

UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF CALIFORNIA 325 West "F" Street, San Diego, California 92101-6991		
In Re		
JOSEPH AND CAYLEE PINSONNEAULT,	Debtor.	BANKRUPTCY NO. 15-05234-LA7
ML MANAGER, LLC,	Plaintiff(s),	ADVERSARY NO. 15-90201-LA
v.		Date of Hearing: Time of Hearing:
JOSEPH AND CAYLEE PINSONNEAULT,	Defendant(s).	Name of Judge: Louise De Carl Adler

FINDINGS FACT AND CONCLUSIONS OF LAW RE:

OBJECTIONS TO DISCHARGE

IT IS HEREBY ORDERED as set forth on the continuation pages attached, numbered two (2)

through eighteen (18).

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DATED:

The matter of the Complaint Objecting to Discharge filed by plaintiff, ML Manager, LLC ("ML Manager" or "Plaintiff") against the debtors, Joseph F. Pinsonneault ("JP") and Caylee D. Pinsonneault ("CP")(collectively "Debtors"), came on regularly for trial on October 31 and November 1, 2016, before the Honorable Louise De Carl Adler, Bankruptcy Judge. Keith L. Hendricks of Moyes, Sellers & Hendricks, represented the Plaintiff; Stephen K Haynes, Esq., represented the Debtors. The Court having heard and considered the testimony and documentary evidence admitted at trial, and having considered the legal authorities submitted by the parties and the oral arguments made at trial, and other good cause appearing, makes the following Findings of Fact and Conclusions of Law to DENY the discharge:

**I.
JURISDICTION**

1. The complaint in this action raises four grounds to deny the discharge:

- a. Whether Debtors should be denied discharge under 11 U.S.C. § 727(a)(2)(A), (B) due to hindering, delaying, or defrauding creditor ML Manager by transferring, removing, or concealing assets one year prior to petition, or after. [See Complaint, Count I]
- b. Whether Debtors should be denied discharge under 11 U.S.C. § 727(a)(3) due to the debtor concealing, destroying, falsifying or failing to keep records of financial condition. [See Complaint, Count II]
- c. Whether Debtors should be denied discharge under 11 U.S.C. § 727(a)(4)(A), (B) due to debtor fraudulently making an oath or account or presenting or using a false claim. [See Complaint, Count III]
- d. Whether Debtors should be denied discharge under 11 U.S.C. § 727(a)(5) for failing to satisfactorily explain the loss of assets and the Debtors' liabilities. [See Complaint, Count IV]

2. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1334(b).

3. The action is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(J). All parties consent to the entry of a final order or judgment by the bankruptcy judge. [ECF No. 37, Joint Pre Trial Order ("PTO") at 2(5)].

4. Venue is proper in this district pursuant to 28 U.S.C. § 1409(a).

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II. FACTUAL FINDINGS¹

5. The Debtors filed the instant voluntary joint Chapter 7 petition on August 6, 2015, assigned Case No. 15-05234-LA7.

6. ML Manager is a creditor that holds a prepetition judgment against the Debtors in its capacity as agent on behalf of certain lenders. [PTO at 2(2)]. ML Manager obtained an initial judgment on July 11, 2012 ("Initial Judgment"), and the Debtors appealed. On October 16, 2014, ML Manager received a post-appeal judgment against the Debtors for \$22,681,630 ("Final Judgment").

7. After entry of the Initial Judgment, the Debtors filed a voluntary Chapter 11 case on September 20, 2012 assigned Case No. 12-12808-LA11 (the "Prior Case").

8. In their statement of financial affairs filed in the Prior Case, the Debtors reported that JP had earned income of \$220,000 year-to-date in 2012 from his wholly-owned real estate company, Pinsonneault Holdings, LLC, a California limited liability company ("Pinsonneault Holdings" or "PHC"). In their Schedule I, the Debtors reported that JP worked as a "consultant" for PHC earning monthly income of \$31,428.59, and that CP did not earn any income. In their Schedule J, the Debtors reported combined monthly expenses of \$52,097.99, resulting in a combined monthly net income deficit of <\$20,669.41>.

9. The Prior Case case was dismissed with a 180-day bar to refiling on February 4, 2013.

10. After dismissal of the Prior Case, at a judgment debtor exam conducted by ML Manager in April 2013, JP testified under oath that he had monthly living expenses of approximately \$17-18,000/month, and he had no income for 2013. [Trial Tr. (Oct. 31, 2016), Pg. 102:20-25] At this debtor exam, he testified that the Debtors were paying their living expenses from "loans" made by JP's mother-in-law, Sheryll Jackman ("Ms. Jackman"), and various friends. [Trial Tr. (Oct. 31, 2016), Pg. 103:1-17]

Debtor's Use of Pinsonneault Holdings, LLC ("PHC") as a Conduit

11. JP created PHC in 2006. The Debtors are the sole members of PHC. [Trial Tr. (Oct. 31, 2016) Pg. 153:19-22]

12. PHC was a "pass-through entity" used to pass all income through to JP. [Trial Tr. (Oct. 31, 2016) Pg. 153:23-25] JP testified that "Pinsonneault Holdings is basically my bank account." [Trial Tr. (Oct. 31, 2016) Pg. 153:15] In response to a question about his employment status as of 2013, JP testified that "I've always been self-employed." [Trial Tr. (Oct. 31, 2016) Pg. 99:25]

13. PHC's business was primarily related to the purchase and sale of real and personal property. [Trial Tr. (Oct. 31, 2016), Pg. 13:12-15]

¹The Court incorporates by reference all of facts set forth in PTO ¶ 3 which are noncontested; and all of the facts set forth in PTO ¶ 5 which, though not admitted, were not contested by any evidence to the contrary at trial.

**The Formation and Transfer of Debtors' Business to Luxury Asset
Purchasing International ("LAPI")**

14. In approximately January, 2015, David Moore ("Mr. Moore") and JP collaborated to form Luxury Asset Purchasing International ("LAPI") whose business model is to buy low, refurbish and resell luxury assets. [Trial Tr. (Oct. 31, 2016), Pg. 16:21, Pg.18:17] The timing of LAPI's formation was only a few months after ML Manager obtained its Final Judgment [See FF 6], a fact that the Court finds significant in her inference of fraudulent intent.

