

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

Thursday, December 4, 2025

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).

Neither a Zoom nor a ZoomGov account is necessary to participate remotely and there are no fees for doing so. No pre-registration or prior approval is required.

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Password: 389048

For more information on appearing before Judge Kaufman by ZoomGov, please see the information entitled "Tips for a Successful ZoomGov Court Experience" on the Court's website at: <https://www.cacb.uscourts.gov/judges/honorable-victoria-s-kaufman> under the tab "Telephonic Instructions."

Docket 0

Tentative Ruling:

- NONE LISTED -

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1:25-10602 World of Mistry, LLC

Chapter 11

#1.00 Motion for relief from stay [RP]

ENTERPRISE BANK & TRUST
VS
DEBTOR

fr. 10/16/25(stip)

Docket 93

***** VACATED *** REASON: Hearing continued to 1/8/26 at 9:30 per
Order entered 11/24/25. [Dkt. 135]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

World of Mistry, LLC

Represented By

Ron Bender

Todd M Arnold

Anthony A. Friedman

Katherine Bunker

Movant(s):

Enterprise Bank & Trust, its

Represented By

Timothy J Silverman

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1:25-11664 Guillermo Alberto Ramirez

Chapter 7

#1.01 Motion for relief from stay [PP]

WELLS FARGO BANK, N.A.
VS
DEBTOR

Docket 10

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):

Guillermo Alberto Ramirez

Represented By
Sydell B Connor

Movant(s):

Wells Fargo Bank, N.A., d/b/a Wells

Represented By
Kirsten Martinez

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CONT... Guillermo Alberto Ramirez

Chapter 7

Trustee(s):

Jeremy W. Faith (TR)

Pro Se

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1:25-11920 Erika Maricela Manzano Flores

Chapter 7

#2.00 Motion for relief from stay [PP]

TOYOTA LEASE TRUST
VS
DEBTOR

Docket 7

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):

Erika Maricela Manzano Flores

Represented By
Sydell B Connor

Movant(s):

Toyota Lease Trust as serviced by

Represented By
Kirsten Martinez

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CONT... Erika Maricela Manzano Flores

Chapter 7

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

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1:25-11972 Marianna Muradyan

Chapter 7

#3.00 Motion for relief from stay [PP]

MERCEDES-BENZ VEHICLE TRUST
VS
DEBTOR

Docket 10

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):

Marianna Muradyan

Represented By
Eileen Keusseyan

Movant(s):

Mercedes-Benz Vehicle Trust

Represented By
Sheryl K Ith

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CONT... Marianna Muradyan

Chapter 7

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

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1:25-11383 Matin Navabi

Chapter 7

#4.00 Motion for relief from stay [RP]

TH MSR HOLDINGS LLC
VS
DEBTOR

Docket 13

***** VACATED *** REASON: No chambers copy of motion provided.
Motion is not on calendar.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Matin Navabi

Represented By
Navid Kohan

Movant(s):

TH MSR Holdings LLC

Represented By
Daniel I Singer

Trustee(s):

Nancy J Zamora (TR)

Pro Se

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1:24-10584 Leticia Hernandez

Chapter 13

#5.00 Motion for relief from stay [PP]

FLAGSHIP CREDIT ACCEPTANCE LLC
VS
DEBTOR

Docket 58

Tentative Ruling:

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

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):

Leticia Hernandez

Represented By
Jeffrey J Hagen

Movant(s):

Flagship Credit Acceptance LLC

Represented By
Sheryl K Ith

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CONT... Leticia Hernandez

Chapter 13

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:25-12103 Richard Jesus Henriquez

Chapter 13

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

Docket 8

Tentative Ruling:

The Court will grant the *Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate* [doc. 8] as to all creditors on an interim basis up to the date of the continued hearing. The Court will continue this hearing to **9:30 a.m. on January 15, 2026.**

No later than **December 12, 2025**, the debtor must serve written notice of the continued hearing and the deadline to file a response 14 days prior thereto on Carrington Mortgage Services.

The debtor must timely pay: (1) to Carrington Mortgage Services, his deed of trust payment for December 2025 in the amount of \$2,686.27 (as stated in his schedule J) as to the real property located at 11409 Blucher Ave., Granada Hills, CA and his December 2025 and January 2026 plan payments in the amount of \$1,737, as stated in the debtor's proposed chapter 13 plan [doc. 14].

No later than January 12, 2026, 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 the order within seven (7) days.

Party Information

Debtor(s):

Richard Jesus Henriquez

Represented By
Matthew D. Resnik

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:22-11212 Gabriella Noemi Loos

Chapter 7

Adv#: 1:24-01012 Amerberg et al v. Loos

#7.00 Status conference re: complaint to determine non-dischargeability
of debt and objection to discharge

fr. 6/26/24; 12/18/24; 12/19/24; 11/20/25

Docket 1

Tentative Ruling:

On November 17, 2025, the plaintiffs filed a unilateral status report (the "Status Report") [doc. 24]. In the Status Report, the plaintiffs represent that the jury trial previously set for October 10, 2025 in the state court action was vacated and a status conference re: bankruptcy was set for December 15, 2025.

In order for the parties to comply with Local Bankruptcy Rule 7016-1(a) and timely file a joint status report before the status conference, the Court will continue the status conference to **1:30 p.m. on January 22, 2026**.

Appearances on December 4, 2025 are excused.

Party Information

Debtor(s):

Gabriella Noemi Loos

Represented By
Kevin T Simon

Defendant(s):

Gabriella Noemi Loos

Pro Se

Plaintiff(s):

Nathan Amerberg

Represented By

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CONT... Gabriella Noemi Loos

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Gennady Leonid Lebedev

Paulina Amerberg

Represented By
Gennady Leonid Lebedev

Trustee(s):

Nancy J Zamora (TR)

Pro Se

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1:25-11678 Jordan Gene Pearlman

Chapter 7

#7.01 Motion for extension of time to file a complaint objecting to discharge

Docket 38

Tentative Ruling:

I. BACKGROUND

A. Prepetition Litigation

In May 2012, Peter Kleidman ("Movant") commenced an action against Jordan Pearlman ("Debtor") in the Supreme Court of the State of New York for the County of New York. In that action, in February 2020, Movant obtained a default judgment against Debtor, based on a breach of guaranty of a debt. Ex. 4 to Debtor's Request for Judicial Notice [doc. 53].

