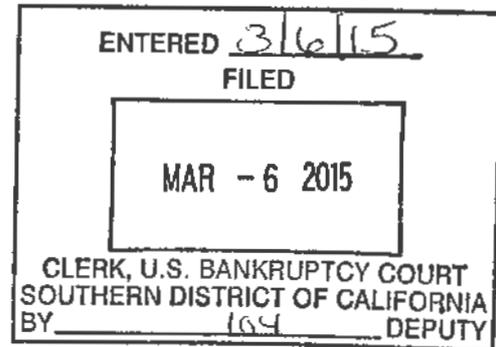


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WRITTEN DECISION – NOT FOR PUBLICATION



UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA

In re:) Bankruptcy Case No. 13-05182-CL7
)
SUNDUS YOUSIF SAKO,) Adversary Proceeding No. 13-90210-CL
)
Debtor,) Chapter 7
)
_____)
)
HIKMAT MAMMO,) MEMORANDUM DECISION AND ORDER
) FINDING NONDISCHARGEABILITY AND
Plaintiff,) AWARDING DAMAGES
)
v.)
)
SUNDUS YOUSIF SAKO,)
) Judge: Christopher B. Latham
Defendant.)
_____)

1 **MEMORANDUM DECISION AND ORDER FINDING**
2 **NONDISCHARGEABILITY AND AWARDED DAMAGES**

3 In 2007, debtor-defendant Sundus Yousif Sako formed El Nopal Market, LLC to run a grocery
4 business in Chula Vista, California. In 2008, plaintiff Hikmat Mammo joined the LLC as a member;
5 he agreed to make a passive investment of \$95,000 in the business. But the business did not do well.
6 Among other things, it repeatedly failed to pay bills on time. Its trade creditors required cash-on-
7 delivery payments for goods. And – without informing Mr. Mammo – Ms. Sako was apparently
8 giving company funds to a Mr. Samir Toma. The three later went into business to form a second store
9 in San Diego, California. But both stores eventually failed.

10 On May 17, 2013, Ms. Sako filed a voluntary Chapter 7 petition in Case No. 13-05182-CL7.
11 Approximately three months later, on August 12, Mr. Mammo initiated the above-captioned adversary
12 proceeding. He seeks damages, costs, and findings of nondischargeability against Ms. Sako under 11
13 U.S.C. §§ 523(a)(2)(A), (a)(4), and (a)(6). On October 2, Ms. Sako answered the complaint. And the
14 court tried the matter over three days. The court then took the matter under submission. Now, for the
15 following reasons, the court: (1) awards Mr. Mammo \$311,500 in damages; and (2) finds this award
16 nondischargeable under 11 U.S.C. § 523(a)(2)(A).

17
18 **I. JURISDICTION AND VENUE**

19 The court has jurisdiction over this adversary proceeding under 28 U.S.C. §§ 1334(b) and
20 157(b)(2)(I). Venue is proper under 28 U.S.C. § 1409(a).

21
22 **II. FACTUAL BACKGROUND AND FINDINGS**

23 Creditor-plaintiff Hikmat Mammo (“Mammo”), Debtor-defendant Sundus Yousif Sako
24 (“Sako”), Father Sabri Kejbo (“Kejbo”), and Mr. Samir Toma (“Toma”) are all members of the
25 Chaldean community – the latter three living in San Diego. Kejbo and Mammo are childhood friends;
26 Mammo became Kejbo’s brother-in-law. Kejbo and Toma are also very good friends; they visit each
27 other multiple times per week. Mammo operates a grocery business in Michigan. And Sako has
28 worked in San Diego grocery businesses for many years.

1 In 2005, Sako became the sole owner of “San Pedro Market” – a grocery store in San Diego’s
2 Chula Vista neighborhood. She later renamed this store to “El Nopal Market.” And in March 2007,
3 she executed a written operating agreement to form El Nopal Market, LLC (“El Nopal 1”) – a
4 California limited liability company that would run the grocery business. Later that June, Sako met
5 Toma. At that time, Sako was some \$30,000 behind in rent for El Nopal 1, and she was trying to sell
6 the business. She informed Toma about this, and he expressed interest. He inspected El Nopal 1. But,
7 rather than purchase it whole, he offered to become Sako’s partner: Toma would provide \$95,000 to
8 the business and Sako would continue to operate it.

9 Sako accepted Toma’s offer and they entered escrow. But before escrow closed, Toma
10 cancelled it due to issues related to his pending divorce. Toma then contacted Kejbo, Kejbo contacted
11 Mammo, and Mammo went into business with Sako. Mammo and Sako amended El Nopal 1’s
12 operating agreement effective August 2008; Mammo joined El Nopal 1 as a member, and Sako took
13 the position of “Chief Executive Member.” Neither Sako, Mammo, Toma, nor Kejbo dispute that
14 these events occurred. They disagree, however, on the nature of this transaction and the legal
15 relationships it created.

16 **A. El Nopal 1**

17 **1. The Relationship Between Sako, Mammo, Toma, and Kejbo**

18 In evaluating the trial testimony, the court generally finds Mammo highly credible, Sako
19 somewhat credible, and Toma hardly credible at all. Sako testified that – although they used only her
20 and Mammo for business papers – she, Mammo, Toma, and Kejbo were all partners in the business.
21 She alleges that Toma did not want his name on any documents because he sought to hide his assets
22 from his soon-to-be ex-wife. To support her position, Sako asserts that Mammo never asked for any of
23 the grocery’s financial documents before forming the LLC. She points to Toma and Kejbo’s
24 involvement in the business. And, at trial, she maintained that she never met Mammo in person until
25 2009. Sako later contradicted this testimony by post-trial declaration.¹

26
27 ¹ At trial, Mammo testified that he usually came to San Diego once a year. Tr. Transcript vol. 2, 178:11-17.
28 Sako testified that she first met Mammo in person in 2009. Tr. Transcript vol. 1, 64:5-7. And Mammo did not
otherwise dispute Sako’s testimony. Thus, to complete its analysis, the court reopened evidence to ascertain
precisely when this 2009 meeting took place. Unfortunately, the parties’ submissions were unhelpful: Sako

1 Toma was heavily involved in the business's affairs. He acted as an intermediary between
2 Sako, Mammo, and Kejbo. Sako admits that Toma never directly gave money to her or El Nopal 1.
3 But she testified, without objection, that Toma told her he gave money to Mammo and Kejbo; that
4 Toma claimed he held an interest in El Nopal 1 "so [he could] collect [his] money through the
5 company;" and that Toma eventually told Sako, "I'm not putting any more money in the company."
6 According to Sako, Toma also knew everything about the business's activities. He often told Sako
7 what to do. He came to the store almost every day and asked for money, which Sako gave him. And
8 he regularly took store food and lottery tickets without paying.

