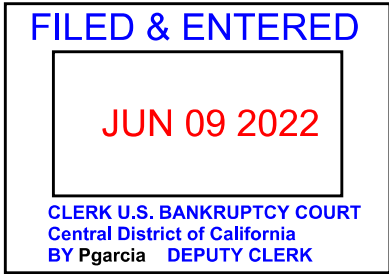


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
SAN FERNANDO VALLEY DIVISION**

In re:
DEBORAH LOIS ADRI,
Debtor.
MOSHE ADRI,
Plaintiff,
vs.
DEBORAH LOIS ADRI,
Defendant.

Case No.: 1:18-bk-10417-VK
Chapter 7
Adv. Proc. No.: 1:19-ap-01072-VK

**MEMORANDUM OF DECISION
AFTER TRIAL**

1 On February 22, 2022, the Court conducted a trial in the above-captioned adversary
2 proceeding. Andrew E. Smyth appeared on behalf of plaintiff Moshe Adri. Gary R. Wallace
3 appeared on behalf of defendant Deborah Lois Adri.

4 The Court has jurisdiction over the adversary proceeding commenced by the filing of Mr.
5 Adri's *Complaint to Deny Debtor's Discharge* pursuant to 11 U.S.C. §§ 727(a)(2)(A)-(B), and
6 (a)(4). The matter in controversy is a core proceeding. Venue is proper pursuant to 28 U.S.C. §
7 1409.

8 For the following reasons, the Court hereby denies Ms. Adri her discharge pursuant to 11
9 U.S.C. §§ 727(a)(2)(A)-(B), and (a)(4). This Memorandum of Decision constitutes the Court's
10 findings of fact and conclusions of law.

11 **I. BACKGROUND**

12 On February 16, 2018 (the "Petition Date"), Deborah Lois Adri filed a voluntary chapter 11
13 petition. When she filed the petition, Ms. Adri was approximately 66 years old.

14 Ms. Adri is a beneficiary of her parents' trust, the Albert Family Trust (the "Trust").
15 Following her mother's death, in 2016, 2017 and 2018, Ms. Adri received large distributions from
16 the Trust. As disclosed in her amended Statement of Financial Affairs (which was filed nearly one
17 year after the Petition Date), Ms. Adri received \$210,000 from the Trust in 2016, \$125,000 from
18 the Trust in 2017 and \$627,500 from the Trust in 2018.

19 Moshe Adri is a judgment creditor, and the ex-husband, of Ms. Adri. In November 2017,
20 Mr. Adri obtained an arbitration award against Ms. Adri in the amount of \$1.35 million, concerning
21 a business dispute.

22 **A. Ms. Adri's Retention of Bankruptcy Counsel**

23 After Mr. Adri's receipt of the arbitration award, Ms. Adri went to see bankruptcy attorney
24 Robert Yaspan. At that time, Ms. Adri recently had received a large check from the Trust, which
25 represented a distribution to her, as a beneficiary. Ms. Adri testified that she was concerned that, if
26 she deposited the check into her personal bank account, Mr. Adri would levy upon and seize it
27 through judgment enforcement. At that time, Ms. Adri also had a number of other creditors,
28 including the Internal Revenue Service and the California Franchise Tax Board, for capital gains
received in 2014, to which she owed \$526,400 and \$300,000, respectively.

Ms. Adri has represented that Mr. Yaspan told her that she could protect the Trust
distribution from her creditors by depositing it into Mr. Yaspan's client trust account and that later
she could transfer those funds, less his retainer, into a new debtor in possession account.
According to Ms. Adri, Mr. Yaspan and Ms. Adri also discussed that she could propose a plan of
reorganization which would offer her creditors a portion of what they claimed to be owed.

Ms. Adri decided to retain Mr. Yaspan to file a chapter 11 case for her. Ms. Adri paid Mr.
Yaspan \$44,271 up front for his retainer (including filing fees) and an additional retainer of
\$25,000 to handle anticipated issues with Mr. Adri, such as the possible filing of an adversary
proceeding.

1 Ms. Adri gave Mr. Yaspan the approximately \$626,000 distribution check from the Trust
2 (the “2018 Trust Distribution”), which Mr. Yaspan then deposited into a client trust account. After
3 that, \$100,000 of the 2018 Trust Distribution was transferred into a bank account of Ms. Adri’s
4 wholly-owned corporation, Gold Girls, Inc. (“Gold Girls”). According to Ms. Adri, Mr. Yaspan
told Ms. Adri that she did not have to place these funds, distributed to Gold Girls, into a debtor in
possession (“DIP”) account.

