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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re) Case No. 12-93176-E-7
LESAMARIE DEL DON,)
Debtor.)
_____))
JENNIFER KUBALA and) Adv. Pro. No. 13-9007
SHARON STENCIL,)
Plaintiffs,)
v.)
LESAMARIE DEL DON,)
Defendant.)
_____)

This memorandum decision is not approved for publication and may not be cited except when relevant under the doctrine of law of the case or the rules of claim preclusion or issue preclusion.

MEMORANDUM OPINION AND DECISION

This Adversary Proceeding was commenced by Jennifer Kubala and Sharon Stencil ("Plaintiffs") requesting their claim against Lesa Marie Del Don ("Defendant-Debtor") be determined nondischargeable in Defendant-Debtor's Chapter 7 Bankruptcy Case (Bankr. E.D. Cal. No. 12-93176). Jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(a), and the referral of bankruptcy cases and all related matters to the bankruptcy judges in this District. ED Cal. Gen Order 182, 223. This Adversary

1 Proceeding is a core matter arising under Title 11, including
2 11 U.S.C. §§ 523(a). 28 U.S.C. § 157(b)(2)(I). In addition, the
3 Parties have expressly consented on the record pursuant to
4 11 U.S.C. § 157(c)(2) that for all non-core matters in this
5 Adversary Proceeding, the final orders and judgment shall be
6 entered by the bankruptcy judge.

7 **SUMMARY OF ADVERSARY PROCEEDING ISSUES**

8 This Adversary Proceeding arises out of the 2008 purchase by
9 Plaintiffs of the Defendant-Debtor's business known as "Consign
10 Couture" ("Business"). This Business is identified in the purchase
11 and sale agreement both as a dba of the Defendant-Debtor and a
12 limited liability company.¹ The purchase price was \$30,000.00,
13 with the property being sold ("Assets") described as,

- 14 A. Consign Couture, located on Dolores Street 3 SW of 5th,
15 Carmel, California;
- 16 B. eBay Seller User ID only "consigncouture;"
- 17 C. www.ConsignCouture.com Website; and
- 18 D. Additional personal property described in a two-page
19 exhibit with the Purchase Agreement.

20 After the sale closed and Plaintiffs were operating the
21 Business, Plaintiffs were notified by the California State Board of
22 Equalization that a substantial unpaid sales tax liability existed
23 for the Business at the time they purchased it. The sales tax
24 liability arose during the period of time the Business was owned
25 and operated by the Defendant-Debtor. The State Board of
26 Equalization noticed an assessment against the Plaintiffs
27 personally (as purchasers of the Business) for this pre-purchase

28 ¹ Exhibit 1.

1 sales tax liability of the Defendant-Debtor. Plaintiffs disputed
2 the assessment and prosecuted an appeal, which was denied. The
3 State Board of Equalization assessed \$30,000.00 in successor tax
4 liability (equal to the amount of the purchase price which had been
5 paid to Defendant-Debtor) against the Plaintiffs for the Defendant-
6 Debtor's unpaid sales taxes.

7 Upon learning of the unpaid sales taxes and the State Board of
8 Equalization assessment of successor tax liability, Plaintiffs
9 contacted Defendant-Debtor concerning this tax debt. When
10 Defendant-Debtor did not sufficiently address the unpaid sales
11 taxes and successor liability assessment to their satisfaction,
12 Plaintiffs filed suit against the Defendant-Debtor in state court.
13 That and other liabilities precipitated the 2012 filing of a
14 Chapter 7 bankruptcy case by the Defendant-Debtor. Bankr. E.D.
15 Cal. 12-93176.

16 On February 21, 2013, Plaintiffs filed the present Complaint
17 for a determination that tort obligations of the Defendant-Debtor
18 arising out of the sale of the Business were nondischargeable on
19 the grounds of fraud as provided in 11 U.S.C. § 523(a)(2)(A).
20 Further, that based on Defendant-Debtor's conduct, Plaintiffs seek
21 punitive damages.