9 Likewise, Sako alleged that Kejbo came to the store periodically to take pizza and lottery
10 tickets. She asserted that Kejbo provided funds for the business. Further, Sako, Toma, or store
11 employees would go to Kejbo's church to get coins for the store's cash registers. And Sako claimed
12 that both Toma and Kejbo paid for El Nopal 1's liquor license. Sako also testified that Toma, Kejbo,
13 and Mammo met at the store in April 2010 to clarify each person's contribution to the business. To
14 corroborate Sako's testimony, Ms. Michelle Melton ("Melton") – Sako's roommate and El Nopal 1's
15 bookkeeper – asserted that she was also present at this meeting. Melton created the document that was
16 the product of that meeting. And Melton claims that Toma asked her to modify figures on the
17 document to make it appear that El Nopal 1 did not have as many losses as it actually did.

18 For their part, Toma and Kejbo denied any interest in El Nopal 1. Together with Mammo, they
19 contend El Nopal 1 had only two members: Mammo and Sako. Toma further denied ever taking
20 money from the business. And Mammo insists he was simply a passive investor. He provided money
21 for the business, but left its operation to Sako. Indeed, he could have no hand in its operation because
22 – at the time – he lived in Michigan. He trusted Kejbo when Kejbo proposed this business opportunity.
23 Further, he trusted Sako to manage the business properly.

24 Mammo, however, did visit San Diego occasionally. Sako admitted to meeting with him and
25 discussing the business. And Sako told him the business was doing fine – she just needed more time
26 and money to build it up. Mammo also kept in regular contact with Sako by phone. He would often
27

28 directly contradicted her trial testimony and declared that she first met Mammo in 2008; and both parties
declared that they did not recall when they met in 2009.

1 inquire about the state of the business. And when he did, Sako would again affirmatively represent
2 that it was doing well, but reiterate her need for more time and money. Mammo testified that Sako was
3 always asking “for more money.” Moreover, Mammo asserted that he had no knowledge of Toma’s
4 acts or his involvement in the business. And Mammo claimed that any funds Kejbo provided were
5 paid on Mammo’s behalf.

6 2. **The Operation of El Nopal 1**

7 El Nopal 1’s operating agreement specifically names Sako as the managing member. Sako
8 herself admits that she was responsible for operating the business; she was in charge of hiring and
9 firing employees; and she managed its day-to-day duties. Apparently, however, Sako did not conduct
10 these operations with diligence or prudence. Sako regularly wrote business checks payable to cash or
11 various people – employees, friends, and family. She alleges that the payees would cash the check at a
12 store or bank, then bring the cash back for the store to use. And she asserts she needed to do this to
13 pay trade creditors: business vendors had issues with bad checks from El Nopal 1 in the past. As a
14 result, the vendors would only accept cash on delivery (“COD”) for their goods. Accordingly, she
15 couldn’t issue checks to the vendors; she had to pay cash for her inventory.

16 But Sako never produced any invoices that showed COD vendor payments. And, without
17 explanation, these check-to-cash amounts increased dramatically in late 2009; they went from
18 approximately \$5,000 per month to approximately \$15,000 per month. Further, it appears El Nopal 1
19 had virtually no accounting practice; Sako produced no books or ledgers accounting for El Nopal 1’s
20 inventory, transactions, or cash. Sako also failed to timely pay the business’s income and payroll
21 taxes. She failed to consistently pay the business’s rent. She used the business’s bank account for
22 personal expenses, such as her own rent and gambling. Again, she gave store money to Toma on a
23 regular basis. And, importantly, she failed to disclose many of these practices to Mammo. Instead,
24 Sako informed Toma about her activities and she asserts – for what it’s worth – that Toma gave her
25 permission to run the business this way.

26 B. **El Nopal 2**

27 Despite El Nopal 1’s shortcomings, in early 2010, Toma expressed interest in opening another
28 store with Mammo and Sako. Sako herself wanted to open a small store that primarily served

1 participants of the federal government's Women, Infants, and Children program ("WIC"). But Toma
2 desired a larger store in a location where he had owned or operated a previous business. Sako, Toma,
3 and Mammo eventually agreed on the larger store, and became partners in it. They named it "El Nopal
4 Market Too" ("El Nopal 2"); Toma contributed equipment, fixtures, and inventory; Mammo
5 contributed funds; and Sako again provided her labor.

6 El Nopal 2, however, appeared to perform worse than El Nopal 1. It had complications with its
7 premises lease and its landlord – Mr. Salam Razuki ("Razuki"). Sako asserted that Mammo and Kejbo
8 offered her \$70,000 for her interest in El Nopal 1. She refused, thinking her interest worth more. She
9 alleged that Toma, Mammo, Kejbo and Razuki conspired to take Sako out of El Nopal 2, as well. El
10 Nopal 2 fell behind on rent, and Razuki sued it for unlawful detainer. Razuki then offered to waive El
11 Nopal 2's rent arrears if it vacated the premises. But Sako refused. Issues arose between Toma,
12 Mammo, and Razuki. Toma abandoned his interest in El Nopal 2. And there was some discussion
13 about selling the stores, and various allegations about why that didn't happen.

14 Eventually, Mammo and Sako reached an agreement: Mammo would take ownership of El
15 Nopal 1, including all its assets and outstanding liabilities; Sako would do the same with El Nopal 2.
16 In October 2011, Mammo and Sako opened escrow to facilitate this ownership change. Mammo hired
17 a man named Nathan to manage El Nopal 1 in his stead. And Sako began the process with California's
18 Department of Alcoholic Beverage Control ("ABC") to transfer El Nopal 1's liquor license to
19 Mammo. But this transfer required a \$2,414 fee. Although Sako and El Nopal 1 lacked the funds to
20 pay this fee, Sako nonetheless issued a check from El Nopal 1's account to pay it. She informed
21 Mammo about this who, in turn, wrote a \$2,414 check to Sako. But Sako's check to ABC bounced.
22 And Mammo claimed that Sako never returned his check. Sako, on the other hand, asserted that she
23 deposited Mammo's check in the bank account that El Nopal 1 used for WIC payments. Only she had
24 access to those funds because she held the WIC license. And, to ensure El Nopal 1 received the
25 benefit of its WIC sales, she had been withdrawing all funds from that account to give to Nathan. In
26 this way, she argued, she returned Mammo's \$2,414.

27 Mammo further alleged that, before he received the WIC license for El Nopal 1, Sako
28 demanded more money from him. Specifically, Sako demanded some \$5,000. And she threatened to

1 stall transfer of the WIC license if he did not pay. Mammo informed Sako that he didn't have \$5,000.
2 But, to ensure her cooperation with the transfer, he paid her what he could – \$3,000. Sako admitted to
3 receiving the money, but she denied that she threatened Mammo.

