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

In re:

GERARDO ERNESTO GONZALEZ, JR.,

Debtor.

ANGELA ARNONE,

Plaintiff,

v.

GERARDO ERNESTO GONZALEZ, JR.,

Defendant.

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**

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1 I. INTRODUCTION

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

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

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

1 On August 11, 2014, Defendant completed and signed a form entitled “Application to Rent or
2 Lease” concerning the Property. Adv. Dkt. 59 at 7–8.² Under “all other proposed occupants,” Defendant
3 listed his father, mother and brother. *Id.* at 7. Regarding his employment and income source, Defendant
4 disclosed that he earned \$420 in gross income per week, and \$368 in net income per week. *Id.* In
5 response to the question “were you ever convicted for any crime(s),” Defendant did not circle a
6 response. *Id.* at 8.

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

12 **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

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

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28 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).

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

6 23. LEGAL FEES: In the event action is brought by LANDLORD to enforce any terms of
7 this agreement or to recover possession of the premises, LANDLORD shall recover from
8 TENANT any and all attorney fees, court fees, and execution fees. LANDLORD shall
9 recover from TENANT any and all attorney fees, court fees, and execution fees in the event
10 an unwarranted action is brought by TENANT.

11 It is acknowledged, between the parties, that jury trials significantly increase the costs of
12 any litigation between the parties. On this basis, all parties waive their rights to have any
13 matter settled by jury trial.

14 Adv. Dkt. 59–1 at 10.

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

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

22 Adv. Dkt. 62 at 14 (¶ 3).

23 **D. The Unlawful Detainer Action**

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

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

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

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

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

20 **E. The Bankruptcy Case**

21 After prevailing in the UD Action, Plaintiff began garnishing Defendant’s wages. Adv. Dkt. 51 at
22 16 (¶ 5). Defendant states that he “was having a very difficult time surviving financially on what [he]
23 was making[,] much less after [Plaintiff] taking the portion she was taking” from his paychecks. *Id.*

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

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28 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.

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

8 **F. The Adversary Proceeding**

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

- 12 (1) a determination of nondischargeability of the Debt for:
- 13 (a) false representations pursuant to 11 U.S.C. § 523(a)(2)(A),⁶
- 14 (b) false written representations pursuant to § 523(a)(2)(B),
- 15 (c) willful and malicious injury pursuant to § 523(a)(6), and
- 16 (d) securities law violations under § 523(a)(19);
- 17 (2) avoidance of unspecified transfers purportedly made by Defendant pursuant to §§ 547(b),
- 18 548(a)(1)(A) and 548(a)(1)(B); and
- 19 (3) denial of Defendant’s discharge for:
- 20 (a) transfer or concealment of property of Defendant within one year before the
- 21 petition date pursuant to § 727(a)(2)(A),
- 22 (b) false oath or account pursuant to § 727(a)(4)(A), and
- 23 (c) actions within the meaning of § 727(a)(2)(A) that purportedly concern an insider
- 24 pursuant to § 727(a)(7).

25 *Id.*

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28 ⁶ Unless otherwise stated herein, all statutory references are to sections of title 11 of the U.S. Code (the “Bankruptcy Code”).

1 On February 26, 2025, the Court held a status conference in this adversary proceeding. At the
2 status conference, the Court discussed with the parties their intention to resolve this adversary
3 proceeding by filing motions for summary judgment. On March 27, 2025, Defendant and Plaintiff each
4 filed a motion for partial summary judgment. Adv. Dkt. 51 (“Defendant’s Motion”); Adv. Dkt. 56
5 (“Plaintiff’s Motion,” and together with Defendant’s Motion, the “Motions”); *see also* Adv. Dkts. 58–65,
6 67 and 69.

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

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

17 III. JURISDICTION, ADJUDICATIVE AUTHORITY & VENUE

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

1 IV. DISCUSSION

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

3 Summary judgment should be granted “if the pleadings, depositions, answers to interrogatories,
4 and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any
5 material fact and that the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P.
6 56(c); Fed. R. Bankr. P. 7056 (incorporating Fed. R. Civ. P. 56).

