IT IS ORDERED as set forth below:

Date: October 26, 2011

James R. Sacca
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE: PUNA KIM, Debtor.	CHAPTER 7 CASE NO. 10-66727-JRS
SHINHAN BANK AMERICA (INC.), Plaintiff, vs. PUNA KIM, Defendant.	ADV. PRO. NO. 10-06500-JRS

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter came on for trial on July 6, 2011 on Plaintiff's Complaint Objecting to Debtor's Discharge and to Dischargeability of Debt filed on September 3, 2010 (the "Complaint"). In the Complaint, Plaintiff sought to deny Debtor's discharge pursuant to 11 U.S.C. §§ 727(a)(2), (3), (4) and (5) and to determine the dischargeability of the debt owed to it by Debtor pursuant to 11 U.S.C.

§§ 523(a)(2), (4) and (6).[1] At the beginning of the trial, Plaintiff announced it would only proceed under § 727(a)(4) for false oaths and § 523(a)(6) for willful and malicious injury arising from an alleged conversion of and damage to its collateral. After considering the documentary evidence admitted at trial, the testimony of the witnesses[2] and all other matters of record, the Court makes the following findings of fact and conclusions of law:[3]

FINDINGS OF FACT

A. Plaintiff's Lending Relationship with Look Entertainment, Inc.

Debtor is an experienced businesswoman who has owned or had an ownership interest in numerous businesses, including Look Entertainment, Inc. ("LEI"). On or about September 21, 2007, Shinhan Bank America (Inc.), the Plaintiff, made a U.S. Small Business Administration loan to LEI (the "LEI Loan"). Plaintiff negotiated the LEI Loan with defendant Puna Kim ("Debtor"), who was the sole shareholder of the company at the time.

The loan was memorialized in a U.S. Small Business Administration Note (the "Note"), which amounted to a line of credit from Plaintiff to LEI with a maximum limit of $750,000.00. The purpose of the loan evidenced by the Note was to assist LEI in constructing and operating a 50,000-

[1] The trial was originally scheduled for May 23, 2011. On May 16, 2011, counsel entered an appearance for Debtor and on May 19, 2011, filed a Motion to Continue Trial and other relief in which it was asserted that Debtor needed time to recover from emergency surgery and counsel needed time to prepare for trial. At the trial, Debtor testified that the surgery was not medically necessary, but rather elective, cosmetic surgery.

[2] The witnesses were Debtor and Susie Puterbaugh, who was not related to either party. The Plaintiff did not have a representative testify.

[3] Where appropriate in this Order, findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact pursuant to Bankruptcy Rules 7052 and 9014.

square-foot bowling alley and game arcade known as "Red Carpet Lanes," which was located at 4500 Satellite Boulevard, Duluth, Georgia ("Red Carpet Lanes"). Debtor operated and managed Red Carpet Lanes during its business existence.[4] LEI fully drew the line of credit in the total principal amount of $750,000.00 that was supposed to be used to purchase equipment and pay other expenses relating to Red Carpet Lanes, including a $160,000 interest reserve for the Note payments.

On behalf of LEI, Debtor also executed a Commercial Security Agreement ("Security Agreement") granting Plaintiff a security interest in collateral described as "all business assets including but not limited to all inventory, chattel paper (electronic and tangible), accounts, equipment, general and payment intangibles and fixtures whether then owned or thereafter acquired" (the "Collateral").

Debtor guaranteed the LEI Loan pursuant to an Unconditional Guarantee (the "Guaranty"). In the Guaranty, Debtor agreed to, *inter alia*, preserve the Collateral pledged by LEI to secure the Note.

The building in which Red Carpet Lanes operated was owned by Cornerstone Investments, LLC, ("Cornerstone") a company Debtor managed at one time and in which she held a 23.5% interest. Red Carpet Lanes ceased doing business in December 2009 after the building in which it was located was foreclosed upon by Cornerstone's lender, Flagstar Bank ("Flagstar"), in October 2009. At the direction of Debtor, all or most of LEI's personal property, including all of the floorboards of the bowling alley, were removed in December 2009 after Flagstar gave LEI notice

[4] Shortly after the LEI Loan closed, it appears Debtor transferred her stock in LEI to her husband, from whom she is now divorced, but she remained the manager of the business.

that it had to vacate the property within seven days. Debtor testified that she discussed the situation with a representative of Plaintiff, including the possibility that she may have to remove the Collateral, but that Plaintiff neither agreed nor objected to the removal of the Collateral.