Since that time, Movant has filed three lawsuits against Debtor and Debtor's spouse, Elizabeth Hunter, in California and in New York. *Id.*, Exs. 5, 6 and 8 [doc. 53]. In June 2024, Movant filed a lawsuit against Debtor, Debtor's spouse and other defendants in the Superior Court of California, County of Los Angeles, for, *inter alia*, declaratory relief, fraud, fraudulent duress, violation of the California Uniform Voidable Transactions Act and voidable transfers. Ex. 6 to Debtor's Request for Judicial Notice [doc. 53].

In June 2025, Movant filed a similar lawsuit against Debtor and Debtor's spouse in the Supreme Court of the State of New York, County of New York, which also asserts claims based on alleged fraudulent transfers. Ex. 8 to Debtor's Request for Judicial Notice [doc. 53].

B. The Bankruptcy Case

On September 17, 2025, Debtor filed a chapter 7 petition. The deadline to object to Debtor's receipt of a discharge or to challenge whether certain debts are dischargeable is December 8, 2025 [doc. 5].

On September 11, 2025, Movant was served with the *Notice of Chapter 7 Bankruptcy*

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Chapter 7

Case -- No Proof of Claim Deadline. [doc. 5]. This notice informed parties in interest about, among other things, the deadline for creditors to file a complaint to object to Debtor's receipt of a discharge or to challenge whether certain debts are dischargeable.

On September 24, 2025, Debtor filed his schedules of assets and liabilities and his Statement of Financial Affairs [doc. 8]. On October 3, 2025, Movant, in pro per, filed *Kleidman's Motion for Access to the CM/ECF System* [doc. 11]. On October 22, 2025, the Court entered an Order granting Movant's motion to use CM/ECF to file documents in this case [doc. 19].

In this case, the first date set for the meeting of creditors was October 8, 2025. Movant appeared at that meeting of creditors. At the continued meeting of creditors, held on November 12, 2025, Movant was able to question Debtor for approximately 30 minutes.

On November 23, 2025, Movant, in pro per, filed a motion for extension of time to file an adversary proceeding to challenge Debtor's discharge under § 727(a)(2)-(7) and to challenge dischargeability of debts under § 523(a)(2), (4) and (6) (the "Extension Motion") [doc. 11]. In the Extension Motion, Movant requests that the Court extend the deadline for Movant to commence such an adversary proceeding until January 6, 2026.

On December 1, 2025, Debtor filed an opposition to the Extension Motion and a Request for Judicial Notice concerning Movant's extensive prepetition litigation against Debtor and Debtor's spouse.

II. LEGAL STANDARDS

Pursuant to Fed. R. Bankr. P. ("Rule") 4004(a), in a chapter 7 case, a complaint objecting to discharge must be filed within 60 days after the first date set for the § 341 meeting of creditors. Rule 4004(b) states: "On a party in interest's motion and after notice and hearing, the court may, for cause, extend the time to object to a discharge. The motion must be filed before the time has expired."

Rule 4007, entitled "Determining Whether a Debt Is Dischargeable," provides, in

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relevant part:

Chapter 7

- (c) Chapter 7, 11, 12, or 13—Time to File a Complaint Under § 523(c); Notice of Time; Extension. ... [A] complaint to determine whether a debt is dischargeable under § 523(c) must be filed within 60 days after the first date set for the § 341(a) meeting of creditors. ... On a party in interest's motion filed before the time expires, the court may, after notice and a hearing and for cause, extend the time to file.

Rule 4007(c).

The advisory committee's note to Rule 4007 explains:

Subdivision (c) ... impos[es] a deadline for filing complaints to determine the issue of dischargeability of debts set out in § 523(a)(2), (4) or (6) of the Code. The bankruptcy court has exclusive jurisdiction to determine dischargeability of these debts. If a complaint is not timely filed, the debt is discharged. See § 523(c).

In *In re Sanderson (Willms v. Sanderson)*, 723 F.3d 1094, 1098 (9th Cir. 2013), two creditors filed a motion to extend the deadline for filing a complaint objecting to the debtor's discharge or a motion to dismiss the debtor's case. At the hearing on the creditors' motion, the bankruptcy court *sua sponte* extended the time for the creditors to file a complaint under 11 U.S.C. § 523(c). *Id.* On appeal, the Ninth Circuit Court of Appeals held that the bankruptcy court "abused its discretion by granting the time extension without either a showing or a finding of cause." *Id.* at 1103.

Here, Movant has not established cause for an extension of the deadline of December 8, 2025. To litigate comparable issues, Movant recently filed actions against Debtor in two state courts. Months ago, Movant received notice of the deadline set by Rules 4004 and 4007. As a result, the Court finds that there is not cause to provide Movant with an extension of that deadline.

Debtor must submit the order within seven days.

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Chapter 7

Debtor(s):

Jordan Gene Pearlman

Represented By
Michael G Spector

Trustee(s):

Sandra McBeth (TR)

Pro Se

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1:25-10804 Donna Graves

Chapter 7

Adv#: 1:25-01047 MAS Media Inc., a corporation v. Graves

#8.00 Motion to Dismiss Complaint

fr. 11/6/25

Docket 5

Tentative Ruling:

The Court will grant the motion and dismiss certain claims for relief with leave the amend and the remaining claims for relief without leave to amend.

THE COMPLAINT

On May 8, 2025, Donna Graves ("Defendant") filed a chapter 7 petition, initiating bankruptcy case 1:25-bk-10804-VK.

On August 4, 2025, MAS Media Inc. ("Plaintiff") filed a complaint against Defendant, initiating this adversary proceeding (the "Complaint"). In the Complaint, the Plaintiff asserts the following claims: (1) false pretenses, misrepresentation and actual fraud under 11 U.S.C. § 523(a)(2)(A); (2) fraud or defalcation while acting in a fiduciary capacity under 11 U.S.C. § 523(a)(4); (3) willful and malicious injury under 11 U.S.C. § 523(a)(6); (4) promise without intent to perform under 11 U.S.C. § 523(a)(2)(A); (5) concealment under 11 U.S.C. § 523(a)(2)(A); (6) conversion under 11 U.S.C. § 523(a)(6); (7) constructive fraud under 11 U.S.C. § 523(a)(2)(A); (8) unjust enrichment under 11 U.S.C. § 523(a)(2)(A); and (9) malicious breach of duty under 11 U.S.C. § 523(a)(6).