22 As set forth below, the court determines that the Plaintiffs
23 have established that the Defendant-Debtor's conduct constitutes
24 fraud as provided in 11 U.S.C. § 523(a)(2)(A) and applicable
25 California law, the compensatory damages awarded by the court are
26 \$40,850.00, and the Plaintiffs are also awarded \$10,000.00 in
27 punitive damages.

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- (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.

The requirements for nondischargeable fraud under the Bankruptcy Code mirror the requirements for a fraud claim under California law. *Lazar v. Superior Court*, 12 Cal. 4th 631, 638 (1996); *Seeger v. Odell*, 18 Cal. 2d 409, 414 (1941); *Thrifty Payless, Inc. v. Americana brands, LLC*, 218 Cal. App. 4th 1230, 1239 (2013).

Plaintiffs have been assessed sales tax liability pursuant to California Revenue and Taxation Code §§ 6811 and 6812 by the California State Board of Equalization for the sales taxes not paid to the State by Defendant-Debtor in the operation of the Business, Consign Couture. Under these Revenue and Taxation Code Sections the purchaser of a business is to withhold a sufficient portion of

1 the purchase price to "[c]over such amount [of taxes owed] until
2 the former owner produces a receipt from the [State Board of
3 Equalization] that [the sales tax] has been paid or a certificate
4 stating that no amount is due." Cal. Rev. & Tax. Code § 6811. If
5 the purchaser fails to withhold the necessary portion of the sale
6 proceeds, then the purchaser has personal liability for the unpaid
7 taxes to the extent of the purchase price. Cal. Rev. & Tax. Code
8 § 6812.

9 Argument was made at trial that the personal property
10 purchased was subject to a tax lien for the unpaid property taxes,
11 notwithstanding there not having been a tax lien filed with the
12 California Secretary of State. Plaintiffs direct the court to
13 California Revenue and Taxation Code § 6757 for the proposition
14 that a perfected lien is created on the personal property when the
15 tax is due. However, this lien is subject to the provisions of
16 California Civil Code § 7150 et seq.² California Government Code
17 § 7170(a) and (c) provide that any such tax lien is not valid as to
18 personal property with respect to a variety of persons, including
19 (1) a person who acquires an interest in the personal property
20 without knowledge of the lien or (2) a buyer in the ordinary course
21 of business (Cal. Com. Code § 9320). There was no evidence
22 presented that the State Board of Equalization asserted a lien
23 against the Business which was superior to that of the Plaintiffs'
24 interest in the Business.

25 **CLAIMS ASSERTED AND NONDISCHARGEABILITY**

26 Plaintiffs assert that they were defrauded by Defendant-Debtor
27

28 ² Cal. Rev. & Tax § 6757(a).

1 into purchasing the Business and Assets, which unknown to them,
2 were subject to an unpaid sales tax obligation. In February 2008,
3 the Plaintiffs purchased the Business from Defendant-Debtor for
4 \$30,000.00 (the "Sale"). This purchase price was paid to
5 Defendant-Debtor.

6 The Sale was documented by a written Sales Contract/Bill of
7 Sale for Business ("Sales Contract").³ This Sales Contract
8 included the following representation and warranty by Defendant-
9 Debtor,

10 4. Warranty of Ownership. Seller [Defendant-Debtor]
11 warrants that Seller is the legal owner of the Business
and that it is free of all liens and encumbrances.

12 In addition to the Sales Contract, Plaintiff Jennifer Kubala
13 (as the lead buyer representative of Plaintiffs) had oral and
14 written communications with Defendant-Debtor in which Defendant-
15 Debtor stated that there were no "tax issues." As is demonstrated
16 in Exhibit 2, which is a copy of an email thread between the
17 Defendant-Debtor and Plaintiff Kubala, the communications are in
18 lay-person speak, not transaction lawyer precision. The Defendant-
19 Debtor affirmatively states, "For the sales tax's [sic.] you are
20 correct I have paid those out of my business savings account...I
21 have it linked together." This is in response to an inquiry by
22 Plaintiff-Kubala concerning an inconsistency in the financial
23 information provided by the Defendant-Debtor which showed a line
24 item for 2007 sales of \$318,770.53 and sales tax of "-3993.00."
25 Ms. Kubala requested in the email thread confirmation that the "-
26 3993.00" did not account for the 7% sales tax on sales of

27
28 ³ Plaintiffs' Exhibit 1.

