Dated: July 18, 2014
The following is SO ORDERED:

David S. Kennedy
UNITED STATES CHIEF BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re

TIMOTHY MICHELOTTI and APRIL MICHELOTTI,

Debtors.

Case No. 12-21679-K

Chapter 7

SAMUEL K. CROCKER, UNITED STATES TRUSTEE, REGION 8,

Plaintiff,

vs.

TIMOTHY MICHELOTTI and APRIL MICHELOTTI,

Defendants.

Adv. Proc. No. 13-00040

MEMORANDUM AND ORDER GRANTING, IN PART, AND DENYING, IN PART, THE "UNITED STATES TRUSTEE'S COMPLAINT FOR DENIAL OF DISCHARGE PURSUANT TO 11 U.S.C. §§ 727(a)(2) AND (4)" COMBINED WITH NOTICE OF THE ENTRY THEREOF

INTRODUCTION

Plaintiff, Samuel K. Crocker, the United States Trustee for Region 8 ("U.S. Trustee"), filed a complaint objecting to the Chapter 7 discharges of the above-named debtors, Timothy and April Michelotti, the defendants herein ("Defendants" or "Mr. Michelotti" and/or "Mrs. Michelotti"), under 11 U.S.C. §§ 727(a)(2) and (4). After notice and a hearing, the court grants the U.S. Trustee's complaint, in part. That is, the court denies a general discharge to Mr. Michelotti under 11 U.S.C. § 727(a)(4)(A) but will grant a discharge to Mrs. Michelotti.

This is a core proceeding. 28 U.S.C. § 157(b)(2)(J). The court has the statutory authority under 28 U.S.C. .§ 157(b)(1) and the constitutional authority to hear and enter a final judgment. The U.S. Trustee filed this proceeding pursuant to 11 U.S.C. § 727(c)(1) and Fed. R. Bankr. P. 7001(4).

The following shall constitute the court's findings of fact and conclusions of law in accordance with Fed. R. Bankr. P. 7052.

PROCEDURAL HISTORY

Defendants filed a voluntary petition under Chapter 7 of the Bankruptcy Code on February 15, 2012. Edward L. Montedonico, Esquire was appointed as the Chapter 7 Trustee ("Trustee"). Bankruptcy schedules, statement of affairs, and other required documents were filed on March 1, 2012. Defendants' original schedules and statement of financial affairs ("SOFA") were amended on April 23, 2012.

The U.S. Trustee moved for a Rule 2004 examination of the defendants on May 1, 2012. Defendants failed to comply with the order for a Rule 2004 examination entered by the court on May 2, 2012, and neither turned over any documents nor appeared in order to be examined until the U.S. Trustee moved to dismiss the case on August 10, 2012. Subsequently, the defendants provided over 100 pages of documents pertaining to their financial affairs, and the court entered an order conditionally denying the U.S. Trustee's motion to dismiss.

The U.S. Trustee filed the instant complaint to deny the discharges ("Complaint") of Mr. and Mrs. Michelotti on January 18, 2013. Defendants filed their answer to the Complaint on March 26, 2013, only after the U.S. Trustee filed a motion for default judgment on March 19, 2013. See Fed. R. Bankr. P. 7055.

The U.S. Trustee propounded requests for production of documents and interrogatories to the defendants on January 29, 2014, which the defendants responded by producing certain documents on or about March 13, 2014. Mr. Michelotti attended an examination on April 29, 2014, at which time he was again asked to provide supplemental documents.

On June 26, 2014, the court conducted a trial on the merits regarding the § 727(a)(2) and (4) complaint. Mr. and Mrs. Michelotti were the only entities who testified at the trial.

FINDINGS OF FACT

Based on the defendants' testimony at the trial, the Pre-trial Stipulation of Facts and Trial Exhibits ("Stipulated Facts"), and the case record as a whole, the court makes the following findings of fact:

1) Mrs. Michelotti prepared the defendants' "Attorney Intake Document" (Exhibit 9) provided by counsel to initiate the bankruptcy process. Both Mr. and Mrs. Michelotti signed the petition, schedules, and SOFA.

2) Defendants did not thoroughly review the petition, schedules, or their SOFA (amended or original) before submitting them to the court.

