

FILED & ENTERED

MAR 13 2012

CLERK U.S. BANKRUPTCY COURT
Central District of California
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UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
RIVERSIDE DIVISION

In re:

Rosa Delia Vasquez aka Rosa Vasquez
Ortega,

Debtor(s),

Heritage Pacific Financial, LLC dba Heritage
Pacific Financial, a Texas Limited Liability
Company,

Plaintiff(s),

Vs.

Rosa Delia Vasquez aka Rosa Vasquez
Ortega

Defendant(s).

Case No.: 6:10-bk-34091-EC

Chapter: 7

Adversary No.: 6:10-ap-01663-SC

MEMORANDUM

Hearing Date:

Date: February 27, 2012

Time: 10:00 a.m.

**Location: Ronald Reagan Federal Building
& Court House, Courtroom 5C
411 West Fourth Street
Santa Ana, CA 92701**

I. INTRODUCTION

The chapter 7 bankruptcy case of Rosa Delia Vasquez (the “Defendant” or “Debtor”) was filed on July 30, 2010, as case number 6:10-bk-34091-EC. Prior to the case filing, the Debtor

1 had been sued in state court by Heritage Pacific Financial, LLC (“HPF”) for recovery of an
2 obligation previously secured by a second deed of trust. That case was pending in the Superior
3 Court of California, San Bernardino, at the time of the petition date.

4 The Defendant obtained a loan in 2006 from WMC Mortgage Corp. in the amount
5 \$77,200.00 (the “Loan”). The Loan was secured by a second deed of trust on the Defendant’s
6 real property. Prior to receiving the Loan, the Defendant signed the completed Uniform
7 Residential Loan Application. That Loan Application states that the Defendant was self-
8 employed as a manager/partner of Nellies Beauty Saloon [sic], earning a gross monthly income
9 of \$8,200.00. The Defendant subsequently defaulted on the Loan.
10

11 HPF acquired the Loan from WMC Mortgage Corp. HPF sued the Defendant in state
12 court and, upon the Defendant’s filing of the chapter 7 petition, filed this nondischargeability
13 complaint pursuant to § 523(a)(2)(A) and (B). Subsequently, HPF decided not to proceed with
14 the § 523(a)(2)(A) cause of action and simply pursued its rights under § 523(a)(2)(B).

15 **II. PROCEDURAL BACKGROUND**

16 On November 8, 2010, HPF filed its Adversary Complaint against the Debtor alleging
17 one cause of action based on two theories, 11 U.S.C. § 523(a)(2)(A) and 11 U.S.C. §
18 523(a)(2)(B), as adversary proceeding case number 6:10-ap-01633-SC. This action was initially
19 before Bankruptcy Judge Ellen Carroll. The Debtor filed a motion to dismiss the complaint on
20 December 13, 2010. A hearing was held on January 14, 2011 and the motion was granted with
21 leave to amend.

22 On February 7, 2011, HPF filed its First Amended Complaint. By that time, the case had
23 been transferred to Bankruptcy Judge Mark Wallace. The Status Conference was originally
24 scheduled for February 14, 2011, but was rescheduled for April 21, 2011. On February 28, 2011,
25 the Defendant filed her answer. On April 21, 2011, the Status Conference was held and then
26 continued to September 8, 2011. However, on June 7, 2011, the prospective Status Conference
27 was continued to October 6, 2011.
28

A. Joint Pretrial Order and Trial Scheduling Order

On October 6, 2011, the Status Conference was held, and on October 7, 2011, the Joint Pretrial Order (“JPO”) and Trial Scheduling Order (“TSO”) were entered by Judge Wallace. The TSO provided that the Opening Trial Briefs were due by January 4, 2012, the Replies were due by January 25, 2012, and any Motions in Limine were due by January 25, 2012. TSO page 1, line 27-28 to page 2, line 3. The TSO also stated that copies of all exhibits needed to be delivered to the Court by January 4, 2011. TSO page 2, line 1-2. The TSO set the trial for February 27, 2012 at 9:00 in Courtroom 6C. TSO page 2, line 4-5.

