Dated: January 02, 2019
The following is SO ORDERED:

Jimmy L. Croom
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

In re

JAMES TRENT BLANKENSHIP and
WENDI DEANN BLANKENSHIP, **Case No. 16-10839**

Debtors. **Chapter 7**

Agrifund, LLC, dba
Ag Resource Management,

Plaintiff,

v. **Adv. Proc. No. 17-5098**

James Trent Blankenship and
Wendi Deann Blankenship,

Defendants.

MEMORANDUM OPINION RE: COMPLAINT TO DETERMINE DISCHARGEABILITY OF DEBT

At issue in this proceeding is a complaint in which Agrifund, LLC, dba Ag Resource Management, seeks to except a debt owed to it by the debtors under 11 U.S.C. § 523(a)(2) and (6). The Court conducted a trial in this proceeding on November 14, 2018.

This proceeding arises in a case referred to this Court by the Standing Order of Reference, Misc. Order No. 84-30 in the United States District Court for the Western District of Tennessee, Western and Eastern Divisions, and is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I). This Court has jurisdiction over core proceedings pursuant to 28 U.S.C. §§ 157(b)(1) and 1334 and, thus, may enter a final order in this matter. Additionally, the parties to this proceeding consented to the Court's constitutional authority to enter a final order in this matter. This memorandum opinion shall serve as the Court's findings of facts and conclusions of law. Fed. R. Bankr. P. 7052.

I. FACTS

Trent and Wendi Blankenship ("Debtors") filed a chapter 11 bankruptcy petition on April 27, 2016. (Case No. 16-10839). At the time of filing, Debtors had been engaged in farming for approximately 20 years. They conducted their farming business under the name "Blankenship Farms, Limited Partnership" ("Blankenship Farms"). Blankenship Farms also filed a chapter 11 petition on April 27, 2016. (Case No. 16-10840). The partners in Blankenship Farms consisted of the Debtors and TWB Management, Inc., for which Trent Blankenship served as president. The Debtors and Blankenship Farms leased numerous parcels of acreage throughout West Tennessee on which they raised cattle and grew row crops. They also used approximately 900 acres of land that they owned in their farming operation.

On May 25, 2016, the Debtors filed an "Emergency Motion … For An Interim And Final Order Authorizing Post-Petition Financing Under 11 U.S.C. §§ 364(c)(2) And (c)(3) And Other Related Relief" in both their individual case and the Blankenship Farms case. Pursuant to these motions, the Debtors sought permission to obtain post-petition financing ("Crop Loan") from Agrifund, LLC, dba Ag Resource Management ("ARM") in the amount of $1,949,880.00 at a 9% interest rate and a proposed maturity date of January 15, 2017. The Debtors stated that they intended to use the financing to produce and harvest their 2016 soybean crop. The Debtors also sought permission to obtain interim funding in an amount not to exceed $100,000.00 in order to obtain farm products and/or advance rental fees for land. Prior to applying for the Crop Loan, the Debtors did not have a lending relationship with ARM.

Prior to seeking permission to obtain financing, the Debtors filled out a Crop Loan Application ("Application") with ARM. The Debtors signed the Application on May 18, 2016. The Application included a warranty on the signature page which states,

> This application and any schedule, explanations, or additional information attached, is submitted on behalf of the undersigned *for the purpose of procuring, establishing and maintaining credit* from time to time from ARM. The undersigned has carefully read the information contained herein and *warrants it to be complete, true, and correct as [of] the dates set forth below* and that ARM may continue to rely upon this application continuing to be true and correct until a written notice of change is given to you by the undersigned.

(Crop Loan Appl. at § 11, ECF No. 1-1 (emphasis added).) Item 8 on the Application, "Crop Acres," asks the borrower to "list all Tillable Acres by individual farms." (*Id.* at § 8.) The Debtors did not list any farms in this section. Rather, the section reads "See Attachment." (*Id.*) The Debtors did not attach a list of farms to the Application; however, in applying for the loan, they emailed ARM a list of land they intended to farm in 2016. The Debtors emailed the list, titled "Blankenship Farms Land" ("Farm List"), to ARM on May 17 and 19, 2016. (*See* Compl. at ¶ 7, ECF No. 1 and Debtors' Resp. at ¶ 7, ECF No. 14.) The Farm List is seven pages long and contains the addresses, acreage, and yearly rent prices for each parcel of land. The total acreage listed thereon is well over 8,000 and the yearly rental costs total approximately $516,902.32.