The Complaint alleges:

On or about July 3, 2024, Plaintiff entered into an agreement (the "Agreement") with Defendant and her company, NCompass International, LLC ("NCompass"), under which Plaintiff would provide audiovisual and event production services for a press conference promoting the Star Wars Outlaws game.

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Defendant, on behalf of herself and NCompass, represented that Plaintiff would be paid \$112,795.50 within 30 days of July 18, 2024. Plaintiff rendered the agreed services. Defendant and NCompass made partial payments but failed to pay the full balance, leaving an unpaid balance in the amount of \$42,375.41.

At the time the parties entered into the agreement, Defendant knowingly and falsely made material misrepresentations to induce Plaintiff's performance, including that: (1) Defendant and her company had the intent and ability to pay the full amount to Plaintiff when due; (2) all necessary contracts for a "Truth or Dare" event had been signed and executed, ensuring that the event would proceed as planned; and (3) sufficient funding had been secured to pay all vendors, including Plaintiff. Plaintiff reasonably and justifiably relied on Defendant's representations.

In truth, insufficient contracts had been signed for the Truth or Dare event to materialize, and NCompass lacked the financial resources or secured funding necessary to pay vendors and ensure the event's success. The event was ultimately canceled, but not before Plaintiff had rendered substantial services and incurred significant expenses in reliance upon Defendant's false promises.

On September 2, 2025, Defendant filed a motion to dismiss the Complaint (the "Motion") [doc. 5]. In the Motion, Defendant contends that the Complaint lacks sufficient facts to sustain claims for relief under 11 U.S.C. §§ 523(a)(2)(A), (a)(4) and (a)(6), which warrants dismissal under Fed. R. Civ. P. ("Rule") 12(b)(6). Plaintiff has not filed a response to the Motion.

APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE

Rule 12(b)(6)

Regarding Rule 12(b)(6):

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A motion to dismiss [pursuant to Rule 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. 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. The plausibility standard is not akin to a probability requirement, but it asks for more than a sheer possibility that a defendant has acted unlawfully.

We accept factual allegations in the complaint as true and construe the pleadings in the light most favorable to the non-moving party. Although factual allegations are taken as true, we do not assume the truth of legal conclusions merely because they are cast in the form of factual allegations. Therefore, conclusory allegations of law and unwarranted inferences are insufficient to defeat a motion to dismiss.

Fayer v. Vaughn, 649 F.3d 1061, 1064 (9th Cir. 2011) (internal quotation marks omitted; citing, *inter alia*, *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 547, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007); and *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009)).

"A complaint that merely recites statutory language fails to state a claim under Rule 12(b)(6)." *In re Kubick*, 171 B.R. 658, 660 (9th Cir. BAP 1994). This is because "mere statutory language does not plead facts sufficiently so that they may be answered or denied." *Id.* "[F]acts must be alleged to sufficiently apprise the defendant of the complaint against him." *Id.* 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).

Federal Rule of Civil Procedure 9(b)

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

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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)); see also *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th Cir. 2003) ("Averments of fraud must be accompanied by 'the who, what, when, where, and how' of the misconduct charged."). 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). "[M]ere conclusory allegations of fraud are insufficient." *Moore v. Kayport Package Exp., Inc.*, 885 F.2d 531, 540 (9th Cir. 1989).

Federal Rule of Civil Procedure 15(a)

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 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."

A false representation is an express misrepresentation, while a false pretense refers to an implied misrepresentation or conduct intended to create and foster a false impression. *In re Reingold*, 2013 WL 1136546, *3 n.4 (9th Cir. BAP Mar. 19, 2013); *In re Russell*, 203 B.R. 303, 312 (Bankr. S.D. Cal. 1996). To prevail on a section

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523(a)(2)(A) claim concerning a false pretense or false representation, a plaintiff must prove by a preponderance of the evidence the following five elements:

- (1) misrepresentation, fraudulent omission or deceptive conduct by the debtor;
- (2) knowledge of the falsity or deceptiveness of the debtor's 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 (9th Cir. BAP 2009) (citing *In re Slyman*, 234 F.3d 1081, 1085 (9th Cir. 2000)).

11 U.S.C. § 523(a)(4) – Fraud or Defalcation While Acting in a Fiduciary Capacity

Pursuant to 11 U.S.C. § 523(a)(4), a bankruptcy discharge does not discharge an individual debtor from any debt "for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny." A debt is nondischargeable for fraud or defalcation while acting in a fiduciary capacity "where (1) an express trust existed, (2) the debt was caused by fraud or defalcation, and (3) the debtor acted as a fiduciary to the creditor at the time the debt was created." *In re Niles*, 106 F.3d 1456, 1459 (9th Cir. 1997); *In re Peltier*, 643 B.R. 349, 359 (9th Cir. BAP 2022).

11 U.S.C. § 523(a)(6)

11 U.S.C. § 523(a)(6) states that 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."

Demonstrating willfulness requires a showing that defendant intended to cause the injury, not merely the acts leading to the injury. *Kawaauhau v. Geiger*, 523 U.S. 57, 61–62, 118 S.Ct. 974, 140 L.Ed. 2d 90 (1998). In the Ninth Circuit, "§ 523(a)(6)'s willful injury requirement is met only when the debtor has a subjective motive to inflict injury or when the debtor believes that injury is substantially certain to result

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from his own conduct." *In re Ormsby*, 591 F.3d 1199, 1206 (9th Cir. 2010). Maliciousness requires (1) a wrongful act; (2) done intentionally; (3) which necessarily causes injury; (4) without just cause or excuse. *Id.* at 1147. "[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).

ANALYSIS

Having assessed the standards and taking into account the facts alleged in the Complaint:

- (1) The Court will grant the Motion as to Plaintiff's First Claim for Relief based on false pretenses, misrepresentation and actual fraud under 11 U.S.C. § 523(a)(2)(A), with leave to amend. As to this claim for relief, Plaintiff has not pleaded the circumstances surrounding Defendant's alleged misrepresentations sufficiently to meet the heightened pleading standard imposed by Rule 9(b).

To meet that pleading standard, in an amended complaint, Plaintiff must state with particularity the time, place and manner (i.e., in person, verbally, over the phone or through written correspondence, such as letters, emails and/or text messages) of Defendant's alleged false statements AND to whom those false statements were made or written correspondence sent.