3) Defendants' statement of income reflected on the amended schedules was an estimation and done to the best of the defendants' ability at the time of filing of this case. Schedule I reflects monthly income of $5,000.00 when regular monthly income was $6,160.00 (or $1,540.00 a week).

4) At the time of filing, the balance of the defendants' joint checking account reflected on the defendants amended Schedule B ($50.00) was incorrect, as the account had a balance of $2,562.52. Case No. 12-21679, Dkt. Nos. 10 and 26; Case No. 13-00040, Dkt. No. 24, Exhibit 1.

5) Defendants' amended Schedule B did not include their joint savings account which had a balance of $61.58 at the time of filing. Case No. 12-21679, Dkt. Nos. 10 and 26; Case No. 13-00040, Dkt. No. 24, Exhibit 2.

6) Defendants' amended Schedule B did not include Mrs. Michelotti's savings account which had a balance of $2.01 at the time of filing. Case No. 12-21679, Dkt. Nos. 10 and 26; Case No. 13-00040, Dkt. No. 24, ¶ 27.

7) Defendants' amended Schedule B included Mr. Michelotti's 20% interest in Sunshine Car Wash, LLC, at Line 35, but did not include this interest elsewhere on Schedule B or the defendants' SOFA. Case No. 12-21679, Dkt. Nos. 10 and 26.

8) Defendants' amended Schedule B and amended SOFA omitted entirely Mr. Michelotti's interests in two other businesses: a 50% membership interest in Steve's

Tire & Auto, LLC and a 100% interest in Ice Box, LLC. Case No. 12-21679, Dkt. Nos. 10 and 26.

9) Steve's Tire & Auto, LLC Written Consent of Members ("Steve's Sale Agreement") reflects the sale of Mr. Michelotti's 50% membership interest in Steve's Tire & Auto to Mr. Steve Woodard ("Mr. Woodard") consummated on February 11, 2011. Case No. 13-00040, Dkt. No. 24, Exhibit 6A.

10) Defendants' IRS Form 6252, "Installment Sale Income," for 2011 states the purchase price of Mr. Michelotti's membership interest in Steve's Tire & Auto, LLC as $179,831.00 and reflects a single installment payment paid in 2011 of $109,831.00. *Id.* at Exhibit 5A.

11) Defendants' IRS Form 6252, "Installment Sale Income," for 2012 reflects a second installment payment for the sale of Mr. Michelotti's membership interest in Steve's Tire & Auto, LLC in the amount of $6,000.00. *Id.* at Exhibit 5B.

12) Steve's Sale Agreement and defendants' 2011 and 2012 forms and reflect an agreement reached between Mr. Michelotti and Mr. Woodard for the sale of Mr. Michelotti's membership interest in Steve's Tire & Auto, LLC to be paid in installments.

13) Mr. Michelotti's testimony at the trial did not sufficiently explain the disposition of the outstanding note receivable, which became property of the § 541(a) estate at the time of defendants' Chapter 7 case filing.

14) The balance outstanding of the note receivable at the Chapter 7 petition date was $64,000.00.

15) At the time of filing of this case, the defendants' had negative equity interests in both Ice Box, LLC and Sunshine Car Wash, LLC.

CONCLUSIONS OF LAW

There is no constitutional right to obtain a discharge of one's debts in bankruptcy.[1] A discharge in bankruptcy is a privilege, not a right.[2] A bankruptcy discharge provides financial relief and a fresh start to the honest but unfortunate debtor who cooperates with the court in the orderly

[1] *See, e.g., In re Krohn*, 886 F.2d 123 (6th Cir. 1989); *In re Tabibien*, 289 F.2d 793, 795 (2nd Cir. 1961).

[2] *See U.S. v. Kras*, 409 U.S. 434, 436 (1973).

liquidation of non-exempt assets. The statutory right to discharge is construed liberally in favor of the debtor. *In re Keeney*, 227 F.3d 679, 683 (6th Cir. 2000) (citations omitted). Section 727 of the Bankruptcy Code ensures that debtors "who seek the shelter of the bankruptcy code do not play fast and loose with their assets or with the reality of their affairs." *In re Tully*, 818 F.2d 106, 110 (1st Cir. 1987). Thus, competing considerations arise and must be balanced.