15. Prior to forming LAPI, Mr. Moore did marketing and consulting work for PHC. [Trial Tr. (Oct. 31, 2016), Pg. 13:16-22]

16. At trial, Mr. Moore testified that PHC continued to operate separately from LAPI after LAPI was formed. [Trial Tr. (Oct. 31, 2016), Pg. 17:16-21] However, this testimony was impeached. [Trial Tr. (Oct. 31, 2016), Pg. 17:22-25, Pg. 18:1-17; See also, PTO at 3(32-44)] The Court finds that upon the formation of LAPI, virtually all of the business activity of PHC ceased. [See FF 69 below]

17. LAPI's business address is 1330 Orange Avenue, Suite 335, Coronado, California 92119, which is the same location as PHC's business. PHC had leased that location for over 10 years prior to LAPI locating at the premises. [Trial Tr. (Oct. 31, 2016), Pg. 13:1-3] There is no written rental agreement between PHC and LAPI for the use of the premises. [Trial Tr. (Oct. 31, 2016), Pg. 13:4-7]

18. Mr. Moore, the manager of LAPI, testified that it takes money and connections to move in the circles for this type of business model, but that he does not move in such circles and does not have the connections to be able to implement LAPI's business model. [Trial Tr. (Oct. 31, 2016), Pg. 60:2-25, Pg. 61:1-5]

19. From its inception, the focus of LAPI's business was to use JP's extensive personal experience in buying and selling assets -- such as boats, cars and real estate -- to make a profit. [Trial Tr. (Oct. 31, 2016), Pg. 56:16-22]

20. As a result of the discussions between Mr. Moore and JP, it was decided that JP would not be made a member of LAPI due to the lawsuits against JP, his financial problems and his "baggage." [Trial Tr. (Oct. 31, 2016), Pg. 55:15-25, Pg. 56:1-5]

21. Even though JP was not made a member, the money to capitalize LAPI came from PHC or JP. [Trial Tr. (Oct. 31, 2016), Pg. 18:18-25, Pg. 19:1] Mr. Moore did not put any capital into LAPI. [Trial Tr. (Oct. 31, 2016), Pg. 18:22-23]

22. Mr. Moore was aware that the Debtors were planning to file another bankruptcy case. He and JP had discussed the Debtors' anticipated bankruptcy filing (this Chapter 7 case), for several months before it was filed. [Trial Tr. (Oct. 31, 2016), Pg. 38:1-10]

JP's Hidden Income from LAPI

23. Mr. Moore and JP agreed that the money generated by LAPI would be divided by allowing JP to take \$20,000 per month for his personal expenses if the money was there, and that

the person who obtained a deal and did the work on the deal was entitled to the money generated on a negotiated basis. [Trial Tr. (Oct. 31, 2016), Pg. 19:2-18]

24. All of LAPI's deals and all of its proceeds have been generated as a result of JP's efforts. [Trial Tr. (Oct. 31, 2016), Pg. 19:19-22, Pg. 39:2-4]

25. It has been JP -- not Mr. Moore -- who has withdrawn over 90% of the money from LAPI. [Trial Tr. (Oct. 31, 2016), Pg. 19:23, Pg. 20:1, Pg. 40:5-7] Mr. Moore testified that the reason for this was two-fold: One, that JP provided most of the effort to produce LAPI's revenue; and, two, that JP's living expenses required most of the revenue. That was their deal from the beginning. [Trial Tr. (Oct. 31, 2016), Pg. 40:8-13]

26. LAPI was willing to pay JP's living expenses because of JP's flair for putting deals together. [Trial Tr. (Oct. 31, 2016), Pg. 57:7-21]

27. LAPI also paid for CP's Lexus payments even though CP had no connection to LAPI. [Trial Tr. (Oct. 31, 2016), Pg. 28:10-21]

28. JP had the ability to direct LAPI to pay the Lexus lease payments. [Trial Tr. (Oct. 31, 2016), Pg. 29:20-23]

29. JP also had a debit card associated with a LAPI bank account that he could, and did, use to pay his living expenses. He could use the card for anything he desired. If the card was used for JP's personal expenses, it would be reflected on LAPI's books as "income" to JP. [Trial Tr. (Oct. 31, 2016), Pg. 30:9-19]

30. The only limit on JP's authority to use LAPI's money was the availability of funds in the account. [Trial Tr. (Oct. 31, 2016), Pg. 40: 20-25, Pg. 41:1:23]

31. JP would tell Mr. Moore the amount of money he needed for the Debtors' living expenses, and Mr. Moore either approved or facilitated it. [Trial Tr. (Oct. 31, 2016), Pg. 35:23-25]

32. The first major transaction of LAPI occurred during the first half of 2015. It was a complicated arrangement involving purchase, refurbishment and sale of a yacht; and utilization of a life insurance settlement to facilitate that purchase and refurbishment. The transaction commenced with a loan to LAPI from a Mr. Kleege; JP personally guaranteed the loan but Mr. Moore did not. [Trial Tr. (Oct. 31, 2016), Pg. 43:20-25, Pg. 44:6-18]

33. During the prepetition period of May and July 2015, before there were any net sales proceeds from the yacht resale available to LAPI, JP had taken over \$120,000 from LAPI's accounts. [Trial Tr. (Oct. 31, 2016), Pg. 44:16-21; Pg. 45:10-25; Pg. 46:1]

34. Mr. Moore was not concerned about JP taking the money that LAPI had borrowed from Mr. Kleege to pay JP's personal expenses because such practice was in keeping with the agreement between LAPI and JP. [Trial Tr. (Oct. 31, 2016), Pg. 47:15-25]

35. On May 20, 2016, in this adversary proceeding, the Debtors responded to discovery propounded by ML Manager and admitted that LAPI had, in part, paid their personal expenses and

produced, for the first time, LAPI's internal accounting showing over \$237,000 in compensation paid to the Debtors for 2015. [Ex. 20(b), Pgs. 35-39]

36. A profit and loss detail prepared by Mr. Moore prior to LAPI's Rule 30(b)(6) deposition showed \$211,715.60 paid to JP in 2015, and to the best of Mr. Moore's knowledge, the profit and loss detail is correct. [Trial Tr. (Oct. 31, 2016), Pg. 48:19-25, Pg. 49:1-17; Ex. 32 (reflecting \$211,715.60 paid in 2015, and \$9,005 paid in 2016)] The profit and loss detail lists all of the checks written to, or on behalf of JP, and all charges by him on LAPI's debit card, representing the comprehensive list of the "compensation" that LAPI paid to JP. [Trial Tr. (Oct. 31, 2016), Pg. 50:3-13]

37. JP claimed the monies he received from LAPI were to be treated as loans. [Trial Tr. (Oct. 31, 2016), Pg. 114:23-25] However, Mr. Moore testified that JP does not have an obligation to repay any of the money that he received because it was accounted for as compensation. [Trial Tr. (Oct. 31, 2016), Pg. 36:13-15]

38. The decision to treat the money provided to JP as compensation, and not a "loan" as JP has represented, was made sometime in the second half of 2015, as a result of conversations with Mr. Moore, his CPA and JP. [Trial Tr. (Oct. 31, 2016), Pg. 36:18-25, Pg. 37:1-25]

39. If LAPI had treated the compensation provided to JP as a "loan," it would have resulted LAPI generating a profit and adversely affected Mr. Moore's Social Security benefits. [Trial Tr. (Oct. 31, 2016), Pg. 37:2-14]

40. Based on the findings contained in FF 14-39, the Court infers that LAPI was a successor conduit to PHC that was formed and used by JP to funnel money that he concealed from his creditors in an ongoing effort to hinder, delay and defraud collection of his debts.