5 To prepare her bankruptcy filings, Ms. Adri testified that she primarily worked with Mr.
6 Yaspan’s paralegal, Tanya Menachian, and that Mr. Yaspan did not sit with her to go over her
7 bankruptcy papers in detail, i.e., the petition, schedules, Statement of Financial Affairs, etc. Ms.
8 Adri stated that Mr. Yaspan and Ms. Menachian told Ms. Adri that, if there was any information
omitted from her initial bankruptcy schedules and statements, Ms. Adri could amend her filing
later.

9 Included in Ms. Adri’s trial exhibits, as Exhibit B, is an email, dated January 29, 2018, from
10 Tanya Menachian to Ms. Adri. This email states, among other things:

11 All pre-filing bank accounts must be closed and new Debtor in Possession (DIP)
12 accounts must be opened. I will need evidence of the closing and evidence of the
13 opening. 3 accounts will be needed, general, tax and payroll. This can be done at
any large bank. If you need our help with these accounts, let me know.

14 Ms. Adri’s Trial Exhibit B.

15 **B. Ms. Adri’s Initial Schedules and Statement of Financial Affairs**

16 On February 16, 2018, Ms. Adri filed her schedules of assets and liabilities and her
17 Statement of Financial Affairs (“SOFA”). In her schedule A/B (“Original Schedule A/B”), Ms.
18 Adri listed personal property totaling \$1,058,600.00. This included Ms. Adri 50% interest in Ride
19 on Autos, LLC (“ROA”), which she valued at \$5,000, and her 100% interest in Gold Girls, which
she valued at \$100,000. Also included in Ms. Adri’s identified personal property assets was
\$501,000 in cash, then in Mr. Yaspan’s client trust account. This cash originated from the 2018
Trust Distribution.

20 In her Original Schedule A/B, Ms. Adri did not disclose: (1) any bank accounts; (2) any
21 funds remaining in the Trust; and (3) a Toyota Sienna.

22 In her Original Schedule A/B, Ms. Adri represented that she was not “the beneficiary of a
23 living trust . . . or . . . currently entitled to receive property because someone has died.” Ms. Adri
24 also represented that she had no financial assets that she did not already list.

25 In her original SOFA, Ms. Adri stated that her income in 2017 was \$60,000 from
26 undisclosed sources and \$15,500 in Social Security. She stated that her income in 2018 was
27 \$10,000 from operating a business and \$1,300 from Social Security. Ms. Adri did not disclose any
28 other income or the large distributions which she had received, e.g., from 2016 through 2018, from
the Trust.

1 In her original SOFA, Ms. Adri stated that she had transferred \$100,000 to Gold Girls on
2 February 15, 2018, “[f]or working capital to be used by LLC that is 100% owned.” She described
3 Gold Girls as being in the business of “retail clothing” and further stated “store closed.” FN1 Ms.
4 Adri described ROA as a “used car lot.”

5 In her original SOFA, Ms. Adri did not disclose any other businesses she had owned, or
6 with which she had any connections, in the prior 4 years.

7 **C. Ms. Adri’s Use of Bank Accounts**

8 Prepetition and after the Petition Date, Ms. Adri owned and controlled bank accounts at
9 Bank of America (“BofA”). One of these BofA accounts, no. 9263, was in the name of Gold Girls.
10 Ms. Adri also had two personal checking accounts at BofA, with account nos. 8188 and 5973.

11 Within one month before the Petition Date, from January 17, 2018 through February 6,
12 2018, Ms. Adri transferred \$44,300 from Gold Girls’ BofA account no. 9263 to her BofA personal
13 checking account no. 8188 [doc. 230]. On the Petition Date, Ms. Adri took \$993.68 from her BofA
14 personal checking account no. 8188 (identified as a “petty cash” transfer) and used the balance left
15 in that account to pay a personal expense [doc. 264]. On February 28, 2018, Ms. Adri closed
16 account no. 8188. FN2

17 From January 16, 2018 through and including the Petition Date, Ms. Adri transferred
18 \$24,800 from Gold Girls’ BofA account no. 9263 to her BofA personal checking account no. 5973.
19 *Id.* On the Petition Date, Ms. Adri transferred \$5,000 of these funds from Gold Girls’ BofA
20 account to her BofA personal checking account, no. 5973 [doc. 264].