The Court conducted an interim hearing on the Debtors' application for financing on June 2, 2016. At that hearing, Trent Blankenship testified that he was going to farm approximately 8200 acres in 2016. (Trial Ex. 3, Tr. of June 2, 2016 Hr'g at 51-52.) He also testified that before ARM would lend him any money, he would have to make a proposed budget for planting his 2016 crops. (*Id.* at 51.) According to his own testimony at this hearing, the proposed budget submitted to ARM in support of the $1.9 million Crop Loan included rents for the land and the input costs associated with planting approximately 8,200 acres of soybeans. (*Id.*). These costs included seed, fertilizer, chemicals, and labor. (*Id.*) The Court entered an interim order on June 2, 2016, approving the Debtors' request to obtain $100,000.00 in interim financing from ARM. The Court set a final hearing on the Debtors' motion for June 9, 2016.

At the final hearing on June 9, 2016, Trent Blankenship testified that only two of the landowners listed on the Farm List had refused to lease farmland to him for the 2016 growing season. (Trial Ex. 4, Tr. of June 9, 2016 Hr'g at 12.) Blankenship testified that these two farms totaled approximately 100 acres. When asked if he had heard anything from any other landowners "that would lead you to believe that you have a dramatically different acreage," Blankenship responded "No." (*Id.*). Blankenship testified that he still anticipated farming "a little bit over 8,000" acres in 2016. (*Id.* at 12, 30-33.) He also testified that "a good average [yield] from our past history will be around 65 bushel[s]" per acre. (*Id.* at 15.) When asked for a "very conservative estimate" on the number of bushels per acre he anticipated yielding, Blankenship replied "50-55 bushels." (*Id.* at 15.) Given these conservative estimates, Blankenship testified that he anticipated earning "around" $4 miillion for his 2016 crop. (*Id.* at 16.) After repaying the Crop Loan with interest, Blankenship estimated he would have $2,000,000.00 available to pay creditors. (*Id.*)

On June 10, 2016, the Court entered an order granting Debtors' motion to obtain financing for their 2016 crop. Pursuant to the order, the Debtors were authorized to obtain post-petition financing from ARM in the amount of $1,949,880.00. The Debtors executed a Guaranty of Certain Demand Promissory Note and Agricultural Security Agreement wherein the Debtors granted ARM security interests in their 2016

crops and their farm products, inventory and farm equipment. (*See* Trial Ex. 2.) ARM perfected this security interest by filing a UCC-1 with the Tennessee Secretary of State on June 3, 2016.

On June 20, 2016, Blankenship Farms filed an omnibus motion to assume land leases ("Omnibus Motion") in its bankruptcy case. (Case No. 16-10840, ECF No. 66.) The leases Blankenship Farms was seeking to assume were listed on an attachment to the motion. (*Id.* at 66-1.) The acreage thereon totaled 8,267 acres. At the Court hearing on July 21, 2016, the Omnibus Motion was granted in part, denied in part, and continued in part. The Court granted the motion as to all leases listed on the attachment to the motion with the exception of three tracts. (Case No. 16-10840, ECF No. 96.) Pursuant to the terms of the order, Blankenship Farms would be allowed to assume all of the leases, except the three, upon payment of any cure amount listed in the Omnibus Motion. The three leases excepted from this order were 155 acres owned by Jerry Brigance, 335 acres owned by the Tennessee Wildlife Resource Agency ("TWRA") and 56 acres owned by Willard Park. None of the leases on these lands were assumed for the 2016 crop year.

On July 25, 2017, the Debtors converted their individual chapter 11 case to chapter 7.

At some point in the proceeding, the Debtors defaulted on repayment of the Crop Loan. On October 20, 2017, ARM filed the instant adversary proceeding against Debtors alleging that the Debtors had failed to pay $378,809.00 of the $1.9 million Crop Loan. ARM alleged that this balance was non-dischargeable on three separate counts: Count I False Pretenses, False Representations and Actual Fraud under 11 U.S.C. § 523(a)(2)(A); Count II Use of False Statement in Writing under 11 U.S.C. § 523(a)(2)(B); and Count III Willful and Malicious Injury under 11 U.S.C. § 523(a)(6). Arm asserted that the Farm List submitted to ARM was a representation by the Debtors that they would be farming approximately 8,200 acres of land during the 2016 crop year. (Adv. Proc. No. 17-5098, Compl. at ¶ 7, ECF No. 1.) In paragraph 8 of its complaint, ARM alleged that:

> The Crop Loan Application was false in that the Defendants described leases that they did not have and did not plant with crops during the 2016 crop year. Defendants also falsely inflated figures for arable acreage owned and leased by Defendants. At the time the Crop Loan Application and listing of Crop Acres was tendered to Plaintiff, Defendants knew that much of the information contained in it was false. Further, Defendant Trent Blankenship falsely represented to ARM on multiple occasions that he was planting, and had planted and harvested, approximately 8,000 acres of soybeans, when in fact he planted and harvested approximately three thousand acres less than that amount.

(*Id.* at ¶ 8.) ARM alleged that, "After the conclusion of the subject harvest, the [Debtors] failed to pay the debt owed to ARM." (*Id.* at ¶ 13.) ARM claims that it reasonably relied on the Crop Loan Application and attachments thereto, as well as the false testimony of Trent Blankenship at the June 9, 2016 hearing. (*Id.* at ¶ 17.) According to the Complaint, the Debtors were in default to ARM in the approximate amount of $378,809.00, plus attorney's fees and expenses.

Debtors filed a response to the complaint on March 1, 2018. In their Response, Debtors allege that ARM was

> fully aware the [Farm List] was from 2015 records and that the Defendants did not have contracts in place, at that point, for the 2016 crop year due to lack of financing. The [Farm List] was sent as an estimation of the acreages that would be pursued upon financing.

(Resp. at ¶ 7, ECF No. 14.) Debtors also claimed that, "before money was released to pay farm rent amount [sic], the Defendants would provide to Plaintiff a signed lease contract for each farm that was agreed upon." (*Id.* at ¶ 8.)

On May 4, 2018, ARM's counsel deposed the Debtors. During his examination, Trent Blankenship testified that the Farm List was part of the Crop Loan Application. (Trial Ex. 10, May 4, 2018 Dep. of [Trent] Blankenship at 34.) Trent Blankenship also testified that Wendi Blankenship prepared the Farm List which they submitted to ARM at the time of applying for the Crop Loan. (*Id.* 34, 38.) Mr. Blankenship admitted that some of the landowners identified on the Farm List refused to lease land to him for the 2016 crop year. (*Id.* at 40-50.) When asked by ARM's counsel whether he ever informed ARM about these refusals, Mr. Blankenship testified that he "sent them the leases that was signed by me and the property owners, and they funded me for those farms." (*Id*. at 52-53.) ARM's counsel continued this line of questioning:

> Q. Did you ever update this list to ARM to provide them with –
>
> A. With the signed leases?
>
> Q. Did you ever let them know specifically that some of these leases that were listed in this [A]pplication were not going to be farmed in 2016?
>
> A. That was projected, and then the signed leases was the final. So I just give it to them and let them – I mean, they could've compared them if they wanted to or needed to.
>
> …
>
> Q. But specifically, you didn't provide an update to this list other than what you stated was to provide them with the actual leases?
>
> A. I provided them the actual leases before they provided me the money.

(*Id.* at 52-54.)

During Wendi Blankenship's deposition, she testified that she prepared the Farm List the Debtors submitted to ARM with the Crop Loan Application. (Trial Ex. 11, May 4, 2018 Dep. of Wendi Blankenship at 11.) To assemble this list, Mrs. Blankenship stated that she copied a list of all the land they had leased and farmed in 2015. (*Id.* at 12.) The only changes she made to the list were to add some Farm Service Agency ("FSA") farm identification numbers. (*Id.*) She testified that "this was the projection for … 2016." (*Id.*) She also stated that she was the only person who provided information to ARM during the 2016 crop year. (*Id.* at 15.) The Court takes judicial notice of the fact that there is nothing on the Farm List that

indicates the information supplied thereon was based on the acres farmed in 2015, nor is there anything that indicates the information was only a projection of what the Debtors would farm in 2016.

The Court conducted a trial in this proceeding on November 14, 2018. Although the Debtors were represented by counsel in their main bankruptcy case, they represented themselves in the adversary proceeding and at the trial.