The False and Omitted Material Information in the Debtors' Bankruptcy Schedules.

41. The Debtors filed their voluntary Chapter 7 bankruptcy petition on August 6, 2015, along with their initial schedules and statement of financial affairs (collectively "initial schedules"). [Ex. 39]

42. Schedule B of their initial schedules shows they held memberships to Coronado Yacht Club and The Club at the Del, and the Debtors admit that the membership dues were current when the case was filed. [PTO at 7; Ex. 39]

43. Schedule B of their initial schedules states the Debtors have \$250 cash on hand; and no funds in any checking, savings, or other like accounts. [PTO at 3(14); Ex. 39, Pg. 9 (placing an "X" in the box on their Schedule B to indicate "None" in the category of checking, savings or other financial accounts of any kind)]

44. Schedule D of their initial schedules does not reflect any of the loans made by JP's friends. [See FF 10 above]. At trial, JP testified that he has never scheduled any of the loans from his friends because: "I don't have to ... it is just good faith money -- I've helped out a lot of people ... and a lot of it [the loans] was favors They didn't feel I owed any money back to them, and I didn't feel I owed them any money." [Trial Tr. (Oct. 31, 2016), Pg. 103:18-25, Pg. 104:1-3]

45. The statement of financial affairs filed as part of their initial schedules states that JP

earned only \$1 in year-to-date income in 2015; CP earned nothing. [PTO at 3(8)]

46. At trial, JP admitted that in 2015 he had received money for his living expenses from both LAPI and PHC that he did not report on his initial bankruptcy schedules. [Trial Tr. (Oct. 31, 2016, Pg. 113:5-11] JP's explanation for his failure to report these monies was that they were "consulting fees at the time." [Trial Tr. (Oct. 31, 2016), Pg. 113:12-15] JP also claimed that he did not report these monies because they were going to be a loan. [FF 37] However, when pressed, JP also agreed that he understood that the monies he received from these sources were, in fact, "income" to him. [Trial Tr. (Oct. 31, 2016), Pg. 112:15-25, Pg. 113:1-4]

47. Schedule J of their initial schedules shows the Debtors' monthly living expenses exceed \$9,300. The \$9,300 in living expenses on their schedules does not include the Debtors' residential rent payments. [PTO at 3(11)-(12)]

48. Schedule J shows the Debtors' monthly living expenses include two lease payments for late model Lexus vehicles. [PTO at 3(13)]

49. When asked on Schedule J of their initial schedules whether they expected an increase or decrease in their income, the Debtors stated:

Debtors have been paying living expenses by borrowing from a family member's business. Monthly rental on the debtors' residence is being paid by Jackman Industries, Inc. (a corporation owned by other family members). This situation cannot go on indefinitely. Debtors seek bankruptcy fresh start so that they can engage in new business ventures and generate income.

[Ex 39, Pg. 28]

50. The Debtors' initial schedules did not list the existence of a Union Bank account used by the Debtors to pay their living expenses. [Ex. 39, Pg. 9; Trial Tr. (Oct. 31, 2016), Pg. 118:12-20, Pg. 122:15-18] Additionally, their initial schedules did not list the existence of the PHC account, also used by the Debtors to pay their living expenses. [Ex. 39, Pg. 9]

51. The Debtors' initial schedules did not reveal that they had use of an American Express Card (the "Amex Card"). [Ex. Trial Tr. (Oct. 31, 2016), Pg. 122:19-21]

52. The Debtors' statement of financial affairs in their initial schedules did not list any payments to insiders within one year of filing the bankruptcy petition. [Ex. 39, Pg. 34]

53. Both Debtors signed their initial schedules under penalty of perjury. [See Ex. 39, Pg.46; Trial Tr. (Oct. 31, 2016), Pg. 78:16-79, Pg. 79:1-8]

54. ML Manager noticed the depositions of Ms. Jackman, Jackman Industries ("JI") and LAPI for July 20, 2016. [Trial Tr. (Oct. 31, 2016), Pg. 154:22-23; Adv. ECF Nos. 23-25]

55. The day before these depositions were taken, the Debtors amended their schedules ("First Amended Schedules" or "FAS"). [Ex. 19]²

57. In their FAS, the Debtors added a single share in JI to their schedule of assets. [Ex. 19, Pg. 4; Trial Tr. (Oct. 31, 2016), Pg. 155:20-25, Pg. 156:1-5] The Debtors further claimed that JI had no active operations. [Ex.19, Pg. 4]

58. The FAS shows \$539 in PHC's bank account. [Ex. 19, Pg. 4] The Debtors claimed a personal exemption for the funds of PHC even though they did not list PHC as an "aka" or a "dba" in their Chapter 7 petition. [Ex. 19, Pg. 4; Ex. 39, Pg. 1] The Debtors' exemption of these funds confirms that the Debtors, in fact, considered the assets of PHC to be their personal assets.

59. In her deposition taken the following day, Ms. Jackman testified that each of her four children had been given one share of stock in JI, and the balance of the shares are owned by Ms. Jackman and her husband. [ECF No. 39, Ex. "A" (S. Jackman Dep.), Pg. 12:17-25] JI has a number of businesses operated under it: Jackman Realty; Jackman Group; Seaside Papery and Seaside Paper Home. Ms. Jackman is also a licensed real estate broker who operates out of Jackman Realty. [See *generally*, ECF No. 39, Ex. "A" (S. Jackman Dep.), Pgs. 9-16]³

60. In the Debtors' initial schedules, they listed a \$345,000 loan made to the Debtors by JI. [Ex. 39, Pg. 22] The FAS deleted the \$345,000 loan made by JI, and added a \$345,000 loan made by Ms. Jackman. [PTO at 3(17); Ex. 19, Pg. 6; Trial Tr. (Oct. 31, 2016), Pg. 155:25, Pg. 156:1-5]

61. Additionally, the FAS added \$145,986 in loans made to the Debtors by LAPI from January 1, 2015 through the petition date. [Ex. 19, Pg. 9; Trial Tr. (Oct. 31, 2016), Pg. 156:6-9]

62. The FAS also amended the statement of financial affairs to add \$145,986 in undisclosed year-to-date income in 2015 (in addition to the \$1 they had initially reported), which they had received from LAPI. [Ex. 19, Pg.8; Trial Tr. (Oct. 31, 2016), Pg. 156:10-13]

63. When questioned at trial, JP could not explain why the information in the FAS was not included in the initial schedules. [Trial Tr. (Oct. 31, 2016), Pg. 156:14-25]

64. On October 13, 2016, shortly before trial, the Debtors filed their Second Amended Schedules ("SAS"), adding as an asset their undisclosed Union Bank Account with a balance of \$8,462, and claiming this amount as exempt. [Main Case ECF No. 30]

65. On November 27, 2016, the Debtors filed their Third Amended Schedules ("TAS"), amending ¶ 12 of the Statement of Financial Affairs to add an undisclosed safe deposit box maintained at Wells Fargo Bank. [Main Case ECF No. 36]

²The Debtors signed their FAS on July 19, 2016, and filed them on July 20, 2016.

