

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WISCONSIN

In re Jason M. Neilitz and
Erica Leigh Neilitz,

Bankruptcy Case No. 21-24132-gmh
(Chapter 7)

Debtors.

PATRICK S. LAYNG,
United States Trustee,

Plaintiff,

Adversary Case No. 22-

v.

JASON M. NEILITZ and
ERICA LEIGH NEILITZ,

Defendants.

**UNITED STATES TRUSTEE'S COMPLAINT TO DENY
JASON M. NEILITZ AND ERICA LEIGH NEILITZ'S DISCHARGES**

United States Trustee, Patrick S. Layng, by Attorney Laura D. Steele, under 11 U.S.C. §§ 727(a) and 727(c), requests that the Court deny Jason M. Neilitz and Erica Leigh Neilitz's discharges. In support of this Complaint, the United States Trustee states:

I. JURISDICTION

1. This is an objection to the Defendants' discharge in a case arising under Title 11 of the United States Code and, as such, this is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(J).

2. The Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. § 1334.

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3. Venue is proper in this Court pursuant to 28 U.S.C. § 1409(a) because this proceeding arises in and is related to the Defendants' bankruptcy case, which is pending in this Court.

4. This action arises under 11 U.S.C. § 727(a) and Fed. R. Bankr. P. 7001(4).

5. The United States Trustee has standing to file this proceeding under 11 U.S.C. § 307 and 11 U.S.C. § 727(c)(1).

6. The United States Trustee consents to the entry of final judgments and orders by the Bankruptcy Court.

7. The deadline to object to discharge is January 28, 2022.

8. This Complaint is timely filed.

II. THE PARTIES

9. The Plaintiff, Patrick S. Layng, is the United States Trustee for the Eastern District of Wisconsin and maintains an office at 517 East Wisconsin Avenue, Suite 430, Milwaukee, Wisconsin 53202.

10. Jason M. Neilitz ("Mr. Neilitz") and Erica Leigh Neilitz ("Mrs. Neilitz") (collectively, "Defendants,"), a married couple, reside at 4111 East Lakeview Street, Crandon, WI 54520 and list their mailing address as P.O. Box 527, Crandon, WI 54520.

III. FACTS

11. On July 23, 2021, the Defendants filed a joint petition under chapter 7 of the Bankruptcy Code.

12. The Defendants filed their bankruptcy schedules on August 6, 2021. ECF No. 10.

13. The Defendants signed their bankruptcy schedules under penalty of perjury on August 6, 2021, attesting that they had "read the summary and schedules filed with this declaration and that they are true and correct." ECF No. 10 at p. 90.

14. The appointed chapter 7 trustee Larry H. Liebzeit (“Trustee Liebzeit”) held the first 11 U.S.C. § 341 meeting of creditors on August 26, 2021.¹

15. The Defendants appeared at the August 26, 2021 meeting of creditors by telephone and testified under oath that their schedules were true and correct.

16. The Defendants’ schedules disclose total assets of \$3,655,500.37, and total debts of \$27,542,342.18.

17. Mr. Neilitz is an educated and experienced businessman: he holds an associate degree from Nicolet College in business and marketing, and later obtained an engineering degree from Microsoft. Mr. Neilitz has worked in the information technology field since 1996. Mr. Neilitz owned and operated an infrastructure support company called 1Prospect until he sold the company in 2006 or 2007. Mr. Neilitz was then retained under a five-year management contract to continue running 1Prospect. Upon leaving 1Prospect, Mr. Neilitz purchased J-T Seed Company Inc. d/b/a Wolf River Valley Seeds in 2012. Mr. Neilitz operated J-T Seed Company through 2021, and in the interim started up several other ventures including NREH, Mojo Transport, Cloud I Q, Glacier Ridge Estates and Glacier Cattle. Mr. Neilitz is currently employed with his brother’s Michigan cannabis business, Grow Haven.

18. Mrs. Neilitz is employed as a nurse manager for the emergency department at Marshfield Medical Center in Minocqua, Wisconsin, and is pursuing a master’s degree in nursing. From time to time, Mrs. Neilitz has assisted Mr. Neilitz in the operation of his businesses.

19. The United States Trustee and the Defendants agreed to the entry of a Rule 2004 Order that required production of certain records by November 5, 2021, and examination of each

¹ The 11 U.S.C. § 341 meeting of creditors has been continued to September 22, 2021, October 6, 2021, November 3, 2021, December 15, 2021, January 13, 2022, January 24, 2022, and February 10, 2022.

Defendant on or before December 31, 2021. Accordingly, the Court granted the agreed motion and entered its Rule 2004 Order dated October 5, 2021, ECF No. 28.

20. Pursuant to the Rule 2004 Order, the United States Trustee conducted a Rule 2004 examination of Mr. Neilitz on December 2, 2021, and of Mrs. Neilitz on December 10, 2021. The Defendants provided testimony under oath at their respective examinations. The Defendants did not produce all records as required as of November 5, 2021, and, as detailed below, have not produced all required records as of the date of this Complaint. ECF No. 28.

A. Cloud I Q LLC collapses.

21. The Defendants' bankruptcy filing was precipitated largely by the failure of Mr. Neilitz's storm clean up venture, Cloud I Q LLC ("Cloud").

22. Mr. Neilitz organized Cloud as its 100% owner and sole member with the Wisconsin Department of Financial Institutions on November 21, 2017.

23. Mr. Neilitz operated Cloud as a subcontract management company to respond to the aftermath of Hurricane Maria's September 20, 2017 landfall in Puerto Rico.

24. Mrs. Neilitz was an employee of Cloud and assisted with Cloud's operations in Puerto Rico.

25. The Defendants are both insiders of Cloud.

26. As part of the Cloud venture, Mr. Neilitz endeavored to raise approximately \$4.5 million in financing. While Mr. Neilitz was able to raise millions in loans, Cloud's venture collapsed when promised contracts did not come to fruition and storm clean up funds were not paid over to Cloud for its work. *See Cloud v. RADAR_APPS INC., et al.*, Adversary Case No. 19-2110-gmh, ECF No. 1 at p. 8 (Bankr. E.D. Wis.).

B. Mr. Neilitz makes false statements on behalf of Cloud.

27. Mr. Neilitz authorized Cloud's petition for relief under chapter 11 of the Bankruptcy Code on April 19, 2019 ("Cloud Petition Date"). Case No. 19-23680-gmh (Bankr. E.D. Wis.).

28. Mr. Neilitz signed Cloud's petition, schedules and statements under penalty of perjury attesting that they were true and accurate. Case No. 19-23680-gmh, ECF Nos. 1, 2, 9, 29.

29. Cloud listed total unsecured debts of \$16,316,122.88; and total assets of \$12,360,377.13—consisting of nearly \$7.7 million in accounts receivable and a \$4.6 million note due. The primary goal of Cloud's chapter 11 filing was to recover the unpaid notes and receivables through the *Cloud v. RADAR_APPS INC.* adversary proceeding. The adversary proceeding is currently stayed.

30. Mr. Neilitz appeared as Cloud's authorized representative at its 11 U.S.C. § 341 meeting of creditors conducted by the United States Trustee on May 29, 2019.

31. Mr. Neilitz testified under oath at the May 29, 2019 Cloud meeting of creditors.

32. Mr. Neilitz testified that Cloud obtained loans from various individuals to fund Cloud's operations. The lenders were promised repayment with interest ranging from 10% - 15% within 30 to 60 days of Cloud commencing work in Puerto Rico.

