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1. HJG Partnership and 1568931 Ontario LTD

# UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA

1. **LOS ANGELES DIVISION**

10

1. In re
2. ANTONY GORDON,

13

Debtor.

Case No.: 2:13-bk-14465-DS

Chapter: 7

Adv. No.: 2:13-ap-01536-DS

1568931 ONTARIO LTD., an Ontario

1. (Canada) Corporation; HJG PARTNERSHIP, an Ontario (Canada)
2. Partnership, and HOWARD FIALKOV,
3. an individual,
4. Plaintiff,

vs.

1. ANTONY GORDON, an individual,
2. Defendant.
3. ANTONY GORDON,
4. Cross-Complainant,
5. v.
6. HOWARD FIALKOV,
7. Cross-Respondent.

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# MOTION FOR SUMMARY JUDGMENT OR IN THE ALTERNATIVE SUMMARY ADJUDICATION OF ISSUES AGAINST DEFENDANT ANTONY GORDON; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION

[Separate Statement of Uncontroverted Facts and Conclusions of Law, Request For Judicial Notice, Declarations in Support Thereof, and Proposed Summary Judgment Filed and lodged concurrently herewith]

Date: September 30, 2014

Time: 1:30 p.m.

Place: Courtroom 1339

United States Bankruptcy Court 255 E. Temple Street

Los Angeles, CA 90012

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# TO THE HONORABLE DEBORAH J. SALTZMAN, UNITED STATES BANKRUPTCY

1. **JUDGE:**
2. Plaintiffs Howard Fialkov, HJG Partnership and 1568931 Ontario LTD (collectively
3. “Plaintiffs”), respectfully move this Court for summary judgment, or in the alternative
4. summary adjudication of issues, in their favor and against the defendant Antony Gordon
5. (“Defendant”), as to Plaintiffs’ claims for non-dischargeability of certain debts asserted
6. against Defendant (the “Motion”).
7. The Motion is made on the grounds that there are no triable issues of material fact
8. that would necessitate trial as to all the claims for relief, thus entitling Plaintiffs to a
9. judgment as a matter of law.
10. The Motion is based upon the Plaintiffs’ Notice of Motion, the Motion, the
11. Memorandum of Points and Authorities, the Request for Judicial Notice, the Proposed
12. Statement of Uncontroverted Facts and Conclusions of Law, the Declaration Howard
13. Fialkov and the Proposed Summary Judgment filed and lodged concurrently herewith,
14. the pleadings and files in the Defendant’s bankruptcy case, and upon such further oral
15. and documentary evidence as may be presented to the Court or of which the Court may
16. take judicial notice. 18

DATED: August 19, 2014 MARGULIES FAITH, LLP

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1. By: */s/ Meghann Triplett*

Jeremy W. Faith

1. Meghann Triplett

Attorneys for Plaintiffs

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# MEMORANDUM OF POINTS AND AUTHORITIES

* 1. **I.**
  2. **STATEMENT OF MATERIAL UNDISPUTED FACTS**

# A. The Parties

* 1. Plaintiff Howard Fialkov (“Mr. Fialkov”) is an investor and businessman who is a
  2. shareholder and director of numerous business ventures in the United States and
  3. Canada. Plaintiffs’ [Proposed] Separate Statement of Uncontroverted Material Facts
  4. (“UF”) 1. Mr. Fialkov is a principal and officer of co-plaintiffs, Ontario, LTD (“Ontario
  5. LTD”) and HJG Partnership (“HJG”)(collectively referred to as “Plaintiffs”). (UF 2).
  6. During a visit to Los Angeles, California in late 2003 or early 2004, Mr. Fialkov
  7. was introduced to defendant Antony Gordon (“Defendant”) through mutual friends in the
  8. Los Angeles Orthodox Jewish community. (UF 3). The initial introduction was made by a
  9. former business associate of Mr. Fialkov’s who knew Defendant and had worked with
  10. him previously. (UF*.* 4). Defendant befriended Mr. Fialkov and took on the role in
  11. welcoming and introducing Mr. Fialkov to the community. (UF 5) Defendant used their
  12. shared Jewish religion to gain Mr. Fialkov’s trust. (UF 6).
  13. At the time of their introduction, Defendant informed Mr. Fialkov that he was a
  14. successful investment advisor, a former Senior Vice President of Morgan Stanley, a
  15. Fulbright Scholar, a graduate of Harvard Law School and the London School of
  16. Economics, and that he was an Orthodox Jewish Rabbi. (UF 7) Almost immediately,
  17. Defendant began soliciting Mr. Fialkov to invest in deals in which Defendant was an
  18. investment banker. (UF 8). Defendant brought to Mr. Fialkov three separate investment
  19. opportunities: (a) Vitrotech Corporation, a Nevada corporation (“Vitrotech”), (b) First
  20. Responders/Criterion Strategies, and (c) National Lampoon (collectively referred to as
  21. the “Companies”) (UF 9).
  22. Based on Defendant’s guidance, assurances and representations, Mr. Fialkov
  23. and his companies Ontario LTD and HJG invested at total of $6,335,000 in the
  24. Companies between 2004 and 2005. (UF 10). By the second quarter of 2005, all three

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1. Companies appeared to be heading towards insolvency. The Companies were
2. struggling to pay their debts as they became due and Defendant continued to persuade
3. Plaintiffs to invest additional monies into the Companies to meet ongoing capital needs. 4 (UF 11).
4. As a direct result of the financial difficulties faced by the Companies, and
5. specifically with Vitrotech, Plaintiffs and Defendant ended up in a dispute with a co-
6. investor in Vitrotech, Hamayon “Tony” Namvar (“Namvar”) and an entity he owned called
7. Vitrobirth, LLC (“Vitrobirth”) (Vitrobirth and Namvar are collectively referred to as the
8. “Namvar Parties”). (UF 12). On November 8, 2005, the Namvar Parties filed a lawsuit in
9. the Los Angeles County Superior Court case, captioned *Vitrobirth, LLC. v. Fialkov, et al*,
10. Case No. BC343267 (“Vitrobirth Case”). (UF 13). The Vitrobirth Case asserted causes
11. of action against Plaintiffs and Defendant, among others, for fraud, conspiracy, negligent
12. misrepresentation, breach of contract, guaranty, security agreement, and related claims
13. (the “Namvar Claims”). (UF 14).
14. The Namvar Claims alleged that Defendant and Mr. Fialkov had guaranteed
15. certain loans and/or other financial accommodations made by the Namvar Parties in
16. connection with Vitrotech (the loans and/or other financial accommodations made to the
17. Namvar Parties are referred to as the “Namvar Loans”). (UF 15). Plaintiffs and
18. Defendant denied the alleged guarantees of the Namvar Loans. (UF 16). The Vitrobirth
19. Case sought $1.5 million in damages, interest and attorney’s fees against Defendant,
20. Mr. Fialkov, and other defendants. (UF 17). Plaintiffs filed cross-claims against Namvar
21. in the Vitrobirth Case, asserting causes of action for fraudulent concealment, rescission
22. of alleged guaranty, fraud, economic duress, implied indemnity, apportionment of fault,
23. equitable indemnity, and declaratory relief. (UF 18).
24. On January 18, 2006, Plaintiffs commenced a separate state court action against
25. Namvar, Steven T. Anapoell and Greenberg Traurig in the Los Angeles County Superior
26. Court, captioned *1568931 Ontario, Ltd., et al. vs. Tony Namvar, Steven T. Anapoell, et*
27. *al*. Case No. BC 353254 (“Anapoell Case”). The Anapoell Case alleged damages by