Debtor directed the removal of the Collateral remaining in Red Carpet Lanes. The Collateral was disassembled and loaded into six 53-foot trailers for storage. Debtor testified that the removal of the Collateral was chaotic and that she did not maintain an inventory of items removed. She testified that she hired day-laborers to remove the Collateral under her supervision, but she could not supervise them to the degree necessary to assure they did not take things. Susie Puterbaugh, a consultant for Cornerstone, testified that on the day the trailers were being loaded at Red Carpet Lanes, she observed two pick-up trucks full of bowling balls. The pick-up trucks were owned by a friend of Debtor who owned a construction company. Ms. Puterbaugh testified that the pick-up trucks were on the opposite side of the building from the trailers. Debtor, however, testified that no bowling balls were loaded on pick-up trucks and that any bowling bowls should have been put in the trailers with everything else. Ms. Puterbaugh also testified that she observed during a prior visit to Red Carpet Lanes before it closed that the arcade machines had already been removed.

When asked to provide a value of the Collateral removed from Red Carpet Lanes, Debtor testified that she was not sure, but that the value could be up to $500,000.00. Plaintiff offered no evidence of the value of the Collateral other than Debtor's own testimony that about $600,000 of the loan proceeds were used to acquire some of it and that as much as $2,000,000 was spent on acquiring furniture, fixtures and equipment. Of the $600,000 of loan proceeds, Debtor testified that

$466,474.95 was wired directly by the Plaintiff, on behalf of LEI, to a Korean company to purchase new arcade machines. Debtor testified that after receiving the first of the machines, she cancelled the balance of the order because the machines were used and displayed text in Chinese or Korean instead of English. Although the order was cancelled, Debtor testified that no recovery has been made of the $466,474.95 wired to the Korean company. Debtor denied that any of the Collateral was sold, but she could not account for the location of the arcade machines, bowling balls, pins or other easily removable items of value other than to say that she told the workers to put everything in the trailers. Debtor could not confirm nor produce any records of what items remained in the six trailers sent to storage. Plaintiff, likewise, did not offer any evidence of what was in the trailers after it took possession of them in January or February 2010.

Debtor admits that, after she removed the Collateral from Red Carpet Lanes, she was contacted by a third party interested in purchasing the Collateral. She testified that she had several discussions with the interested party and that she agreed to meet him at a local mall. At trial, Debtor authenticated a copy of an unexecuted, proposed contract from the third party indicating a proposed purchase price for the Collateral of $160,000.00. The draft contract stated that the assets were free and clear of liens. Debtor denies negotiating the contract and claims she had no authority to sign it on behalf of LEI because her ex-husband was the shareholder and president at that time, although she was the day-to-day manger of LEI. It appears from the evidence that the potential sale of the Collateral stalled after Plaintiff became aware of the sale and the potential purchaser became aware of Plaintiff's security interest in the Collateral. The proposed purchaser, however, did not testify at

trial or through deposition testimony.

No evidence was offered by either side regarding the amount Plaintiff recovered from its sale, if any, of the Collateral, what was and was not in the six trailers and what is the balance owed to Plaintiff.

B. Debtor's Bankruptcy Filing

On March 5, 2010, Debtor filed a Voluntary Petition with this Court initiating a Chapter 7 bankruptcy case. Debtor filed her Statement of Financial Affairs ("SOFA") and Schedules on March 18, 2010. Debtor signed her SOFA and her Schedules under oath.

In response to Question 1 of the SOFA, Debtor disclosed $330,000 of income in 2008 from employment, trade or operation of a business, as follows: (a) $50,000.00 in salary from Universal Wireless, Inc. ("Universal Wireless"), another entity in which Debtor has or had ownership interest, and $280,000 from Cornerstone. Debtor listed no other income from employment, trade or operation of a business for 2008. Debtor listed her income in response to Question 1 of the SOFA for both 2009 and 2010 as being "nil."

In response to Question 2 of the SOFA, Debtor disclosed that she received $198,000.00 from the sale of "company stock" in 2009. This was the only source of income she disclosed other than from employment or operation of her business during the two years immediately preceding the commencement of the case. Accordingly, based on the Debtor's response to Questions 1 and 2 of the SOFA, Debtor's total income for 2008, 2009 and 2010 (up to the petition date) was $528,000, and all but $90,000 of that was disclosed to have been paid between May 2008 and January 2009.