³Ms. Jackman's Deposition is listed as Exhibit 14 on the Plaintiff's exhibit list. The Court excused formal admission of Exhibit 14, having admitted her deposition and the errata thereto as part of the Court's ruling on a motion in *limine* and, instead, permitted reference by the parties to the lodged deposition excerpts at ECF No. 39.

66. Based on the findings contained in FF 41-53 and FF 60-63 above, citing extensive omissions made by Debtors to their initial schedules that were signed under penalty of perjury, and it further appearing to the Court that said omissions were knowing and deliberate, the Court finds the Debtors' oaths were false and fraudulent. The later, last-minute amendments to those schedules executed on the eve of depositions and on the eve of trial do not vitiate their initial falsity.

**The Transfer of Debtors' Business from PHC to LAPI as Evidenced by the LAPI
and Pinsonneault Holdings Banking Transactions**

67. JP testified that prior to the Chapter 7 bankruptcy, the bank of account for PHC was the only bank account that he had, and he used that account to pay the Debtors' personal expenses. [Trial Tr. (Oct. 31, 2016), Pg. 133:24-25, Pg. 134:1-2]

68. JP admitted that PHC and LAPI, after its formation, were the entities that directly paid the Debtors' personal expenses. [Trial Tr. (Oct. 31, 2016), Pg. 134:9-21]

69. After LAPI's formation in January 2015, the business activity of PHC declined at the same time that LAPI's activity increased. The bank account transaction activity for the period of February 2015 to August 2015, shows a steady decrease in PHC's banking transactions and a steady increase in LAPI's banking transactions. [See PTO at 3(32)-(49)]

70. The findings contained in FF 67-69 support a finding by the Court that JP transferred his business assets from PHC and concealed them in LAPI within one year of filing his Chapter 7 petition. [See *also* FF 14-40]

**The Secret Union Bank Account, Amex Card Account and the Debtors'
Inability to Explain Source and Use of Funds**

71. Because of the residual financial problems experienced by the Debtors after dismissal of their Prior Case, sometime in 2013, Ms. Jackman opened an account at Union Bank for the Debtors' benefit (the "Union Bank Account"). [Trial Tr. (Oct. 31, 2016), Pg. 118:12-18; ECF No. 39, Ex. "A" (S. Jackman Dep.), Pg. 77:17-25, Pg. 78:1-23] CP had signing authority on the Union Bank Account. [PTO at 3(20)]

72. The Union Bank Account was opened to enable the Debtors to pay their expenses; Ms. Jackman did not use the Union Bank Account to pay any of her own expenses. [ECF No. 39, Ex. "A" (S. Jackman Dep.), Pg. 78:5-23]

73. JP initially testified at his deposition that the money in the Union Bank Account came from either PHC or LAPI. [Trial Tr. (Oct. 31, 2016), Pg. 144:9-23] He later testified that the majority of the money in the Union Bank Account came from Ms. Jackman. [Trial Tr. (Oct. 31, 2016), Pg. 146:12-14] To the best of his recollection, the money in this account came from one of three sources: Ms. Jackman, PHC and LAPI. [Trial Tr. (Nov. 1, 2016), Pg. 177:15-19]⁴

⁴All references to the Trial Transcript for Nov. 1, 2016, are to the actual page number of the transcript and not its assigned ECF page number in the Bankruptcy Court's docket.

74. Between the opening of the Union Bank Account in 2013 and the beginning of the Debtors' bankruptcy case in 2015, over \$700,000 was deposited into the account. [Exhibit 44; Trial Tr. (Nov. 1, 2016), Pg. 175:8-17] The Debtors said they used the \$700,000 to pay for their personal living expenses. [Trial Tr. (Nov. 1, 2016), Pg. 177:15-19] CP later admitted that: "I know it doesn't cost that much, so it couldn't be all living expenses." [Trial Tr. (Nov. 1, 2016), Pg. 189:3-5] CP thought it was possible that some of the funds may have been used by JP for real estate speculation, but she really was not certain. [Trial Tr. (Nov. 1, 2016), Pg. 189:5-12]

75. The Debtors could not identify how much of the \$700,000 in deposits came from Ms. Jackman, PHC or LAPl. [Trial Tr. (Nov. 1, 2016, Pg. 175:13-25, Pg. 176:1-28, Pg. 177:1-21] JP's testimony was that the Plaintiff should review the bank statements (Ex. 44). [Trial Tr. (Nov. 1, 2016), Pg. 175:18-25, Pg. 176:1-2, Pg. 194:4-10] The Court finds that the bank statements do not explain the source of funds.

76. Specifically, JP testified that Ms. Jackman put money into the Union Bank Account. [Trial Tr. (Nov. 1, 2016), Pg.193:22-24 ("I just know, when I would say I need money and she would put it into the Union Bank Account.")] His testimony was that deposits from Ms. Jackman came in chunks, and that over time he imagined it added up. [Trial Tr. (Nov. 1, 2016), Pg. 193:24-25] When asked whether \$345,000 of the Union Bank deposits had come from Ms. Jackman, JP's response was that "without looking at numbers, I cannot be exactly accurate on that." [Trial Tr. (Nov. 1, 2016) Pg. 194:8-10]

77. In contrast, Ms. Jackman denied that the money in the Union Bank Account came from her or her company, JI. [ECF No. 39, Ex. "A" (S. Jackman Dep.), Pg. 45:1-24]. She testified that she and her businesses have struggled during the last seven or eight years, and that she did not have the money to give anyone. [ECF No. 39, Ex. "A" (S. Jackman Dep.), Pg. 41:21-22, Pg. 19:21-25, Pg. 20:1]

78. In addition to opening the Union Bank Account, Ms. Jackman also provided CP with the Amex Card issued on the account of JI. [Trial Tr. (Oct. 31, 2016), Pg. 118:21-25, Pg.119:1-5; Trial Tr. (Nov. 1, 2016), Pg. 197:16-23]