7 The moving party has the burden of establishing the absence of a genuine issue of material fact.
8 *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). If the moving party shows the absence of a genuine
9 issue of material fact, the nonmoving party must go beyond the pleadings and identify facts that show a
10 genuine issue for trial. *Id.* at 324. In determining whether a genuine issue of material fact exists, “the
11 evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor.”
12 *Tolan v. Cotton*, 572 U.S. 650, 651 (2014) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255
13 (1986)). To establish a genuine issue, the non-moving party “must do more than simply show that there
14 is some metaphysical doubt as to the material facts.” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*,
15 475 U.S. 574, 586 (1986); *see also Anderson*, 477 U.S. at 252 (“The mere existence of a scintilla of
16 evidence in support of the [non-moving party]’s position will be insufficient.”). Rather, the nonmoving
17 party must provide “evidence of such a caliber that ‘a fair-minded jury could return a verdict for the
18 [nonmoving party] on the evidence presented.’” *United States v. Wilson*, 881 F.2d 596, 601 (9th Cir.
19 1989) (quoting *Anderson*, 477 U.S. at 252).

20 The Court may also consider summary judgment independent of a party’s motion. Fed. R. Civ. P.
21 56(f) (“After giving notice and a reasonable time to respond, the court may: (1) grant summary
22 judgment for a nonmovant; (2) grant the motion on grounds not raised by a party; or (3) consider
23 summary judgment on its own after identifying for the parties material facts that may not be genuinely
24 in dispute.”); *Gospel Missions of Am. v. City of Los Angeles*, 328 F.3d 548, 553 (9th Cir. 2003) (“Even
25 when there has been no cross-motion for summary judgment, a district court may enter summary
26 judgment sua sponte against a moving party if the losing party has had a ‘full and fair opportunity to
27 ventilate the issues involved in the matter.’” (quoting *Cool Fuel, Inc. v. Connett*, 685 F.2d 309, 312 (9th
28 Cir. 1982)).

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

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

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

11 (1) misrepresentation, fraudulent omission or deceptive conduct...;

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

13 (3) an intent to deceive;

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

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

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

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

23 “Under common law, a false representation can be established by an omission when there is a
24 duty to disclose.” *Citibank (S.D.), N.A. v. Eashai (In re Eashai)*, 87 F.3d 1082, 1082 (9th Cir. 1996).
25 Courts “look to the Restatement (Second) of Torts for guidance in determining what constitutes a
26 fraudulent nondisclosure for purposes of § 523(a)(2)(A).” *Barnes v. Belice (In re Belice)*, 461 B.R. 564,
27 580 n.10 (B.A.P. 9th Cir. 2011). The Restatement provides, in relevant part:
28

1 (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,

2 (a) matters known to him that the other is entitled to know because of a fiduciary or
3 other similar relation of trust and confidence between them; and

4 (b) matters known to him that he knows to be necessary to prevent his partial or
ambiguous statement of the facts from being misleading....

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

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

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

19 The general rule is that a person may justifiably rely on a representation even if the falsity
20 of the representation could have been ascertained upon investigation. In other words,
“negligence in failing to discover an intentional misrepresentation is no defense.”
21 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
22 of a representation, “a person cannot purport to rely on preposterous representations or
close his eyes ‘to avoid discovery of the truth.’”

23 *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).