21 From the Petition Date through February 23, 2018, Ms. Adri disbursed \$4,347.11 from her
22 account no. 5973, of which approximately \$2,200 was transferred to a DIP checking account, no.
23 5939, on February 20, 2018. *Id.* As of the end of February 2018, Ms. Adri’s personal checking
24 account, no. 5973, had a balance of \$772.27. From March 1, 2018 through March 21, 2018, Ms.
25 Adri disbursed the entire remaining balance from that account, in four separate transactions [doc.
26 265]. FN3

27 Despite her extensive use of these BofA accounts shortly before and on the Petition Date,
28 Ms. Adri did not disclose any of these BofA bank accounts in her Original Schedule A/B or in her
original Monthly Operating Reports.

1 **D. Ms. Adri’s First Meeting of Creditors**

2 On March 29, 2018, Ms. Adri testified at her first meeting of creditors and examination held
3 pursuant to 11 U.S.C. § 341. At her § 341(a) meeting, Ms. Adri stated that she reviewed the
4 schedules and her SOFA that were filed in her case and that all the information in those documents
5 was accurate and correct to the best of her knowledge. FN4

6 When asked, Ms. Adri identified various entities that she had operated with Mr. Adri,
7 including M&D Resources. Ms. Adri testified that a retail shopping center owned by M&D
8 Resources was sold in 2014 for \$3.8 million and that most of the proceeds paid off secured debt.
9 Ms. Adri acknowledged that, on the Petition Date, she still owned M&D Resources. After Ms.

1 Adri discussed her existing interest in M&D Resources, Mr. Yaspan acknowledged that Ms. Adri's
 2 schedules needed to be amended to disclose any active entities owned by Ms. Adri, even if they
 had no assets.

3 During the first meeting of creditors, the attorney for the United States Trustee asked Ms.
 4 Adri: "over what period had you received income distributions from the trust?" In response, Mr.
 5 Yaspan stated "they're not income distributions. They're distributions from the trust, but it's not - -
 6 but they're not income taxable and they're not income. . . . And they're not referred to in the first
 7 question of the Statement of Financial Affairs for that reason." Later in the meeting, the attorney
 for the United States Trustee noted that Ms. Adri should have disclosed her interest in the Trust in
 the Original Schedule A/B. Mr. Yaspan then agreed to give an explanation and to get the Trust
 agreement. FN5

8 Ms. Adri also answered questions about Gold Girls. Among other things, Ms. Adri stated
 9 that Gold Girls had bank accounts at Bank of America, with approximately \$70,000 in cash, and
 10 that the cash in those accounts originated from a transfer of funds from a trust. Ms. Adri testified
 11 that the \$100,000 transferred to Gold Girls "was transferred to help fund [Gold Girls'] new
 website" and "to pay some liabilities."

12 **E. Mr. Adri's Motion to Appoint a Chapter 11 Trustee or to Dismiss the Case**

13 On December 7, 2018, Mr. Adri filed a motion to appoint a chapter 11 trustee or to dismiss
 14 the case [doc. 216]. On December 28, 2018, Mr. Adri filed a supplement to that motion (the
 "Trustee Motion Supplement") [doc. 230]. Mr. Adri based the Trustee Motion Supplement on
 15 bank account records which Ms. Adri produced in response to the Court's Order granting Mr.
 16 Adri's motion to take a Fed. R. Bankr. P. 2004 examination of Ms. Adri, and compelling Ms.
 Adri's related production of bank records [docs. 225, 226 and 230].

17 **F. Ms. Adri's Amended Schedules and SOFA**

18 On January 16, 2019, Ms. Adri filed amended schedules and statements [doc. 243]. Ms.
 19 Adri's original schedules and amended schedules, filed almost a year into her chapter 11 case,
 significantly vary. Below is a chart illustrating the differences.

Category	Schedules and SOFA filed on February 16, 2018 [doc. 1]	Schedules and SOFA filed on January 24, 2019 [doc. 248]
Schedule A/B – cash	<ul style="list-style-type: none"> • Cash on Hand - \$1,100.00 • Cash at Robert M Yaspan Client Trust Account on day of filing - \$501,000.00 	Cash on Hand - \$1,100.00
Schedule A/B – deposits of money	None	<ul style="list-style-type: none"> • Cash at Robert M Yaspan Client Trust Account on day of filing - \$501,000.00 • Bank of America, Gold Girls - \$125,614.62 • Bank of America, ROA ending in 5494 - \$51.87 • Bank of America, Street Resources, LLC ("Street Resources") - \$17.93 • Bank of America, Debtor's personal account ending in 5973 - \$772.27 • Bank of America, Debtor's personal account ending in 8188 - \$993.68

