FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

SAN FERNANDO VALLEY DIVISION

In re: GERARDO ERNESTO GONZALEZ, JR., Debtor.	Case No.: 1:24-bk-10450-MB Chapter 7 Adv. No.: 1:24-ap-01028-MB **MEMORANDUM OF DECISION RE: CROSS MOTIONS FOR SUMMARY JUDGMENT**
ANGELA ARNONE, Plaintiff, v. GERARDO ERNESTO GONZALEZ, JR., Defendant.	

I. INTRODUCTION

This adversary proceeding concerns a landlord's effort to enforce a debt under a residential lease. Prepetition, the landlord leased a home to the debtor's family. The debtor signed on to that residential lease as a favor to his elderly parents, who were unable to qualify by themselves. He did not reside at the premises. During the COVID-19 pandemic, the landlord informed the debtor's family that she would not renew the lease. The family resisted her efforts to evict them, resulting in an unlawful detainer action in state court. Following a jury trial, the landlord obtained a money judgment for the family's holdover and the landlord's attorney fees in prosecuting the action. Because the debtor signed the lease as a tenant, the judgment named him as a liable party. After the landlord began garnishing his paychecks, the debtor filed a chapter 7 petition. The landlord thereafter filed a complaint against him asserting various theories why his judgment debt should not be discharged, and why the Court should revoke the debtor's discharge entirely.

On summary judgment, the Court finds her arguments to be unavailing. Among other things, the landlord argued that under 11 U.S.C. § 523(a)(2)(A), the debtor is vicariously liable for misrepresentations that his family members allegedly made in their rental applications. The landlord relies on *Bartenwerfer v. Buckley*, 598 U.S. 69 (2023) to support her expansive theory of vicarious liability. In *Bartenwerfer*, the Supreme Court held that partnership fraud debts may be nondischargeable regardless of whether the debtor himself had committed any fraud. *Id.* at 80–81. Here, however, the debtor's relationship to the tenants was solely familial. He was not in a legal partnership with any of them and did not sign the residential lease as part of a business venture. The Court therefore concludes that *Bartenwerfer* is inapposite to the facts of this adversary proceeding.

After careful consideration of the applicable legal standards and the circumstances presented, the Court denies each of the landlord's claims for relief under 11 U.S.C. §§ 523(a) and 727(a). Accordingly, the Court will enter summary judgment in favor of the debtor.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. The Parties

Angela Arnone ("Plaintiff") is a trustee of the Arnone Family Trust, which owns a single-family home located at 13958 Carl Street, Pacoima, CA 91331 (the "Property"). Apparently, Plaintiff's father owned the Property, and when he passed, it was conveyed to the Arnone Family Trust, of which Plaintiff and her two siblings are beneficiaries.

Gerardo Ernesto Gonzalez, Jr. a.k.a. Gerardo Ernesto Gonzalez Aldana ("Defendant") is a warehouseman by trade. Adv. Dkt. 62 at 14 (¶ 2). Defendant's immediate relatives are his father, Gerardo Alfonso Gonzalez; his mother, Maria Victoria Gonzalez; and his brother, Gerson Ademir Gonzalez (collectively with Defendant, the "Tenants").

B. Defendant's Relationship with Andrea Gonzalez

In 2010, Defendant married Andrea Gonzalez. Adv. Dkt. 62 at 15 (¶ 7). In 2013, Defendant and Andrea separated. *Id.* To date, Defendant and Andrea remain married because neither "can afford the cost of getting a formal dissolution of [their] marriage." [1] *Id.* The two continue to co-parent their children. *Id.* (¶ 8).

C. The Rental Application and the Lease

In August 2014, Plaintiff hired a broker to show the Property and find tenants. Adv. Dkt. 58 at 41 (lns. 5–6). At oral argument, Plaintiff stated that the Montoya family (purportedly the family of Andrea), "was a former tenant at the Property," which she "had evicted and just finished collecting from [on] a judgment [against the Montoya family] in that year." The record contains no admissible evidence in support of this factual allegation.

[1] The Court notes—solely for the parties' reference—that California law has recently changed to permit more couples to file for divorce jointly for only $435. *See* 2024 Cal. Legis. Serv. Ch. 190 (S.B. 1427) (West). On January 1, 2026, the Superior Court of California, County of Los Angeles began offering "a new legal pathway that simplifies the divorce process for California couples seeking an amicable dissolution of their marriage[.]" *Superior Court of Los Angeles County Announces New Expanded Divorce Option for Parties Seeking Amicable Divorce, Beginning Jan. 1, 2026*, Superior Court of California, County of Los Angeles (Dec. 29, 2025), https://www.lacourt.org/newsmedia/uploads/142025122915355825NR12-29-2025NewJointPetitionforDissolution-PressRelease(2).pdf.

On August 11, 2014, Defendant completed and signed a form entitled "Application to Rent or Lease" concerning the Property. Adv. Dkt. 59 at 7–8.[2] Under "all other proposed occupants," Defendant listed his father, mother and brother. *Id.* at 7. Regarding his employment and income source, Defendant disclosed that he earned $420 in gross income per week, and $368 in net income per week. *Id.* In response to the question "were you ever convicted for any crime(s)," Defendant did not circle a response. *Id.* at 8.

Together with his rental application, Defendant submitted to Plaintiff's broker copies of his pay stubs for six different weekly pay periods in 2014. Adv. Dkt. 58 at 42 (lns. 1–3); Adv. Dkt. 60 at 8–9. Defendant's pay stubs indicated that his hourly wage was $10.50, that he worked an average of 32 hours per week, that his average gross pay was $335 per week, and that his average net pay was $251 per week. *See* Adv. Dkt. 60 at 8–9; *see also* Table 1 below.

Table 1. ***Data from Defendant's Pay Stubs***

Pay Period Beginning	Pay Period Ending	Hours	Rate	Gross Pay	Net Pay
5/23/2014	5/29/2014	28	$10.50	$294.00	$271.28
5/30/2014	6/5/2014	37.5	$10.50	$393.75	$187.04
6/6/2014	6/12/2014	19.5	$10.50	$204.75	$342.56
6/13/2014	6/19/2014	29	$10.50	$304.50	$262.85
7/18/2014	7/24/2014	37.5	$10.50	$393.75	$249.62
7/25/2014	7/31/2014	40	$10.50	$420.00	$195.44
	Averages:	32	$10.50	$335.13	$251.47

Plaintiff's broker sent to Plaintiff via email copies of the Tenants' rental applications and proof of income (including Defendant's pay stubs), and her broker recommended that Plaintiff rent the Property to the Tenants. Adv. Dkt. 58 at 41 (lns. 5–6), 42 (lns. 1–3). At oral argument, Plaintiff stated that she "went off of [her broker's] recommendation" in deciding to rent the Property to the Tenants. Specifically, she "looked through the application real quick [*sic*], looked at the pay stubs, and—with the four of them—[determined that] they should be able to make it." She further stated that "because of [her] father's condition" at that time, she and her siblings "just had to put up with them until [her] father passed."

[2] Defendant's mother, father and brother also submitted rental applications and proof of income to Plaintiff's broker. Adv. Dkt. 59 at 3–6, 9–10 (rental applications); Adv. Dkt. 3–7, 10–11 (proof of income).

On August 23, 2014, the parties entered into a lease agreement concerning the Property for monthly rent of $2,000. Adv. Dkt. 1 at 3 (¶ 14); Adv. Dkt. 43 at 3 (¶ 14); Adv. Dkt. 51 at 44–55; Adv. Dkt. 59–1 at 6–18 (the "Lease").[3] The Lease states that Plaintiff is the landlord; the tenants are Defendant and his mother, father and brother. *Id.* at 44. Jose Francisco Ruiz Vasquez is identified in the lease as "co-signer only." *Id*. The Lease further states, in relevant part:

> 23. LEGAL FEES: In the event action is brought by LANDLORD to enforce any terms of this agreement or to recover possession of the premises, LANDLORD shall recover from TENANT any and all attorney fees, court fees, and execution fees. LANDLORD shall recover from TENANT any and all attorney fees, court fees, and execution fees in the event an unwarranted action is brought by TENANT.
>
> It is acknowledged, between the parties, that jury trials significantly increase the costs of any litigation between the parties. On this basis, all parties waive their rights to have any matter settled by jury trial.

Adv. Dkt. 59–1 at 10.

