



Honorable Mike K. Nakagawa  
United States Bankruptcy Judge



Entered on Docket  
March 20, 2017

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA

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In re:	)	BK-S-15-13987-MKN
HENRY EUGENE NETH,	)	Chapter 7
Debtor.	)	
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RES-AZ KINGMAN, LLC,	)	Adv. Proc. No.: 15-01201-MKN
Plaintiff,	)	
v.	)	Date: March 6, 2017
HENRY EUGENE NETH,	)	Time: 9:30 a.m.
Defendant.	)	
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**MEMORANDUM DECISION AFTER TRIAL<sup>1</sup>**

This Memorandum Decision constitutes the court’s findings of fact and conclusions of law entered pursuant to FRBP 7052 incorporating by reference FRCP 52.

This is a core matter pursuant to 28 U.S.C. §157(a) for which the court has subject matter jurisdiction pursuant to 28 U.S.C. §1334. The matter has been referred to the bankruptcy court pursuant to Local Rule 1001(b)(1) of the United States Bankruptcy Court for the District of

<sup>1</sup> In the text and footnotes of this Memorandum Decision, all references to “Section” are to provisions of the Bankruptcy Code, 11 U.S.C. § 101, et seq. All references to “NRS” are to provisions of the Nevada Revised Statutes. All references to “FRBP” are to provisions of the Federal Rules of Bankruptcy Procedure. All references to “FRCP” are to the provisions of the Federal Rules of Civil Procedure. All references to “ECF No.” are to the documents filed in the above-captioned bankruptcy case, and all references to “AECF No.” are to the documents filed in the above-captioned adversary proceeding. All references to “Ex. No. \_\_\_” are to the exhibits admitted at the trial in this matter.

1 Nevada. Venue is proper pursuant to 28 U.S.C. §1406.

2 **BACKGROUND**

3 On July 9, 2015, Henry Eugene Neth (“Debtor”) filed a voluntary Chapter 7 petition.  
4 (ECF No. 1). Victoria Nelson (“Trustee”) was appointed as the bankruptcy trustee to administer  
5 the bankruptcy case. A meeting of creditors under Section 341(a) (“341 Meeting”) was  
6 scheduled for August 14, 2015.

7 On July 22, 2015, Debtor filed his Schedules of Assets and Liabilities (“Schedules”),<sup>2</sup> his  
8 Statement of Financial Affairs (“SOFA”), and his Statement of Current Monthly Income and  
9 Means Test Calculation (“CMI Statement”). (ECF Nos. 12 and 13).

10 On August 14, 2015, Debtor appeared along with his bankruptcy counsel at the 341  
11 Meeting, but it was continued to August 28, 2015, so that his Schedules could be amended. (Ex.  
12 No. 21).

13 On August 27, 2015, Debtor filed an amended personal property Schedule “B.” Later the  
14 same day, Debtor filed another amended personal property Schedule “B.” (ECF Nos. 16 and  
15 18).

16 On August 28, 2015, Debtor filed an amended secured creditor Schedule “D.” (ECF No.  
17 20).

18 On August 28, 2015, the 341 Meeting was further continued to October 9, 2015, so that  
19 the Debtor’s Schedules could be amended.

20 On October 6, 2015, Debtor filed an amended real property Schedule “A.” (ECF No.  
21 23).

22 On October 7, 2015, Debtor filed another amended Schedule “A.” (ECF No. 24).

23 On October 9, 2015, the 341 Meeting was further continued to October 23, 2015.

24 On October 19, 2015, an order was entered approving a stipulation to extend to  
25 December 14, 2015, the deadline for the Trustee, or any other party in interest, to file an

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27 <sup>2</sup> Debtor’s original Schedule “C” (Ex. No. 3) attempted to protect certain personal  
28 property assets by claiming exemptions under Section 522(d) even though Nevada has opted out  
of exemptions for its residents who seek bankruptcy protection. See Nev.Rev.Stat. 21.090(3). In  
a subsequent amendment, Debtor later claimed exemptions under NRS 21.090(1). (Ex. No. 5).