79. The Debtors charged about \$244,000 on the Amex Card over a two year period. [Trial Tr. (Nov. 1, 2016), Pg. 281:3-5]

80. At her deposition, Ms. Jackman testified that the Debtors repaid her for most of the amounts they charged on the Amex Card. [ECF No. 39, Ex. "A" (S. Jackman Dep.), Pgs. 26-29; Pg. 31:24-25, Pg. 32:1-12; Pg. 35:2-11] Her recollection was that the Debtors had repaid all but around \$35,000 of the amount they charged. [ECF No. 39, Ex. "A" (S. Jackman Dep.), Pg. 41:9-12]

81. At her deposition, Ms. Jackman testified that neither she nor any of her entities paid any bills or provided any loans to the Debtors between 2010 and 2015. The only bill she paid was the payment due on the Debtors' use of the Amex Card. [ECF No. 39, Ex. "A" (S. Jackman Dep.), Pg. 16:20-25]

82. The Debtors initially failed to disclose the Union Bank and Amex Card account. [See FF 50-51] They also failed to disclose or to explain the sources of funds deposited in the Union Bank Account or used to pay the Amex Card bills. The Debtors failed to produce any documentary corroboration for JP's claim that much of the money used to pay their living expenses from the Union

Bank account, or used to pay the Amex Card, came from loans from Ms. Jackman. Ms. Jackman's deposition testimony directly contradicted that claim. The Court finds that JP committed a false oath regarding his lack of year-to-date income in 2015, and he failed to maintain financial records which would be usual and customary for transactions of this magnitude.

**JP's Testimony at Trial About the Sale of 709/711 1st Street Property
is Not Credible**

83. At trial, there was extensive inquiry about the Debtor's former residence located at 709-711 1st Street, Coronado, California. At trial, this property was referred to as the "709 Property." [Trial Tr. (Oct. 31, 2016), Pg. 80:24-25, Pg. 81:1-14] The 709 Property consists of a main house at 709 1st Street, and a guest house at 711 1st Street.

84. The Debtors owned and resided in the 709 Property at the time they filed their Prior Case in 2012.

85. Sometime after their Prior Case was dismissed, the 709 Property went into foreclosure.

86. In 2013, the Debtors sold the 709 Property for \$7.3 million to Empac Capital ("Empac"). [Trial Tr. (Oct. 31, 2016), Pg. 91:10-14, Pg. 92:19-22]

87. After Empac acquired the Property, sometime in April or May, 2013, the Debtors moved back into the 709 Property as renters. [Trial Tr. (Oct. 31, 2016), Pg. 94:10-18; Trial Tr. (Nov. 1, 2016), Pg. 237:19-21]

88. As renters, the Debtors paid \$10,000 a month for the 709 Property. [Trial Tr. (Oct. 31, 2016), Pg. 101:4-9]

89. At trial, for the first time, JP testified that the Debtors subleased the back portion of the 709 Property (the guest house) for \$4,000/ month, and they used the rental income received from this sublease to help pay their rent. [Trial Tr. (Oct. 31, 2016), Pg. 93:11-18; Pg. 94:3-9]. This rental income was not disclosed in any of the Debtors' bankruptcy schedules. JP also did not disclose receipt of this rental income in any interrogatories or deposition questions posed by ML Manager, claiming that he "just never thought about it." [Trial Tr. (Oct. 31, 2016), Pg. 93:19-21, Pg. 94:6-9]

90. The following day JP reversed this testimony, stating that Ms. Jackman had the lease for the 709 Property; that she paid the rent to Empac; and that they reimbursed her, presumably, for a portion of the rent she paid. [Trial Tr. (Nov. 1, 2016), Pg. 178:4-19] This statement directly contradicts the deposition testimony of Ms. Jackman. [See FF 99, 102 below]

91. During JP's 2013 judgment debtor's exam taken by ML Manager, JP testified that his rent was being paid by friends and family. JP never testified that rent was being paid by PHC, or through rental of the guest house, or by Jackman. [Trial Tr. (Oct. 31, 2016), Pg. 100:24-25, Pg. 101:1-25, Pg. 102:1-3]

92. JP stated that Empac held the property for about a year and then put it on the market for resale. [Trial Tr. (Oct. 31, 2016), Pg. 92:23-25; Pg. 93:1] At trial, for the first time, JP alleged that Ms. Jackman had an option to buy the 709 Property from Empac. He claimed that Ms. Jackman was also a real estate broker for the sale of the 709 Property. There was no documentary evidence

corroborating the existence of this option or this listing agreement produced at trial. JP claims that either Ms. Jackman or JI received \$345,000 from the sale of the 709 property to Empac. [Trial Tr. (Oct. 31, 2016), Pg. 119:10-21, Pg. 123:7-14; Trial Tr. (Nov. 1, 2016), Pg. 240:8-16]

93. JP testified that the monies received by Ms. Jackman as a commission from the sale of the 709 property, and from the option she had on the property, were then lent to CP by depositing monies in the Union Bank Account or by permitting her to use the Amex Card. [Trial Tr. (Oct. 31, 2016), Pg. 122:22-25; 123:1-25; 124:1-10]

94. JP did not disclose the fact that Ms. Jackman had an option on the 709 property or received compensation from the sale until trial. [Trial Tr. (Oct. 31, 2016), Pg. 123:15-17; 137:14-25; 138:1-6]

95. The Court finds the foregoing explanation of the purported loan from Ms. Jackman of \$345,000 is not credible. JP reversed himself on his testimony (See FF 89 and 90), and concealed the source of funds which he belatedly listed as a loan from Ms. Jackman in his FAS. Further, Ms. Jackman's deposition testimony claimed she was struggling financially and unable to loan anyone a sum of that magnitude. [See FF 77; see *also* FF 100] The Court finds from this inconsistent testimony and JP's failure to produce corroborating documentary evidence that JP is not a credible witness. Further, the Court finds that the Debtors have concealed assets, failed to keep records from which their financial affairs could be ascertained, and falsified their financial affairs in order to mislead and delay their creditors.

The Deposition of Ms. Jackman, and the "Corrections" to Her Deposition Transcript

96. ML Manager took the deposition of Ms. Jackman on July 20, 2016. [ECF No. 39, Ex. "A" (S. Jackman Dep.)] CP was present at the deposition.