Defendant testified that he signed the Lease "at the request of [his] mother" and "as a favor to her and [his] father and brother." Adv. Dkt. 62 at 14 (¶ 3). He "did not intend to live there." Adv. Dkt. 51 at 16 (¶ 4). Defendant's recollection of what happened on August 23, 2014, is as follows:

> When I got [to the Property, my mother] told me the forms were on the table and that I had to fill out the [L]ease…. I did that and visited for a while and left. I had no discussions about anything with [Plaintiff] before the [L]ease was signed other than to say hello to her and maybe a little small talk.

Adv. Dkt. 62 at 14 (¶ 3).

D. The Unlawful Detainer Action

On January 5, 2023, Plaintiff filed an unlawful detainer complaint against the Tenants (the "UD Complaint") in the Superior Court of California, County of Los Angeles (the "State Court").[4] *See* State Court Case No. 23CHUD00022 (the "UD Action"). On January 15, 2023, the Tenants filed an answer to the UD Complaint. Adv. Dkt. 56–3 at 57–72. Defendant represents that he "was not involved in the

[3] The Lease purportedly was amended on November 10, 2015, to change the due date for rent from the first of the month to the third of the month. *See* Adv. Dkt. 59 at 14 (a "Rent Addendum" signed by Plaintiff and not countersigned by Defendant or any of the tenants). According to Plaintiff, "[t]his was a request made by Gerson Gonzalez because his parents did not receive their social security checks until the 3rd…." *See* Dkt. 58 at 41 (lns. 11-12).

[4] The record does not contain a copy of the UD Complaint.

decision to fight the eviction" and "did not get involved in the [UD Action]." Adv. Dkt. 62 at 15 (¶ 5). According to Defendant, his brother Gerson "was the one actively opposing the eviction." *Id.*

Attached to the answer is a verification under penalty of perjury under California law that, "based upon information and belief, the [a]nswer is true and correct." Adv. Dkt. 56–3 at 72. The verification is signed by each of the Tenants, except that Defendant's signature is a graphical signature created by DocuSign software. *See id.* Defendant has not admitted that he signed the verification; however, he testified that "[i]t is possible that [he] signed something that would have [been] requested by Gerson," Defendant's brother. Adv. Dkt. 62 at 15 (¶ 5).

On August 9, 2023, the jury in the UD Action reached a unanimous decision in favor of Plaintiff, granting possession of the Property and holdover damages in the amount of $15,003.30. Adv. Dkt. 1 at 4 (¶ 23); Adv. Dkt. 43 at 3 (¶ 23); Adv. Dkt. 56–3 at 81–87 (the "UD Judgment").[5] As "holdover damages," monetary damages awarded to Plaintiff in the UD Judgment are based on the Tenants' breach of the Lease by failing to vacate or pay rent after commencement of the UD Action. *See id.*

On October 9, 2023, the State Court awarded Plaintiff $50,925.50 in attorney fees against Defendant and the other Tenants, jointly and severally. Adv. Dkt. 1 at 34–42 (the "Attorney Fees Award"); *see also* Adv. Dkt. 1 at 22 (lns. 5–7). In the Attorney Fees Award, the State Court applied paragraph 23 of the Lease, which provided for a unilateral contractual obligation on the Tenants to pay Plantiff's attorney's fees, and California Civil Code § 1717(a), which creates a statutory right to attorney's fees to the "prevailing party [in an action] on the contract." Adv. Dkt. 1 at 34–35.

E. The Bankruptcy Case

After prevailing in the UD Action, Plaintiff began garnishing Defendant's wages. Adv. Dkt. 51 at 16 (¶ 5). Defendant states that he "was having a very difficult time surviving financially on what [he] was making[,] much less after [Plaintiff] taking the portion she was taking" from his paychecks. *Id.*

On March 20, 2024, Defendant filed a chapter 7 petition, initiating case no. 1:24-bk-10450-MB (the "Case"). Case Dkt. 1. On April 29, 2024, the chapter 7 trustee held a § 341(a) meeting of creditors in the Case. Case Dkt. 5. At the meeting of creditors, Defendant testified that he "makes payments of

[5] On August 16, 2023, the State Court amended the UD Judgment to grant "judgment for possession … against all unnamed occupants." Adv. Dkt. 61 at 5.

$500 per month to his spouse to assist with bills," and that "he was unaware of [Andrea]'s employment status and her finances." Adv. Dkt. 1 at 14 (¶ 111); Adv. Dkt. 43 at 9 (¶ 111). Shortly after concluding the meeting of creditors, the chapter 7 trustee filed a report of no distribution in which she stated that, after having "made a diligent inquiry into the financial affairs of Defendant," "there is no property available for distribution from the estate over and above that exempted by law." Dkt. 8. On June 5, 2024, despite the chapter 7 trustee deeming there to be no assets available for distribution to creditors in this Case, Plaintiff filed proof of claim no. 1–1.

F. The Adversary Proceeding

On June 7, 2024, Plaintiff filed a complaint against Defendant, initiating this adversary proceeding. Adv. Dkt. 1 (the "Complaint"). In the Complaint, Plaintiff contends that Defendant owes a debt to her arising from the UD Judgment and the Attorney Fees Award (the "Debt"). Plaintiff sought:

(1) a determination of nondischargeability of the Debt for:
   (a) false representations pursuant to 11 U.S.C. § 523(a)(2)(A),[6]
   (b) false written representations pursuant to § 523(a)(2)(B),
   (c) willful and malicious injury pursuant to § 523(a)(6), and
   (d) securities law violations under § 523(a)(19);

(2) avoidance of unspecified transfers purportedly made by Defendant pursuant to §§ 547(b), 548(a)(1)(A) and 548(a)(1)(B); and

(3) denial of Defendant's discharge for:
   (a) transfer or concealment of property of Defendant within one year before the petition date pursuant to § 727(a)(2)(A),
   (b) false oath or account pursuant to § 727(a)(4)(A), and
   (c) actions within the meaning of § 727(a)(2)(A) that purportedly concern an insider pursuant to § 727(a)(7).

Id.

[6] Unless otherwise stated herein, all statutory references are to sections of title 11 of the U.S. Code (the "Bankruptcy Code").

On February 26, 2025, the Court held a status conference in this adversary proceeding. At the status conference, the Court discussed with the parties their intention to resolve this adversary proceeding by filing motions for summary judgment. On March 27, 2025, Defendant and Plaintiff each filed a motion for partial summary judgment. Adv. Dkt. 51 ("Defendant's Motion"); Adv. Dkt. 56 ("Plaintiff's Motion," and together with Defendant's Motion, the "Motions"); *see also* Adv. Dkts. 58–65, 67 and 69.

On June 12, 2025, the Court held oral argument on the Motions. Plaintiff appeared in pro per. M. Jonathan Hayes of RHM Law LLP, and Michael Massmann and Emily Thompson of Neighborhood Legal Services of Los Angeles County, appeared on behalf of Defendant. At the oral argument, the parties orally stipulated to withdrawal of Plaintiff's claims for: (1) nondischargeability of the UD Judgment pursuant to § 523(a)(19), and (2) avoidance of unspecified transfers purportedly made by Defendant pursuant to §§ 547(b), 548(a)(1)(A) and 548(a)(1)(B) for Plaintiff's lack of standing. As set forth on the record, the Court deemed those claims withdrawn pursuant to the parties' stipulation.

Defendant's Motion seeks summary judgment of Plaintiff's claims under §§ 523(a)(2)(A), (a)(2)(B) and (a)(6). Plaintiff's Motion seeks summary judgment on those claims, and on her claims under §§ 727(a)(2)(A), (a)(4)(A) and (a)(7).

III. JURISDICTION, ADJUDICATIVE AUTHORITY & VENUE

The Court has jurisdiction over the Motions pursuant to 28 U.S.C. § 1334(b), because they arise under §§ 523(a) and 727(a). As such, the Motions pertain to statutorily and constitutionally core matters over which this Court has the adjudicative authority to enter final orders. *See Wellness Int'l Network, Ltd. v. Sharif*, 575 U.S. 665 (2015); *In re Deitz*, 760 F.3d 1038 (9th Cir. 2014) (authority to adjudicate nondischargeability encompasses authority to liquidate debt and enter final judgment). The Court also finds that venue is proper under 28 U.S.C. § 1409(a) because the Motions were filed in the court where this adversary proceeding is pending.