1 adversary complaint objecting to the Debtor’s discharge under Section 727(a) or to determine  
2 dischargeability of a debt under Section 523(a). (ECF No. 27).

3 On October 23, 2015, the 341 Meeting was concluded.

4 On December 14, 2015, creditor RES-AZ Kingman, LLC (“Plaintiff”) commenced the  
5 above-captioned adversary proceeding against the Debtor.<sup>3</sup> The complaint seeks to deny  
6 discharge pursuant to Section 727(a)(2)(A and B) and Section 727(a)(4), and to determine  
7 dischargeability of debt under Section 523(a)(2)(A).<sup>4</sup> (AECF No. 1).

8 On December 30, 2015, Debtor filed an answer. (ECF No. 30).

9 On January 13, 2016, Debtor filed another amended secured creditor Schedule “D.”  
10 (ECF No. 32).

11 On August 17, 2016, a scheduling order was entered scheduling a trial in the adversary  
12 proceeding for January 30 and 31, 2017, and February 2, 2017. (AECF No. 14).

13 On January 9, 2017, a stipulated order was entered approving a continuance of the trial  
14 dates to March 6 and 7, 2017. (AECF No. 23).

15 On March 1, 2017, Plaintiff filed its trial statement. (AECF No. 31).

16 On March 2, 2017, Debtor filed his trial statement. (ECF No. 35).

17 On March 6, 2017, a trial was conducted at which only the Debtor testified. Numerous  
18 exhibits were admitted into evidence by stipulation. In addition to stipulating to the admission of  
19 various exhibits, counsel also stipulated that Plaintiff’s claim under Section 523(a)(2)(A) was

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21 <sup>3</sup> On March 7, 2011, Plaintiff commenced a civil action against the Debtor, and others, in  
22 the Arizona Superior Court in Mohave County, denominated Case No. CV-2011-00366. (Ex.  
23 No. 11). The complaint sought damages based on counts for breach of contract, and for breach  
24 of the implied covenant of good faith and fair dealing. On March 27, 2014, a final judgment was  
25 entered against the Debtor in the amount of \$6,227,448.57, after Plaintiff filed a motion for  
26 summary judgment. (Ex. No. 12). After the judgment was entered in Arizona, Plaintiff then  
27 took steps to have the judgment registered in Clark County, Nevada. When the Debtor filed his  
28 voluntary Chapter 7 petition on July 9, 2015, all further efforts to enforce the Arizona judgment  
were stayed under Section 362(a)(1).

<sup>4</sup> Plaintiff’s civil action in Arizona involved the Debtor’s guaranty of a loan for a real  
estate project in Kingman, Arizona. Debtor’s activities in real estate development apparently led  
to additional judgments entered against him in Clark County, Nevada, as well as the initiation of  
criminal proceedings for fraud that ultimately were dismissed.

1 withdrawn. After the close of evidence, oral arguments were presented by counsel, and the  
2 matter was taken under submission.

### 3 SUMMARY OF THE DISPUTE

4 Plaintiff alleges that the Debtor filed under penalty of perjury a variety of documents in  
5 this bankruptcy proceeding that are incomplete or false, including his Schedules, SOFA, and  
6 CMI Statement. Plaintiff also alleges that the Debtor's testimony at the 341 Meeting was  
7 incomplete or inaccurate. It therefore asserts that the Debtor has committed various false oaths  
8 requiring a denial of discharge under Section 727(a)(4)(A).

9 Plaintiff further alleges that the Debtor did not accurately disclose his transfer of various  
10 assets within one year before the bankruptcy was filed. Moreover, it alleges that the Debtor  
11 transferred interests in undisclosed assets after the bankruptcy was filed. As a result, Plaintiff  
12 asserts that the Debtor has transferred or concealed assets with intent to hinder, delay or defraud  
13 creditors before and after commencement of the case. For these additional reasons, Plaintiff  
14 argues that the Debtor should be denied a discharge under Sections 727(a)(2)(A) and  
15 727(a)(2)(B).