- (2) The Court will grant the Motion as to Plaintiff's Second Claim for Relief for fraud or defalcation while acting in a fiduciary capacity under 11 U.S.C. § 523(a)(4), with leave to amend. Regarding the Second Claim for Relief, Plaintiff alleges: "*Defendant owed a duty of good faith in handling the business arrangement and client funds for production services. Defendant abused her position, breaching fiduciary obligations owed to Plaintiff.*" Complaint, ¶¶ 24-25. This does not state a cause of action under § 523(a)(4).

In an amended complaint, Plaintiff must: (1) set forth specific facts and the applicable law as to the existence of an **express trust**, (2) state whether the

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alleged debt was caused by Defendant's fraud or defalcation, (3) if the debt was caused by fraud, meet the pleading standards of Rule 9(b), (4) if the debt was caused by defalcation, include the pertinent allegations as to Defendant's state of mind (*see Bullock v. BankChampaign, N.A.*, 569 U.S. 267, 273–74, 133 S.Ct. 1754, 185 L.Ed.2d 922 (2013) ("We include as intentional not only conduct that the fiduciary knows is improper but also reckless conduct of the kind that the criminal law often treats as the equivalent. Thus, we include reckless conduct of the kind set forth in the Model Penal Code. Where actual knowledge of wrongdoing is lacking, we consider conduct as equivalent if the fiduciary 'consciously disregards' (or is willfully blind to) 'a substantial and unjustifiable risk' that his conduct will turn out to violate a fiduciary duty.")), and (5) state the basis on which Defendant was a fiduciary to Plaintiff with respect to the express trust.

- (3) The Court will grant the Motion as to Plaintiff's Third Claim for Relief for willful and malicious injury under 11 U.S.C. § 523(a)(6), with leave to amend. Regarding the Third Claim for Relief, Plaintiff alleges: "*Defendant's conduct was willful and malicious, intended to harm Plaintiff through deception and nonpayment.*" Complaint, ¶ 27.

This allegation is conclusory. In an amended complaint, Plaintiff must plead sufficient facts as to Defendant's conduct to state a plausible claim for relief under 11 U.S.C. § 523(a)(6), including that alleged breach of the Agreement is tortious under state law.

- (4) The Court will grant the Motion as to Plaintiff's Fourth Claim for Relief for "promise without intent to perform" under 11 U.S.C. § 523(a)(2)(A), without leave to amend. Regarding the Fourth Claim For Relief, Plaintiff contends: "*Defendant promised to pay MAS within 30 days of the event, but had no intention to perform that promise.*" Complaint, ¶ 29.

In the Complaint, Plaintiff alleges that, of the \$112,798.50 that the parties agreed would be paid Plaintiff, Defendant and NCompass paid \$70,423.09, leaving an unpaid balance of \$42,375.41. *See* Complaint, ¶¶ 7-8. As a result, Plaintiff cannot state a plausible claim that Defendant "had no intention to perform" when Plaintiff allegedly received 62% of the amount

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due to Plaintiff, under the Agreement.

- (5) The Court will grant the Motion as to Plaintiff's Fifth Claim for Relief for "concealment" under 11 U.S.C. § 523(a)(2)(A), with leave to amend. Regarding the Fifth Claim for Relief, Plaintiff alleges: "*Defendant concealed her lack of funds and intent not to pay, misleading Plaintiff into accepting the job.*" Complaint, ¶ 31.

"It is well recognized that silence, or the concealment of a material fact, can be the basis of a false impression which creates a misrepresentation actionable under § 523(a)(2)(A)." *In re Evans*, 181 B.R. 508, 514 (Bankr. S.D. Cal. 1995) (quoting *Minority Equity Capital Corp. v. Weinstein*, 31 B.R. 804, 809 (Bankr. E.D.N.Y. 1983)); *see also In re Daquila*, 2011 WL 3300197 (9th Cir. BAP Feb. 28, 2011) ("A debtor's failure to disclose material facts constitutes a fraudulent omission under § 523(a)(2)(A) if the debtor was under a duty to disclose and possessed an intent to deceive."). "[A] party to a business transaction has a duty to disclose when the other party is ignorant of material facts which he does not have an opportunity to discover." *Apte v. Japra (In re Apte)*, 96 F.3d 1319, 1324 (9th Cir. 1996).

In an amended complaint, Plaintiff must specify why Plaintiff did not have an opportunity to discover Defendant's alleged lack of funds.

- (6) The Court will grant the Motion as to Plaintiff's Sixth Claim for Relief for conversion under 11 U.S.C. § 523(a)(6), without leave to amend. Regarding the Sixth Claim for Relief, Plaintiff alleges: "*By using MAS's services and refusing payment, Defendant wrongfully converted those services into her own benefit.*" Complaint, ¶ 33.

"Conversion is the wrongful exercise of dominion over the property of another." *Farmers Insurance Exchange v. Zerin*, 53 Cal.App.4th 445, 451 (Cal. Ct. App. 1997). "In California, '[t]he elements of a conversion are the creditor's ownership or right to possession of the property at the time of the conversion; the debtor's conversion by a wrongful act or disposition of property rights; and damages.'" *In re Thiara*, 285 B.R. 420, 427 (9th Cir. BAP 2002) (quoting *Farmers*, 53 Cal.App.4th at 451). Based on

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Defendant's alleged breach of the Agreement, Plaintiff cannot plausibly state a claim for conversion.

- (7) The Court will grant the Motion as to Plaintiff's Seventh Claim for Relief for constructive fraud under 11 U.S.C. § 523(a)(2)(A), without leave to amend. Among other elements, a claim under 11 U.S.C. § 523(a)(2)(A) requires knowledge of the falsity or deceptiveness of the debtor's statement or conduct and an intent to deceive. Intent is not required to assert a claim for constructive fraud. *See In re Harmon*, 250 F.3d 1240, 1249 (9th Cir. 2001) ("[U]nder § 523(a)(2)(A), the debtor must have intended to deceive the creditor...but in the case of constructive fraud...it is not necessary to prove deliberate or intentional fraud.") (internal citation and quotations omitted). Consequently, constructive fraud does not meet the mandatory elements to be nondischargeable under § 523(a)(2)(A).
- (8) The Court will grant the Motion as to Plaintiff's Eighth Claim for Relief for unjust enrichment under 11 U.S.C. § 523(a)(2)(A), without leave to amend. "Unjust enrichment" does not state a cause of action for nondischargeability under 11 U.S.C. § 523(a)(2)(A).
- (9) The Court will grant the Motion as to Plaintiff's Ninth Claim for Relief for "malicious breach of duty" under 11 U.S.C. § 523(a)(6), with leave to amend. In the Complaint, Plaintiff alleges that "*Defendant maliciously breached her duty to deal fairly and honestly with Plaintiff, justifying non-dischargeability.*" Complaint, ¶ 39. This is conclusory and fails to state a plausible claim under 11 U.S.C. § 523(a)(6).