Debtor filed a Notice of Amendments to Affected Parties ("First Amendment") on April 9, 2010, three days after her § 341 First Meeting of Creditors commenced, which contained certain amendments to the SOFA and Schedules and added additional creditors.

Debtor then filed a Second Notice of Amendments to Affected Parties ("Second Amendment") on May 11, 2010, eleven days after her § 341 Meeting concluded.[5] In this Second Amendment, Debtor added the following to her Schedule B: (1) a "Wrist Watch – after market Rolex bought at an auction over 18 years [ago]" (the "Rolex") with an "unknown" value and (2) almost $1,180,000 of receivables from LEI and Universal Wireless. This amended disclosure was made after Debtor had been extensively questioned about the Rolex at the § 341 Meeting in her case.

C. Debtor's Bank Deposits for 2008 – 2010

Based on the evidence presented at trial, it appears Debtor deposited a total of $651,577.14 into her personal bank accounts in 2008, $145,929.06 in 2009 and $12,250 in 2010 (up to the petition date), for total deposits into her bank accounts of $809,756.20 during 2008, 2009 and 2010 (up until the petition date). The bank records introduced at trial did not appear to include the $198,000 Debtor received for the sale of the stock on January 5, 2009 per her SOFA.[6] Accordingly, her deposits in 2008, 2009 and 2010, plus the amount she received for the stock, was $1,007,756.20, which was about $480,000 more than she disclosed as income in response to Questions 1 and 2 on the SOFA.

[5] The § 341 Meeting was commenced on April 6, 2010, but was concluded on April 30, 2010.
[6] The bank records only show one $30,000 deposit in January 2009, and that was on January 16, 2009 from LEI.

For 2008, the deposits into her accounts of $657,599.14 included: (a) a $400,000.00 check from Cornerstone (the memo line on this check, which appears she wrote to herself, reads "Promoter Compensation"); (b) another $20,000.00 from Cornerstone; (c) $103,000.00 from Universal Wireless; (d) $24,713.14 from JK Construction International; (e) $50,000.00 from Young Cha Park, (f) $25,826.00 from LEI; and (g) $27,738.00 from unknown sources. Debtor admits she received all of these deposits in 2008. Her testimony was that the amount of the deposits in excess of $330,000 of income she disclosed for 2008 was either rental income, gifts from friends, loans to her, expense reimbursements or loan repayments which she contends did not need to be disclosed because she did not think they were "income" as that term is used in Question 1 and 2 of the SOFA. For example, with respect to the $400,000 check to her from Cornerstone that states on its face it was "Promoter Compensation," she testified that the $120,000 difference between the $280,000 salary she disclosed she received in 2008 from Cornerstone and the $400,000 face amount of the check was rent Cornerstone owed to her for office space. With respect to the $50,000 check from Young Cha Park, Debtor listed Park as a creditor for $50,000 on account of a loan. In addition, a $50,000 check from Universal Wireless and a $20,000 check from LEI contain the legend "loan repayment" in the memo line. Except as otherwise written on the checks or explained above, Debtor presented no documentation or other witness testimony supporting her assertions about the nature of the money she received in 2008.

For 2009, Debtor's bank records show total deposits into her accounts of $145,929.06. Debtor testified that these deposits were not income in her opinion, but gifts and loan repayments,

although she did not present any evidence other than her testimony to support that defense. Included in this amount were undisclosed deposits in 2009 from LEI totaling $66,000.02, which include six periodic payments to her in the amount of $1,666.67 every two weeks between May and July 2009.

Debtor also admits receiving $5,000.00 from LEI and another $7,250.00 from a third party in 2010. Neither payment was disclosed in her SOFA because she said she did not believe they were income.

D. Debtor's Prepetition Transfers

The only transfer of property Debtor disclosed in response to Question 10 of the SOFA was the sale of the Unlimited PCS, Inc. stock to Kon Young Park in January 2009, which appears to be the stock sale referenced in Question 2 of the SOFA. Debtor testified that "most" of the money she received from the stock purchase and the 2008, 2009 and 2010 deposits into her bank accounts, some of which she had testified were loan repayments from LEI, "went back to the bowling alley." If these transfers to LEI were made according to her testimony, Debtor did not disclose them on her SOFA in response to Question 10.

