

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA**

Honorable Fredrick E. Clement
Bakersfield Federal Courthouse
510 19th Street, Second Floor
Bakersfield, California

PRE-HEARING DISPOSITIONS

DAY: WEDNESDAY
DATE: APRIL 6, 2016
CALENDAR: 10:30 A.M. CHAPTER 7 ADVERSARY PROCEEDINGS

GENERAL DESIGNATIONS

Each pre-hearing disposition is prefaced by the words "Final Ruling," "Tentative Ruling" or "No Tentative Ruling." Except as indicated below, matters designated "Final Ruling" will not be called and counsel need not appear at the hearing on such matters. Matters designated "Tentative Ruling" or "No Tentative Ruling" will be called.

ORAL ARGUMENT

For matters that are called, the court may determine in its discretion whether the resolution of such matter requires oral argument. See *Morrow v. Topping*, 437 F.2d 1155, 1156-57 (9th Cir. 1971); accord LBR 9014-1(h). When the court has published a tentative ruling for a matter that is called, the court shall not accept oral argument from any attorney appearing on such matter who is unfamiliar with such tentative ruling or its grounds.

COURT'S ERRORS IN FINAL RULINGS

If a party believes that a final ruling contains an error that would, if reflected in the order or judgment, warrant a motion under Federal Rule of Civil Procedure 60(a), as incorporated by Federal Rules of Bankruptcy Procedure 9024, then the party affected by such error shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter either to be called or dropped from calendar, as appropriate, notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860. Absent such a timely request, a matter designated "Final Ruling" will not be called.

1. [12-11008](#)-A-7 RAFAEL ALONSO CONTINUED STATUS CONFERENCE RE:
[15-1044](#) AMENDED COMPLAINT
GORSKI V. CAMACHO 12-10-15 [[44](#)]
PHILLIP GILLET/Atty. for pl.
RESPONSIVE PLEADING

Tentative Ruling

Consistent with the Civil Minute Order, filed February 9, 2016, ECF #56, the court intends to bifurcate the issue of equitable tolling from the remainder of the action and issue a scheduling order. Prior to the hearing, the court requests counsel read and consider the impact of recently decided authority on this issue. *Templeton v. Milbly*, 545 B.R. 613 (9th Cir. B.A.P. February 24, 2016).

2. [12-11008](#)-A-7 RAFAEL ALONSO CONTINUED STATUS CONFERENCE RE:
[15-1049](#) AMENDED COMPLAINT
GORSKI V. ANGULO 12-10-15 [[44](#)]
PHILLIP GILLET/Atty. for pl.
RESPONSIVE PLEADING

Tentative Ruling

Consistent with the Civil Minute Order, filed February 9, 2016, ECF #56, the court intends to bifurcate the issue of equitable tolling from the remainder of the action and issue a scheduling order. Prior to the hearing, the court requests counsel read and consider the impact of recently decided authority on this issue. *Templeton v. Milbly*, 545 B.R. 613 (9th Cir. B.A.P. February 24, 2016).

3. [15-11835](#)-A-7 JAMES/JAMIE CANNON CONTINUED STATUS CONFERENCE RE:
[15-1139](#) COMPLAINT
PARKER V. CANNON ET AL 11-16-15 [[1](#)]
LISA HOLDER/Atty. for pl.

Final Ruling

Judgment entered, the status conference is concluded.

4. [15-11835](#)-A-7 JAMES/JAMIE CANNON STATUS CONFERENCE RE: COMPLAINT
[16-1004](#) 1-7-16 [[1](#)]
CATERPILLAR FINANCIAL SERVICES
CORPORATION V. CANNON
MARK PONIATOWSKI/Atty. for pl.

Final Ruling

The status conference is continued to May 4, 2016, at 10:30 a.m.

5. [15-13991](#)-A-7 JERAD/ALICE SANDERS CONTINUED STATUS CONFERENCE RE:
[16-1003](#) COMPLAINT
DELANO VINE VALLEY, INC. V. 1-6-16 [[1](#)]
SANDERS ET AL
NICHOLAS ANIOTZBEHERE/Atty. for pl.

No tentative ruling.