4 **C. The End of Los Nopales**

5 In December 2011, Mammo decided to abandon El Nopal 1; he informed Sako that he would
6 not follow through on their agreement. Accordingly, Sako resumed control of El Nopal 1's operations.
7 To that end, and because Mammo stopped funding the company, she took out a \$22,000 loan at 46%
8 interest from a Mr. Chanan Fradkin on El Nopal 1's behalf. Later, an auctioneer sold El Nopal 2's
9 assets for \$11,770. El Nopal 2 then vacated its premises in February 2014. According to Sako, in
10 order to cash the auction proceeds more quickly, the auctioneer made the check out to Sako personally.
11 Sako then alleges that she used these funds to pay past due rent and utilities on El Nopal 1. And when
12 El Nopal 1 finally closed its doors, Mr. Fradkin took all its assets in repayment of his loan.

13 **D. Mammo's Forgery Allegations**

14 Finally, Mammo alleged that Sako – or Melton, at Sako's direction – forged his signature on
15 four documents: (1) a credit agreement and guaranty in favor of Southern Wine and Spirits; (2) an
16 equipment finance agreement and guaranty in favor of Northern Leasing; (3) a new customer
17 application with Bakemark USA; and (4) an indemnity bond with Platte River to cover El Nopal 1's
18 payments to San Diego Gas & Electric. Mammo provided an Expert Witness Report explaining that
19 the signatures on the documents are not his. He argued that circumstantial evidence proved that Sako
20 caused the signatures to be forged. And he asserted that Sako damaged him, as a result.

21 **E. Mammo's Contributions**

22 Over the course of these events, Mammo contributed \$341,500 to the businesses through the
23 following payments:

- 24 • *August 10, 2008*: \$30,000 from Mammo for El Nopal 1's Rent (Ex. 24);
- 25 • *August 21, 2008*: \$20,000 from Mammo to El Nopal 1 (Ex. 25);
- 26 • *December 23, 2008*: \$6,000 from Kejbo to El Nopal 1 (Ex. 28);
- 27 • *January 3, 2009*: \$25,000 from Mammo to El Nopal 1 (Ex. 26);
- 28 • *April 10, 2009*: \$20,000 from Kejbo for El Nopal 1's Rent (Ex. 28);

- 1 • *April 25, 2009*: \$50,000 from Kejbo to El Nopal 1 (Ex. 27);
- 2 • *August 28, 2009*: \$10,000 from Kejbo to El Nopal 1 (Ex. 28);
- 3 • *October 14, 2009*: \$38,500 from Kejbo for El Nopal 1's Liquor License (Ex. 28);²
- 4 • *November 3, 2009*: \$12,500 from Kejbo for El Nopal 1's Rent (Ex. 28);
- 5 • *January 26, 2010*: \$5,750 from Kejbo for El Nopal 2 (Ex. 49);
- 6 • *January 29, 2010*: \$28,000 from Kejbo to El Nopal 1 (Ex. 61);
- 7 • *March 5, 2010*: \$11,250 from Kejbo to El Nopal 1 (Ex. 28);
- 8 • *June 13, 2010*: \$4,000 from Kejbo to El Nopal 1 (Ex. 28);
- 9 • *December 31, 2010*: \$35,000 from Mammo to El Nopal 1 (Ex. 29);
- 10 • *December 31, 2010*: \$15,000 from Kejbo for El Nopal 2's Rent (Ex. 29);
- 11 • *February 14, 2011*: \$25,000 from Mammo to El Nopal 1 (Ex. 30); and
- 12 • *February 21, 2011*: \$5,500 from Kejbo for El Nopal 2's Rent (Ex. 50).

13 Notably, these contributions do not include: (1) Mammo's \$2,414 payment for the ABC liquor license
14 transfer; or (2) his \$3,000 payment for the WIC license transfer. The court addresses these two
15 payments separately in its analysis, below.

17 III. LEGAL ANALYSIS AND CONCLUSIONS

18 The court finds Mammo's debts nondischargeable under § 523(a)(2)(A).³ It does not, however,
19 find nondischargeability under §§ 523(a)(4) or (a)(6).

20 A. Section 523(a)(2)(A) Nondischargeability

21 Section 523(a)(2)(A) provides that debts are nondischargeable if they are obtained by: "false
22 pretenses, a false representation, or actual fraud" To except her debt from discharge under
23 § 523(a)(2)(A), Mammo must show by a preponderance of the evidence that:

- 24 (1) Sako made representations;
- 25 (2) Sako knew at the time that the representations were false;
- 26 (3) Sako made those representations with the intention and purpose of deceiving Mammo;

27 ² See also Tr. Transcript vol. 2, 41:11-42:16.

28 ³ Unless otherwise noted, all sections referred to in this memorandum decision relate to the Bankruptcy Code, Title 11 of the United States Code.

1 (4) Mammo justifiably relied on the representations; and

2 (5) Mammo sustained losses as a proximate result of Sako's representations.

3 *In re Sabban*, 600 F.3d 1219, 1222 (9th Cir. 2010); *In re Galindo*, 467 B.R. 201, 208 (Bankr. S.D. Cal.
4 2012).

5 **1. Mammo's Forgery Allegations**

6 As a preliminary matter, Mammo's arguments with respect to § 523(a)(2)(A) relate primarily to
7 his allegation that Sako forged his signatures on certain documents. Mammo, however, has no actual
8 knowledge of who forged his signature. Rather, he relies on: (1) an expert report that indicates he
9 himself did not sign the documents; and (2) circumstantial evidence that Sako might benefit from the
10 forgeries. But the court found Sako credible when she testified that she knew nothing about the forged
11 documents. And the circumstantial evidence does not show that Sako is the only person that could
12 have benefitted from them. Indeed, Toma and Melton were both involved in the business, and they are
13 just as likely to have forged Mammo's signatures. Thus, even if Mammo shows that he himself did not
14 sign the documents, he has not shown – by a preponderance of the evidence – that Sako was the one
15 who forged his signature. The court therefore finds that Sako is not liable for the forgeries. She is,
16 however, liable for other fraudulent acts as the court describes below.

17 **2. False Representations and Omissions**

18 “A debtor's failure to disclose material facts constitutes a fraudulent omission under
19 § 523(a)(2)(A) if the debtor was under a duty to disclose and the debtor's omission was motivated by
20 an intent to deceive.” *In re Harmon*, 250 F.3d 1240, 1246 n.4 (9th Cir. 2001) (citing *In re Eashai*, 87
21 F.3d at 1089-90). A party to a business transaction has a duty to disclose:

22 (a) matters known to him that the other is entitled to know because of a fiduciary or other
23 similar relation of trust and confidence between them; and (b) matters known to him that
24 he knows to be necessary to prevent his partial or ambiguous statement of the facts from
being misleading

25 RESTATEMENT (SECOND) OF TORTS § 551.⁴

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28 ⁴ The Restatement also provides, “[a] representation stating the truth so far as it goes but which the maker knows
or believes to be materially misleading because of his failure to state additional or qualifying matter is a
fraudulent misrepresentation.” RESTATEMENT (SECOND) OF TORTS § 529.

