



UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA - SAN FERNANDO VALLEY DIVISION

In re:

Hashem Hosseini,

Debtor.

First Data Merchant Services, LLC,

Plaintiff,

v.

Hashem Hosseini,

Defendant.

Case No.: 1:24-bk-10273-MB

Chapter 7

Adv. No.: 1:24-ap-01026-MB

**MEMORANDUM OF DECISION RE:  
DEFENDANT'S MOTION FOR SUMMARY  
JUDGMENT**

**I. FACTUAL AND PROCEDURAL BACKGROUND**

First Data Merchant Services, LLC (“Plaintiff”), a Florida limited liability company, is a creditor of Hashem Hosseini (“Defendant”). Adv. Dkt. 19 at 1 (¶ 1); Adv. Dkt. 20 at 2 (¶ 1).

In March of 2016, Defendant filed documents with the California Secretary of State to incorporate Kourosch Rugs & Arts, Inc. (“KRA”). Adv. Dkt. 29-1 at 2 (¶ 2); Adv. Dkt. 35 at 4 (articles of incorporation), 6 (statement of information). Defendant listed KRA’s address as 21781 Ventura Blvd., Suite 241, Woodland Hills, CA 91364. *Id.* Defendant established KRA for retail business concerning hand-made Persian rugs and antiques or arts. Adv. Dkt. 29-1 at 2 (¶¶ 2–3); Adv. Dkt. 35 at 6. Defendant listed himself as the CEO, CFO, secretary, and sole director of KRA. Adv. Dkt. 35 at 6.

Defendant wanted KRA to be able to accept credit cards from customers. Adv. Dkt. 29-1 at 2 (¶ 4). To do so, on July 27, 2016, he submitted a “Merchant Processing Application” to Wells Fargo

1 Bank. *Id.*; Adv. Dkt. 29-2 at 2–7 (the “Application”).<sup>1</sup> It appears that the parties’ relationship was such  
2 that Plaintiff, through its business unit “First Data Global Leasing,” leased a Verifone VX520 credit card  
3 terminal to KRA. Adv. Dkt. 29-2 at 3; Adv. Dkt. 39 at 48 (purported terms of adherence for “Equipment  
4 Lease Agreement” between Plaintiff and Defendant). Plaintiff apparently accepted the Application and  
5 thereafter provided merchant processing services to KRA. As part of the parties’ agreement, Defendant  
6 entered into a written personal guaranty as to the debts of KRA to Plaintiff. Adv. Dkt. 19 at 3 (¶ 6); Adv.  
7 Dkt. 20 at 2 (¶ 6).

8 In March of 2022, Plaintiff obtained a judgment against Defendant in the Los Angeles Superior  
9 Court (the “Judgment”). *See* LASC Case No. 21STCV31370 (the “State Court Action”). Adv. Dkt. 19  
10 at 2 (¶ 3); Adv. Dkt. 20 at 2 (¶ 3). The Judgment was based on Defendant’s personal guaranty of KRA’s  
11 debts to Plaintiff. Adv. Dkt. 19 at 3 (¶ 6); Adv. Dkt. 20 at 2 (¶ 6).

12 **A. The KRA Bankruptcy Case**

13 In January of 2021, KRA filed a chapter 7 petition. *See* Case No. 1:21-bk-10054-MT (the “KRA  
14 Case”). Plaintiff was listed as a creditor to be given notice of the KRA Case. KRA Case Dkt. 33 at 6  
15 (amended schedule E/F). Plaintiff filed a proof of claim in the KRA Case, asserting an unsecured claim  
16 against KRA in the amount of \$243,251.16 for “[c]redit card processing services.” KRA Case Claim  
17 2-1. In November of 2021, the chapter 7 trustee in the KRA Case filed a report of no distribution, and  
18 the KRA Case was closed.