33. Mr. Neilitz testified that he had put in approximately \$1 million of his own funds into Cloud.

34. Cloud's original schedules did not disclose Mr. Neilitz as a creditor or investor.

35. Mr. Neilitz's testimony that he put in \$1 million into Cloud is unsupported by any documentary evidence and, upon information and belief, is a false statement.

36. On June 27, 2019, Cloud filed an amended schedule EF listing Mr. Neilitz as a creditor in the amount of \$500,000 for "loan to Debtor." Case No. 19-23680-gmh, ECF No. 29 at

3.4 Nonpriority creditor's name and mailing address

Jason Neilitz
652 W Washington Street
Crandon, WI 54520

Date(s) debt was incurred _

Last 4 digits of account number _

As of the petition filing date, the claim is: *Check all that apply.*

- Contingent
 Unliquidated
 Disputed

Basis for the claim: Loan to Debtor

Is the claim subject to offset? No Yes

\$500,000.00

37. The \$500,000 debt is not listed as contingent, unliquidated or disputed and is entitled to prima facie evidence of validity under Fed. R. Bankr. P. 3003(b)(1) and (c)(2).

38. Cloud's scheduling of the \$500,000 debt to Mr. Neilitz is the functional equivalent of filing a proof of claim on behalf of a creditor. *See In re Drumm*, 524 B.R. 329, 403 (Bankr. D. Mass. 2015), *aff'd*, No. 15-CV-10184-LTS, 2015 WL 9911447 (D. Mass. Nov. 20, 2015) (citing Fed. R. Bankr. P. 3003(b)(1) and (c)(2)).

39. Mr. Neilitz authorized the filing of the amended schedule EF disclosing the \$500,000 debt to him.

40. Mr. Neilitz signed the amended declaration under penalty of perjury attesting that the amended schedule EF is true and correct. Case No. 19-23680-gmh, ECF No. 29 at p. 14.

41. Mr. Neilitz's purported \$500,000 loan to Cloud is unsupported by any documentary evidence.

42. The scheduled \$500,000 debt owed by Cloud to Mr. Neilitz is a false statement.

43. The Court converted Cloud's chapter 11 proceeding to a proceeding under chapter 7 on September 30, 2021. Case No. 19-23680-gmh, ECF No. 151.

44. The appointed chapter 7 trustee in Cloud's bankruptcy proceeding is Bruce Lanser ("Trustee Lanser").

45. Cloud filed a second amended schedule EF on November 1, 2021. Case No. 19-23680-gmh, ECF No. 162.

46. The second amended schedule EF added creditors holding post-petition claims against Cloud, including a \$10,000 claim by Mr. Neilitz for “DIP financing contribution to Debtor” in September 2019. Case No. 19-23680-gmh, ECF No. 162 at p. 2.

47. On November 1, 2021, Mr. Neilitz signed the declaration accompanying the second amended schedule EF attesting under penalty of perjury that it is true and correct. Case No. 19-23680-gmh, ECF No. 162 at p. 4.

48. Cloud has never amended schedule EF to remove creditors.

49. Mr. Neilitz appeared and testified under oath at Cloud’s 11 U.S.C. § 341, chapter 7 meeting of creditors before Trustee Lanser on November 3, 2021.

50. Mr. Neilitz again testified that he reviewed Cloud’s petition, all supporting schedules and statements before they were filed with the Court, and that they were true and accurate.

51. Mr. Neilitz’s testimony at the November 3, 2021 meeting of creditors is false because Cloud’s schedules and statements are not true and correct.

52. Mr. Neilitz testified at the November 3, 2021 meeting of creditors that he took only one draw from Cloud in the amount of \$10,000 in the end of 2017 or first part of 2018, which was distributed to employees for their living and transportation expenses while in Puerto Rico.

53. Mr. Neilitz confirmed that he did not take any owner draws, wages or loans from Cloud for his own benefit:

| | | |
|----|---|--|
| 14 | Q | All right. So booked as an owner draw, but |
| 15 | | as a practical matter, you never took any money from |
| 16 | | the business. |
| 17 | A | No, sir. |
| 18 | Q | So, you didn't take wages, no owner draws, |
| 19 | | no officer loans, none of that. |
| 20 | A | No. |

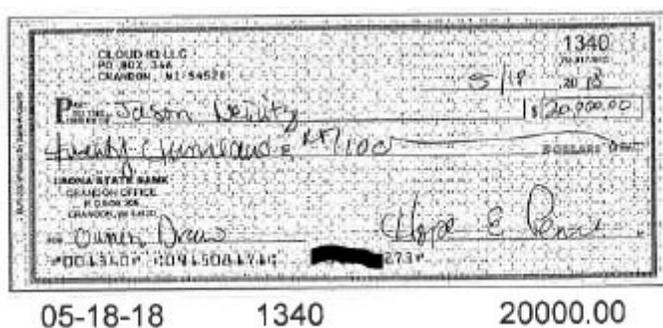
(Nov. 3, 2021 11 U.S.C. § 341 Meeting Tr. at p. 33).

54. Mr. Neilitz's testimony that he did not receive any owner draws from Cloud is false.

55. Cloud's Laona State Bank account *273 reflects numerous transfers to Mr. Neilitz— including for a \$20,000 owner draw.

56. For example, Cloud's Laona State Bank account *273 includes a \$20,000 transfer by check number 1340 to Mr. Neilitz on May 18, 2018.

57. The image of check number 1340 indicates that the check is for "owner draw" on the memo line.² (UST Bates Neilitz 000597).



58. The \$20,000 owner draw by Mr. Neilitz occurred within one year of the Cloud Petition Date.

59. The United States Trustee's review of Cloud's Laona State Bank account *273 indicates transfers between December 22, 2017 and July 20, 2018 totaling \$273,558.48 in which either Mr. Neilitz or Mrs. Neilitz is named as the payee.

² While the Defendants did not provide complete bank statements from Cloud in advance of the 2004 exam of Mr. Neilitz, the United States Trustee obtained account statements for Cloud's Laona State Bank account *273 through its Rule 2004 order of Thomas M. Cleereman, II and Sara J. Cleereman (the "Cleeremans"). Case No. 21-24132-gmh at ECF No. 34. The records produced by the Cleeremans, former business associates of the Defendants, included copies of canceled checks demonstrating the payees of certain transactions.

60. Cloud's Laona State Bank account *273 also includes \$158,811.63 in wire transactions between January 24, 2018 and January 29, 2018 authorized by Mr. Neilitz without disclosure of the recipient.

61. Upon information and belief, Cloud transferred between \$273,558.48 and \$432,370.11 of its funds to the Defendants for their personal benefit from December 22, 2017 through July 20, 2018.

62. Of those transfers, Cloud transferred approximately \$61,792.71 to the Defendants within the year before the Cloud Petition Date.

63. At least \$22,535 of the transfers from Cloud were deposited into the Defendants' personal CoVantage checking and money market accounts between April 2018 and May 2018.

64. The Defendants had actual knowledge of the transfers to them from Cloud.

65. Records of Cloud's distributions to the Defendants were required to be provided to the United States Trustee pursuant to the Court's Rule 2004 Order, but have not been provided as of the date of this Complaint. ECF No. 28 ¶ 2(e).