97. At her deposition, Ms. Jackman testified that neither she, nor any entity in which she was involved, paid bills or made loans to the Debtors between 2010 and 2015. [ECF No. 39, Ex. "A" (S. Jackman Dep.), Pg. 16:16-25, Pg.17:1-4, Pg. 19:12-20, Pg. 20:1]

98. Ms. Jackman also testified that neither she nor any of her entities ever had any involvement with JP. [ECF No. 39, Ex. "A" (S. Jackman Dep.), Pg. 18:8-17; ECF No. 39, Ex. "B" (JI Dep.), Pg. 7:19-25, 8:1-7]

99. Ms. Jackman testified that the only method by which she has been involved in the financial lives of the Debtors was through paying the monthly charges on the Amex Card. [ECF No. 39, Ex. "A" (S. Jackman Dep.), Pg. 34:12-19] She testified that the Debtors had not reimbursed her their charges on the Amex Card approximately four times. [ECF No. 39, Ex. "A" (S. Jackman Dep.), Pg. 35:2-11] Ms. Jackman testified that the Debtors still owe her around \$35,000. [ECF No. 39, Ex. "A" (S. Jackman Dep.), Pg. 41:9-22]

100. Ms. Jackman further testified that she did not have money to give the Debtors in the last seven or eight years. [ECF No. 39, Ex. "A" (S. Jackman Dep.), Pg. 19:20-25, Pg. 20:1]

101. Ms. Jackman testified that she would remember if she had given the Debtors \$300,000. [ECF No. 39, Ex. "A" (S. Jackman Dep.), Pg. 45:21-24]

102. Ms. Jackman testified that she never paid the rent for CP. [ECF No. 39, Ex. "A" (S. Jackman Dep.), Pg. 46:21-25]

103. Ms. Jackman testified that she was not repaying a prior obligation, but was merely helping her daughter. [ECF No. 39, Ex. "A" (S. Jackman Dep.), Pg. 47:4-21]

104. After her deposition, Ms. Jackman provided a written statement of corrections to her deposition transcript which materially altered some of her deposition testimony. For example, she "corrects" her claim that she did not have money to give to the Debtors in the last seven or eight years (FF 77, FF 100), referring to an attached explanation which is devoid of any explanation for the alleged error in her original testimony. [ECF No. 42, Ex. 3 (Corrections to Tr. of Dep. of S. Jackman), Pg. 3-5] The most extensive corrections are those involving the purported option held by JI to purchase the 709 property from Empac. [ECF No. 42, Ex. 3 (Corrections to Tr. of Dep. of S. Jackman), Pg. 4:16-28, Pg. 5:1-8] The corrections attempt to corroborate JP's testimony at trial about the option transaction. [See FF 92-93] The Court finds the explanations for the corrections virtually unintelligible.

105. During the November 1, 2016 hearing in this matter, the Court heard the Plaintiff's Motion to Exclude the Corrections to Transcript of Deposition of Ms. Jackman. [ECF No. 40] The Court considered the arguments of counsel, and the law regarding major contradictory changes to deposition testimony, and also considered the fact that Ms. Jackman voluntarily absented herself from the jurisdiction shortly before trial so she was unavailable to be served with a subpoena and did not voluntarily appear.

106. The Court denied the motion to exclude the corrections and admitted her corrected deposition testimony, subject to a determination of the weight it should be accorded. The Court finds that Ms. Jackman's altered testimony does not provide coherent explanations for the changes. Without Ms. Jackman's live testimony, the Court cannot find her explanations for the changes credible. The changes were not subject to cross-examination. They are materially inconsistent with repeated statements made during her deposition. They are also inconsistent with the prior written discovery answers provided by the Debtors.

107. The Court decides to take Ms. Jackman at her word, expressed in her deposition:

What do you do? It's your kids. And so I don't look at it as a business transaction or somebody I'm going to sue to get it back...And if I need to help Caylee and her kids out, that's what I do.

[ECF No. 39, Ex. "A" (S. Jackman Dep.), Pg. 41:23-25; Pg. 42:1-9 (emphasis added)] It appears that Ms. Jackman would also materially shade the truth to protect her daughter and her children. For these reasons, the Court gives little or no weight to these changes to Ms. Jackman's deposition testimony.

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III. CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Court adopts the following Conclusions of Law:

Standards for Objections to Discharge

A. On an objection to discharge, the debtor is entitled to a strict construction of the statutory grounds for the objection because of the policy of giving the debtor a "fresh start." *In re Cox*, 41 F.3d 1294, 1297 (9th Cir. 1994); *see also In re Adeeb*, 787 F.2d 1339, 1342 (9th Cir. 1986) (recognizing that objections to discharge are construed liberally in favor of the discharge because of the policy of a fresh start). However, the corollary to this "fresh start" policy is that only an "honest but unfortunate debtor" is entitled to receive a fresh start. *Grogan v. Garner*, 498 U.S. 279, 286-87 (1991). The party seeking to deny the debtor's discharge bears the burden of proof, which under § 727 is a preponderance of the evidence. Fed. R. Bankr. P. 4005; *In re Retz*, 606 F.3d 1189, 1196 (9th Cir. 2010).

B. Bankruptcy courts are courts of equity. As such, they possess the power to delve behind the form of transactions and relationships to determine the substance. *In re United Energy Corp.*, 944 F.2d 589, 596 (9th Cir. 1991). Thus, when considering an objection to discharge, the court may disregard the corporate structures when the assets are controlled by the debtor or the debtor receives the benefits of the assets. *See e.g. In re Lawson*, 122 F.3d 1237, 1241-42 (9th Cir. 1997)(holding that the debtor concealed assets "where the debtor retains a secret benefit of ownership in the transferred property within the year prior to filing); *In re Spitko*, 357 B.R. 272, 300 (Bankr. E.D. Pa. 2006)(recognizing that a "fraudulent concealment may arise when a debtor transfers his property to a third party, but retains either control over or a [secret] beneficial interest in the transferred property"); *In re Zhang*, 463 B.R. 66, 82 (Bankr. S.D. Ohio 2012)(recognizing that in the context of §§ 727(a)(2) and (4), courts frequently borrow from alter ego or reverse veil piercing theories to disregard corporate distinctions to treat the assets of those entities as assets of the debtor when the facts warrant the application of those theories). With these policies and guidelines in mind, the Court concludes the discharge will be denied.

Count One - Denial of Discharge Under 11 U.S.C. § 727(a)(2)(A)

C. To bring a successful claim for denial of a debtor's discharge for having fraudulently transferred or concealed property of the debtor, the plaintiff must show that: (1) the debtor transferred or concealed property; (2) the property belonged to the debtor; (3) the transfer occurred within one year of the bankruptcy filing; and (4) the debtor executed the transfer with the intent to hinder, delay, or defraud a creditor. *In re Neff*, 505 B.R. 255, 262 (9th Cir. BAP 2014).

D. Courts may infer intent from the circumstances surrounding the transaction. *In re Coombs*, 193 B.R. 557, 567 (Bankr. S.D. Cal. 1996).