CONCLUSIONS OF LAW

Plaintiff objects to Debtor's discharge under § 727(a)(4)(A) and seeks a determination of dischargeability of its debt under § 523(a)(6). Because the Court concludes that Debtor's discharge should be denied pursuant to § 727(a)(4)(A), consideration of the dischargeability of the debt under § 523(a)(6) is unnecessary.

Objections to discharge are construed strictly against the creditor and liberally in favor of the

debtor "to give effect to the fresh start policy of the Bankruptcy Code," *Hope v. Walker (In re Walker)*, 48 F.3d 1161, 1164–65 (11th Cir. 1995); *accord Equitable Bank v. Miller (In re Miller)*, 39 F.3d 301, 304 (11th Cir. 1994), and it is the plaintiff's burden to prove by a preponderance of the evidence that the debtor's discharge should be denied. *Grogan v. Garner*, 498 U.S. 279, 289–91, 111 S. Ct. 654, 661 (1991).

Rule 4005 of the Federal Rules of Bankruptcy Procedure places the burden of proving an objection to a discharge on the plaintiff, Fed. R. Bankr. P. 4005,[7] but because debtors are often better able to establish facts than plaintiffs are able to establish the non-existence of such facts, the courts are permitted to determine the circumstances under which the burden of going forward with evidence shifts. Fed. R. Bankr. P. 4005 advisory committee's note.[8] In discharge proceedings before courts in the Eleventh Circuit, once the plaintiff establishes the basis for his objection, the burden shifts to the debtor. *In re Rudolph*, 233 F. App'x 885, 887 (11th Cir. 2007) (quoting *In re Chalik*, 748 F.2d 616, 619 (11th Cir. 1984)); *In re Matus*, 303 B.R. 660, 671–72 (Bankr. N.D. Ga. 2004); *see In re Prevatt*, 261 B.R. 54, 59 (Bankr. M.D. Fla. 2000) (The party objecting to discharge must produce sufficient evidence "to give rise to a reasonable inference that the debtor failed to disclose information with the intent to hinder the investigation of the trustee and creditors. The

[7] "At the trial on a complaint objecting to a discharge, the plaintiff has the burden of proving the objection." Fed. R. Bankr. P. 4005.

[8] "[T]he rule leaves to the courts the formulation of rules governing the shift of the burden of going forward with the evidence in the light of considerations such as the difficulty of proving the nonexistence of fact and of establishing a fact as to which the evidence is likely to be more accessible to the debtor than to the objector." Fed. R. Bankr. P. 4005 advisory committee's note.

debtor must then overcome this inference with credible evidence." (citation omitted)); *cf. In re Martin*, 698 F.2d 883, 887 (7th Cir. 1983) (discussing Fed. R. Bankr. P. 4005, its advisory committee's note, and the burden of production in discharge proceedings in the Seventh Circuit).

Plaintiff argues that Debtor's failure to disclose on her Schedules and SOFA all of her income, her Rolex watch and the transfer of funds from her accounts are omissions that amount to false oaths, preventing the discharge of her debt under § 727(a)(4)(A). Section 727(a)(4)(A) provides that the Court shall grant the debtor a discharge, unless the "debtor knowingly and fraudulently, in or in connection with the case made a false oath or account." 11 U.S.C. § 727(a)(4)(A). The false oath must also be material to the bankruptcy case. *Swicegood v. Ginn*, 924 F.2d 230, 232 (11th Cir. 1991) (citing *In re Chalik*, 748 F.2d 616); *In re Franklin-Graham*, No. 05-91520, 2008 WL 7842108, at *6 (Bankr. N.D. Ga. Apr. 17, 2008). Fraudulent and material omissions from a debtor's Schedules and SOFA, which are sworn statements, justify denial of discharge under this section, as well. *Swicegood*, 924 F.2d at 232 (citing *Chalik*, 748 F.2d 616); *In re Franklin-Graham*, 2008 WL 7842108, at *6. A *prima facie* case under § 727(a)(4)(A) is thus established when a plaintiff shows the debtor knowingly and fraudulently made a false statement or omission under oath that related materially to the bankruptcy case. *In re Matus*, 303 B.R. at 676 (citations omitted).