66. The United States Trustee's summary of transfers to the Defendants from Cloud's Laona State Bank account *273 is attached as **UST Exhibit A**.

67. Cloud was required to disclose all payments, transfers, expense reimbursements, draws, salary or any other value given to an insider within a year of the Cloud Petition Date under SOFA questions 4 and 30.

68. Cloud represented that it did not transfer any value to its insiders within a year before the Cloud Petition Date.

69. Cloud's responses to SOFA questions 4 and 30 are false.

70. Mr. Neilitz authorized Cloud's false statements within its SOFA.

71. Mr. Neilitz's failure to disclose insider transactions within Cloud's schedules, statements, and at its two meetings of creditors demonstrates either his intent to deceive or demonstrates a pattern of reckless indifference to the truth.

C. The Defendants file their personal bankruptcy schedules and statements containing false statements.

72. Facing the collapse of Cloud and mounting state court legal actions, the Defendants retained their bankruptcy counsel, Krekeler Strother S.C. on or about August 19, 2020.

73. The Defendants completed their credit counseling certificates on May 24, 2021.

74. The Defendants then filed their chapter 7 petition on July 23, 2021 ("Neilitz Petition Date"), and filed their bankruptcy schedules and statements on August 6, 2021. ECF Nos. 1, 10.

75. As detailed below, the Defendants' sworn August 6, 2021 bankruptcy schedules and statements contain numerous errors, omissions and false statements.

i. Undervalued Jewelry

76. The Defendants undervalued their jewelry within schedule AB.

77. The Defendants obtained a "fair market value appraisal" prepared by Brenda S. Arnold, GJ, RGA of Professional Jewelry Services, 680 Oak Street #307, Oshkosh, WI 54901.

78. The appraisal is dated April 16, 2021.

79. The appraisal discloses values that are \$7,775 higher than the values disclosed in schedule AB:

| Item | Scheduled Value | Fair Market Liquidation Value |
|---|------------------------|--------------------------------------|
| Ladies 14K Two Tone Diamond Necklace | \$3,000 | \$8,475 |
| 14k White Gold Diamond Studed Earrings | \$2,000 | Not appraised |
| 18K White Gold Diamond Tennis Bracelet | \$2,200 | \$3,000 |
| 14K Yellow and White Gold Custom Wedding Ring | \$7,000 | \$8,500 |

80. The Defendants' home insurance policy issued November 22, 2021 by Auto Owners indicates insurance limits on the diamond necklace of \$8,100, the diamond earrings of \$6,450, the tennis bracelet of \$39,400, and the wedding ring of \$20,835.

81. The Defendants applied the Wisconsin state exemptions to fully exempt their consumer goods personal property on schedule C. Wis. Stat. § 815.18(3)(d).

82. If the Defendants had listed the appraisal's fair market liquidation values for the diamond necklace, the tennis bracelet, and the custom wedding ring, the Defendants would have exceeded the exemption limit of \$24,000 and the Defendants' estate would have non-exempt assets.

83. The Defendants knowingly and intentionally listed lower values of their jewelry on schedule AB in order to exempt assets. *See In re Pynn*, 546 B.R. 425, 431 (Bankr. C.D. Cal. 2016) (court denying discharge where debtors knowingly undervalued assets in order to exempt assets).

84. The Defendants' lower valuation of their jewelry is not justified in light of the fair market liquidation value appraisals and insurance limits in effect as of November 2021.

ii. Undisclosed Personal Bank Account and Income

85. The Defendants disclose their interest in seven depository accounts as of the Neilitz Petition Date, including a CoVantage Credit Union Checking Account *073 with a balance of \$366.07; CoVantage Credit Union Checking Account *000 with a balance of \$2,111.69; CoVantage Credit Union Checking Account Money Market account with a balance of \$704.95; two UTMA accounts for their children; Venmo account with a \$200 balance; and a Health Savings Account.

86. Mr. Neilitz also held a personal checking account *631 at Laona State Bank as of the Neilitz Petition Date, but the Defendants did not disclose the account within the Defendants' schedules.

87. The Defendants produced copies of the Laona State Bank personal checking account *631 from January 22, 2017 through August 22, 2021 as required by the Court's Rule 2004 Order. ECF No. 28.

88. The United States Trustee's review of Laona State Bank personal checking account *631 includes the following deposits and debits:

- a. \$250,000 deposit on October 4, 2017 and a \$250,000 debit on October 5, 2017;
- b. \$50,000 deposit on November 24, 2017 and a \$50,000 debit on the same day;
- c. \$10,000 in deposit on July 17, 2018 and a \$10,000 debit on the same day;
- d. \$13,000 deposit on October 15, 2019 and an \$11,025 debit on October 18, 2019;
- e. \$20,000 deposit on October 23, 2019;
- f. \$5,000 deposit on October 30, 2019 followed by debits totaling \$23,324;
- g. \$4,000 deposit on December 19, 2019 and a \$3,600 debit on November 25, 2019;
- h. \$26,500 deposit on December 14, 2020 followed by \$15,729 in debits;
- i. \$10,825 in debits in January 2021.

89. The sources of the above deposits are not identified within the bank statements provided to the United States Trustee.

90. Upon information and belief, the source of the above deposits are not from wage income earned by the Defendants.

91. Upon information and belief, the \$68,500 in total deposits into Laona State Bank account *631 from October 15, 2019 through December 14, 2020 is income that the Defendants were required to disclose within their SOFA questions 4 and 5 but did not disclose.

92. Mr. Neilitz testified that he believed the \$250,000 deposit into Laona State Bank personal checking account *631 on October 4, 2017 came from a personal loan from Laona State Bank to purchase cattle on behalf of his company Glacier Cattle Company LLC.

93. The Defendants failed to provide documentary evidence supporting the disposition of the \$250,000 in funds debited on October 5, 2017.

94. Mr. Neilitz further testified that the \$50,000 deposit on November 24, 2017 was also part of the personal loan from Laona State Bank, which totaled \$300,000. The Defendants failed to provide documentary evidence supporting the disposition of the \$50,000 in funds debited on October 5, 2017.

95. As of the date of this Complaint, the Defendants have not provided records sufficient to determine the source and disposition of the above deposits and debits within Laona State Bank personal checking account *631.

iii. Undisclosed Income Deposited into Personal Accounts

96. Mrs. Neilitz testified that CoVantage Money Market account *72 disclosed within the Defendants' schedules was funded in part by an inheritance from her father in 2007.

97. Mrs. Neilitz testified that she would sometimes transfer funds from her CoVantage checking account *296 into money market account *72.

98. Mrs. Neilitz would also occasionally lend money to Mr. Neilitz from money market account *72 for use by one of Mr. Neilitz's businesses. Mr. Neilitz would later reimburse Mrs. Neilitz by check, which she would deposit into CoVantage money market account *72.

99. Mrs. Neilitz testified that other than checking transfers or reimbursements from Mr. Neilitz, there were no other sources of deposits into CoVantage money market account *72. (Erica Neilitz Rule 2004 Exam Dec. 10, 2021 Tr. at 47:1-18).

100. The United States Trustee inquired into the following deposits into CoVantage checking account *296:

- a. March 30, 2018 - \$10,000 deposit;
- b. April 27, 2018 -- \$10,000 deposit by check;
- c. April 27, 2018-- \$12,950.35 deposit by check;
- d. June 1, 2018-- \$5,000 deposit by check;
- e. March 29, 2019-- \$5,000 deposit;
- f. October 9, 2020-- \$3,000 deposit by check;
- g. February 12, 2021-- \$5,000 deposit;
- h. February 24, 2021-- \$3,500 deposit.