IV. DISCUSSION

A. Summary Judgment under Fed. R. Civ. P. 56

Summary judgment should be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c); Fed. R. Bankr. P. 7056 (incorporating Fed. R. Civ. P. 56).

The moving party has the burden of establishing the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). If the moving party shows the absence of a genuine issue of material fact, the nonmoving party must go beyond the pleadings and identify facts that show a genuine issue for trial. *Id.* at 324. In determining whether a genuine issue of material fact exists, "'the evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor.'" *Tolan v. Cotton*, 572 U.S. 650, 651 (2014) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986)). To establish a genuine issue, the non–moving party "must do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986); *see also Anderson*, 477 U.S. at 252 ("The mere existence of a scintilla of evidence in support of the [non–moving party]'s position will be insufficient."). Rather, the nonmoving party must provide "evidence of such a caliber that 'a fair–minded jury could return a verdict for the [nonmoving party] on the evidence presented.'" *United States v. Wilson*, 881 F.2d 596, 601 (9th Cir. 1989) (quoting *Anderson*, 477 U.S. at 252).

The Court may also consider summary judgment independent of a party's motion. Fed. R. Civ. P. 56(f) ("After giving notice and a reasonable time to respond, the court may: (1) grant summary judgment for a nonmovant; (2) grant the motion on grounds not raised by a party; or (3) consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute."); *Gospel Missions of Am. v. City of Los Angeles*, 328 F.3d 548, 553 (9th Cir. 2003) ("Even when there has been no cross-motion for summary judgment, a district court may enter summary judgment sua sponte against a moving party if the losing party has had a 'full and fair opportunity to ventilate the issues involved in the matter.'" (quoting *Cool Fuel, Inc. v. Connett*, 685 F.2d 309, 312 (9th Cir. 1982)).

B. Nondischargeability Under Section 523(a)(2)(A)

Section 523(a)(2)(A) provides that a chapter 7 discharge does not discharge an individual debtor from any debt "for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by … false pretenses, a false representation, or actual fraud…."

A false representation is an express misrepresentation, while a false pretense refers to an implied misrepresentation or conduct intended to create and foster a false impression. *Reingold v. Shaffer (In re Reingold)*, 2013 WL 1136546, at *3 n.4 (B.A.P. 9th Cir. Mar. 19, 2013); *Shannon v. Russell (In re Russell)*, 203 B.R. 303, 312 (Bankr. S.D. Cal. 1996). To prevail on a § 523(a)(2)(A) claim concerning a false pretense or false representation, a plaintiff must prove by a preponderance of the evidence the following five elements:

(1) misrepresentation, fraudulent omission or deceptive conduct…;

(2) knowledge of the falsity or deceptiveness of the … statement or conduct;

(3) an intent to deceive;

(4) justifiable reliance by the creditor on the … statement or conduct; and

(5) damage to the creditor proximately caused by its reliance on the … statement or conduct.

Oney v. Weinberg (In re Weinberg), 410 B.R. 19, 35 (B.A.P. 9th Cir. 2009) (citing *Turtle Rock Meadows Homeowners Ass'n v. Slyman (In re Slyman)*, 234 F.3d 1081, 1085 (9th Cir. 2000)).

"In cases involving fraudulent omissions, instead of fraudulent representations, 'the nondisclosure of a material fact in the face of a duty to disclose has been held to establish the requisite reliance and causation for actual fraud under the Bankruptcy Code.'" *Manion v. Strategic Funding Source, Inc. (In re Manion)*, 667 B.R. 473, 479 (B.A.P. 9th Cir. 2025) (quoting *Apte v. Romesh Japra, M.D., F.A.C.C., Inc. (In re Apte)*, 96 F.3d 1319, 1323 (9th Cir. 1996)).

"Under common law, a false representation can be established by an omission when there is a duty to disclose." *Citibank (S.D.), N.A. v. Eashai (In re Eashai)*, 87 F.3d 1082, 1082 (9th Cir. 1996). Courts "look to the Restatement (Second) of Torts for guidance in determining what constitutes a fraudulent nondisclosure for purposes of § 523(a)(2)(A)." *Barnes v. Belice (In re Belice)*, 461 B.R. 564, 580 n.10 (B.A.P. 9th Cir. 2011). The Restatement provides, in relevant part:

> (2) One party to a business transaction is under a duty to exercise reasonable care to disclose to the other before the transaction is consummated,
>
> (a) matters known to him that the other is entitled to know because of a fiduciary or other similar relation of trust and confidence between them; and
>
> (b) matters known to him that he knows to be necessary to prevent his partial or ambiguous statement of the facts from being misleading….

Restatement (Second) of Torts § 551 (Am. L. Inst. 1977).

As to the fourth requirement under § 523(a)(2)(A), "a creditor's reliance on a debtor's misrepresentation need be only justifiable, not reasonable…." *Eashai*, 87 F.3d at 1090 (citing *Field v. Mans*, 516 U.S. 59, 75 (1995)). In determining whether a creditor's reliance was justifiable, bankruptcy courts "must look to all of the circumstances surrounding the particular transaction, and must particularly consider the subjective effect of those circumstances upon the creditor." *Eugene Parks L. Corp. Defined Benefit Pension Plan v. Kirsh (In re Kirsh)*, 973 F.2d 1454, 1460 (9th Cir. 1992); *see also Field v. Mans*, 516 U.S. at 71 (holding that justifiable reliance takes into account the "qualities and characteristics of the particular plaintiff, and the circumstances of the particular case, rather than of the application of a community standard of conduct to all cases"). A plaintiff does not have a duty to investigate. *Field v. Mans*, 516 U.S. at 70, 73–75 n.12.

The court of appeals in *Kirsh* described "justifiable" reliance as a mixture of objective and subjective standards, "which takes into account the knowledge and relationship of the parties themselves." 973 F.2d at 1458.

> The general rule is that a person may justifiably rely on a representation even if the falsity of the representation could have been ascertained upon investigation. In other words, "negligence in failing to discover an intentional misrepresentation is no defense." However, a person cannot rely on a representation if "he knows that it is false or its falsity is obvious to him." In sum, although a person ordinarily has no duty to investigate the truth of a representation, "a person cannot purport to rely on preposterous representations or close his eyes 'to avoid discovery of the truth.'"

In re Apte, 180 B.R. 223, 229 (B.A.P. 9th Cir. 1995) (citing *Kirsh*), *aff'd,* 96 F.3d 1319 (9th Cir. 1996).

Plaintiff alleges under § 523(a)(2)(A) that: (1) Defendant misrepresented that he would be residing at the Property, when he did not ultimately do so; (2) Defendant failed to disclose, on his rental application or otherwise: (a) that he was married, including to whom he was married, and (b) his criminal history; (3) Defendant misrepresented on his rental application that his income was higher than it was; (4) Defendant made unspecified misrepresentations in the verified answer filed in the UD Action,

which Plaintiff contends amounts to fraud on the State Court; and (5) the other Tenants made various misrepresentations, for which Plaintiff contends Defendant is vicariously liable.

1. Defendant's Alleged Misrepresentation That He Would Be Residing at the Property, When He Did Not Ultimately Do So

The parties do not dispute that Defendant never resided at the Property. The Lease lists Defendant as one of five individuals included in the defined term "TENANTS," but that list includes another individual who is a "co-signer only." The Lease does not contain any express representation by Defendant that he personally would take possession of the Property. Moreover, Plaintiff offers no testimony establishing an oral misrepresentation by Defendant before or at the time he signed the Lease. The only testimony of Plaintiff and Defendant's interactions at that time is that of Defendant; he states that he "had no discussions about anything with [Plaintiff] before the [L]ease was signed other than to say hello to her and maybe a little small talk." Adv. Dkt. 62 at 14 (¶ 3). Accordingly, on Plaintiff's claim under § 523(a)(2)(A), the Court will deny Plaintiff's Motion and will grant Defendant's Motion regarding Defendant's alleged misrepresentation that he would be residing at the Property.

