



UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
SANTA ANA DIVISION

In re RAYMOND NGHIA DAO and ALLISON MONGLAN DAO, Debtors.	Case No. 8:09-bk-12689-RK Chapter 7 Adv. No. 8:09-ap-01390-RK
SON KIM NGUYEN, Plaintiff, vs. RAYMOND NGHIA DAO and ALLISON MONGLAN DAO, Defendants.	MEMORANDUM DECISION ON ADVERSARY COMPLAINT OBJECTING TO DISCHARGE DATE: December 16 and 17, 2010 TIME: 8:00 a.m. CTRM: 5D

This adversary proceeding was tried before the undersigned United States Bankruptcy Judge on December 16 and 17, 2010, on the complaint of plaintiff Son Kim Nguyen ("plaintiff") seeking the denial of the discharge of defendants Raymond Nghia Dao and Allison Monglan Dao ("defendants") pursuant to Section 727(a) and (c) of the Bankruptcy Code, 11 U.S.C. Jonathan T. Nguyen, of the law firm of Gilbert & Nguyen, appeared for plaintiff. Daniel Yu, of the law firm of Lee, Tran & Liang, APLC, appeared for defendants.

1 On March 27, 2009, defendants filed a voluntary petition for relief under Chapter 7
2 of the Bankruptcy Code, 11 U.S.C. The Chapter 7 Trustee filed a report of no distribution
3 was filed on July 21, 2009, but a discharge has not entered due to this pending adversary
4 proceeding.

5 On June 19, 2009, plaintiff commenced this adversary proceeding by filing the
6 adversary complaint against defendants objecting to their discharge pursuant to 11
7 U.S.C. §§ 727(a) and (c). *Complaint Objecting to Discharge ("Complaint")*, filed on June
8 19, 2009. On July 24, 2009, defendants served and filed an answer denying the
9 substantive allegations of the complaint. *Answer to Complaint*, filed on July 24, 2009.

10 On October 19, 2010, the parties filed a joint pretrial statement containing the
11 parties' stipulation as to the authenticity of documents and admission of evidence at trial
12 that plaintiff's exhibits numbered 1-16 and defendants' exhibits 1-10 may be admitted
13 without objection. On October 26, 2010, the court conducted a pretrial conference in this
14 adversary proceeding and orally approved the joint pretrial statement and order, but later
15 entered the joint pretrial order on May 31, 2011.

16 On December 16 and 17, 2010, the court conducted a trial in this adversary
17 proceeding. At the close of the evidence at trial, the court ordered the parties to submit
18 proposed findings of fact and conclusions of law on or before February 11, 2011 and to
19 file objections, if any, on or before February 25, 2011. Plaintiff lodged his proposed
20 findings of fact and conclusions of law on February 10, 2011. Defendants lodged their
21 proposed findings of fact and conclusions of law on February 11, 2011. Plaintiff filed
22 objections to defendants' proposed findings of fact and conclusions of law on February
23 19, 2011. On February 25, 2011, the court took the matter under submission.

24 Having considered the evidence admitted at trial and the oral and written
25 arguments of the parties, the court now issues this memorandum decision.

26 The court has jurisdiction over this adversary proceeding under 28 U.S.C. §§
27 157(a) and (b)(1) and (2)(I) and 1334. Venue is proper in this judicial district. This
28 adversary proceeding is a core matter.

1 The court makes the following findings of facts based on facts previously
2 determined in the court's joint pretrial order as well as facts determined on the evidence
3 admitted at trial. *Joint Pre-Trial Statement and Pretrial Order ("JPTO")*, submitted on
4 October 19, 2010 and entered on May 31, 2011.

