

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, February 28, 2024

Hearing Room 301

9:30 AM

1: -

Chapter

#0.00 All hearings on this calendar will be conducted in Courtroom 301 at 21041 Burbank Boulevard, Woodland Hills, California, 91367. All parties in interest, members of the public and the press may attend the hearings on this calendar in person.

Additionally, (except with respect to evidentiary hearings, or as otherwise ordered by the Court) parties in interest (and their counsel) may connect by ZoomGov audio and video free of charge, using the connection information provided below. Members of the public and the press may only connect to the zoom audio feed, and only by telephone. Access to the video feed by these individuals is prohibited.

Parties in interest may participate by ZoomGov video and audio using a personal computer (equipped with camera, microphone and speaker), or a handheld mobile device (such as an iPhone or Android phone). Members of the public, the press and parties in interest may participate by audio only using a telephone (standard telephone charges may apply).

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Docket 0

Tentative Ruling:

- NONE LISTED -

**United States Bankruptcy Court
Central District of California
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9:30 AM

1:23-10270 Linda Ezor Swarzman

Chapter 11

#1.00 Motion for relief from stay [RP]
2917 Tropicana, Crystal Beach, TX 77650

LEGACY LENDING, LLC
VS
DEBTOR

fr. 7/12/23 (stip); 7/19/23(stip); 8/9/23(stip); 9/27/23(stip); 10/18/23(stip);
11/15/23; 12/20/23; 1/31/24

Docket 125

***** VACATED *** REASON: Mtn to approve agreement between trustee
and lender granted on 2/5/24. See docs. 397 and 458.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Linda Ezor Swarzman

Represented By
Susan K Sefflin
Jessica Wellington
David Seror

Movant(s):

Legacy Lending, LLC

Represented By
Christopher M McDermott

**United States Bankruptcy Court
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1:24-10046 Temple Poteat

Chapter 7

#2.00 Motion for relief from stay [PP]

SAG-AFTRA FEDERAL CREDIT UNION
VS
DEBTOR

Docket 10

Tentative Ruling:

Grant with 4001(a)(3) waiver and confirmation that no stay is in effect. 11 U.S.C. § 362(c)(4)(A)(i) and (ii). The debtor, an individual, has had two cases pending and dismissed within the last year, other than a case refiled under 11 U.S.C. § 707(b), and the debtor did not file a motion requesting imposition of the stay within 30 days of his commencement of this third case.

Movant to submit Order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

Party Information

Debtor(s):

Temple Poteat

Pro Se

Movant(s):

SAG-AFTRA Federal Credit Union

Represented By
Larry D Webb

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

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1:22-11162 Gustavo Ruiz

Chapter 7

#3.00 Motion for relief from stay [RP]

HOF GRANTOR TRUST 5, A DELAWARE TRUST
VS
DEBTOR

Docket 119

Tentative Ruling:

Deny.

Respondent must submit the order within seven (7) days.

Party Information

Debtor(s):

Gustavo Ruiz

Represented By
Stella A Havkin

Movant(s):

HOF Grantor Trust 5, a Delaware

Represented By
Daniel I Singer

Trustee(s):

Amy L Goldman (TR)

Represented By
Todd A. Frealy
Anthony A. Friedman

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1:23-10968 Vagram Garayan

Chapter 13

#4.00 Motion for relief from stay [PP]

FINANCIAL SERVICES VEHICLE TRUST
VS
DEBTOR

Docket 29

Tentative Ruling:

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

Party Information

Debtor(s):

Vagram Garayan

Represented By
Khachik Akhkashian

Movant(s):

Financial Services Vehicle Trust

Represented By
Cheryl A Skigin

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CONT... Vagram Garayan

Chapter 13

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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1:24-10043 Darlene D Freeland

Chapter 13

#5.00 Motion for relief from stay [RP]

CIVIC REAL ESTATE HOLDINGS III, LLC
VS
DEBTOR

Docket 21

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Darlene D Freeland

Represented By
Stephen L Burton

Movant(s):

Civic Real Estate Holdings III, LLC,

Represented By
Reilly D Wilkinson

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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9:30 AM