E. Courts will use "badges of fraud" factors in helping to determine intent. These factors, not all of which need be present, include: (1) a close relationship between the transferor and the transferee; (2) that the transfer was in anticipation of a pending suit; (3) that the transferor-debtor was insolvent or in poor financial condition at the time; (4) that all or substantially all of the Debtor's property was transferred; (5) that the transfer so completely depleted the Debtor's assets that the creditor has been hindered or delayed in recovering any part of the judgment; and (6) that the Debtor

received inadequate consideration for the transfer. *In re Woodfield*, 978 F.2d 516, 518 (9th Cir. 1992).

F. Debtors hinder, delay, or defraud creditors by transferring or concealing property when they transfer property to another person or entity but keep control over that property. For example, in *Spitko*, the bankruptcy court denied the debtors' discharge based on their formation of a new corporation to conceal their assets. The debtors had personally guaranteed loans in favor of their business. *Spitko*, 357 B.R. at 280-81. When the business failed to produce the anticipated income, the debtors defaulted on their loan. *Id.* at 281. The business then ceased operations, and three days later the debtors opened a new business. *Id.* at 282. The new business operated from the same location as the prior business, used the same employees, performed the same services, sold some of the inventory of the prior business as its own, and collected and deposited the prior business's accounts receivables into the bank account of the new business. *Id.* at 282-83. The debtors contributed substantial personal funds to "capitalize" the new business which they characterized as a "loan" to the corporation, but they did not list any loans as payables in their bankruptcy schedules. *Id.* at 284. The operating agreement for their new business allowed the debtors to withdraw cash whenever they deemed it warranted. *Id.* at 284. In denying the debtors' discharge, the bankruptcy court found that the debtor controlled the assets of the new company. Specifically, the bankruptcy court concluded that the debtors' formation and operation of the new company was made for the purpose of hindering, delaying or defrauding the debtors' creditor. *Id.* at 303-04.

G. In this case, the Court finds that the Debtors' prior business, PHC, was operated as a "pass-through entity" and that the Debtors considered the income generated and assets acquired by PHC to be their personal assets. JP testified that he used the PHC bank account as his personal bank account, and he considered himself to be self-employed. In their FAS, the Debtors added the funds in PHC's bank account and claimed a personal exemption for these funds, confirming the Debtors, in fact, considered the assets of PHC to be their personal assets.

H. Within one year of the bankruptcy filing, the Debtors formed LAPI and transferred the assets and income of PHC to LAPI, as more fully set forth in FF 14-40. The Debtors formed and used LAPI for the purpose of funneling money from JP's business activities to the Debtors in order to conceal JP's income from their creditors with the ongoing intent to hinder, delay and defraud collection of their debts. The Court concludes that the Plaintiff has met its burden of proof on Count One by a preponderance of evidence, and judgment shall be entered in favor of the Plaintiff and the discharge denied.

Count Two - Denial of Discharge Under 11 U.S.C. § 727(a)(3)

I. Under 11 U.S.C. § 727(a)(3), the court should deny discharge if the debtor conceals, destroys, falsifies, or fails to keep records of financial condition. *In re Cox*, 41 F.3d 1294, 1296 (9th Cir.1994). The general purpose of this section is to make the discharge dependent on a true presentation of the debtor's financial affairs. See *Cox*, 41F.3d at 1296 (generally discussing purpose, but involving only section 727(a)(3)).

J. A creditor must initially establish a *prima facie* case of debtor's violation of § 727(a)(3) by showing: (1) that the debtor failed to maintain and preserve adequate records; and (2) that such failure makes it impossible to ascertain the debtor's financial condition and material business transactions. *Id.* at 1296; *In re Hong Minh Tran*, 464 B.R. 885, 892 (Bankr. S.D. Cal. 2012).

K. After the creditor establishes a *prima facie* violation of § 727(a)(3), the burden shifts to the debtor who must justify the inadequacy or nonexistence of the records. *Cox*, 41 F.3d at 1296; *Hong Minh Tran*, 464 B.R. at 892.

L. In evaluating the reasonableness of records, the court must undertake a case-by-case determination and should take into consideration the sophistication of the debtor and the type of transactions in which the debtor engaged. *Hong Minh Tran*, 464 B.R. at 893.

M. In this case, there is substantial evidence - that has not been justified or explained - that the Debtors' initial schedules were materially false, and that Debtors have not maintained adequate records to establish the source of in excess of \$700,000 of funds deposited into the Union Bank Account, and the source of funds used by the Debtors to pay their personal expenses from mid-2013 (when the Union Bank Account and Amex Card account were opened) through the petition date. [See FF 41-66, FF 82] The Debtors' false oaths and their failure to maintain and preserve adequate records makes it impossible to ascertain their financial condition and material business transactions. JP is a sophisticated debtor, having operated a business since at least 2006, so he understood the importance of maintaining financial records. JP's vague explanations are insufficient, and his attempt to justify or explain the lack of adequate records is not credible.

O. The false oaths and failure to maintain adequate records prejudiced the Trustee in determining if there were, among other things, preference actions to recover the Debtors' payments made to Ms. Jackman to reimburse her payment of charges by the Debtors on the Amex Card (See FF 79-81), or other assets of the estate. The Plaintiff has met its burden of proof on Count Two, and judgment shall be entered in favor of the Plaintiff and the discharge is denied.

Count Three - Denial of Discharge Under 11 U.S.C. §§ 727(a)(4)(A), (B)

P. Under 11 U.S.C. § 727(a)(4)(A), (B), the Court should deny discharge if the debtor fraudulently makes a false oath or account or presents or uses a false claim. *In re Coombs*, 193 B.R. 557, 560 (Bankr. S.D. Cal. 1996). A fundamental purpose of § 727(a)(4)(A) is to insure that the trustee and creditors have accurate information without having to conduct costly investigations. *In re Truppa*, 555 B.R. 701, 711 (Bankr. C.D. Cal. 2016).

Q. To deny discharge under § 727(a)(4), the plaintiff must show that: (1) debtors made a statement under oath; (2) the statement was false; (3) debtor knew the statement was false; (4) debtor made the statement with fraudulent intent; and (5) the statement related materially to the bankruptcy case. *Coombs*, 193 B.R. at 563-64.

R. Because a plaintiff can rarely produce direct evidence of fraudulent intent, the requisite actual intent to defraud may be established through proof of "badges of fraud," which include: (1) a reservation of rights in or the beneficial use of the transferred assets; (2) inadequate consideration; (3) a close friendship or relation to the transferee; (4) the financial condition of the transferor both before and after the transfer; and (5) the existence or cumulative effect of a pattern or series of transactions or course of conduct after the incurring of debt, onset of financial difficulties, or pendency or threat of suits by creditors. *Id.* at 563-64.