19 **B. Defendant’s Bankruptcy Case**

20 On February 23, 2024, Defendant filed a chapter 7 petition. *See* Case No. 1:24-bk-10273-MB  
21 (the “Case”). In his schedule E/F, Defendant disclosed a claim of Plaintiff in the amount of \$210,000  
22 arising out of the State Court Action. Case Dkt. 1 at 25 (¶ 4.9). In his schedule I, Defendant indicated  
23 he was not employed, and that his wife was self-employed as the owner of KRG. *Id.* at 35.

24 On March 29, 2024, the chapter 7 trustee conducted the meeting of creditors and thereafter filed  
25 a report of no distribution. Defendant received his chapter 7 discharge on May 29, 2024. Case Dkt. 11.  
26 The Case has been closed ever since. Case Dkt. 12.

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28 <sup>1</sup> The record does not contain a complete copy of the Agreement. Defendant’s copy is not countersigned by Plaintiff or Wells  
Fargo Bank, and is missing the “Program Terms and Conditions [version IPS1904(ia)] consisting of 52 pages.” *See* Adv. Dkt.  
29-2 at 7. Plaintiff offers only a purported copy of Program Terms and Conditions. *See* Adv. Dkt. 39 at 6–57.

1           **C.     The Adversary Proceeding**

2           On September 6, 2024, Plaintiff filed a first amended complaint against Defendant, which is the  
3 operative complaint this adversary proceeding. Adv. Dkt. 19 (the “Complaint”). In the Complaint,  
4 Plaintiff seeks a determination of nondischargeability of the debt arising from the Judgment pursuant to  
5 11 U.S.C. §§ 523(a)(2)(A) and (a)(4).<sup>2</sup> *Id.* The Complaint does not specify the basis on which Plaintiff  
6 seeks a determination of nondischargeability under § 523(a)(4)—fraud or defalcation while acting in a  
7 fiduciary capacity, embezzlement, or larceny. *See id.* It refers only to “false and fraudulent statements  
8 of and/or intentional actions and failures to act of Defendant” as the basis for nondischargeability. *Id.* at  
9 6 (¶ 16). On October 4, 2024, Defendant filed an answer to the Complaint. Adv. Dkt. 20.

10           On April 16, 2025, the Court held a status conference in the adversary proceeding. Plaintiff had  
11 not filed the requisite status report in advance of the status conference. Plaintiff did not appear at the  
12 status conference, only Defendant did. Thereafter, the Court issued an “Order to Show Cause Re  
13 Dismissal of Adversary Proceeding Based on Plaintiff’s Failure to Appear and Failure to Prosecute.”  
14 Adv. Dkt. 26 (the “OSC”). On June 30, 2025, the Court held a hearing on the OSC, at which Ms. Roza  
15 appeared and accepted responsibility for Plaintiff’s failures. The Court discharged the OSC but declined  
16 to dismiss the adversary proceeding. Adv. Dkt. 45. Instead, the Court issued a sanction against Ms.  
17 Roza in the amount of \$150 for her noncompliance with the Court’s orders. *Id.* That sanction has been  
18 paid. Adv. Dkt. 47.

19           **D.     The Motion**

20           On April 25, 2025, Defendant filed a motion for summary judgment, supported by declarations  
21 of Defendant, Defendant’s wife and Defendant’s counsel. Adv. Dkt. 29 (the “Motion”); *see also* Adv.  
22 Dkt. 35 (Defendant’s request for judicial notice). On June 9, 2025, Plaintiff filed an opposition to the  
23 Motion, together with a declaration of Plaintiff’s counsel. Adv. Dkts. 41 (opposition), 39 (declaration).  
24 On June 16, 2025, Defendant filed a reply to the opposition and evidentiary objections to the declaration  
25 of Plaintiff’s counsel. Adv. Dkts. 43 (reply), 44 (evidentiary objections).

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<sup>2</sup> Unless otherwise stated herein, all statutory references are to sections of title 11 of the U.S. Code (the “Bankruptcy Code”).