2. Defendant's Alleged Failure to Disclose: (a) That He Was Married, Including to Whom He Was Married; and (b) His Criminal History

Plaintiff argues that "Defendant had a duty to disclose based on the fiduciary relationship created when the [Tenants] took possession of" the Property pursuant to the Lease. Adv. Dkt. 58 at 10. Plaintiff does not cite, and the Court is not aware of, any legal authority that supports this proposition. In fact, in *Girard v. Delta Towers Joint Venture*, 26 Cal. Rptr. 2d 102, 106–07 (Cal. Ct. App. 1993), the California court of appeal noted that no "unique or fiduciary" relationship existed in what it described as a "garden variety landlord-tenant relationship." *See also id.* at 106 ("no fiduciary relationship is established merely because 'the parties reposed trust and confidence in each other.'" (quoting *Worldvision Enters., Inc. v. Am. Broad. Cos., Inc.*, 191 Cal. Rptr. 148 (Cal. Ct. App. 1983))). Moreover, Plaintiff's theory is that Defendant had a duty of disclosure "throughout the duration of the [landlord-tenant] relationship," whereas the Restatement limits the duty of disclosure to "before the transaction is consummated." *Compare* Adv. Dkt. 58 at 10, *with* Restatement (Second) of Torts § 551(2). The Court's inquiry with respect to fraudulent omissions is thus limited to the period before the parties signed the Lease.

As for Defendant's marital status, the parties do not dispute that Defendant knew he was married to Andrea when he signed the Lease. However, Plaintiff offers no admissible evidence that the family of Andrea had been evicted from the Property in the period immediately preceding when Defendant signed the Lease. Moreover, a genuine dispute of material fact exists as to whether that alleged eviction was a matter Defendant knew "to be necessary to prevent his partial or ambiguous statement of the facts from being misleading." In fact, Defendant's testimony indicates that he made no partial or ambiguous statement of the facts to Plaintiff; according to Defendant, he "had no discussions about anything with [Plaintiff] before the [L]ease was signed other than to say hello to her and maybe a little small talk." Adv. Dkt. 62 at 14 (¶ 3).

As for Defendant's criminal history, Defendant did not circle a response to the question "were you ever convicted for any crime(s)." in his rental application. Defendant contends that he did not check the box because his felony conviction is "personal and embarrassing," and that Plaintiff "could have asked him about it." Dkt. 63 at 11. As discussed previously, the testimony in the record indicates that Plaintiff did not ask him about it before the parties signed the Lease. Accordingly, a genuine dispute of material fact exists as to whether Defendant intended to deceive Plaintiff when he did not circle a response to the question about his criminal history on the rental application.

Notwithstanding these factual disputes, Plaintiff has not established any reliance on Defendant's allegedly fraudulent omissions. The record is clear that Plaintiff "looked through" the rental application and did not inquire further about Defendant's background, criminal or otherwise. Instead, her primary concern at that time was whether the Tenants earned enough income collectively to afford the $2,000 monthly rent. Moreover, Plaintiff stated that she "went off of [her broker's] recommendation" in deciding to rent the Property to the Tenants. In light of the uncontroverted evidence that Plaintiff did not rely on Defendant's purportedly fraudulent omissions in deciding to enter into the Lease, the Court will deny Plaintiff's Motion and will grant Defendant's Motion on Plaintiff's claim under § 523(a)(2)(A) concerning the nondisclosure of Defendant's marital status and criminal history.

3. Defendant's Alleged Misrepresentation on His Rental Application That His Income Was Higher Than It Was

In his rental application, Defendant represented that he earned $420 in gross income per week and $368 in net income per week. His pay stubs, which he submitted with his rental application, indicated that his average gross pay was $335 per week, and that his average net pay was $251 per week. *See* Table 1. Although Plaintiff complains about the inconsistent representations in Defendant's rental application, her testimony is that she actually relied on the pay stubs in deciding whether to enter into the Lease. And even if she did rely solely on the rental application, doing so was not justifiable. The more detailed pay stub evidence made clear that Defendant's weekly income was lower than stated on the rental application. *See Kirsh*, 973 F.2d at 1460; *Apte*, 180 B.R. at 229. Accordingly, the Court will deny Plaintiff's Motion and will grant Defendant's Motion for Plaintiff's claim under § 523(a)(2)(A) insofar as it concerns the inconsistent representations between Defendant's rental application and the pay stubs submitted alongside it.

4. Defendant's Alleged Unspecified Misrepresentations in the Verified Answer Filed in the UD Action, Which Plaintiff Contends Amounts to Fraud on the State Court

Plaintiff complains that Defendant made unspecified misrepresentations in the verified answer filed in the UD Action, which she contends amount to fraud on the State Court. *See* Adv. Dkt. 58 at 13 (alleging fraud on the court pursuant to Fed. R. Civ. P. 60(b)(3)). Plaintiff also alleges that the Tenants committed fraud on the State Court by hiring a non-attorney to represent them in the UD Action. *Id.* at 13–14. The problem is that there is no private right of action based on any of these alleged harms.

This Court has previously discussed the lack of a private right of action under California and federal law for damages resulting from an alleged fraud on the court, perjurious testimony, or the presentation of false evidence:

> Under California law, there is no private right of action for "fraud upon the court." *See Whitty v. First Nationwide Mortg. Corp.*, 2007 WL 628033, at *9–10, 2007 U.S. Dist. LEXIS 12988, at *29–*30 (S.D. Cal. February 26, 2007) (citing *Cedars–Sinai Medical Center v. Superior Court*, 18 Cal.4th 1, 9, 74 Cal.Rptr.2d 248, 954 P.2d 511 (1998)). In California courts, fraud on the court may be a basis for relief from a judgment, *id.* at *10, 2007 U.S. Dist. LEXIS 12988, at *30 (citing *Olivera v. Grace*, 19 Cal.2d 570, 575, 122 P.2d 564 (1942)), but California courts repeatedly have limited the availability of tort claims for litigation-related misconduct. For instance, the California Supreme Court has held that there is no civil remedy in damages against a witness who commits perjury when testifying. *See Cedars–Sinai Medical Center v. Superior Court*, 18 Cal.4th at 9–10, 74

> Cal.Rptr.2d 248, 954 P.2d 511 (citing *Taylor v. Bidwell*, 65 Cal. 489, 4 P. 491 (1884)). Relying on *Taylor*, one decision of the California Court of Appeal later held that there can be no tort action for the concealment or withholding of evidence. *Agnew v. Parks*, 172 Cal.App.2d 756, 756–57, 343 P.2d 118 (1959).
>
> Other Court of Appeal decisions have rejected attempts, under a variety of legal theories, to seek damages for the presentation of false evidence. *See Mercury Casualty Co. v. Superior Court*, 179 Cal.App.3d 1027, 1034–35, 225 Cal.Rptr. 100 (1986) (rejecting fraud action based on allegations that insurer of opposing party in underlying action had presented false testimony in that action); *Rios v. Allstate Ins. Co.*, 68 Cal.App.3d 811, 817–19, 137 Cal.Rptr. 441 (1977) (rejecting insured's action for bad faith alleging that, in arbitration between insurer and insured, insurer had presented false evidence and testimony in the action); *Kachig v. Boothe*, 22 Cal.App.3d 626, 640–41, 99 Cal.Rptr. 393 (1971) (rejecting action for fraud and intentional infliction of emotional distress arising out of prior judgment that rested on false testimony and false documentary evidence).
>
> Likewise, the court has not located any case recognizing a federal right of action for damages resulting from a fraud on the court, perjury or the presentation of false evidence. *See Coultas v. Payne*, 2016 U.S. Dist. LEXIS 22215 (D. Or. 2016); *Whitty*, 2007 WL 628033, at *12–13, 2007 U.S. Dist. LEXIS 12988, at *38–*39; *see also Levy v. San Joaquin County Dep't of Child Support Servs.*, 2013 WL 1891402, at *7, 2013 U.S. Dist. LEXIS 64526, at *19–*20 (N.D. Cal. 2013) (holding that although perjury is a crime there is no private right of action for perjury); *Najarro v. Wollman*, No. C12–01925 PJH, 2012 WL 1945502, 2012 U.S. Dist. LEXIS 75032 (N.D. Cal. May 30, 2012) (the claims of "obstruction of laws," "obstruction of justice," and "perjury" dismissed because there is no private right of action on any of these claims). Under federal law, fraud on the court is an equitable doctrine justifying the setting aside of a federal judgment. *See United States v. Stonehill*, 660 F.3d 415, 443–444 (9th Cir. 2011) *(citing Chambers v. NASCO, Inc.*, 501 U.S. 32, 44, 111 S.Ct. 2123, 115 L.Ed.2d 27 (1991)); *see also* Fed. R. Civ. P. 60(b)(3) (judgment may be set aside based on fraud on the court, misrepresentation or other misconduct by an opposing party).