The JPO set out a Joint Exhibit List and Joint Witness List. JPO page 6, line 1-24. The Joint Exhibit List identified four exhibits: (1) Defendant’s Residential Loan Application (“Loan Application”), (2) Promissory Note with Endorsement by HPF, (3) Borrower’s Certification and Authorization, and (4) Deed of Trust. JPO page 6, line 2-5. The Joint Witness List identified five witnesses: (1) Ben Ganter, (2) Rosa Delia Vasquez a/k/a Rosa Vasquez Ortega, (3) Khoi Dan Phan, (4) Francisco Martinez, and (5) Marisol Flores. JPO page 6, line 7-24. Neither party filed a motion to amend the JPO at any point during the proceedings.

B. Preparing for Trial

On or about January 4, 2012, HPF served its Original Trial Brief and Exhibit List on the Defendant’s counsels and transmitted those documents by personal delivery to the Court, via attorney service. However, the docket reflects that the Trial Brief and Exhibit List were not filed on that date. HPF’s Exhibit List contains exhibits 1-4, and these exhibits match all of the exhibits listed in the JPO.

This case was reassigned to this Court on January 10, 2012.

The Defendant, having timely received HPF’s Trial Brief and Exhibit List, timely served and filed a Reply Brief on January 25, 2012.

On January 19, 2012, the attorney for the Defendant filed a motion to withdraw. The hearing on this motion was scheduled for February 8, 2012.

1 On January 31, 2012, the Court ordered that, in addition to the Defendant's attorney's
2 motion to withdraw, an additional Status Conference be held on February 8, 2012. At the
3 hearing on February 8, 2012, the Court granted the motion to withdraw and confirmed the trial
4 date of February 27, 2012, at 10:00 a.m. The Court ordered that the trial would be a trial by
5 declaration. In other words, opening testimony would occur by declaration testimony alone and
6 each declarant would be required to be present for cross-examination, if any. The Court ordered
7 that the parties were to submit their witness declarations by February 23, 2012. Status
8 Conference and Scheduling Order, page 2, subsection 2(l), Dk. 38, filed February 15, 2012. No
9 other changes to the dates of the TSO were made and no changes to the JPO were made.
10

11 Four days prior to trial, on February 23, 2012, HPF served a Second Trial Brief (the
12 "New Brief"), which was accompanied by the declarations of three individuals: (1) Mark
13 Schuerman, (2) Ben Ganter, and (3) Azucena Beltran. This time, HPF actually filed its New
14 Brief on February 23, 2012. The New Brief also contained a new witness list and new exhibit
15 list. This new witness list and new exhibit list contained witnesses and exhibits never before
16 disclosed by HPF and not listed in the entered JPO. The new witnesses on the new witness list
17 included (1) Mark Schuerman, (2) Robert Rothleder, and (3) Azucena Beltran. The new exhibits
18 included (1) Defendant's entire loan file and (2) Bank Account Verification.

19 **C. Trial**

20 Trial took place on February 27, 2012, at 10:00 a.m. in courtroom 5C. HPF appeared, but
21 the Defendant did not. The Court reviewed the procedural status of the case, confirmed that the
22 JPO was entered on October 7, 2011, and that HPF had filed no motions to amend the JPO. The
23 Court confirmed that HPF had withdrawn its cause of action against the Defendant with respect
24 to 11 U.S.C. § 523(a)(2)(A) and was only proceeding under 11 U.S.C. § 523(a)(2)(B).
25

26 With respect to the additional witnesses added by HPF four days before trial, the Court
27 determined that Mr. Schuerman, Mr. Rothleder, and Ms. Beltran were previously undisclosed to
28 the Court or to the Defendant and were ineligible to provide testimony. The Court excluded
from consideration the declarations of Mr. Schuerman and Ms. Beltran filed by HPF on February

23, 2012. (No declaration was filed on behalf of Mr. Rothleder.) The Court also noted that HPF did not produce Mr. Schuerman or Ms. Beltran for cross-examination at the hearing, and even if the Court were to admit their declarations, they would have been inadmissible for failure to be available for cross-examination.