1:24-10190 Gregorio Alberto Driotez

Chapter 13

#6.00 Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate

Docket 6

Tentative Ruling:

The Court will grant the motion on an interim basis up to the date of the continued hearing. The Court will continue this hearing to **9:30 a.m. on April 24, 2024.**

No later than March 1, 2024, the debtor must serve **on all creditors** notice of the continued hearing date and time and the deadline to file any response 14 days prior thereto. In addition, the debtor must timely pay: (1) his first deed of trust payments for March 2024 and April 2024 in the amount of \$2,531.00 (as stated in his current schedule J) as to the real property located at 7125 Geyser Avenue, Reseda, CA 91335; and (2) his March and April 2024 plan payments in the amount of \$750.00, as stated in the debtor's proposed chapter 13 plan [doc. 17].

No later than April 15, 2024, the debtor must file a declaration which demonstrates that he timely made his required postpetition deed of trust and chapter 13 plan payments.

The debtor must submit an order within seven (7) days.

Party Information

Debtor(s):

Gregorio Alberto Driotez

Represented By
Kevin T Simon

Movant(s):

Gregorio Alberto Driotez

Represented By
Kevin T Simon

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CONT... Gregorio Alberto Driotez

Chapter 13

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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1:22-11504 Drita Pasha Kessler

Chapter 7

Adv#: 1:23-01009 Travelers Property Casualty Company of America v. Kessler

#7.00 Travelers Property Casualty Company of America's Motion For
Order Extending Deadline To File Pretrial Motions

Docket 32

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Drita Pasha Kessler

Represented By
Andrew Edward Smyth

Defendant(s):

Drita Pasha Kessler

Pro Se

Movant(s):

Travelers Property Casualty

Represented By
James E Till
David C Nealy
Brett Ramsaur

Plaintiff(s):

Travelers Property Casualty

Represented By
James E Till
David C Nealy
Brett Ramsaur

Trustee(s):

David Seror (TR)

Represented By
Elissa Miller

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1:22-11504 Drita Pasha Kessler

Chapter 11

Adv#: 1:23-01009 Travelers Property Casualty Company of America v. Kessler

#8.00 Order to Show Cause why this Adversary Proceeding Should
Not Be Dismissed for Failure to Prosecute

fr. 1/17/24

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Drita Pasha Kessler

Represented By
Michael Jay Berger
Andrew Edward Smyth

Defendant(s):

Drita Pasha Kessler

Represented By
Leonard Pena

Plaintiff(s):

Travelers Property Casualty

Represented By
James E Till
David C Nealy

Trustee(s):

Robert Paul Goe (TR)

Pro Se

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1:22-11504 Drita Pasha Kessler

Chapter 11

Adv#: 1:23-01009 Travelers Property Casualty Company of America v. Kessler

#9.00 Pre-Trial conference re: Complaint for determination of nondischargeability of debt

fr. 7/26/23; 12/6/23; 1/17/24

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Drita Pasha Kessler

Represented By
Leonard Pena

Defendant(s):

Drita Pasha Kessler

Represented By
Leonard Pena

Plaintiff(s):

Travelers Property Casualty

Represented By
James E Till
David C Nealy

Trustee(s):

Robert Paul Goe (TR)

Pro Se

**United States Bankruptcy Court
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1:23-11478 Scott Joseph Saccoccio

Chapter 7

Adv#: 1:23-01054 Saccoccio v. Mohela aka Higher Education Loan Authority of the

#10.00 Status conference re: complaint to determine student loans dischargeable for "undue hardship" under 11 U.S.C. §523(a)(8)

Stipulation to continue filed 1/31/24

Docket 1

*** VACATED *** REASON: Per order entered 2/15/24 [doc. 5], SC continued to 4/17/24 at 1:30 p.m.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Scott Joseph Saccoccio

Represented By
Sanaz Sarah Bereliani

Defendant(s):

Mohela aka Higher Education Loan

Pro Se

SOFI LENDING CORP.