1 Under California law, “[t]he fiduciary duties a manager owes to [a] limited liability company
2 and to its members are those of a partner to a partnership and to the partners of the partnership.” Cal.
3 Corp. C. § 17153.⁵ And in California,

4 “Partners are trustees for each other, and in all proceedings connected with the conduct of
5 the partnership every partner is bound to act in the highest good faith to his copartner and
6 may not obtain any advantage over him in the partnership affairs by the slightest
7 misrepresentation [or] concealment” [*Llewelyn v. Levi*, 157 Cal. 31, 37 (1909)]. A
8 managing partner has a legal duty to disclose to copartners “matters affecting their
9 business relationship.” [*Berg v. King-Cola, Inc.*, 227 Cal. App. 2d 338, 341 (1964)].
Partners have a duty to make a full and fair disclosure of all matters substantially
affecting the value of the partnership. [*Estate of Witlin*, 83 Cal. App. 3d 167, 175
(1978)].

10 *McCain v. Phoenix Resources, Inc.* 185 Cal. App. 3d 575, 579 (1986); *see also* Callison and Sullivan,
11 PARTNERSHIP LAW AND PRACTICE 12:5 (2006) (“The duty of loyalty includes a duty to disclose all
12 material facts concerning the partnership business, together with all facts connected with transactions
13 involving partnership interests and property.”).

14 In *In re Haddad*, debtor Thomas Haddad was partners with his brother, Abe Haddad, in a
15 California partnership named Golden H. Packing Company (“GHP”). *Haddad v. Haddad (In re*
16 *Haddad)*, 21 B.R. 421, 422 (B.A.P. 9th Cir. 1982). GHP and Tom were the beneficiaries to Abe’s two
17 life insurance policies. *Id.* In the course of its business, GHP borrowed \$500,000 from Bank of
18 America. *Id.* Abe then passed away and, as a result, GHP and Tom received some \$1.75 million in
19 life insurance proceeds; Tom withdrew GHP’s proceeds for his own use. *Id.* Abe’s widow – Caroline
20 Haddad – became the beneficiary of Abe’s partnership interest under GHP’s standing buy-and-sell
21 agreement. *Id.* And Bank of America later demanded payment of its loan. *Id.*

22 When Caroline met with Tom and others to discuss the loan, she was asked to pay Abe’s half.
23 *Id.* at 423. Tom, however, did not disclose his receipt of the insurance proceeds. *Id.* And Caroline
24 ultimately paid Bank of America some \$250,000. *Id.* Caroline later discovered the proceeds, Tom

25 ⁵ In 2012, the California legislature enacted the California Revised Uniform Limited Liability Company Act (the
26 “Revised Act”), California Corporations Code § 17701.01, *et seq.* The Revised Act became operative January
27 1, 2014, and it repealed the Beverly-Killea Limited Liability Company Act (the “Repealed Act”), California
28 Corporations Code § 17000, *et seq.* But, under its savings clause, the Revised Act “does not affect an action
commenced, proceeding brought, or right accrued or accruing before [January 1, 2014].” Cal. Corp. C.
§ 17713.03. Mammo brought this nondischargeability action on August 12, 2013. Accordingly, the Revised
Act does not affect this action; the Repealed Act still applies.

1 filed bankruptcy, and – in a nondischargeability action – the bankruptcy court found that Tom had not
2 committed § 523(a)(2)(A) fraud against Caroline. *Id.* at 422. On appeal, the Ninth Circuit Bankruptcy
3 Appellate Panel ruled that: (1) under California law, Tom had a duty to disclose the insurance proceeds
4 to Caroline; and (2) Tom knowingly concealed this information to induce Caroline to pay Bank of
5 America. *Id.* at 423-24. The panel thus held Tom’s liability for this fraudulent omission
6 nondischargeable under § 523(a)(2)(A), and reversed the bankruptcy court. *Id.* at 424.

7 In *In re Lopez*, debtor Lopez borrowed \$60,000 from creditor Pagliero to pay for living
8 expenses so she could quit her job and pursue a career in art. *In re Lopez*, No. 09-1277-A, 2011 WL
9 10642952, at *2 (Bankr. E.D. Cal. May 18, 2011). She represented to Pagliero that, if she could not
10 sell enough artwork to repay the loan, she would either go back to work or sell her house. *Id.* But she
11 failed to disclose to Pagliero that: (1) her employer was ready to lay her off because it was
12 discontinuing her department; (2) she possessed a retirement account that she could cash out; (3) she
13 had recently borrowed \$50,000 against the equity in her house; (4) she held a large amount of credit
14 card debt; (5) she had previously filed bankruptcy; and (5) she had no intent to make enough money to
15 pay back her loan to Pagliero. *Id.* at *3. The bankruptcy court found that these omissions satisfied
16 § 523(a)(2)(A)’s false representation requirement.

17 Sako admitted that she was giving business funds to Toma almost every day. Giving away
18 these business funds substantially affected El Nopal I’s value. Thus, like Tom’s duty to disclose the
19 insurance proceeds to Caroline, Sako held a duty to disclose her use of business funds to Mammo.
20 But, like Tom, Sako failed to meet her duty. Further, like Lopez’s partial representations about her
21 employment and her home equity, Sako only partially represented the state of the business. She
22 represented to Mammo that the business was doing well – it just needed more time and money. But it
23 was not doing well. The entire truth about the business and why it needed more money was that: (1) it
24 relied on costly check cashing services because its vendors only accepted COD payments; (2) it was
25 regularly late on taxes and rent; (3) Sako was using the business account for her personal expenses;
26 and (4) again, Sako was regularly giving business funds to Toma. Like Lopez, Sako did not disclose
27 this whole truth.

1 When Sako became managing member of El Nopal 1, she acquired with it a duty to fully and
2 fairly disclose to Mammo all matters substantially affecting El Nopal 1's value. When Sako partially
3 represented to Mammo that the business was doing well, she was misleading. She therefore had a duty
4 to disclose the whole truth about the business to Mammo. Because Sako failed to meet her duties, and
5 because the court finds below that Sako intended to deceive Mammo by her omissions, the court
6 concludes that Sako's omissions and half-truths constitute false representations under § 523(a)(2)(A).

7 **3. Intent to Deceive**

8 To find nondischargeability under § 523(a)(2)(A), the debtors must have had the subjective
9 intent to deceive at the time of the transaction. The court may infer this intent from the surrounding
10 circumstances. *In re Kennedy*, 108 F.3d 1015, 1018 (9th Cir. 1997). After carefully considering the
11 evidence and the various witnesses' credibility, the court is not persuaded that Sako had intent *ab initio*
12 to defraud Mammo. She originally pursued her business deal with Toma. She did not seek Mammo
13 out. Nor does the court find it likely that Sako conspired with Toma to bring Mammo in just to
14 defraud him. Rather, it appears that Toma and Kejbo brought Mammo into the deal without any
15 solicitation from Sako.