101. Mrs. Neilitz testified she did not know the source of the above deposits in ¶ 100. (Erica Neilitz Rule 2004 Exam Dec. 10, 2021 Tr. at 109:5-9; 112:3-6; 115:2-9; 127:1-5; 127:12-19; 132:3-7).

102. Upon information and belief, the deposits identified in ¶ 100 comprise income to the Defendants. The Defendants were required to disclose the \$16,500 in deposits from March 29, 2019 through February 21, 2021 within their SOFA questions 4 and 5, but did not.

103. The United States Trustee inquired into a \$30,616.50 deposit on May 10, 2019 into CoVantage checking account *296.

104. Mrs. Neilitz testified that the \$30,616.50 deposit was transferred to her via check from Glacier Cattle Company, and used for household expenses.

105. The Defendants were required to, but did not disclose, any income from Glacier Cattle Company for 2019 within their SOFA questions 4 or 5.

106. The United States Trustee inquired into a \$45,961.58 deposit by check into CoVantage checking account *296.

107. Mrs. Neilitz testified that the \$45,961.58 deposit is proceeds from the sale of the Defendants' 852 West Washington Street, Crandon, Wisconsin property on November 8, 2019.

108. The Defendants' SOFA discloses that \$185,544.95 in house sale proceeds were "paid direct to CoVantage Credit Union to pay off first mortgage." ECF No. 10 at p. 96. The Defendants do not disclose on their SOFA that they directly received \$45,961.58 of the sale proceeds.

109. The Defendants were required to but did not disclose that they directly received proceeds in 2019 from the sale of their West Washington Street property in response to SOFA question 5.

110. The United States Trustee inquired into a \$71,259.25 deposit on December 30, 2019 into CoVantage checking account *296.

111. Mrs. Neilitz testified that the \$71,259.25 deposit resulted from the sale of real estate held by Glacier Ridge Estates Inc.

112. Glacier Ridge Estates remitted \$71,259.25 in sale proceeds to the Defendants.

113. The Defendants used the \$71,259.25 in sale proceeds to pay the Defendants' personal bills and to purchase two \$12,000 IRAs.

114. The \$71,259.25 remittance from Glacier Ridge Estates is a distribution to the Defendants made within three years of the Neilitz Petition Date.

115. The Defendants were required to but did not disclose the receipt of \$71,259.25 in 2019 from Glacier Ridge Estates Inc. in response to SOFA question 5.

116. The United States Trustee inquired into a \$26,881.70 deposit on October 15, 2018 into money market account *72.

117. Mrs. Neilitz testified that she did not know the source of the \$26,881.70 deposit. (Erica Neilitz Rule 2004 Exam Dec. 10, 2021 Tr. at 112:19-25 113:1-6).

118. Upon information and belief, the Defendants failed disclose all sources of income within their bankruptcy schedules and statements. Further, the Defendants failed to disclose distributions to them from entities in which they hold or control an interest. ECF No. 28 ¶ 2(e).

iv. Undisclosed Gambling Income

119. The Defendants' schedules and statements do not disclose any gambling income.

120. However, the Internal Revenue Service issued Mr. Neilitz form W2Gs in July 2021 which reflect the receipt of slot winnings.

121. According to the IRS form W2Gs provided to the United States Trustee, Mr. Neilitz won a total of \$6,318.69 from slot machines on July 2, 2021—just weeks before the Neilitz Petition Date.

122. The Defendants knowingly failed to disclose gambling income within their bankruptcy statements and schedules.

v. Undisclosed Business Entity

123. The Defendants did not disclose all business entities in which they held an interest in the four years before filing their bankruptcy petition.

124. Mr. Neilitz was a member of Cleereman Neilitz Veneer, LLC within four years of the Neilitz Petition Date.

125. The Defendants knowingly failed to disclose their connection to Cleereman Neilitz Veneer, LLC within their schedules and statements.

D. The Defendants do not sufficiently explain the loss of assets.

126. The Defendants were required under the Court's Rule 2004 Order to provide copies of all personal financial statements prepared by or on behalf of the Defendants from January 1, 2019 through September 30, 2021. ECF No. 28 at ¶ 2(y).

127. The Defendants produced a personal financial statement dated February 8, 2019 ("2019 PFS"). **UST Exhibit B.**

128. The 2019 PFS bears Mr. Neilitz's electronic signature below a certification that the information disclosed in the 2019 PFS is "accurate and complete."

129. The 2019 PFS discloses that as of February 8, 2019, the Defendants owned total assets worth \$20,357,428, including:

- a. Cash value life insurance-- \$15,000
- b. Real Estate owned-- \$3,287,400
- c. Other Assets- NREH- \$4,759,000
- d. JT Seed -- \$10,680,028
- e. Cattle-- \$900,000
- f. Machinery, equipment, vehicles-- \$446,000
- g. Boats/ATVs/Snowmobiles-- \$165,000
- h. Gravel Pit-- \$105,000.

130. Among the real estate disclosed in the 2019 PFS is a \$1,375,000 parcel described as "Matchwood Ranch, SEC 34, Matchwood MI."

131. The Defendants did not disclose any interest or transfer of real property located in Michigan within their schedules or statements.

132. The 2019 PFS also discloses that as of February 8, 2019, Mr. Neilitz had total liabilities of \$9,715,659, for a net worth of \$10,641,769.

133. The Defendants disclose within their bankruptcy schedules total assets of \$3,655,500.37. Of the total amount of scheduled assets, \$2,250,000 is accounted for as contingent and unliquidated counterclaims against Thomas Cleereman II and Thomas Cleereman III.

134. The Defendants have not adequately explained the loss of assets between the February 2019 PFS and the July 2021 Neilitz Petition Date.

E. The Defendants do not sufficiently explain the disposition of business loan proceeds and fail to provide business records.

135. According to the Defendants, none of their business entities were operating as of the Neilitz Petition Date.

136. In particular, the Defendants disclose that Glacier Cattle Company LLC operated from July 2009 to the end of 2020; and that J-T Seed Company, Inc. dba Wolf River Seed Company operated from February 1989 to July 2021.

i. Glacier Cattle Company LLC

137. Mr. Neilitz testified that Glacier Cattle Company LLC last operated at the end of 2020, and that all of its assets were sold to an individual at the end of 2019.

138. The Defendants were required to provide bank statements for all business accounts held or controlled by Glacier Cattle Company LLC from January 1, 2017 through September 30, 2021. ECF No. 28 at ¶ 2(j).

139. The Defendants produced statements for Laona State Bank account for Glacier Cattle Company LLC ending *290.

140. Glacier Cattle Company LLC's Laona State Bank account *290 indicates minimal deposit and debit activity for 2020 and 2021.

141. The Defendants did not provide the United States Trustee with any other bank account statements for any other accounts held by Glacier Cattle Company LLC.

142. According to public records, Glacier Cattle Company LLC of Argonne, Wisconsin obtained a Small Business Administration Payroll Protection Program loan ("PPP Loan") of \$10,822 on or about March 12, 2021 from Nicolet National Bank. *See*

<https://projects.propublica.org/coronavirus/bailouts/loans/glacier-cattle-company-llc-1109328600> (last accessed January 25, 2022).