1 \$318,770.53.

2 The testimony presented to the court was that the financial
3 information provided by the Defendant-Debtor was not a profit and
4 loss statement or books of the Business, but "financial
5 information" collected by others working for Defendant-Debtor.
6 Though Plaintiffs were provided access to this information about
7 the Defendant-Debtor's Business, there was not a clear set of
8 financial records showing the liabilities of the Business.

9 The Defendant-Debtor testified that she was not good with, and
10 not responsible for, the books, issuance of checks, and the day to
11 day store operation. Her focus was on the on-line sales side of
12 the business. Additionally, at the time of the sale she was going
13 through a divorce and suffered from some health issues.

14 However, based on the evidence presented, the court finds that
15 the Defendant-Debtor chose to make affirmative representations that
16 the Business and Assets were (1) owned by the Defendant-Debtor and
17 (2) free of all liens and encumbrances. While the former was true,
18 the latter was not - the personal property assets were "encumbered"
19 by the unpaid sales tax obligation. Further, Defendant-Debtor
20 affirmatively wrongly represented that there were no tax issues
21 with respect to the Business.

22 Though Plaintiffs, as innocent purchasers, might have been
23 able to assert a priority of their interest over the State Board of
24 Equalization lien (Cal. Govt. Code § 7170), such a successful
25 contention does not avoid the liability arising pursuant to
26 California Revenue and Taxation Code § 6812 for the business and
27 assets purchased. The Defendant-Debtor's statement that the
28 Business and Assets were "free of all liens and encumbrances,"

1 other statements that there were no tax issues, and the limited
2 financial information provided were all statements that there were
3 no tax liabilities with respect to the Business and Assets being
4 purchased.

5 It was asserted by the Defendant-Debtor that she had disclosed
6 to Plaintiffs that the Defendant-Debtor's accountant had not
7 completed her income tax returns. As discussed below, the stated
8 reason was that Defendant-Debtor did not want her current income
9 disclosed to her soon to be ex-husband. However, the taxes at
10 issue at trial and the undisclosed liability have nothing to do
11 with income taxes, but the sales taxes owed by Defendant-Debtor
12 from the business and not paid to the State of California.⁴

13 The evidence also shows that Defendant-Debtor knew at the time
14 of the February 2008 Sale that the State Board of Equalization was
15 asserting claims against her unpaid sales taxes. Exhibit 6 is a
16 History Summary of calls and contacts made by the State Board of
17 Equalization concerning the Defendant-Debtor's unpaid sales taxes.
18 In her testimony, the Defendant-Debtor acknowledges having some of
19 the communications (not all were specifically discussed at trial).
20 The Defendant-Debtor failed to disclose that she had not paid the
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23 ⁴ As discussed by the California Court of Appeal in *Xerox Corp.*
24 *v. County of Orange*, 66 Cal. App. 3d 746, 756 (1977), the state sales
25 tax is not a tax on the sale, but an excise tax imposed upon the
26 retailer for the "privilege of conducting a retail business...." See
27 Cal. Rev. & Tax. Code § 6051 (stating that tax is imposed on
28 retailer). A retailer is allowed to add the sales tax to the sales
price under specified circumstances (which is the common practice in
California). Cal. Civ. Code § 1656.1. However, such obligation was
that of the Defendant-Debtor in operating the business prior to the
sale as a retailer, to pay, and was also imposed in the amount of
\$30,000.00 on to Plaintiffs when the Defendant-Debtor sold Plaintiffs
the Business.

1 sales taxes to the State Board of Equalization and that such
2 liability existed for the Business she was selling. Because of
3 this non-disclosure and the other misrepresentations that there
4 were no tax issues for the Business, the Defendant-Debtor created
5 for Plaintiffs personal tax liability for the Defendant-Debtor's
6 sales tax obligations.