16 Debtor acknowledges that there were inaccuracies in his bankruptcy documents but  
17 claims that he had no intent to deceive. Debtor also asserts that he does not have an interest in  
18 the asset that he is alleged to have concealed or transferred.

19 The court has considered the exhibits that were admitted into evidence, along with the  
20 Debtor's written and live testimony. The court concludes that the Plaintiff has met its burden  
21 under Section 727(a)(4)(A) by a preponderance of the evidence. Discharge therefore must be  
22 denied. Because discharge is denied under that provision, it is unnecessary for the court to reach  
23 the Plaintiff's additional claims under Sections 727(a)(2)(A) and 727(a)(2)(B).

### 24 DISCUSSION

25 Denying a discharge under Section 727 is an extreme result. As such, an objection to  
26 discharge must be construed strictly against the objecting party and liberally in favor of the  
27 debtor. See First Beverly Bank v. Adeeb (In re Adeeb), 787 F.2d 1339, 1342 (9th Cir. 1986);  
28 Cheung v. Fletcher (In re Cheung), 551 B.R. 455, 460 (Bankr. E.D. Cal. 2016); Shapiro v. Smith

1 (In re Smith), 481 B.R. 633, 637 (Bankr. D. Nev. 2012).

2 Section 727(a) provides that an individual debtor shall be granted a discharge “unless -  
3 (4) the debtor **knowingly and fraudulently**, in connection with the case - (A) **made a false oath**  
4 **or account** . . .” 11 U.S.C. § 727(a)(4)(A). (Emphasis added). Establishing that a debtor  
5 “knowingly” and “fraudulently” made a false oath requires proof of actual intent. See Devers v.  
6 Bank of Sheridan (In re Devers), 759 F.2d at 753. Actual intent may be established by  
7 circumstantial evidence or inferences drawn from the debtor’s conduct. 759 F.2d at 753-54.

8 A false oath may be a false statement or an omission in the schedules and statements filed  
9 by the debtor. See Riley v. Searles (In re Searles), 317 B.R. 368, 377 (B.A.P. 9th Cir. 2004);  
10 Fogal Legware of Switzerland, Inc. v. Wills (In re Wills), 243 B.R.58, 62 (B.A.P. 9th Cir. 1999);  
11 Kavanagh v. Leija (In re Leija), 270 B.R. 497, 502 (Bankr. E.D. Cal. 2001). A debtor has a duty  
12 to prepare his or her schedules “carefully, completely and accurately.” In re Mohring, 142 B.R.  
13 389, 394 (Bankr. E.D. Cal.1992), aff’d mem., 153 B.R. 601 (B.A.P. 9th Cir. 1993), aff’d mem.,  
14 24 F.3d 247 (9th Cir. 1994). It is not the bankruptcy debtor’s role to decide the importance of  
15 the information required by the schedules and statements. See Stanley v. Hoblitzell (In re  
16 Hoblitzell), 223 B.R. 211, 215-16 (Bankr. E.D. Cal. 1998).

17 “A false statement is material if it bears a relationship to the debtor’s business  
18 transactions or estate, or concerns the discovery of assets, business dealings, or the existence and  
19 disposition of the debtor's property.” In re Wills, 243 B.R. at 62, citing Chalik v. Moorefield (In  
20 re Chalik), 748 F.2d 616, 618 (11th Cir. 1984). A false statement or omission may be material  
21 even in the absence of direct financial prejudice to creditors. See In re Chalik, 748 F.2d at 618;  
22 Ford v. Ford (In re Ford), 159 B.R. 590, 593 (Bankr. D. Or. 1993).