143. Glacier Cattle Company LLC's Laona State Bank account *290 does not reflect the deposit of a PPP Loan from Nicolet National Bank in or about March 2021.

144. Upon information and belief, the Defendants have failed to disclose all bank accounts held by Glacier Cattle Company LLC as required by the Court's Rule 2004 Order. ECF No. 28 at ¶ 2(j).

145. The Court's Rule 2004 further order required the Defendants to provide copies of all loan applications made by Glacier Cattle Company LLC from January 1, 2021 through September 30, 2021 and to provide records sufficient to demonstrate the disposition of loan proceeds including bank statements. ECF No. 28 at ¶ 2(k).

146. The Defendants provided an unsigned copy of Glacier Cattle Company LLC's PPP Loan application, without any supporting documents. (Neilitz Bates 006082-087).

147. The Defendants failed to provide records sufficient to demonstrate the disposition of the Glacier Cattle Company LLC's PPP loan proceeds. ECF No. 28 at ¶ 2(j-k).

148. The Defendants failed to provide or prepare year-end profit and loss statements and year-end balance sheets for Glacier Cattle Company LLC for 2018, 2019, 2020, and 2021. ECF No. 28 at ¶ 2(d).

149. The Defendants failed to provide or prepare 2020 federal tax returns for Glacier Cattle Company LLC. ECF No. 28 at ¶ 2(c).

150. The Defendants' failure to provide the above records referred to in above ¶¶ 145-149, or to provide an adequate reason for their unavailability is a violation of the Rule 2004 Order. ECF No. 28.

ii. J-T Seed Company Inc.

151. The Defendants provided copies of Laona State Bank account *173 in the name of J-T Seed Company Inc. from September 30, 2017 through July 31, 2021 pursuant to the United State Trustee's Rule 2004 Order. ECF No. 28 at ¶ 2(j).

152. The Laona State Bank account *173 held a balance of \$7.88 from November 30, 2019 through May 19, 2020.

153. After four months of no activity within the account, Laona State Bank account *173 reflects an \$11,091 deposit from an unknown source on May 19, 2020.

154. J-T Seed Company Inc. applied for and received two PPP Loans.

155. J-T Seed Company Inc. received the first PPP Loan on or about April 15, 2020, in the amount of \$97,570 from Nicolet National Bank. *See* <https://projects.propublica.org/coronavirus/bailouts/loans/j-t-seed-company-inc-5180608406> (last accessed January 25, 2022).

156. J-T Seed Company Inc.'s Laona State Bank account *173 does not reflect the deposit of \$97,570 in PPP Loan proceeds in 2020.

157. J-T Seed Company Inc. received the second PPP Loan on or about February 8, 2021 in the amount of \$97,498 also from Nicolet National Bank. *See* <https://projects.propublica.org/coronavirus/bailouts/loans/j-t-seed-company-incorporated-8824957105> (last accessed January 25, 2022).

158. J-T Seed Company Inc.'s Laona State Bank account *173 does not reflect the deposit of the \$97,498 PPP Loan from Nicolet National Bank in 2021.

159. The Defendants were required by the Court's Rule 2004 Order to all bank accounts held in the name or for the benefit of J-T Seed Company Inc., but upon information and belief, have not disclosed all such accounts. ECF No. 28 at ¶ 2(j).

160. The Defendants provided an unsigned copy of J-T Seed Company Inc.'s 2021 PPP Loan application, without any supporting records. ECF No. 28 at ¶ 2(k). (Neilitz Bates 006103-106).

161. The Defendants failed to provide records sufficient to explain the disposition of J-T Seed Company Inc.'s 2021 PPP Loan proceeds. ECF No. 28 at ¶ 2(k).

162. The Defendants were required to but have not provided 2020 federal tax returns for J-T Seed Company Inc. ECF No. 28 at ¶ 2(c).

163. The Defendants were required by the Court's Rule 2004 Order to provide year-end profit and loss statements and year-end balance sheets for J-T Seed Company Inc. for 2019, 2020 and 2021, but have not provided such records. ECF No. 28 at ¶ 2(d).

164. The Defendants' failure to provide the above records referred to in above ¶¶ 159-163, or to provide an adequate reason for their unavailability is a violation of the Rule 2004 Order. ECF No. 28.

F. The Defendants fail to produce records regarding the Overly Revocable Trust.

165. The Defendants were required to provide records sufficient to determine the disposition of loan proceeds from the Shirley Overly Revocable Trust ("Overly Trust"). ECF No. 28 at ¶ 2(q).

166. The Defendants were required to produce:

q. Copies of all promissory notes, agreements, offerings, and or contracts between the Debtors jointly or individually, or by an entity owned or controlled by the Debtors, or in which the Debtors hold or held an interest, with the Shirley H. Overly Revocable Trust (Schedule EF items 4.53, 4.54). To include a complete accounting to demonstrate the disposition of any loan proceeds from the Shirley H. Overly Revocable Trust obtained by the Debtors or an entity owned or controlled by the Debtors, or in which the Debtors hold or held an interest. To include supporting bank statements to demonstrate the disposition of the loan proceeds.

167. The Defendants failed to provide any records regarding the Overly Trust as required by the Courts Rule 2004 Order. ECF No. 28.

168. The Defendants disclose that they owe the Shirley H. Overly Revocable Trust \$4,720,020 under either loan agreements or personal guarantees provided in 2018. ECF No. 10 at p. 58.

169. The Overly Trust filed Proof of Claim 18 in Cloud's bankruptcy proceeding. The claim indicates that Mr. Neilitz, as "managing partner" of Cloud, and the Overly Trust by Shirley Overly, executed two promissory notes on December 15, 2017: one for \$500,000 with 10% interest, and a second for \$520,000 with 11% interest. Case No. 19-23680-gmh, Claim No. 18 filed December 1, 2021. Case No. 19-23680-gmh, Claim No. 18-1.

170. The Overly Trust's Proof of Claim 18 also included a third loan agreement executed by Shirley Overly on behalf of the Overly Trust, and by Mr. Neilitz as "managing partner" of Cloud on May 11, 2018 for \$2.5 million. Case No. 19-23680-gmh, Claim No. 18-2.

171. The May 2018 promissory note provides the Overly Trust a 50% security interest in assets held by Mr. Neilitz in his entity, Northern Real Estate Holdings LLC ("NREH") "as reported on an audited balance sheet per Andy Davis, CPA of Rhinelander, WI." *Id.*

172. The Defendants' schedule AB discloses that they hold a 100% interest in NREH.

173. The Defendants were required to provide NREH's balance sheets from January 1, 2017 through September 30, 2021 but have not. ECF No. 28 at ¶ 2(d).

174. The Defendants failed to adequately explain the disposition of loan proceeds provided by the Overly Trust to the Defendants and or their business entities.

175. The Defendants' failure to provide the above records referred to in ¶¶ 166 and 173, or to provide an adequate reason for their unavailability is a violation of the Rule 2004 Order. ECF No. 28.

IV. ALLEGATIONS

Count One

The Defendants' Discharge Should Be Denied for Making False Oaths Under 11 U.S.C. § 727(a)(4)(A)

176. All of the preceding paragraphs are incorporated and realleged herein by reference.

177. Section 727(a)(4)(A) provides that the court may not grant a debtor a discharge if "the debtor knowingly and fraudulently, in or in connection with the case--(A) made a false oath or account" 11 U.S.C. § 727(a)(4)(A).