"The Bankruptcy Code is designed to ensure that deserving debtors receive a 'fresh start' by requiring them to provide complete, accurate, and reliable information at the commencement of a case, so that all parties may adequately evaluate the case and the estate's property may be properly administered." *In re Bren*, 303 B.R. 610, 614 (B.A.P. 8th Cir. 2004). Disclosure of all of a debtor's assets and liabilities is not merely a suggestion but a prerequisite for the granting of a discharge. *In re Keeney*, 227 F.3d at 685 (quotation omitted). "A petitioner cannot omit items from his schedules, force the trustee and the creditors, at their peril, to guess that he has done so—and hold them to a mythical requirement that they search through a paperwork jungle in the hope of finding an overlooked needle in a documentary haystack." *In re Tully*, 818 F.2d at 111. The threat of a denial of discharge fosters the timely disclosure, discovery, and liquidation of assets that upholds the fundamental purposes of the Code.

Rule 4005 of the Federal Rules of Bankruptcy Procedure provides that the plaintiff (here, the U.S. Trustee) bears the burden of proving the § 727(a)(2) and (4) objections. The Plaintiff must show, by a preponderance of the evidence, that all the required § 727(a) elements are properly met. *See, for example, In re Keeney*, 227 F.3d at 683 (citing *Barclays/American Bus. Credit, Inc. v. Adams (In re Adams)*, 31 F.3d 389, 394 (6th Cir. 1994)).

11 U.S.C. § 727(a)(4)(A)

Section 727(a)(4)(A) states: "[t]he 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) (2014).

The Sixth Circuit Court of Appeals adopts a five element test for determining whether a debtor has violated § 727(a)(4)(A): 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 fraudulent intent; and 5) the statement related materially to the bankruptcy case. *See In re Keeney*, 227 F.3d at 685 (citing *Beaubouef v. Beaubouef (In re Beaubouef)*, 966 F.2d 174, 178 (5th Cir. 1992)).

The bankruptcy petition, schedules of assets and liabilities, and the SOFA have the force and effect of oaths.[3] Thus, a debtor may be denied a discharge under § 727(a)(4)(A) if the debtor knowingly and fraudulently makes a false representation on them. Knowledge can be shown by demonstrating that the debtor knew the truth, but failed to give the proper information. A false statement or omission made by mistake or misunderstanding is not sufficient to deny a debtor's discharge, but a knowingly false statement or omission, or a pattern of misrepresentations and omissions, with reckless indifference to the truth will suffice as grounds to deny a debtor's chapter 7 discharge.[4] "A debtor's intent may be inferred from circumstantial evidence or from the debtor's course of conduct." *In re Hamo*, 233 B.R. at 724 (quoting *Hunter v. Sowers (In re Sowers)*, 229 B.R. 151, 159 (Bankr. N.D. Ohio 1998)) (internal citations omitted).

As stated above, the purpose of § 727 is to ensure the effective and efficient functioning of the bankruptcy system by denying dishonest and uncooperative debtors a general discharge.

Section 727(a)(4)(A) Claim against Mrs. Michelotti

Mrs. Michelotti signed the defendants' bankruptcy petition, schedules (amended and original), and the debtors' SOFA (amended and original) under penalty of perjury. As stated above, these documents are considered oaths for the purposes of § 727(a)(4)(A) and therefore the first element of a violation under this section is satisfied.

On these documents, Mrs. Michelotti misstated the defendants' income and omitted certain bank accounts and property interests. At the time of filing, Defendants received $1,540.00 a week, or $6,160.00 per month, from Sunshine Car Wash, LLC as regular income from the operation of that business. However, the defendants' schedules indicate that their monthly income was $5,000.00. Mrs. Michelotti had access to bank statements reflecting the correct amount of regular monthly income, and, therefore, her knowledge of this false statement can be inferred.

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[3] *See In re Bren*, 303 B.R. at 613 (citing *First State Bank v. Beshears (In re Beshears)*, 196 B.R. 468, 476 (Bankr. E.D. Ark. 1996); Federal Rule of Bankruptcy Procedure 1008 ("All petitions, lists, schedules, statements and amendments thereto shall be verified or contain an unsworn declaration as provided in 28 U.S.C. § 1746.")); Official Bankruptcy Form B1 (Voluntary Petition) ("I declare under penalty of perjury that the information provided in this petition is true and correct."); Official Bankruptcy Form B7 (SOFA) ("I declare under penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs and any attachments thereto and that they are true and correct.").