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1. Plaintiffs against Namvar, Anapoell and Greenberg Traurig for legal malpractice, breach
2. of fiduciary duty, fraud, and negligent misrepresentation. (UF 19).
3. Finally, on October 16, 2006, Mr. Fialkov commenced another separate state
4. court action against Namvar, in the Los Angeles Superior Court, captioned *Fialkov, et al.*
5. *vs. Tony Namvar*, Case No. BC360246 (the “Queen Mary Case”). In the Queen Mary
6. Case, Mr. Fialkov sought damages against Namvar for breach of contract and fraud
7. arising out of a separate investment agreement with Namvar that was not related to the
8. Companies or Defendant. (UF 20).

# B. Defendant’s Fraudulent Inducement Of Plaintiffs’ Investments In The

1. **Companies**
2. Sometime in 2006, Plaintiffs began to realize that Defendant had made a number
3. of material misrepresentations to Plaintiffs in connection with Plaintiffs’ investments in
4. the Companies. (UF 21). Defendant’s misrepresentations to Plaintiffs included false
5. representations about company revenues, the interest and involvement of other
6. investors, and future share prices. Each misrepresentation was designed to induce
7. Plaintiffs to make investments into the Companies. (UF 22).
8. Ultimately, the Companies’ struggles resulted in Plaintiffs losing the entirety of the
9. $6,335,000 Plaintiffs had invested into the Companies. (UF 23). After Plaintiffs became
10. aware of the misrepresentations by Defendant, a dispute arose between Plaintiffs and
11. Defendant. (UF 24). This dispute was ultimately resolved by way of a written
12. “Settlement Agreement and Mutual General Release” entered into between Plaintiffs and
13. Defendant on January 8, 2007 (the “Settlement Agreement”). *See* **Exhibit 1** to the
14. Declaration of Mr. Fialkov filed concurrently herewith; *See also,*( UF 25).
15. In the Settlement Agreement, Defendant admitted to the fraudulent
16. representations made to Plaintiffs with respect to the Companies, specifically stating in
17. the Settlement Agreement as follows: 27 ///

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* 1.  **VITROTECH:** By way of example, GORDON represented to HJG and ONTARIO on numerous occasions that the share
  2. price of VITROTECH would be $10 per share within one year of the company going public. GORDON represented that
  3. there was sales to Mitsubishi, Sumitomo, and General Motors prior to the investment of $1,500,000 made by HJG in
  4. February 2004. GORDON represented to the FIALKOV PARTIES that VITROTECH had lined up institutional
  5. investors and in reliance on that, HJG exercised some of its warrants early, which resulted in another investment of
  6. $1,000,000. GORDON represented to FIALKOV prior to ONTARIO making its loans to VITROTECH beginning in
  7. September 2004 that there were other investors who were prepared to make similar loans to VITROTECH. GORDON
  8. made representations to the FIALKOV PARTIES about additional sales that VITROTECH was making in the Fall of
  9. 2004 after the ONTARIO September 29, 2004 agreement was put in place. The FIALKOV PARTIES relied on each of
  10. these misrepresentations when investing/loaning their respective monies to their detriment. These representations
  11. were false and caused the FIALKOV PARTIES to lose their substantial investments/loans.

12

# FIRST RESPONDERS/CRITERION STRATEGIES:

1. GORDON fraudulently misrepresented to FIALKOV on behalf of HJG that HJG was not the only committed party and that
2. $3,000,000 was fully committed (including HJG’s over

$750,000). HJG and FIALKOV relied on these

1. misrepresentations to its detriment when HJG funded in excess of $750,000, because HJG wanted to ensure that the
2. company was fully funded when it made its investment. In fact, the only additional funds invested in the company were
3. $250,000 investment made by a friend of GORDON. These representations were false and caused the HJG to lose in
4. excess of $750,000 [because the company was under funded].

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* + **NATIONAL LAMPOON:** GORDON fraudulently

1. misrepresented to FIALKOV that the stock of this company would be worth at least triple the initial entry price within one
2. year of HJG’s investment. This did not occur. FIALKOV and HJG relied on the misrepresentations when HJG invested its
3. respective monies to its detriment. The representations were false and caused HJG to lose its investments.

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1. *See Id.; See also*, (UF 26).

# C. Defendant Fraudulently Induces Plaintiffs To Enter Into The

1. **Settlement Agreement**
2. The dispute between Plaintiffs and Defendant as reflected in the Settlement
3. Agreement with Plaintiffs’ investments in the Companies took place while the parties

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1. were simultaneously litigating the Vitrobirth Case. (UF 27). In late 2006, prior to entering
2. into the Settlement Agreement, Defendant informed Plaintiffs that he had been offered a
3. “once in a life time” opportunity as an equity owner in a start-up hedge fund which
4. Defendant referred to as East Avenue Capital Partners, LLP (“EACP”). (UF 28).
5. Defendant represented to Plaintiffs that this opportunity would allow Defendant to repay
6. Plaintiffs the $6 million that Defendant had persuaded Plaintiffs to invest in the
7. Companies. (UF 29).
8. Defendant has described the business opportunity with EACP in his discovery
9. responses in this Case as follows:
10. ii. In 2006, a “once in a lifetime opportunity” presented itself when a friend introduced me to Peter Gerhard, a veteran and
11. prominent prop trade at Goldman Sachs. After more than 23

years at Goldman Sachs, Peter was looking to launch a

1. hedge fund, and after speaking for a few months to me about the best strategy to raise assets for the hedge fund, offered
2. me an opportunity to join him in launching his fund, East

Avenue Capital Partners, LLP (“EACP”).

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iii. The fact that Namvar had filed a lawsuit in which I was

1. named however presented a problem as it would raise duty for me to disclose this contingent liability to investors which
2. would be an added hurdle to surmount in raising capital.
3. iv. Accordingly, on the recommendations of several people who had an appreciation of the magnitude of the opportunity
4. at hand, I began to focus on trying to reach a settlement with

Namvar out of court before the ‘hard launch date’ in the

1. beginning of January 2007. The clock was beginning to tick in earnest as Michael Blumenfeld, Esq. on my behalf had
2. begun settlement discussions with Namvar while Fialkov

remained adamant that the right approach was to take on

1. Namvar, regardless of the time and money involved and knowing that I would have to forfeit what appeared to be
2. arguably the most lucrative opportunity in my life and

potentially place my family in harms way. . .