178. The burden of proof lies with the plaintiff to establish five elements: (1) the debtor made a statement under oath; (2) the statement was false; (3) the debtor knew the statement was false; (4) the debtor made the statement with intent to defraud; and (5) the statement is related to the bankruptcy case in a material way. *In re Tauber*, 349 B.R. 540, 557-58 (Bankr. N.D. Ind. 2006) (citing *[In re] Bailey*, 145 B.R. [919] at 926 [(Bankr. N.D. Ill.1992)]).

a. Statement Under Oath

179. The first issue to determine is whether the Defendants made a statement under oath.

180. Bankruptcy petitions, schedules and statements of financial affairs, and amended schedules constitute statements under oath.

181. A debtor's testimony at the § 341 meeting and hearings consists of statements made under oath.

182. The Defendants made statements under oath within their bankruptcy schedules, statements, within their testimony at the § 341 meeting, and the United States Trustee's Fed. R. Bankr. P. 2004 exam.

b. False Statements

183. The next issue is whether the Defendants made false statements. Bankruptcy schedules with material misrepresentations or omissions constitute false statements under oath.

184. The Defendants made false statements when they signed their schedules.

185. The Defendants further made false statements when they testified at their 11 U.S.C. § 341 meeting of creditors that their bankruptcy schedules were true and accurate.

186. The Defendants made false oaths when they:

- a. Failed to disclose all bank or depository accounts in which the Defendants directly or indirectly held an interest;
- b. Failed to disclose all of their income within their SOFA, including a \$30,616.50 transfer from Glacier Cattle Company Inc. to the Defendants on May 10, 2019; a \$71,259.25 deposit on December 30, 2019 from sale proceeds from Glacier Ridge Estates; \$68,500 in deposits into Laona State Bank account *631; \$16,500 in deposits from March 29, 2019 through February 21, 2021 into CoVantage checking account *296; and a \$45,961.58 deposit by check into CoVantage checking account *296 from the sale of their West Washington Street property in 2019.
- c. Undervalued their jewelry by at least \$7,775;
- d. Failed to disclose gambling income;

- e. Failed to disclose all of their business interests, including Cleereman Neilitz Veneer, LLC; and
- f. Failed to disclose draws and reimbursements transferred to the Defendants by Cloud.

c. *Knowing and Fraudulent*

187. Once a false oath is demonstrated, the next issue that needs to be addressed is whether the Defendants made these false statements knowingly and fraudulently.

188. “When a false statement is in the form of an omission, it is made ‘knowingly’ if the debtor has actual knowledge of the underlying information that was omitted.” *In re Aydt*, No. 20-20738, 2022 WL 107334, at *12 (Bankr. E.D. Wis. Jan. 11, 2022) (citing *In re Chlad*, 922 F.3d 856, 862 (7th Cir. 2019)).

189. To establish an intent to defraud, “[t]he plaintiff must prove the omissions are the fruit of an intent to deceive or form a pattern of reckless indifference to the truth.” *Layng v. Sgambati (In re Sgambati)*, 584 B.R. 865, 871 (Bankr. E.D. Wis. 2018). In evaluating a debtor’s intent, courts should look at the “whole pattern of conduct.” *Id.*

190. The aggregate errors and omissions in the Defendants’ bankruptcy schedules and their testimony at the meeting of creditors and Rule 2004 examinations demonstrate either the Defendants’ intent to defraud or their reckless indifference for the truth.

191. The pattern of false statements along with the transactions that were concealed demonstrate the Defendants’ intent to defraud. For example, while the Defendants provided statements for Laona State Bank account *173 for J-T Seed Company Inc., they did not disclose the account into which J-T Seed’s PPP Loan proceeds were deposited. The selective nature of the undisclosed transactions reflects a knowing intent to defraud.

d. Materiality

192. Finally, the plaintiff must show that the false statements made by the debtor relate materially to the bankruptcy case. “[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.’” *Lardas v. Grcic*, 847 F.3d 561, 570 (7th Cir. 2017) (quoting *Stamat v. Neary*, 635 F.3d 974, 982 (7th Cir. 2011)).

193. “Debtors have an absolute duty to report whatever interests they hold in property, even if they believe their assets are worthless or are unavailable to the bankruptcy estate.” *Matter of Yonikus*, 974 F.2d 901, 904 (7th Cir. 1992).

194. The Defendants’ omissions and false oaths relate directly to this bankruptcy proceeding and concerns the discovery of assets, business dealings, and the disposition of the Defendants’ property.

195. The Defendants’ actions have made the information in their schedules unreliable.

196. The Defendants failed to disclose material information about their financial circumstances and should not receive a discharge.

WHEREFORE, Plaintiff, the United States Trustee, respectfully requests that this Court enter an order denying the Defendants’ discharges pursuant to 11 U.S.C. § 727(a)(4)(A).

Count Two

The Defendants’ Discharge Should Be Denied for Failure to Explain Satisfactorily any Loss of Assets or Deficiency of Assets to Meet the Defendants’ Liabilities Under 11 U.S.C. § 727(a)(5)

197. All of the preceding paragraphs are incorporated and realleged herein by reference.

198. Section 727(a)(5) of the Bankruptcy Code provides that the Court shall grant the debtor a discharge unless 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.

199. "Section 727(a)(5) is broadly drawn and clearly gives a court broad power to decline to grant a discharge in bankruptcy where the debtor does not adequately explain a shortage, loss, or disappearance of assets." *In re Martin*, 698 F.2d 883, 886 (7th Cir. 1983) (citations omitted).

200. "Title 11 U.S.C. § 727(a)(5) requires a satisfactory explanation for the whereabouts of a debtor's assets." *In re D'Agnese*, 86 F.3d 732, 734 (7th Cir. 1996) (debtor failed to specify the whereabouts of certain assets he claims to have transferred or provide any convincing evidence that the assets were transferred).

201. A satisfactory explanation "must consist of more than . . . vague, indefinite, and uncorroborated" assertions by the debtor. *Id.* (citing *Baum v. Earl Millikin, Inc.*, 359 F.2d 811, 814 (7th Cir. 1966)).

202. "It is not enough to overcome a § 727(a)(5) objection to offer a general oral explanation for the disappearance of substantial assets without documentary corroboration." *In re Hermanson*, 273 B.R. 538, 549 (Bankr. N.D. Ill. 2002). Indeed, "a debtor facing an objection to discharge under § 727(a)(5) may very well have to gather or produce documents and records which she might otherwise not ordinarily keep and in fact may be justified for failing to keep under § 727(a)(3). *Id.* She may well have to hire professionals to locate her assets if she is unable to do so herself." *In re Mezvinsky*, 265 B.R. 681, 690-91 (Bankr. E.D. Pa. 2001).

203. The Court's scrutiny of whether an explanation is satisfactory concerns debtor's ability to provide details, documentation, or proof of disposal of the missing assets, not the wisdom of the debtor's disposition of the asset. *Matter of D'Agnese*, 86 F.3d at 735.

204. The Defendants have failed to produce a satisfactory explanation regarding the loss of assets between their 2019 Personal Financial Statement which represented that as of February 8, 2019, the Defendants held assets valued at over \$20 million, and their July 2021 bankruptcy petition disclosing only \$1.4 million in noncontingent liquidated assets.