23 Because a discharge is available only for honest but unfortunate debtors, a culpable  
24 failure to disclose assets cannot be absolved by asserting that no harm likely would have  
25 occurred. See Bernard v. Scheaffer (In re Bernard), 96 F.3d 1279, 1281-82 (9th Cir. 1996);  
26 Cooke v. Renshaw (In re Cooke), 2016 WL 4039699 at \*15 (B.A.P. 9th Cir. 2016). Nor is an  
27 amendment to a debtor’s schedules (after inadequacies are revealed) necessarily convincing if  
28 the debtor’s intent to hinder, delay or defraud is otherwise established by the record. Compare

1 Beauchamp v. Hoose (In re Beauchamp), 236 B.R. 727, 733 (B.A.P. 9th Cir. 1999); see also  
2 Phillips v. United States Trustee (In re Phillips), 2010 WL 6259975 at \*9-10 (B.A.P. 9th Cir.  
3 2010).

4 The value of any asset omitted from a debtor's schedules is not alone determinative of an  
5 intention to make a false oath. See In re Wills, 243 B.R. at 64. A person acts knowingly if he or  
6 she acts deliberately and consciously. See Roberts v. Erhard (In re Roberts), 331 B.R. 876, 883  
7 (B.A.P. 9th Cir 2005), aff'd, 241 Fed.Appx. 420 (9th Cir 2007). A debtor's education and  
8 experience may be considered in evaluating the debtor's knowledge of a false statement. See  
9 Montey Corporation v. Maletta (In re Maletta), 159 B.R. 108, 112 (Bankr. D. Conn. 1993);  
10 Perrine v. Speier (In re Perrine), 2008 WL 8448835 at \*8 (B.A.P. 9th Cir. 2008).

11 That a debtor knows his or her schedules are false does not mean that the debtor intends  
12 to defraud, however, since Section 727(a)(4) requires proof of both knowledge and fraudulent  
13 conduct. See Khalil v. Developers Surety and Indemnity (In re Khalil), 379 B.R. 163, 174  
14 (B.A.P. 9th Cir. 2007). To prove that the debtor acted fraudulently, the plaintiff must show that  
15 the false oath was made, that the debtor knew the oath was false at the time, and that the oath  
16 was made with the intention and purpose of deceiving creditors. Id. at 173.

17 Proof of a debtor's recklessness in making oaths does not alone establish that the oaths  
18 were knowingly made, but recklessness may be evidence of the debtor's fraudulent intent. See  
19 In re Khalil, 379 B.R. at 173. "For instance, multiple omissions of material assets or  
20 information may well support an inference of fraud if the nature of the assets or transactions  
21 suggests that the debtor was aware of them at the time of preparing the schedules and that there  
22 was something about the assets or transactions which, because of their size or nature, a debtor  
23 might want to conceal." Id. at 175, quoting Garcia v. Coombs (In re Coombs), 193 B.R. 557,  
24 565-66 (Bankr. S.D. Cal. 1996). A debtor's reckless indifference to his or her duty of full  
25 disclosure may be motivated by a desire "to protect family or friends from intrusive discovery or  
26 preference or fraudulent transfer actions, or simply to make investigation difficult for the  
27 bankruptcy trustee or creditors." In re Khalil, 379 B.R. at 176. Proof of motive, however, is not  
28 required. Id. at 176-77.

1 In this case, Plaintiff has met its burden of establishing that the documents filed by the  
2 Debtor in his bankruptcy proceeding contain false statements. Specifically, Plaintiff  
3 demonstrated that the Debtor omitted from his Schedules his interest in an entity known as  
4 Witcco, LLC (“Witcco”).<sup>5</sup> It also demonstrated that the Debtor omitted from his initial  
5 Schedules his legal interest in four parcels of real property that had been awarded to his former  
6 wife, Elizabeth Provenza (“Provenza”) under a 2012 amended divorce decree (“Divorce  
7 Decree”) (Debtor’s Ex. No. 1), but which he had not quitclaimed to Provenza prior to filing his  
8 bankruptcy petition.<sup>6</sup> Plaintiff demonstrated that the Debtor omitted from his Schedules, his  
9 SOFA and his CMI Statement, income that he received from Provenza and Witcco prior to the  
10 filing of the bankruptcy petition.<sup>7</sup> It also demonstrated that the Debtor failed to disclose in his  
11 Schedules any claims of Provenza or Witcco for loans or advances made prior to the  
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15 <sup>5</sup> Ex. Nos. 1, 2, 3, 5, 6, 7, 8, 9, and 10 consist of copies of the original bankruptcy petition  
16 and Schedules, as well as any amendments to those documents, filed by the Debtor in this case.  
None of them disclose the Debtor’s interest in Witcco.