7 The court finds relevant another email thread between the
8 Defendant-Debtor and Plaintiffs.⁵ This occurred on February 15,
9 2008, and relates to the tax returns not filed by the Defendant-
10 Debtor. In this exchange the Defendant-Debtor states that she has
11 been "dragging her feet" and had not filed income tax returns so
12 that her soon to be ex-husband would not find out that her income
13 was actually higher than he previously knew. The Defendant-Debtor
14 was concerned that if the soon to be ex-husband were to find out,
15 the Defendant-Debtor would have to pay him even more alimony.
16 While providing such assurance that everything was okay with
17 respect to the "taxes," no mention is made as to the unpaid sales
18 taxes.

19 Though the Defendant-Debtor offers the non-disclosure of the
20 sale tax liability as merely "inadvertence" or the "fault" of
21 others who maintain her finances, her credibility is impaired by
22 the Defendant-Debtor's own testimony. She testified that she
23 intentionally failed to file tax returns as part of her dissolution
24 strategy with her soon to be ex-husband. This was done to prevent
25 accurate income information from being known. The court finds that
26 Defendant-Debtor's protestation of a belief that she was being

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28 ⁵ Exhibit B.

truthful in affirmatively representing or warranting,

A. Defendant-Debtor "is the legal owner of the Business and that it is free of all liens and encumbrances." Sale Contract, Exhibit 1;

B. "For the sales tax's [sic.] you are correct I have paid those out of my business saving account..I have it linked together." February 10, 2008 Correspondence, Exhibit 2, pg. 1; and

C. The Defendant-Debtor did not want to use an escrow because "My title company, Old Republic Title does not do business escrow, the only one who does them here in our area is an attorney. Also, it makes it [the sale] very public, which I do not like my soon to be ex-husband knowing anything. So that leave you with the question of having my attorney service, Parker Stanbury prepare our agreement." February 11, 2008 Correspondence, Exhibit 3, pg. 1;

rings hollow and is not credible. The court also finds that the Defendant-Debtor's testimony that she was not aware of the sales tax obligation, that she did not misrepresent that there were no sales taxes owing, and that she is not responsible for misrepresenting that there were no sales taxes owing to not be credible.

The Defendant-Debtor argues that the Plaintiffs were represented by counsel in this transaction and failed to do their "due diligence" by not investigating the taxes. No evidence was presented to the court as to what is the standard in the industry or business community for conducting such "due diligence" and what would or could have been done to so investigate the tax delinquency information.

The court finds that such contention is one of "well, I'm not responsible for my misrepresentations if the buyers did not catch me before they were defrauded." The Defendant-Debtor states that since the Plaintiffs were represented by an attorney, then the

1 attorney should be blamed and the Defendant-Debtor let off the hook
2 for the sales tax misrepresentations. This contention misses the
3 mark by a wide margin.⁶

4 The court has to find, for a debt to be nondischargeable based
5 on fraud, that the reliance by the creditor was "justified."
6 Justifiable reliance looks to the qualities and characteristics of
7 the particular plaintiff and the circumstances of the particular
8 case. *Field v. Mans*, 516 U.S. 59, 71 (1995). It does not require
9 that the victim make an investigation of his own unless the facts
10 should be apparent to one of his knowledge and intelligence from a
11 cursory glance or he has discovered something which should serve a
12 warning that he is being deceived. *Id.*; See also *Seeger v. Odell*,
13 18 Cal. 2d 409, 414-415 (1941) (negligence of plaintiff not defense
14 to intentional misrepresentation, constructive notice of public
15 record not a defense to misrepresentation, no "reasonable person
16 standard" for reliance).

17 In *Romesh Japra, M.D., F.A.C.C., Inc. v. Apte (In re Apte)*, 96
18 F.3d 1319 (9th Cir. 1996), the Ninth Circuit Court of Appeals
19 explained the meaning of justifiable reliance:

20 C. Justifiable Reliance

21 Although the statute does not state what degree of
22 reliance is necessary for application of section
23 523(a)(2)(A), the Supreme Court has held that the
24 creditor's reliance need be only justifiable, not
reasonable. *Field v. Mans*, 133 L. Ed. 2d 351, 116 S. Ct.
437, 446 (1995); *Eashai*, 87 F.3d at 1090.