6. [15-13991](#)-A-7 JERAD/ALICE SANDERS MOTION TO DISMISS ADVERSARY
[16-1003](#) VG-1 PROCEEDING/NOTICE OF REMOVAL
DELANO VINE VALLEY, INC. V. 2-5-16 [[7](#)]
SANDERS ET AL
VINCENT GORSKI/Atty. for mv.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Dismiss Adversary Complaint

Notice: LBR 9014-1(f)(2); no written opposition required

Disposition: Granted in part, denied in part (and any claims dismissed are dismissed without prejudice)

Order: Civil minute order

Plaintiff Delano Vine Valley, Inc. has filed a complaint against Defendants Jerad R. Sanders and Alice M. Sanders, the debtors in the underlying bankruptcy case. The complaint contains claims under § 727(a)(3)(A), (a)(4)(A), (a)(4)(C), (a)(5), and § 523(a)(2)(A) and (a)(2)(B). The Sanderses have moved to dismiss the complaint for (1) lack of standing and (2) failure to state a claim. Delano Vine opposes the dismissal.

LEGAL STANDARDS

Under Federal Rule of Civil Procedure 12(b)(6), a party may move to dismiss a complaint for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6), *incorporated by* Fed. R. Bankr. P. 7012(b). "A Rule 12(b)(6) dismissal may be based on either a lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory." *Johnson v. Riverside Healthcare Sys., LP*, 534 F.3d 1116, 1121-22 (9th Cir. 2008); *accord Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001).

The Supreme Court has established the minimum requirements for pleading sufficient facts. "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (citing *Twombly*, 550 U.S. at 556).

In ruling on a Rule 12(b)(6) motion to dismiss, the court accepts all factual allegations as true and construes them, along with all reasonable inferences drawn from them, in the light most favorable to

the non-moving party. *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001); *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337-38 (9th Cir. 1996). The court need not, however, accept legal conclusions as true. *Iqbal*, 556 U.S. at 678. "A pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.'" *Id.* (quoting *Twombly*, 550 U.S. at 555).

In addition to looking at the facts alleged in the complaint, the court may also consider some limited materials without converting the motion to dismiss into a motion for summary judgment under Rule 56. Such materials include (1) documents attached to the complaint as exhibits, (2) documents incorporated by reference in the complaint, and (3) matters properly subject to judicial notice. *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003); accord *Swartz v. KPMG LLP*, 476 F.3d 756, 763 (9th Cir. 2007) (per curiam) (citing *Jacobson v. Schwarzenegger*, 357 F. Supp. 2d 1198, 1204 (C.D. Cal. 2004)). A document may be incorporated by reference, moreover, if the complaint makes extensive reference to the document or relies on the document as the basis of a claim. *Ritchie*, 342 F.3d at 908 (citation omitted).

STANDING

The Sanderses argue that Delano Vine lacks standing. They assert that because Delano Vine has filed a certificate of dissolution and dissolved, it cannot maintain this action. More specifically, the Sanderses contend that Delano Vine's filing and maintenance of this action, which contains claims under § 523 and § 727, is inconsistent and irreconcilable with statements made in Delano Vine's dissolution certificate. The essence of the Sanders' argument is that prior representations of Delano Vine in its dissolution certificate preclude it from filing this action as a creditor.

Constitutional Standing Principles

"In order to invoke the jurisdiction of the federal courts, a plaintiff must establish the irreducible constitutional minimum of standing, consisting of three elements: injury in fact, causation, and a likelihood that a favorable decision will redress the plaintiff's alleged injury." *Lopez v. Candaele*, 630 F.3d 775, 785 (9th Cir. 2010) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)) (internal quotation marks omitted).

The first element, an injury in fact, means that the plaintiff must have suffered "an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61, 112 S. Ct. 2130, 2136, 119 L. Ed. 2d 351 (1992) (citations omitted) (footnote omitted) (internal quotation marks omitted).

The second element requires "a causal connection between the injury and the conduct complained of," meaning that "the injury has to be fairly trace[able] to the challenged action of the defendant, and not th[e] result [of] the independent action of some third party not before the court." *Id.* at 560 (alterations in original) (internal quotation marks omitted) (ellipses omitted).

Under the third element, "it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Id.* at 561 (internal quotation marks omitted).