17 <sup>6</sup> Ex. No. 9 is a copy of the Debtor’s amended Schedule “A,” filed on October 6, 2015, on  
18 which the Debtor listed the four parcels of real property that had been awarded to Provenza  
19 under the Divorce Decree.

20 <sup>7</sup> Ex. No. 3 includes a copy of Debtor’s original Schedule “I” attesting that he was not  
21 employed and was receiving no gross income on the bankruptcy petition date. Also included in  
22 Ex. No. 3 is a copy of the Debtor’s original SOFA attesting that he had no employment income  
23 during the two years preceding the filing of the bankruptcy case. Ex. No. 4 is a copy of the  
24 Debtor’s CMI Statement attesting that he had received no gross wages and no net income from  
25 business operations during the six month period before filing his bankruptcy petition. Ex. No. 5  
26 includes a copy of the Debtor’s amended Schedule “I” attesting that he was not employed and  
27 was receiving no gross wages on the petition date, but disclosing that he was receiving \$500 in  
28 other monthly income described as a “household contribution from ex-wife.” Ex. No. 8 includes  
a copy of an amended SOFA again attesting the Debtor had no employment income during the  
two years immediately preceding the bankruptcy filing. Ex. No. 21 is a copy of the transcript of  
the Debtor’s testimony at the 341 Meeting conducted on August 14, 2015, at which he stated that  
he had no job and was unemployable. Ex. No. 22 is a copy of the transcript of the Debtor’s  
testimony at the 341 Meeting conducted on August 28, 2015, at which he stated that he performs  
odd jobs for his ex-wife in exchange for allowing him to park and live in a motor home located  
on her residential property.

1 commencement of the bankruptcy proceeding.<sup>8</sup>

2 That these items were material, has also been established. Full and accurate disclosure of  
3 the Debtor's interest in Witcco and his sources of income were necessary to the Trustee's  
4 investigation of the Debtor's financial affairs and to determine possible distribution to creditors.  
5 Separate from the interests of the Trustee, the interests of the Plaintiff, as well as the many other  
6 creditors who had pursued the Debtor prior to bankruptcy, required complete and accurate  
7 disclosures by the Debtor.<sup>9</sup>

8 The evidence and testimony regarding Witcco was diaphanous at best. Unfortunately, no  
9 deposition or live testimony was offered from Provenza, the purported sole-owner of Witcco,  
10 even though Debtor claimed that Provenza would not give him an interest in Witcco unless he  
11 paid his own funds into the company. The official website for Witcco, copyrighted 2015, listed  
12 the Debtor as the Project Development Manager, with Provenza listed as the President. (Ex. No.  
13 13). Eric Frye and Garth Gamble are identified, respectively, as the Construction Manager and  
14 Business Development Manager for Witcco. Unfortunately, no deposition or live witness  
15 testimony was offered from these individuals as to the ownership of Witcco. A business entity  
16 search for Witcco indicated that the company was created on January 16, 2014. (Ex. No. 15). A  
17 business license search for December 2015, listed the Debtor as the primary contact for Witcco.  
18 (Ex. No. 16). The 2014 profit and loss Schedule "C" to the IRS Form 1040 prepared for  
19 Provenza shows total gross receipts for Witcco of \$67,641. (Ex. No. 18). The 2015 profit and  
20 loss Schedule "C" to the IRS Form 1040 prepared for Provenza, however, shows total gross  
21 receipts for Witcco of \$931,286. Debtor testified that Witcco is no longer profitable and has  
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23 <sup>8</sup> Ex. Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 were all filed in the Debtor's bankruptcy case  
24 and none of them list Provenza or Witcco as a creditor of the Debtor.