5 **FACTS**

6 This adversary proceeding follows the judgment in the lawsuit between plaintiff
7 and defendants in the Superior Court of California for the County of Orange, Case No.
8 07CC05694 (the judgment listed on Statement of Financial Affairs in bankruptcy
9 package). The state court entered its judgment in favor of plaintiff and against
10 defendants on September 9, 2008, as amended on October 17, 2008, in the amount of
11 \$185,175.46. *JPTO, at 3, Admitted Fact No. 1*. Plaintiff filed a proof of claim asserting a
12 secured claim of \$185,175 based on this judgment. *Claim No. 1-1, filed on June 18,*
13 *2009.*

14 Plaintiff levied upon defendants' bank accounts beginning in the fall of 2008 to
15 collect the judgment. *December 16, 2010 Trial Testimony of Raymond Dao* at 11:15
16 a.m.; *December 17, 2010 Trial Testimony of Raymond Dao* at 8:46 a.m.; *Transcript of*
17 *June 25, 2009 341(a) Meeting of Creditors (Testimony of Allison Dao)* at 9-12.

18 Mrs. Dao had a bank account with her son, Ensign Bui, at the Orange County
19 Teachers Federal Credit Union. *Transcript of June 25, 2009 341(a) Meeting of Creditors*
20 at 8-10. Defendants provided the Chapter 7 trustee with bank statements for this
21 account covering the time period of January 1, 2008 through October 31, 2008. *Id.* at 2,
22 8. The bank account statements showed that the account balance averaged less than
23 \$1,000.00. *Id.* at 10. When this account was levied in October 2008, the account was
24 drawn down to zero. *Id.* at 9-10. Mrs. Dao admitted that she closed the account due to
25 plaintiff's levy. *Id.*

26 Mrs. Dao also had an individual bank account at the Orange County Teachers
27 Federal Credit Union. *Transcript of June 25, 2009 341(a) Meeting of Creditors* at 10.

1 Defendants provided the Chapter 7 trustee with bank statements for this account
2 covering the time period of January 1, 2008 through August 31, 2008. *Id.* The bank
3 account statements showed a minimal balance in the account (less than \$500.00)
4 between January and August 2008. *Id.* When this account was levied in August 2008,
5 the account was drawn down to zero. *Id.* Mrs. Dao admitted that she closed the account
6 in August 2008 due to plaintiff's levy. *Id.*

7 Mrs. Dao had an individual bank account at Bank of America. Defendants
8 provided the Chapter 7 trustee with bank statements for this account covering the time
9 period of January 1, 2008 through October 15, 2008. *Transcript of June 25, 2009 341(a)*
10 *Meeting of Creditors* at 10–11. The bank account statements showed transaction activity
11 of about \$3,500.00 per month through April 2008. *Id.* at 2, 10-11. The account balance
12 was \$400.00 in May 2008, \$1,000.00 in June 2008, and \$1,200.00 in July 2008. *Id.* at
13 11. When this account was levied in October 2008, the account was drawn down to zero.
14 Mrs. Dao admitted that she closed the account in October 2008 due to the levy. *Id.* at 11.

15 Defendants had a joint checking account at Bank of America. *Transcript of June*
16 *25, 2009 341(a) Meeting of Creditors* at 11–15. Defendants provided the Chapter 7
17 Trustee with bank statements for this account covering the time period of January 1,
18 2008 through October 15, 2008. *Id.* at 2. The bank account statements for this account
19 showed \$13,385.72 in deposits through January 14, 2008, \$8,000.00 in deposits for
20 January through February 2008, \$5,000.00 in deposits for February through March 2008;
21 \$8,000.00 in deposits for April through May 2008, \$8,000.00 in deposits for June through
22 July 2008, \$5,000.00 in deposits for July through August 2008, and \$5,400.00 in deposits
23 for August through September 2008. *Id.* at 11-15. The bank account statement for
24 September through October 2008 showed the account being overdrawn as a result of
25 plaintiff's levy. *Id.* at 14. Defendants had deposited all of their earnings into this bank
26 account. *Id.* at 12-14. When this account was levied in October 2008, it was overdrawn,
27 and defendants closed the account. *Id.* at 14–15.