With respect to the two additional exhibits filed by HPF on February 23, 2012 (the Defendant's entire loan file and the Bank Account Verification), the Court excluded these exhibits because they were not disclosed in the JPO. The Court also noted that the Defendant had no opportunity to timely object to the admissibility of these exhibits, as the deadline to object to documentary evidence was established by the Court as January 25, 2012. The docket entry dated October 6, 2011 states that "[e]videntiary objections not raised in motion in limine if not filed by 1/25/2012 will be deemed waived," and the deadline to file any motion in limine was January 25, 2012. Docket entry for Hearing Held docketed on October 6, 2011; TSO page 2, line 3.

Therefore, the evidence before the Court supporting HPF's case is the declaration of Mr. Ganter (the "Ganter Declaration") filed on February 23, 2012. The Ganter Declaration was accepted into evidence, as were the four original exhibits that were identified in the JPO and provided to the Court on January 4, 2012, by HPF.¹ The previously served, but not filed, Trial Brief and Exhibits now appear on the docket as docket number 42, filed on February 27, 2012, pursuant to Court order.

III. FACTUAL FINDINGS

In 2006, the Defendant acquired the Loan from WMC Mortgage Corp. in the principal amount of \$77,200.00 and executed a promissory note for the Loan in favor of the initial lender and its assigns. JPO page 2, line 1-2, 4-5. Before receiving the Loan, the Defendant signed a completed Loan Application. JPO page 2, line 3-4. The Defendant defaulted on the Loan after

¹ The Ganter Declaration was filed on February 23, 2012 pursuant the Court's order that declarations be filed by February 23, 2012. Status Conference and Scheduling Order, page 2, subsection 2(l), Dk. 38, filed February 15, 2012.

1 one year. JPO page 2, line 2-3. The Loan was subsequently acquired by HPF. Ganter
2 Declaration page 1, line 15-26.

3 The Loan Application signed by the Defendant states that the Defendant was the
4 manager/partner of Nellies Beauty Salon and was self-employed. JPO page 2, line 6-7; Trial
5 Brief and Exhibits Filed by HPF, Exhibit 1, Uniform Residential Loan Application, page 1, Dk.
6 42, filed Feb. 27, 2012. The Loan Application also states that the Defendant was earning a gross
7 monthly income of \$8,200.00. JPO page 2, line 7; Trial Brief and Exhibits Filed by HPF,
8 Exhibit 1, Uniform Residential Loan Application, page 1, Dk. 42, filed Feb. 27, 2012.

9 On the Defendant's Statement of Financial Affairs (the "SOFA"), in contrast to the Loan
10 Application, the Defendant failed to state that she was an owner, manager, or partner of Nellies
11 Beauty Salon. Bankruptcy Petition, Statement of Financial Affairs ¶ 18, Dk. 1, case no. 6:10-bk-
12 34091-EC, filed July 30, 2010. The SOFA requires the Debtor to include any businesses in
13 which the Debtor was an officer, director, partner, sole proprietor, or self-employed during the
14 six years before the filing of the bankruptcy. Bankruptcy Petition, Statement of Financial Affairs
15 ¶ 18, Dk. 1, case no. 6:10-bk-34091-EC, filed July 30, 2010. The Defendant filed her
16 bankruptcy on July 30, 2010, and therefore, she was required to include any business in which
17 she was an officer, director, partner, sole proprietor, or self-employed during the period of July
18 30, 2004 to July 30, 2010. If the Defendant was a manager/partner of Nellies Beauty Salon in
19 2006 when the Defendant signed the Loan Application, the Defendant would have been required
20 to include this on her SOFA because it occurred during the time period specified in the SOFA,
21 but she did not. Although the contradiction between the Defendant's Loan Application and
22 SOFA shows that at least one of these statements may be incorrect, the Court has no evidence
23 before it to make a determination of whether the Loan Application is incorrect or whether the
24 SOFA is incorrect with respect to the issue of the partnership of which the Defendant asserts.
25 There is, however, there is no evidence that the monthly income stated on the Loan Application
26 was not \$8,200.00.
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IV. CONCLUSIONS OF LAW