1 On June 30, 2025, the Court held a hearing on the Motion. Marta Roza of Herzlich, Blum &  
2 Roza, LLP appeared on behalf of the Plaintiff. Sanaz Sarah Bereliani of Bereliani Law Firm, PC,  
3 appeared on behalf of Defendant. At the hearing on the Motion, Ms. Roza argued that an “implied  
4 fiduciary duty” existed to support its claim under § 523(a)(4) based on Defendant agreeing to indemnify  
5 Plaintiff. Even so, Ms. Roza represented that Plaintiff was “stand[ing] down on” its § 523(a)(4) claim  
6 and instead sought a determination of nondischargeability solely on its § 523(a)(2)(A) claim. As set  
7 forth on the record, the Court deemed Ms. Roza’s statement to constitute withdrawal of Plaintiff’s  
8 § 523(a)(4) claim. As set forth herein, in the alternative to withdrawal, the Court will deny that claim on  
9 the merits.

10 Having considered the parties’ papers filed in support of and in opposition to the Motion, oral  
11 arguments, as well as other pleadings and papers filed in this adversary proceeding and the Case, the  
12 Court now finds and concludes as follows.

## 13 II. JURISDICTION, ADJUDICATIVE AUTHORITY & VENUE

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

## 21 III. DISCUSSION

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

23 Summary judgment should be granted “if the pleadings, depositions, answers to interrogatories,  
24 and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any  
25 material fact and that the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P.  
26 56(c); Fed. R. Bankr. P. 7056 (incorporating Fed. R. Civ. P. 56).

27 “A moving party without the ultimate burden of persuasion at trial—usually, but not always, a  
28 defendant—has both the initial burden of production and the ultimate burden of persuasion on a motion

1 for summary judgment.” *Nissan Fire & Marine Ins. Co. v. Fritz Companies, Inc.*, 210 F.3d 1099, 1102  
2 (9th Cir. 2000). The moving party may discharge its initial burden by “show[ing] that the nonmoving  
3 party does not have enough evidence of an essential element to carry its ultimate burden of persuasion at  
4 trial.” *Id.* But, “to carry its ultimate burden of persuasion on the motion, the moving party must  
5 persuade the court that there is no genuine issue of material fact.” *Id.* Where “a moving party carries its  
6 burden of production, the nonmoving party must produce evidence to support its claim....” *Id.* at 1103.

7 In determining whether a genuine issue of material fact exists, “the evidence of the nonmovant  
8 is to be believed, and all justifiable inferences are to be drawn in his favor.” *Tolan v. Cotton*, 572 U.S.  
9 650, 651 (2014) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986)). To establish a  
10 genuine issue, the nonmoving party “must do more than simply show that there is some metaphysical  
11 doubt as to the material facts.” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586  
12 (1986); *see also Anderson*, 477 U.S. at 252 (“The mere existence of a scintilla of evidence in support of  
13 the [non–moving party]’s position will be insufficient.”). Rather, the nonmoving party must provide  
14 “evidence of such a caliber that ‘a fair-minded jury could return a verdict for the [nonmoving party] on  
15 the evidence presented.” *United States v. Wilson*, 881 F.2d 596, 601 (9th Cir. 1989) (quoting *Anderson*,  
16 477 U.S. at 252). In asserting that a fact is genuinely dispute, the nonmoving party “must support the  
17 assertion by ... citing to particular parts of materials in the record, including depositions, documents,  
18 electronically stored information, affidavits or declarations, stipulations..., admissions, interrogatory  
19 answers, or other materials.” Fed. R. Civ. P. 56(c)(1)(A).

20 As the complaining creditor in this adversary proceeding, Plaintiff has the ultimate burden of  
21 persuasion at trial. *See Grogan v. Garner*, 498 U.S. 279, 291 (1991) (creditor must prove  
22 nondischargeability by a preponderance of the evidence). For Defendant to satisfy his initial burden of  
23 production on the Motion, he must show that Plaintiff does not have enough evidence of an essential  
24 element of the claim to carry Plaintiff’s ultimate burden of persuasion at trial. *See Nissan Fire &*  
25 *Marine*, 210 F.3d at 1102. Defendant’s Motion has made that prima facie case, so the burden shifts to  
26 Plaintiff to produce some evidence on every element under §§ 523(a)(2)(A) and (a)(4).