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. . . .

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v. . . . Accordingly, I told Fialkov about EACP and the

1. importance to me of capitalizing on this opportunity. Unlike Fialkov who comes from a hugely wealthy family in Toronto,
2. as someone who came from very modest means, it was

important to me to avail myself on what appeared to be a

1. unique opportunity that played to my strengths.

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1 *See* Exhibit 4 attached to the Declaration of M. Triplett filed concurrently herewith; See 2 also, (UF 30).

1. Defendant represented to Plaintiffs that in order repay his debt to Plaintiffs by
2. securing a position with EACP, Defendant had to settle the Vitrobirth Case due to
3. financial disclosure issues. Specifically, Defendant stated that he had to resolve the
4. dispute with the Namvar Parties so that he would not have to disclose any outstanding
5. contingent liabilities in connection with his position in EACP. (UF 31).
6. After settlement terms were circulated with respect to the disputes with the
7. Namvar Parties, Defendant represented to Mr. Fialkov that he did not have the financial
8. ability to fund his initial $100,000 payment in the proposed settlement with the Namvar
9. Parties. (UF 32). However, Defendant also represented that as a result of his position
10. with EACP, he would be able to repay this amount to Mr. Fialkov under the Settlement
11. Agreement as well as meet his other financial obligations under the Namvar Settlement.
12. (UF 33). Furthermore, Plaintiffs did not want to settle and release their claims against
13. the Namvar Parties. Plaintiffs believed that they would prevail against Namvar in the
14. Vitrobirth Case, the Queen Mary Case and the Anapoell Case. (UF 34).
15. In late 2006, Defendant began constantly emailing and calling Mr. Fialkov,
16. begging him to enter into a settlement with the Namvar Parties. (UF 35). Defendant
17. repeatedly promised that settlement with the Namvar Parties would allow Defendant to
18. repay Plaintiffs because it would allow him to leverage his alleged valuable equity
19. position with EACP. (UF 36). Defendant emailed, faxed and called Mr. Fialkov
20. numerous times a day, purporting to provide evidence of his financial ability to honor the
21. terms in the proposed settlement with Plaintiffs. (UF 37). Defendant agreed to enter into
22. a separate settlement agreement with Plaintiffs for repayment of the obligations he owed
23. them as a result of the fraud in connection with Plaintiffs’ investments in the Companies.
24. (UF 38). Defendant continued to pressure Plaintiffs to settle with Defendant and enter
25. into a settlement with the Namvar Parties, leveraging his position as a Rabbi to use
26. religion to carry out his fraudulent scheme. (UF 39).

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# i. Defendant Falsely Represented The Financial Condition Of EACP To

* 1. **Induce Plaintiffs To Enter Into The Settlement Agreement And To**
  2. **Settle With The Namvar Parties**
  3. Defendant’s asserted position and equity interest in EACP was the main catalyst
  4. for Plaintiffs to settle with the Namvar Parties and to enter into the Settlement
  5. Agreement. (UF 40). Defendant represented to Plaintiffs that he had a ten percent
  6. (10%) equity interest in the general partner of the hedge fund (the “Equity Interest”) that
  7. he referred to as EACP. (UF 41). To induce Plaintiffs to settle with the Namvar Parties
  8. and give up the Queen Mary and Anapoell cases, Defendant told Plaintiffs that he was
  9. willing to pledge the Equity Interest to the Plaintiffs as security for his obligations to
  10. Plaintiffs under the Settlement Agreement. (UF 42).
  11. During settlement discussions between Defendant and Plaintiffs, Defendant
  12. informed Plaintiffs that his Equity Interest was worth $8 million, specifically confirming
  13. this amount as a recital in the Settlement Agreement. (UF 43). Defendant sent
  14. numerous text messages to Mr. Fialkov promising him that EACP would be the conduit
  15. to re-pay Plaintiffs their investment in the Companies as well as any other monies paid
  16. by Plaintiffs to the Namvar Parties. *See* **Exhibit 3** to the Declaration of H. Fialkov filed
  17. concurrently herewith; BBM message from Defendant to Mr. Fialkov dated January 7,
  18. 2007 at 3:22 pm, Defendant promises that the “entity” (i.e. EACP) will be the conduit to
  19. pay Plaintiffs back. ); *See also,* (UF 44). Defendant further represented to Mr. Fialkov
  20. that Defendant would be receiving $25,000 per month from his employment with EACP
  21. and would have the financial ability to perform his obligations under the Agreement. *See*
  22. **Exhibit 4** to the Declaration of H. Fialkov filed concurrently herewith, BBM message to
  23. from Defendant to Mr. Fialkov dated January 2, 2007; *See also*, (UF 45).
  24. Plaintiffs reasonably believed Defendant’s statements regarding Defendant’s
  25. financial condition and ability to perform under the Settlement Agreement. (UF 46). In
  26. reliance on Defendant’s representations, Plaintiffs agreed to enter into the global
  27. settlement with the Namvar Parties, on the condition that Defendant and Plaintiffs first

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1. reach an agreement regarding Defendant’s repayment of the $6,335,000 of the funds
2. that Plaintiffs lost in connection with their investments in the Companies as a result of
3. Defendant’s fraudulent misrepresentations. (UF 47).
4. The Settlement Agreement was heavily negotiated, with Defendant and Plaintiffs
5. exchanging multiple proposed drafts. (UF 48). The initial settlement document was
6. actually drafted by the Defendant. (UF 49). Defendant, who is a Harvard law graduate,
7. was represented by a lawyer during the course of the negotiations. (UF 50). Defendant
8. has admitted that prior to signing the Settlement Agreement, he had agreed to the
9. following specific terms:1
10.  “In consideration for Howie forfeiting his right to pursue those two
11. cases, we had come with had come [up] with a dollar figure … which as
12. I recall was $6 million” (UF 51)
13.  That Howie (or assignee) would be the beneficiary of a life insurance
14. policy and Defendant would be the insured (UF 52)
15.  The money that Howie’s family had advanced would be repaid (UF 53)
16.  That a repayment scheduled was negotiated (UF 54)
17.  Defendant agreed that an interest rate would be applied to the
18. outstanding balances owed under the Settlement Agreement (UF 55)
19. The final version of the Settlement Agreement was executed by Plaintiffs and Defendant 20 on January 8, 2007. (UF 56).
20. Thereafter, on or about January 11, 2007, Plaintiffs and Defendant executed a
21. settlement agreement with the Namvar Parties (the “Namvar Settlement Agreement”).
22. (UF 57). The settlement required immediate payment of $1.35 million of which $1.25
23. million was to be paid by Plaintiffs and $100,000 paid by Defendant. (UF 58). The
24. settlement also required Defendant to pay an additional $850,000 in installments at 10%
25. interest rate over a period of 7 years. (UF 59). The agreement also provided for a friend 27

1 *See* **Exhibit 5** to the Declaration of M. Triplett filed concurrently herewith, Relevant Portions of Transcript

28 of March 21, 2014 Deposition of Antony Gordon (hereinafter the “Gordon Depo”). The complete certified transcript of the Gordon Depo will be lodged separately with the Court pursuant to LBR 7030-1(b).