16 The court does, however, find that Sako formed her fraudulent intent very shortly after Mammo
17 joined El Nopal 1. The parties' business deal contemplated Mammo's role as a passive investor. Sako
18 ran the grocery business; Mammo provided the capital. And, after she received this capital, she began
19 right away diverting some of it to Toma at Toma's request. Although Sako did not initially intend to
20 defraud Mammo, she must have known that had she presented the whole truth about El Nopal 1's
21 operations – particularly her regular gifts to Toma – Mammo would have likely stopped funding the
22 business.

23 Indeed, it would have been an easy thing for Sako to inform Mammo about Toma. Mammo
24 regularly inquired about the business. And if Sako truly believed Toma to be a legitimate business
25 partner, disclosure should have been even easier – Sako could have simply explained to Mammo that
26 the business needed more money because their partner Toma was constantly taking its funds. But
27 Sako didn't explain this; she remained conspicuously silent about Toma. Instead, she told Mammo
28 that the business was doing well. Then she asked him for more money. Given these circumstances,

1 the court finds that Sako made the partial representations and omissions described above with the
2 intent to deceive Mammo and induce him into providing El Nopal 1 with more funds.

3 4. Justifiable Reliance

4 Reliance on the representation need not reach the level of “reasonableness;” it need only be
5 justifiable. *Field v. Mans*, 516 U.S. 59, 73-76 (1995); *In re Eashai*, 87 F.3d 1082, 1090 (9th Cir.
6 1996). This is a subjective standard that considers the relationship between the parties. *In re Tallant*,
7 218 B.R. 58, 67 (B.A.P. 9th Cir. 1998).

8 [A] person is justified in relying on a representation of fact “although he might have
9 ascertained the falsity of the representation had he made an investigation. . . .
10 Justification is a matter of the qualities and characteristics of the particular plaintiff, and
11 the circumstances of the particular case, rather than of the application of a community
standard of conduct to all cases.”

12 *Field v. Mans*, 516 U.S. at 70-71 (quoting RESTATEMENT (SECOND) OF TORTS §§ 540, 545A,
13 Comment b). “Although one cannot close his eyes and blindly rely, mere negligence in failing to
14 discover an intentional misrepresentation is no defense to fraud.” *In re Apte*, 96 F.3d 1319, 1322 (9th
15 Cir. 1996). Further, in cases involving fraudulent omissions,

16 [P]ositive proof of reliance is not a prerequisite to recovery. All that is necessary is that
17 the facts withheld be material in the sense that a reasonable [person] might have
18 considered them important in the making of this decision. This obligation to disclose and
19 this withholding of a material fact establish the requisite element of causation in fact.

20 *Id.* at 1323 (quoting *Affiliated Ute Citizens v. United States*, 406 U.S. 128, 153-54 (1972)).

21 Mammo learned about the El Nopal 1 business deal through his brother-in-law, Kejbo, and
22 through Kejbo’s friend, Toma. Mammo, Sako, Kejbo, and Toma all belong to the same ethnic
23 community; they share similar backgrounds. Toma regularly visited the store. Kejbo occasionally
24 visited it. And Mammo testified that he trusted Sako to run the business. Thus, when Sako affirmately
25 represented that the business was doing well, there was little reason for Mammo to suspect otherwise.
26 And there was no reason for Mammo to suspect that Sako was giving money over to Toma nearly
27 every day. Moreover, even if Mammo had suspected it, it’s not clear that a reasonable investigation
28 would have uncovered Sako’s fraudulent intent. The business operated largely on cash. And it does

1 not appear that Sako or Melton were at all diligent with accounting for this cash – Sako produced no
2 documents specifically describing where the funds went.

3 The court notes, however, that Mammo might have been more discerning about the transaction
4 as a whole. Mammo has experience in the grocery business; he himself operates a store in Michigan.
5 Had he scrutinized the way Sako ran El Nopal 1, he would have discovered the many checks made out
6 to employees or cash. Had he reviewed the business’s bank records, he would likely have discovered
7 that Sako was using El Nopal 1’s account as her own personal account. But, nonetheless, Mammo and
8 Sako’s business deal contemplated Mammo being a passive investor. And living in Michigan made
9 assiduous scrutiny of the business difficult. The court therefore finds that Mammo’s failure to
10 investigate did not rise above the level of negligence. Moreover, the court finds that a reasonable
11 person would have considered Sako’s undisclosed facts important in deciding whether to continue
12 funding the business. These facts are therefore material, and accordingly, Mammo justifiably relied on
13 both Sako’s affirmative misrepresentations and fraudulent omissions for purposes of § 523(a)(2)(A).

14 5. Proximate Cause

15 The Restatement (Second) of Torts (1976) explains that proximate cause entails
16 (1) causation in fact, which requires a defendant’s misrepresentations to be a substantial
17 factor in determining the course of conduct that results in loss, § 546; and (2) legal
18 causation, which requires a creditor’s loss to “reasonably be expected to result from the
19 reliance.” § 548A.

19 *In re Brown*, 217 B.R. 857, 862 (Bankr. S.D. Cal. 1998). And, again: a debtor’s failure to satisfy his or
20 her obligation to disclose a material fact establishes causation in fact. *In re Apte*, 96 F.3d at 1323.

21 The court found above that Sako’s affirmative misrepresentations and material omissions
22 induced Mammo to continue funding El Nopal 1. And, in the end, Mammo lost much of the capital he
23 contributed. But Sako’s duty to disclose her gifts to Toma did not arise until she started giving such
24 gifts. Her duty to disclose the truth behind her partial representations did not arise until she made such
25 representations. Moreover, the court has found that Sako did not intend *ab initio* to defraud Mammo.
26 Thus, Sako could not have not proximately caused the loss of Mammo’s initial investment in El
27 Nopal 1. But she did proximately cause the loss of Mammo’s investments after she began:
28

1 (1) diverting funds to Toma without informing Mammo; and (2) misleading Mammo with partial
2 representations that the business was doing well.

3 The record does not make explicitly clear when Sako started paying Toma. Nor does it clearly
4 show when, precisely, Sako began making partial representations to Mammo about the business. But
5 the court infers from the parties' testimony that these things started almost immediately after Toma and
6 Kejbo brought Mammo into the deal. Sako testified, without qualification, that Toma was always
7 involved in El Nopal 1's business affairs, that he came to the store regularly, and that he asked for
8 money nearly every day. She further testified to meeting with Mammo to discuss the business. And
9 Mammo claimed he stayed generally informed about the business through regular telephone calls with
10 Sako, where Sako would represent to him that the business was doing okay.