In order to establish a case against the Defendant, HPF must prove all of the elements of 11 U.S.C. § 523(a)(2)(B). *In re Taylor*, 514 F.2d 1370, 1373 (9th Cir. 1975). The Court may only consider the evidence presented in the Ganter Declaration when determining whether HPF has satisfied 11 U.S.C. § 523(a)(2)(B) because the other declarations HPF filed on February 23, 2012 were inadmissible. However, certain portions of the Ganter Declaration address new exhibits which were not included in the JPO. Those portions of the Ganter Declaration and the new exhibits are inadmissible.²

HPF has standing to bring this adversary proceeding against the Defendant since HPF is the established current holder of the Defendant's Loan. Ganter Declaration page 1, line 15-24. All of the rights and remedies of the original lender run to HPF. Ganter Declaration page 1, line 24-26.

Section 523(a)(2)(B) “ ‘provides that a debt will not be discharged in bankruptcy proceedings if the debt was obtained through use of a statement in writing— (i) that is materially false; (ii) respecting the debtor's or an insider's financial condition; (iii) on which the creditor to whom the debtor is liable for such money, property, services, or credit reasonably relied; and (iv) that the debtor caused to be made or published with intent to deceive.’ ” *In re Boyajian*, 564 F.3d 1088, 1090 n.2 (9th Cir. 2009) (quoting 11 U.S.C. § 523(a)(2)(B)). HPF must establish all of the elements of this provision in order for the debt to be nondischargeable. *In re Boyajian*, 564 F.3d 1088, 1090 n.2 (9th Cir. 2009) (quoting 11 U.S.C. § 523(a)(2)(B)); *In re Taylor*, 514 F.2d 1370, 1373 (9th Cir. 1975).

A. Written Financial Statement

HPF must prove that the Defendant provided a written statement regarding the Defendant's financial condition. *In re Boyajian*, 564 F.3d 1088, 1090 n.2 (9th Cir. 2009) (quoting 11 U.S.C. § 523(a)(2)(B)). The Ganter Declaration states that the Defendant completed

² These inadmissible exhibits are (1) Defendant's entire loan file and (2) Bank Account Verification.

1 the Loan Application on or about May 8, 2006.³ It was admitted as true by the parties and the
2 Court in the JPO that the “Defendant signed a completed Uniform Residential Loan
3 Application.” JPO page 2, line 3-5. The Loan Application qualifies as a written financial
4 statement for purposes of § 523(a)(2)(B) because it is in writing and states the borrower’s overall
5 financial condition. *In re Williams*, 431 B.R. 150, 155-56 (Bankr. M.D. La. 2010); *see In re*
6 *Kirsh*, 973 F.2d 1454, 1457 (9th Cir. 1992); *In re Belice*, 461 B.R. 564, 574-78 (B.A.P. 9th Cir.
7 2011) (quoting *In re Joelson*, 427 F.3d 700, 714 (10th Cir. 2005) (stating that a written financial
8 statement is a statement that “ ‘purport[s] to present a picture of the debtor’s overall financial
9 health’ ”).

10
11 **B. Statement is Materially False**

12 HPF must prove that the Defendant’s financial statements were materially false. *In re*
13 *Boyajian*, 564 F.3d 1088, 1090 n.2 (9th Cir. 2009) (quoting 11 U.S.C. § 523(a)(2)(B)); *In re*
14 *Taylor*, 514 F.2d 1370, 1373 (9th Cir. 1975).