Represented By
Rafael Munoz Hernandez

Joint Debtor(s):

Melissa Mae Saccoccio

Represented By
Sanaz Sarah Bereliani

Plaintiff(s):

Scott Joseph Saccoccio

Represented By
Sanaz Sarah Bereliani

Trustee(s):

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 301

2:00 PM

1:23-11082 Philip M. Lawrence, II

Chapter 7

Adv#: 1:23-01050 Lawrence v. Lawrence, II

#11.00 Motion of Defendant Philip M. Lawrence, II, to Dismiss For
Failure to State A Claim

Docket 5

Tentative Ruling:

The Court will grant the motion to dismiss (the "Motion") [doc. 5] as to the claims of Urbana Chapa Lawrence ("Plaintiff") against the debtor Philip M. Lawrence, II ("Defendant"), with leave to amend the complaint.

APPLICABLE FEDERAL RULES OF PROCEDURE

"A motion to dismiss [pursuant to Fed. R. Civ. P. 12(b)(6)] will only be granted if the complaint fails to allege enough facts to state a claim to relief that is plausible on its face." *Fayer v. Vaughn*, 649 F.3d 1061, 1064 (9th Cir. 2011) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 547, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009)).

In evaluating a Rule 12(b)(6) motion, review is "limited to the contents of the complaint." *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754 (9th Cir. 1994). However, without converting the motion to one for summary judgment, exhibits attached to the complaint may be considered in determining whether dismissal is proper. *See Parks School of Business, Inc. v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995).

Under Rule 15(a)(1)(B), a plaintiff has a one-time right to file an amended complaint "as a matter of course" 21 days after the earlier of (i) service of a responsive pleading or (ii) service of a Rule 12(b), (e) or (f) motion. Even if a plaintiff does not have the right to amend "as a matter of course," the court may grant leave to amend. Rule 15(a)(2) provides that "the court should freely give leave [to amend] when justice so

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Philip M. Lawrence, II

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requires." Dismissal without leave to amend is appropriate, however, when the court is satisfied that the deficiencies in the complaint could not possibly be cured by amendment. *Jackson v. Carey*, 353 F.3d 750, 758 (9th Cir. 2003); *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000).

APPLICABLE BANKRUPTCY STATUTES

11 U.S.C. § 523(a)(2)(A)

Pursuant to 11 U.S.C. § 523(a)(2)(A), a bankruptcy discharge does not discharge an individual debtor from any debt "for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by – false pretenses, a false representation, or actual fraud, other than a statement respecting a debtor's or an insider's financial condition." To prevail on a § 523(a)(2)(A) claim, a plaintiff must prove, by a preponderance of the evidence, the following five elements:

- (1) misrepresentation, fraudulent omission or deceptive conduct by the debtor;
- (2) knowledge of the falsity or deceptiveness of his statement or conduct;
- (3) an intent to deceive;
- (4) justifiable reliance by the creditor on the debtor's statement or conduct;
- and
- (5) damage to the creditor proximately caused by its reliance on the debtor's statement or conduct.

In re Weinberg, 410 B.R. 19, 35 (B.A.P. 9th Cir. 2009) (citing *In re Slyman*, 234 F.3d 1081, 1085 (9th Cir. 2000)). Representations made without an intent to perform satisfy the first three requirements of § 523(a)(2)(A). *In re Rubin*, 875 F.2d 755, 759 (9th Cir. 1989). A promise also can be considered fraudulent when the promisor knew or should have known of his inability to perform. *In re Barrack*, 217 B.R. 598, 606 (B.A.P. 9th Cir. 1998).

11 U.S.C. § 523 (a)(6)

Under 11 U.S.C. § 523(a)(6), a discharge under 11 U.S.C. § 727 does not discharge an individual debtor from any debt "for willful and malicious injury by the debtor to another entity or to the property of another entity." "[A]n intentional breach of

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Chapter 7

contract cannot give rise to non-dischargeability under § 523(a)(6) unless it is accompanied by conduct that constitutes a tort under state law." *Lockerby v. Sierra*, 535 F.3d 1038, 1040 (9th Cir. 2008). Fraud is an action in tort. *In re Haynie*, 621 B.R. 456, 470 (Bankr. D. Idaho 2020), *aff'd*, 624 B.R. 872 (B.A.P. 9th Cir. 2021).