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1. of Defendant’s Mr. Elliott Broidy to guarantee $650,000 of the total amount due by
2. Defendant and for Mr. Fialkov to guarantee the remaining $200,000 due by Defendant.
3. (UF 60). Defendant represented to Plaintiffs that he did not have any funds to make the
4. initial settlement payment, so Plaintiffs would have to fund the $1.35 million payment, as
5. well as provide full releases of all of Plaintiffs’ various affirmative claims against the
6. Namvar Parties, as well as release the claims in the Anapoell and Queen Mary cases.
7. (UF 61). As an inducement to get Plaintiffs to settle with the Namvar Parties and fund
8. the settlement payment, Defendant promised Plaintiffs he would pay them back $6
9. million for their lost investments in the Companies, and reimburse Plaintiffs for any
10. amounts paid under a settlement with the Namvar Parties. (UF 62).
11. Plaintiffs were further fraudulently induced by Defendant to guarantee part of
12. Defendant’s obligations to the Namvar Parties under the Namvar Settlement. (UF 63).
13. Defendant also failed to make his yearly installments of $41,081.10 under the Namvar
14. Settlement and Mr. Fialkov paid these amounts on Defendant’s behalf for seven years.
15. (UF 64). Plaintiffs have therefore paid a total of $1,637,567.77 in the Namvar Settlement
16. in reliance on Plaintiff’s promises to repay him pursuant to the Settlement Agreement as
17. a result of Defendant’s conduct and representations. (UF 65).

# ii. Defendant’s Representations Regarding His Position And The

1. **Financial Condition Of EACP Were False And Designed To Induce**
2. **Plaintiffs To Enter Into The Namvar Settlement Agreement And The**
3. **Settlement Agreement Between Plaintiffs And Defendant**
4. After execution of the Namvar Settlement Agreement and the Settlement
5. Agreement, Plaintiffs eventually learned that Defendant never had any equity interest
6. EACP, as falsely represented in the Settlement Agreement. (UF 66). Thus, Defendant
7. never had an Equity Interest he could pledge as security under the Settlement
8. Agreement. (UF 67). Furthermore, Defendant’s material representation that he owned
9. an asset with a fair market value of $8 million in the Settlement Agreement was
10. completely false. (UF 68). Relying on Defendant’s false representations about his

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1. interest in EACP, Plaintiffs were harmed by entering into the Namvar Settlement
2. Agreement, paying the settlement amounts to the Namvar Parties, paying some of the
3. Defendant’s portion of the Namvar Settlement, releasing their claims against the Namvar
4. Parties, and entering into the Settlement Agreement with Defendant. (UF 69).

# iii. Defendant Never Intended To Perform His Obligations In the

1. **Settlement Agreement**
2. The Settlement Agreement which Defendant pushed Plaintiffs to enter contained
3. numerous immediate and continuing covenants that required Defendant to perform
4. certain obligations. (UF 70). Defendant never performed any of his obligations under the
5. Settlement Agreement, even those covenants which were within his ability to perform.
6. (UF 71). As such, Defendant immediately fell into default under the Settlement
7. Agreement, evidencing his complete lack of intent to perform under the Settlement
8. Agreement. (UF 72).

# a. Defendant Failed To Obtain Three Million Dollar Life Insurance

1. **Policy Promised In The Agreement**
2. As additional security for his obligations under the Settlement Agreement,
3. Defendant promised to obtain a whole life insurance policy for a minimum amount of
4. three million dollars for the benefit of Plaintiffs. (UF 73). In connection with the policy,
5. Defendant promised to pay the premiums, to keep the policy in good standing and
6. assign a beneficiary of Mr. Fialkov’s choosing within eighteen days of execution of the
7. Settlement Agreement. (UF 74).
8. Defendant failed to purchase the policy within the required time period under the
9. Settlement Agreement. Eventually, after pressure by Mr. Fialkov, Defendant obtained
10. the policy. However, Mr. Fialkov paid the initial cost for the policy (approximately
11. $45,000) as well as payment for the first few premiums. (UF 75). Despite Defendant’s
12. promise to pay Plaintiffs back for the expense of obtaining the policy and the premium
13. payments, Defendant has failed to pay a single policy premium. (UF 76). It is assumed
14. that the policy has thus been cancelled and Defendant has breached this term of the

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1. Settlement Agreement. (UF 77).

# b. Defendant Failed To Assign His Existing One Million Dollar Life

1. **Insurance Policy To Plaintiffs**
2. In addition to obtaining a new life insurance policy, the Settlement Agreement also
3. provided that Defendant was to assign to Plaintiffs a beneficial interest in an existing $1
4. million life insurance policy with AIG Life Insurance (the “AIG Policy”). (UF 78).
5. However, Defendant failed to pledge any such beneficial interest in the AIG Policy. (UF
6. 79). Defendant has admitted in sworn deposition testimony that the Policy is still in place
7. and Defendant’s wife is the beneficiary under the policy. (UF 80).

# c. Defendant Failed To Make A Single Payment Pursuant To The

1. **Settlement Agreement**
2. The Settlement Agreement requires Defendant to use his best efforts to make
3. payments to Plaintiffs of at least $50,000 per year, etc. (UF 81). However, to date,
4. Defendant has failed to make a single payment to the Plaintiffs under the Settlement
5. Agreement. (UF 82). Defendant has admitted that as of the date of the signing of the
6. Settlement Agreement, he was earning $300,000 per year. (UF 83). However, instead of
7. honoring his obligations under the Settlement Agreement; Defendant has testified that
8. he was bad with money and was spending the money elsewhere, thus evidencing
9. Defendant’s intent to never repay Plaintiffs. (UF 84)

# d. Defendant Failed To Produce Financial Documentation

1. **Required By The Agreement**
2. In the Settlement Agreement, Defendant promised to provide Plaintiffs:
3. (a) all of his (and his wife’s, if applicable) personal income tax returns commencing with the Year 2006 Form 1040 tax
4. Return (due, absent an extension, on April 15, 2007), until the

Gordon Payment was paid in full; and (b) all of the income tax

1. returns of the entity in which Gordon placed his 10% interest in East Avenue Capital Partners, LLC, commencing with the
2. Year 2006 Tax Return (due, absent an extension, on March

15, 2007), until the Gordon Payment was paid in full.