[4] *See In re Hamo*, 233 B.R. at 725 (citing *In re Beaubouef*, 966 F.2d at 178); *see also In re Keeney*, 227 F.3d at 686 (citing *In re Chavin*, 150 F.3d 726, 728 (7th Cir. 1998)).

Defendants also listed only one bank account on Schedule B, valued at $50.00. However, the defendants' had three bank accounts, a joint checking account valued at $2,562.52, a joint savings account valued at $61.58, and a savings account in Mrs. Michelotti's name valued at $2.01. Mrs. Michelotti had access to the correct information concerning defendants' bank accounts, and, therefore, her knowledge of this false statement can be inferred.

Mrs. Michelotti also omitted Mr. Michelotti's ownership interest in Steve's Tire & Auto, LLC and Ice Box, LLC at the time of filing. However, Mrs. Michelotti did not have access to the financials of either of these entities, and the U.S. Trustee has not submitted any further proof that Mrs. Michelotti was aware of the nature or value of these business interests. Thus, Mrs. Michelotti's omission from the schedules and SOFA of Steve's Tire & Auto, LLC, and Ice Box, LLC, was not done knowingly.

Although Mrs. Michelotti's statements concerning the business income and bank accounts may have been knowingly false, the U.S. Trustee also must prove fraudulent intent and materiality by a preponderance of the evidence. Mrs. Michelotti's role in the household is primarily that of a housewife/caregiver, and her primary responsibility regarding finances was to organize the family's healthcare. She does not appear to regularly oversee the business income or bank accounts. The U.S. Trustee's evidence suggests that the misrepresentation of the defendants' income and accounts was more akin to an isolated and inadvertent (or innocent) mistake by Mrs. Michelotti. Mrs. Michelotti testified that the statements were her best estimate at the time the intake form was completed. As an isolated and inadvertent mistake, the court finds that Ms. Michelotti did not act with fraudulent intent or reckless disregard for the truth as contemplated here.

Furthermore, regardless of intent, the omissions and misrepresentations of the defendants' bank accounts and income arguably are immaterial to the bankruptcy case as a whole. The court notes that the account values may fall within a category of statutory exemptions therefore making the omission immaterial. Accordingly, the court finds that Mrs. Michelotti did not knowingly and fraudulently make a material false oath in violation of § 727(a)(4)(A). Plaintiff's request for relief under § 727(a)(4)(A) against Ms. Michelotti is denied. Plaintiff has not carried the required burden of proof.

Section 727(a)(4)(A) Claim against Mr. Michelotti

As with Mrs. Michelotti, Mr. Michelotti signed the Chapter 7 petition, schedules, and SOFAs under penalty of perjury. These statements were false as they omitted or misrepresented the true

value of Defendants' bank accounts, income, and property interests in Steve's Tire & Auto, LLC and Ice Box, LLC. Thus, elements one and two of the §727(a)(4)(A) test are satisfied.

Mr. Michelotti, like Mrs. Michelotti, had access to the correct information concerning the defendants' bank accounts and income. However, Mr. Michelotti alone knew about the omitted property interests in Steve's Tire & Auto, LLC, and Ice Box, LLC as he was the president and sole owner, respectively. Mr. Michelotti, therefore, knew (or should have known) that the documentation submitted to the court omitting these two entities and misrepresenting the defendants' bank accounts and income was false, satisfying element three of a § 727(a)(4)(A) violation.

For purposes of the business income and bank accounts, the court adopts the findings regarding Mrs. Michelotti as the same findings for Mr. Michelotti. The U.S. Trustee failed to show that the misrepresentation of the defendants' income and accounts was anything more than an isolated and inadvertent mistake by the defendants and therefore failed to satisfy the intent element of a § 727(a)(4)(A) violation.