ARM alleged that the Debtors overstated the acreage for their soybean crop by approximately 3,700 acres. In support of this assertion, ARM introduced a copy of the Debtors' FSA 578 Report of Commodities Farm and Tract Detail Listing ("578 Report") for 2016. (Trial Ex. 7.) As explained by Trent Blankenship at his May 4, 2018 deposition, farmers are required to file the 578 Report each year after they finish planting their crops. (Trial Ex. 10, Tr. of May 4, 2018 Dep. of Trent Blankenship at 57.) The report indicates the type of crop that was planted and the actual acres planted. *Id.* According to the Debtors' 578 Report for 2016, they only planted row crops on approximately 4,900 acres. (Trial Ex. 7.) This is roughly 3,300 acres less than what they indicated they were going to farm when applying for the 2016 Crop Loan with ARM. As stated *supra*, Wendi Blankenship testified at her deposition that she assembled the Farm List by copying a list of all the land they leased in 2015. (Trial Ex. 11, Tr. of May 4, 2018 Dep. of Wedny Blankenship at 12.) To dispute this assertion, ARM also introduced the Debtors' 578 Report for 2015 into evidence. (Trial Ex. 7.) This report indicated that the Debtors only planted a total of 5,200 acres of row crops in 2015. (Trial Ex. 6.)

In addition to the 15 exhibits it introduced into evidence, ARM called seven witnesses to testify at the trial. ARM's first witness was Chad Harden of TWRA. Harden was responsible for the supervision of the Debtors' four-year lease of 335 acres in Decatur County from TWRA. The Debtors executed the lease in February 2014. The lease began on April 1, 2014, and had a yearly rent of $43,885.00. (Trial Ex. 8 at 6-12.) The annual rent was due on December 31st. (*Id.* at 12.) The lease provided that it could be "canceled by either party upon thirty (30) days written notice." (*Id.* at 6.) It also allowed TWRA to terminate the lease "at any time upon evidence that said above Lessee has failed to fulfill obligations set forth in this agreement[.]" (*Id.*)

Harden testified that the Debtors failed to pay the 2015 rent by the December 31, 2015 due date. As such, he contacted Trent Blankenship in the spring of 2016 about the delinquency. Blankenship then paid the 2015 rent. However, due to the late payment and the fact that the Debtors and Blankenship Farms had filed their chapter 11 petitions, Harden informed Trent Blankenship that before he could plant his 2016 crop, he would need to provide surety of payment for the 2016 rent. Trent Blankenship attempted to satisfy Harden's conditions, however, the letter of credit he submitted was insufficient. Harden called Trent Blankenship on April 24, 2016, to inform him that the lease was being cancelled. (*See* Trial Ex. 8 at 13.) Harden then sent the Debtors a letter dated April 25, 2016, informing them that TWRA lease had been

cancelled for failure to provide surety of payment in the form of a performance bond or irrevocable letter of credit. (*Id.*) As such, the Debtors had no right to farm TWRA land at the time they submitted the Farm List to ARM in May 2016. Although the Debtors and TWRA eventually agreed to renew TWRA lease, the order allowing them to do so was not entered until September 13, 2016. (*See* Case No. 16-10840, ECF No. 107.) And, more importantly, because TWRA had leased the land to another party for the 2016 crop year, the Debtors did not have any right to farm the land until 2017. (*Id.*) Thus, the Debtors never had the right to farm the TWRA acreage for the 2016 crop year.

ARM then called Larry Scott to testify. Larry Scott owned 130 acres of land in Henderson County that the Debtors rented in 2015. Scott testified that he had been in communication with the Debtors about farming the land in 2016; however, because the Debtors failed to pay the 2015 rent on time, Scott decided to let his son farm the land for the 2016 planting season. Larry Scott testified that he informed the Debtors of this decision in either May or June 2016. Larry Scott's son farmed the acreage for both the 2016 and 2017 crop years. Like the TWRA lease, the Debtors listed the lease with Larry Scott on the Farm List they submitted to ARM.

ARM's third witness was Jerry Brigance. Brigance owned 155 acres in Decatur County that the Debtors leased from 2012 until 2015. According to Brigance, the Debtors were late with the annual rent for the 2015 crop year. As such, Brigance informed Trent Blankenship sometime in the spring of 2016 that he was going to cancel the lease. Brigance then contacted his attorney who sent two letters to the Debtors informing them that the lease had been canceled. As with the TWRA lease, the Court allowed the Debtors to assume the lease of Brigance's land by order entered on August 23, 2016. (*See* Case No. 16-10840, ECF No. 96.) This assumption, however, was only for the 2017 crop year. The Debtors were not allowed to farm Brigance's land in 2016. Brigance ended his testimony by stating that the Debtors failed to pay the rent according to the terms set forth in the August 23, 2016 order and, therefore, they did not farm his land in 2017.