1 Defendants had a joint checking business account in the name of RAM
2 Entertainment, Inc., at Bank of America. Defendants provided the Chapter 7 trustee with
3 bank statements for this account dating from January 1, 2008 through August 2008.
4 *Transcript of June 25, 2009 341(a) Meeting of Creditors* at 17–18, 21. This account was
5 never levied. *Id.* at 17-18. Defendants testified that they sometimes deposited funds
6 from customers and used the funds in this account to pay their attorneys' fees and bills.
7 *Id.*

8 In 2008, defendants opened a new bank account at Wells Fargo Bank in the
9 name of RAM Entertainment, Inc., a business in which they were two-thirds shareholders,
10 to avoid plaintiff's levy on their personal accounts at Wells Fargo, Banco Popular, and
11 First Bank. *Transcript of June 25, 2009 341(a) Meeting of Creditors* at 20-21, 24;
12 *December 16, 2010 Trial Testimony of Raymond Dao* at 11:15–11:18 a.m.; *December*
13 *17, 2010, Trial Testimony of Raymond Dao* at 8:47 a.m.; *December 17, 2010 Trial*
14 *Testimony of Allison Dao* at 9:32 – 9:35 a.m.; *Declaration of Raymond Dao* ¶ 5;
15 *Declaration of Allison Dao* ¶ 5. Defendants testified that RAM Entertainment ceased
16 operating in 2007. *Transcript of May 7, 2009 341(a) Meeting of Creditors* at 14.
17 Defendants provided the Chapter 7 trustee with bank statements for this account
18 covering the time period from September 25, 2008 to February 27, 2009. *Transcript of*
19 *June 25, 2009 341(a) Meeting of Creditors* at 15. Defendants admitted in their testimony
20 during meetings of creditors and at trial that they used the new Wells Fargo bank account
21 to cash checks to avoid the levy. *Transcript of June 25, 2009 341(a) Meeting of Creditors*
22 *at 21 and 24; Transcript of July 10, 2009 341(a) Meeting of Creditors* at 14; *December*
23 *16, 2010 Trial Testimony of Raymond Dao* at 11:16– 1:17 a.m.; *December 17, 2010, Trial*
24 *Testimony of Raymond Dao* at 8:47–8:48 a.m. Defendants testified that they used this
25 cash to pay their personal bills and expenses. *Id.* Defendants also admitted in testimony
26 at the meetings of creditors and at trial that they used the new Wells Fargo account in
27 RAM Entertainment's name to purchase money orders and cashier's checks to avoid the
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1 levy. *Id.* Defendants stated that they used these money orders and cashier's checks to
2 pay their bills and expenses. *Id.*

3 Defendants listed \$6,298.00 as their monthly expenses on Schedule J of their
4 bankruptcy petition. *Plaintiff's Trial Exhibit 1.* Defendants indicated in their Statement of
5 Financial Affairs that plaintiff received \$499.97 towards his judgment from the levied
6 accounts. *Statement of Financial Affairs* at 2-3, *Plaintiff's Trial Exhibit 1.*

7 Defendants hired attorney Joseph A. Weber ("bankruptcy attorney") to prepare
8 and file their voluntary Chapter 7 bankruptcy petition. *Voluntary Chapter 7 Petition,*
9 *Plaintiff's Trial Exhibit 1.* Defendants testified that they provided their bankruptcy attorney
10 with all of their income sources for the six months prior to the petition date, including
11 copies of pay stubs, 1099 Forms, cancelled checks and pay statements, and copies of
12 their tax returns from 2006 to the petition date as evidence of their income. *Transcript of*
13 *May 7, 2009 341(a) Meeting of Creditors* at 28-29; *Transcript of June 25, 2009 341(a)*
14 *Meeting of Creditors* at 24-25; *December 16, 2010 Trial Testimony of Raymond Dao* at
15 11:39-11:43 a.m.; *December 17, 2010 Trial Testimony of Raymond Dao* at 8:12-8:13
16 a.m. and 8:21-8:22 a.m.; *December 17, 2010 Trial Testimony of Allison Dao* at 9:23-9:25
17 a.m. Defendants also testified that they provided their bankruptcy attorney with copies of
18 bank statements evidencing all of their bank accounts. *December 16, 2010 Trial*
19 *Testimony of Raymond Dao* at 11:42-11:43 a.m.; *December 17, 2010 Trial Testimony of*
20 *Allison Dao* at 9:27-9:28 a.m. Defendants testified that they provided all of this financial
21 information to their bankruptcy attorney before their Chapter 7 bankruptcy petition was
22 filed. *Transcript of June 25, 2009 341(a) Meeting of Creditors* at 25; *December 17, 2010*
23 *Trial Testimony of Raymond Dao* at 8:12-8:15 a.m.