27 (UF 85).

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* 1. To date, Defendant has failed to provide copies of any tax returns and/or financial
  2. information pursuant to the terms of the Settlement Agreement. (UF 86).

# iv. Defendant Made Ongoing Representations To Plaintiffs Promising To

* 1. **Honor The Agreement**
  2. Defendant holds himself out as a pious man; using religion to gain Plaintiffs’ trust
  3. so that he could carry out his various schemes to defraud Plaintiffs into entering into the
  4. Settlement Agreement and the Namvar Settlement Agreement. (UF 87). In a text
  5. message to Mr. Fialkov dated January 2, 2007, Defendant used their shared religion to
  6. induce Mr. Fialkov’s reliance on the knowingly false representations made by Defendant
  7. to Plaintiffs, informing Mr. Fialkov that he was putting his trust in God and not “Gordon
  8. the Rabbi”. (UF88). This was Defendant’s standard practice of using religion and taking
  9. advantage of Mr. Fialkov’s faith and deference lent to religious leaders in their shared
  10. community. (UF 89). For years after the execution of the Settlement Agreement,
  11. Defendant continued to use the parties’ relationship of trust and his position as a Rabbi
  12. to manipulate the Plaintiffs into giving him more time to perform under the Settlement
  13. Agreement. (UF 90).

# v. Procedural Background Of Bankruptcy Filing And Adversary

* 1. **Proceeding**
  2. On February 21, 2013, Defendant filed a voluntary petition for relief under Chapter
  3. 7 of the Bankruptcy Code. (UF 91). Peter J Mastan is the duly-appointed, qualified and
  4. acting Chapter 7 Trustee in this bankruptcy case. (UF 92).
  5. On May 17, 2013, Plaintiffs timely filed their “Complaint (1) for the Non-
  6. Dischargeability of Debt Pursuant to 11 U.S.C. § 523(a)(2)(A) and (a)(6); and (2)
  7. Damages Including Attorneys’ Fees, Costs, and Other Relief” (the “Complaint”) (Adv.
  8. Dkt. No. 1). (UF 93). Pursuant to the Summons executed on May 20, 2013, Defendant’s
  9. response to the Complaint was due on or before June 19, 2013 (Adv. Dkt. No. 5). (UF 27 94).

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* + 1. On June 17, 2013, the Fialkov Parties agreed to stipulate with Defendant to allow
    2. Defendant three additional weeks to respond to the Complaint (Adv. Dkt. No. 11). (UF
    3. 95). On July 3, 2013, after it was discovered that the Exhibits referenced in the
    4. Complaint were inadvertently not attached, the Fialkov Parties filed a Notice of Errata
    5. Re: Submission of Exhibits referenced in the Complaint (Adv. Dkt. No. 12) (UF 96). On
    6. July 5, 2013, the Plaintiffs and Defendant entered into a Second Stipulation to Extend
    7. the Time for Defendant to Respond to the Complaint as well as an express agreement
    8. that the Complaint along with the Notice of Errata and attached Exhibits shall constitute
    9. the entire Complaint and references to the Complaint shall include the Exhibits attached
    10. to the Errata (Adv. Dkt No. 13) (UF 97).
    11. On July 22, 2013, Defendant filed his Answer to the Complaint containing general
    12. denials and boilerplate affirmative defenses as well as a Cross-Complaint against
    13. defendant Howard Fialkov for damages relating to an alleged breach of oral contract and
    14. fraudulent misrepresentation (the “Cross-Complaint”) (Adv. Dkt. No. 17). (UF 98).
    15. On October 9, 2013, the Court dismissed the Cross-Complaint in its entirety (Adv.
    16. Dkt. No. 32). The Discovery cutoff date in the adversary proceeding ran on July 7, 2014. 17 (UF 99).

# II.

1. **LEGAL STANDARD**
2. **A. Jurisdiction in This Court Is Proper**
3. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §
4. 1334(a) (the district courts shall have original and exclusive jurisdiction of all cases
5. under Title 11) and 28 U.S.C. § 157(a) (authorizing the district courts to refer all Title 11
6. cases and proceedings to the bankruptcy judges for the district). Plaintiffs’ [Proposed]
7. Separate Statement of Conclusions of Law (“CL”) 1.
8. This matter is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(B)
9. (allowance or disallowance of claims against the estate). (CL 2). This action relates to
10. the Chapter 7 bankruptcy case filed in the United States Bankruptcy Court, Los Angeles

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1. Division, entitled In re Antony Gordon, Case No. 2:13-bk-14465-DS on the docket of the
2. Court.2 *See* Plaintiffs Request for Judicial Notice filed concurrently herewith.

# B. The Standard for Summary Judgment Or Summary Adjudication

1. Pursuant to Rule 56 of the Federal Rules of Civil Procedure (“FRCP”), made
2. applicable by Rule 7056 of the Federal Rules of Bankruptcy Procedure (“FRBP”), the
3. court “shall grant summary judgment if the movant shows that there is no genuine
4. dispute as to any material fact and the movant is entitled to judgment as a matter of law.”
5. *See* FRCP 56(a); FRBP 7056. (CL 3). “The purpose of summary judgment is to avoid
6. unnecessary trials when there is no dispute as to the [material] facts before the court.”
7. *NW*. *Motorcycle Ass’n v. U.S. Dept. of Agric.*, 18 F.3d 1468, 1471 (9th Cir. 1994). (CL 4).
8. A party moving for summary judgment under Rule 56 need not negate its
9. opponent’s claim; rather the moving party need only point to the absence of a genuine
10. issue of material fact. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). (CL 5).
11. Once the moving party has met this initial burden, the burden shifts to the opposing party
12. to “set out specific facts showing a genuine issue for trial.” *Id.* at 324, and must
13. “affirmatively show that a material issue of fact remains in dispute and may not simply
14. rest on hope of discrediting movant’s evidence at trial.” *Frederick S. Wyle Professional*
15. *Corp. v. Texaco, Inc.*, 764 F.2d 604, 608 (9th Cir. 1985). (CL 6) An issue is “genuine”
16. only if there is a sufficient evidentiary basis on which a reasonable trier of fact could find
17. for the non-moving party. *Scott v. Harris*, 550 U.S. 372, 380 (2007); *In re Ahaza*
18. *Systems, Inc.*, 482 F.3d 1118, 1128 (9th Cir. 2007). (CL 7). A factual dispute is
19. “material” only if it might affect the outcome of the proceeding under applicable law.
20. *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248 (1986); *In re Caneva*, 550 F.3d 755,
21. 760 (9th Cir. 2008). (CL 8). Moreover, “When the moving party has carried its burden
22. under 56(c), its opponent must do something more than simply show there is some 26
23. 2 Plaintiffs respectfully request that the Court take judicial notice of Debtor’s Bankruptcy Petition and other documents filed therewith and any amendments which are in the Court’s file, pursuant to Fed. R. Evid.
24. 201, as made applicable to bankruptcy proceedings by Fed. R. Bankr. P. 9017. The information contained in these documents is admissible pursuant to Fed. R. Evid. 801(d).