		<ul style="list-style-type: none"> Bank of America, ROA ending in 2708- \$8,396.20 	
1	Schedule A/B – property owed from someone who has died	None	Funds on hand in Trust - \$25,000.00; estate entitled to 42% distribution when it comes due
2	Schedule A/B – inventory	None	Toyota Sienna - \$2,335.00
3	SOFA – income from 2016	None	Distribution from Trust - \$210,000.00
4	SOFA – income from 2017	<ul style="list-style-type: none"> Operating a business - \$60,000.00 Social security - \$15,600.00 	<ul style="list-style-type: none"> Operating a business - \$60,000.00 Social Security - \$15,600.00 Distribution from Trust - \$125,000.00
5	SOFA – income from 2018	<ul style="list-style-type: none"> Operating a business - \$10,000.00 Social security - \$1,300.00 	<ul style="list-style-type: none"> Operating a business - \$10,000.00 Social security - \$1,500.00 Distribution from Trust - \$627,500.00
6	SOFA – within four years of petition, businesses Debtor owned	<ul style="list-style-type: none"> Gold Girls – retail clothing; store closed ROA – used car lot; still open 	<ul style="list-style-type: none"> Gold Girls – retail clothing; store closed ROA – used car lot; still open M & D Resources, LLC – real estate; 2001 – 2016 Reseda Chase Plaza, LLC – real estate; 2005 – 2014 Street Resources – real estate (ownership in dispute with Creditor); 2001 – present Prime Property Management Corporation – real estate management; 2004 – 2016
7	SOFA – property kept in storage	None	Property has been kept in storage for over five years
8			
9			
10			
11			
12			
13			
14			

G. Ms. Adri’s Chapter 11 Status Conference Report

In her initial chapter 11 case status conference report and her supporting declaration, Ms. Adri described her chief business activity as buying motor vehicles, primarily from wholesale auction houses, and then placing them for resale through ROA, a used-car dealership [Ms. Adri’s Trial Exhibit E]. Ms. Adri stated that her business model was to purchase approximately 4-6 automobiles at auction each month, repair the cars if necessary and resell them. Ms. Adri stated that she expected to generate at least \$10,000 of profit per month. *Id.*

Ms. Adri described her other intended stream of income as a website to be owned by Gold Girls, which was to sell products for dogs and their owners. Ms. Adri stated that she planned to buy \$5,000 of opening inventory and that the income from this business would begin within 3-6 months of the petition date. *Id.*

H. Ms. Adri’s Monthly Operating Reports

For the preparation of her Monthly Operating Reports (“MORs”), Ms. Adri testified that Mr. Yaspan referred her to Bryan Avaylon. In May 2018, several months after the Petition Date, Ms. Adri hired Mr. Avaylon to help her to prepare her MORs. **FN6**

On December 6, 2018, the Court held a continued chapter 11 case status conference in Ms. Adri’s case. As of that time, Ms. Adri had filed MORs for February 2018 through September 2018. At the chapter 11 case status conference, the Court pointed out that Ms. Adri was not properly completing the MORs and had not submitted the underlying bank statements.

1 Consequently, on December 7, 2018, the Court entered an order requiring Ms. Adri to file amended
2 MORs, with the related bank statements attached, by December 31, 2018 (the “Order to Amend”)
[doc. 212].

3 After the status conference hearing on December 6, 2018, during which the Court noted the
4 deficiencies in Ms. Adri’s MORs, Ms. Adri engaged Carylton Feinstein of TIXE Consulting, Inc. to
redo the MORS from the beginning of the case.

5 **I. Ms. Adri’s Submission of Amended MORs**

6 Following the entry of the Order to Amend and Mr. Adri’s filing of his motion to appoint a
7 chapter 11 trustee and the Trustee Motion Supplement, in January 2019, Ms. Adri filed three
8 amended MORs for February 2018 through April 2018 and bank statements for May 2018 through
9 October 2018. In late January 2019 and in February 2019, Ms. Adri filed second amended MORs
for February 2018 through May 31, 2018 [doc. 267].

10 Unlike her original MORs, Ms. Adri’s second amended MORs included bank statements for
11 Gold Girls’ BofA account. Ms. Adri’s second amended February 2018 and March 2018 MORs also
12 included bank statements for her BofA personal bank accounts, account nos. 8188 and 5973 –
which accounts Ms. Adri did not disclose in her bankruptcy schedules until January 16, 2019 (the
“Omitted Personal Accounts”).