25 "[A] person is justified in relying on a representation
of fact 'although he might have ascertained the falsity

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27 ⁶ It is highly likely that if the "attorney was to blame" for
28 not catching the Defendant-Debtor's fraud, the attorney would be
subrogated to the rights of Plaintiffs and be the party pressing the
nondischargeability claim against the Defendant-Debtor.

1 of the representation had he made an investigation.'" *Field*, 116 S. Ct. at 444 (quoting the Restatement
2 (Second) of Torts (1976) § 540). Although one cannot
3 close his eyes and blindly rely, mere negligence in
4 failing to discover an intentional misrepresentation is
5 no defense to fraud. *Eashai*, 87 F.3d at 1090-91 (quoting
In re Apte, 180 Bankr. 223, 229 (9th Cir. BAP 1995); *In*
re Kirsh, 973 F.2d 1454, 1459 (9th Cir. 1992)).

6 As discussed by the Ninth Circuit Court of Appeals in *Eugene Parks*
7 *Law Corporation Defined Benefit Pension Plan v. Ronald Kirsh (In re*
8 *Kirsh)*, 973 F.2d 1454, 1458 (9th Cir. Cal. 1992), "The standard
9 does protect the ignorant, the gullible, and the dimwitted. . . ."
10 Further, "it is only if 'the conduct of the plaintiff in the light
11 of his own intelligence and information was manifestly
12 unreasonable' that he will be denied recovery--a person cannot
13 purport to rely on preposterous representations or close his eyes
14 'to avoid discovery of the truth. . . .'" *Id.*

15 The court had the benefit of testimony provided by Plaintiffs
16 and the Defendant-Debtor in open court. While the Plaintiffs are
17 not "dimwitted," they represent the type of business owner who has
18 the passion for activities of the business (here a second hand
19 clothing store), but not sophisticated, or even a demonstrated
20 above average layperson level business knowledge. Clearly,
21 Plaintiffs did not have more than a basic understanding for buying
22 a business in California.

23 While it is true that the Plaintiffs were represented by
24 counsel, no information was provided to the court as to the
25 knowledge and experience of such counsel. Defendant-Debtor does
26 not contend that such counsel was representing her, owed a duty to
27 her, or had an obligation to supervise and manage the sale to
28 protect the Defendant-Debtor from making misrepresentations. The

1 gist of the Defendant-Debtor's contention appears to be that the
2 attorney became her guarantor and provides automatic absolution for
3 the Defendant-Debtor's misrepresentations about the sales taxes.

4 There is nothing preposterous about a seller representing that
5 the sales taxes of a business have been taken care of and are not
6 an issue. While not what an experienced transaction lawyer would
7 do, it was not unjustified for Plaintiffs to believe that the
8 Defendant-Debtor would not misrepresent or omit critical
9 information about the business finances, including that there were
10 substantial unpaid sales taxes.

11 The court also finds credible Plaintiffs' testimony that they
12 would not have purchased the Business for \$30,000.00, and paid such
13 monies to Defendant-Debtor, if they knew of the outstanding sales
14 tax liabilities of the business.

15 The court finds that all of the elements for a determination
16 of fraud have been satisfied. The Defendant-Debtor with knowledge
17 of the falsity, misrepresented and omitted the material information
18 that the business had substantial unpaid sales taxes. The
19 Defendant-Debtor knew of the tax obligation and that the
20 information concerning the taxes, and lack of information, was
21 false and deceptive; the Defendant-Debtor made such
22 misrepresentations with an intent to deceive the Plaintiffs in
23 order to complete the sale of the business to Plaintiffs for
24 \$30,000.00; the Plaintiffs justifiably relied upon the
25 misrepresentations and omissions by the Defendant-Debtor; and the
26 Plaintiffs have been damaged by such misrepresentations and
27 omissions in the amount of the \$30,000.00 in sales taxes, plus
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1 interest and penalties thereon.⁷

2 **ACTUAL DAMAGES**

3 The evidence presented establishes that the Plaintiffs have
4 incurred actual damages as follows:

- 5 A. \$30,000.00 in tax liability, plus interest and penalties
6 thereon until paid; and
7 B. \$10,850.00 in costs and expenses in pursuing
8 administrative relief with the California State Board of
9 Equalization for the successor liability which was
imposed for the undisclosed unpaid sales taxes of the
business that was purchased.