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

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

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

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

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

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

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

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

17 Notwithstanding these factual disputes, Plaintiff has not established any reliance on Defendant’s
18 allegedly fraudulent omissions. The record is clear that Plaintiff “looked through” the rental application
19 and did not inquire further about Defendant’s background, criminal or otherwise. Instead, her primary
20 concern at that time was whether the Tenants earned enough income collectively to afford the \$2,000
21 monthly rent. Moreover, Plaintiff stated that she “went off of [her broker’s] recommendation” in
22 deciding to rent the Property to the Tenants. In light of the uncontroverted evidence that Plaintiff did not
23 rely on Defendant’s purportedly fraudulent omissions in deciding to enter into the Lease, the Court will
24 deny Plaintiff’s Motion and will grant Defendant’s Motion on Plaintiff’s claim under § 523(a)(2)(A)
25 concerning the nondisclosure of Defendant’s marital status and criminal history.
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1 **3. Defendant’s Alleged Misrepresentation on His Rental Application That His**
2 **Income Was Higher Than It Was**

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

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

17 Plaintiff complains that Defendant made unspecified misrepresentations in the verified answer
18 filed in the UD Action, which she contends amount to fraud on the State Court. *See* Adv. Dkt. 58 at 13
19 (alleging fraud on the court pursuant to Fed. R. Civ. P. 60(b)(3)). Plaintiff also alleges that the Tenants
20 committed fraud on the State Court by hiring a non-attorney to represent them in the UD Action. *Id.* at
21 13–14. The problem is that there is no private right of action based on any of these alleged harms.

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

25 Under California law, there is no private right of action for “fraud upon the court.” *See*
26 *Whitty v. First Nationwide Mortg. Corp.*, 2007 WL 628033, at *9–10, 2007 U.S. Dist.
27 LEXIS 12988, at *29–*30 (S.D. Cal. February 26, 2007) (citing *Cedars–Sinai Medical*
28 *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

1 Cal.Rptr.2d 248, 954 P.2d 511 (citing *Taylor v. Bidwell*, 65 Cal. 489, 4 P. 491 (1884)).
2 Relying on *Taylor*, one decision of the California Court of Appeal later held that there can
3 be no tort action for the concealment or withholding of evidence. *Agnew v. Parks*, 172
4 Cal.App.2d 756, 756–57, 343 P.2d 118 (1959).

5 Other Court of Appeal decisions have rejected attempts, under a variety of legal theories,
6 to seek damages for the presentation of false evidence. See *Mercury Casualty Co. v.*
7 *Superior Court*, 179 Cal.App.3d 1027, 1034–35, 225 Cal.Rptr. 100 (1986) (rejecting fraud
8 action based on allegations that insurer of opposing party in underlying action had
9 presented false testimony in that action); *Rios v. Allstate Ins. Co.*, 68 Cal.App.3d 811, 817–
10 19, 137 Cal.Rptr. 441 (1977) (rejecting insured’s action for bad faith alleging that, in
11 arbitration between insurer and insured, insurer had presented false evidence and testimony
12 in the action); *Kachig v. Boothe*, 22 Cal.App.3d 626, 640–41, 99 Cal.Rptr. 393 (1971)
13 (rejecting action for fraud and intentional infliction of emotional distress arising out of
14 prior judgment that rested on false testimony and false documentary evidence).

15 Likewise, the court has not located any case recognizing a federal right of action for
16 damages resulting from a fraud on the court, perjury or the presentation of false evidence.
17 See *Coultas v. Payne*, 2016 U.S. Dist. LEXIS 22215 (D. Or. 2016); *Whitty*, 2007 WL
18 628033, at *12–13, 2007 U.S. Dist. LEXIS 12988, at *38–*39; see also *Levy v. San Joaquin*
19 *County Dep’t of Child Support Servs.*, 2013 WL 1891402, at *7, 2013 U.S. Dist. LEXIS
20 64526, at *19–*20 (N.D. Cal. 2013) (holding that although perjury is a crime there is no
21 private right of action for perjury); *Najarro v. Wollman*, No. C12–01925 PJH, 2012 WL
22 1945502, 2012 U.S. Dist. LEXIS 75032 (N.D. Cal. May 30, 2012) (the claims of
23 “obstruction of laws,” “obstruction of justice,” and “perjury” dismissed because there is no
24 private right of action on any of these claims). Under federal law, fraud on the court is an
25 equitable doctrine justifying the setting aside of a federal judgment. See *United States v.*
26 *Stonehill*, 660 F.3d 415, 443–444 (9th Cir. 2011) (citing *Chambers v. NASCO, Inc.*, 501
27 U.S. 32, 44, 111 S.Ct. 2123, 115 L.Ed.2d 27 (1991)); see also Fed. R. Civ. P. 60(b)(3)
28 (judgment may be set aside based on fraud on the court, misrepresentation or other
misconduct by an opposing party).