25 <sup>9</sup> At the time Debtor filed his Chapter 7 petition, he claimed all of his assets as exempt on  
26 his Schedule "C" as well as his social security income. It is clear that the Plaintiff would have  
27 had difficulty collecting on its judgment because the Debtor's scheduled assets portrayed him as  
28 being judgment proof. What would have happened if he simply disclosed a possible legal  
interest in Witcco, the four pieces of real property that were awarded to Provenza under the  
divorce decree, and his sources of income? In all likelihood there would have been no  
objections to his discharge.



1 stopped doing business, but there are no records or testimony from Provenza to support these  
2 assertions.

3 As discussed in more detail below, the notations appearing on various checks written on  
4 the Witcco checking account providing an “owners draw” to the Debtor suggests that the Debtor  
5 has an equity position in Witcco. (Ex. No. 17). Debtor testified that he did not have an interest  
6 in Witcco even when the checks he received indicate the contrary. Moreover, Debtor testified  
7 that in order to obtain business, he misrepresented to potential clients of Witcco that he was an  
8 owner of the company. Debtor also acknowledged that he signed many checks on behalf of  
9 Witcco, some payable to himself, others payable to cash, and still others payable for the services  
10 of his bankruptcy counsel. Debtor attested that some of the funds he received from Witcco or  
11 Provenza actually were advances or loans, rather than owner draws, but he also acknowledged  
12 that none of the advances or loans that he received before bankruptcy were disclosed as claims  
13 by Witcco or Provenza.

14 On this record, the court concludes that the Plaintiff has established that the Debtor has  
15 an equity interest in Witcco for which disclosure was required when the Debtor filed his  
16 bankruptcy petition on July 9, 2015. The Trustee, as well as the Debtor’s creditors, should have  
17 been able to investigate the value of that interest. Even though the Debtor was actively involved  
18 in the operations of Witcco after he filed his bankruptcy petition, he never disclosed any interest  
19 even though he repeatedly amended his Schedules and bankruptcy petition for other purposes.  
20 Nor did the Debtor disclose any income or other remuneration received from Witcco, whether  
21 characterized as owner’s draws, advances, or loans.

22 Based on the Debtor’s testimony, both in court and as reflected in 341 Meeting  
23 transcripts, the court concludes that the omissions of information were the result of deliberate  
24 and conscious acts. Debtor’s background as commissioner for Nye County, as well as a member  
25 of the Pahrump planning commission and the local hospital board, provided him knowledge of  
26 the consequences of nondisclosure of relevant information. While his real estate experience does  
27 not translate directly to the bankruptcy arena, it is sufficient to make him aware of the  
28 importance of full, complete, and accurate disclosure of information when legally required.

1 There is no question that the Debtor was aware that he was signing his schedules and statements  
2 under penalty of perjury.

3 At the 341 Meeting, Debtor was questioned as to the failure to include the four parcels of  
4 real property that were awarded to Provenza under the Divorce Decree but in which he remained  
5 on record title. Only after being questioned did the Debtor ever amend his real property  
6 Schedule “A” to include those parcels, but he never amended his personal property Schedule “B”  
7 to disclose his interest in Witcco.