15
16 A statement is materially false if it contains an important and substantial untruth.
17 A frequent litmus test used by court’s [sic] evaluating whether an untruth is important
18 and substantial is whether the falsehood had an effect on the creditor’s decision-making
19 process. Simply stated, a misrepresentation is deemed ‘material’ if credible evidence is
20 presented that the creditor would not have entered into the subject transaction had the
21 truth been revealed.

22 *In re Masegian*, 134 B.R. 402, 405 (Bankr. E.D. Cal. 1991) (citations omitted).

23 HPF has given the Court insufficient evidence to show that the Defendant’s financial
24 statements were materially false. The Ganter Declaration claims that the Defendant made three
25 material misrepresentations on the Loan Application; however, the Ganter Declaration provides
26 insufficient evidence to support these claims.

27 First, the Ganter Declaration claims that the Defendant stated that she was the owner of
28 Nellies Beauty Saloon [sic] in the Loan Application. Ganter Declaration page 2, line 1. The

³ Other than the Ganter Declaration, there is no evidence that the Defendant actually completed or filled in the Loan Application.

1 Ganter Declaration attempts to prove the falsity of this statement by stating that the Defendant
2 indicated in her bankruptcy petition that she was unemployed from 2006-2010. Ganter
3 Declaration page 2, line 2-3. This assertion is not supported by evidence. The Court asked
4 HPF's counsel where to find this information in the bankruptcy petition, and counsel referred the
5 Court to section 18 of the Defendant's SOFA. Transcript of Hearing on February 27, 2012,
6 page 27, line 16 to page 29, line 14. It is true that the Defendant failed to disclose that the
7 Defendant was an owner, manager, or partner of Nellies Beauty Saloon [sic] in her SOFA.
8 Bankruptcy Petition, Statement of Financial Affairs ¶ 18, Dk. 1, case no. 6:10-bk-34091-EC,
9 filed July 30, 2010. However, this does not prove that the statement in the Loan Application was
10 false. This disparity shows that either the SOFA or the Loan Application might be incorrect, but
11 HPF failed to bring forth evidence to show that it was the Loan Application that was false.
12 Additionally, the Ganter Declaration provides no evidence to demonstrate that this statement was
13 material. No evidence is presented demonstrating that being a partner or owner of the business
14 (a business which generally only has customer chairs to rent to hair stylists) is material to the
15 determination of creditworthiness.
16

17 Second, the Ganter Declaration states that the Defendant indicated she earned a gross
18 monthly salary of \$8,200.00 in the Loan Application. Ganter Declaration page 2, line 1-2.
19 Again, the Ganter Declaration pointed to the Defendant's bankruptcy petition to prove the falsity
20 of this statement by stating that the Defendant claimed she was unemployed from 2006-2010 in
21 the bankruptcy petition. Ganter Declaration page 2, line 2-3. The SOFA section 18 does not
22 reflect the "employment" status of the Defendant. It requests information regarding the
23 identification of businesses operated by the Defendant, either in the form of separate entities or
24 through self-employment. It does not reflect employment status. For the same reasons as stated
25 above regarding the statement that the Defendant is an owner of Nellies Beauty Saloon [sic],
26 HPF failed to prove the falsity or materiality of the stated income.
27

28 Third, the Ganter Declaration states that the Defendant represented in the Loan
Application that, at the time of the Loan Application, she had an account balance of \$8,000.00 in