In order to show that a debtor's omission was fraudulent, "the plaintiff must prove actual and not constructive fraud." *In re Letlow*, 385 B.R. 782, 795 (Bankr. N.D. Ga. 2007) (citing *Rogers v. Aiello (In re Aiello)*, 173 B.R. 254, 257 (Bankr. D. Conn. 1994); *cf. Wines v. Wines (In re Wines)*,

997 F.2d 852, 856 (11th Cir. 1993)). Actual intent may, however, be inferred from circumstantial evidence and course of conduct. *In re Franklin-Graham*, 2008 WL 7842108, at *6 (citing *Parnes v. Parnes (In re Parnes)*, 200 B .R. 710 (Bankr. N.D. Ga. 1996)); *In re Letlow*, 385 B.R. at 796 (citing *Playnation Play Sys. v. Howard (In re Howard)*, No. 02-97042, 2004 WL 5848047, at *8, 2004 Bankr. LEXIS 1804, at *27 (Bankr. N.D. Ga. Sept. 24, 2004)). Further, a court may infer deceptive intent from the cumulative effect of "a series or pattern of errors or omissions," *In re Franklin-Graham*, 2008 WL 7842108, at *6 (quoting *In re Parnes*, 200 B.R. at 714), and the debtor's business acumen is one factor relevant to determining fraudulent intent. *In re Freese*, No. 09-02627, 2011 WL 2604750, at *5 (Bankr. N.D. Iowa June 30, 2011). Finally, a debtor's deceptive intent may be established by a showing of recklessness and indifference to the truth. [9] *In re York*, No. 09-41011, 2010 WL 1957125, at *5 (Bankr. N.D. Ala. May 12, 2010); *In re Letlow*, 385 B.R. at 796.

The materiality of a debtor's omissions may be established by showing they bear "a relationship to the bankrupt's business transactions or estate, or concern[] the discovery of assets, business dealings, or the existence and disposition of his property." *Chalik*, 748 F.2d at 618; *accord, e.g.*, *In re Franklin-Graham*, 2008 WL 7842108, at *6. Materiality is not determined by the debtor; creditors must be allowed to "judge for themselves what will benefit, and what will prejudice, them." *Chalik*, 748 F.2d at 618; *accord, e.g.*, *In re Franklin-Graham*, 2008 WL 7842108, at *6.

Debtor's honest and complete disclosure of financial information on his or her bankruptcy

[9] "However, the discharge may not be denied when the untruth was the result of a mistake or inadvertence." *In re Matus*, 303 B.R. 660, 677 n.10 (Bankr. N.D. Ga. 2004) (quoting *Hunerwadel v. Dulock (In re Dulock)*, 250 B.R. 147, 152 (Bankr. N.D. Ga. 2000)).

schedules and statements is of utmost importance. *In re Dorsey*, No. 09-11157, 2011 WL 2313158, at *10 (Bankr. M.D. Ala. June 8, 2010) (quoting *Chalik* 748 F.2d at 618). Indeed, the debtor's honesty is essential to the proper functioning of the bankruptcy system; it is "'the very core of the bankruptcy process,'" *In re Franklin-Graham*, 2008 WL 7842108, at *7 (quoting *In re Colvin*, 288 B.R. 477, 481 (Bankr. E .D. Mich. 2003)) (citing *In re Matus*, 303 B.R. at 675–76; *In re Hyde*, 222 B.R. 214, 219 (Bankr. S.D.N.Y. 1998); *In re Hogan*, 214 B.R. 882, 886 (Bankr. E.D. Ark. 1997)). Consequently, the debtor has an "uncompromising duty to disclose" his or her financial information, not "to pick and choose or to obfuscate the answers." *In re Freese*, 2011 WL 2604750, at *5 (citations and internal quotation marks omitted).

Applying the law to the facts in this case, the Court holds that Plaintiff has shown by a preponderance of the evidence that Debtor made false oaths by knowingly and fraudulently omitting material information from her schedules and SOFA.

This Debtor's lack of credibility is crucial to the Court's determination that her omissions were fraudulent in nature. She is an experienced businesswoman who has managed and had ownership interests in several companies, which have borrowed millions of dollars. Yet she failed to disclose a significant amount of income in response to Questions 1 and 2 of her SOFA, a Rolex watch and transfers in response to Question 10 on her SOFA. Considering Debtor's omissions in the aggregate, her demeanor at trial and the lack of documentation to support her testimony, her explanation for these

omissions is not credible.[10]

The Court first reviews the sufficiency of Debtor's responses to Questions 1 and 2 of the SOFA, which require disclosure of the following:

Question 1:

> State the gross amount of income the debtor has received from employment, trade, or profession, or from operation of the debtor's business, including part-time activities either as an employee or in independent trade or business, from the beginning of this calendar year to the date this case was commenced. State also the gross amounts received during the two years immediately preceding this calendar year.