[A]lthough § 523(a)(6) *generally* applies to torts rather than to contracts and an intentional breach of contract *generally* will not give rise to a nondischargeable debt, where an intentional breach of contract is accompanied by tortious conduct which results in willful and malicious injury, the resulting debt is excepted from discharge under § 523(a)(6).

In re Jercich, 238 F.3d 1202, 1205 (9th Cir. 2001) (emphasis in original).

THE COMPLAINT

With respect to Plaintiff's claims under sections 523(a)(2)(A) and (a)(6), the complaint (the "Complaint") [doc. 1] makes, in relevant part, the following allegations:

Plaintiff and Defendant were married on March 22, 2017. On October 28, 2022, the parties filed the Divorce Action. Defendant is a songwriter, producer and performer. On or about February 7, 2020, Defendant sold a portion of his music catalog for approximately \$90 million (the "Sale Proceeds"). Defendant failed to pay any tax on the Sale Proceeds. Complaint, ¶¶ 7-9.

In or about February 2020, Defendant represented to Plaintiff verbally and in writing that the Sale Proceeds were an asset that was for the benefit of himself, Plaintiff, and their four children. Defendant further represented to Plaintiff that he would pay all taxes resulting from the Sale Proceeds. *Id.*, ¶ 12.

On or about October 15, 2021, Defendant asked Plaintiff to sign California state and federal tax returns for the 2020 tax year. Defendant represented to Plaintiff that: (1) the tax returns were complete and accurate; (2) the Sale Proceeds identified in the returns and the corresponding tax liability were part of the parties' joint estate; and (3) Defendant would pay in full the tax liability for the Sale Proceeds. Defendant made these representations with the intention

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Philip M. Lawrence, II

Chapter 7

of deceiving Plaintiff into signing the tax returns. In reliance upon Defendant's representations, Plaintiff signed the 2020 tax returns. *Id.*, ¶¶ 13-14.

Defendant's representations were false when he made them. The 2020 tax returns were not complete and accurate. Defendant never intended to pay the taxes and he never intended to share the Sale Proceeds with Plaintiff. Rather, Defendant intended for Plaintiff to be burdened by the 2020 tax liability. Plaintiff did not know Defendant's representations were false and reasonably relied on them when she signed the 2020 tax returns. ¶¶ 14-15.

As a direct and proximate result of Defendant's false representations, Plaintiff signed the 2020 tax returns and unknowingly agreed to be liable for approximately \$27 million in tax liabilities resulting from the Sale Proceeds. Defendant's conduct, actions, and statements were intentional and were made willfully and maliciously. As a direct and proximate result of Defendant's conduct, Plaintiff suffered actual damages in an amount to be determined at trial. *Id.*, ¶¶ 16-18 and 20.

ANALYSIS

11 U.S.C. § 523(a)(2)(A)

Under Rule 12(b)(6), in order for a claim against Defendant to have facial plausibility, Plaintiff must plead factual content that allows the Court to draw the reasonable inference that Defendant is liable for the alleged misconduct. Plaintiff has not met this burden.

The Complaint sufficiently alleges that Defendant intentionally made false representations with the intent to deceive Plaintiff into signing the 2020 tax returns, on which Plaintiff relied when she signed the returns. However, the facts alleged in the Complaint, taken as true, do not support the reasonable inference that Plaintiff suffered damages that were proximately caused by Defendant's representations.

According to the Complaint, the parties were married in 2017. In the Opposition, Plaintiff asserts that the tax debt arises from the sale of Defendant's *separate* property. Opposition, p. 4. However, this is not alleged in the Complaint.

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CONT... Philip M. Lawrence, II

Chapter 7

Regarding any consequences of Plaintiff's alleged reliance on the purported representations at issue, Plaintiff must address why her tax liability arises only from her signature on, and submission of, joint tax returns for 2020. To the extent that Plaintiff contends that the music catalog and the Sale Proceeds constitute Defendant's separate property, and that any tax liability arising from the sale of the music catalog would not have been taxable to Plaintiff, had Plaintiff not signed joint tax returns for 2020, Plaintiff needs to allege that in an amended complaint. In addition, Plaintiff must allege in an amended complaint how she would have filed her California state and federal tax returns for 2020, if Defendant had not made the statements at issue, which are set forth in the complaint.