13 The second amended February 2018 and March 2018 MORs showed that, on and after the
14 Petition Date, Ms. Adri used the Omitted Personal Accounts to pay her personal living expenses.
15 **FN7** The amended MORs also showed that Ms. Adri used Gold Girls’ BofA account, no. 9263, to
pay her personal living expenses.

16 In February 2018, Ms. Adri had spent \$14,526 from Gold Girls’ BofA account on personal
17 disbursements, including a \$5,000 transfer, made to one of the Omitted Personal Accounts, on the
18 Petition Date [doc. 264]. For example, in February, March and April 2018, including on the
19 Petition Date, Ms. Adri used Gold Girls’ BofA account to purchase personal goods from, among
other providers, Art’s Deli, Gelson’s Markets, Ralph’s, Bloomingdales, Nordstrom, Pet Smart,
Netflix, SiriusXM, DirecTV, Rite Aid and CVS Pharmacy. **FN8**

20 In her original SOFA, Ms. Adri represented that \$100,000 transferred to Gold Girls on
21 February 15, 2018 was to provide working capital to Gold Girls. At her 341(a) meeting, Ms. Adri
22 further testified that these monies transferred to Gold Girls were to invest in Gold Girls’ website
23 and to pay liabilities. However, as reflected in the BofA account statements, Ms. Adri often used
the monies transferred to Gold Girls for her personal expenses and did not use the funds to invest in
a website.

24 **J. Appointment of Chapter 11 Trustee and Subsequent Events**

25 At a hearing held on February 7, 2019, the Court granted Mr. Adri’s motion to appoint a
26 chapter 11 trustee [docs. 277 and 278]. Subsequently, on the motion of the chapter 11 trustee, the
27 Court converted the chapter 11 case to one under chapter 7.
28

1 In July 2019, the chapter 7 trustee filed a complaint to deny Ms. Adri a discharge under 11
2 U.S.C. §§ 727(a)(2)(A), 727(a)(2)(B), 727(a)(3) and 727(a)(4). In October 2020, the Court denied
3 in part the chapter 7 trustee's motion for summary adjudication, holding that Ms. Adri had raised a
4 genuine issue of material fact as to whether she had transferred property with the intent to hinder,
5 delay or defraud creditors and had made false oaths knowingly and fraudulently.

6 In October 2019, the chapter 7 trustee filed a complaint against Mr. Yaspan for breach of
7 fiduciary duty. Following participation in mediation by the chapter 7 trustee, Ms. Adri and Mr.
8 Yaspan, a settlement was reached in which Mr. Yaspan, through his insurance carrier, agreed to
9 pay \$626,000 to the chapter 7 trustee, for the dismissal of the litigation against him, and Ms. Adri
10 agreed to pay \$75,000, to resolve litigation between the chapter 7 trustee and ROA. The chapter 7
11 trustee then dismissed her denial of discharge action against Ms. Adri, without impact on Mr.
12 Adri's denial of discharge litigation.

9 II. ANALYSIS

10 Claims for denial of discharge are liberally construed in favor of the debtor and against the
11 objector to discharge. *In re Khalil*, 379 B.R. 163, 172 (B.A.P. 9th Cir. 2007), *aff'd*, 578 F.3d 1167
12 (9th Cir. 2009). The objector to discharge bears the burden to prove by a preponderance of the
13 evidence that the debtor's discharge should be denied. *Id.*

13 A. 11 U.S.C. § 727(a)(2)(A)-(B)

14 Section 727(a)(2)(A)-(B) provides that a court shall grant a debtor a discharge unless "the
15 debtor, with intent to hinder, delay or defraud a creditor or an officer of the estate charged with
16 custody of property ... has transferred, removed, destroyed, mutilated, or concealed ... (A) property
17 of the debtor, within one year before the date of the filing of the petition; or (B) property of the
18 estate, after the date of the filing of the petition."

19 "Two elements comprise an objection to discharge under § 727(a)(2)(A): 1) a disposition of
20 property, such as transfer or concealment, and 2) a subjective intent on the debtor's part to hinder,
21 delay or defraud a creditor..." *In re Beauchamp*, 236 B.R. 727, 732 (B.A.P. 9th Cir. 1999). The
22 transfer must occur within one year prepetition. *In re Lawson*, 122 F.3d 1237, 1240 (9th Cir. 1997).
Lack of injury to creditors is irrelevant under § 727(a)(2). *In re Bernard*, 96 F.3d 1279, 1281-82
(9th Cir. 1996). "The standard for denial of discharge under § 727(a)(2)(B) is the same as §
727(a)(2)(A), but the disposition must be of estate property occurring after the petition date." *In re*
Miller, 2015 WL 3750830, at *3 (Bankr. C.D. Cal. June 12, 2015).