10 The Plaintiffs have paid the \$30,000.00 purchase price once,
11 and due to the misconduct of the Defendant-Debtor are having to pay
12 it a second time, plus interest and penalties, to the State Board
13 of Equalization.

14 Evidence has been provided that there have been attorneys'
15 fees, costs, and expenses in Plaintiffs challenging the imposition
16 of the \$30,000.00. These fees, costs, and expenses are not for
17 litigation with the Defendant-Debtor, but in fighting and appealing
18 the \$30,000.00 successor liability tax assessment of the State
19 Board of Equalization. Though under the American Rule each party
20 is to bear his or her own expenses of litigation unless otherwise
21 provided for by contract or statute,

22 [i]t is settled that a person who is required through the
23 tort of another to act in protection of his interest by
24 bringing or defending an action against a third person is
entitled to recover compensation for the reasonably

25 ⁷ The Court makes no determination as to the actual amount of
26 the sales tax liability as between the Plaintiffs and Defendant-Debtor
27 on the one hand and the State of California on the other. To the
28 extent that Defendant-Debtor is correct in her assertions that the
sales tax liability is overstated, this decision does not limit or
determine such contentions by the Plaintiffs or Defendant-Debtor
against the State of California.

1 necessary attorney's fees incurred. (*Prentice v. North*
2 *Amer. Title Guar. Corp.* (1963) 59 Cal.2d 618, 620; *Glass*
3 *v. Gulf Oil Corp.* (1970) 12 Cal. App. 3d 412, 437-438.)

4 *Moe v. Transamerica Title Insurance Company*, 21 Cal. App. 3d 289,
5 303 (1971).

6 Later cases make it clear, however, that the so-called
7 "third party tort exception" to the rule that parties
8 bear their own attorney fees is not really an "exception"
9 at all but an application of the usual measure of tort
10 damages. The theory of recovery is that the attorney fees
11 are recoverable as damages resulting from a tort in the
12 same way that medical fees would be part of the damages
13 in a personal injury action. In such cases there is no
14 recovery of attorney fees *qua* attorney fees. (*Brandt v.*
15 *Superior Court* (1985) 37 Cal.3d 813, 817-818.) Indeed,
16 this point was made clear in *Prentice* itself when the
17 court stated it was "not dealing with 'the measure and
18 mode of compensation of attorneys' but with damages
19 wrongfully caused by the defendant's improper actions."
20 (*Prentice*, *supra*, 59 Cal.2d at p. 621.)

21 *Sooy v. Peter*, 220 Cal. App. 3d 1305, 1310 (1990). The attorneys'
22 fees, costs, and expenses are additional damages which the
23 Plaintiffs incurred with respect to the third-party State Board of
24 Equalization due to the Defendant-Debtor's tortious conduct. The
25 court finds that the \$10,850.00 in attorneys' fees and costs to be
26 reasonable and necessary for pursuing administrative relief from
27 the \$30,000.00 sales tax liability.

28 **PUNITIVE DAMAGES**

29 Plaintiffs have requested that in addition to actual damages,
30 the court award punitive damages. The analysis begins with
31 California Civil Code § 3294⁸ as applied by the California Supreme

32 ⁸ California Civil Code § 3294.