11 Thus, Sako's duties to disclose arose almost immediately after Mammo's initial investment on
12 August 10, 2008. Sako's failure to meet her duties was a substantial factor in determining Mammo's
13 continued investment and loss. Further, it was reasonable to expect that Mammo's reliance on Sako's
14 partial representations and omissions would result in this loss. The court therefore finds that the false
15 representations and omissions proximately caused Mammo's losses between August 21, 2008 and late
16 2011, when Mammo decided to end his business relationship with Sako. Mammo has accordingly
17 shown all the elements necessary to find nondischargeability under § 523(a)(2)(A).

18 6. Damages

19 Mammo's complaint sought compensatory damages, punitive damages, and costs. His post-
20 trial brief specifically requested damages caused by the forged documents. But the court has not found
21 Sako liable for the forgeries. At trial, Mammo made no arguments with respect to punitive damages.
22 And neither party raised the issue of prejudgment interest. Even so, Rule 54(c) of the Federal Rules of
23 Civil Procedure⁶ provides: "[a non-default judgment] should grant the relief to which each party is
24 entitled, even if the party has not demanded that relief in its pleadings."

25 The Restatement describes that damages for fraud include "pecuniary loss suffered [] as a
26 consequence of the [] reliance upon the misrepresentation." RESTATEMENT (SECOND) OF TORTS § 549.

27
28 ⁶ Rule 7054 of the Federal Rules of Bankruptcy Procedure incorporates by reference Rule 54 of the Federal
Rules of Civil Procedure.

1 Indeed, the damages in a nondischargeability action are not limited to the amount of money Debtors
2 obtained by fraud. They extend to the creditor's loss resulting from the fraud, even if this exceeds the
3 value Debtors received. *Cohen v. de la Cruz*, 523 U.S. 213, 214-18 (1998); *Muegler v. Bening*, 413
4 F.3d 980, 983 (9th Cir. 2005). Under Rule 54(d) of the Federal Rules of Civil Procedure, a prevailing
5 party may recover costs other than attorney fees.

6 Further, "[t]he federal prejudgment interest rate applies to actions brought under federal statute,
7 such as bankruptcy proceedings, unless the equities of the case require a different rate." *Banks v. Gill*
8 *Distribution Centers, Inc. (In re Banks)*, 263 F.3d 862, 871 (9th Cir. 2001) (citing *Nelson v. EG & G*
9 *Energy Measurements Group, Inc.*, 37 F.3d 1384, 1392 (9th Cir. 1994)). And, in particular, an action
10 under § 523(a)(2)(A) is a product of federal law engendering federal prejudgment interest. *In re*
11 *Eberts*, No. CV 11-08827-MWF, 2013 WL 1248637, at *10-11 (C.D. Cal., March 27, 2013).

12 Here, Mammo contributed \$311,500 between August 21, 2008 and late 2011. As the court
13 found above, Sako's false representations and omissions proximately caused Mammo to contribute and
14 ultimately lose these funds. There's no indication that Mammo ever received any of these funds back
15 from Sako or the El Nopal entities. Accordingly, the court finds Sako liable to Mammo for \$311,500.
16 It further finds Sako liable to Mammo for costs – other than attorney fees – that he incurred in bringing
17 this action. And because Sako's liability arises under federal law, the court awards Mammo
18 prejudgment interest at the federal rate starting from August 21, 2008.

19 **B. Section 523(a)(4) Nondischargeability**

20 A debt is nondischargeable under § 523(a)(4) if: "[(1)] an express trust existed, [(2)] the debt
21 was caused by fraud or defalcation, and [(3)] the debtor acted as a fiduciary to the creditor at the time
22 the debt was created." *Otto v. Niles (In re Niles)*, 106 F.3d 1456, 1459 (9th Cir. 1997); *Maxwell v.*
23 *Maxwell (In re Maxwell)*, 509 B.R. 286, 289 (Bankr. E.D. Cal. 2014). Again, a manager owes the
24 same fiduciary duties to her LLC that a partner owes to her partnership. Cal. Corp. C. § 17153. Under
25 California law, partners are trustees for purposes of § 523(a)(4) liability. *Ragsdale v. Haller*, 780 F.2d
26 794 (9th Cir. 1986). So, too, are managing LLC members. *Plikaytis v. Roth (In re Roth)*, 518 B.R. 63,
27 72 (S.D. Cal. 2014).

1 But actions for damages to the LLC belong to the LLC; not the individual members. See Cal.
2 Corp. C. § 17300. Members only have standing to bring such actions derivatively. See *In re Blixeth*,
3 459 B.R. 444 (Bankr. D. Mont. 2011); *Albers v. Gunthy-Renker Corp.*, 92 Fed. Appx. 497 (9th Cir.
4 2004); Cal. Corp. C. § 17501. And in California, a derivative complaint must state with particularity
5 the plaintiff's efforts for demand on the LLC or their reasons for not making that effort. Cal Corp. C.
6 § 17501(a)(2). It must further allege that the plaintiff informed the LLC or the LLC's managers in
7 writing about the underlying facts of the complaint. *Id.*

8 Here, the parties spent much of trial focused on Sako's apparent defalcation – she admitted that
9 she regularly gave funds to Toma; she used the company's bank account for personal expenses; and
10 she largely failed to account for cashed checks. But these defalcations all relate to funds belonging to
11 El Nopal 1, not Mammo personally; Mammo had already given these funds over to the business.
12 Accordingly, these acts damaged the LLC and Mammo only has standing to sue on them derivatively.

13 Mammo's complaint, however, fails to state with particularity his efforts for demand on El
14 Nopal 1 or his reasons for not making such demand.⁷ It likewise fails to allege that he informed El
15 Nopal 1 or Sako in writing about the underlying facts of his complaint. And there is otherwise no
16 indication that Mammo brought this action derivatively. He did not join El Nopal 1 as a party to the
17 action. He makes no specific arguments about El Nopal 1's damages. He hardly mentions his rights as
18 an LLC member.⁸ And, indeed, he often and inaccurately referred to El Nopal 1 as a partnership rather
19 than a limited liability company.

20 Because: (1) Sako's apparent defalcation damaged El Nopal 1 and not Mammo personally;
21 (2) Mammo's complaint fails to comply with California Corporations Code § 17501's requirements;
22 and (3) Mammo does not otherwise appear to bring this action derivatively, Mammo lacks standing to
23

24 ⁷ The court takes judicial notice that El Nopal 1 is an "FTB Suspended" company according to the California
25 Secretary of State. This, in itself, might have been good reason not to make demand under Cal. Corp. C.
26 § 17501(a)(2). But the court notes that a plaintiff in a derivative LLC action has no greater standing than the
27 company itself. *Cohen v. Davis Creek Lumber Co.*, 151 Cal. App. 2d 420, 427 (1957). And suspended
28 companies have no power to sue. Cal. Corp. C. § 17654. Thus, even if Mammo had complied with the
requirements of California Corporations Code § 17501, it appears his 11 U.S.C. § 523(a)(4) claim would
nonetheless fail for a derivative lack of standing. *Davis Creek Lumber Co.*, 151 Cal. App. 2d at 427.