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  
16           conduct.

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

19           Representations made without an intent to perform satisfy the first three requirements of  
20 § 523(a)(2)(A). *Rubin v. West (In re Rubin)*, 875 F.2d 755, 759 (9th Cir. 1989). A promise also can be  
21 considered fraudulent when the promisor knew or should have known of his inability to perform.  
22 *McCrary v. Barrack (In re Barrack)*, 217 B.R. 598, 606 (B.A.P. 9th Cir. 1998). Because intent is  
23 difficult to prove through direct evidence, it “may be established by circumstantial evidence, or by  
24 inferences drawn from a course of conduct. Therefore, in determining whether the debtor had no  
25 intention to perform, a court may look to all the surrounding facts and circumstances.” *Barrack*, 217  
26 B.R. at 607; *see also Citibank (S.D.), N.A. v. Eashai (In re Eashai)*, 87 F.3d 1082, 1087 (9th Cir. 1996)  
27 (“[A] court may infer the existence of the debtor’s intent ... if the facts and circumstances of a particular  
28 case present a picture of deceptive conduct by the debtor.”).

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

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

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

18 *Romesh Japra, M.D., F.A.C.C., Inc. v. Apte (In re Apte)*, 180 B.R. 223, 229 (B.A.P. 9th Cir. 1995) (citing  
19 and quoting *Kirsh*), *aff’d*, 96 F.3d 1319 (9th Cir. 1996).

20 Plaintiff alleges under § 523(a)(2)(A) that: (1) in the Application, Defendant misrepresented: (a)  
21 the principal address of KRA, (b) the date that KRA began operating, and (c) that Defendant was the  
22 owner of KRA; and (2) Defendant misrepresented that certain sales were bona fide, and that he would  
23 issue a refund in the event of a return of the items.

#### 24 **1. Defendant’s Purported Misrepresentations in the Application**

25 In KRA’s corporate filings filed in March of 2016, Defendant listed KRA’s address as 21781  
26 Ventura Blvd., Suite 241, Woodland Hills, CA 91364. In the Application submitted in July of 2016,  
27 Defendant listed KRA’s “business address” as 22540 Ventura Blvd., Woodland Hills, CA 91364. Adv.  
28 Dkt. 29–2 at 2. Plaintiff contends this was a misrepresentation, and that KRA’s actual address was

1 21414 Ventura Blvd., Woodland Hills, CA 91364. Adv. Dkt. 41 at 5–6. In support of this contention,  
2 Plaintiff offers a purported print-out of KRA’s website from August of 2021, which lists KRA’s “New  
3 Store” as 21414 Ventura Blvd., Woodland Hills, CA 91364. *See* Adv. Dkt. 39 at 2 (¶ 7), 74. This  
4 evidence is of no persuasive value because the website print-out lacks any temporal connection with the  
5 representation in July of 2016, and Defendant’s evidentiary objection to it is sustained. *See* Adv. Dkt. 44  
6 at 6–7. Even when viewing this evidence in the light most favorable to Plaintiff, because the purported  
7 website print-out describes it as the “New Store” address, the only justifiable inference therefrom is that  
8 KRA’s address changed in the period after Defendant submitted the Application, i.e., it does not  
9 demonstrate a misrepresentation made with the intent to deceive at the time of the Application.

10 KRA’s corporate filings indicate it was formed in March of 2016. In the Application, Defendant  
11 represented that the “Date Business Started” was May of 2016. Adv. Dkt. 29–2 at 2. Plaintiff contends  
12 this was a misrepresentation. Plaintiff offers no evidence to support its contention that Defendant  
13 intended to deceive Plaintiff by indicating it “started business” in May as opposed to March of 2016, or  
14 that the parties understood “Date Business Started” to mean the date of the entity’s incorporation.