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1. metaphysical doubt as to the material facts.” *Matushida Elec. Indus. Co. v. Zenith Radio*
2. *Corp.*, 475 U.S. 574, 586 (1986). The mere scintilla of evidence in support of the
3. opposing party’s position will be insufficient to overcome summary judgment. *Anderson*
4. *v. Liberty Lobby, Inc.*, 477 U.S. at 522. (CL 9).
5. The Supreme Court’s decisions in *Matsushita* and *Celotex* reflect the Court’s
6. desire to resolve cases at the summary judgment level rather than litigate a case where
7. there is only a scintilla of evidence that creates a hint of a genuine issue of fact. As set
8. forth below and as evidenced by the declaration and exhibits filed concurrently herewith,
9. there is no genuine issue of material fact in this adversary proceeding for trial.
10. Therefore, Plaintiffs are entitled to judgment as a matter of law as to all claims for relief
11. contained in the Complaint.

# C. Plaintiffs Have Established A Non-Dischargeable Claim Under §

1. **523(a)(2)(A) In Connection With The Intentional Fraudulent**
2. **Misrepresentations Made To Plaintiffs In Connection With The**
3. **Settlement Agreement And The Namvar Settlement**
4. Section 523(a)(2)(A) provides that a debt for “money, property, services, or an
5. extension, renewal, or refinancing of credit, to the extent obtained, by false pretenses, a
6. false representation, or actual fraud, other than a statement respecting the debtor's or an
7. insider's financial condition” is not dischargeable. 11 U.S.C. § 523(a)(2)(A). (CL 10).
8. The creditor seeking to prove nondischargeability under this section must establish that:
9. (1) the debtor made a misrepresentation; (2) the debtor knew at the time the
10. representation was false; (3) the debtor made the misrepresentation with the intention of
11. deceiving the creditor; (4) the creditor relied on the representation; and (5) the creditor
12. sustained damage as the proximate result of the representation. *Cossu v. Jefferson Pilot*
13. *Sec. Corp*., 410 F.3d 591, 596 (9th Cir. 2005); *Turtle Rock Meadows Homeowners Ass’n*
14. *v. Slyman (In re Slyman),* 234 F.3d 1081, 1085 (9th Cir. 2000); *In re Britton*, 950 F.2d
15. 602, 604 (9th Cir.1991). (CL 11). Section 523(a)(2)(A) prevents the discharge of all
16. liability arising from fraud, including both punitive and compensatory damages. *Cohen v.*

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1. *De La* Cruz, 118 S.Ct. 1212, 1219 (1998). (CL 12). The uncontested material facts in
2. this case establish the elements of fraud under Section 523(a)(2)(A) and Defendant’s
3. debt to Plaintiffs in the amount of $7.25 million should be determined to be non-
4. dischargeable.

# 1. Defendant’s False Representations To Plaintiffs

1. Defendant made fraudulent representations and promises in connection with the
2. Settlement Agreement and the Namvar Settlement in order to induce Plaintiffs’ entry into
3. such agreements. “False representations are ‘representations knowingly and
4. fraudulently made that give rise to the debt.’” *Adams County Dept. of Soc. Services v.*
5. *Sutherland–Minor (In re Sutherland–Minor)*, 345 B.R. 348, 354
6. (Bankr.D.Colo.2006)(internal citations omitted). A promise to pay a debt made with an
7. intent not to pay is a false representation. *See In re Kountry Korner Store*, 221 B.R. 265,
8. 272 (Bankr.N.D.Okla.1998) (“The Court does recognize a species of ... fraud in which a
9. promise to perform some act in the future is made without the present intent to ever
10. perform[ ].”). In this case, Defendant’s made knowingly false affirmative representations
11. in the Settlement Agreement and made promises which the evidence demonstrates he
12. never intended to perform despite his ability to do so. Defendant made the following
13. specific representations and promises to induce Plaintiffs’ entry into the Settlement
14. Agreement and Namvar Settlement Agreement:
15.  Defendant represented that he had a 10% interest in EACP that he would
16. pledge to Plaintiffs as security for the Settlement Agreement (UF 100).
17.  Defendant represented that a 10% interest in EACP was worth $8 million. 23 (UF 101).
18.  Defendant represented to Mr. Fialkov that Peter Gerhard was his partner in
19. EACP and that Defendant would be receiving $25,000 per month from his
20. employment with EACP. (UF 102).
21.  Defendant represented that his interest and position with EACP would give
22. him the financial ability to perform his obligations under the Settlement

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1. Agreement. (UF 103).
2.  Defendant promised to pay the sum of $6 million for Plaintiffs’ losses
3. incurred in connection with the Companies. (UF 104).
4.  Defendant promised to reimburse Plaintiffs for the amounts paid by
5. Plaintiffs pursuant to the Namvar Settlement. (105).
6.  Defendant promised to purchase a $3 million universal life insurance policy
7. for the benefit of Plaintiffs, to pay for the cost of obtaining the policy and to
8. pay all premiums as further security for the Settlement Agreement. (UF 9 106).
9.  Defendant promised to assign a beneficial interest in his existing $1 million
10. term life insurance policy to Plaintiffs or their selected assignee. (UF 107).
11.  Defendant promised to provide Plaintiffs with certain financial information
12. so that Plaintiffs could verify Defendant’s on gong financial condition and
13. ability to continue to perform under the Settlement Agreement. (UF 108).
14.  Defendant promised to provide Plaintiffs with: (a) all of his (and his wife’s, if
15. applicable) personal income tax returns commencing with the Year 2006
16. Form 1040 tax Return (due, absent an extension, on April 15, 2007), until
17. the Defendant’s payment was paid in full; and (b) all of the income tax
18. returns of the entity in which Defendant placed his 10% interest in EACP,
19. commencing with the Year 2006 Tax Return (due, absent an extension, on
20. March 15, 2007), until the Defendant’s Payment was paid in full. (UF 109).
21.  Defendant promised to use his best efforts to make payments under the
22. Settlement Agreement. (UF 110).
23. All of the foregoing representations by Defendant to Plaintiffs were known to be
24. false to Defendant and designed to induce Plaintiffs to enter the Settlement Agreement
25. and the Namvar Settlement Agreement. 27 ///

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# 2. Defendant Knew At The Time That The Representations Were False