Greenstein v. Wells Fargo Bank, N.A. (In re Greenstein), 675 B.R. 139, 177–78 (Bankr. C.D. Cal. 2017) (Barash, J.)*, aff'd,* 589 B.R. 854 (C.D. Cal. 2018)*, aff'd,* 788 F. App'x 497 (9th Cir. 2019).

Moreover, the record contains no finding by the State Court that any conduct or papers filed by Defendant or the other Tenants in the UD Action amounted to fraud on the State Court. Even if it did, Plaintiff could not possibly establish reliance. The UD Action occurred long after Plaintiff decided to enter into the Lease with the Tenants. Accordingly, the Court will deny Plaintiff's Motion and will grant Defendant's Motion on Plaintiff's claim under § 523(a)(2)(A) insofar as that claim concerns purported fraud on the State Court.

5. Alleged Misrepresentations by the Other Tenants, for Which Plaintiff Contends Defendant Is Vicariously Liable

Plaintiff alleges that people other than Defendant made misrepresentations, for which Plaintiff contends Defendant is vicariously liable. *See, e.g.,* Adv. Dkt. 56 at 14 (alleging that Defendant's parents

failed to disclose in their rental application that they previously filed bankruptcy); Adv. Dkt. 58 at 9 (alleging that Defendant's brother listed "false information regarding previous addresses and income" in his rental application). Plaintiff cites *Bartenwerfer v. Buckley*, 598 U.S. 69 (2023), for the proposition that these alleged misrepresentations render the UD Judgment nondischargeable under § 523(a)(2)(A) in Defendant's case. *See* Adv. Dkt. 56 at 13 (lns. 24–27).

"It is a fundamental tenet of modern bankruptcy law that the debts of the 'honest but unfortunate debtor' generally should be discharged and hence the exceptions to discharge set forth in § 523(a) should be narrowly construed." *O. v. Del Rosario (In re Del Rosario)*, 668 B.R. 618, 624 (B.A.P. 9th Cir. 2025). In *Bartenwerfer*, the Supreme Court "acknowledged this general principle but found it inapt for purposes of interpreting whether § 523(a)(2)(A) renders nondischargeable an innocent partner's vicarious liability for his partner's fraud." *Del Rosario*, 668 B.R. at 624.

The debtor in *Bartenwerfer* was an individual who formed a legal partnership with her business partner[7] to remodel a home and sell it for a profit. 598 U.S. at 72–73. The other business partner took charge of the project, while the debtor was largely uninvolved. *Id.* The business partners ultimately sold the home to a creditor without disclosing several defects that a state court later determined were material and that the business partners had a duty to disclose to the debtor. *Id.* The business partners filed bankruptcy and, on the creditor's claim against the debtor under § 523(a)(2)(A), the bankruptcy court determined that the debtor could not be liable for her business partner's fraud. *Id.* at 73.

On appeal, the Supreme Court concluded that § 523(a)(2)(A) rendered nondischargeable a debtor-partner's vicarious liability for another partner's fraud; that is, partnership fraud debts may be nondischargeable regardless of whether the debtor himself had committed any fraud. 598 U.S. at 80–81; *see also Turney v. Vulaj (In re Vulaj)*, 651 B.R. 310, 314–15 (Bankr. S.D. Cal. 2023) (limiting *Bartenwerfer*'s holding to partnership or agency cases). In reaching that conclusion, the Supreme Court relied on Congress' response to the Supreme Court's prior precedent in *Strang v. Bradner*, 114 U.S. 555

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[7] To be clear, the business partner in *Bartenwerfer* was the boyfriend—and later, husband—of the defendant. *Id.* at 72. However, the Supreme Court made clear that the key fact was their business partnership, not their romantic or marital relationship. *See id.* at 72 ("sometimes a debtor is liable for … deceit practiced by a partner or agent"), 76 ("individuals liable for the frauds committed by their partners within the scope of the partnership"); *see also id.* at 83–84 (highlighting that the two "had an agency relationship" and "formed a partnership" and noting that the case is not "a situation involving fraud by a person bearing no agency or partnership relationship to the debtor") (Sotomayor, J., concurring).

(1885). *Bartenwerfer*, 598 U.S. at 79. In *Del Rosario*, the Bankruptcy Appellate Panel of the Ninth Circuit (the "BAP") clarified the *Bartenwerfer* decision's limited reliance on *Strang*:

> At the time of *Strang*, the operative bankruptcy statute excepted from discharge any "debt created by the fraud or embezzlement **of the bankrupt**." Despite the inclusion of the phrase "of the bankrupt" in the 1867 statute, *Strang* held that the nondischargeability of partnership debt arising from one partner's fraud extended to other partners innocent of the fraud. To reach this conclusion, *Strang* relied on common law partnership and agency principles governing **liability** to impute the fraud of one partner to all partners for purposes of **nondischargeability**. It further reasoned that the absence of wrongful conduct or a culpable state of mind by the debtors was irrelevant because "the partners, who were not themselves guilty of wrong, received and appropriated the fruits of the fraudulent conduct of their associate in business."
>
> *Bartenwerfer* then turned its attention to the revision of our country's bankruptcy laws following *Strang*—subsumed within the Bankruptcy Act of 1898 ("1898 Act"), Ch. 541, 30 Stat. 544 (repealed 1978). The 1898 Act omitted the phrase "of the bankrupt" from the new exception to discharge statute. As stated in the 1898 dischargeability statute, "[a] discharge in bankruptcy shall release a bankrupt from all of his provable debts, except such as ... are judgments in actions for frauds, or obtaining property by false pretenses or false representations, or for willful and malicious injuries to the person or property of another." According to *Bartenwerfer*, Congress' deletion of the phrase "of the bankrupt" from the 1898 Act's exception to discharge statute "unmistakabl[y]" was meant to embrace *Strang*'s holding that an innocent partner's liability for partnership debts arising from another partner's fraud should be nondischargeable in bankruptcy.
>
> The final step in *Bartenwerfer*'s analysis simply observed that our modern Bankruptcy Code essentially "reenacted the discharge exception for fraud without change"—at least with respect to the continuing omission from § 523(a)(2)(A) of any reference to "by the debtor." According to *Bartenwerfer*, this continuing omission enabled it to conclude that Congress "embraced *Strang's* holding" by making all partnership fraud debts nondischargeable under § 523(a)(2)(A) regardless of whether the debtor herself had committed any fraud.

Del Rosario, 668 B.R. at 625–26 (citations omitted; emphasis in original). As the BAP further explained, subsequent Supreme Court decisions have effectively overruled the holding in *Strang*:

> *Strang* treated nondischargeability and liability as if they were the same thing—or as if the common law's treatment of vicarious liability necessarily should govern the issue of nondischargeability in bankruptcy. Though *Bartenwerfer* declined to opine whether *Strang* was correctly decided, *id.* at 80 n.3, 128 S.Ct. 579, modern conceptions of statutory construction and the scope and nature of the Bankruptcy Code's nondischargeability provisions would appear to prevent *Strang* from being decided today the way it was decided in 1885. Applying these modern conceptions, the doctrinal underpinnings of *Strang* dealing with the common law vicarious liability simply cannot eclipse the plain language of the statute regarding the scope of nondischargeability. The Supreme Court has explained that "[s]ince 1970, ... the issue of nondischargeability has been a matter of federal law governed by the terms of the Bankruptcy Code." *Grogan v. Garner*, 498 U.S. 279, 284, 111 S.Ct. 654, 112 L.Ed.2d 755 (1991). Contrary to the reliance on state law in *Strang,* dischargeability is now purely an issue of bankruptcy law.

Del Rosario, 668 B.R. at 625.

Plaintiff's theory of vicarious liability is much broader than and inconsistent with the Supreme Court's decision in *Bartenwerfer* and its progeny. Unlike the debtor and her business partner in *Bartenwerfer*, Defendant's relationship to the other Tenants was solely familial; he was not in a legal partnership with the other Tenants and did not sign the Lease as part of a business venture with his family members. Plaintiff cites *Strang* for the proposition that because Defendant signed the Lease with the other Tenants, he is vicariously liable under common law for the purportedly fraudulent actions of the other Tenants at that time. *See* Adv. Dkt. 58 at 12 (lns. 22–28).