15 KRA’s corporate filings indicate that Defendant was its CEO, CFO, secretary, and sole director.  
16 Adv. Dkt. 35 at 6. In the Application, Defendant represented that he was its sole owner and “President.”  
17 Adv. Dkt. 29–2 at 3. Plaintiff contends this was a misrepresentation but offers no evidence to indicate  
18 that a person other than Defendant was the owner of KRA.

19 Importantly, even if any of these statements, which were made by Defendant to Plaintiff in the  
20 Application, constituted misrepresentations, Plaintiff offers no evidence that would establish its  
21 materiality or any reliance by Plaintiff. Nor could it, as Plaintiff’s only evidence offered in opposition to  
22 the Motion is a declaration of Plaintiff’s counsel, Ms. Roza, who lacks personal knowledge of the events  
23 that took place in 2016, including Plaintiff’s decision to enter into the MPA. Accordingly, because  
24 Plaintiff has failed to meet its burden of proof, the Court will grant the Motion and enter summary  
25 judgment in favor of Defendant on Plaintiff’s § 523(a)(2)(A) claim.

26 **C. Nondischargeability Under Section 523(a)(4)**

27 As noted, the Court has deemed Plaintiff’s claim under § 523(a)(4) withdrawn. Alternatively,  
28 the claim fails on the merits.

1 Section 523(a)(4) excepts from discharge debts for defalcation while acting in a fiduciary  
2 capacity, embezzlement, and larceny. Whether a debtor is a fiduciary for the purposes of § 523(a)(4) is  
3 a question of federal law. *Lewis v. Scott (In re Lewis)*, 97 F.3d 1182, 1185 (9th Cir. 1996). “The broad,  
4 general definition of fiduciary—a relationship involving confidence, trust and good faith—is  
5 inapplicable in the dischargeability context.” *Ragsdale v. Haller*, 780 F.2d 794, 796 (9th Cir. 1986).  
6 Instead, the fiduciary relationship must “arise from an express or technical trust that was imposed prior  
7 to the wrongdoing that caused the debt.” *Plyam v. Precision Dev. (In re Plyam)*, 530 B.R. 456, 471  
8 (B.A.P. 9th Cir. 2015) (citing *Ragsdale*). “In other words, the fiduciary relationship must exist ‘before  
9 the wrong and without reference to it.’” *Uriostegui v. Dowling (In re Uriostegui)*, 669 B.R. 49, 54  
10 (B.A.P. 9th Cir. 2025) (quoting *Ragsdale*). However, state law informs whether the requisite trust  
11 relationship exists. *See Lewis*, 97 F.3d at 1185; *Mele v. Mele (In re Mele)*, 501 B.R. 357, 365 (B.A.P.  
12 9th Cir. 2013).

13 The indemnification provision in the parties’ contract was the only evidence Plaintiff cited to  
14 support the essential element under § 523(a)(4) that an express or technical trust existed prior to  
15 Defendant’s complained-of conduct. This is inadequate. Plaintiff cited no legal authority, under  
16 California law or otherwise, standing for the proposition that an indemnification agreement creates the  
17 requisite trust relationship for a § 523(a)(4) claim. Accordingly, separate and apart from Plaintiff’s  
18 apparent withdrawal, this claim fails as a matter of law, and the Court will enter summary judgment in  
19 favor of Defendant on Plaintiff’s § 523(a)(4) claim.

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1 **IV. CONCLUSION**

2 For the foregoing reasons, the Court will grant the Motion and enter summary judgment in favor  
3 of Defendant on the Complaint. The chapter 7 discharge issued in the Case will include discharge of  
4 Defendant's personal liability for the Judgment.  
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23 Date: March 3, 2026



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Martin R Barash  
United States Bankruptcy Judge