In an amended complaint, among other things, Plaintiff must include sufficient factual and legal content for the Court to draw the reasonable inference that Defendant's conduct is nondischargeable under 11 U.S.C. § 523(a)(6).

To the extent that Plaintiff asserts a claim for breach of a fiduciary duty, to sufficiently allege that a debt to Plaintiff arising from a breach of fiduciary duty is nondischargeable, Plaintiff must: (1) set forth specific facts and the applicable law as to the existence of an **express trust**, (2) state whether the

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alleged debt was caused by Defendant's fraud or defalcation, (3) if the debt was caused by fraud, meet the pleading standards of Rule 9(b), (4) if the debt was caused by defalcation, include the pertinent allegations as to Defendant's state of mind (*see Bullock v. BankChampaign, N.A.*, 569 U.S. 267, 273–74, 133 S.Ct. 1754, 185 L.Ed.2d 922 (2013)) ("We include as intentional not only conduct that the fiduciary knows is improper but also reckless conduct of the kind that the criminal law often treats as the equivalent. Thus, we include reckless conduct of the kind set forth in the Model Penal Code. Where actual knowledge of wrongdoing is lacking, we consider conduct as equivalent if the fiduciary 'consciously disregards' (or is willfully blind to) 'a substantial and unjustifiable risk' that his conduct will turn out to violate a fiduciary duty."), and (5) state the basis on which Defendant was a fiduciary to Plaintiff with respect to the express trust.

No later than 14 days after the entry of the Court's order deciding the Motion, Plaintiff may file and serve an amended complaint. No later than 14 days after the filing and service date of an amended complaint, Defendant must file and serve a response to Plaintiff's amended complaint.

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

Party Information

Debtor(s):

Donna Graves

Represented By
Marc A Lieberman

Defendant(s):

Donna Graves

Represented By
Stella A Havkin

Plaintiff(s):

MAS Media Inc., a corporation

Represented By
Jack M Schuler

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Trustee(s):

Amy L Goldman (TR)

Pro Se

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Adv#: 1:25-01047 MAS Media Inc., a corporation v. Graves

#9.00 Status conference to Determine Nondischargeability of
Debt (11 U.S.C. Section 523(a)(2)(A), (4) and (6))

fr. 11/13/25

Docket 1

Tentative Ruling:

See cal. no. 8.

The Court will continue the status conference to **1:30 p.m. on February 5, 2026**. Pursuant to Local Bankruptcy Rule 7016-1(a), the parties must to file a joint status using mandatory court form F 7016-1.STATUS.REPORT (and F 7016-1.STATUS.REPORT.ATTACH, if applicable), **no later than January 22, 2026**.

In accordance with Local Bankruptcy Rule 7016-1(a)(4), within seven (7) days after this status conference, the plaintiff must submit a Scheduling Order. If any of these deadlines are not satisfied, the Court will consider imposing sanctions against the party at fault pursuant to Local Bankruptcy Rule 7016-1(f) and (g).

Party Information

Debtor(s):

Donna Graves

Represented By
Marc A Lieberman

Defendant(s):

Donna Graves

Represented By
Stella A Havkin

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Plaintiff(s):

MAS Media Inc., a corporation

Represented By
Jack M Schuler

Trustee(s):

Amy L Goldman (TR)

Pro Se

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Adv#: 1:25-01048 Groupe Boombox, Inc. v. Graves

#10.00 Motion to Dismiss Complaint

fr. 11/6/25

Docket 4

Tentative Ruling:

The Court will grant the motion and dismiss certain claims for relief with leave the amend and the remaining claims for relief without leave to amend.

THE COMPLAINT

On May 8, 2025, Donna Graves ("Defendant") filed a chapter 7 petition, initiating bankruptcy case 1:25-bk-10804-VK.

On August 4, 2025, Groupe Boombox, Inc. ("Plaintiff") filed a complaint against Defendant, initiating this adversary proceeding (the "Complaint"). In the Complaint, the Plaintiff asserts the following claims: (1) false pretenses, misrepresentation and actual fraud under 11 U.S.C. § 523(a)(2)(A); (2) fraud or defalcation while acting in a fiduciary capacity under 11 U.S.C. § 523(a)(4); (3) willful and malicious injury under 11 U.S.C. § 523(a)(6); (4) promise without intent to perform under 11 U.S.C. § 523(a)(2)(A); (5) concealment under 11 U.S.C. § 523(a)(2)(A); (6) conversion under 11 U.S.C. § 523(a)(6); (7) constructive fraud under 11 U.S.C. § 523(a)(2)(A); (8) unjust enrichment under 11 U.S.C. § 523(a)(2)(A); (9) malicious breach of duty under 11 U.S.C. § 523(a)(6); (10) fraudulent inducement to forbear collection under 11 U.S.C. § 523(a)(2)(A); and (11) pre-bankruptcy planning and/or fraudulent transfer under 11 U.S.C. § 523(a)(2)(A).

Paragraph 5 of the Complaint states:

On or about September 13, 2022 and September 16, 2022, Plaintiff entered into agreements with Defendant Donna Graves ("Graves") is an individual residing in Los Angeles County, California. On May 8,

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2025, Graves filed for Chapter 7 bankruptcy protection in this district, Case No. 2:25-bk-13859-BR. Defendant and her company, NCompass International, LLC ("NCompass"), under which Plaintiff would provide live streaming, content capture and editing for the 2022 Magic The Gathering World Championship and post-production services for the Activision ABK LUU Project promoting an internship project for gaming company Activision.

The Complaint also alleges:

The 2022 Magic The Gathering World Championship contract (the "MTG Contract") provided for payment to Plaintiff of \$317,490. The Activision ABK LUU Project (the "Activision Contract" and together with the MTG Contract, the "Contracts") provided for payment to Plaintiff of \$41,020. Plaintiff rendered services pursuant to the Contracts.