23 Intent may be inferred from the actions of the debtor. *In re Devers*, 759 F.2d 751, 753-54
24 (9th Cir. 1985). The necessary intent under § 727(a)(2) "may be established by circumstantial
25 evidence, or by inferences drawn from a course of conduct." *In re Adeeb*, 787 F.2d 1339, 1343 (9th
26 Cir.1986).

27 "The standard for denial of discharge under § 727(a)(2)(B) is the same as § 727(a)(2)(A),
28 but the disposition must be of estate property occurring after the petition date." *In re Miller*, 2015
WL 3750830, at *3 (Bankr. C.D. Cal. June 12, 2015).

1 Taking into account Ms. Adri's use of the funds in Gold Girls' BofA account and
2 the Omitted Personal Accounts, and her failure to disclose these bank accounts in her Original
3 Schedule A/B, the Court concludes that Ms. Adri, with intent to hinder, delay or defraud her
4 creditors, transferred and concealed her property, a portion of the 2018 Trust Distribution, within
5 one year before the Petition Date, and property of the estate, after the Petition Date.

6 Shortly before the Petition Date, Ms. Adri arranged for Mr. Yaspan to transfer \$100,000 of
7 the 2018 Trust Distribution into Gold Girls' BofA account, from his client trust account. At that
8 time, Ms. Adri was in poor financial condition and concerned about Mr. Adri's arbitration award
9 and her tax debts; Gold Girls was no longer operating. After Gold Girls's BofA account received
10 \$100,000 of the 2018 Trust Distribution, and after the Petition Date, Ms. Adri used the funds in
11 Gold Girls' BofA account to pay her personal expenses. After the Petition Date, Ms. Adri also
12 used one of the Omitted Personal Accounts to pay her personal expenses, without having disclosed
13 its existence in her schedules, at her 341(a) meeting or in her MORs.

14 Contrary to Ms. Adri's representations at her 341(a) meeting and in other filings with the
15 Court, Ms. Adri did not use the funds transferred to Gold Girls to restart the business of Gold Girls,
16 as a website. Moreover, although they were open on and following the Petition Date, she did not
17 disclose Gold Girls' BofA account, or the Omitted Personal Accounts, in her Original Schedule
18 A/B, and she did not report her use of those accounts in her original MORs. As reflected in her
19 amended schedule A/B, on the Petition Date, those accounts had outstanding balances; Gold Girls'
20 BofA account balance exceeded \$120,000.

21 When Ms. Adri did file an amendment of her Original Schedule A/B, and her first and
22 second amended MORs, in which she identified the BofA accounts, Ms. Adri did so nearly a year
23 or more after the Petition Date. By that time, the Court had ordered her to file the bank statements
24 for her bank accounts, and Mr. Adri had filed his motion to appoint a chapter 11 trustee and the
25 Trustee Motion Supplement.

26 In her original SOFA, Ms. Adri did disclose a \$100,000 transfer to Gold Girls, made on
27 February 15, 2018. In her original SOFA, Ms. Adri stated that this transfer was "for working
28 capital to be used by LLC that is 100% owned." At her 341(a) meeting of creditors and
examination, Ms. Adri also represented that the funds transferred from the Trust to Gold Girls were
to be used to restart a business for Gold Girls. However, funds transferred to Gold Girls were not
used in that way; for months following the Petition Date, Ms. Adri used these funds to pay her
personal expenses. Ms. Adri also omitted Gold Girls' BofA account, and her personal BofA bank
accounts, from her Original Schedule A/B and her original MORs.

Ms. Adri contends that it is the fault of her bankruptcy lawyer, his staff and other
professionals that she did not make accurate disclosures in her Original Schedule A/B and file
complete MORs. However, when Ms. Adri discussed the transfer of funds into Gold Girls, she did
not disclose that she would be continuing to use those funds to pay her personal expenses. Why
would Ms. Adri think that it was appropriate for her to use Gold Girls' BofA account, and the
Omitted Personal Accounts, to pay her personal expenses – on and for months following the
Petition Date - without her identifying those BofA accounts in her Original Schedule A/B and her
use of those accounts in her MORs? As of the Petition Date, she had more than \$500,000 in Mr.
Yaspan's client trust account; on March 5, 2018, those funds were transferred to a DIP account.
Ms. Adri could have used funds in her DIP accounts to pay her personal expenses. Moreover, she
had been informed that she had to close her prepetition personal bank accounts.