205. The Defendants' failure to explain the loss of nearly \$19 million in assets, without supporting documentation, within two years before their bankruptcy petition is not satisfactory under 11 U.S.C. § 727(a)(5).

206. Mr. Neilitz testified that he received a \$300,000 loan from Laona State Bank between October and November 2017, which was deposited into his Laona State Bank personal checking account *631, and then spent the money in full. Mr. Neilitz failed to provide any documentary evidence of how the \$300,000 loan was spent or disbursed. Mr. Neilitz's vague assertions are not satisfactory. 11 U.S.C. § 727(a)(5).

207. The Court's Rule 2004 Order required the Defendants to provide documents sufficient to demonstrate the disposition of PPP Loan proceeds received by Glacier Cattle Company and J-T Seed Company in 2021. The Defendants have failed to provide all of the required documents. The Defendants' failure to account for PPP Loan proceeds received by their entities in 2021, or their failure to explain the unavailability of records, is not justified and in violation of the Court's Rule 2004 Order. The Defendants have failed to provide a satisfactory explanation of the disposition of PPP Loan proceeds obtained on behalf of their business entities within the year before their bankruptcy petition. 11 U.S.C. § 727(a)(5).

208. The Defendants were required to provide documents sufficient to demonstrate the disposition of loan proceeds from the Overly Trust. As of the date of this Complaint, the Defendants have failed to provide any records demonstrating how nearly \$4.7 in loan proceeds from the Shirley H. Overly Revocable Trust were disposed.

209. The failure to account for the disposition of Shirley H. Overly Revocable Trust loan proceeds is not justified and constitutes a failure to explain the loss of assets to meet the Defendants' liabilities under 11 U.S.C. § 727(a)(5).

WHEREFORE, Plaintiff, the United States Trustee, respectfully requests that this Court enter an order denying the Defendants' discharges pursuant to 11 U.S.C. § 727(a)(5).

Count Three

The Defendants' Discharge Should Be Denied for Failure to Keep or Preserve Records— 11 U.S.C. § 727(a)(3)

210. All of the preceding paragraphs are incorporated and realleged herein by reference.

211. Section 11 U.S.C. § 727(a)(3) provides that a debtor shall be granted a discharge unless the debtor conceals, fails to keep or to preserve books and records from which the debtor's financial situation may be ascertained.

212. A debtor has the affirmative duty "to create books and records accurately documenting his business affairs." *In re Scott*, 172 F.3d 959, 969 (7th Cir. 1999) (citing *In re Juzwiak*, 89 F.3d 424, 427-28 (7th Cir. 1996)).

213. The Seventh Circuit defined parameters for a matter brought pursuant to section 727(a)(3): "Section 727(a)(3) requires as a precondition to discharge that debtors produce records which provide creditors with enough information to ascertain the debtor's financial condition and track his financial dealings with substantial completeness and accuracy for a reasonable period past to present." *In re Juzwiak*, 89 F.3d at 427-28.

214. In *Juzwiak*, the Seventh Circuit held that a debtor who only produced bank statements, canceled checks, checking account records, deposit slips and tax returns, but did not identify the source of his income or substantiate business expenses, failed to keep sufficient records and denied the debtor's discharge. *Id.*

215. Applying *Juzwiak*, Judge Shapiro in *Happel* held that a debtor's bank records alone are insufficient for the purposes of 11 U.S.C. § 727(a)(3). "Trustees and creditors are not required to undertake an independent investigation of a debtor's affairs or to speculate as to her financial history or her condition or sift through documents in order to attempt to reconstruct the flow of such assets." *In re Happel*, 394 B.R. 915, 923 (Bankr. E.D. Wis. 2008).

216. "Fraudulent intent is not required under § 727(a)(3). A debtor's sophistication and business experience, or lack thereof, is a relevant factor in determining if there is a violation of this section, but is not controlling. Even an unsophisticated debtor must keep available written evidence from which that debtor's financial condition and business transactions can be ascertained." *Id.* at 923.

217. Courts impose a higher expectation of better record keeping where the debtor is sophisticated in business and the debtor conducts business transactions involving significant assets. *In re Scott*, 172 F.3d at 970.

218. Here, the Defendants are sophisticated, and their business ventures involve significant assets. For example, the Defendants' entity NREH was valued at nearly \$4.7 million in 2019, and J-T Seed Company Inc. valued at nearly \$10 million also in 2019. The Defendants operated Cloud, which obtained millions of dollars in loans from lenders, including from the Overly Trust.

219. The Defendants have not kept or produced records from which the disposition of nearly \$19 million in assets reported on the 2019 PFS can be ascertained.

220. The Defendants have not kept records regarding Glacier Cattle Company LLC, including its receipt and disposition of a \$10,822 PPP Loan, its bank accounts, its year end profit and loss sheets as well as year end balance sheets for 2018 through 2021, and its 2020 federal tax return.

221. The Defendants have not kept records regarding J-T Seed Company Inc., including its receipt and disposition of nearly \$200,000 in PPP Loans in 2020 and 2021, its bank accounts, its year end profit and loss sheets as well as yearend balance sheets for 2019 through 2021, and its 2020 federal tax return.

222. The Defendants have not kept records regarding loan proceeds from the Overly Trust provided to them and or entities which they control.

223. The Defendants have not kept records regarding NREH, including balance sheets from January 1, 2017 through September 30, 2021.

224. The Defendants have not kept records regarding transfers to them from Cloud from 2017 through 2018.

225. The Defendants have not kept records regarding deposits into their personal bank accounts, including their personal accounts at CoVantage Credit Union and an undisclosed account at Laona State Bank.

226. The Defendants' failure to keep records is not justified.

WHEREFORE, Plaintiff, the United States Trustee, respectfully requests that this Court enter an order denying the Defendants' discharges pursuant to 11 U.S.C. § 727(a)(3).

Count Four

The Defendants' Discharge Should Be Denied for Failing to Obey A Court Order Under 11 U.S.C. § 727(a)(6)(A)

227. All of the preceding paragraphs are incorporated and realleged herein by reference.

228. Bankruptcy Code § 727(a)(6)(A) states:

(a) The Court shall grant the debtor a discharge, unless ...

(6) the debtor has refused, in the case—

(A) to obey any lawful order of the court, other than an order to respond to a material question or to testify;

229. Accordingly, a debtor who refuses to obey a court order will be denied a discharge.

230. “Complete compliance from a debtor concerning a lawful court order is required to effectuate the administration of the bankruptcy case.” *In re Grady*, 607 B.R. 659, 670 (Bankr. C.D. Ill. 2019). “Courts have the discretion to determine if refusing to comply with a court order is severe enough to require denial of discharge.” *Id.*

231. The word “refused” requires a showing of a willful or intentional act. *Grochocinski v. Eckert (In re Eckert)*, 375 B.R. 474, 480 (Bankr. N.D. Ill. 2007) (collecting cases). A mere failure to comply with a court order is insufficient to deny a debtor's discharge. *Id.* The objecting party, however, can meet its burden of proof by showing that the debtor received the order and failed to comply. *Kutrubis v. Bowman (In re Kutrubis)*, 486 B.R. 895, 901 (N.D. Ill. 2013) (citation omitted). The burden then shifts to the debtor to explain the lack of compliance. *Id.*

232. The Defendants agreed to a Rule 2004 Order signed by the Court. ECF No. 28.

233. The Defendants received the Rule 2004 Order, and were aware of the records it required them to produce, including:

- Federal and State business tax returns for 2017, 2018, 2019, 2020, and 2021 (when filed) for all entities owned or controlled by the Debtors, or in which the Debtors held an interest from January 1, 2017 through September 30, 2021. To include all schedules and attachments. ECF No. 28 at ¶ 2(c).
- Year-end P&L statements and year-end balance sheets for all entities owned or controlled by the Debtors, or in which the Debtors held an interest from January 1, 2017 through September 30, 2021. ECF No. 28 at ¶ 2(d).
- Partnership (LLC membership) basis calculations including transaction detail for contributions and distributions from January 1, 2017 through September 30, 2021, for all entities in which the Debtors hold or control, or in which the Debtors held an interest. ECF No. 28 at ¶ 2(e).
- Bank statements for all business accounts held or controlled by any entity in which the Debtors own, control, or have had an interest, from January 1, 2017 through September 30, 2021. ECF No. 28 at ¶ 2(j).