The burden of establishing these three elements falls on the party who invokes federal jurisdiction. *Id.* "Since they are not mere pleading requirements but rather an indispensable part of the plaintiff's case, each element must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, *i.e.*, with the manner and degree of evidence required at the successive stages of the litigation. At the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice, for on a motion to dismiss we presum[e] that general allegations embrace those specific facts that are necessary to support the claim. In response to a summary judgment motion, however, the plaintiff can no longer rest on such mere allegations, but must set forth by affidavit or other evidence specific facts, which for purposes of the summary judgment motion will be taken to be true. And at the final stage, those facts (if controverted) must be supported adequately by the evidence adduced at trial." *Id.* at 561 (citations omitted) (internal quotation marks omitted).

Prudential Standing

In addition to satisfying constitutional standing, a plaintiff must also satisfy prudential standing principles.

Prudential standing requires that "a plaintiff . . . assert its own legal rights and . . . not assert the legal rights of others." *Veal v. Am. Home Mortg. Servicing, Inc. (In re Veal)*, 450 B.R. 897, 907 (B.A.P. 9th Cir. 2011).

The Ninth Circuit "has explained [the] prudential limitation on standing as follows: Standing doctrine involves both constitutional limitations on federal-court jurisdiction and prudential limitations on its exercise. The constitutional aspect inquires whether the plaintiff has made out a case or controversy between himself and the defendant within the meaning of Article III by demonstrating a sufficient personal stake in the outcome. The prudential limitations, in contrast, restrict the grounds a plaintiff may put forward in seeking to vindicate his personal stake. Most important for our purposes is that a litigant must normally assert his own legal interests rather than those of third parties." *McCollum v. California Dep't of Corr. & Rehab.*, 647 F.3d 870, 878 (9th Cir. 2011) (quoting *Fleck & Assocs., Inc. v. Phoenix*, 471 F.3d 1100, 1103-04 (9th Cir.2006)).

Analysis

The Sanderses' arguments are not grounded in standing principles. They do not argue that Delano Vine has failed to allege facts showing the elements of constitutional standing. Nor do they contend that Delano Vine is not asserting its own legal rights or that it is not the proper party in interest. Instead, the Sanderses argue that Delano Vine is legally precluded from filing an action against them because of the effect of representations Delano Vine made in its certificate of dissolution filed with the Secretary of State.

At the pleading stage, general factual allegations suffice to meet standing requirements under Supreme Court precedent. The court

presumes that the general allegations embrace those specific facts that are necessary to support the claim.

Here, the complaint contains sufficient factual allegations to support standing, both constitutional and prudential, at this stage of the proceeding. The complaint alleges that Delano Vine is a creditor of the Sanderses. Compl. ¶1. Delano Vine pleads that it provided substantial services to the Sanderses for which it was not paid. Compl. ¶¶ 5-8. A stipulated judgment was entered against the Sanderses in the amount of \$935,796.44, jointly and severally. Compl. ¶ 9. The complaint brings claims against the Sanderses under subsections of § 727 and § 523(a)(2)(A). These statutory subsections would, if Delano Vine succeeds, make the Sanderses' debt to Delano Vine nondischargeable. The factual basis for these claims include the Sanderses' nondisclosure of assets in their bankruptcy case, their transfer of assets, and other actions, which, if true, could make the Sanderses' debt to Delano Vine, and potentially all debts in this case, nondischargeable.

As a result, the allegations are sufficient to show constitutional standing. Delano Vine has alleged a concrete injury in fact (the creation of the debt and the actions taken by the Sanderses to prevent payment of the debt both before and at the time of this bankruptcy case), causation of such injury by the Sanderses' actions, and likelihood of redressibility of the injury by a favorable decision (a favorable decision for Delano Vine in this adversary provides an avenue for ongoing collection efforts extending into the future).

Prudential standing is also present, as Delano Vine is asserting its own legal rights, and not the rights of another. This is no less true because of representations made by Delano Vine in a dissolution certificate. Whether or not Delano Vine's representations in a different forum (a filing with the California Secretary of State) affect its ability to obtain the relief sought is an issue unrelated to whether Delano Vine has asserted its own legal rights. The Sanderses have not suggested that Delano Vine's rights belong to a third party or a party other than Delano Vine. Prior acts or representations made by Delano Vine in a different forum may constitute the basis for the Sanderses' assertion of a defense against the rights Delano Vine asserts, but they do not alter the fact that Delano Vine is asserting its own rights in the first instance.