Question 2:

> State the amount of income received by the debtor other than from employment, trade, profession, operation of the debtor's business during the two years immediately preceding the commencement of this case.

Debtor failed to disclose hundreds of thousands of dollars in income in response to these questions. Debtor deposited $1,007,756.20 into her account between 2008 and 2010, but disclosed only about half of that; approximately $480,000 in deposits were undisclosed. Although Debtor argued that the undisclosed amounts were not income, she admitted at trial that at least $120,000 from a $400,000 check labeled "Promoter Compensation" was rental income paid to her by Cornerstone. Any definition of income would include rental income, and $120,000 is a material amount. The Court could deny her discharge for her omission of that amount, alone. Debtor testified that the remaining $360,000 not disclosed on her SOFA was from loans, loan repayments, reimbursements and gifts, but she provided no other support for that other than legends on some of the checks. Her testimony

[10] An example of Debtor's lack of credibility is that Debtor should have been in possession of documents to support her story if it was true, so her failure to produce them calls into question her credibility. Also, in light of Ms. Puterbaugh's testimony regarding the bowling balls and arcade machines, the Court did not find Debtor's testimony on the subject to be credible.

is not credible. Debtor should have been in possession of the records to show the nature of the money she received, but she did not offer anything in that regard, not even her tax returns or the financial statements of the businesses which she owned or controlled. Her definition of what is "income" that is required to be disclosed in response to Question 1 and 2 is also wrong.

"Income" is defined as "[t]he money or other form of payment that one receives, usu. periodically, from employment, business, investments, royalties, gifts, and the like." Black's Law Dictionary 778 (8th ed. 2004). "Gross Income" is defined as "[t]otal income from all sources before deductions, exemptions or other tax reductions." *Id.* Debtor appears to assert that she only had to disclose taxable income.[11] There is no support for such a limitation on the response necessary to Question 1 and Question 2 on the SOFA. In fact, the instructions to Official Form B7 to Question 2 of the SOFA specifically include sources of income which are not taxable, and the instructions state that the examples used are not exhaustive. This debtor received approximately $1,000,000 during the two calendar years before the petition date. Her trustee and creditors were entitled to know that amount so they could conduct their investigation accordingly. The complete disclosure of what money she received in response to Questions 1 and 2 of the SOFA was necessary to satisfy her "uncompromising duty to disclose" rather than "to pick and choose or to obfuscate the answers" as she did. *In re Freese*, 2011 WL 2604750, at *5.

Debtor's credibility is undermined by her statement in her 2009 divorce agreement that she had enough income to support her children so that she did not need child support from her ex-

[11] Even if Debtor's argument was correct and she only had to disclose taxable income, she still failed to disclose the $120,000 in her rental income, which is taxable.

husband. She testified that she had to make that statement in the agreement or her husband, who did not have a job or income, would have obtained custody of the children under Korean law. This explanation is simply not credible. Her custody rights were adjudicated under Georgia law in a Georgia court. In order to obtain custody of her children in that proceeding, she did not have to state that she had sufficient income in that agreement, unless she did have sufficient income. It appears the purpose of that statement in the divorce agreement was to excuse her former husband from having to pay child support, not to determine custody of the children.

Debtor's failure to disclose the total amount of her income in response to Questions 1 and 2 of her SOFA was knowingly done, fraudulent and material. Her omission of her income was a false oath under § 727(a)(4)(A).

The Court turns next to the Debtor's failure to disclose the Rolex watch until after she was questioned about it at her § 341 Meeting. Debtor does not deny that she knowingly failed to list the Rolex. Her explanation for this omission at trial was that the watch was aftermarket and consequently not worth anything. However, it is not the Debtor's place to determine whether the watch is worth disclosing in her bankruptcy case. *See Chalik*, 748 F.2d at 618; *In re Franklin-Graham*, 2008 WL 7842108, at *6. In addition, Debtor's explanation for omitting the Rolex is not credible because she scheduled several other items worth values as low as $100.00, such as a checking account, a "Pool Outdoor Set" and a "Running Machine." Debtor's failure to disclose the Rolex was fraudulently and knowingly done, and it was material to her case. Her omission of the

Rolex was a false oath under § 727(a)(4)(A). [12]