* 1. Defendant never had any intention of repaying the obligation to Plaintiffs under
  2. the Settlement Agreement and knew that the representations were false at the time he
  3. entered into the Settlement Agreement. One of the primary inducements for Plaintiffs to
  4. enter the Settlement Agreement and the Namvar Settlement Agreement was
  5. Defendant’s asserted financial condition as a result of his alleged position and interest in
  6. EACP.
  7. Defendant’s representation that he had a vested 10% equity interest in EACP as
  8. of entry into the Settlement Agreement was false. (UF 100). Defendant has admitted
  9. that such representation was false as of the entry into the Settlement Agreement. I*d.*
  10. Furthermore, Defendant’s representation that a 10% interest in EACP was worth $8
  11. million was also knowingly false. (UF 101). Defendant has admitted that at that time, he
  12. couldn’t say for certain that he was going to raise that much money and that the
  13. representation of $8 million was based on his assumptions of how the numbers add up
  14. stating “I don’t recall it exactly, but I think it must have been 10% of prognosticating
  15. A.U.M. [Assets Under Management] of $80 million.” (UF 102). Furthermore, Elliott
  16. Broidy who was a friend of Defendant and who also served as a Special Advisor to
  17. EACP from late December 2006 until the fund was liquidated in 2008 has confirmed that:
  18. “In or around January 2007, [Defendant] did not own 10% of the General Partner of the
  19. fund.” Further stating that “It is important to note that at that time, the fund only had a
  20. minimal amount of assets under management and the General Partner was of
  21. immaterial value. (UF 66). Defendant as an experienced investor, and Harvard law
  22. graduate was well aware of these facts at the time he made the false statements to
  23. convince Plaintiffs he had the financial ability to perform under the Settlement
  24. Agreement. (UF 7).
  25. Furthermore, Defendant’s promises to perform the various obligations under the
  26. Settlement Agreement were also knowingly false. Defendant was capable of performing
  27. a number of the obligations under the Settlement Agreement, including making the

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1. assignment of the $1 million insurance policy, making payments under the Agreement
2. while earning a significant salary, obtaining the $3 million insurance policy and providing
3. financial records. Despite Defendant’s ability to perform all of these covenants, he never
4. attempted to do so – proving that such promises were knowingly false when Defendant
5. made them in the Settlement Agreement. (UF at 74-86)

# 3. Defendant Made The Representations With The Intent To Deceive

1. **Plaintiffs**
2. Defendant’s knowingly false statements about his interest in EACP, the value of
3. such interest and promises in the Settlement Agreement that he never intended to
4. perform were all made to deceive Plaintiffs into entering into the Settlement Agreement
5. and the Namvar Settlement Agreement. The Defendant’s knowledge and fraudulent
6. intent may be shown by circumstantial evidence and inferred from the Defendant’s
7. course of conduct. *Tallant v. Kaufman (In re Talllant)*, 218 B.R. 58, 66 (9th Cir. BAP
8. 1998); *See also*, *Devers v. Bank of Sheridan (In re Devers*), 759 F 2d. 751, 753-54 (9th 15 Cir. 1985)
9. Defendant knew that Plaintiffs were not inclined to settle the Namvar Claims.
10. Defendant did not have the financial ability to settle the Namvar Claims as they related to
11. him personally. Defendant also did not have the financial ability to resolve the disputes
12. with Plaintiffs over the fraud claims connected to the investments into the Companies.
13. Instead of facing reality and accepting liability, Defendant chose to manipulate Plaintiffs
14. by making the various false representations which were designed to deceive Plaintiffs
15. and spur them to enter into the settlement agreements.

# 4. Plaintiffs Justifiably Relied On Defendant’s Representations

1. Defendant is a Harvard Law School graduate, a former Senior Vice President with
2. Morgan Stanley, a Fulbright Scholar and Rabbi. Defendant’s substantial credentials,
3. combined with his position as a leader in the Orthodox Jewish Community, justified the
4. reliance upon which Plaintiffs placed on the representations made by Defendant.
5. “justifiable reliance” is a subjective standard that takes into account the qualities and

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1. characteristics of the particular creditor and the circumstances of the particular case
2. “rather than the application of a community standard of conduct in all cases.” *Field v.*
3. Mans, 516 U.S. 59, 70-71 (1995). Justifiable reliance is a “less demanding” standard
4. than reasonable reliance. *Id.* at 61*.* Defendant represented to Plaintiffs that he had an
5. asset worth $8million (i.e. his 10% equity interest in EACP). Defendant promised to
6. pledge this interest to Plaintiffs as consideration and security for entering into the
7. Settlement Agreement. Defendant further represented that he was earning $25,000 a
8. month from his employment with EACP and would have sufficient funds to repay
9. Plaintiffs under the Settlement Agreement.
10. Defendant presented himself as a pious man and Mr. Fialkov gave deference that
11. Defendant’s representations would be truthful based on their shared faith and standards
12. for honest dealings in the Orthodox Jewish Community.

# 5. Plaintiffs Sustained Loss As The Proximate Result Of Defendant’s

1. **Representations**
2. As a proximate result of Defendant’s representations, the Plaintiffs have suffered
3. damages in excess of $7,250,000. Defendant’s misrepresentations led directly to
4. Plaintiffs paying a total of $1,637,567.77 in the Namvar Settlement. Further, Plaintiffs
5. waived their claims in the Namvar Case as well as the Queen Mary and Anapoell cases.
6. Plaintiffs also settled their claims against Defendant for the fraudulent
7. misrepresentations made in connection with Plaintiffs’ investments in the Companies
8. and signed waivers in consideration for Defendant’s promise to pay $6 million. All of the
9. foregoing damages were directly caused by the deceit of Defendant in fraudulently
10. inducing Plaintiffs to enter into the Settlement Agreement and Namvar Settlement
11. Agreement. *See, Archer v. Warner*, 538 U.S. 314 (2003) (finding that debt owing by
12. Defendant to Plaintiffs under the Settlement Agreement arose out of fraudulent
13. representations Defendant made that induced Plaintiffs to enter into the Settlement
14. Agreement and constituted a nondischargeable debt). 28 ///

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# D. Defendant’s Conduct Was Willful and Malicious