24 Defendants' bankruptcy attorney prepared their Chapter 7 petition and amended
25 schedules. *December 16, 2010 Trial Testimony of Raymond Dao* at 11:42-11:46 a.m.;
26 *December 17, 2010 Trial Testimony of Raymond Dao* at 8:08-8:09 a.m.

27 Defendants testified that they produced bank statements, copies of checks,
28 invoices and disclosed the existence of their bank accounts to the Chapter 7 trustee in

1 this case. See *Transcript of June 25, 2009, 341(a) Meeting of Creditors* at 2-5; *Transcript*
2 *of July 10, 2009 341(a) Meeting of Creditors* at 2-7; *Declaration of Defendant Allison Dao*
3 *¶ 12 and attached exhibits; Declaration of Raymond Dao ¶ 12 and attached exhibits;*
4 *December 16, 2010 Trial Testimony of Raymond Dao* at 11:40 a.m.; *December 17, 2010*
5 *Testimony of Raymond Dao* at 8:12–8:13 a.m.

6 Defendants' bankruptcy petition listed three bank accounts on Schedule B: two
7 accounts at "Wells Fargo", and one account at "First FCU". *Plaintiff's Trial Exhibit 1*
8 Defendants' Bankruptcy Attorney filed an Amended Schedule B on May 11, 2009 but the
9 information under "Checking, savings or other financial accounts. . ." was not changed.

10 Defendants are both entertainers. Defendants testified that the last time
11 defendants made CD's or cassettes of their performances was in 2005. *December 16,*
12 *2010 Trial Testimony of Raymond Dao* at 11:22–11:23 a.m. Defendants operate a
13 website at www.trongnghiamonglan.com. *Declaration of Raymond Dao ¶ 10.*
14 *Declaration of Allison Dao ¶ 10.* Defendants testified that their website only generated a
15 single order for five CDs (compact discs) since 2005. *December 16, 2010 Trial*
16 *Testimony of Raymond Dao* at 11:22–11:25 a.m. Defendants' website contains
17 information about Defendants' career and has photographs of defendants, their children,
18 and other family members. *Declaration of Allison Dao ¶ 10 and Exhibit D attached*
19 *thereto; Declaration of Raymond Dao ¶ 10 and Exhibit D attached thereto.*

20 **ANALYSIS**

21 **11 U.S.C. § 727(a)(2)**

22 A debtor may be denied a discharge under 11 U.S.C. § 727(a)(2) if it is
23 established that "the debtor, with intent to hinder, delay or defraud a creditor . . . has
24 transferred, removed, destroyed, mutilated, or concealed . . . (A) property of the debtor,
25 within one year before the date of the filing of the petition." Plaintiff as the party objecting
26 to discharge of the debtors bears the burden of proving by a preponderance of the
27 evidence that the debtors (1) made a disposition of property, such as transfer or
28 concealment, and with (2) subjective intent to hinder, delay, or defraud a creditor through

1 the act of disposing of the property. *Lawson v. Hughes (In re Lawson)*, 193 B.R. 520,
2 523 (9th Cir. BAP 1996). The court construes Section 727 liberally in favor of the debtors
3 in keeping with the Bankruptcy Code's ultimate goal of giving debtors a fresh start.
4 *Bernard v. Sheaffer (In re Bernard)*, 96 F.3d 1279, 1281 (9th Cir.1996) (citation omitted).
5 "Denial of discharge, however, need not rest on a finding of intent to defraud. Intent to
6 hinder or delay is sufficient." *Id.*, citing *Matter of Smiley*, 864 F.2d 562, 568 (7th
7 Cir.1989); and *In re Adeeb*, 787 F.2d 1339, 1343 (9th Cir.1986).