- Copies of all loan applications made by any entity held, controlled by the Debtors, or in which the Debtors held an interest, from January 1, 2021 through September 30, 2021. To include records sufficient to demonstrate the disposition of loan proceeds, including bank statements. ECF No. 28 at ¶ 2(k).
- And records regarding loans from the Overly Trust. ECF No. 28 at ¶ 2(q).

234. The Defendants did not comply with the agreed Rule 2004 Order, and as detailed in this Complaint, have failed to produce records as required by the Court's Rule 2004 Order.

235. The Defendants' disregard for the Court's order intentionally, or with reckless disregard merits denial of the Defendants' discharge.

WHEREFORE, Plaintiff, the United States Trustee, respectfully requests that this Court enter an order denying the Defendants' discharges pursuant to 11 U.S.C. § 727(a)(6)(A).

Count Five

Mr. Neilitz's Discharge Should Be Denied for Making a False Claim and Making False Oaths In Connection With Another Bankruptcy Proceeding Under 11 U.S.C. § 727(a)(7)

236. Section 727(a)(7) mandates denial of a discharge in the event of a debtor's misconduct in any bankruptcy case filed separately from but related to the debtor's own case. *In re Krehl*, 86 F.3d 737, 741 (7th Cir.1996).

237. "The purpose and intent of Section 727(a)(7) of the Bankruptcy Code is to prevent debtors who are involved in several bankruptcy proceedings from failing to cooperate in a proceeding in which their own discharge is not at issue such as a corporate proceeding or a proceeding involving a partner or a relative and then, subsequently or simultaneously, obtaining an individual discharge in another case. Section 727(a)(7) is a statutory provision which ties related cases together so that misconduct in one case by an individual may be chargeable against that individual in other related proceedings." *Associated Bank, N.A. v. Sever (In re Sever)*, 438 B.R.

612, 619 (Bankr. C.D. Ill. 2010) (quoting *Whiteside F.S Inc. v. Siefkin*, 46 B.R. 479, 480–81 (N.D.Ill.1985)).

238. In order for a discharge to be denied under § 727(a)(7), a movant must establish the following elements: (1) “the debtor has committed any act specified in paragraph (2), (3), (4), (5), or (6)” of subsection 727(a); (2) the act occurred “on or within one year before the date of the filing of the petition, or during the [debtor’s] case;” and (3) the act was committed “in connection with another case, under this title or under the Bankruptcy Act, concerning an insider[.]” 11 U.S.C. § 727(a)(7).

239. The Defendants are insiders of Cloud. The collapse of Cloud precipitated the filing of the Defendants’ own chapter 7 petition.

240. Upon information and belief, Mrs. Neilitz did not participate in the preparation of Cloud’s bankruptcy schedules.

241. Mr. Neilitz signed Cloud’s chapter 11 schedules and statements, and amendments, as its authorized representative under penalty of perjury.

242. Mr. Neilitz appeared and testified under oath as Cloud’s authorized representative at both its chapter 11 and 7 meetings of creditors.

243. Mr. Neilitz caused Cloud to make a false claim when he knowingly and fraudulently caused Cloud to file an amended schedule EF disclosing a \$500,000 debt to him for a prepetition loan.

244. Because Mr. Neilitz knew that he never made a loan to Cloud, the claim is false and violates 11 U.S.C. § 727(a)(4)(B).

245. Mr. Neilitz further knowingly and fraudulently made false oaths on Cloud’s behalf when he failed to disclose insider transfers made within a year of the Cloud Petition Date in violation of 11 U.S.C. § 727(a)(4)(A).

246. Mr. Neilitz authorized and signed Cloud's response to SOFA questions 4 and 30 disclosing that no such insider transfers occurred, when in fact he knew there were insider transfers.

247. For example, Mr. Neilitz failed to disclose \$61,792.71 in transfers between April 30, 2018 and July 20, 2018 to the Defendants:

| Date | Amount | Recipient | Description |
|-------------|---------------|------------------|---------------------------------|
| 4/30/2018 | \$10,000.00 | Erica Neilitz | Check 1301 Memo: (blank) |
| 4/30/2018 | \$7,535.90 | Erica Neilitz | Check 1306 Memo: Reimbursement |
| 5/18/2018 | \$20,000.00 | Jason Neilitz | Check 1340 Memo: Owner Draw |
| 5/29/2018 | \$5,000.00 | Erica Neilitz | Check 1351 Memo: (blank) |
| 6/01/2018 | \$2,306.58 | Erica Neilitz | Check 1352 Memo: Reimbursements |
| 6/29/2018 | \$5,000.00 | Erica Neilitz | Check 1362 Memo: (blank) |
| 7/17/2018 | \$10,000.00 | Jason Neilitz | Debit: p/c Hope to Jason's |
| 7/20/2018 | \$1,950.23 | Erica Neilitz | Check 1382 Memo: Reimbursements |

Total: **\$61,792.71**

See UST Exhibit A.

248. Mr. Neilitz further knowingly and fraudulently made false oaths at Cloud's chapter 11 and 7 meetings of creditors when he failed to fully disclose all value transferred from Cloud to its insiders during its operation. 11 U.S.C. § 727(a)(4)(A).

249. For example, the United States Trustee's transaction summary of Cloud's Laona State Bank account *273 demonstrates that Cloud transferred between \$273,558.48 and \$432,370.11 of its funds to the Defendants for their personal benefit from December 22, 2017 through July 20, 2018. *See UST Exhibit A.*

250. Mr. Neilitz's failure to fully disclose Cloud's insider transfers is material because it bears a relationship to Cloud's business transactions, its estate, the discovery of assets, business dealings, and the existence and disposition of Cloud's property. *See Stamat*, 635 F.3d at 982.

251. Mr. Neilitz's false statements and omissions within Cloud's bankruptcy proceeding evidence a reckless disregard for the truth.

WHEREFORE, Plaintiff, the United States Trustee, respectfully requests that this Court enter an order denying Mr. Neilitz's discharge pursuant to 11 U.S.C. § 727(a)(7).

V. CONCLUSION

Based upon the foregoing facts, the United States Trustee requests that the Court enter a judgment denying the Defendants' discharges, and for such other relief as may be just.

Dated: January 27, 2022.

PATRICK S. LAYNG
United States Trustee

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Date: 2022.01.27
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LAURA D. STEELE
Attorney for the United States Trustee