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

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

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

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

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

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

12 The debtor in *Bartenwerfer* was an individual who formed a legal partnership with her business
13 partner⁷ to remodel a home and sell it for a profit. 598 U.S. at 72–73. The other business partner took
14 charge of the project, while the debtor was largely uninvolved. *Id.* The business partners ultimately sold
15 the home to a creditor without disclosing several defects that a state court later determined were material
16 and that the business partners had a duty to disclose to the debtor. *Id.* The business partners filed
17 bankruptcy and, on the creditor’s claim against the debtor under § 523(a)(2)(A), the bankruptcy court
18 determined that the debtor could not be liable for her business partner’s fraud. *Id.* at 73.

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

25 _____
26 ⁷ To be clear, the business partner in *Bartenwerfer* was the boyfriend—and later, husband—of the defendant. *Id.* at 72.
27 However, the Supreme Court made clear that the key fact was their business partnership, not their romantic or marital
28 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).

1 (1885). *Bartenwerfer*, 598 U.S. at 79. In *Del Rosario*, the Bankruptcy Appellate Panel of the Ninth
2 Circuit (the “BAP”) clarified the *Bartenwerfer* decision’s limited reliance on *Strang*:

3 At the time of *Strang*, the operative bankruptcy statute excepted from discharge any “debt
4 created by the fraud or embezzlement of the bankrupt.” Despite the inclusion of the phrase
5 “of the bankrupt” in the 1867 statute, *Strang* held that the nondischargeability of
6 partnership debt arising from one partner’s fraud extended to other partners innocent of the
7 fraud. To reach this conclusion, *Strang* relied on common law partnership and agency
8 principles governing **liability** to impute the fraud of one partner to all partners for purposes
9 of **nondischargeability**. It further reasoned that the absence of wrongful conduct or a
10 culpable state of mind by the debtors was irrelevant because “the partners, who were not
11 themselves guilty of wrong, received and appropriated the fruits of the fraudulent conduct
12 of their associate in business.”

13 *Bartenwerfer* then turned its attention to the revision of our country’s bankruptcy laws
14 following *Strang*—subsumed within the Bankruptcy Act of 1898 (“1898 Act”), Ch. 541,
15 30 Stat. 544 (repealed 1978). The 1898 Act omitted the phrase “of the bankrupt” from the
16 new exception to discharge statute. As stated in the 1898 dischargeability statute, “[a]
17 discharge in bankruptcy shall release a bankrupt from all of his provable debts, except such
18 as ... are judgments in actions for frauds, or obtaining property by false pretenses or false
19 representations, or for willful and malicious injuries to the person or property of another.”
20 According to *Bartenwerfer*, Congress’ deletion of the phrase “of the bankrupt” from the
21 1898 Act’s exception to discharge statute “unmistakabl[y]” was meant to embrace *Strang*’s
22 holding that an innocent partner’s liability for partnership debts arising from another
23 partner’s fraud should be nondischargeable in bankruptcy.

24 The final step in *Bartenwerfer*’s analysis simply observed that our modern Bankruptcy
25 Code essentially “reenacted the discharge exception for fraud without change”—at least
26 with respect to the continuing omission from § 523(a)(2)(A) of any reference to “by the
27 debtor.” According to *Bartenwerfer*, this continuing omission enabled it to conclude that
28 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.