Putting aside the questionable vitality of *Strang*, Plaintiff misapplies it. *Strang* involved three partners at a merchant firm, and the issue was whether two of the partners could discharge debts arising from the third partner's lies to fellow merchants. *See Bartenwerfer*, 598 U.S. at 79–80 ("The fraud of one partner, we explained, is the fraud of all because '[e]ach partner was the agent and representative of the firm with reference to all business within the scope of the partnership' … And the reason for this rule was particularly easy to see because 'the partners, who were not themselves guilty of wrong, received and appropriated the fruits of the fraudulent conduct of their associate in business.'"). Plaintiff was not a partner to any of his family members. *Strang* cannot be construed to make one person signing a residential lease liable for a fraudulent statement of another person signing the lease because they are family members. Neither California law nor federal law provides for vicarious liability on this basis. Accordingly, the Court will deny Plaintiff's Motion and will grant Defendant's Motion on Plaintiff's claim under § 523(a)(2)(A) insofar as that claim concerns purported misrepresentations made by the Tenants other than Defendant.

C. Nondischargeability Under Section 523(a)(2)(B)

Section 523(a)(2)(B) provides that a chapter 7 discharge does not discharge an individual debtor from any debt "for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by … 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….

11 U.S.C. § 523(a)(2)(B). The Ninth Circuit Court of Appeals has "reworded these requirements as follows:"

> (1) a representation of fact by the debtor,
> (2) that was material,
> (3) that the debtor knew at the time to be false,
> (4) that the debtor made with the intention of deceiving the creditor,
> (5) upon which the creditor relied,
> (6) that the creditor's reliance was reasonable,
> (7) that damage proximately resulted from the representation.

Candland v. Ins. Co. of N. Am. (In re Candland), 90 F.3d 1466, 1469 (9th Cir. 1996) (citing *Siriani v. Nw. Nat'l Ins. Co. of Milwaukee, Wis. (In re Siriani)*, 967 F.2d 302, 304 (9th Cir. 1992)).

"[A] statement is 'respecting' a debtor's financial condition if it has a direct relation to or impact on the debtor's overall financial status." *Lamar, Archer & Cofrin, LLP v. Appling*, 584 U.S. 709, 720 (2018). An omission is not a "statement" as that term is used in § 523(a)(2)(B). *Manion*, 667 B.R. 473 (citing *Oregon v. Mcharo (In re Mcharo)*, 611 B.R. 657, 662 (B.A.P. 9th Cir. 2020)); *Howell v. L. Offs. of Andrew S Bisom (In re Howell)*, No. 21–60031, 2023 WL 5925886, at *1 (9th Cir. Sept. 12, 2023) (holding that an "omission" is not a "statement respecting the debtor's … financial condition" as that phrase is used in § 523(a)(2)).

Plaintiff's claim under § 523(a)(2)(B) concerns two allegedly false statements made by Defendant in writing: (1) Defendant allegedly represented on his rental application that his income was higher than it was, and (2) Defendant allegedly represented in the Lease that he would reside at the Property, when he did not.

Regarding the former allegation, as discussed above, Plaintiff did not reasonably rely on Defendant's representations in his rental application concerning his income; the falsity was obvious to her because the pay stubs he submitted with his rental application indicated his true income. *See* Section IV.B.3. As for the latter allegation, Defendant's alleged representation that he would reside at the Property is not a statement "respecting [Defendant's] financial condition" within the meaning of § 523(a)(2)(B). Whether Defendant intended to reside at the Property when he completed the rental application and signed the Lease has no "direct relation to or impact on [Defendant's] overall financial status." *See Appling*, 584 U.S. at 720. Accordingly, as to Plaintiff's claim under § 523(a)(2)(B), the Court will deny Plaintiff's Motion and will grant Defendant's Motion.

D. Nondischargeability Under Section 523(a)(6)

Section 523(a)(6) provides that a chapter 7 discharge does not discharge an individual debtor from any debt "for willful and malicious injury by the debtor to another entity or to the property of another entity." The "willful" and "malicious" requirements are conjunctive and subject to separate analysis. *Jett v. Sicroff (In re Sicroff)*, 401 F.3d 1101, 1105 (9th Cir. 2005).

A "willful" injury is a "deliberate or intentional *injury*, not merely a deliberate or intentional *act* that leads to injury." *Kawaauhau v. Geiger*, 523 U.S. 57, 61 (1998) (emphasis in original). Debts "arising from recklessly or negligently inflicted injuries do not fall within the compass of § 523(a)(6)." *Id*. at 64. It suffices, however, if the debtor knew that harm to the creditor was "substantially certain." *Petralia v. Jercich (In re Jercich)*, 238 F.3d 1202, 1208 (9th Cir. 2001). ("[T]he willful injury requirement of § 523(a)(6) is met when it is shown either that the debtor had a subjective motive to inflict the injury *or* that the debtor believed that injury was substantially certain to occur as a result of his conduct.") (emphasis in original).

"[T]he 'malicious' injury requirement of § 523(a)(6) is separate from the 'willful' requirement." *Carrillo v. Su (In re Su)*, 290 F.3d 1140, 1146 (9th Cir. 2002). Maliciousness requires (1) a wrongful act; (2) done intentionally; (3) which necessarily causes injury; (4) without just cause or excuse. *Id*. at 1147. "[T]he 'done intentionally' element of a 'malicious' injury brings into play the same subjective standard of intent which focuses on the [tortfeasor]'s knowledge of harm to the creditor." *Thiara v. Spycher Bros. (In re Thiara)*, 285 B.R. 420, 434 (B.A.P. 9th Cir. 2002); *see also Jercich*, 238 F.3d at 1209. This definition "does *not* require a showing of biblical malice, i.e., personal hatred, spite, or ill-will." *Murray v. Bammer (In re Bammer)*, 131 F.3d 788, 791 (9th Cir. 1997) (emphasis in original).

When analyzing a claim under § 523(a)(6), courts look at: (1) whether the debtor's conduct was tortious under state law; and (2) whether the tortious conduct resulted in willful and malicious injury. *Jercich*, 238 F.3d at 1205–08. "[A]n intentional breach of contract cannot give rise to non-dischargeability under § 523(a)(6) unless it is accompanied by conduct that constitutes a tort under state law." *Lockerby v. Sierra*, 535 F.3d 1038, 1040 (9th Cir. 2008); *see also Jercich*, 238 F.3d at 1206 ("[T]o be excepted from discharge under § 523(a)(6), a breach of contract must be accompanied by some form of 'tortious conduct' that gives rise to 'willful and malicious injury.' ... To determine whether [the

debtor]'s conduct was tortious, we look to California state law.").

Here, Plaintiff seeks a determination of nondischargeability under § 523(a)(6) of the Debt, which arises from the UD Judgment and the Attorney Fees Award. In the Complaint, Plaintiff does not allege that Defendant's conduct was tortious under California law; instead, she argues that she does not need to do so. *See* Adv. Dkt. 58 at 15 (lns. 6–8). Plaintiff is mistaken. As discussed above, the UD Judgment awards monetary damages to Plaintiff for the Tenants' holdover, i.e., the Tenants' breach of the Lease by failing to vacate or pay rent after commencement of the UD Action. The Attorney Fees Award is based on a contractual provision in the Lease and the fact that Plaintiff prevailed in the UD Action. *See* Section II.D. Accordingly, the Debt is a debt for a breach of the Lease—a contract. Because Plaintiff has not alleged that the Tenants' breach of the Lease was accompanied by any tortious conduct from Defendant, the Debt cannot be excepted from discharge under § 523(a)(6). Furthermore, Plaintiff failed to establish that the Debt is for an injury that meets the requisite level of willfulness and maliciousness. Accordingly, on Plaintiff's claim under § 523(a)(6), the Court will deny Plaintiff's Motion and will grant Defendant's Motion.

E. Denial of Discharge Under Section 727(a)(2)(A)

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

"[T]wo elements comprise an objection to discharge under § 727(a)(2)(A): 1) a disposition of property, such as transfer or concealment, and 2) a subjective intent on the debtor's part to hinder, delay or defraud a creditor." *Hughes v. Lawson (In re Lawson)*, 122 F.3d 1237, 1240 (9th Cir. 1997). The transfer must occur within one year prepetition. *Id.* Lack of injury to creditors is irrelevant under § 727(a)(2). *Bernard v. Sheaffer (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." *Faith v. Miller (In re Miller)*, Adv. No. 9:13–ap–01133, 2015 WL 3750830, at *3 (Bankr. C.D. Cal. June 12, 2015).