33 § 3294. When permitted. (a) In an action for the
34 breach of an obligation not arising from contract,
35 where it is proven by clear and convincing evidence
36 that the defendant has been guilty of oppression,
37 fraud, or malice, the plaintiff, in addition to the

1 Court.

2 As we [California Supreme Court] ourselves have recently
3 observed, in order to justify the imposition of punitive
4 damages the defendant "' . . . must act with the intent
5 to vex, injure, or annoy, or with a conscious disregard
6 of the plaintiff's rights. [Citations.]" (Italics added;
7 *Neal v. Farmers Ins. Exchange* (1978) 21 Cal. 3d 910, 922,
quoting from *Silberg v. California Life Ins. Co.* (1977)
11 Cal. 3d 452, 462; accord, *Seimon v. Southern Pac.*
8 *Transportation Co.* (1977) 67 Cal. App. 3d 600, 607; *G. D.*
9 *Searle & Co. v. Superior Court* (1975) 49 Cal. App. 3d
22.)

10 *Taylor v. Superior Court of Los Angeles County*, 24 Cal. 3d 890, 895
11 (1979).

12 Damages in general must be "reasonable." Cal. Civ. Code
13 § 3359. With respect to punitive damages, the court is guided by
14 the following principles of California law:

15 A. "[T]he particular nature of the defendant's acts in light
16 of the whole record; clearly, different acts may be of
17 varying degrees of reprehensibility, and the more
18 reprehensible the act, the greater the appropriate

19 actual damages, may recover damages for the sake of
20 example and by way of punishing the defendant...

21 (c) As used in this section, the following definitions
22 shall apply:

23 (1) "Malice" means conduct which is intended by the
24 defendant to cause injury to the plaintiff or
25 despicable conduct which is carried on by the
26 defendant with a willful and conscious disregard of
27 the rights or safety of others.

28 (2) "Oppression" means despicable conduct that
subjects a person to cruel and unjust hardship in
conscious disregard of that person's rights.

(3) "Fraud" means an intentional misrepresentation,
deceit, or concealment of a material fact known to the
defendant with the intention on the part of the
defendant of thereby depriving a person of property or
legal rights or otherwise causing injury.

1 punishment, assuming all other factors are equal...;"

2 B. "[T]he amount of compensatory damages awarded; in
3 general, even an act of considerable reprehensibility
4 will not be seen to justify a proportionally high amount
 of punitive damages if the actual harm suffered thereby
 is small...;" and

5 C. "[T]he wealth of the particular defendant; obviously, the
6 function of deterrence... will not be served if the
7 wealth of the defendant allows him to absorb the award
 with little or no discomfort. [citations omitted] By the
8 same token, of course, the function of punitive damages
 is not served by an award which, in light of the
9 defendant's wealth and the gravity of the particular act,
 exceeds the level necessary to properly punish and
 deter."

10 *Neal v. Farmers Insurance Exchange*, 21 Cal. 3d 910, 928 (1978).

11 In addressing the propriety of a punitive damage award in
12 federal court, the United States Supreme Court stated,

13 In light of these concerns [procedural and substantive
14 constitutional limitations], in *Gore supra*, 517 U.S. 559,
15 we instructed courts reviewing punitive damages to
16 consider three guideposts: (1) the degree of
17 reprehensibility of the defendant's misconduct; (2) the
18 disparity between the actual or potential harm suffered
19 by the plaintiff and the punitive damages award; and
 (3) the difference between the punitive damages awarded
 by the jury and the civil penalties authorized or imposed
 in comparable cases. *Id.*, at 575, considers the
 proportionality of the punitive damages to the
 compensatory damages awarded to the Plaintiff-Debtor.

20 *State Farm Mutual Auto Insurance Company v. Campbell*, 538 U.S. 408,
21 418 (2004). The Supreme Court opined that while a punitive damage
22 award of more than four times the amount of compensatory damages
23 might be close to the line of constitutional impropriety, higher
24 multiples have been awarded. *Id.* at 425.

25 Defendant-Debtor intended to mislead the Plaintiffs into
26 purchasing the Business. Defendant-Debtor was aware of the unpaid
27 tax liabilities she and the Business owed and hid that information
28 from Plaintiffs. By doing so she ensured that the Plaintiffs would

1 unwittingly be liable for a portion of the sales taxes Defendant-
2 Debtor failed to pay.