1 her account. Ganter Declaration page 2, line 4-5. In an attempt to prove the falsity of this
2 statement, the Ganter Declaration claims that “[a] subsequent verification by Heritage for this
3 period of time for the accounts showed that the Defendant only had a balance of \$1,281.60 and
4 \$70.45.” Ganter Declaration page 2, line 5-7. This statement is inadmissible and unpersuasive.
5 It is not clear at what time HPF verified the funds in the account or what date this verification
6 took place. There is no evidence as to who made this verification. All the Ganter Declaration
7 states is that “Heritage” made this verification. Mr. Ganter has no personal knowledge to testify
8 as to this verification. The Court asked HPF’s counsel when the verification was made.
9 Transcript of Hearing on February 27, 2012, page 34, line 23-24. Counsel did not know.
10 Transcript of Hearing on February 27, 2012, page 34, line 23-24. The Court asked HPF’s
11 counsel who made the verification. Transcript of Hearing on February 27, 2012, page 34, line 25
12 to page 35, line 1-10. Counsel did not know. Transcript of Hearing on February 27, 2012, page
13 34, line 25 to page 35, line 1-10.
14

15 HPF attempted to introduce its verification document (the “Verification Document”) to
16 provide evidence with respect to the verification; however, the Verification Document is
17 inadmissible since it was not identified previously in the JPO. Because the verification
18 documents were not provided in the JPO, the Defendant never had an opportunity to respond to
19 the Verification Document and it cannot be admitted.

20 In sum, HPF provided no admissible evidence as to the falsity of the Defendant’s
21 statement that she had an account balance of \$8,000.00 in her account at the time of the Loan
22 Application. HPF also failed to show that this statement, even if false, was material. Why was
23 not such a verification made at the time the Loan Application was originally received? Inquiring
24 minds would like to know.

25 The Ganter Declaration declares that all three of these statements were false; however
26 Mr. Ganter only baldly asserts that the Defendant’s statements are false without providing
27 supporting evidence. Just saying it does not make it so. Therefore, HPF has not proven the
28 falsity of any of the Defendant’s statements.

C. The Lender Reasonably Relied on the Statement

The Ganter Declaration does not prove that HPF or any other lender relied on the three allegedly false statements in the Loan Application. Reasonable reliance is a mandated requirement under § 523(a)(2)(B). *In re Boyajian*, 564 F.3d 1088, 1090 n.2 (9th Cir. 2009) (quoting 11 U.S.C. § 523(a)(2)(B)).

The Ninth Circuit has not provided a bright-line test for reasonable reliance. It stated that “[r]easonable reliance is a term courts can apply without additional help.” *In re Candland*, 90 F.3d 1466, 1471 (9th Cir. 1996). However, one lower court within the Ninth Circuit has stated that “ ‘[t]he emerging standard of reasonableness requires the court to measure that creditor’s actual conduct in the case at bar against three different factors: the creditor’s standard practices in evaluating creditworthiness; the standards or customs of the creditor’s industry in evaluating creditworthiness; and the surrounding circumstances existing at the time of the debtor’s application for credit.’ ” *In re Masegian*, 134 B.R. 402, 408 (Bankr. E.D. Cal. 1991) (quoting *In re Harms*, 53 B.R. 134, 141 (Bankr. D. Minn. 1985)). HPC has provided this Court with no admissible evidence of the original lender’s actual conduct on these counts.

The Ganter Declaration states that the original lender relied on the Defendant’s representations in the Loan Application and that HPF relied only on the information in the Loan Application when it acquired the Defendant’s Loan. Ganter Declaration page 2, line 12-19. However, the Ganter Declaration provides no evidence of the original lender’s reliance on the statements within the Loan Application. Mr. Ganter provides no personal knowledge as to the reliance undertaken by the original lender. The Ganter Declaration claims that the original lender approved the Loan based on the Defendant’s misrepresentations. This is a bald, unsupported statement, without personal knowledge of the original lender’s reliance or state of mind.

Four days before trial, HPF attempted to demonstrate reasonable reliance by asserting industry standards through inclusion of a witness which was never previously disclosed. The

1 Court disallowed the declaration of this witness because this witness was not disclosed within the
2 JPO, to the Court, or to the Defendant prior to that time.