1 Based on the preponderance of the evidence, the Court concludes that, in order to conceal
2 from her creditors that those funds remained her property and property of the estate, Ms. Adri had
3 \$100,000 of the 2018 Trust Distribution transferred to Gold Girls' BofA Account, did not disclose
4 the existence of her accounts at BofA in her Original Schedule A/B and misrepresented and
5 concealed her actual use of that significant portion of the 2018 Trust Distribution, with intent to
6 hinder, delay or defraud her creditors. Consequently, the Court will deny Ms. Adri's receipt of a
7 discharge pursuant to § 727(a)(2)(A)-(B).

8 **B. 11 U.S.C. § 727(a)(4)**

9 Section 727(a)(4)(A) denies a discharge to a debtor who "knowingly and fraudulently"
10 made a false oath or account in the course of the bankruptcy proceedings. To bring a successful §
11 727(a)(4)(A) claim for false oath, the plaintiff must show: (1) the debtor made a false oath in
12 connection with the case; (2) the oath related to a material fact; (3) the oath was made knowingly;
13 and (4) the oath was made fraudulently. *In re Wills*, 243 B.R. 58, 62 (B.A.P. 9th Cir. 1999). "[A]
14 false oath may involve a false statement or omission in the debtor's schedules." *In re Roberts*, 331
15 B.R. 876, 882 (B.A.P. 9th Cir. 2005), *aff'd and remanded on other grounds*, 241 F. App'x 420 (9th
16 Cir. 2007).

17 "A fact is material if it bears a relationship to the debtor's business transactions or estate, or
18 concerns the discovery of assets, business dealings, or the existence and disposition of the debtor's
19 property." *In re Retz*, 606 F.3d 1189, 1198 (9th Cir. 2010)(internal quotations omitted). "A debtor
20 acts knowingly if he or she acts deliberately and consciously." *Retz*, 606 F.3d at 1198.

21 Intent must usually be established by circumstantial evidence or inferences drawn from the
22 debtor's course of conduct. *Khalil*, 379 B.R. at 174 (circumstances might include multiple
23 omissions or failure to clear up omissions). "[T]he cumulative effect of false statements may, when
24 taken together, evidence a reckless disregard for the truth sufficient to support a finding of
25 fraudulent intent" under § 727(a)(4). *Stamat v. Neary*, 635 F.3d 974, 982 (7th Cir. 2011).

26 Based on the preponderance of the evidence, the Court concludes that Ms. Adri made a
27 false oath when she omitted Gold Girls' BofA account, and the Omitted Personal Accounts, from
28 her Original Schedule A/B. That oath was false, related to material facts and was made knowingly
by Ms. Adri.

In addition, in light of her extensive prepetition and postpetition use of Gold Girls' BofA
account and the Omitted Personal Accounts to pay her personal expenses, her failure to correct the
omission of these bank accounts from her schedules for nearly a year following the Petition Date
(after she had spent the money and Mr. Adri had filed evidence of her postpetition use of the
accounts), and Ms. Adri's repeated misrepresentations regarding the use of the \$100,000 transfer to
Gold Girls, the Court finds that Ms. Adri's intent was fraudulent; in order to hide her actual use of
these bank accounts, Ms. Adri omitted Gold Girls' BofA account and her BofA personal bank
accounts from her Original Schedule A/B and did not provide proper reporting of her personal
expenses in her original MORs. *See In re Sholdra*, 249 F.3d 380, 383 (5th Cir. 2001) (affirming
denial of discharge based on false oaths in original schedules and refusing to accept the debtor's
attempt to blame the false oaths on his bankruptcy counsel; the debtor's "purported inexperience
with financial affairs does not negate the fact that he made false oaths by knowingly swearing to
false information"). **FN9**

1 Ms. Adri also made false oaths when she omitted other assets, including her interest in the
2 Trust, from her Original Schedule A/B and when she did not disclose the prepetition distributions
3 from the Trust and her ownership interests in various active entities in her original SOFA.
4 However, given Ms. Adri's testimony about those assets, the Trust and her interest in those entities
5 during her first § 341(a) meeting, and the statements made by her bankruptcy counsel during that
6 meeting, the Court finds that Ms. Adri did not do so with fraudulent intent.