3 Evidence was presented that the Defendant-Debtor made
4 representations that she was going to pay the tax liabilities from
5 an inheritance she was to receive from her grandmother. This is
6 stated in the State Board of Equalization phone contact records
7 presented as Exhibit 6 and the testimony of the Defendant-Debtor.
8 The records reflect that the Defendant-Debtor was to receive a 2004
9 320 CI convertible BMW (January 1, 2008 phone call record) and
10 jewelry, which will be sold to pay the taxes. Exhibit 6, pg. 54 of
11 61, January 28, 2008 phone call record.

12 However, at the time of trial the Defendant-Debtor stated that
13 the car and jewelry ended up "going to her brother and mother." No
14 credible explanation was provided for how assets the Defendant-
15 Debtor stated she had were not hers.

16 Hiding the existence of the sales taxes was in conscious,
17 callous disregard of the Plaintiffs' rights and the obligations
18 that Defendant-Debtor secretly imposed on them. The Defendant-
19 Debtor knowingly and intentionally made the misrepresentations in
20 order to obtain the \$30,000.00 purchase price from Plaintiffs.

21 As with many punitive damage claims presented to this court,
22 the evidence as to the Defendant-Debtor's current financial
23 condition is thin. The court knows that the Defendant-Debtor has
24 sought and obtained relief under Chapter 7 of the Bankruptcy Code.
25 Bankr. E.D. Cal. 12-93176. This is often because the defendant is
26 the bankruptcy debtor, who by the time he or she is driven to
27 bankruptcy has little left. Such information is disclosed on
28 Schedules A and B filed by the debtor under penalty of perjury,

1 making his or her financial information, at least as of the
2 commencement of the bankruptcy case, an open book.

3 Defendant-Debtor received her discharge on April 1, 2013. 12-
4 93176 Dckt. 15. This has freed her of the various other debts and
5 obligations which predate the bankruptcy. However, it has not
6 freed her of the nondischargeable debts owed to the State of
7 California for the unpaid sales taxes.

8 Schedule B, listing personal property of the Debtor,
9 identifies assets totaling only \$5,124.00 in value. 12-93176
10 Dckt. 1 at 9-11. No real property interests are listed on
11 Schedule A. *Id.* at 8. Schedule I lists the Defendant-Debtor
12 receiving income of \$1,071.00 a month from an entity identified as
13 Del Don Farms. *Id.* at 22. On the Statement of Financial Affairs
14 the Defendant-Debtor states that 2012 year to date she received
15 \$13,283.64 in income, \$3,221.00 in 2011, and \$19,339.00 in 2010.

16 Considering the Defendant-Debtor's conduct, her knowledge of
17 the substantial unpaid State Board of Equalization taxes, the
18 affirmative representations made concerning the income taxes, the
19 intentional failure to disclose the unpaid State Board of
20 Equalization taxes, the statements about intentionally delaying
21 filing tax returns to prevent the disclosure of current, accurate
22 financial information, the Defendant-Debtor's limited finances
23 based on the information provided to the court, and the \$40,850.00
24 in actual damages, the court finds and awards \$10,000.00 of
25 punitive damages to the Plaintiffs. This represents less than 25%
26 of the actual damage award, not even a one-times multiplier of the
27 actual damages.

28 The court shall issue a separate judgment for \$40,850.00 in

1 actual damages and \$10,000.00 in punitive damages for Plaintiffs,
2 jointly and severally, and against the Defendant-Debtor. Further,
3 that such judgment is nondischargeable pursuant to 11 U.S.C.
4 § 523(a)(2)(A). Plaintiffs shall file a costs bill on or before
5 May 22, 2014.

6 The Defendant-Debtor shall receive a credit for any monies
7 paid to the California State Board of Equalization which is applied
8 to and reduces the successor liability of the Plaintiffs or for the
9 reduction in the amount of successor liability the Plaintiffs
10 obtained through the efforts of Defendant-Debtor.

11 Dated: May 7, 2014

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14 /s/
RONALD H. SARGIS, Judge
15 United States Bankruptcy Court
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