Intent may be inferred from the actions of the debtor. *Devers v. Bank of Sheridan, Mont. (In re Devers)*, 759 F.2d 751, 753–54 (9th Cir. 1985). The necessary intent under § 727(a)(2) "may be established by circumstantial evidence, or by inferences drawn from a course of conduct." *First Beverly Bank v. Adeeb (In re Adeeb)*, 787 F.2d 1339, 1343 (9th Cir. 1986) (quoting *Devers*, 759 F.2d at 753–54).

In the Complaint, Plaintiff alleges that certain pre- and postpetition payments made by Defendant to Andrea on account of his domestic support obligations amount to transfers made with the intent to hinder, delay, or defraud Plaintiff. Adv. Dkt. 1 at 14–15. As an initial matter, because the Complaint does not allege a cause of action under § 727(a)(2)(B), payments that Defendant allegedly made postpetition are irrelevant to the Court's inquiry. The Complaint makes allegations under § 727(a)(2)(A) about certain prepetition payments Defendant made to Andrea in cash, but Plaintiff's Motion expands the allegations beyond those set forth in the Complaint. Specifically, her motion questions payments Defendant purportedly made on account of a 2020 Volkswagen Jetta and insurance premiums thereon. Adv. Dkt. 56 at 26–27. Plaintiff now alleges these payments were for the benefit of Defendant's adult son. *Id*. Plaintiff further contends that Defendant's purchase of the vehicle was "unnecessary." *Id*. at 23.

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1. Defendant's Prepetition Transfers to Andrea

Regarding prepetition transfers from Defendant to Andrea, Plaintiff's sole evidence in support of her contentions is bank statements from Defendant's prepetition checking account at Wells Fargo. Adv. Dkt. 56 at 50 (lns. 3–4); Adv. Dkt. 56–5 at 1–62. Those bank statements disclose the following transfers between Defendant and Andrea:

Table 2. ***Data from Defendant's Prepetition Bank Statements***

Date	Description	Deposits	Withdrawals
12/20/2023	Zelle From Andrea S Gonzalez	$100	
1/3/2023	Zelle to Gonzalez Andrea		$50
1/4/2023	Zelle to Gonzalez Andrea		$50
1/5/2023	Zelle to Gonzalez Andrea		$25
1/13/2023	Zelle to Gonzalez Andrea		$255
4/17/2023	Zelle From Andrea S Gonzalez	$191	
4/19/2023	Zelle From Andrea S Gonzalez	$12	
5/10/2023	Zelle From Andrea S Gonzalez	$300	
6/1/2023	Zelle to Gonzalez Andrea		$235
6/9/2023	Zelle to Gonzalez Andrea		$600
6/16/2023	Zelle to Gonzalez Andrea		$45
6/16/2023	Zelle to Gonzalez Andrea		$5
7/5/2023	Zelle to Gonzalez Andrea		$600
7/7/2023	Zelle to Gonzalez Andrea		$180
7/18/2023	Zelle From Andrea S Gonzalez	$80	
8/14/2023	Zelle From Andrea S Gonzalez	$164	
8/15/2023	Zelle From Andrea S Gonzalez	$100	
8/25/2023	Zelle to Gonzalez Andrea		$100
8/25/2023	Zelle to Gonzalez Andrea		$174
9/11/2023	Zelle to Gonzalez Andrea		$25
9/12/2023	Zelle to Gonzalez Andrea		$1,000
9/27/2023	Zelle to Gonzalez Andrea		$20
10/20/2023	Zelle to Gonzalez Andrea		$40
10/23/2023	Zelle From Andrea S Gonzalez	$40	
11/6/2023	Zelle to Gonzalez Andrea		$750
12/29/2023	Zelle to Gonzalez Andrea		$130
1/2/2024	Zelle to Gonzalez Andrea		$45
1/8/2024	Zelle to Gonzalez Andrea		$50
1/10/2024	Zelle to Gonzalez Andrea		$50
1/12/2024	Zelle From Andrea S Gonzalez	$25	
1/16/2024	Zelle From Andrea S Gonzalez	$164	
1/18/2024	Zelle to Gonzalez Andrea		$890
1/25/2024	Zelle to Gonzalez Andrea		$766
	TOTALS:	$1,176	$6,085

Defendant's schedules indicate that: (1) he owes the Department of Child Support Services ("DCSS") for arrearages on his domestic support obligations in the amount of $9,839, (2) DCSS deducts $201.04 from his paychecks each month on account of his domestic support obligations, and (3) he pays an additional $600 per month from his take home pay on account of his domestic support obligations. Dkt. 1 at 19, 25, 27. Defendant testifies that the $600 figure is an estimate based on the average of historical payments, and that he and Andrea "do not have an arrangement where [he] pay[s] her a flat monthly sum." Adv. Dkt. 62 at 16 (¶ 18). Instead, considering that the two are co-parenting their minor daughter, when Andrea would ask him for money, he gave her what he could afford. *Id.* Consistent with this testimony, Table 3 shows the net amount Defendant transferred to Andrea each month:

Table 3. ***Monthly Net Amount Defendant Transferred to Andrea***

Month	Net Amount
December 2022	($100)
January 2023	$380
April 2023	($203)
May 2023	($300)
June 2023	$885
July 2023	$700
August 2023	$10
September 2023	$1,045
October 2023	$0
November 2023	$750
December 2023	$130
January 2024	$1,612
Average:	$409
Average of months >0:	$689

In summary, Table 3 above indicates that, after accounting for transfers from Andrea to Defendant, Defendant transferred to Andrea an average of $409 for each month. Isolating for months where the net amount Defendant's transfers were greater than $0, Defendant transferred to Andrea an average of $689 each month. Nothing about this evidence suggests that these payments were made with the intent to hinder, delay or defraud any creditor. Instead, they tend to corroborate Defendant's testimony that he frequently, although inconsistently, transferred to Andrea an estimated $600 per month to satisfy his domestic support obligations to her. Considering that Plaintiff's sole evidence offered in support of her claim under § 727(a)(2)(A) corroborates Defendant's testimony, no genuine issue of

material fact exists to preclude summary judgment on this claim. Accordingly, on Plaintiff's claim under § 727(a)(2)(A) regarding Defendant's transfers to Andrea, the Court will deny Plaintiff's Motion.

2. Defendant's Payments on Account of a 2020 Volkswagen Jetta

In the Complaint, Plaintiff's claim for relief under § 727(a)(2)(A) makes no mention of any purported transfers or concealment of Defendant's vehicles prepetition; it solely concerns Defendant's payments to Andrea on account of his domestic support obligations. Nevertheless, the Court notes the following evidence in the record regarding these allegations. Defendant testifies that in December 2023, after his prior "car was totaled" in a car accident, he purchased a 2020 Volkswagen Jetta. Adv. Dkt. 62 at 15 (¶ 9). Due to his poor credit history, Defendant "asked [Andrea] to co-sign" the vehicle loan so that he could purchase the car. *Id*. Defendant stated that the Jetta "is [his] car." *Id*. Defendant's schedule A/B discloses that he and another person have an ownership interest in the Jetta. Dkt. 1 at 11. Defendant's schedule D corroborates that the Jetta was purchased in December 2023 and indicates that the vehicle was purchased via a financing agreement with Volkswagen Credit, Inc. *Id.* at 18l. Defendant's schedule H discloses that Andrea is a codebtor for the debt owed to Volkswagen Credit, Inc. Dkt. 38 at 2. Regarding the insurance policy, Defendant states that he "include[s] Andrea and [his] son on the … policy because [he] get[s] a better rate when there are multiple people on the policy." Dkt. 62 at 15 (¶ 10).

The evidence in the record does not establish that Defendant had the intent to hinder, delay or defraud any creditor by purchasing the Jetta. Defendant's testimony regarding his subjective intent in purchasing the Jetta to replace his totaled car is uncontroverted. Accordingly, no genuine issue of material fact exists to preclude summary judgment on this claim. The Court will deny Plaintiff's Motion on this claim. Further, the Court will grant summary judgment in favor of Defendant on this claim. Although Defendant's Motion did not seek summary judgment on this claim, Plaintiff has had a full and fair opportunity to ventilate the issues involved. *See* Fed. R. Civ. P. 56(f); *Gospel Missions*, 328 F.3d at 553.

F. Denial of Discharge Under Section 727(a)(4)(A)

Section 727(a)(4)(A) provides that the court shall not grant a debtor a discharge if "the debtor knowingly and fraudulently, in or in connection with the case—made a false oath or account." 11 U.S.C.