8 In their testimony at their 11 U.S.C. § 341(a) meetings of creditors, depositions
9 and trial, defendants admitted that they closed several bank accounts that had been
10 levied by plaintiff and had opened a new Wells Fargo bank account with the express
11 purpose of avoiding the plaintiff's levy to collect the judgment debt owed by them to him.
12 Defendants opened the new Wells Fargo bank account in RAM Entertainment's name
13 between August and October of 2008, which is less than one year before the petition
14 date of March 27, 2009. Defendants admitted that during this time, they used the new
15 Wells Fargo account to cash checks to avoid plaintiff's levy and used the cash to pay
16 their personal bills and expenses without paying plaintiff as their creditor. Defendants
17 also admitted that they used the new Wells Fargo bank account to purchase money
18 orders and cashier's checks to avoid the levy and pay other bill and expenses.

19 The definition of "transfer" in the Bankruptcy Code is very broad. Section
20 101(54)(D) of the Bankruptcy Code defines "transfer" as, "each mode, direct or indirect,
21 absolute or conditional, voluntary or involuntary, of disposing of or parting with (i)
22 property; or (ii) an interest in property." See also, *In re Bernard*, 96 F.3d at 1282. The
23 legislative history of this provision confirms its broad meaning:

24 A transfer is a disposition of an interest in property. The definition of transfer is as
25 broad as possible. Many of the potentially limiting words in current law are deleted,
26 and the language is simplified. Under this definition, any transfer of an interest in
27 property is a transfer, including a transfer of possession, custody, or control even if
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1 there is no transfer of title, because possession, custody, and control are interests
2 in property. *A deposit in a bank account or similar account is a transfer.*
3 S. Rep. No. 989, 95th Cong., 2d Sess. 27 (1978), *reprinted in* 1978 U.S.Code. Cong.
4 &.Adm. News 5787, 5813 (emphasis added), *quoted in In re Bernard*, 96 F.3d at 1282.
5 Based on this definition, defendants' deposits of their earnings into the Wells Fargo bank
6 account in the name of RAM Entertainment qualify as "transfers" under 11 U.S.C. §
7 727(a)(2).

8 In *Locke v. Schafer (In re Schafer)*, 294 B.R. 126 (N.D.Cal. 2003), a case with very
9 similar facts, the bankruptcy court's denial of discharge was affirmed on appeal. *Id.* at
10 132. In *Schafer*, the objecting creditor's attachment of the debtor's bank account
11 prompted the debtor to open and use a different bank account. *Id.* at 130. The debtor
12 testified that his purpose in opening the new account was to facilitate paying other
13 creditors. *Id.* The debtor in *Schafer* also testified that he placed funds into the new
14 account in order to prevent the objecting creditor from attaching them. *Id.* The court in
15 *Schafer* held that as a matter of law, the debtor's actual intent to hinder the objecting
16 creditor precluded him from granting a discharge, regardless of his intent to benefit other
17 creditors. *Id.* at 130-131 ("Schafer's stated plainly in his deposition that his intent was to
18 prevent Transamerica, his creditor, from attaching his funds by placing them in a new
19 account and holding money in cashier's checks. That plaintiff opened the new account
20 for the alleged purpose of paying off other creditors is unavailing."); *see also, In re*
21 *Bernard*, 96 F.3d at 1281-1283.