And Delano Vine, as a creditor, has statutory standing under § 727(a) and (c), and § 523(c). Under § 727(c)(1), Delano Vine qualifies as a creditor for purposes of this stage in the litigation. Similarly, under § 523(c)(1), Delano Vine is plainly the creditor to whom the debts referred to in the complaint are owed.

Dissolution Certificate

Even though the effect of the dissolution certificate is not an issue of standing, the court rejects the argument that the mere filing of a certificate of dissolution precludes a party from participation in litigation. For purposes of this analysis, the court assumes, as the parties do, that Delano Vine filed a certificate of dissolution. The court notes that Delano Vine states that resolution of the Sanders' debt to it is the only aspect of Delano Vine's affairs that remains unresolved.

California Corporations Code section 2010 provides in pertinent part: "(a) A corporation which is dissolved nevertheless continues to exist for the purpose of winding up its affairs, prosecuting and defending actions by or against it and enabling it to collect and discharge obligations, dispose of and convey its property and collect and divide its assets, but not for the purpose of continuing business except so far as necessary for the winding up thereof. (b) No action or proceeding to which a corporation is a party abates by the dissolution of the corporation or by reason of proceedings for winding up and dissolution thereof." Cal. Corp. Code § 2010(a), (b).

A fairly recent published appellate decision in California has held that a "[corporation] continues to exist for the purpose of winding up its affairs, including prosecuting lawsuits to recover sums due or owing to it or to recover any of its property." *Favila v. Katten Muchin Rosenman LLP*, 188 Cal. App. 4th 189, 212, 115 Cal. Rptr. 3d 274, 292 (2010). It further reasoned that "a corporation's dissolution is best understood not as its death, but merely as its retirement from active business." *Id.* at 213. The court will rely on *Favila*, as it is a published decision and is consistent with section 2010(a) of the Corporations Code, rather than the unpublished decision cited by the Sanderses, *Mongols Nation Motorcycle Club, Inc. v. City of Lancaster*, 145 Cal. Rptr. 3d 122 (Cal. Ct. App. 2012) (In denying review, the California Supreme Court ordered that *Mongols Nation* be not official published.).

Thus, winding up of a corporation is permitted under California law, and this "winding up" expressly includes prosecuting and defending actions and collecting and discharging obligations. Each claim in this action would qualify as prosecution of an action and as collection of an obligation that would fall within the scope of a dissolved corporation's permitted activities.

CLAIMS OBJECTING TO DISCHARGE UNDER § 727

Section 727(a)(3)

An objection to discharge under § 727(a)(3) requires the plaintiff to prove that (1) the debtor failed to maintain and preserve adequate records, and (2) that failure makes it impossible to ascertain the debtor's financial condition and material business transactions. *Landsdowne v. Cox (In re Cox)*, 41 F.3d 1294, 1296 (9th Cir. 1994). This subsection does not require absolute completeness in making or keeping records. *Caneva v. Sun Cmtys. Operating Ltd. P'ship (In re Caneva)*, 550 F.3d 755, 761 (9th Cir. 2008) (citing *Rhoades v. Wikle*, 453 F.2d 51, 53 (9th Cir. 1971)).

Instead, the debtor must "present sufficient written evidence which will enable his creditors reasonably to ascertain his present financial condition and to follow his business transactions for a reasonable period in the past." *Id.* Thus, § 727(a)(3) imposes an affirmative duty on the debtor to create books and records that accurately document his business affairs. *Id.* at 762.

In this case, The Sanderses have argued that they have adequate records of their finances and that Delano Vine has not attempted to obtain the records that are the basis for this claim. These arguments are misplaced in the context of a Rule 12(b)(6) motion as they attempt to introduce facts outside the confines of the complaint.

But the complaint contains insufficient factual content to allow the court to infer reasonably that the defendant is liable for a claim under § 727(a)(3). The complaint merely repeats the language of the statute without adding any plausible factual specifics, such as when the documents or records were concealed, destroyed, mutilated, or falsified. In addition, the claim does not indicate plainly what documents are within the scope of this claim. Paragraph 13 of the complaint does, however, mention that documents transferring 5805 Grandifloras Dr., Bakersfield, CA ("Grandifloras property") were not signed. But this paragraph does not state that the documents do not exist or were destroyed, concealed, falsified, or unpreserved.