11 U.S.C. § 523(a)(6)

The elements of fraud also apply to establishing the issue of tortious conduct under section 523(a)(6). In addition, to survive a motion to dismiss, malice and intent may be alleged generally. *See* Rule 9(b).

In the Complaint, Plaintiff alleges that Defendant acted willfully and maliciously. Assuming Plaintiff files an amended complaint containing factual content that allows the Court to draw a reasonable inference that Defendant is liable for fraud, Plaintiff will have alleged sufficient facts to state a claim under section 523(a)(6).

Having assessed the standards, and taking into account the analysis set forth above, the Court will grant the Motion as to Plaintiff's claims against Defendant, with leave to amend the Complaint. Within 14 days after the Court's entry of the order granting the Motion, Plaintiff must file and serve on Defendant and his counsel an amended complaint.

No later than 14 days after the filing and service date of the amended complaint, Defendant must file and serve a response to Plaintiff's amended complaint.

Defendant must submit the order within seven (7) days.

Party Information

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CONT... Philip M. Lawrence, II

Chapter 7

Debtor(s):

Philip M. Lawrence II

Represented By
Robert M Yaspan

Defendant(s):

Philip M. Lawrence II

Represented By
Robert M Yaspan

Movant(s):

Philip M. Lawrence II

Represented By
Robert M Yaspan

Plaintiff(s):

Urbana Chapa Lawrence

Represented By
David L Oberg
Madison B Oberg

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Ron Bender
Jeffrey S Kwong

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1:23-11082 Philip M. Lawrence, II

Chapter 7

Adv#: 1:23-01050 Lawrence v. Lawrence, II

#12.00 Status conference re: complaint to determine debt
non-dischargeable under 11 U.S.C. §523

fr. 2/21/24

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Philip M. Lawrence II

Represented By
Robert M Yaspan

Defendant(s):

Philip M. Lawrence II

Represented By
Robert M Yaspan

Plaintiff(s):

Urbana Chapa Lawrence

Represented By
David L Oberg
Madison B Oberg

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Ron Bender
Jeffrey S Kwong

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Chapter 7

Adv#: 1:23-01051 Everett v. Lawrence, II

#13.00 Motion of Defendant Philip M. Lawrence, II, to Dismiss For
Failure to State a Claim

Docket 4

Tentative Ruling:

The Court will grant in part and deny in part the motion to dismiss (the "Motion") [doc. 4] as to the claims of Ashley N. Everett ("Plaintiff") against the debtor Philip M. Lawrence, II ("Defendant").

APPLICABLE FEDERAL RULES OF PROCEDURE

"A motion to dismiss [pursuant to Fed. R. Civ. P. 12(b)(6)] will only be granted if the complaint fails to allege enough facts to state a claim to relief that is plausible on its face." *Fayer v. Vaughn*, 649 F.3d 1061, 1064 (9th Cir. 2011) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 547, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009)).

In evaluating a Rule 12(b)(6) motion, review is "limited to the contents of the complaint." *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754 (9th Cir. 1994). However, without converting the motion to one for summary judgment, exhibits attached to the complaint may be considered in determining whether dismissal is proper. *See Parks School of Business, Inc. v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995).

Under Rule 15(a)(1)(B), a plaintiff has a one-time right to file an amended complaint "as a matter of course" 21 days after the earlier of (i) service of a responsive pleading or (ii) service of a Rule 12(b), (e) or (f) motion. Even if a plaintiff does not have the right to amend "as a matter of course," the court may grant leave to amend. Rule 15(a) (2) provides that "the court should freely give leave [to amend] when justice so

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requires." Dismissal without leave to amend is appropriate, however, when the court is satisfied that the deficiencies in the complaint could not possibly be cured by amendment. *Jackson v. Carey*, 353 F.3d 750, 758 (9th Cir. 2003); *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000).