8 The court in In re Coombs emphasized the necessity of facts “placed in evidence that  
9 must point toward” the debtor’s fraudulent intent, 193 B.R. at 564-65, even when the presence of  
10 a false oath and the debtor’s knowledge already has been established. A debtor’s fraudulent  
11 intent may be inferred from his or her reckless indifference to the truth contained or omitted  
12 from the schedules and statements. See In re Khalil, 379 B.R. at 175-76. Proof of the debtor’s  
13 motive to conceal information, while not required, may provide additional evidence of fraudulent  
14 intent. 379 B.R. at 176. The appellate court in Khalil observed:

15 A bankruptcy court might find that a debtor’s reckless indifference  
16 to the truth is part of an attempt to fly “below the trustee’s radar  
17 screen”...or **to protect family or friends from intrusive  
18 discovery or preference or fraudulent transfer actions, or  
19 simply to make investigation difficult for the bankruptcy  
20 trustee or creditors.** Alternatively, the court might never know  
21 the debtor’s motive, but the number of misstatements or omissions,  
22 or the size of nature of a single one, might suffice to support a  
23 finding that a debtor knowingly and fraudulently made a false oath  
24 or account.

25 Id. (Emphasis added.)

26 Generally, a debtor who relies in good faith on the advice of counsel lacks the intent  
27 necessary to deny a discharge. See United States Trustee v. Killian (In re Killian), 2008 WL  
28 5834017 at \*4 (Bankr. D. Or. 2008), citing, e.g., In re Adeeb, 787 F.2d at 1343 and In re Leija,  
270 B.R. at 503. On examination by his own counsel, however, Debtor acknowledged the many  
inaccuracies in the documents he filed under penalty of perjury as well as in his testimony at the  
341 Meeting. More important, he testified that at the time he filed the documents and provided  
the testimony, he “should have paid more attention, but he just didn’t care” at the time. Debtor

1 testified that he was under extreme financial, family, and personal distress at the time, but  
2 acknowledges that those circumstances are not an excuse. The court has no doubt that the  
3 Debtor currently regrets his previous conduct, but that is not the test. At the very least, Debtor  
4 admits to reckless indifference to the truthfulness of the written representations in his bankruptcy  
5 documents as well as his testimony at the 341 Meeting.

6 Debtor's own testimony, however, also suggests more. Bank records for Witcco were  
7 admitted into evidence. (Ex. No. 17). Those records include copies of three separate cashier's  
8 checks dated May 1, 2014, July 11, 2014, and December 16, 2014, payable to Witcco in the  
9 amounts of \$3,000, \$5,000, and \$10,000, apparently purchased from Nevada State Bank by,  
10 respectively, "Liz and Henry Neth," "Henry and Liz Neth," and "Henry Neth." The records also  
11 include a copy of a Witcco check dated December 15, 2014, payable to Dirtroad, Inc., having a  
12 memo line describing the payment as "Henry Draw." The record also includes copies of no less  
13 than six checks issued by Witcco from January 2015 to June 2015, payable to the Debtor, having  
14 a memo line describing the payment as an "owner draw." The record also includes checks from  
15 Witcco dated August 18, 2015 and August 12, 2015, i.e., after the Debtor commenced the  
16 bankruptcy case, to Dirtroad, Inc., having a memo line describing the payment as "Henry Draw  
17 match for Eric Lawyer" and "Henry Draw match for Eric car payoff." The record also includes  
18 multiple Witcco checks dated on or after December 2, 2015, signed by the Debtor, some of  
19 which are payable to the Debtor's bankruptcy counsel, some of which are payable to the Debtor,  
20 and one of which is payable to cash and endorsed by the Debtor. The memos on the checks  
21 signed by the Debtor suggest that the Debtor received draws from Witcco as an owner of the  
22 entity payable directly to himself, or to his wholly-owned entity, Dirtroad, Inc.<sup>10</sup>

23 Debtor testified that he did not purchase the cashier's checks that were deposited to  
24 Witcco in 2014, and that he never put any money into Witcco except for a \$22.44 check he  
25 received from the U.S. Treasury. He apparently believed that the cashier's checks were drawn

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27 <sup>10</sup> According to the Divorce Decree, Debtor and Provenza have joint custody of a teenage  
28 daughter even though Debtor's monthly payment Schedule "J" does not list any dependents.  
(ECF No. 12). Debtor testified that he and Provenza reconciled in November 2015 and that they  
now live together in Provenza's residence.