22 Defendants contend that "[t]here was no evidence that Defendants transferred,
23 removed, destroyed, mutilated or conceal[ed] any of their property with intent to hinder or
24 delay Plaintiff from collecting from Defendants." *Defendants' Proposed Findings of Fact*
25 *and Conclusions of Law*, filed on February 11, 2011, at 2. "Defendants' existing bank
26 accounts were levied and essentially frozen, and Defendants needed other bank
27 accounts to be able to process business and personal income and expenses." *Id.*
28

1 Defendants' testimony during the 11 U.S.C. § 341(a) meetings of creditors and at
2 trial and in their trial declarations admitted their intent in closing their personal bank
3 accounts in their own names and opening and using the new Wells Fargo bank account
4 in the name of RAM Entertainment was to prevent their creditor, plaintiff, from attaching
5 their funds to collect the debt they owed to him. As such, the requisite intent of
6 defendants to hinder, delay or defraud a creditor within the meaning of 11 U.S.C. §
7 727(a)(2) was admitted through direct and uncontroverted evidence. Defendants testified
8 that they deposited their earnings into this bank account not in their own name, but under
9 their control, and cashed checks through the account to purchase money orders and
10 cashier's checks, to pay their living expenses and creditors other than plaintiff. *See In re*
11 *Schafer*, 294 B.R. at 130-131. Accordingly, the court finds that plaintiff has shown by a
12 preponderance of the evidence that the defendants transferred and removed property
13 with intent to hinder, delay or defraud a creditor within the one-year period preceding the
14 petition date to warrant denial of their discharge pursuant to 11 U.S.C. § 727(a)(2). *Id.*

15 The Ninth Circuit observed in *Bernard* that "[d]enial of discharge is a harsh result."
16 96 F.3d at 1283. "However, bankruptcy has its roots in equity. To get equity, one must
17 do equity." *Id.* As in *Bernard*, the creditor in this case, plaintiff, was taking legal action to
18 help him collect on a debt owed him by the debtors through levies on their bank
19 accounts. *In re Bernard*, 96 F.3d at 1283. The debtors intentionally and successfully
20 hindered this effort by not depositing their earnings into their personal bank accounts,
21 which had been subject to plaintiff's levies, but rather depositing these funds into bank
22 accounts they opened and controlled, not in their name, but in the name of a non-
23 operating corporation, RAM Entertainment (two-thirds owed by defendants), and/or
24 cashing checks from their customers through these accounts and purchasing money
25 orders and cashier's checks to pay other bills and creditors. *See id.* As in *Bernard*, these
26 facts and circumstances substantiate a claim for denial of discharge under 11 U.S.C. §
27 727(a)(2). Accordingly, the court grants plaintiff's claim for relief to deny a discharge
28 pursuant to 11 U.S.C. § 727(a)(2).

1 **11 U.S.C. § 727(a)(3)**

2 Plaintiff's second claim for relief alleges that "the debtor has concealed, destroyed,
3 mutilated, falsified, or failed to keep or preserve any recorded information, including
4 books, documents, records, and papers, from which the debtor's financial condition or
5 business transactions might be ascertained, unless such act or failure to act was justified
6 under all of the circumstances of the case." 11 U.S.C. § 727(a)(3). *Complaint*, ¶ 9.
7 Plaintiff alleges that defendants failed to disclose the existence of several bank accounts
8 on their bankruptcy petition. *Id.*

9 It appears that plaintiff has abandoned any claim under 11 U.S.C. § 727(a)(3)
10 since he submitted no proposed findings of fact and conclusions of law for that claim.
11 *See Plaintiff's Proposed Findings of Fact and Conclusions of Law*, filed on February 10,
12 2011.

