material, the misstatement or omission must detrimentally affect the administration of the estate for a denial of discharge to be warranted." *Lockwood v. JMS Labs Ltd. (USA) L.L.C. (In re Lockwood)*, 2007 Bankr. LEXIS 4938, at *15 (B.A.P. 9th Cir. 2007)

Here, Plaintiff has not demonstrated that Coopman's failure to include the claim amount in Schedule D and misstatement about the cause of action against Plaintiff in Schedule B have detrimentally affected the administration of Innovation Pet's bankruptcy estate. The Court notes that Plaintiff was acknowledged as a secured creditor in Schedule D. The absence of claim amount does not detrimentally affect the administration of Innovation Pet's Chapter 7 bankruptcy estate and therefore does not constitute grounds for denying discharge. Additionally, the inclusion of a cause of action against Plaintiff totaling $405,883.00 in Schedule B, arising from the misappropriation of account receivables cash receipts not owed to them, does not demonstrably and detrimentally affect the administration of Innovation Pet's bankruptcy estate. Accordingly, the Court concludes that Plaintiff has not succeeded in demonstrating the necessary element of materiality.

2. Defendant Did Not Make the Oath Knowingly.

"For a person to have acted knowingly, his or her acts must be deliberately and consciously committed. An omission resulting from negligence (i.e., ignorance or carelessness) or recklessness does not rise to the level of knowing." *Lockwood v. JMS Labs Ltd. (USA) L.L.C. (In re Lockwood)*, 2007 Bankr. LEXIS 4938, at *16 (B.A.P. 9th Cir. 2007) (citation omitted).

Here, the evidence suggests that Coopman's omission of claim amount in Schedule D was a careless omission. Coopman's testimony suggests reasons why she perceived Plaintiff's claim amount as disputable, as she believed Plaintiff had received more payments than were owed to them. [Dkt. 54, Tr. of Trial, pgs. 123 and 142]. Other than Coopman's lack of credibility

regarding the conversion of the Invoice Payments, there are no facts presented that would warrant the Court to believe that Coopman knowingly omitted to mention the total amount of claim in Schedule D.

Plaintiff contends that the disclosure in Schedule B of Innovation Pet's bankruptcy petition, asserting that Plaintiff was overpaid by $405,883.00, conflicts with Innovation Pet's balance sheet as of December 31, 2020, where the amount for "CFF AR Cash Receipts Held in Trust for IP Non-Factored" was recorded at $1,799.90. [Dkt. No. 43, Plaintiff's Tr. Ex., pg. 722]. However in her testimony, Coopman clarified that Innovation Pet's balance sheet represents a 'kind of a temporary suspense account' and does not reflect the final amount of liability that was owed. [Dkt. No. 54, Tr. of Trial, pgs. 59 and 61, Dkt. No. 43, Plaintiff's Tr. Ex., pgs.723-724]. Coopman further testified that upon receiving information from Plaintiff regarding payments on non-factored invoices, she would record it as a journal entry on the balance sheet and offset the liability account, resulting in a smaller running balance amount. [Dkt. No. 54, Tr. of Trial, pgs. 123, 126, and 142, Defendant's Tr. Ex., pg. 2]. Based on the presented facts, there is insufficient evidence to conclude that Coopman knowingly asserted a non-meritorious cause of action in the bankruptcy petition.

3. Defendant Did Not Make the Oath Fraudulently.

As for the element of fraud, "a debtor acts fraudulently when (1) the debtor made a false statement or omission in connection with the case, such as in bankruptcy schedules or at creditor meetings, (2) that at the time the debtor knew was false, and (3) debtor made such statement or

omission with the intention and purpose of deceiving creditors or the trustee." *Phillips v. United States Tr. (In re Phillips)*, 2010 Bankr. LEXIS 5081, at *23 (B.A.P. 9th Cir. 2010).

Regarding the omission of the claim amount in Schedule D and misstatements regarding the cause of action against Plaintiff in Schedule B, there is a lack of evidence to suggest that Coopman acted with fraudulent intent in omitting the total claim amount or in presenting a non-meritorious cause of action against Plaintiff. The mere knowledge of possible demand or claim by Plaintiff related to the Tractor Supply account is insufficient to establish Coopman's state of mind in knowingly omitting the claim amount in Schedule D. Moreover, Coopman's testimony indicates her belief that Plaintiff had been overcompensated for the non-factored invoices. [Dkt. 54, Tr. of Trial, pgs. 123 and 142]. Consequently, the Court finds that Coopman did not knowingly make a false statement nor is there sufficient evidence to suggest an intent to deceive Plaintiff or the bankruptcy trustee in connection with preparing the schedules in Innovation Pet's Bankruptcy Case.

Therefore, the Court concludes that Plaintiff has not met its burden of proving the elements of materiality, knowledge, and fraud. The Court does not deem Coopman's omission of a claim amount in Schedule D and misstatements regarding the cause of action against Plaintiff in Schedule B to rise to the level of materiality that might warrant a denial of discharge under 11 U.S.C. § 727(a)(4). Additionally, Plaintiff has not demonstrated that Coopman made these omissions and misstatements with actual knowledge or an intent to defraud Plaintiff or the trustee.

IV. CONCLUSION

For the reasons set forth above otherwise set forth on the record, the Court determines that Plaintiff has established by a preponderance of the evidence the elements required for a finding of nondischargeability under 11 U.S.C. §§ 523(a)(2)(A) and 523(a)(6), but has not established the requirements for denial of discharge under §§ 727(a)(3) or 727(a)(4).

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Date: March 31, 2024

Mark Houle
United States Bankruptcy Judge