The final frame in the Court's analysis is Question 10 of the SOFA, which requires a debtor to list all property "other than property transferred in the ordinary course of the business or financial affairs of the debtor, transferred either absolutely or as security within two years immediately preceding the commencement of this case." Debtor disclosed the sale of Unlimited PCS, Inc. stock in response to Question 10, but she did not disclose any other transfers between 2008 and 2010. At trial, when counsel for Plaintiff asked her to explain the disappearance of the $1,007,756.20 deposited into her personal accounts between 2008 and 2010, she stated that most of it "went back to the bowling alley." Plaintiff's counsel further asked, "You didn't disclose that you had transferred money out of your personal accounts to other businesses, correct?" Debtor responded that she did not recall and offered no further explanation.

Congress intended the term "transfer" to be read broadly. *In Re Oliver*, 414 B.R. 361, 377 (Bankr. E.D. Tenn. 2009); *In re Skorich*, 337 B.R. 441, 445 (Bankr. D.N.H. 2006) (citing *In re*

[12] Several courts have determined that the omission of a Rolex watch is sufficient to support a denial of discharge. *Swicegood*, 924 F.2d at 231–32 (holding that the bankruptcy court's finding of a deliberate omission resulting in a denial of discharge under § 727(a)(4) was appropriate when Debtor (1) omitted from his schedules a Rolex watch, silver flatware, golf clubs and two shares of AT&T stock; (2) amended his schedules to include these items only after he discovered the trustee knew about the omissions; and (3) wore the Rolex watch on his wrist); *Jalajel v. Pugsley*, No. 1:11cv163, 2011 WL 1348312, at *2 (E.D. Va. Apr. 8, 2011) (affirming bankruptcy court's ruling that Debtor was not entitled to discharge under § 727(a)(4)(A) when Debtor listed on his schedules a $3,000 Rolex watch as "watch" and valued it at $100.00); *In re Sullivan*, 444 B.R. 1, 4, 7–11 (Bankr. D. Mass. 2011) (denying Debtor's discharge under § 727(a)(4)(A) for failure to disclose his Rolex watch until his wife, the Plaintiff, told the Trustee he had one, despite Debtor's unilateral determination that it had no value); *In re Mullin*, No. 6:09-bk-17382, 2011 WL135801, at *1–*6 (Bankr. M.D. Fla. Jan. 13, 2011) (denying discharge under § 727(a)(2)–(a)(6) when *pro se* Debtor, a sophisticated businessperson, committed fraud by, among other things, making false oaths and omitting from his Schedules interests in a Rolex watch, a BMW, a boat, and a business entity); *In re Leech*, 408 B.R. 222, 225–27, 228 (Bankr. E.D. Wis. 2009) (affirming bankruptcy court's denial of Debtor's discharge under § 727(a)(4)(A) for Debtor's failure to disclose two Rolex watches and other jewelry, valued by Debtor at $9,700, despite Debtor's subsequent amendment of his schedules to include them).

Robotics Vision Sys., Inc., 322 B.R. 502, 508 (Bankr. D.N.H. 2005)); *see Rosen v. MIF Realty, L.P. (In re Vuckovic)*, 211 B.R. 1002, 1005 (Bankr. M.D. Fla. 1997). "The definition of transfer focuses on what the debtor has relinquished . . . . Under this definition any transfer of an interest in property is a transfer . . . . [and] almost every business transaction constitutes a transfer." *In re Vuckovic*, 211 B.R. at 1005 (citations omitted). Here, according to her testimony, Debtor transferred a material amount of money from her personal accounts to LEI between 2008 and early 2010, within the two-year period immediately preceding the filing of her bankruptcy petition. Because the Debtor is not in the business of lending money, she should have disclosed any transfers to LEI in response to Question 10 of her SOFA.[13]

Debtor's failure to disclose these transfers was knowingly done, fraudulent and material. She offered no explanation for the omission. Consequently, the Court finds that her omission of the transfers of money was a false oath under § 727(a)(4)(A).

CONCLUSION

Based on these findings of fact and conclusions of law, the Court finds that Debtor's omissions amount to material, knowing and fraudulent false oaths, and her discharge is denied pursuant to 11 U.S.C. § 727(a)(4)(A).

END OF DOCUMENT

[13] If she did not, in fact, transfer money to LEI, then her testimony to that effect at trial was a false oath in violation of § 727(a)(4)(A).