13 Assuming *arguendo* that such claim is not abandoned, the court notes that the
14 initial burden of proof under Section 727(a)(3) lies with the party objecting to the
15 discharge, who must prove: (1) the debtor failed to maintain and preserve adequate
16 records, and (2) that failure made it impossible to ascertain debtor's financial condition
17 and material business transactions. *Landsdowne v. Cox (In re Cox)*, 41 F.3d 1294, 1296
18 (9th Cir.1994)(citation omitted). The "fresh start" aim of Chapter 7 must be balanced
19 against the goal of Section 727(a)(3) of providing adequate information regarding
20 debtor's financial status. The statute does not require "a rigid standard of perfection" in
21 making or keeping records. *Rhoades v. Wikle*, 453 F.2d 51, 53 (9th Cir.1971). Rather,
22 the debtor must "present sufficient written evidence which will enable his creditors
23 reasonably to ascertain his present financial condition and to follow his business
24 transactions for a reasonable period in the past." *Id.*

25 Here, defendants testified that they provided their bankruptcy attorney with records
26 of all of their income sources for the six months prior to the petition date in order for him
27 to prepare their bankruptcy petition, including copies of pay stubs, Forms 1099, cancelled
28 checks and pay statements. Defendants testified that they so provided their bankruptcy

1 attorney with copies of their tax returns from 2006 through the petition date as evidence
2 of their income. Defendants also testified that they provided their bankruptcy attorney
3 with copies of bank statements evidencing all of their bank accounts. Defendants
4 testified that they had provided all of this financial information to their bankruptcy attorney
5 before their bankruptcy petition was filed.

6 Defendants testified that they do not have any bankruptcy expertise and that they
7 had relied upon their bankruptcy attorney to prepare their Chapter 7 bankruptcy petition
8 and schedules. Defendants testified that they trusted the thoroughness and competency
9 of their bankruptcy attorney and because they trusted their attorney, they had no reason
10 to believe their bankruptcy petition or amended schedules were incomplete or inaccurate
11 when they reviewed and signed them. Defendants further testified that they did not
12 understand why their bankruptcy attorney asked them to sign amended bankruptcy
13 schedules, but that they trusted his professional judgment.

14 Defendants produced bank statements, copies of checks, invoices, and disclosed
15 the existence of their bank accounts to the Chapter 7 trustee

16 Defendants are individuals with minimal business savvy and no bankruptcy
17 expertise. They supplied their bankruptcy attorney with ample financial documentation
18 and understandably assumed that he had the necessary expertise to file a complete and
19 accurate bankruptcy petition. When the Chapter 7 trustee requested that defendants turn
20 over copies of financial documents, they complied.

21 The court finds that defendants' testimony that they provided extensive financial
22 documentation of their income and assets, including bank accounts, to their bankruptcy
23 attorney and the Chapter 7 trustee was credible, and because the court finds defendants'
24 testimony to be credible, this court finds that plaintiff has not met his burden of proving by
25 a preponderance of the evidence that defendants concealed, destroyed or failed to keep
26 financial books or records in this case. Accordingly, the court finds that plaintiff has not
27 met his burden of proof in showing by a preponderance of the evidence that defendants
28 concealed, destroyed, mutilated, falsified, or failed to keep or preserve recorded

1 information relevant to their financial condition to warrant denial of their discharge under
2 11 U.S.C. § 727(a)(3). Therefore, the court denies plaintiff's claim for relief to deny a
3 discharge pursuant to 11 U.S.C. § 727(a)(3) either as abandoned or for failure of proof.

4 **11 U.S.C. § 727(a)(4)**

5 Plaintiff's third claim for relief alleges that defendant made a false oath or account
6 pursuant to 11 U.S.C. § 727(a)(4)(A) and is not entitled to a discharge. *Complaint*, ¶ 10.
7 Specifically, plaintiff alleges that the false oaths or accounts are shown by: (1)
8 defendants' failure to disclose all of their income; (2) defendants' failure to disclose their
9 ownership interests in the websites, which sell their CDs; and (3) defendants' failure to
10 disclose their bank accounts. *Id.*

11 It appears that plaintiff has abandoned any claim under 11 U.S.C. § 727(a)(4)
12 since he submitted no proposed findings of fact and conclusions of law for that claim.
13 *See Plaintiff's Proposed Findings of Fact and Conclusions of Law*, filed on February 10,
14 2011. Assuming *arguendo* that such claim is not abandoned, the court notes that in
15 order to deny a debtor's discharge for a false oath or account under 11 U.S.C. §
16 727(a)(4)(A), plaintiff must show that: (1) the debtor made a false oath in connection with
17 the bankruptcy case; (2) the oath related to a material fact; (3) the oath was made
18 knowingly; and (4) the oath was made fraudulently. *Retz v. Samson (In re Retz)*, 606
19 F.3d 1189, 1197 (9th Cir. 2010)(citations omitted).