* 1. For purposes of section 523(a)(6), the bankruptcy court must find the injury
  2. inflicted by the debtor was both “willful” and “malicious.” *Matter of Ormsby*, 591 F.3d
  3. 1199, 1206 (9th Cir. 2010). (CL 13). “Willful” within the meaning of section 523(a)(6)
  4. means “deliberate or intentional.” *Kawaauhau v. Geiger*, 523 U.S. 57, 61 (1998). (CL 14)
  5. A “malicious injury” under section 523(a)(6) involves: (1) a wrongful act; (2) done
  6. intentionally; (3) that necessarily causes injury; and (4) that is committed without just
  7. cause or excuse. *In re Jercich*, 238 F.3d 1202, 1209 (9th Cir. 2001). (CL 15). Once it is
  8. established that a defendant’s actions were willful and necessarily caused injury, a court
  9. can imply malice. *In re Terrell*, 2007 Bankr. LEXIS 4330, 14-16 (Bankr. C.D. Cal. Dec.
  10. 14, 2007) *citing Thiara v. Spycher Bros. (In re Thiara)*, 285 B.R. 420, 434 (9th Cir. BAP
  11. 2002) ("the 'done intentionally' element of a 'malicious' injury brings into play the same
  12. subjective standard of intent which focuses on one’s knowledge of harm to the creditor”).
  13. (CL 16). The Court can imply malice in this case from Defendant’s knowingly false
  14. representations to Plaintiffs to induce Plaintiffs’ entry into the Settlement Agreement.
  15. In addition to the Court’s ability to infer malice, the undisputed facts undeniably
  16. establish that Defendant’s actions were malicious. A plaintiff/creditor seeking to hold a
  17. particular debt nondischargeable has the burden of proving its claim by a preponderance
  18. of the evidence. *Grogan*, 498 U.S. at 289.
  19. In his second claim under § 523(a)(6), Plaintiffs alleged that Defendant committed
  20. willful and malicious injury to the Plaintiffs because Defendant willfully induced the
  21. Plaintiffs to enter into the settlement Agreement and the Namvar Settlement, pay over
  22. $1.6 million under the Namvar Settlement, and dismiss Plaintiffs’ claims against the
  23. Namvar Parties in the Vitrobirth Case, the Anapoell and Queen Mary cases. Defendant
  24. was a co-defendant in the Vitrobirth Case and had exposure relating to the underlying
  25. claims, and if the lawsuit with the Namvar Parties was not settled, Defendant would have
  26. to disclose this fact as a contingent liability when he was trying to raise money for EACP.
  27. Defendant needed Plaintiffs cooperation and financial backing in order to enter into the

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1. Namvar Settlement, as Defendant did not have the financial ability at that time to pay the
2. amounts owing under the Agreement. Defendant maliciously inflicted injury upon
3. Plaintiffs by intentionally and wrongfully submitting false, misleading and inaccurate
4. representations and warranties concerning his assets and liabilities, by making promises
5. he had no intention of performing and by concealing material facts from the Plaintiffs.
6. Second, it is undisputed that Defendant’s inducement of the Plaintiffs into the
7. settlement agreement was an intentional act. Defendant needed Plaintiffs in order to
8. settle the Vitrobirth Case and pursue his opportunity with EACP. Therefore, Defendant
9. engaged in a relentless campaign in order to convince Plaintiffs to enter into the
10. Settlement Agreement.
11. Third, it is undisputed that Defendant’s wrongful and intentional actions caused
12. significant harm to Plaintiffs. Plaintiffs entered into the Settlement Agreement and the
13. Namvar Settlement and have paid more than $1.6 million in reliance on the Settlement
14. Agreement. Plaintiffs also gave up their lawsuits against the Namvar Parties and waived
15. claims against Defendant resulting in damages in excess of $7.25 million and also gave
16. up the Queen Mary and Anapoell cases.
17. Fourth, Defendant’s wrongful and intentional acts were done without cause or
18. excuse. It is undisputed that Defendant made misrepresentations about his assets and
19. ability to perform under the Settlement Agreement. There is no evidence in the record
20. that Defendant acted with any justification or excuse. Defendant’s actions and words
21. confirm that he knew what he was doing was wrong and took every step possible to
22. avoid having to disclose the contingent liability in the Vitrobirth Case as well as having to
23. face his substantial debts. Defendant used their shared Jewish religion to gain Mr.
24. Fialkov’s trust and abused his position as a religious leader to convince Mr. Fialkov to
25. enter into the Settlement Agreement and the Namvar Settlement. Any attempt to justify
26. his intentional, wrongful, and deceitful conduct would merely be conjured up after the
27. fact to avoid his admitted liability to Plaintiffs. There is absolutely no excuse for
28. Defendant’s deceptive conduct which resulted in substantial harm to Plaintiffs.

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* 1. As to Plaintiff’s claim for relief under Section 523(a)(6), there is no genuine issue
  2. of material fact and Defendant’s fraudulent inducement of the Plaintiffs supports a
  3. judgment in favor of Plaintiffs. Therefore, summary judgment in favor of Plaintiffs is
  4. proper and Defendant’s debt should be found to be non-dischargeable.

# III.

* 1. **CONCLUSION**
  2. For the reasons stated above, Plaintiffs respectfully request that the Court: (1)
  3. grant the Motion and enter judgment as a matter of law on Plaintiffs’ § 523(a)(2) and §
  4. 523(a)(6) claims on the grounds that there is no “genuine issue” regarding Defendant’s
  5. fraudulent conduct; (3) for reasonable costs and attorney’s fees, in an amount to be
  6. submitted after hearing on the Motion; (4) for interest; and (5) for such further and other
  7. relief as the Court may deem just and proper. 13

DATED: August 19, 2014 MARGULIES FAITH, LLP

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1. By: */s/ Meghann Triplett*

Jeremy W. Faith

1. Meghann Triplett

Attorneys for Plaintiffs

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**PROOF OF SERVICE OF DOCUMENT**

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: 16030 Ventura Blvd., Suite 470, Encino, CA 91436

A true and correct copy of the foregoing document entitled **MOTION FOR SUMMARY JUDGMENT OR IN THE ALTERNATIVE SUMMARY ADJUDICATION OF ISSUES AGAINST DEFENDANT ANTONY GORDON;**

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF)**: Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On

August 19, 2014, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Baruch C Cohen [bcc4929@gmail.com,](mailto:bcc4929@gmail.com) [pjstarr@starrparalegals.com](mailto:pjstarr@starrparalegals.com)

Jeremy Faith [Jeremy@MarguliesFaithlaw.com,](mailto:Jeremy@MarguliesFaithlaw.com) [Helen@MarguliesFaithlaw.com](mailto:Helen@MarguliesFaithlaw.com) Meghann A Triplett [Meghann@MarguliesFaithlaw.com,](mailto:Meghann@MarguliesFaithlaw.com) [Helen@MarguliesFaithlaw.com](mailto:Helen@MarguliesFaithlaw.com) United States Trustee (LA) [ustpregion16.la.ecf@usdoj.gov](mailto:ustpregion16.la.ecf@usdoj.gov)

1. **SERVED BY UNITED STATES MAIL**:

Service information continued on attached page

On August 19, 2014, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Honorable Deborah J. Saltzman, United States Bankruptcy Court, 255 E. Temple Street, Suite 1460, Los Angeles, CA 90012

Service information continued on attached page

1. **SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on , I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

|  |  |  |
| --- | --- | --- |
| August 19, 2014 | Helen Cardoza | /s/ Helen Cardoza |
| *Date* | *Printed Name* | *Signature* |

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

*June 2012* **F 9013-3.1.PROOF.SERVICE**