Pursuant to Rule 9(b), "[i]n alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally." "Particularity" means that allegations must be stated with "specificity including an account of the time, place, and specific content of the false representations as well as the identities of the parties to the misrepresentations." *Lepton Labs, LLC v. Walker*, 55 F.Supp. 3d 1230, 1243 (C.D. Cal 2014) (citing *Swartz v. KPMG LLP*, 476 F.3d 756, 764 (9th Cir 2007)). Allegations must be "specific enough to give defendants notice of the particular misconduct which is alleged to constitute the fraud charged[.]" *Neubronner v. Milken*, 6 F.3d 666, 671 (9th Cir. 1993).

APPLICABLE BANKRUPTCY STATUTES

11 U.S.C. § 523(a)(2)(A)

Pursuant to 11 U.S.C. § 523(a)(2)(A), a bankruptcy discharge does not discharge an individual debtor from any debt "for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by – false pretenses, a false representation, or actual fraud, other than a statement respecting a debtor's or an insider's financial condition." To prevail on a § 523(a)(2)(A) claim, a plaintiff must prove, by a preponderance of the evidence, the following five elements:

- (1) misrepresentation, fraudulent omission or deceptive conduct by the debtor;
- (2) knowledge of the falsity or deceptiveness of his statement or conduct;
- (3) an intent to deceive;
- (4) justifiable reliance by the creditor on the debtor's statement or conduct;
- and
- (5) damage to the creditor proximately caused by its reliance on the debtor's statement or conduct.

In re Weinberg, 410 B.R. 19, 35 (B.A.P. 9th Cir. 2009) (citing *In re Slyman*, 234 F.3d

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1081, 1085 (9th Cir. 2000)). Representations made without an intent to perform satisfy the first three requirements of § 523(a)(2)(A). *In re Rubin*, 875 F.2d 755, 759 (9th Cir. 1989). A promise also can be considered fraudulent when the promisor knew or should have known of his inability to perform. *In re Barrack*, 217 B.R. 598, 606 (B.A.P. 9th Cir. 1998).

11 U.S.C. § 523 (a)(6)

Under 11 U.S.C. § 523(a)(6), a discharge under 11 U.S.C. § 727 does not discharge an individual debtor from any debt "for willful and malicious injury by the debtor to another entity or to the property of another entity." "[A]n intentional breach of contract cannot give rise to non-dischargeability under § 523(a)(6) unless it is accompanied by conduct that constitutes a tort under state law." *Lockerby v. Sierra*, 535 F.3d 1038, 1040 (9th Cir. 2008). Fraud is an action in tort. *In re Haynie*, 621 B.R. 456, 470 (Bankr. D. Idaho 2020), *aff'd*, 624 B.R. 872 (B.A.P. 9th Cir. 2021).

[A]lthough § 523(a)(6) *generally* applies to torts rather than to contracts and an intentional breach of contract *generally* will not give rise to a nondischargeable debt, where an intentional breach of contract is accompanied by tortious conduct which results in willful and malicious injury, the resulting debt is excepted from discharge under § 523(a)(6).

In re Jercich, 238 F.3d 1202, 1205 (9th Cir. 2001) (emphasis in original).

THE COMPLAINT

With respect to Plaintiff's claims under sections 523(a)(2)(A) and (a)(6), the complaint (the "Complaint") [doc. 1] makes, in relevant part, the following allegations:

In January 2017, Defendant solicited Plaintiff to move from Texas to California to work as a second assistant for Defendant's household. Defendant represented to Plaintiff that she would be paid a \$4,000.00 monthly salary and receive free housing in Defendant's guest home for her services. In February 2017, Plaintiff moved to California and began working for Defendant. Complaint, ¶¶ 12 and 14.

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In July 2019, Defendant promised Plaintiff an employment bonus of real property. In July 2020, this real property bonus changed to \$400,000.00 to be paid in cash; Defendant offered to finance a real property of Plaintiff's choosing and incorporate the bonus into the real property. The parties agreed that Plaintiff would refinance the property and be responsible for the remainder of the loan, including any taxes that Defendant had paid. The parties further agreed that Plaintiff would be entitled to any equity accrued on the property from the date of purchase through the date of the refinance. Plaintiff selected the real property located at 9639 Amigo Avenue, Northridge, California 91324 (the "Property"), and in September 2020, Defendant purchased the Property for \$960,000.00. Plaintiff relied on Defendant's representation that she would be able to keep the Property. Starting in 2020 and continuing thereafter, Plaintiff made improvements totaling over \$65,000 on the Property. *Id.*, ¶¶ 15-17.