For purposes of the property interests, Mr. Michelotti failed to list two of the three property interests on his submitted documents. It was not until after the meeting of creditors and multiple requests for documentation that the U.S. Trustee was able to uncover the true nature of these ownership interests. Mr. Michelotti testified that he did not know he needed to include these interests in his schedules and SOFA, but could not adequately explain why his disclosed interest in Sunshine Car Wash, LLC, valued at $1.00, was distinguishable from his omitted interests in Steve's Tire & Auto, LLC, and Ice Box, LLC.[5] Mr. Michelotti's failure to disclose these interests is especially problematic because there is value outstanding from the sale of his interest in Steve's Tire & Auto, LLC. While Mr. Michelotti testified that the entire installment sale note receivable for his 50% membership interest in Steve's Tire & Auto, LLC had been paid in full, he could not identify where the remaining proceeds had gone nor point to a specific entry related to the sale in any of the bank statements provided. Similarly, he could not testify as to when the $6,000.00 installment note receivable was paid in 2012, raising the question of whether it was paid to him pre- or post-petition. Mr. Michelotti's omission of his property interests, combined with his deliberately vague testimony concerning the disposition of the outstanding note receivable, compel the court to find that Mr.

[5] Notwithstanding the value of the outstanding note receivable, the court notes that a debtor's opinion of the value of an asset does not excuse the debtor from listing it on the bankruptcy schedules and SOFA. *See In re Hamo*, 233 B.R. at 725 (quoting *Chalik v. Moorefield (In re Chalik)*, 748, F.2d 616, 618 (11th Cir. 1984)).

Michelotti exhibited at least a reckless disregard, if not complete fraudulent intent, for the truthfulness of his submitted documents, therefore satisfying the intent requirement of a § 727(a)(4)(A) violation.

A § 727(a)(4)(A) violation can hinge on the significance of the omission, or the materiality of the facts omitted. "[F]alse statements in a debtor's schedules must be regarded as serious business," *In re Ramos*, 8 B.R. 490, 495 (Bankr. W.D. Wisc. 1981) (quoting *In re Diorio*, 407 F.2d 1330 (2d Cir. 1969)), and "[a]lthough an insignificant amount *might* be treated as immaterial," if the amount omitted is significant, it cannot be ignored. *Id* (citing *Dilworth v. Boothe*, 69 F.2d 621 (5th Cir. 1934)). "The subject of a false oath is material if it bears a relationship to the bankrupt's business transactions or estate, or concerns the discovery of assets, business dealings, or the existence and disposition of property." *In re Keeney*, 227 F.3d at 686 (quoting *In re Beaubouef*, 966 F.2d at 178) (other quotations omitted). Contrary to Mr. Michelotti's testimony, the outstanding note receivable (worth approximately $64,000.00) is a significant asset to the estate and satisfies not one but all of the elements outlined in *Keeney*. Thus, the omitted property interests were material to the bankruptcy estate, satisfying the fifth element of the § 727(a)(4)(A) test.

Mr. Michelotti further contends that if he had known he needed to amend his schedules and SOFA to reflect his interest in Steve's Tire & Auto, LLC or had been asked for detailed financials relating to the installment sale, he would have provided them. The court finds this argument unpersuasive, however, because it is not clear that Mr. Michelotti ever admitted to an interest in Steve's Tire & Auto until, at the earliest, March 13, 2014. See Stipulated Facts, Dkt. No. 24, ¶¶ 13, 14, 21. Perhaps the defendants' counsel missed an opportunity to amend the schedules and resolve this complaint. Regardless, ineffective counsel is not a defense. "A debtor cannot, merely by playing ostrich and burying his head deeply enough in the sand, disclaim all responsibility for statements which he has made under oath." *In re Tully*, 818 F.2d at 111.

Accordingly, the court finds that Mr. Michelotti has violated section § 727(a)(4)(A) and denies his discharge.

11 U.S.C. § 727(a)(2)(B)

Section 727(a)(2) states: "[t]he court shall grant the debtor a discharge, unless… the debtor, with intent to hinder, delay, or defraud a creditor or an officer of the estate charged with custody of property under this title, has… concealed… property of the estate, after the date of the filing of the petition." 11 U.S.C. § 727(a)(2)(B) (2014). This section is intended to prevent the discharge of a

debtor who attempts to avoid payments to creditors by concealing or otherwise disposing of assets.[6]

In order for the court to deny a discharge under § 727(a)(2)(B), the plaintiff must show, by a preponderance of the evidence, that 1) a concealment has occurred, and 2) the debtor had a *subjective* intent to hinder, delay, or defraud a creditor or officer of the estate. *In re Keeney*, 227 F.3d at 683 (quoting *Hughes v. Lawson (In re Lawson)*, 122 F.3d 1237, 1240 (9th Cir. 1997)) (emphasis added). For the purposes of § 727(a)(2)(B), the concealment must have taken place after the debtor's bankruptcy petition was filed.