§ 727(a)(4)(A). "The fundamental purpose of § 727(a)(4)(A) is to insure that the trustee and creditors have accurate information without having to conduct costly investigations." *Retz v. Samson (In re Retz)*, 606 F.3d 1189, 1196 (9th Cir. 2010).

To prevail on a claim under § 727(a)(4)(A), the plaintiff must show that: (1) the debtor made a false oath in connection with the case; (2) the oath related to a material fact; (3) the oath was made knowingly; and (4) the oath was made fraudulently. *Id*. at 1197.

"Intent is usually proven by circumstantial evidence or by inferences drawn from the debtor's conduct." *Id*. at 1199. "[M]ultiple omissions of material assets or information may well support an inference of fraud if the nature of the assets or transactions suggests that the debtor was aware of them at the time of preparing the schedules and that there was something about the assets or transactions which, because of their size or nature, a debtor might want to conceal." *Garcia v. Coombs (In re Coombs)*, 193 B.R. 557, 565–66 (Bankr. S.D. Cal. 1996). "'[T]he cumulative effect of false statements may, when taken together, evidence a reckless disregard for the truth sufficient to support a finding of fraudulent intent' under § 727(a)(4)." *Stamat v. Neary*, 635 F.3d 974, 982 (7th Cir. 2011) (quoting *Cadle Co. v. Duncan (In re Duncan)*, 562 F.3d 688, 695 (5th Cir. 2009)).

In the Complaint, Plaintiff alleges that Defendant made the following false oaths: (1) in his petition, Defendant incorrectly indicated that his debts were primarily consumer debts, because Plaintiff contends the Debt is not a "consumer debt" as that term is defined by the Bankruptcy Code; (2) in his schedule E/F, Defendant disclosed a nonpriority unsecured claim of Hyundai Motor Finance in the amount of $9,076 arising out of a "repossessed automobile," which Plaintiff contends is time-barred and should not have been listed; and (3) in his schedule J, Defendant disclosed monthly expenses for medical and dental care, rent, telecommunications and entertainment in amounts that Plaintiff considers "excessive," "unjustified luxuries," and "deceitful." Dkt. 1 at 8–10. The Court will discuss each issue in turn.

First, the Bankruptcy Code defines the term "consumer debt" to mean a "debt incurred by an individual primarily for a personal, family, or household expense." 11 U.S.C. § 101(8). That definition is contrasted with a business debt, which is a debt incurred to obtain money for a business or investment or through the operation of the business or investment. The parties agree that the Debt was not incurred to

obtain money for a business or investment. Defendant testifies that he signed the Lease "at the request of [his] mother" and "as a favor to her and [his] father and brother." Adv. Dkt. 62 at 14 (¶ 3). The Debt was incurred when the Tenants breached the Lease by failing to vacate the Property after Plaintiff commenced the UD Action. Stated differently, the Debt was incurred primarily for a family expense, i.e., the cost of rent for his parents and brother. The Debt therefore qualifies as a consumer debt under § 101(8). Accordingly, the Court is not persuaded that Defendant's petition misrepresented the nature of his debts.

Second, whether or not the claim in favor of Hyundai Motor Finance is time-barred is irrelevant. Schedule E/F instructs debtors to "be as complete … as possible" in disclosing creditors with unsecured claims. The Bankruptcy Code "utilizes [the] 'broadest possible definition' of claim to ensure that 'all legal obligations of the debtor, *no matter how remote or contingent*, will be able to be dealt with in the bankruptcy case.'" *In re SNTL Corp.,* 571 F.3d 826, 838 (9th Cir. 2009) (emphasis in original) (citing *Cal. Dep't of Health Servs. v. Jensen (In re Jensen)*, 995 F.2d 925, 929–30 (9th Cir. 1993)). This broad definition "is critical in effectuating the bankruptcy code's policy of giving the debtor a 'fresh start.'" *Jensen*, 995 F.2d at 930. Normally in the Ninth Circuit, the test for determining when a claim arises is the "fair contemplation" test. *See In re Gillespie*, 516 B.R. 586, 591 (9th Cir. B.A.P. 2014); *see also In re Castellino Villas*, 836 F.3d at 1034 ("A claim arises when a claimant can fairly or reasonably contemplate the claim's existence even if a cause of action has not accrued under nonbankruptcy law."). What matters is whether Defendant fairly contemplated that Hyundai's claim existed—no matter how remote it may be. The Hyundai claim clearly meets that low threshold. In any event, Plaintiff does not allege that Defendant had the requisite knowledge that Hyundai's claim was time-barred.

Third, the remaining alleged false oaths regarding Defendant's monthly expenses do not relate to any material fact. The record reflects that the chapter 7 trustee filed a report of no distribution in which she stated that, after having "made a diligent inquiry into the financial affairs of Defendant," "there is no property available for distribution from the estate over and above that exempted by law." Dkt. 8. Regardless of Defendant's projected expenses, the chapter 7 trustee deemed his case to be a no-asset case. Moreover, Plaintiff has neither demonstrated nor allged that Defendant listed his expenses with any fraudulent intent.

Accordingly, on Plaintiff's claim under § 727(a)(4)(A), the Court will deny Plaintiff's Motion. Further, the Court will grant summary judgment in favor of Defendant on this claim. Although Defendant's Motion did not seek summary judgment on this claim, Plaintiff has had a full and fair opportunity to ventilate the issues involved. *See* Fed. R. Civ. P. 56(f); *Gospel Missions*, 328 F.3d at 553.

G. Denial of Discharge Under Section 727(a)(7)

Section 727(a)(7) provides that the court shall not grant a debtor a discharge if the debtor: (1) on or within one year before the date of the filing of the petition, or at any time during the debtor's own case, (2) commits any of the objectionable acts specified in subsection 727(a)(2)–(6), (3) in connection with another case concerning an insider. The Bankruptcy Code defines the term "insider" to include, if the debtor is an individual, a relative of the debtor. 11 U.S.C. § 101(31)(A). The Bankruptcy Code also defines the term "relative" to mean an "individual related by affinity or consanguinity within the third degree as determined by the common law…." 11 U.S.C. § 101(45).

"Section 727(a)(7) extends the basis for denial of discharge to the debtor's misconduct in a substantially contemporaneous related bankruptcy case." 6 Collier on Bankruptcy ¶ 727.10 (Richard Levin & Henry J. Sommer eds., 16th ed. 2025). Thus, if the debtor engages in objectionable conduct in a case involving a relative, the debtor may be denied a discharge in the debtor's own case. *Id.* This provision encourages the cooperation of individuals in related bankruptcy cases. *Id.*

In the Complaint, Plaintiff alleges that Defendant "made fraudulent transfers to an insider with the intention to delay [Plaintiff]'s collection" of the Debt. Plaintiff's Motion clarifies that this allegation concerns the postpetition payments made by Defendant to Andrea on account of his domestic support obligations, which Plaintiff contends amount to transfers made with the intent to hinder, delay, or defraud Plaintiff under § 727(a)(2)(A). Adv. Dkt. 56 at 26–27. As discussed above, the Court finds that those payments do not satisfy the standard for revocation of discharge under § 727(a)(2)(A). *See* Section IV.E. Moreover, Plaintiff fails to demonstrate that these transfers are fraudulent in connection with another bankruptcy case concerning an insider of Defendant. Accordingly, on Plaintiff's claim under § 727(a)(7), the Court will deny Plaintiff's Motion. Further, the Court will grant summary judgment in favor of Defendant on this claim. Although Defendant's Motion did not seek summary

judgment on this claim, Plaintiff has had a full and fair opportunity to ventilate the issues involved. *See* Fed. R. Civ. P. 56(f); *Gospel Missions*, 328 F.3d at 553.

V. CONCLUSION

For the foregoing reasons, the Court will grant summary judgment in favor of Defendant on all of Plaintiff's remaining claims under §§ 523(a)(2)(A), 523(a)(2)(B), 523(a)(6), 727(a)(2)(A), 727(a)(4)(A), and 727(a)(7). Within seven days of the entry of this memorandum of decision, Defendant must lodge, and file and serve on Plaintiff a notice of lodgment concerning: (1) a proposed order granting Defendant's Motion, (2) a proposed order denying Plaintiff's Motion, and (3) a proposed judgment.

Date: February 2, 2026

Martin R. Barash

Martin R Barash
United States Bankruptcy Judge