At the time Plaintiff entered into the Contracts, Defendant knowingly and falsely made material misrepresentations to induce Plaintiff's performance, including that: (1) NCompass had secured the necessary funding to pay all vendors; (2) all necessary client contracts were fully executed; (3) the events would proceed as planned with sufficient revenue to cover all obligations; and (4) Defendant had the intent and ability to pay the contracted amounts when due. Plaintiff reasonably and justifiably relied on Defendant's representations.

Between March 2023 and November 2024, Defendant engaged in a pattern of making small payments, coupled with false assurances of imminent full payment, with the intent to prevent Plaintiff from pursuing legal remedies. In addition, when Defendant made a final payment of \$2,000 in November 2024, Defendant knew that she intended to file for bankruptcy.

Defendant made partial payments to Plaintiff totaling approximately \$228,784.66. As a direct result of Defendant's failure to pay the full amount due to Plaintiff, Plaintiff suffered actual damages in the

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amount of \$88,705.34, consisting of: (1) \$61,229 for the balance of the MTG Contract; (2) \$13,880 for the balance of the Activision Contract; and (3) \$13,596.34 in interest and PayPal fees.

Defendant breached her fiduciary duty to Plaintiff. Defendant's conduct was willful and malicious and Defendant intended to harm Plaintiff. Although Defendant promised to pay Plaintiff, Defendant had no intention to perform that promise. Defendant concealed her lack of funds and her intent to not pay Plaintiff. Defendant's representations were made without full disclosure of material facts. As a result of Defendant's false assurances of imminent full payment, Plaintiff delayed pursuing collection remedies. Finally, Defendant engaged in pre-bankruptcy planning designed to shield assets from creditors.

See id., ¶¶ 6-18, 22, 25-26, 31, 33, 35, 39, 51 and 54.

On September 2, 2025, Defendant filed a motion to dismiss the Complaint (the "Motion") [doc. 4]. In the Motion, Defendant contends that the Complaint lacks sufficient facts to sustain claims for relief under 11 U.S.C. §§ 523(a)(2)(A), (a)(4) and (a)(6), which warrants dismissal under Fed. R. Civ. P. ("Rule") 12(b)(6). As of November 18, 2025, Plaintiff has not filed a response to the Motion.

APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE

Rule 12(b)(6)

Regarding Rule 12(b)(6):

A motion to dismiss [pursuant to Rule 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. 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. The plausibility standard is not akin to a probability requirement, but it asks for more than a sheer possibility that a

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defendant has acted unlawfully.

We accept factual allegations in the complaint as true and construe the pleadings in the light most favorable to the non-moving party. Although factual allegations are taken as true, we do not assume the truth of legal conclusions merely because they are cast in the form of factual allegations. Therefore, conclusory allegations of law and unwarranted inferences are insufficient to defeat a motion to dismiss.

Fayer v. Vaughn, 649 F.3d 1061, 1064 (9th Cir. 2011) (internal quotation marks omitted; citing, *inter alia*, *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 547, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007); and *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009)).

"A complaint that merely recites statutory language fails to state a claim under Rule 12(b)(6)." *In re Kubick*, 171 B.R. 658, 660 (9th Cir. BAP 1994). This is because "mere statutory language does not plead facts sufficiently so that they may be answered or denied." *Id.* "[F]acts must be alleged to sufficiently apprise the defendant of the complaint against him." *Id.* 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).

Federal Rule of Civil Procedure 9(b)

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)); see also *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th Cir. 2003) ("Averments of fraud must be accompanied by 'the who, what, when, where, and how' of the misconduct charged."). 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.

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1993). "[M]ere conclusory allegations of fraud are insufficient." *Moore v. Kayport Package Exp., Inc.*, 885 F.2d 531, 540 (9th Cir. 1989).

Federal Rule of Civil Procedure 15(a)

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 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."

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

- (1) misrepresentation, fraudulent omission or deceptive conduct by the debtor;
- (2) knowledge of the falsity or deceptiveness of the debtor's statement

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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 (9th Cir. BAP 2009) (citing *In re Slyman*, 234 F.3d 1081, 1085 (9th Cir. 2000)).

11 U.S.C. § 523(a)(4) – Fraud or Defalcation While Acting in a Fiduciary Capacity

Pursuant to 11 U.S.C. § 523(a)(4), a bankruptcy discharge does not discharge an individual debtor from any debt "for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny." A debt is nondischargeable for fraud or defalcation while acting in a fiduciary capacity "where (1) an express trust existed, (2) the debt was caused by fraud or defalcation, and (3) the debtor acted as a fiduciary to the creditor at the time the debt was created." *In re Niles*, 106 F.3d 1456, 1459 (9th Cir. 1997); *In re Peltier*, 643 B.R. 349, 359 (9th Cir. BAP 2022).

11 U.S.C. § 523(a)(6)

11 U.S.C. § 523(a)(6) states that 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."

Demonstrating willfulness requires a showing that defendant intended to cause the injury, not merely the acts leading to the injury. *Kawaauhau v. Geiger*, 523 U.S. 57, 61–62, 118 S.Ct. 974, 140 L.Ed. 2d 90 (1998). In the Ninth Circuit, "§ 523(a)(6)'s willful injury requirement is met only when the debtor has a subjective motive to inflict injury or when the debtor believes that injury is substantially certain to result from his own conduct." *In re Ormsby*, 591 F.3d 1199, 1206 (9th Cir. 2010).

Maliciousness requires (1) a wrongful act; (2) done intentionally; (3) which necessarily causes injury; (4) without just cause or excuse. *Id.* at 1147. "[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).

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ANALYSIS

As an initial matter, paragraph 5 of the Complaint is nonsensical. In an amended complaint, Plaintiff must describe the parties to each of the contracts at issue (the "Contracts"), that is, who signed each of the Contracts and in what capacity was that signature made. Did Defendant sign the Contracts as an officer of NCompass? Did Defendant sign the contracts as an individual?

If Defendant signed the Contracts as an officer of NCompass, Plaintiff must include sufficient allegations in the Complaint as to why Defendant is personally liable for any debt to Defendant.

Having assessed the standards and taking into account the facts alleged in the Complaint:

- (1) The Court will grant the Motion as to Plaintiff's First Claim for Relief based on false pretenses, misrepresentation and actual fraud under 11 U.S.C. § 523(a)(2) (A), with leave to amend. As to this claim for relief, Plaintiff has not pleaded the circumstances surrounding Defendant's alleged misrepresentations sufficiently to meet the heightened pleading standard imposed by Rule 9(b).