Concealment for the purposes of § 727(a)(2) covers conduct such as withholding knowledge of assets by failure or refusal to divulge owed information. *In re Lawson*, 122 F.3d at 1237. Owed information includes correct and complete answers to questions on the SOFA and requests for information on the petitions and schedules. Thus, if a debtor fails to provide accurate information on these documents, he or she may be guilty of concealment.

Unlike § 727(a)(4)(A), to violate § 727(a)(2), a debtor must also have actual, or subjective, intent to hinder, delay, or defraud creditors or the estate. Constructive intent is not enough to bar a discharge under § 727(a)(2). *Village of San Jose v. McWilliams*, 284 F.3d 785 (7th Cir. 2002). A showing of reckless disregard to the truth of submitted documents, therefore, is not enough to carry the burden of proof for a violation of this section. A court may look to surrounding facts and circumstances to infer the requisite intent, because a debtor is unlikely to testify that the intent was fraudulent. *Devers v. Bank of Sheridan (In re Devers)*, 759 F.2d 751, 754 (9th Cir. 1985).

§ 727(a)(2)(B) claims against Defendants

As noted above, the defendants' knowingly omitted the outstanding note receivable of Mr. Michelotti's sale of his membership interest in Steve's Tire & Auto, LLC from their SOFA. Since this note receivable is an asset of the bankruptcy estate, its omission could amount to concealment in violation of § 727(a)(2)(B).

However, for purposes herein, the U.S. Trustee did not carry the required burden of proof to deny the defendants' discharges under § 727(a)(2)(B). Circumstances may infer requisite intent for concealment on behalf of Mr. Michelotti, but this has not been shown by a preponderance of the evidence. While Mr. Michelotti testified that the outstanding balance of the note receivable had been paid in full, he did not provide any evidence supporting his claim. If his testimony is true, this would undo the subjective intent requirement of a violation of § 727(a)(2), but would not undo the

[6] *See* COLLIER ON BANKRUPTCY ¶ 727.02[1] (Alan N. Resnick & Henry J. Sommers eds., 16th ed.).

reckless disregard standard for a violation of § 727(a)(4)(A). Thus, the plaintiff, the United States Trustee, has not carried the heightened burden under § 727(a)(2). Accordingly, the court finds that the defendants did not violate the provisions of § 727(a)(2).

Based on the forgoing and consideration of the entire case record as a whole including considerations of the Stipulated Facts, IT IS ORDERED AND NOTICE IS HEREBY GIVEN that U.S. Trustee's instant complaint to deny discharge is granted, in part, and denied in part. That is, Mr. Michelotti's discharge is denied;[7] and Mrs. Michelotti's discharge will be granted.

The Bankruptcy Court Clerk shall cause a copy of this Memorandum, Order, and Notice to be sent to the entities reflected below:

Karen P. Dennis, Trial Attorney
Plaintiff, United States Department of Justice
Office of the United States Trustee
200 Jefferson Ave., Suite 400
Memphis, TN 38103

Ted. I. Jones, Esquire
Attorney for Defendants
2670 Union Ave., Suite 1200
Memphis, TN 38104

Edward L. Montedonico, Chapter 7 Trustee (Informational copy)
200 Jefferson Ave., Suite 201
Memphis, TN 38103

Mr. Jed G. Weintruab, Bankruptcy Court Clerk
200 Jefferson Ave., 8th Floor
Memphis, TN 38103

[7] Pursuant to Fed. R. Bankr. P. 4006, the Bankruptcy Court Clerk shall promptly cause a separate notice be given to all parties in interest in the manner provided by Fed. R. Bankr. P. 2002 that on this date an order was entered under 11 U.S.C. § 727(a)(4) denying the general discharge of Mr. Michellotti (and that Mrs. Michelotti's discharge shall be granted).