3 The Ganter Declaration additionally claims that HPF relies on the statements in the loan
4 applications when deciding whether to purchase a loan. Ganter Declaration page 2, line 13-19.
5 This reliance, even if the Court assumes it is true, is insufficient under § 523(a)(2)(B). Only the
6 reliance of the original lender is relevant because any subsequent holder of the note stands in the
7 shoes of the original lender and the Court will look only at the reliance of the original lender at
8 the time the loan is obtained. *In re Boyajian*, 564 F.3d 1088, 1090-91 (9th Cir. 2009).

9
10 Even if HPF could prove reliance, HPF's reliance may not be reasonable. The Loan
11 Application contains a telephone number for Nellies Beauty Saloon [sic]. Any lender could have
12 easily verified the information the Defendant provided in the Loan Application to ensure that the
13 Defendant was in fact affiliated with Nellies Beauty Saloon [sic] by simply calling this number
14 and making an inquiry. Perhaps someone did. However, there is no evidence that any lender
15 ever attempted to make this simple verification.

16 HPF has failed to provide any evidence of reasonable reliance with respect to the
17 statements made by the Defendant.

18 **D. The Defendant Made the Statement with the Intent to Deceive**

19 Even if HPF was able to demonstrate the falsity of the Defendant's statements and that
20 the original lender relied on the statements, HPF provides no evidence to demonstrate that the
21 Defendant made these statements with the intent to deceive, which is another mandatory
22 requirement under 11 U.S.C. § 523(a)(2)(B). *In re Boyajian*, 564 F.3d 1088, 1090 n.2 (9th Cir.
23 2009) (quoting 11 U.S.C. § 523(a)(2)(B)).

24 The Ganter Declaration's only reference of the Defendant's intent does not address the
25 Defendant's intent to deceive. The Ganter Declaration claims "[b]y signing the
26 'Acknowledgement and Agreement' the borrower intends to make these representations to any
27 subsequent note holders, like Heritage." Ganter Declaration page 2, line 20-21. This is not
28 compliant with the § 523(a)(2)(B) standard. The standard requires intent to deceive. *In re*

1 *Boyajian*, 564 F.3d 1088, 1090 n.2 (9th Cir. 2009) (quoting 11 U.S.C. § 523(a)(2)(B)). There is
2 no evidence of the Defendant's intent to deceive, and the Court finds that HPF has failed to
3 satisfy this requirement.

4
5 **V. CONCLUSION**

6 The Court finds that HPF failed to satisfy several of the requirements of § 523(a)(2)(B).
7 Therefore, the debt is dischargeable and the Court shall enter judgment in favor of the Defendant
8 contemporaneously with this Memorandum.

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DATED: March 13, 2012

United States Bankruptcy Judge

NOTE TO USERS OF THIS FORM:

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

NOTICE OF ENTERED ORDER AND SERVICE LIST

Notice is given by the court that a judgment or order entitled (*specify*) **MEMORANDUM** 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 March 13, 2012, the following person(s) are currently on the Electronic Mail Notice List for this bankruptcy case or adversary proceeding to receive NEF transmission at the email address(es) indicated below.

- Sandra L Bendon (TR) sandra.bendon@att.net, sbendon@ecf.epiqsystems.com
- Brad A Mokri amirmokri1@yahoo.com, gmokrilaw@yahoo.com
- United States Trustee (RS) ustpregion16.rs.ecf@usdoj.gov

☐ Service information continued on attached page

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

Rosa Delia Vasquez
25887 E 7th Street
San Bernardino, CA 92410

Mercedes V. Castillo
560 N Arrowhead Ave 8A
San Bernardino, CA 92401-1219

Moises A. Aviles
Aviles & Associates
560 N Arrowhead Ave Ste 2A
San Bernardino, CA 92401

☐ Service information continued on attached page

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:

☐ Service information continued on attached page