To meet that pleading standard, in an amended complaint, Plaintiff must state with particularity the time, place and manner (i.e., in person, verbally, over the phone or through written correspondence, such as letters, emails and/or text messages) of Defendant's alleged false statements AND to whom those false statements were made or written correspondence sent. Defendant also must specify why the allegedly false statements were inaccurate.

- (2) The Court will grant the Motion as to Plaintiff's Second Claim for Relief for fraud or defalcation while acting in a fiduciary capacity under 11 U.S.C. § 523(a)(4), with leave to amend. Regarding the Second Claim for Relief, Plaintiff alleges: *"Defendant owed a duty of good faith in handling the business arrangement and client funds for production services. Defendant abused her position, breaching fiduciary obligations owed to Plaintiff."* Complaint, ¶¶ 30-31. This does not state a cause of action under § 523(a)(4).

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In an amended complaint, Plaintiff must: (1) set forth specific facts and the applicable law as to the existence of an **express trust**, (2) state whether the alleged debt was caused by Defendant's fraud or defalcation, (3) if the debt was caused by fraud, meet the pleading standards of Rule 9(b), (4) if the debt was caused by defalcation, include the pertinent allegations as to Defendant's state of mind (*see Bullock v. BankChampaign, N.A.*, 569 U.S. 267, 273–74, 133 S.Ct. 1754, 185 L.Ed.2d 922 (2013) ("We include as intentional not only conduct that the fiduciary knows is improper but also reckless conduct of the kind that the criminal law often treats as the equivalent. Thus, we include reckless conduct of the kind set forth in the Model Penal Code. Where actual knowledge of wrongdoing is lacking, we consider conduct as equivalent if the fiduciary 'consciously disregards' (or is willfully blind to) 'a substantial and unjustifiable risk' that his conduct will turn out to violate a fiduciary duty.")), and (5) state the basis on which Defendant was a fiduciary to Plaintiff with respect to the express trust.

- (3) The Court will grant the Motion as to Plaintiff's Third Claim for Relief for willful and malicious injury under 11 U.S.C. § 523(a)(6), with leave to amend. Regarding the Third Claim for Relief, Plaintiff alleges: "*Defendant's conduct was willful and malicious, intended to harm Plaintiff through deception and nonpayment.*" Complaint, ¶ 33.

This allegation is conclusory. In an amended complaint, Plaintiff must plead sufficient facts as to Defendant's conduct to state a plausible claim for relief under 11 U.S.C. § 523(a)(6), including that alleged breaches of the Contracts are tortious under state law.

- (4) The Court will grant the Motion as to Plaintiff's Fourth Claim for Relief for "promise without intent to perform" under 11 U.S.C. § 523(a)(2)(A), without leave to amend. Regarding the Fourth Claim For Relief, Plaintiff contends: "*Defendant promised to pay BOOMBOX within 90 days of invoicing, but had no intention to perform that promise.*" Complaint, ¶ 35.

In the Complaint, Plaintiff alleges that Defendant paid Plaintiff approximately \$228,784.66, leaving an unpaid balance of \$88,705.34, consisting of: (a) \$61,229 for the final post-event payment on the MTGA contract, (b) \$13,800 for the editing

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balance on the ABK LUU contract, and (c) \$13,596.34 in interest and PayPal fees. Complaint, ¶ 9. Assuming the payment of \$228,784.66 to Plaintiff was a personal obligation of Defendant, and not solely the contractual obligation of NCompass, Plaintiff cannot state a plausible claim that Defendant "had no intention to perform" when Plaintiff allegedly received 70% of the amount due to Plaintiff, including interest, under the Contracts.

- (5) The Court will grant the Motion as to Plaintiff's Fifth Claim for Relief for "concealment" under 11 U.S.C. § 523(a)(2)(A), with leave to amend. Regarding the Fifth Claim for Relief, Plaintiff alleges: "*Defendant concealed her lack of funds and intent not to pay, misleading Plaintiff into accepting the job.*" Complaint, ¶ 39.

"It is well recognized that silence, or the concealment of a material fact, can be the basis of a false impression which creates a misrepresentation actionable under § 523(a)(2)(A)." *In re Evans*, 181 B.R. 508, 514 (Bankr. S.D. Cal. 1995) (quoting *Minority Equity Capital Corp. v. Weinstein*, 31 B.R. 804, 809 (Bankr. E.D.N.Y. 1983)); *see also In re Daquila*, 2011 WL 3300197 (9th Cir. BAP Feb. 28, 2011) ("A debtor's failure to disclose material facts constitutes a fraudulent omission under § 523(a)(2)(A) if the debtor was under a duty to disclose and possessed an intent to deceive."). "[A] party to a business transaction has a duty to disclose when the other party is ignorant of material facts which he does not have an opportunity to discover." *Apte v. Japra (In re Apte)*, 96 F.3d 1319, 1324 (9th Cir. 1996).

In an amended complaint, Plaintiff must specify why Plaintiff did not have an opportunity to discover Defendant's alleged lack of funds.

- (6) The Court will grant the Motion as to Plaintiff's Sixth Claim for Relief for conversion under 11 U.S.C. § 523(a)(6), without leave to amend. Regarding the Sixth Claim for Relief, Plaintiff alleges: "*By using BOOMBOX'S services and refusing payment, Defendant wrongfully converted those services into her own benefit.*" Complaint, ¶ 41.

"Conversion is the wrongful exercise of dominion over the property of another." *Farmers Insurance Exchange v. Zerin*, 53 Cal.App.4th 445, 451 (Cal. Ct. App.

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1997). "In California, '[t]he elements of a conversion are the creditor's ownership or right to possession of the property at the time of the conversion; the debtor's conversion by a wrongful act or disposition of property rights; and damages.'" *In re Thiara*, 285 B.R. 420, 427 (9th Cir. BAP 2002) (quoting *Farmers*, 53 Cal.App.4th at 451). Based on Defendant's alleged breaches of the Contracts, Plaintiff cannot plausibly state a claim for conversion.