This claim will be dismissed without prejudice.

Section 727(a)(4)(A)

An objection to discharge under § 727(a)(4)(A) requires the plaintiff to prove that (1) the debtor made a false oath (or account) in connection with his own bankruptcy case; (2) the oath related to a material fact; (3) the oath was made knowingly; and (4) the oath was made fraudulently. *Retz v. Samson (In re Retz)*, 606 F.3d 1189, 1197 (9th Cir. 2010). As to the first element, "[a] false statement or an omission in the debtor's bankruptcy schedules or statement of financial affairs can constitute a false oath." *Id.* As to the second element, a fact is material "if it bears a relationship to the debtor's business transactions or estate, or concerns the discovery of assets, business dealings, or the existence and disposition of the debtor's property." *Id.* at 1198.

Since this is a claim alleging fraud, Rule 9(b) applies. This rule's heightened pleading standard requires a plaintiff to "state with particularity the circumstances constituting fraud." Fed. R. Civ. P. 9(b), incorporated by Fed. R. Bankr. P. 7009. A plaintiff must include the "who, what, when, where, and how" of the fraud. *Vess v. Ciba-Geigy Corp. U.S.A.*, 317 F.3d 1097, 1106 (9th Cir. 2003).

Delano Vine has pleaded plausible factual content to show that the Sanderses made false oaths or accounts in connection with their bankruptcy case, and that those oaths related to material facts, such as real property assets, business / employment income, the purpose for real property transfers, and business interests. The claim contains the requisite factual content that would permit an inference that the Sanderses' false statements in their schedules were made knowingly and fraudulently. The "who, when, and where" of the fraud may be reasonably inferred from the fact that the statements were made in the Sanderses' bankruptcy schedules, which have a filing date and have been signed under penalty of perjury by the Sanderses.

While Delano Vine might have included more information regarding the "what and how" of the fraud, the court may draw reasonable inferences from the facts alleged in the light most favorable to Delano Vine as the non-movant. Such reasonable inferences include that the false oaths were made knowingly—the Sanderses would know when completing their schedules that they had businesses other than the one listed, that they owned real properties, that they had business or employment income, and that they had made transfers for a purpose other than the purpose alleged. Another reasonable inference is that the Sanderses had fraudulent intent—they declared under penalty of perjury that they read the schedules and that the schedules were true and correct, Fed. R. Evid. 201, and the only reason to make false statements in the

schedules knowingly would be to defraud the trustee and creditors of the estate by attempting to shield assets from them.

The motion to dismiss inappropriately argues that Delano Vine has failed to "prove by a preponderance of evidence" several of the elements of a § 727(a)(4)(A) claim. This mischaracterizes the standard on a motion to dismiss, where evidence is not considered.

This claim will not be dismissed.

Section 727(a)(4)(C)

An objection to discharge under § 727(a)(4)(C) requires the plaintiff to prove that (1) the debtor gave, offered, received, or attempted to obtain money, property, or advantage, or promise of these for the purpose of acting or forbearing to act in or in connection with the debtor's case; (2) the debtor did so knowingly; and (3) the debtor did so fraudulently. See 6 *Collier on Bankruptcy* ¶ 727.06, at 727-42 (16th ed. 2012). This subsection is intended to cover bribery and extortion.

This claim will be dismissed because the court cannot understand the factual basis for it from the factual content alleged. Paragraph 44 is confusing and unclear about how the Sanderses' transfers of properties were made in exchange "for [a person's] acting or forbearing to act" in connection with this bankruptcy case. In addition, it is unclear how these transfers were fraudulent.

This claim will be dismissed without prejudice.

Section 727(a)(5)

Section 727(a)(5) provides for denial of discharge "the debtor has failed to explain satisfactorily, before determination of denial of discharge under this paragraph, any loss of assets or deficiency of assets to meet the debtor's liabilities." 11 U.S.C. § 727(a)(5). "Under § 727(a)(5) an objecting party bears the initial burden of proof and must demonstrate: (1) 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 order of relief granted, the debtor no longer owned the assets; and (3) the bankruptcy pleadings or statement of affairs do not reflect an adequate explanation for the disposition of the assets." *In re Retz*, 606 F.3d 1189, 1205 (9th Cir. 2010) (quoting *Olympic Coast Invest., Inc. v. Wright (In re Wright)*, 364 B.R. 51, 79 (Bankr. D. Mont. 2007)).