1 from some type of credit line at Nevada State Bank that he had with Provenza before they were  
2 divorced, based on the same account number appearing along the bottom of each check. A  
3 comparison to the Divorce Decree, however, reflects no credit lines or debts connected to  
4 Nevada State Bank that were divided between the parties. That the cashier's checks had the  
5 same account number is consistent with the checks being drawn on the Nevada State Bank's  
6 funds, rather than the purchaser of the checks. On their face, the three cashier's checks suggest  
7 that the Debtor paid funds into Witcco in 2014.

8 Debtor testified that he did not prepare the Witcco checks describing the payments as an  
9 owner's draw. He testified that his ex-wife, Provenza, would not recognize that he had an  
10 ownership interest in Witcco because he had not invested any of his own funds in the business.  
11 If that is correct, it makes even less sense that Provenza would sign checks referring to the  
12 payment as an owner's draw.<sup>11</sup> But Debtor admitted, however, that he represented to potential  
13 customers of Witcco that he was an owner of the company. He maintains that such "puffery"  
14 gave him credibility when he solicited work for Witcco. So while he admittedly was willing to  
15 misrepresent his ownership interest in Witcco for financial gain, Debtor now wants the court to  
16 believe that he really does not have an interest in the same entity. In the face of the documentary  
17 evidence, Debtor's testimony at trial rings hollow. The court might draw a different conclusion  
18 if Provenza credibly testified to corroborate the Debtor's explanations, but no such testimony  
19 was ever offered.

20 But even if Provenza testified that the Debtor had no ownership interest in Witcco,  
21 Debtor's attempt to characterize the payments received from Witcco as something other than  
22 employment income also lacks credibility. During his testimony, Debtor suggested that the  
23 payments may have been advances or loans from Provenza, rather than income received for work  
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26 <sup>11</sup> It makes even less sense that Provenza would have purchased the three cashier's  
27 checks from Nevada State Bank in 2014 identifying the Debtor as the remitter. As pointed out in  
28 the examination by Debtor's counsel, a fourth cashier's check dated May 29, 2014, payable to  
Witcco, was purchased from Nevada State Bank by a remitter identified as Provenza Neth  
Properties LLC. Whoever purchased the cashier's checks included in the record was careful to  
identify the party providing funds to Witcco.

1 performed. This suggestion rings hollow as well, inasmuch as Debtor acknowledged that he  
2 never listed Provenza or Witcco as a creditor in his Schedules who might have prepetition claims  
3 for the moneys advanced.

4 But the Debtor's role with Witcco, even if he had no ownership interest, was described  
5 on Witcco's own website as that of a project development manager. He acknowledged receiving  
6 checks from Witcco dated June 23, 2015, and July 8, 2015, designated as "final contractor pay"  
7 that he deposited into his bank account. If these checks from Witcco were not his income from  
8 employment with Witcco within a month before he filed his bankruptcy petition, then these  
9 payments should have been listed as advances or loans from Witcco constituting prepetition  
10 claims against the Debtor. But as previously observed, neither the payments nor the claims were  
11 listed in any fashion, and the Debtor testified at the 341 Meetings, and in his income Schedule  
12 "I" and in his SOFA, that he was unemployed.

13 Under these circumstances, Plaintiff has established that the inaccuracies in the Debtor's  
14 written statements as well as his oral testimony at the 341 Meeting were the product of reckless  
15 indifference to the truthfulness of his representations. Moreover, the record also suggests that  
16 the Debtor has deliberately and consciously omitted and concealed his interest in Witcco. Thus,  
17 by a preponderance of the evidence, Plaintiff has established all of the elements required by  
18 Section 727(a)(4)(A).

### 19 CONCLUSION

20 In view of the foregoing, Debtor is not entitled to a discharge in this proceeding. A  
21 separate judgment has been entered concurrently with this Memorandum Decision.

22  
23 Copies sent to all parties via BNC and via CM/ECF ELECTRONIC FILING

24 Copies sent via BNC to:

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26 401 SO. FRONTAGE RD. #1  
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