Next, ARM called Jon Graves of Graves Farm in Decatur County, Tennessee. The Debtors indicated on the Farm List submitted in support of the Crop Loan Application that they were going to lease 400 acres of Graves' property for the 2016 crop year. Graves testified that the Debtors only actually farmed soybeans on 160 acres of the land. (*See* Trial Ex. 7.)

ARM's fifth witness was Willard Park, owner of 29 acres in Henderson County that the Debtors leased for farming. Park testified that Trent Blankenship asked to borrow money from him in late February or early March 2016. Seeing that Debtors could not afford to lease the land for the 2016 crop year, he leased it to someone else. Park testified that he informed the Debtors of this decision that same month. The Debtors included Willard Park's land on the Farm List; however, they indicated that they were going to farm 56 acres of his land.

ARM's sixth witness was Ronnie Bates, the owner/operator of a grain elevator in Dresden, Tennessee. From October 2016 thru January 2017, the Debtors contracted with Mr. Bates for the transportation of a portion of their soybean crop from the Debtors' property to the Bates grain elevator. In their main bankruptcy case and this adversary proceeding, the Debtors alleged that Bates and his employees had absconded with approximately 100 truckloads, or 92,000 bushels, of the Debtors' soybeans. Although the Debtors raised this allegation with their chapter 11 attorneys and with this Court, the Debtors never took any action against Mr. Bates or his business. They did not report the alleged theft to the authorities nor did they bring any type of action against Bates in this Court. They also failed to contact Mr. Bates about this alleged theft. At the trial in this proceeding, Trent Blankenship asserted that he did not contact Bates about the missing soybeans because he did not think it was "proper" to call someone and accuse them of stealing $1,000,000.00 worth of soybeans. Instead, he reported the theft to his bankruptcy attorneys. Mr. Bates testified that he was unaware of any discrepancies with respect to these allegedly missing soybeans. He stated that he provided load tickets to the Debtors for all the loads he carried from the Debtors' farm to the Bates grain elevator.

ARM's last witness was Jack Dalton ("Dalton"), a market leader at ARM. In 2016, Dalton was responsible for supervising ARM offices in Dexter, Missouri, and Jonesboro, Arkansas. According to Dalton's testimony, Trent Blankenship contacted Dalton in mid May 2016 requesting financing for his 2016 crop. Dalton told Mr. Blankenship what specific information he would need to provide in order to apply for a crop loan with ARM. Dalton testified that during the application process, Trent Blankenship verbally represented to Dalton that he would be farming approximately 8,000 acres of soybeans in 2016. The Debtors made this same assertion when they submitted the Crop Loan Application and the Farm List to ARM. Dalton testified that ARM made the decision to loan the Debtors approximately $1.9 million based on the Debtors' representations that they were going to farm around 8,000 acres in 2016.

Dalton testified that the Debtors never contacted ARM at any time during the lending relationship to disclose that they were unable to farm any of the land listed on the Farm List in 2016. Dalton further testified that the Debtors never informed ARM that the amount of land they actually farmed soybeans on in 2016 was closer to 5,000 acres. When asked what impact, if any, the significant decrease in acreage would have had on ARM's decision to lend the Debtors money, Dalton testified that ARM would have re-evaluated the loan and decreased the loan amount.

After the Court approved the Crop Loan on June 10, 2016, ARM began disbursing the loan proceeds to the Debtors. As stated *supra*, ARM loaned the Debtors funds to pay the rent on the leased farmland, to purchase crop inputs and chemicals, and to pay various business and living expenses. Dalton testified that between the months of June and December of 2016, ARM disbursed the full $1.9 million in loan proceeds to the Debtors in periodic disbursements.

After the Debtors had planted all of their soybean crops, Dalton travelled to West Tennessee to meet with the Debtors. Dalton testified that in mid to late July 2016 Trent Blankenship drove him around to look at the Debtors' soybean crop.