7 For knowingly and fraudulently making false oaths regarding the BofA accounts of Ms.
8 Adri and Gold Girls, the Court will deny Ms. Adri's receipt of a discharge pursuant to § 727(a)(4).

9 **III. CONCLUSION**

10 The Court will deny Ms. Adri's receipt of a discharge pursuant to § 727(a)(2)(A)-(B) and
11 § 727(a)(4).

12 **FOOTNOTES**

13 **FN1** At her first § 341(a) examination and meeting of creditors, Ms. Adri also stated that Gold
14 Girls had operated a retail clothing store and that Gold Girls' store had closed on January
15 18, 2018.

16 **FN2** Ms. Adri did not close her BofA personal checking account no. 5973 at that time, or by
17 more than one month later.

18 **FN3** Although prepetition bank accounts are to be closed when a chapter 11 petition is filed, and
19 Ms. Adri had been informed of her obligation to close them, Ms. Adri continued to use her
20 BofA personal account, no. 5973, after the Petition Date.

21 **FN4** Mr. Yaspan also attended this meeting of creditors. During the § 341(a) meeting, as
22 concerns the accuracy of Ms. Adri's bankruptcy filings, Mr. Yaspan noted only that Ms.
23 Adri's schedules had to be amended to add unsecured creditors.

24 **FN5** On March 29, 2018, Ms. Adri sent an email to Irwin Abramson and Jeffery Zabner, who
25 were involved with the administration of the Trust. In her email, Ms. Adri stated that she
26 had filed a chapter 11 case and that her bankruptcy lawyer would be requesting documents
27 regarding the Trust. Subsequent to the meeting of creditors, in April 2018, Mr. Yaspan
28 wrote to the lawyer for the Trust, Jeffrey Zabner, asking for an accounting and a copy of the
Trust document. *See* Ms. Adri's Trial Exhibit I.

FN6 Ms. Adri's Trial Exhibit P, an email from a lawyer at Mr. Yaspan's office, Debra Brand, to
Ms. Adri, dated May 4, 2018, discusses the suggested engagement of Mr. Avaylon. In that
email, Ms. Brand recommends that Ms. Adri engage Mr. Avaylon to help her with the
bookkeeping and MORS. Ms. Adri's Trial Exhibit KK also includes emails, dated January
28, 2019, between Mr. Yaspan and Ms. Adri, concerning Ms. Adri's engagement of Mr.
Avaylon.

1 **FN7** In her second amended MORs, Ms. Adri filed redacted bank statements for the Omitted
2 Accounts, which blocked out entries showing her use of those accounts during the first half
3 of February 2018, i.e., within a few weeks (and days) before the Petition Date. Carolyn
4 Feinstein of TIXE Consulting prepared the second amended MORs for February, March
5 and April 2018. See Ms. Adri's Trial Exhibit LL, which includes emails from Ms. Feinstein
6 to Ms. Adri about these MORs.


7 **FN8** Similarly, the September 2018 statement for Gold Girls' BofA account, attached to Ms.
8 Adri's second amended MOR for September 2018 (filed on February 6, 2019), shows
9 purchases from that account for "iTunes.com," "Paolis Italian Kitchen," "Siriusxm.com,"
10 "Bloomy's," "Macy's," "Fabiane's Café and Pastr Brooklyn" "Gramercy Park Hotel New
11 York," "Thriftwares" and "AARPFfoundat" [doc. 274]. Ms. Adri also paid personal
12 expenses from Gold Girls' BofA account in August 2018, November 2018 and December
13 2018 [MORs, docs. 242, 244 and 273].

14 **FN9** Included in Ms. Adri's trial exhibits, as Exhibit F, are emails from Ms. Adri to Mr. Yaspan,
15 dated March 19, 2018 and March 20, 2018. The March 19 email from Ms. Adri states:
16 "Waiting for the answer regarding the reimbursement of funds to Gold Girls." The March
17 20 email from Ms. Adri states: "Please advise regarding the MOR report. Am I able to
18 reimburse the Gold Girls account for my personal expenditures? The report is done and
19 waiting for your reply."

20 These emails do not negate the Court's conclusion that Ms. Adri knowingly and
21 fraudulently omitted her BofA personal checking accounts and Gold Girls' BofA account
22 from her Original Schedule A/B.

23 ###

24 Date: June 9, 2022

25
26
27
28

Victoria S. Kaufman
United States Bankruptcy Judge