⁸ The court notes specifically that – even if Mammo had brought this action derivatively – both he and Sako
hold interests in El Nopal 1. And Mammo failed to address what portion of the damages he would be entitled to
for his membership interest.

1 assert a § 523(a)(4) defalcation action. Accordingly, the court does not find that Sako owes Mammo a
2 nondischargeable debt under § 523(a)(4).

3 **C. Section 523(a)(6) Nondischargeability**

4 Debts for “willful and malicious injury” are nondischargeable under § 523(a)(6).

5 The word “willful” in (a)(6) modifies the word “injury,” indicating that
6 nondischargeability takes a deliberate or intentional *injury*, not merely a deliberate or
7 intentional *act* that leads to injury. . . . [T]he (a)(6) formulation triggers in the lawyer’s
8 mind the category “intentional torts,” as distinguished from negligent or reckless torts.
Intentional torts generally require that the actor intend “the *consequences* of an act,” not
simply “the act itself.”

9 *Kawaauhau v. Geiger*, 523 U.S. 57, 61 (1998) (emphasis in original). This standard “focuses on the
10 debtor’s state of mind and precludes application of § 523(a)(6)’s nondischargeability provision short of
11 the debtor’s actual knowledge that harm to the creditor was substantially certain.” *Carrillo v. Su (In re*
12 *Su)*, 290 F.3d 1140, 1146 (9th Cir. 2002).

13 “A ‘malicious’ injury involves ‘(1) a wrongful act, (2) done intentionally, (3) which necessarily
14 causes injury, and (4) is done without just cause or excuse.’” *Petralia v. Jercich (In re Jercich)*, 238
15 F.3d 1202, 1209 (9th Cir. 2001). “Malice may be inferred based on the nature of the wrongful act.”
16 *Ormsby v. First American Title Company of Nevada (In re Ormsby)*, 591 F.3d 1199, 1207 (9th Cir.
17 2010) (citing *Transamerica Commercial Fin. Corp. v. Littleton (In re Littleton)*, 942 F.2d 551, 554
18 (9th Cir. 1991)).

19 Again, Mammo did not show by a preponderance of the evidence that Sako forged any
20 documents. And Mammo did not sue derivatively for damages that El Nopal 1 sustained.
21 Accordingly, the only remaining debts subject to § 523(a)(6) nondischargeability are: (1) Sako’s
22 liability for her fraudulent omissions and partial representations; (2) Sako’s purported failure to return
23 the \$2,414 liquor license transfer fee; and (3) Mammo’s \$3,000 payment to ensure Sako’s cooperation.
24 The court addresses each of these debts in turn.

25 **1. Sako’s Fraud Liability**

26 When Sako committed her fraud by omissions and partial representations, she did it to induce
27 Mammo into giving the business more money. And, in the end, this injured Mammo. But it does not
28 necessarily mean that Sako intended such injury. Despite the fact that Sako regularly diverted business

1 funds to Toma, her testimony plainly indicates that she wanted El Nopal 1 to do well. And although
2 she lacked diligence and prudence in running the business, it is nonetheless apparent that she was
3 working hard toward its success. Sako wanted the business to grow and, accordingly, she wanted the
4 value of Mammo's interest to grow with it. Nothing indicates that Sako intended to permanently
5 deprive Mammo of his investment or any return on it. Nor did she know that her acts were
6 substantially certain to cause Mammo harm. Thus, with respect to the \$341,500 Mammo provided to
7 the business, the court finds that Sako did not intend to injure Mammo. Accordingly, the court does
8 not find nondischargeability of that debt under § 523(a)(6).

9 2. **The Liquor License Transfer Fee**

10 Sako asked Mammo for \$2,414 to pay ABC's liquor license transfer fee. And the court finds
11 credible Sako's testimony that she intended to use those funds to pay the transfer fee. That the funds
12 never successfully reached ABC is not, by itself, proof that Sako intended to hurt Mammo in asking
13 for those funds. Moreover, the court also finds credible Sako's testimony that she: (1) deposited
14 Mammo's \$2,414 in El Nopal 1's WIC account; and (2) emptied that account to provide WIC funds to
15 Mammo's employee, Nathan. The court notes that El Nopal 1's WIC account appears to be with
16 Neighborhood National Bank. And the check Sako issued to ABC instead drew upon El Nopal 1's
17 Chase Bank account. It is thus unclear how Sako thought Mammo's funds would reach the ABC. But
18 the court does not find this mistake an indication of malice. Rather, it attributes the error to the general
19 lack of diligence, competence, and attention to detail that Sako demonstrated throughout her operation
20 of the business.⁹ Thus, with respect to the \$2,414 Mammo provided for ABC's liquor license transfer
21 fee, the court finds that Sako did not intend to injure Mammo. Accordingly, the court does not find
22 nondischargeability of that debt under § 523(a)(6).

23 3. **The Cooperation Payment**

24 "While bankruptcy law governs whether a claim is nondischargeable under § 523(a)(6), [the]
25 court looks to state law to determine whether an act falls within the [underlying] tort []." *Del Bino v.*

26 ⁹ It is also worth noting that, for all the bank statements the parties brought into evidence, they did not bring the
27 December 2011 statement for El Nopal 1's Neighborhood National Bank account. This statement would
28 presumably show whether or not Sako did deposit Mammo's check, and what then happened to those funds.
But, because the court does not have this statement, Sako's testimony is the only evidence the court has
regarding the \$2,414.

1 *Bailey (In re Bailey)*, 197 F.3d 997, 1000 (9th Cir. 1999). Thus, an intentional breach of contract will
2 not give rise to a nondischargeable debt unless the breach is accompanied by tortious conduct that
3 results in willful and malicious injury. *In re Jercich*, 238 F.3d at 1205. And “[i]n California, tort
4 recovery for breach of contract is permitted only when a defendant’s conduct violates a fundamental
5 public policy of the state.” *Jenkins v. Mitelhaus (In re Jenkins)*, BAP Nos. CC-14-1185-PaTaD, CC-
6 14-1258-PaTaD, 2015 WL 735799, at *7 (B.A.P. 9th Cir., Feb. 20, 2015) (internal quotations omitted)
7 (quoting *Rattan v. United Servs. Auto. Assoc.*, 84 Cal. App. 4th 715, 720 (2000)).

8 Near the end of 2011, Mammo and Sako agreed to swap interests and create sole ownerships in
9 El Nopal 1 & 2. But before they fully consummated this deal, Sako held El Nopal 1’s WIC license
10 hostage: she threatened to prevent its transfer to Mammo unless Mammo paid her \$5,000. And,
11 ultimately, Mammo paid Sako \$3,000 to ensure her cooperation. At trial, however, Mammo did not
12 describe or otherwise specify what tort Sako committed by doing this. Indeed, it is unclear whether
13 she committed a tort at all – she threatened to breach her contract with Mammo unless he paid her
14 more money. A claim for Sako’s actions might thus sound in contract rather than tort.