In addition, while Plaintiff was employed by Defendant, Defendant induced Plaintiff to pay for certain of his personal and household expenses, exceeding \$50,000.00. On March 5, 2021, Defendant demanded that Plaintiff purchase a gift from Gucci for an artist signed to Defendant's record label, despite Defendant's knowledge that he did not have a working credit card that Plaintiff could use. On March 25, 2021, Defendant instructed Plaintiff to move Defendant and Defendant's family into a new home they had purchased. However, Defendant did not provide Plaintiff with a working credit card and insisted that Plaintiff use her own credit cards to pay for the moving costs. In addition, Plaintiff advanced additional non-reimbursed expenses, including, but not limited to, household purchases, airfare, ground transportation and payments to individuals for cleaning services, moving services locksmith services and landscaping. Plaintiff relied on Defendant's promises that he would reimburse her. Defendant did not reimburse Plaintiff as promised. Rather, Defendant persuaded Plaintiff to acquire debt on her own credit cards, which negatively impacted her credit standing. Finally, Defendant also owes Plaintiff over \$63,000.00 in wages accumulated from August 2022 through February 2023. *Id.*, ¶¶ 18-21.

On October 13, 2023, during the section 341(a) meeting of creditors,

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Defendant did not identify Plaintiff as one of his creditors. Moreover, Defendant testified that he did not know why Plaintiff was living in the Property. *Id.*, ¶ 10.

Defendant never intended to pay Plaintiff a bonus or repay Plaintiff for any reimbursements. Instead of reimbursing Plaintiff or paying Plaintiff's wages, Defendant unjustly enriched himself. Defendant's conduct, actions, and statements were intentional and were made willfully and maliciously. As a direct and proximate result of Defendant's conduct, Plaintiff suffered actual damages in an amount to be determined at trial. *Id.*, ¶¶ 21-22, 24-25 and 27.

ANALYSIS

With respect to reimbursement of expenses which Plaintiff incurred for the benefit of Defendant, and which Defendant represented that he would reimburse, and Plaintiff's entitlement to unpaid wages, the Complaint includes sufficient allegations that Defendant engaged in fraudulent conduct such that the debt owed to Plaintiff may be nondischargeable under section 523(a)(2)(A).

Representations made without an intent to perform satisfy the first three requirements of section 523(a)(2)(A). *Rubin*, 875 F.2d at 759. In addition, a promise can be considered fraudulent when the promisor knew or should have known of his inability to perform. *Barrack*, 217 B.R. at 606. Finally, allegations regarding intent may be alleged generally at the motion to dismiss stage. *See* Rule 9(b).

However, as concerns Plaintiff's allegation that Defendant misrepresented the provision of a bonus to Plaintiff, by Plaintiff obtaining title to the Property for \$400,000 less than the Property's \$960,000 purchase price, Plaintiff has not stated a claim for relief that is plausible on its face. In the Complaint, Plaintiff has not set forth sufficient allegations to explain how long Plaintiff was entitled to reside in the Property, before refinancing the Property, in accordance with the alleged agreement between Plaintiff and Defendant, nor has Plaintiff identified any steps she took to refinance the Property, in order to obtain the \$400,000 bonus, and explain why Plaintiff did not effectuate that refinance.

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The elements of fraud also apply to establishing the issue of tortious conduct under section 523(a)(6). To survive a motion to dismiss, malice and intent may be alleged generally. *See* Rule 9(b). In the Complaint, Plaintiff alleges that Defendant acted willfully and maliciously. To the extent that Defendant contends Plaintiff cannot bring a nondischargeability claim for breach of contract, in *Jercich*, 238 F.3d at 1208-09, the Court of Appeals held that a defendant's intentional failure to pay wages, despite his knowledge that he could pay them, may, and in that case did, constitute willful and malicious conduct under section 523(a)(6). Consequently, with respect to Defendant's alleged failure to pay wages owed to Plaintiff, Plaintiff has alleged sufficient facts to state a claim under section 523(a)(6).