S. A debtor's fraudulent intent is established when there has been a pattern of falsity, or a "cumulative effect" of falsehoods. *Id.* at 563-64. A debtor's fraudulent intent may also be established from a debtor's reckless indifference to or cavalier disregard of the truth. *Id.*

T. A false oath is complete when made. *In re Searles*, 317 B.R. 368, 377 (9th Cir. BAP 2004). A debtor's eventual amendment of their schedules to disclose assets that they knowingly omitted does not negate their initial intent to defraud. See *In re Cummings*, 595 Fed. Appx. 707, 709-10 (9th Cir. 2015); *In re Traina*, 501 B.R. 379, 384 (Bankr. N.D. Cal. 2013) ("amendments do not prevent this court from determining whether they made a false oath in their original bankruptcy documents"); *In re Vanschoiack*, 356 B.R. 56, 66 (Bankr. D. Idaho 2006) (holding that because debtor amended schedules only after creditors discovered undisclosed assets "lead the Court to conclude the omission was done with knowledge and fraudulent intent."); *In re Beauchamp*, 236 B.R. 727, 734 (9th Cir. BAP1999), *aff'd*, 5 Fed. Appx. 743 (9th Cir. 2001); *In re Clark*, 525 B.R. 442, 458-59 (Bankr. D. Idaho 2015), *aff'd*, 2016 WL 1377807 (9th Cir. BAP Mar. 29, 2016)("[d]ebtor did not disclose these assets until his amended schedules of August 7 and 8, 2013, which he filed after Trustee had already discovered most of this undisclosed property from independent inquiry. The very nature and magnitude of the assets belies the too facile defense that they were simply overlooked or forgotten.").

U. In this case, there is overwhelming evidence that the initial schedules made by the Debtors were false. [See FF 41-66, FF 71-82, FF 96-107] The initial schedules contained material omissions with regard to income, assets and accounts used for the exclusive benefit of the Debtors. They omitted over \$700,000 of income and other assets available to the Debtors prior to bankruptcy, and also misrepresented the Debtors' actual expenses. The Debtors knew their initial schedules were false at the time they filed them under oath, and they offered no credible explanation for the omissions which were material to the administration of this estate. Based on the application of the badges of fraud and appropriate allocation of inferences from the evidence, the Court finds that the false statements were made with the intent to defraud or delay creditors and the Trustee, protect claims and assets of family members and business associates, and constitute a pattern of falsity. The Plaintiff has met its burden of proof on Count Three, and judgment shall be entered in favor of the Plaintiff and the discharge is denied.

Count Four - Denial of Discharge Under 11 U.S.C. § 727(a)(5)

V. Under 11 U.S.C. § 727(a)(5), the Court should deny discharge if the debtor fails to explain satisfactorily the loss of assets and the debtor's liabilities. *Hong Minh Tran*, 464 B.R. at 893. Section 727(a)(5) is broad enough to include any unexplained disappearance or shortage of assets. 6 Collier On Bankruptcy, 727-08, 727-45 (Alan N. Resnick & Harry J. Sommer eds., 16th ed.)

W. A creditor must initially establish a prima facie case of debtor's violation of § 727(a)(5) by showing that: (1) the debtor at one time, not too remote from the bankruptcy petition date, owned identifiable assets; (2) on the date the bankruptcy petition was filed or the order for relief granted, the debtor no longer owned the assets; and (3) the bankruptcy pleadings or statement of financial affairs do not reflect an adequate explanation for the disposition of the assets. *In re Retz*, 606 F.3d 1189, 1205 (9th Cir. 2010).

X. After the creditor establishes a prima facie violation of § 727(a)(5), the burden shifts to the debtor to satisfactorily explain the loss of assets and the debtor's liabilities. *Chalik*, 748 F.2d 616, 619 (11th Cir. 1984); *Hong Minh Tran*, 464 B.R. at 893. A debtor cannot satisfy the requirements of § 727(a)(5) with conclusory statements; there must be credible evidence. *Chalik*, at 619; *Hong Minh Tran*, at 895.

Y. The evidence establishes that over \$700,000 in concealed funds were deposited into the Union Bank Account between the opening of this account in mid-2013 and the beginning of this bankruptcy case in 2015. [See FF 23-40, FF 46, FF 71-77] The Union Bank Account was omitted from the Debtors initial bankruptcy schedules. The Debtors first added the Union Bank Account to their bankruptcy schedules in their SAS filed on the eve of trial, listing a balance of only \$8,462 as of the petition date. [See FF 64] The Debtors relied on their vague testimony to explain where the money in the Union Bank Account went, claiming the monies were consumed to pay their personal expenses and that JP may have used some of the money for unspecified business ventures. In response to a question about the source of the funds deposited in the Union Bank Account, JP directed the Plaintiff's counsel to look at the bank statement to figure it out for himself. [See FF 67] These vague explanations, and the directive to review the bank statements to figure it out, are not sufficient to explain the source of the \$700,000 and how it was spent. See *Retz*, 606 F.3d at 1205; *Chalik*, 748 F.2d at 619.

Z. The Debtors' testimony as to the disposition of proceeds from the resale of the 709 Property was inconsistent, and confusing. For example, JP testified at trial -- without any corroborating documentary evidence -- that Ms. Jackman or JI received \$345,000 from the sale of this property because she had an option to buy the 709 Property and she was also a real estate broker for the sale of the 709 Property. JP claimed that Ms. Jackman then loaned the \$345,000 to the Debtors by depositing unspecified amounts of money at various times in the Union Bank Account, or by permitting use of the Amex Card. [See FF 76, 93]. The Court does not find JP's testimony to be credible, finding that: the Debtors concealed their assets, failed to keep records from which their financial affairs could be ascertained, and falsified their financial affairs to mislead and delay their creditors. [See FF 95]

AA. JP also testified for the first time at trial that the Debtors subleased the back half of the 709 Property (the guest house), and received \$4,000/mo. in rental income from this sublease which they used to help pay the \$10,000 in rent they owed to lease the property. Later, JP contradicted this very testimony with a new claim that Ms. Jackman paid all of the rent for the 709 Property and that the Debtors merely reimbursed a portion of the rent. [See FF 89-90] Such contradictory and ever-evolving narrative, without corroborating documentation or records, leads the Court to discount the Debtors' testimony as not credible. The Debtors' testimony, standing alone, is insufficient to satisfactorily explain the Debtors' sources of the substantial funds they received, and the disposition of these funds, from the time their Prior Case was dismissed in 2013 through the date they filed this Chapter 7 case. See *Hong Minh Tran*, 464 B.R. at 895 (finding that the debtor's story, standing alone, did not constitute a satisfactory explanation for the disappearance of a significant amount of cash and other assets). The Plaintiff has met its burden of proof on Count Four, and judgment shall be entered in favor of the Plaintiff and the discharge is denied.

BB. All Conclusions of Law that are Findings of Fact are deemed to be Findings of Fact. The Court will prepare its own judgment.