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

21 *Strang* treated nondischargeability and liability as if they were the same thing—or as if the
22 common law’s treatment of vicarious liability necessarily should govern the issue of
23 nondischargeability in bankruptcy. Though *Bartenwerfer* declined to opine whether *Strang*
24 was correctly decided, *id.* at 80 n.3, 128 S.Ct. 579, modern conceptions of statutory
25 construction and the scope and nature of the Bankruptcy Code’s nondischargeability
26 provisions would appear to prevent *Strang* from being decided today the way it was
27 decided in 1885. Applying these modern conceptions, the doctrinal underpinnings of
28 *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.

28 *Del Rosario*, 668 B.R. at 625.

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

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

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

22 Section 523(a)(2)(B) provides that a chapter 7 discharge does not discharge an individual debtor
23 from any debt “for money, property, services, or an extension, renewal, or refinancing of credit, to the
24 extent obtained by ... use of a statement in writing:”

- 25 (i) that is materially false;
26 (ii) respecting the debtor's or an insider's financial condition;
27 (iii) on which the creditor to whom the debtor is liable for such money, property, services,
28 or credit reasonably relied; and
(iv) that the debtor caused to be made or published with intent to deceive....

1 11 U.S.C. § 523(a)(2)(B). The Ninth Circuit Court of Appeals has “reworded these requirements as
2 follows:”

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

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

12 “[A] statement is ‘respecting’ a debtor’s financial condition if it has a direct relation to or impact
13 on the debtor’s overall financial status.” *Lamar, Archer & Cofrin, LLP v. Appling*, 584 U.S. 709, 720
14 (2018). An omission is not a “statement” as that term is used in § 523(a)(2)(B). *Manion*, 667 B.R. 473
15 (citing *Oregon v. Mcharo (In re Mcharo)*, 611 B.R. 657, 662 (B.A.P. 9th Cir. 2020)); *Howell v. L. Offs. of*
16 *Andrew S Bisom (In re Howell)*, No. 21–60031, 2023 WL 5925886, at *1 (9th Cir. Sept. 12, 2023)
17 (holding that an “omission” is not a “statement respecting the debtor’s ... financial condition” as that
18 phrase is used in § 523(a)(2)).

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

23 Regarding the former allegation, as discussed above, Plaintiff did not reasonably rely on
24 Defendant’s representations in his rental application concerning his income; the falsity was obvious to
25 her because the pay stubs he submitted with his rental application indicated his true income. *See* Section
26 IV.B.3. As for the latter allegation, Defendant’s alleged representation that he would reside at the
27 Property is not a statement “respecting [Defendant’s] financial condition” within the meaning of
28 § 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.

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

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

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

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

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

1 debtor]’s conduct was tortious, we look to California state law.”).

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

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

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

21 “[T]wo elements comprise an objection to discharge under § 727(a)(2)(A): 1) a disposition of
22 property, such as transfer or concealment, and 2) a subjective intent on the debtor’s part to hinder, delay
23 or defraud a creditor.” *Hughes v. Lawson (In re Lawson)*, 122 F.3d 1237, 1240 (9th Cir. 1997). The
24 transfer must occur within one year prepetition. *Id.* Lack of injury to creditors is irrelevant under
25 § 727(a)(2). *Bernard v. Sheaffer (In re Bernard)*, 96 F.3d 1279, 1281–82 (9th Cir. 1996). “The standard
26 for denial of discharge under § 727(a)(2)(B) is the same as § 727(a)(2)(A), but the disposition must be of
27 estate property occurring after the petition date.” *Faith v. Miller (In re Miller)*, Adv. No. 9:13–ap–01133,
28 2015 WL 3750830, at *3 (Bankr. C.D. Cal. June 12, 2015).