Having assessed the standards, and taking into account the analysis set forth above, the Court will GRANT the Motion as concerns the nondischargeability of any damages arising from Plaintiff's nonreceipt of a \$400,000 bonus (the "Bonus") and Plaintiff's expenditures for improvements to the Property (the "Property Improvements"); the Court will DENY the Motion as to the nondischargeability of damages incurred as a result of Defendant's alleged failure to reimburse Plaintiff: (1) for Plaintiff's purported purchase in March 2021, for Defendant's benefit, at Defendant's request and based on Defendant's alleged representations that Plaintiff would be reimbursed, of a Gucci gift and (2) for Plaintiff's purported payment in March 2021 of Defendant and his family's moving costs, including household purchases, airfare, ground transportation and payments to individuals for cleaning services, moving services, locksmith services and landscaping, based on Defendant's alleged representations to Plaintiff that Plaintiff would be reimbursed for those expenditures.

Regarding the nondischargeability of any debt to Plaintiff based on the Bonus and the Property Improvements, the Court will deny the Motion with leave to amend the Complaint.

No later than 14 days after the entry of the Court's order deciding the Motion, Plaintiff must file and serve on Defendant and his counsel an amended complaint or a notice (the "Notice") that Plaintiff will go forward with the Complaint, absent the claims concerning the Bonus and the Property Improvements.

No later than 14 days after Plaintiff files and serves on Defendant and his counsel the

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amended complaint or the Notice, Defendant must file a response to the amended complaint or to the Complaint, from which the claims concerning the Bonus and the Property Improvements will be dismissed.

Plaintiff must submit the order within seven (7) days.

Party Information

Debtor(s):

Philip M. Lawrence II

Represented By
Robert M Yaspan

Defendant(s):

Philip M. Lawrence II

Represented By
Robert M Yaspan

Movant(s):

Philip M. Lawrence II

Represented By
Robert M Yaspan

Plaintiff(s):

Ashley Everett

Represented By
Herlinda Rebeca Vasquez

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Ron Bender
Jeffrey S Kwong

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1:23-11082 Philip M. Lawrence, II

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Adv#: 1:23-01051 Everett v. Lawrence, II

#13.01 Status conference re: complaint to determine debt non-dischargeable
under 11 U.S.C. §523

fr. 2/21/24

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Philip M. Lawrence II

Represented By
Robert M Yaspan

Defendant(s):

Philip M. Lawrence II

Represented By
Robert M Yaspan

Plaintiff(s):

Ashley Everett

Represented By
Herlinda Rebeca Vasquez

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Ron Bender
Jeffrey S Kwong

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1:23-11082 Philip M. Lawrence, II

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Adv#: 1:23-01052 Diskint v. Lawrence, II

#14.00 Motion of Defendant Philip M. Lawrence, II, to Dismiss For
Failure to State A Claim

Docket 4

*** VACATED *** REASON: Order approving stipulation for dismissal of
adversary proceeding entered 2/22/24

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Philip M. Lawrence II

Represented By
Robert M Yaspan

Defendant(s):

Philip M. Lawrence II

Represented By
Robert M Yaspan

Movant(s):

Philip M. Lawrence II

Represented By
Robert M Yaspan

Plaintiff(s):

Michael Diskint

Represented By
Gregory A Rougeau

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Ron Bender
Jeffrey S Kwong

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1:23-11082 Philip M. Lawrence, II

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Adv#: 1:23-01052 Diskint v. Lawrence, II

#15.00 Status conference re: complaint for nondischargeability of debt

fr. 2/21/24

Docket 1

***** VACATED *** REASON: Order approving stipulation for dismissal of
adversary proceeding entered 2/22/24**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Philip M. Lawrence II

Represented By
Robert M Yaspan

Defendant(s):

Philip M. Lawrence II

Represented By
Robert M Yaspan

Plaintiff(s):

Michael Diskint

Represented By
Gregory A Rougeau

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Ron Bender
Jeffrey S Kwong