- (7) The Court will grant the Motion as to Plaintiff's Seventh Claim for Relief for constructive fraud under 11 U.S.C. § 523(a)(2)(A), without leave to amend. Among other elements, a claim under 11 U.S.C. § 523(a)(2)(A) requires knowledge of the falsity or deceptiveness of the debtor's statement or conduct and an intent to deceive. Intent is not required to assert a claim for constructive fraud. *See In re Harmon*, 250 F.3d 1240, 1249 (9th Cir. 2001) ("[U]nder § 523(a)(2)(A), the debtor must have intended to deceive the creditor...but in the case of constructive fraud...it is not necessary to prove deliberate or intentional fraud.") (internal citation and quotations omitted). Consequently, constructive fraud does not meet the mandatory elements to be nondischargeable under § 523(a)(2)(A).
- (8) The Court will grant the Motion as to Plaintiff's Eighth Claim for Relief for unjust enrichment under 11 U.S.C. § 523(a)(2)(A), without leave to amend. "Unjust enrichment" does not state a cause of action for nondischargeability under 11 U.S.C. § 523(a)(2)(A).
- (9) The Court will grant the Motion as to Plaintiff's Ninth Claim for Relief for "malicious breach of duty" under 11 U.S.C. § 523(a)(6), with leave to amend. In the Complaint, Plaintiff alleges that "*Defendant maliciously breached her duty to deal fairly and honestly with Plaintiff, justifying non-dischargeability.*" Complaint, ¶ 47. This is conclusory and fails to state a plausible claim under 11 U.S.C. § 523(a)(6).

In an amended complaint, among other things, Plaintiff must include sufficient factual and legal content for the Court to draw the reasonable inference that Defendant's conduct is nondischargeable under 11 U.S.C. § 523(a)(6).

To the extent that Plaintiff asserts a claim for breach of a fiduciary duty, to sufficiently allege that a debt to Plaintiff arising from a breach of fiduciary duty is

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nondischargeable, Plaintiff must: (1) set forth specific facts and the applicable law as to the existence of an **express trust**, (2) state whether the alleged debt was caused by Defendant's fraud or defalcation, (3) if the debt was caused by fraud, meet the pleading standards of Rule 9(b), (4) if the debt was caused by defalcation, include the pertinent allegations as to Defendant's state of mind (*see Bullock v. BankChampaign, N.A.*, 569 U.S. 267, 273–74, 133 S.Ct. 1754, 185 L.Ed.2d 922 (2013) ("We include as intentional not only conduct that the fiduciary knows is improper but also reckless conduct of the kind that the criminal law often treats as the equivalent. Thus, we include reckless conduct of the kind set forth in the Model Penal Code. Where actual knowledge of wrongdoing is lacking, we consider conduct as equivalent if the fiduciary 'consciously disregards' (or is willfully blind to) 'a substantial and unjustifiable risk' that his conduct will turn out to violate a fiduciary duty.")), and (5) state the basis on which Defendant was a fiduciary to Plaintiff with respect to the express trust.

- (10) The Court will grant the Motion as to Plaintiff's Tenth Claim for Relief for "fraudulent inducement to forbear collection" under 11 U.S.C. § 523(a)(2)(A), with leave to amend. In the Complaint, Plaintiff alleges:

From March 2023 through November 2024, Defendant made strategic partial payments and false promises of imminent full payment with the specific intent to induce Plaintiff to forbear from collection activities and legal action. These token payments and false assurances were made with actual knowledge that Defendant lacked the ability and intent to pay the full amount owed, and were designed to prevent Plaintiff from protecting its interests through timely legal action. As a direct result of Defendant's fraudulent inducement to forbear, Plaintiff delayed pursuing collection remedies, allowing Defendant to further dissipate assets and ultimately file for bankruptcy protection.

Complaint, ¶¶ 49-51.

In an amended complaint, Plaintiff must state with particularity the time, place and manner (i.e., in person, verbally, over the phone or through written correspondence, such as letters, emails and/or text messages) of Defendant's alleged false statements AND to whom those false statements were made or written

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correspondence sent. Plaintiff also must describe: (a) the collection remedies which Plaintiff did not pursue and (b) the assets which allegedly were dissipated by Defendant and the value of those allegedly dissipated assets.

- (11) The Court will grant the Motion as to Plaintiff's Eleventh Claim for Relief for "pre-bankruptcy planning/fraudulent transfer" under 11 U.S.C. § 523(a)(2)(A), without leave to amend.

In the Complaint, Plaintiff alleges:

Defendant's November 2024 payment was made with actual knowledge of her intent to file for bankruptcy protection within months, constituting an attempt to manipulate her debt structure prior to filing. Upon information and belief, Defendant engaged in pre-bankruptcy planning designed to shield assets from creditors while maintaining the appearance of attempting to satisfy her obligations.

Complaint, ¶¶ 53-54.

These allegations do not state a claim for relief under 11 U.S.C. § 523(a)(2)(A).

No later than 14 days after the entry of the Court's order deciding the Motion, Plaintiff may file and serve an amended complaint. No later than 14 days after the filing and service date of an amended complaint, Defendant must file and serve a response to Plaintiff's amended complaint.

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

Party Information

Debtor(s):

Donna Graves

Represented By
Marc A Lieberman

Defendant(s):

Donna Graves

Represented By

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Stella A Havkin

Plaintiff(s):

Groupe Boombox, Inc.

Represented By
Jack M Schuler

Trustee(s):

Amy L Goldman (TR)

Pro Se

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Adv#: 1:25-01048 Groupe Boombox, Inc. v. Graves

#11.00 Status conference re: complaint to determine nondischargeability
of debt [11 U.S.C. Section 523(a)(2)(A), (4) and (6)]

fr. 11/13/25

Docket 1

Tentative Ruling:

See cal. no. 10.

The Court will continue the status conference to **1:30 p.m. on February 5, 2026**. Pursuant to Local Bankruptcy Rule 7016-1(a), the parties must to file a joint status using mandatory court form F 7016-1.STATUS.REPORT (and F 7016-1.STATUS.REPORT.ATTACH, if applicable), **no later than January 22, 2026**.

In accordance with Local Bankruptcy Rule 7016-1(a)(4), within seven (7) days after this status conference, the plaintiff must submit a Scheduling Order. If any of these deadlines are not satisfied, the Court will consider imposing sanctions against the party at fault pursuant to Local Bankruptcy Rule 7016-1(f) and (g).

Party Information

Debtor(s):

Donna Graves

Represented By
Marc A Lieberman

Defendant(s):

Donna Graves

Represented By
Stella A Havkin

Plaintiff(s):

Groupe Boombox, Inc.

Represented By

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Jack M Schuler

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Trustee(s):

Amy L Goldman (TR)

Pro Se