15 Nonetheless, after examining California law, Sako’s actions appear to fall closest to economic
16 duress or civil extortion. But neither of these actions afford Mammo § 523(a)(6) relief. First, a claim
17 for economic duress appears to sound in contract: it forms a basis for contract rescission. *Chan v.*
18 *Lund*, 188 Cal. App. 4th 1159, 1173-74 (2010). Further,

19 [“Economic duress requires] a wrongful act which is sufficiently coercive to cause a
20 reasonably prudent person faced with no reasonable alternative to succumb to the
21 perpetrator’s pressure. . . . [A] reasonably prudent person subject to such an act may
22 have no reasonable alternative but to succumb when the only other alternative is
bankruptcy or financial ruin.”

23 *Id.* at 1174 (quoting *Rich v. Whillock, Inc. v. Ashton Development, Inc.*, 157 Cal. App. 3d 1154, 1158-
24 59 (1984)). Here, Mammo has not shown that a reasonably prudent person would be faced with no
25 reasonable alternative but to succumb to Sako’s demand for \$5,000. There is no indication that
26 Mammo’s only other alternative was bankruptcy or financial ruin. Indeed, Mammo and Sako had
27 already formed their contract – Mammo could have easily sued Sako for performance of it. Thus, even
28

1 if a claim for economic duress qualifies as a tort for purposes of § 523(a)(6) liability, Mammo has not
2 met its standard under California law.

3 On the other hand, “[e]xtortion is the obtaining of property from another, with his consent, . . .
4 induced by a wrongful use of force or fear” Cal. Pen. C. § 518. “Fear, such as will constitute
5 extortion, may be induced by a threat . . . [t]o do an unlawful injury to the person or property of the
6 individual threatened” Cal. Pen. C. § 519. The court, however, has found no authority that
7 suggests a breach of contract constitutes an “unlawful injury” for the purposes of extortion.¹⁰
8 Accordingly, Mammo has not shown that Sako committed civil extortion when she threatened to
9 breach her contract with him.

10 Finally, Mammo has described no fundamental public policy in California that would transform
11 Sako’s breach into a tortious act. In *In re Lawson*, debtor Lawson refused to release goods that a
12 creditor had already paid for in full. *Coastal Industrial Partners, LLC v. Lawson (In re Lawson)*, A.P.
13 No. 13-1105, 2014 WL 1017908, at *1 (Bankr. N.D. Cal. Mar. 14, 2014). Lawson insisted that the
14 creditor owed him some \$76,000 in additional fees. *Id.* But an arbitrator found Lawson’s claim false
15 and wrongful – Lawson’s refusal was part of a “‘fraudulent scheme’ to ‘extort’ money from” the
16 creditor. *Id.* And the arbitrator found Lawson liable for conversion and breach of contract. *Id.* at *2.
17 Lawson later filed bankruptcy and the creditor sought § 523(a)(6) nondischargeability of the arbitration
18 award. *Id.* at *1. The Northern District of California Bankruptcy Court stated, “[t]here is no
19 fundamental public policy in this case which would turn Lawson’s breach of contract, however
20 unjustified, into a tort.” *Id.* at *2. And it thus denied the creditor § 523(a)(6) nondischargeability for
21 the breach of contract portion of the award. *Id.*

22 As Lawson breached his contract by refusing to release goods unless his creditor paid
23 additional fees, so Sako breached her contract by refusing to cooperate with the WIC license transfer
24 unless Mammo paid additional funds. Just as Lawson’s demand was wrongful and unjustified, so too
25 was Sako’s. But like the *In re Lawson* court, this court has found no fundamental public policy that
26 would transform Sako’s breach of contract into a tort. And Mammo has not otherwise met his burden
27

28 ¹⁰ Black’s Law Dictionary defines “unlawful” as, “1. Not authorized by law; illegal 2. Criminally
punishable [or] 3. Involving moral turpitude” BLACK’S LAW DICTIONARY 1678 (9th ed. 2009).

1 to show an intentional tort in Sako's breach. The court therefore denies Mammo nondischargeability
2 of that \$3,000 debt under § 523(a)(6).

3
4 **IV. CONCLUSION**

5 For the foregoing reasons, the court finds that: (1) Sako failed to disclose information that she
6 had a duty to disclose; (2) she made partial representations that at the time she knew to be misleading;
7 (3) she made these partial representations and omissions with the intent to deceive Mammo;
8 (4) Mammo justifiably relied on these partial representations and omissions; and (5) these
9 representations and omissions proximately caused Mammo \$311,500 in damages plus costs.

10 But since Mammo lacks standing to sue for damages that El Nopal 1 sustained, the court does
11 not find that Sako owes Mammo a nondischargeable liability under § 523(a)(4). Because the court
12 finds that either: (1) Sako did not intend to injure Mammo; or (2) Mammo did not meet his burden to
13 show an intentional tort, the court does not find that Sako owes Mammo a nondischargeable debt under
14 § 523(a)(6). Nor does the court find punitive damages appropriate under the facts at bar.

15 The court therefore awards Mammo a total of **\$311,500** plus costs against Sako. It awards
16 prejudgment interest at the federal rate from August 21, 2008. This award is **nondischargeable** under
17 11 U.S.C. § 523(a)(2)(A) and likewise accrues postjudgment interest at the federal rate. A separate
18 judgment in favor of Mammo and against Sako shall issue.

19 **IT IS SO ORDERED.**

20
21 Dated: March 6, 2015



22 **CHRISTOPHER B. LATHAM, JUDGE**
23 United States Bankruptcy Court
24
25
26
27
28

In re Sundus Yousif Sako, Bk. No. 13-05182-CL7
Hikmat Mammo v. Sundus Yousif Sako, AP No. 13-90210-CL

CERTIFICATE OF MAILING

The undersigned, a regularly appointed and qualified clerk in the office of the United States Bankruptcy Court for the Southern District of California, at San Diego, hereby certifies that a true copy of the attached document, to wit:

**MEMORANDUM DECISION AND ORDER
FINDING NONDISCHARGEABILITY AND AWARDING DAMAGES**

was enclosed in a sealed envelope bearing the lawful frank of the bankruptcy judges and mailed via first class mail to the parties at their respective addresses listed below:

Hikmat Mammo
625 Broadway #620
San Diego CA 92101

Ronald W. Noya
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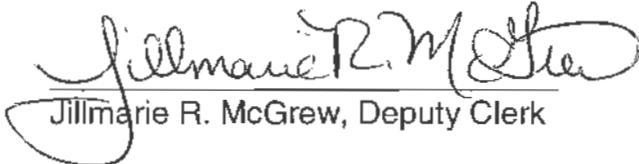
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Said envelope(s) containing such document was deposited by me in the City of San Diego, in said District on March 6, 2015.


Jillmarie R. McGrew, Deputy Clerk