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

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

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

10 **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

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

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

3 **2. Defendant’s Payments on Account of a 2020 Volkswagen Jetta**

4 In the Complaint, Plaintiff’s claim for relief under § 727(a)(2)(A) makes no mention of any
5 purported transfers or concealment of Defendant’s vehicles prepetition; it solely concerns Defendant’s
6 payments to Andrea on account of his domestic support obligations. Nevertheless, the Court notes the
7 following evidence in the record regarding these allegations. Defendant testifies that in December 2023,
8 after his prior “car was totaled” in a car accident, he purchased a 2020 Volkswagen Jetta. Adv. Dkt. 62 at
9 15 (¶ 9). Due to his poor credit history, Defendant “asked [Andrea] to co-sign” the vehicle loan so that
10 he could purchase the car. *Id.* Defendant stated that the Jetta “is [his] car.” *Id.* Defendant’s schedule A/B
11 discloses that he and another person have an ownership interest in the Jetta. Dkt. 1 at 11. Defendant’s
12 schedule D corroborates that the Jetta was purchased in December 2023 and indicates that the vehicle
13 was purchased via a financing agreement with Volkswagen Credit, Inc. *Id.* at 18l. Defendant’s schedule
14 H discloses that Andrea is a codebtor for the debt owed to Volkswagen Credit, Inc. Dkt. 38 at 2.
15 Regarding the insurance policy, Defendant states that he “include[s] Andrea and [his] son on the ...
16 policy because [he] get[s] a better rate when there are multiple people on the policy.” Dkt. 62 at 15
17 (¶ 10).

18 The evidence in the record does not establish that Defendant had the intent to hinder, delay or
19 defraud any creditor by purchasing the Jetta. Defendant’s testimony regarding his subjective intent in
20 purchasing the Jetta to replace his totaled car is uncontroverted. Accordingly, no genuine issue of
21 material fact exists to preclude summary judgment on this claim. The Court will deny Plaintiff’s Motion
22 on this claim. Further, the Court will grant summary judgment in favor of Defendant on this claim.
23 Although Defendant’s Motion did not seek summary judgment on this claim, Plaintiff has had a full and
24 fair opportunity to ventilate the issues involved. *See* Fed. R. Civ. P. 56(f); *Gospel Missions*, 328 F.3d at
25 553.

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

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

1 § 727(a)(4)(A). “The fundamental purpose of § 727(a)(4)(A) is to insure that the trustee and creditors
2 have accurate information without having to conduct costly investigations.” *Retz v. Samson (In re Retz)*,
3 606 F.3d 1189, 1196 (9th Cir. 2010).

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

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

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

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

1 obtain money for a business or investment. Defendant testifies that he signed the Lease “at the request of
2 [his] mother” and “as a favor to her and [his] father and brother.” Adv. Dkt. 62 at 14 (¶ 3). The Debt was
3 incurred when the Tenants breached the Lease by failing to vacate the Property after Plaintiff
4 commenced the UD Action. Stated differently, the Debt was incurred primarily for a family expense, i.e.,
5 the cost of rent for his parents and brother. The Debt therefore qualifies as a consumer debt under
6 § 101(8). Accordingly, the Court is not persuaded that Defendant’s petition misrepresented the nature of
7 his debts.

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

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

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

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

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

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

18 In the Complaint, Plaintiff alleges that Defendant “made fraudulent transfers to an insider with
19 the intention to delay [Plaintiff]’s collection” of the Debt. Plaintiff’s Motion clarifies that this allegation
20 concerns the postpetition payments made by Defendant to Andrea on account of his domestic support
21 obligations, which Plaintiff contends amount to transfers made with the intent to hinder, delay, or
22 defraud Plaintiff under § 727(a)(2)(A). Adv. Dkt. 56 at 26–27. As discussed above, the Court finds that
23 those payments do not satisfy the standard for revocation of discharge under § 727(a)(2)(A). *See*
24 Section IV.E. Moreover, Plaintiff fails to demonstrate that these transfers are fraudulent in connection
25 with another bankruptcy case concerning an insider of Defendant. Accordingly, on Plaintiff’s claim
26 under § 727(a)(7), the Court will deny Plaintiff’s Motion. Further, the Court will grant summary
27 judgment in favor of Defendant on this claim. Although Defendant’s Motion did not seek summary
28

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

3 **V. CONCLUSION**

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

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23 Date: February 2, 2026



Martin R Barash
United States Bankruptcy Judge