20 This court finds that plaintiff has not shown by a preponderance of the evidence
21 that defendants failed to disclose their income to support a claim for false oath. As
22 discussed above, the evidence shows that defendants provided their bankruptcy attorney
23 with ample financial documentation of their income and assets and trusted that he would
24 file a complete and accurate bankruptcy petition on their behalf. The evidence also
25 showed that when the Chapter 7 trustee asked the defendants to produce tax returns,
26 bank statements, pay stubs, and other financial documentation, they readily complied.
27 Accordingly, the court finds that plaintiff has not presented sufficient evidence to indicate
28 that defendants knowingly made a false oath with the intent to deceive.

1 As to plaintiff's contention that defendants failed to disclose their ownership
2 interest in their website, the court finds that the evidence shows that the website was
3 mainly personal in nature and of little economic value. Mr. Dao testified that the last time
4 defendants made CDs or cassettes of their music performances was in 2005 and that
5 their website has only generated a single order for five CDs since 2005. Defendants
6 testified that the website contains information about Defendants' career and has
7 photographs of Defendants, their children, and other family members. The court finds the
8 website had little, if any, economic value, and that any alleged failure by defendants to
9 disclose the website in their petition was immaterial.

10 The issue as to defendants' alleged failure to disclose bank accounts was
11 addressed above dealing with the 11 U.S.C. § 727(a)(3) claim. Defendants provided
12 their bankruptcy attorney with sufficient financial documentation to disclose their income
13 and assets, and they justifiably assumed that he would file a thorough and accurate
14 bankruptcy petition on their behalf. Furthermore, when the Chapter 7 trustee requested
15 defendants' financial documents, they readily delivered copies. Therefore, the court finds
16 that plaintiff has not shown by a preponderance of the evidence that defendants failed to
17 disclose their financial information with the intent to defraud.

18 For the foregoing reasons, the court finds that plaintiff has failed to show by a
19 preponderance of the evidence that defendants made a false oath or account on their
20 bankruptcy documents. Accordingly, the court denies plaintiff's claim for relief to deny a
21 discharge pursuant to 11 U.S.C. § 727(a)(4)(A) either as abandoned or for failure of
22 proof.

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1 This memorandum decision constitutes the court's findings of fact and conclusions
2 of law. Counsel for plaintiff is ordered to submit a proposed judgment in accordance with
3 this memorandum decision within 30 days of entry of this decision.

4 IT IS SO ORDERED.

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DATED: December 13, 2011


United States Bankruptcy Judge

NOTICE OF ENTERED ORDER AND SERVICE LIST

Notice is given by the court that a judgment or order entitled (*specify*) **MEMORANDUM DECISION ON ADVERSARY COMPLAINT OBJECTING TO DISCHARGE** 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 **December 12, 2011**, 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:

Charles W Daff cdaff@epiqtrustee.com, charlesdaff@yahoo.com
Weneta M Kosmala (TR) Weneta.Kosmala@7trustee.net,
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Jonathan T Nguyen bruinesq@gnlaw.org
Kinh L Tran klt@ltlcounsel.com
United States Trustee (SA) ustpregion16.sa.ecf@usdoj.gov

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 U.S. Mail, first class, postage prepaid, to the following person(s) and/or entity(ies) at the address(es) indicated below:

Daniel Yu
Lee Tran & Lian APLC
601 S Figueroa St Ste 4025
Los Angeles, CA 90017

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: