

**UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA  
LOS ANGELES DIVISION**

In re:

Raxajack Urquico and  
Anabeth Urquico,

Debtors.

Brian Horvoth,

Plaintiff,

vs.

Raxajack Urquico,

Defendant.

CHAPTER 7

Case No.: 2:15-bk-20361-TD  
Adv. No.: 2:15-ap-01465-TD

**MEMORANDUM DECISION**

Date: May 25-26, 2016  
Time: 10:00 a.m.  
Courtroom: 1445

**INTRODUCTION**

Raxajack "Rong" Urquico (Defendant or Urquico) filed a chapter 7 petition, with his wife Anabeth Urquico, on June 29, 2015. On August 28, 2015, Brian Horvoth (Plaintiff or Horvoth) filed an adversary proceeding against Urquico seeking recovery under 11 U.S.C. §§ 523(a)(2)(A), (a)(4) and (a)(6). Pursuant to the Trial Setting Order,

1 direct testimony was presented through declarations. Cross-examination was allowed  
2 through live testimony. The trial was held on May 25th and 26th with the Honorable  
3 Gregg Zive presiding.

4 This memorandum decision contains the court's findings of fact and conclusions  
5 of law. The court hereby finds that Plaintiff's claim for \$150,000 is nondischargeable  
6 pursuant to 11 U.S.C. § 523(a)(2)(A). The facts support a finding that Urquico made  
7 repeated misrepresentations to Horvoth which he knew were false and which Horvoth  
8 justifiably relied upon to his detriment. The representations were made October 25–29,  
9 2012, during four meetings between Urquico and Horvoth, before Horvoth loaned  
10 \$150,000 to Urquico. The court specifically finds that Plaintiff proved each element of §  
11 523(a)(2)(A), by a preponderance of evidence, that the Defendant made false  
12 representations and engaged in deceptive conduct to lure Plaintiff to invest in a concert  
13 promotion deal proximately resulting in Horvoth's loss of his investment.

#### 14 **SUMMARY OF FACTS**

15 The evidence established that the Defendant and his cohorts had absolutely no  
16 concept of what was necessary to produce or promote a concert but that did not deter  
17 them from making multiple intentional misrepresentations to the Plaintiff to convince him  
18 to invest \$150,000 in the Defendant's pie-in-the-sky promotion upon which the Plaintiff  
19 relied. Defendant then continued to mislead the Plaintiff after Plaintiff invested the  
20 money, resulting in total loss of his investment.

21 Urquico, Brendan Howry (Howry) and Francesco Benincaso (Benincaso) formed  
22 a Nevada corporation called Great Morning, Inc. (GMI), in August 2012. Urquico was  
23 the assigned treasurer. The selection of officers was chosen arbitrarily to satisfy the  
24 requirement of the Nevada Secretary of State. Urquico testified that the officer  
25 assignments were intended to be temporary until the nature of the business was  
26 discovered and the strengths of each shareholder were evaluated. Benincaso, Howry,  
27  
28

1 Andrew Schlottmann (Schlottmann)<sup>1</sup> and Urquico signed a "Resolution" on October 26,  
2 2012 in an attempt to form a joint venture with Horvath to host a concert for the popular  
3 boybands One Direction or The Wanted. Urquico's Trial Ex. A.

4 The Resolution was signed the day after Horvath, Urquico and Schlottmann met,  
5 for approximately an hour, at a restaurant called Wokcano, in Santa Clarita, California.  
6 During the meeting, Urquico lied to Horvath when he said he was the producer of a  
7 reality television series and owner of a medicine labeling company. Urquico also lied to  
8 Horvath about selling websites and owning several homes. Urquico told Horvath that  
9 because his close friend worked for Universal Music that would help to bypass a lot of  
10 red tape, and they would deal directly with the talent's manager when GMI produced the  
11 proposed concert. Urquico told Horvath that Horvath would earn \$500,000 in this deal.  
12 During the meeting, Urquico assured Horvath that the funds for the concert would be  
13 held in an escrow account and an insurance policy protecting Horvath's investment  
14 would make it impossible for Horvath to lose his \$150,000.

15 After the meeting, Horvath conducted searches on the internet to confirm if  
16 Urquico's business background was true. Horvath discovered a website called IMDb.  
17 Urquico's IMDb page showed Urquico was a producer of a reality show called *Ultimate*  
18 *Woman Challenge*. Urquico testified that the IMDb page was manufactured by Brandon  
19 Howry's father, Lyle Howry. Urquico was aware that this page existed and knew the  
20 posted information was false. Urquico testified that it was an attempt to give him  
21

22  
23 <sup>1</sup> Schlottmann and Horvath were friends from church and had known each other  
24 for several years. Horvath had expressed an interest in developing a business with  
25 Schlottmann. Schlottmann knew that Horvath recently received \$150,000 from a  
26 lawsuit and informed Horvath about a concert promotion opportunity with Urquico.

27 The record establishes that Schlottmann and Horvath had a close personal  
28 relationship akin to a father-son-like relationship. There were text message exchanges  
between the two men that showed they loved each other. Schlottmann was brought  
into the GMI arrangement to provide comfort, as a personal friend and insider, to  
Horvath. Schlottmann described himself as a "liaison" between Horvath and GMI. He  
testified at trial that the goal was to make everyone feel at ease.

1 credibility in the entertainment industry.

2 The meeting at Wokcano was the first time that Horvoth and Urquico met.  
3 Previously, while Horvoth was visiting his wife in the hospital sometime in 2012, Horvoth  
4 saw Urquico working as a nurse at the hospital. Schlottmann was present and told  
5 Horvoth that Urquico and his family were worth more than \$100,000,000. When  
6 Horvoth asked why Urquico worked in the hospital, Schlottmann told Horvoth that  
7 Urquico was learning the hospital procedures to start a business for labeling  
8 medications to simplify identification for the nursing staff and was starting a nurse  
9 staffing agency.

10 Schlottmann sent a text to Horvoth on October 26, 2012, stating, "Just signed  
11 one direction." "Contract don[e] t[o]night and ready to sign tmrw wit[h] sending them  
12 check." "We are getting the contract ready t[o]night and sending it to them. As soon as  
13 they sign we have to send money. Contract signed first."

14 On October 27, 2012, Horvoth met with Urquico and Schlottmann at a Corner  
15 Bakery for about an hour and a half. Urquico specifically told Horvoth that there was a  
16 contract between GMI and One Direction. Urquico told Horvoth that his friend who  
17 worked at Universal Music had obtained an executed agreement for One Direction to  
18 perform a concert. Horvoth questioned why he was given the opportunity to make  
19 \$500,000 based on his \$150,000 deposit. Urquico told Horvoth this was a "can't lose"  
20 business opportunity. Urquico represented to Horvoth that he would have invested his  
21 own money, but his money was tied up in the half dozen homes he owned in Santa  
22 Clarita and other investments. Urquico promised that Horvoth's money would be held in  
23 an escrow account and would only be used to secure and promote the concert. Urquico  
24 also promised Horvoth that the \$150,000 would be returned in four weeks or GMI would  
25 agree to pay interest on any balance. The parties agreed to meet on the morning of  
26 October 29, 2012 in order for Horvoth to provide a cashier's check for \$150,000.

27 Horvoth sent Urquico his address via a text message also on October 27, 2012.  
28 Urquico sent a misleading response which was, "Thanks. I'll forward it to my lawyer.

1 Have a great day.” Urquico did not have a lawyer at the time he sent the text and never  
2 obtained a lawyer during any of the time that he interacted with Horvoth. Urquico  
3 obtained all of his “legal” advice (and documents) through a website called AVVO.com  
4 and other random websites. Urquico acknowledged that his text message was  
5 misleading.

6 On October 28, 2012, for approximately 45 minutes to an hour, Urquico met with  
7 Horvoth at Horvoth’s house to answer questions about the joint venture agreement.  
8 Urquico once again assured Horvoth that he was offering a “can’t lose” opportunity  
9 because it would be insured and held in an escrow account.

10 Urquico sent an email to Horvoth on October 29, 2012 at 9:20 a.m., which stated,  
11 “. . . Here is the Artist/Event insurance we discussed. . . . I have attached a PDF for your  
12 review, as well as this link below . . .” Urquico’s email showed (a) he was president of  
13 Boss Entertainment Corporation with a link to an IMDb page, (b) his Beverly Hills work  
14 address and (c) an address located in New York, at Rockefeller Plaza, on Fifth Avenue.  
15 Plaintiff’s Ex. 10. The attachment was not an insurance policy, it was merely a  
16 summary of event liability and property damage insurance. An insurance policy was  
17 never obtained.

18 At the October 29th meeting, Horvoth confirmed with Urquico that there was an  
19 executed agreement between GMI and One Direction. Urquico told Horvoth that GMI  
20 was now a “friends and family” preferred company with Universal Music. Again, Urquico  
21 assured Horvoth that the money would be insured and placed in an escrow account with  
22 an insurance policy in place to protect against any loss of Horvoth’s money. Urquico  
23 told Horvoth that GMI had a contact in the music industry that had direct access to One  
24 Direction’s management. Their contact was Jason Newman (Newman). Based on  
25 Urquico’s representations of fact, Horvoth gave Urquico and Schlottmann a cashier’s  
26 check for \$150,000.

27 Despite Schlottmann’s and Urquico’s incredible testimony that they do not recall  
28 who took the check from Horvoth or who brought the check to the bank to be cashed,

1 the check was deposited into a Chase bank account on October 29, 2012. The money  
2 was never placed in an escrow account. The same day the money was deposited in the  
3 Chase bank account, Urquico, Schlottmann, Howry and Benincaso obtained individual,  
4 personal debit cards for the account.

5 Urquico, Howry, Benincaso and Schlottmann met October 29, 2012 to finalize  
6 what they called the GMI Shareholders Agreement. The shareholder's "resolution"  
7 regarding GMI's election of officers, prepared by Urquico, shows Urquico was removed  
8 as treasurer of GMI and became the Chief Operating Officer (COO) and secretary.  
9 Defendant's Exhibit E. Despite his awareness that a treasurer was required for any  
10 Nevada corporation, Urquico did not appoint a new treasurer.

11 Urquico was responsible for finding a venue for the concert. He contacted  
12 several venues for estimates. Through this process, he realized that a contract with the  
13 artist (an "artist binder") was essential. He admits the venues, insurance companies  
14 and sponsors required an artist binder. Urquico admits that on October 29, 2012, he ".  
15 . contacted Direct Event Insurance ([www.directeventinsurance.com](http://www.directeventinsurance.com)) to start the process  
16 of obtaining Event Insurance for the concert." Urquico's Trial Dec., page 6, paragraph  
17 28, lines 25–26. Urquico was told an artist binder was required before GMI could obtain  
18 concert insurance. Urquico's Trial Dec, paragraph 29. Urquico knew he could not  
19 obtain the insurance because GMI did not have an artist binder.

20 Horvoth said in a text message to Schlottmann, on October 29, 2012, that he felt  
21 good about the proposed deal and, "The only reason I'm in this is because of you." In  
22 the evening of October 29, 2012, Horvoth sent a text message to Schlottmann which  
23 stated, "Did u guys lock up the contract for the boys?" "Yep," replied Schlottmann.

24 Urquico's expectations for this concert event were completely unrealistic. After  
25 Urquico contacted the Make-A-Wish Foundation on November 5, 2012, he learned that  
26 the Make-A-Wish Foundation had a contact in the Obama administration. Urquico was  
27 so excited about this great news that he was ". . . trying to fathom and process the idea  
28 of having the President of the United States at our first concert. This story of how our

1 concert came together would be perfect for a movie.” Defendant’s Trial Dec., ¶ 46, lines  
2 24–26.

3 On November 5, 2012, Urquico became aware that Newman would not be able  
4 to obtain a deal with One Direction due to the latter’s other contractual obligations and  
5 The Wanted would be the alternate band.

6 Despite the prior representations that there was a contract between GMI and the  
7 band One Direction, Urquico now represented to Horvoth that the agreement between  
8 GMI and Horvoth needed to be switched to identify The Wanted. “The Wanted Concert  
9 Joint Venture Agreement by and between Great Morning, Inc. and Brian Horvoth” (“New  
10 Joint Venture Agreement”) was signed by Urquico, as COO, and Horvoth on November  
11 6, 2012. Urquico informed Horvoth that the insurance policy that had been obtained for  
12 the concert with One Direction could be transferred to The Wanted concert without any  
13 problems.

14 Schlottmann sent a text message to Horvoth on November 9, 2012, which stated,  
15 “[W]e have the contract.” Horvoth replied, “For The Wanted?” Schlottmann confirmed,  
16 “Yep.”

17 The next day a conference call took place among the owners of GMI. Although  
18 Urquico and Schlottmann had never seen any type of contract or an artist binder, GMI  
19 wired \$52,500 from the GMI Chase bank account to Newman on November 10, 2012.  
20 The funds in the account were all from Plaintiff’s investment. Newman was a friend of  
21 Howry and allegedly had connections that would result in a contract with a band.  
22 However, there never was a contract and Newman never accounted for nor refunded  
23 the money that was wired to him. Urquico testified at trial that he now believes Newman  
24 was a scammer. He also testified that before the money was wired, Newman laughed  
25 at the proposed GMI contract and called it ridiculous due to the wording of the contract.  
26 Still, GMI wired the money to Newman based on the fact that Urquico was able to  
27 attend some parties with Howry and because Howry vouched for Newman.

28 Despite knowing that an artist binder was required, which they knew they did not

1 have, the members of GMI wired \$25,000 to the Home Depot Center on November 14,  
2 2012, as a deposit for a concert venue.

3 By November 30, 2012, only \$38,744.57 remained in the Chase bank account.  
4 By March 2013, all of Horvoth's money was gone. Plaintiff's Exhibit 12 shows the  
5 Chase bank statements which reflect the various transactions made by the members of  
6 GMI.

7 Schlottmann's understanding was that the money could be used for operational  
8 expenses of the company, including paying for meals with Horvoth. The evidence  
9 shows Schlottmann made several purchases that were not related to securing or  
10 promoting the proposed concert:

11 On November 19, 2012, at Chevron for \$66.84.

12 On November 21, 2012, at Pinz Bowling Center for \$56.00.

13 On November 26, 2012, at Gamestop for \$345.80 (Schlottmann claims he  
14 used the wrong credit card when he made this purchase) and Chevron for  
15 \$52.64.

16 On December 5, 2012, a purchase for dinner with Horvoth for \$66.24.

17 On December 14, 2014, at Ralph's for \$42.54.

18 On December 17, 2012, at Beverages and More for \$73.05.

19 Urquico made the following withdrawals and purchases:

20 On November 8, 2012, the Nevada Secretary of State for \$50.00.

21 On November 16, 2012, at Overnightprints for \$138.19.

22 On December 3, 2012, at Beverly Hills Executive for \$75.00.

23 On December 5, 2012, at Godaddy.com for \$10.17.

24 On December 31, 2012, at 37Signals-Charge.Com for \$49.00.

25 On January 2, 2013, at Beverly Hills Executive for \$75.00.

26 On January 30, 2013, an atm withdrawal at the Cosmopolitan in Las  
27 Vegas, for \$505.00.

28 On January 31, at Cosmopolitan Blue Ribbon for \$85.04.

1 Notwithstanding Schlottmann and Urquico's inability to describe any specific task  
2 performed by either Howry or Benincaso that benefited GMI, Howry and Benincaso  
3 used the GMI funds as their personal bank account. They charged \$575 (each) at a  
4 Las Vegas strip club called Little Darlings, made a purchase at Louis Vuitton for  
5 \$755.81, incurred charges at Victoria's Secret, Equinox Gym, LA Fitness and Apple  
6 iTunes, withdrew thousands of dollars of cash, and made multiple purchases at fast  
7 food restaurants and coffee shops. There is no evidence to show that any of the  
8 purchases or cash withdrawals by Howry and Benincaso were made to further any  
9 legitimate business purpose.

10 By January of 2013, Horvoth felt that he was starting to be ignored. On January  
11 28, 2013, Horvoth sent a text to Schlottmann about the status of the concert.  
12 Schlottmann sent a reply text to Horvoth stating, "[h]ave \$125,000 of ur money in the  
13 bank account right now. Ur money isnt gone. I would never do anything to hurt my  
14 dad."

15 On February 1, 2013, GMI (at Schlottmann's email address) received an email  
16 from Newman. Plaintiff's Ex. 15. The email indicated that GMI could secure the band  
17 One Direction, for one show, on May 3-5, 2013, for \$650,000. The same day,  
18 Schlottmann went to Horvoth's home and told him the concert was switched back to  
19 One Direction. Horvoth expressed that he was not comfortable with GMI making  
20 changes without his consent and the he had real concerns regarding their inability to  
21 keep an arrangement in place. Horvoth asked to see proof of the agreements with the  
22 bands to verify his investment and what had been told to him.

23 Even knowing that \$650,000 would be required to obtain an artist binder, on  
24 February 4, 2013, Schlottmann wired an additional \$20,000 to Alyte Consulting, a  
25 company owned by Newman. Defendant's Exhibit L. Schlottmann sent a text message  
26 to Horvoth that day which stated, "Good news offer was accepted getting contract  
27 t[o]day Nd working on sponsors." Urquico testified at trial that he never verified that  
28 there were any sponsors.

1 On February 19, 2013, Schlottmann sent another text to Horvoth stating that GMI  
2 was "[a]bout to sign patron." On February 28, 2013, he sent a confirmation text  
3 indicating he "... just got the word that the announcement will be by next Friday  
4 guaranteed!" This text said that the concert was scheduled to take place in May.

5 On March 25, 2013, Horvoth received a forwarded text from Schlottmann that  
6 allegedly came from an executive at UK Universal. Apparently, One Direction was  
7 scheduled to be in Europe on May 3–5, 2013, the same time Horvoth was told the band  
8 would perform a concert in Los Angeles.

9 When Horvoth asked how things were going on April 9, 2013, via text message,  
10 Schlottmann's response was, "Fantastic." When Horvoth sent a text on April 11, 2013,  
11 regarding funding, Schlottmann replied "I was told this morning 48 hours." On April 16,  
12 2013, Schlottmann texted that GMI had \$2,000,000 in sponsorship money.  
13 Schlottmann sent a text to Horvoth on April 24, 2013, which stated, "Like I said about  
14 your money, the bank is taking its time releasing a few million since it's a new account.  
15 I'm just waiting for their call that I can get it." On April 25, 2013, Schlottmann claims, "It  
16 wasn't for a mil, but over 100k."

17 On May 3, 2013, Urquico informed Horvoth that there would be no concert by  
18 One Direction in Los Angeles. Horvoth, Urquico and Schlottmann planned a meeting  
19 for May 4, 2013. Prior to the May 4, 2013 meeting, Urquico sent a text message to  
20 Horvoth which stated, "But I am getting the contract [t]his morning it was signed off and  
21 being sent over." Urquico met with Horvoth, at Horvoth's home, on the morning of May  
22 4, 2013. Schlottmann did not attend the meeting. Horvoth told Urquico he was not  
23 happy with the way things were going and wanted his money back. Urquico agreed that  
24 things were not going well and lied to Horvoth by representing that there was \$70,000 in  
25 the escrow account and \$65,000 in the GMI bank account. Urquico also told Horvoth  
26 they were still trying to put together a concert for One Direction in August. Urquico  
27 reassured Horvoth that his friend at Universal Music had secured a new concert time,  
28 new concert date, and that the agreement was executed and that he was supposed to

1 bring in the paper work that morning, but he did not. Urquico told Horvoth that GMI  
2 planned to purchase a concert from Live Nation; the producer of the concert was selling  
3 its right to produce because of financial difficulties. Horvoth agreed to allow a couple  
4 weeks for the deal to come to fruition.

5 Urquico testified that by May 2013, he knew there was no contract. He also  
6 testified that May 6, 2013 was the first time that he told Horvoth that an artist binder did  
7 not exist. However, the text message evidence shows that Urquico continued to  
8 represent to Horvoth that a contract did exist. On May 9, 2013, Urquico told Horvoth “. .  
9 . Andrew and I have been communicating with LiveNation [sic]. From the  
10 conversations, it is been [sic] told to us that everything is done and that we were just  
11 going through the logistic part of contract. . . .” On May 21, 2013, Urquico sent text  
12 messages to Horvoth telling him, “Andy will have the contract” and that he is “Just  
13 awaiting the executed contract from Andy.” He reassured Horvoth that Schlottmann  
14 would have an executed contract from Live Nation.

15 Horvoth asked to see a copy of the contract on May 22, 2013. Schlottmann told  
16 Horvoth that he was “. . . having them change some wording [he] didn’t like. Its [sic] no  
17 big deal.” Schlottmann testified that this statement was false. In fact, he never saw any  
18 contract between GMI and any entity or person.

19 After May 28, 2013, Urquico stopped responding to Horvoth’s text messages and  
20 requests for the executed agreement, bank records, documentation of services provided  
21 and proof of insurance.

22 Urquico began to think that Newman was a scammer or not a real person.  
23 Urquico testified that in July 2013, GMI made a call to U Music in London and spoke  
24 with a management person for One Direction. The management person confirmed  
25 there was no contract between One Direction and GMI, and there was no refund to  
26 request. Urquico never communicated this information to Horvoth.

27 In August of 2013, Schlottmann received a phone call from Chase Bank. He  
28 alleges that this is the first time that he became aware that all of the money in the

1 Chase account was gone.

2 The Chase bank statements were mailed to Great Morning Inc., DBA Great  
3 Morning Inc. #1, 9107 Wilshire Blvd Ste 450, Beverly Hills, CA 90210-5535. This was  
4 Urquico's business address. Urquico testified at trial that although he was the treasurer,  
5 then secretary and COO of GMI, he never reviewed the GMI bank statements. In fact,  
6 Urquico testified that he did not collect or review the GMI mail on a regular basis.

7 Urquico claims that there was a discussion between the members of GMI to keep  
8 track of their expenses and that he intended to hire an accountant, but he never  
9 monitored the expenses and never hired an accountant to keep track of the funds.  
10 Urquico said he never took one step to implement any of these plans.

11 The majority of Schlottmann's and Urquico's testimony was not credible;  
12 however, the court believes that despite repeated representations to the contrary made  
13 to Horvath from both men, their testimony that a contract never existed between GMI  
14 and any band was credible.

15 **PLAINTIFF'S CLAIM FOR \$150,000 IS NONDISCHARGEABLE**  
16 **PURSUANT TO 11 U.S.C. § 523(a)(2)(A)**

17 Pursuant to 11 U.S.C. § 523(a)(2)(A), a debt is nondischargeable to the extent  
18 the debt was obtained by false pretenses, a false representation, or actual fraud. "The  
19 Ninth Circuit has held that a claim for fraud under § 523(a)(2)(A) requires five elements:  
20 (1) the debtor made a false statement or engaged in deceptive conduct; (2) the debtor  
21 knew the representations to be false; (3) the debtor made the representations with the  
22 intent to deceive the creditor; (4) the creditor justifiably relied on the representation; and  
23 (5) the creditor sustained damage from its reliance." *Williams v. Sato (In re Sato)*, 512  
24 B.R. 241, 247 (Bankr.C.D.Cal. 2014), citing *Turtle Rock Meadows Homeowners Assoc.*  
25 *v. Slyman (In re Slyman)*, 234 F.3d 1081, 1085 (9th Cir. 2000). The creditor must  
26 demonstrate each element by a preponderance of the evidence. *In re Slyman* 234 F.3d  
27 at 1085. Section 523(a)(2)(A) applies to misrepresentations other than those respecting  
28 the debtor's financial condition. *In re Sato* 512 B.R. at 247.

**1. Defendant made false statements and engaged in deceptive conduct.**

Urquico and Horvoth met in person, at least four times, between October 25–29, 2012. At each meeting, Urquico repeatedly made false statements and engaged in deceptive conduct.

During the October 25, 2012 meeting at Wokcano, Urquico misrepresented his business success. Urquico made false statements when he told Horvoth that he was a producer of a reality television show and owner of a medicine labeling company. He also lied about his success in selling websites and owning several homes. Urquico tricked Horvoth when he told Horvoth that he would earn \$500,000 based on a \$150,000 investment. Urquico also falsely assured Horvoth that the funds for the concert would be held in an escrow account and an insurance policy would be obtained to make it impossible for Horvoth to lose his investment.

During an October 27, 2012 meeting, Urquico lied when he told Horvoth that his friend at Universal Music obtained an executed agreement between GMI and One Direction. Urquico misrepresented the situation as a “can’t lose” business opportunity. Urquico again made a false promise that the funds would be held in an escrow account and would only be used to secure and promote the concert. Urquico falsely represented to Horvoth that the funds would be returned in four weeks if the concert did not work out.

Urquico sent a text message to Horvoth, on October 27, 2012, falsely claiming he had a lawyer. Urquico acknowledged that this statement was misleading because he did not have a lawyer during any of the time that he interacted with Horvoth. Urquico knew his “legal” advice came from random websites.

On October 28, 2012, when they met at Horvoth’s house, Urquico again falsely represented to Horvoth that he was offering a “can’t lose” opportunity. He falsely reiterated to Horvoth that Horvoth could not lose his funds because the money would be insured and held in an escrow account.

On October 29, 2012, during their final meeting, Urquico misrepresented to

1 Horvoth that there was an executed agreement between GMI and One Direction.  
2 Again, Urquico misrepresented that Horvoth's money would be insured and placed in an  
3 escrow account with an insurance policy to protect Horvoth's money.

4 Based on Urquico's repeated misrepresentations, false assurances and  
5 deceptive conduct, Horvoth gave Urquico and Schlottmann a cashier's check for  
6 \$150,000.

7 **2. Defendant knew the representations were false at the time**  
8 **he made them.**

9 The evidence establishes by a preponderance that when the Urquico made his  
10 false statements to Horvoth, he knew them to be false, or alternatively, he made them  
11 with reckless disregard for the truth of the statements. See *In re Sato*, 512 B.R. at 248  
(citations omitted).

12 **a. There was no contract between GMI and One Direction.**

13 During the October 27th and 29th meetings, Urquico represented to Horvoth that  
14 a contract existed between One Direction and GMI, but a contract did not exist. Urquico  
15 and Schlottmann confirmed that there never was any contract between GMI and One  
16 Direction. Urquico never saw a contract between GMI and One Direction.

17 Urquico knew that a contract did not exist, on October 29, 2012, when he  
18 attempted to obtain the insurance he promised Horvoth. Urquico testified that he was  
19 unable to obtain the insurance on October 29th because there was no contract. Yet, on  
20 the same day when he accepted the money from Horvoth, he told Horvoth that a  
21 contract did exist.

22 Urquico claims he relied on information from Schlottmann and Howry regarding  
23 whether a contract existed. Urquico's claim in this regard is not credible. If this were  
24 true, at a minimum, Urquico made the misrepresentation with a reckless disregard for  
25 the truth. Urquico never tried independently to verify that a contract existed. Urquico  
26 demonstrated no concern with whether the statements from Schlottmann or Howry  
27 regarding the contract were true.

28 Urquico told Horvoth a contract existed to persuade Horvoth to invest the

1 \$150,000 for his benefit and that of the other owners of GMI.

2 **b. Urquico was not a successful businessman and he did not have**  
3 **an attorney.**

4 Urquico made false statements to portray himself as a successful businessman.  
5 Urquico lied when he told Horvoth that he was a reality television producer for a show  
6 that did not exist. Urquico knew he was not a television producer and that the public  
7 IMDb page associated with his name provided false information. Urquico knew that he  
8 did not own a successful medical labeling business. When Urquico told Horvoth his  
9 website sales were so successful that he was able to purchase several homes, he knew  
10 this statement was not true. Urquico did not own several homes.

11 Urquico represented to Horvoth that he would forward Horvoth's address to  
12 his attorney. Urquico never consulted with an attorney. At trial, Urquico admitted that  
13 this representation was misleading. Urquico obtained all of his legal "advice" from the  
14 internet.

15 Urquico misrepresented his professional background and the fact that he was  
16 working with an attorney because Urquico wanted Horvoth to perceive him as a  
17 successful person who was proposing a legitimate deal.

18 **c. This was not a "can't lose" opportunity.**

19 Urquico told Horvoth the transaction was a "can't lose" business opportunity.  
20 Part of that promise was based on the insurance. Considering that neither Urquico nor  
21 any of the owners of GMI had any experience in concert promotions, it is not credible  
22 that Urquico believed this investment was a "can't lose" situation. When Urquico tried to  
23 purchase the insurance, he was unable to obtain the insurance because GMI did not  
24 have an artist binder. Urquico knew when he told Horvoth otherwise that Horvoth's  
25 money was not and could not be insured.

26 Urquico assured Horvoth that the funds would be held in an escrow account.  
27 Urquico never made an attempt to place the funds in an escrow account. Urquico  
28 falsely assured Horvoth that the funds would be returned in four weeks or GMI would

1 pay interest on any balance. Again, this was a reckless, deceptive statement. Urquico  
2 had no way to guarantee that the funds would be returned, with interest, in four weeks.

3 **d. Horvoth's investment was not properly protected as promised.**

4 Urquico, as GMI's secretary and COO, did not monitor GMI's funds which  
5 consisted solely of Horvoth's \$150,000 investment and he made no attempt or effort to  
6 protect the funds from improper use. Urquico admitted he never reviewed the bank  
7 statements nor did he attempt to limit the use of the funds to secure and promote a  
8 concert. The bank statements demonstrate the funds were used for personal  
9 purchases that did not relate to any concert promotion. Urquico's intentional  
10 representation that Horvoth's investment would only be used for concert promotion was,  
11 again, false, deceptive and reckless.

12 **3. Defendant made his representations to Horvoth with the intent to**  
13 **deceive Horvoth.**

14 Urquico's representations regarding the contract and insurance were  
15 intentional and deceptive to induce Horvoth to invest in GMI's concert promotion.  
16 Urquico was not truthful when he represented that he had an attorney and was a  
17 successful television producer and entrepreneur in an effort to make himself and the  
18 deal seem legitimate.

19 As in *Sato*, the GMI members used the money to do whatever they wanted  
20 with it, but Horvoth was made to believe differently. Before Horvoth invested his  
21 \$150,000, Urquico told Horvoth that his money was safe and there was no way he could  
22 lose it. Urquico represented to Horvoth that his money was insured and was going to  
23 be placed in an escrow with an accountant overseeing expenditures. As the defendant  
24 in *Sato*, Urquico's belief that everything would all work out is irrelevant as to his scienter  
25 at the time he made the misrepresentations. *In re Sato* 512 B.R. at 249. Urquico's  
26 belief that he and Horvoth could make money is consistent with his intent to deceive  
27 Horvoth, because he believed, in the end, he could probably get away with the  
28 consequences of his fraudulent actions. *In re Sato* at 249. Urquico made false

1 statements in order to obtain the investment from Horvoth.

2 **4. Plaintiff justifiably relied on Defendant's representations.**

3 Plaintiff must show that his justifiable reliance on debtor's conduct caused the  
4 debt he seeks to recover. *In re Slyman*, 234 F.3d 1081 (9th Cir. 2000). The plaintiff  
5 cannot purport to rely on preposterous representations or close his eyes to avoid  
6 discovery of the truth. *In re Sato* at 249. See also *Eugene Parks Law Corp. Defined*  
7 *Benefit Pension Plan v. Kirsch (In re Kirsch)*, 973 F.2d 1454, 1459 (9th Cir. 1995).

8 Justification is a subjective standard that relies on the qualities of the particular plaintiff,  
9 and the circumstances of the particular case. *Field v. Mans*, 516 U.S. 59, 70, 116 S.Ct.  
10 437, 133 L.Ed.2d 351 (1995). The court must look to all of the surrounding

11 circumstances regarding the particular transaction and must particularly consider the  
12 subjective effect of those circumstances upon the creditor. *In re Kirsch*, 973 F.2d 1460.

13 The parties were excited about hosting a glamorous event. Horvoth had little  
14 knowledge and no experience with concert management and promotion. Urquico  
15 claimed to be an entrepreneur with regard to his medicine labeling company, reality  
16 television show production, sale of websites and management of various homes he  
17 purchased in Santa Clarita. Horvoth relied on Urquico's alleged success in past  
18 projects to consider the concert to be a potentially profitable endeavor. Horvoth was  
19 introduced to Urquico through his close, trusted friend Schlottmann.

20 Horvoth justifiably relied on Urquico's promises that his money would be safe  
21 and carefully spent. The agreement, as represented to Horvoth, was that Horvoth  
22 would invest \$150,000 in GMI to enable Urquico and his colleagues to produce a  
23 concert with One Direction. The money would only be used for the concert. In return  
24 for the \$150,000 investment, Horvoth could expect to receive at least \$500,000.

25 Horvoth testified that he was skeptical, but with Urquico's assurance that his money  
26 would be protected by insurance and placed in an escrow account with an accountant  
27 supervising the money, Horvoth justifiably relied on Urquico's statements to feel  
28 comfortable in investing his funds.

1           **5. Plaintiff sustained a loss of \$150,000 based on the representations of**  
2           **Defendant.**

3           The Chase bank records show that the \$150,000 was no longer in the account as  
4 of March 2013. Urquico made false representations regarding his background, the  
5 existence of a contract and the protection and monitoring of these funds that induced  
6 Horvoth to turn over the funds. Horvoth's loss of \$150,000 was caused directly by  
7 Urquico's intentional misrepresentations. But for Urquico's representations, Horvoth  
8 would not have invested in the concert deal.

9           **THE EVIDENCE IS INSUFFICIENT TO SUPPORT A CLAIM**  
10           **PURSUANT TO 11 U.S.C. § 523(a)(4)**

11           Section 523(a)(4) prevents the discharge of debt incurred by fraud or defalcation  
12 while the debtor was acting in a fiduciary capacity. Horvoth argued that Urquico, as  
13 treasurer, secretary and COO of GMI, breached his fiduciary duty to Horvoth.

14           For purposes of § 523(a)(4), the Ninth Circuit has adopted a narrow definition of  
15 "fiduciary." *Richard Yin-Ching Houg v. Tatung Company, Ltd. (In re Houg)*, 636  
16 Fed.Appx. 396, 398 (9th Cir. 2016); *Marcella J. Honkanen v. J. Michael Hopper (In re*  
17 *Honkanen)*, 446 B.R. 373, 378 (9th Cir. BAP 2011). Under § 523(a)(4), the fiduciary  
18 relationship must be one "arising from an express or technical trust that was imposed  
19 before, and without reference to the wrongdoing that caused the debt." *Id.* quoting *Cal-*  
20 *Micro, Inc. v. Cantrell (In re Cantrell)*, 329 F.3d 1119, 1125 (9th Cir. 2003). Implied or  
21 constructive trusts do not create a fiduciary relationship. *Helen Lovell v. Samuel*  
22 *Stanifer, (In re Stanifer)*, 236 B.R. 709, 714 (9th Cir. BAP 1999).

23           While the scope of the term "fiduciary capacity" is a question of federal law, the  
24 Ninth Circuit has considered state law to ascertain whether the requisite trust  
25 relationship exists. *In re Honkanen*, 446 B.R. at 379. For a trust relationship under §  
26 523(a)(4) to be established, the applicable state law must clearly define fiduciary duties  
27 and identify trust property. *Id.* If the applicable state law does not clearly and expressly  
28 impose a trust-like obligation on a party, courts will not assume fiduciary duties exist  
and will not find that there was a fiduciary relationship. *In re Houg*, 636 Fed.Appx at

1 398. A broad, general definition of fiduciary (a relationship involving confidence, trust  
2 and good faith) is inapplicable in the dischargeability context. *Ragsdale v. Haller*, 780  
3 F.2d 794, 796 (9th Cir. 1986).

4 Here, the facts do not support a finding that Urquico was acting in a fiduciary  
5 capacity, under § 523(a)(4), because there is no evidence of an express or technical  
6 trust. GMI was a Nevada corporation. For purposes of § 524(a)(4), Nevada law is  
7 considered to determine whether an express or technical trust existed. See *Plyam v.*  
8 *Precision Development, LLC (In re Plyam)* 530 B.R. 456, 471–2 (9th Cir. BAP 2015)  
9 (Limited liability company was organized under the laws of Nevada; therefore, Nevada  
10 law is the law that governs).

11 **There is insufficient evidence of an express trust.**

12 “Under Nevada law, an express trust requires that: (1) ‘[t]he settlor properly  
13 manifest[s] an intention to create a trust; and [ (2) ] [t]here is trust property. . . .’” *Id.* at  
14 472. Quoting Nev.Rev.Stat. § 163.003. There are various methods to create a trust,  
15 including a declaration by the owner of property that he holds the property as trustee or  
16 a transfer of property by the owner during his lifetime to another person as a trustee. *Id.*  
17 Nevada also permits a business trust. *Id.* at 472. See Nev.Rev.Stat. §§ 88A.010–  
18 88A.930. To create a business trust, a party must file with the Nevada secretary of  
19 state a certificate of trust. *Id.* See *id.* § 88A.210. Articles of organization may establish  
20 that a trust relationship exists. *In re Plyam* at 473.

21 In the instant case, there is no evidence the parties intended to create a trust.  
22 There were written agreements between the parties. The evidence includes: (1) a  
23 document called “One Direction Concert Joint Venture Agreement.” This agreement  
24 appears to be signed by Urquico on October 28, 2012. The agreement is not signed by  
25 Horvath or any other party. Defendant’s Ex. B; (2) a document called “Great Morning,  
26 Inc. Joint Venture Agreement.” The document was initialed and signed by Benincaso,  
27 Howry, Schlottmann and Urquico on October 29, 2012. Defendant’s Ex. D; (3) a  
28 document titled “The Wanted Concert Joint Venture Agreement.” It was signed on

1 November 6, 2016 by Urquico and Horvoth. Defendant's Ex. H. None of these  
2 documents refer to a trust. None of these documents show that the parties intended to  
3 create a trust.

4 The parties did not provide any articles of organization. Urquico, Benincaso,  
5 Howry and Schlottmann signed a "Resolution-Shareholders: Forming a joint venture  
6 with Brian Horvoth to hold a concert event for One Direction of The Wanted."

7 Defendant's Ex. A. This document does not refer to a trust.

8 There is no evidence of a certificate of trust filed with the Nevada secretary of  
9 state or any evidence the parties created a business trust.

10 **There is insufficient evidence of a technical trust.**

11 Nevada law does not define a technical trust. *Plyam* 530 B.R. at 472. In  
12 absence of a definition under state law, a technical trust can be construed as one  
13 imposed by statute. *Id.* Principles of law regarding general partnerships encompass  
14 joint ventures. *Radaker v. Scott*, 109 Nev. 653, 658, 855 P.2d 1037, 1040 (1993).  
15 Nothing in the Nevada partnership statutes provides that a trust for the benefit of a third  
16 party (Horvoth), was created based upon the creation of a joint venture or partnership.

17 In the instant case, the record does not show any evidence of a technical trust.  
18 Horvoth did not cite any Nevada statute that would show a technical trust was imposed  
19 between the parties. Nevada law does not establish a trust simply because Urquico  
20 had titles such as secretary, treasurer and COO. The fiduciary relationship had to be  
21 one arising from an express or technical trust that was imposed before and without  
22 reference to the wrongdoing that cause the debt. *In re Cantrell*, 329 F.3d at 1125.  
23 Citing *Lewis v. Scott (In re Lewis)*, 97 F.3d 1182, 1185 (9th Cir. 1996).

24 **There was no res.**

25 No independent trust was created. Urquico never held any money in trust for  
26 Horvoth. There was a GMI bank account which held Horvoth's money and which  
27 Urquico and confederates used as a personal bank account for personal enjoyment, as  
28 opposed to business purposes. In absence of a trust res, a fundamental requirement to

1 form a trust, there was no express or technical trust. See *In re Honkanen*, 381 B.R. at  
2 381. Since there is insufficient of evidence of an express or technical trust, and no trust  
3 res, the court cannot make a finding that Urquico is liable, as a fiduciary, pursuant to §  
4 523(a)(4).

5 **THE EVIDENCE IS INSUFFICIENT TO SUPPORT A CLAIM**  
6 **PURSUANT TO 11 U.S.C. § 523(a)(6)**

7 Under 11 U.S.C. § 523(a)(6), a debt is nondischargeable by an individual when  
8 such debt is for “willful and malicious injury by the debtor to another entity or to the  
9 property of another entity.” In order for the debt to be nondischargeable pursuant to §  
10 523(a)(6), the bankruptcy court must find the injury inflicted by defendant was both  
11 willful and malicious. *In the Matter of Ormsby v. First Am. Title Co. of Nev. (In re*  
12 *Ormsby)*, 591 F.3d 1199, 1206 (9th Cir. 2010). “The Supreme Court in *Kawaauhau v.*  
13 *Geiger (In re Geiger)*, 523 U.S. 57, 118 S.Ct. 947, 140 L.Ed.2d 90 (1998), made clear  
14 that for section 523(a)(6) to apply, the actor must intend the consequence of the act, not  
15 simply the act itself.” *In re Ormsby* at 1206, citing *Geiger* at 60. “The Debtor is charged  
16 with the knowledge of the natural consequences of his [or her] actions.” *Id.* [citations  
17 omitted]. “In addition to what a debtor may admit to knowing, the bankruptcy court may  
18 consider circumstantial evidence that tends to establish what the debtor must have  
19 actually known when taking the injury-producing action.” *Id.* See also *Carrillo v. Su (In*  
20 *re Su)* 290 F.3d 1140, 1146 n. 6 (9th Cir. 2002).

21 A willful injury requires “a deliberate or intentional *injury*, not merely a deliberate  
22 or intentional *act* that leads to injury.” *In re Geiger* at 61. The willful requirement of §  
23 523(a)(6) is met when it is shown either (a) that the debtor had a subjective intent to  
24 cause harm or (b) knowledge that harm is substantially certain to occur as a result of his  
25 [or her] conduct. *Petralia v. Jercich (In re Jercich)*, 238 F.3d 1202, 1208 (9th Cir. 2001).  
26 *In re Su* at 1144–45 n. 3.

27 The next step of the inquiry is whether the injury was “malicious.” “An injury is  
28 ‘malicious,’ as that term is used in Section 523(a)(6), when it is: (1) a wrongful act; (2)  
done intentionally; (3) which necessarily causes injury; and (4) is done without just

1 cause and excuse.” *Jett v. Sicroff (In re Sicroff)*, 401 F.3d 1101, 1106 (9th Cir. 2005)  
2 citing *In re Jercich* at 1209.

3 Here, it is possible that Urquico, Schlottmann, Howry, Benincaso and/or Newman  
4 were involved in a scam to obtain money from an unwitting investor, but there was  
5 insufficient evidence presented in this case to prove this suspicion. Urquico’s  
6 intentional misrepresentations led to Horvoth’s loss of \$150,000; however, the evidence  
7 was insufficient to show that Urquico had a subjective intent to cause the harm or had  
8 knowledge that harm was substantially certain to occur as a result of his conduct.

9 Based on the testimony and evidence before this court, the parties intended to  
10 host a concert. Schlottmann and Urquico testified that they did not have any experience  
11 in putting together a concert. The lack of experience of the parties would indicate this  
12 type of business venture was based on wishful thinking, but the evidence shows that  
13 Urquico, Schlottmann and Horvoth intended to make a lot of money from this deal.

14 Based on the purchases made by Urquico, and by the use of the funds in the  
15 Chase bank account, it appears he attempted to make some type of business  
16 arrangements, though the evidence does not establish that these purchases were made  
17 to further any business arrangements for GMI.

18 The evidence was clear that after Horvoth’s money was turned over to GMI,  
19 Urquico and Schlottmann repeatedly made false statements about the status of the  
20 contracts with the bands. There was no evidence to show Urquico attempted to verify  
21 that such a contract existed.

22 The facts that the parties were to self-monitor their spending and that there was  
23 no treasurer, accountant or escrow manager to monitor the funds, shows Urquico, as  
24 COO of GMI, had to know that lack of supervision of the money could cause harm to  
25 Horvoth. The joint venture agreement signed on October 29, 2012 by Urquico,  
26 Benincaso, Howry and Schlottmann states the COO “. . . shall keep full and accurate  
27 books of account reflecting all assets, liabilities and transactions of the Company and  
28 shall supervise the preparation of all budgets necessary or desirable relating to receipts

1 or expenditures of the Company . . .” Defendant’s Ex. D, ¶ 2.4. Urquico admitted that  
2 he did not keep track of the funds.


3 Urquico’s misrepresentations to Horvoth regarding the status of the contract and  
4 Urquico’s lack of monitoring of the funds was, at best, reckless; however, reckless or  
5 negligently inflicted injuries do not fall within the willful and malicious injury exception to  
6 discharge. *In re Geiger*, 523 U.S. 57. The evidence, as presented, was insufficient to  
7 show that Urquico intended to cause the injury.

8 **CONCLUSION<sup>2</sup>**

9 Plaintiff Brian Horvoth met his burden by a preponderance of the evidence that  
10 Defendant Raxajack Urquico made material misrepresentations upon which the plaintiff  
11 justifiably relied, to induce Plaintiff to provide an investment for a concert deal. Plaintiff  
12 suffered proximate damages of \$150,000. The court hereby concludes that Plaintiff’s  
13 claim for \$150,000 is nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(A).

14 IT IS SO ORDERED.

15  
16  
17  
18  
19 Date: August 26, 2016

20   
21 \_\_\_\_\_  
22 Gregg W. Zive  
23 United States Bankruptcy Judge  
24  
25

26 <sup>2</sup> Notwithstanding the findings related to the defendant in this adversary  
27 proceeding, the court does not make any specific findings regarding the liability of  
28 Andrew Schlottmann, Brendan Howry, Francesco Benincaso or Jason Newman, as the  
court has no jurisdiction here, other than over Urquico.