The court finds that this claim meets the minimal requirements to survive a Rule 12(b)(6) motion. Although the underlying factual details of the transfers of real properties and other assets are confusing and ambiguous in the complaint (and properly the subject of amendment in any amended complaint filed), they are sufficient to provide a plausible factual basis for this § 727(a)(5) claim, when considered together with the allegation that the Sanderses failed to explain in their schedules or in their § 341 meeting or otherwise the loss or transfer of assets.

This claim will not be dismissed.

CLAIMS FOR NONDISCHARGEABILITY UNDER § 523

Section 523(a)(2)(A)

To succeed on a nondischargeability claim under § 523(a)(2)(A), a creditor must establish five elements: "(1) misrepresentation, fraudulent omission or deceptive conduct by the debtor; (2) knowledge of the falsity or deceptiveness of his statement or conduct; (3) an intent to deceive; (4) justifiable reliance by the creditor on the debtor's statement or conduct; and (5) damage to the creditor proximately caused by its reliance on the debtor's statement or conduct." *Turtle Rock Meadows Homeowners Ass'n v. Slyman (In re Slyman)*, 234 F.3d 1081, 1085 (9th Cir. 2000). "The purposes of [§ 523(a)(2)(A)] are to prevent a debtor from retaining the benefits of property obtained by fraudulent means and to ensure that the relief intended for honest debtors does not go to dishonest debtors." *Id.*

In this case, the Sanderses' promise in a forbearance agreement forms the basis of this claim. The Ninth Circuit has specifically elaborated what standards apply in the context of a forbearance agreement. "Focusing on the final element, the Ninth Circuit has clarified the nature of proximate cause in a renewal context. To prove causation on a § 523(a)(2)(A) claim based on an extension, a renewal, or a refinance, a creditor must show "that it had valuable collection remedies at the time it agreed to renew, and that such remedies lost value during the renewal period." *In re Escoto*, Adv. No. 13-01058, 2015 WL 2343461, at *4 (B.A.P. 9th Cir. May 15, 2015) (quoting *Stevens v. Nw. Nat'l Ins. Co. (In re Siriani)*, 967 F.2d 302 (9th Cir.1992)). The complaint does not sufficiently and clearly plead its "valuable collection remedies" at the time the forbearance agreement was entered that were then lost during the forbearance period. Although the complaint states a lis pendens was released as a result of the false promise, the complaint nowhere alleges the property to which this lis pendens attached, nor does the complaint allege whether the same collection device could be used at this time. The complaint also fails to address whether the reliance was justifiable (reasonable reliance is not the standard).

This claim will be dismissed without prejudice.

Section 523(a)(2)(B)

"According to the Ninth Circuit, a creditor seeking to establish § 523(a)(2)(B) nondischargeability must show [that] it provided the debtor with money, property, services or credit based on a *written representation of fact* by the debtor as to the debtor's *financial condition*." Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 22:547 (rev. 2015) (citing Ninth Circuit cases). Delano Vine fails to state a claim under § 523(a)(2)(B) because it has not pleaded a written representation of the Sanderses' financial condition was made. For this reason alone, this claim will be dismissed without prejudice.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

The Sanderses motion to dismiss the present adversary complaint has been presented to the court. Having reviewed the complaint and the papers filed in support of and opposition to the motion, and having heard the arguments of counsel, if any, and good cause appearing,

IT IS ORDERED that the motion is granted in part and denied in part. The court dismisses the following claims without prejudice to amendment: the § 727(a)(3) claim, the § 727(a)(4)(C) claim, the § 523(a)(2)(A) claim, and the § 523(a)(2)(B) claim. All other claims will not be dismissed.

IT IS FURTHER ORDERED that an amended complaint may be filed no later than 21 days after service of this order.

7.	<u>15-13991</u> -A-7 JERAD/ALICE SANDERS <u>16-1016</u> NUNEZ AG, INC. V. SANDERS ET AL TERRENCE EGLAND/Atty. for pl.	STATUS CONFERENCE RE: COMPLAINT 2-2-16 [<u>1</u>]
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Final Ruling

The status conference is continued to May 4, 2016, at 10:30 a.m.