Dalton stated that in early 2017 he learned that the Debtors were claiming that approximately 100 truckloads of their soybean crop was missing. During this time, Dalton met with Trent Blankenship on several occasions. Dalton testified that during these meetings Trent Blankenship told him that he had planted and harvested enough soybeans to repay the Crop Loan. After finding out about the allegedly missing soybeans, ARM conducted an investigation into the Debtors' farming operation and obtained copies of the Debtor's 2015 and 2016 578 Reports. In doing this, ARM discovered that the Debtors had only planted approximately 5,200 acres of row crops in 2015 and 4,900 in 2016. (*See* Trial Exs. 6 & 7.)

Dalton testified that they received payments on the Crop Loan from the bankruptcy estate and the federal government. The balance on the Crop Loan as of the trial date was approximately $355,012.44. Dalton stated that this figure did not include the attorney fees and expenses ARM has incurred in attempting to collect this debt. The loan documents at issue in this proceeding entitle ARM to seek recovery of these amounts.

During cross-examination, the Debtors asked Dalton if ARM received the Farm List separately or as an attachment to the Application. Dalton stated that, to the best of his recollection, the Debtors submitted the Farm List to ARM prior to sending in the Application. Dalton also stated that regardless of when ARM received the Fam List, ARM used the list to complete the Debtors' loan analysis. On re-direct, Dalton stated that the vast majority of the loan proceeds released to the Debtors were for crop inputs and discretionary expenses. On re-cross, the Debtors asked Dalton to affirm that ARM only released loan proceeds to the Debtors upon submission of receipts. Dalton responded "yes." Dalton also testified that ARM advanced roughly $50,000.00 of the loan proceeds to the Debtors for attorney fees associated with their bankruptcy cases.

During the Defendants' case in chief, the Debtors called one witness: Jack Dalton. Trent Blankenship asked Dalton whether ARM ordinarily receives copies of 578 Reports. Dalton responded no and stated that the FSA does not automatically send lenders copies of 578 Reports. Blankenship then asked Dalton why ARM would not request a copy of these reports when making debtor-in-possession loans in chapter 11 cases. Dalton stated that because the Debtors were required to obtain court approval for the Crop Loan he assumed that the acreage on the Farm List had been verified. It was only after Dalton learned that there was an issue with the Debtors' 2016 crop production in early January 2017 that he requested a copy of the 578 Reports.

During the trial, the Debtors offered several defenses to ARM's dischargeability complaint. The first was that they did not attach the Farm List to the Application. Although they did not elaborate on this

argument, the Court presumes the Debtors were asserting that the Farm List was not part of the Crop Loan Application. The second argument offered by the Debtors was that the Farm List was just a projection of what they would farm in 2016 and that they based the list on what they farmed in 2015. The Debtors asserted that ARM was aware of this fact. When asked by the Court about when they finished planting the 2016 soybean crop, the Debtors responded "by the Fourth of July." The Court continued:

> So, by the Fourth of July, you knew exactly how many acres you had planted? That was less than a month from when this Court approved the loan application. … My point is, you were in this Court on [June 9, 2016] to approve planting of 8,000 acres. Less than a month later you're completed planting by your own testimony and it was nowhere near 8,000 acres.

The Debtors admitted they only planted approximately 5,000 acres for the 2016 crop year. They also admitted that they did not inform ARM of this fact. They asserted, however, that they did not receive any funds to plant any land they did not farm. Trent Blankenship stated that they were unable to plant all 8,000 acres because they "simply ran out of time."

The third argument the Debtors offered in defense of ARM's complaint was that they sought Court permission to assume some of the leases listed on the Farm List and that, for that reason, they included those leases on the Farm List.

In closing, the Debtors stated that although they may have mistakenly filled out the Crop Loan Application incorrectly, they had not done anything maliciously or with the intent to misrepresent anything to ARM. They fully intended to farm all of the acres listed on the Farm List at the time of applying for the 2016 Crop Loan.

II. CONCLUSIONS OF LAW

ARM has alleged that its debt should be excepted from discharge pursuant to 11 U.S.C. § 523(a)(2)(A) & (B) and (a)(6). If the Court determines that the Crop Loan is non-dischargeable under any one of these three subsections, it is unnecessary to analyze ARM's claim under the other two subsections of § 523(a). *Longo v. McLaren* (*In re McLaren*), 3 F.3d 958, 964 n.3 (6th Cir. 1993) ("Because the debt is nondischargeable under § 523(a)(2), we find it unnecessary to address the applicability of these other provisions."). In this proceeding, the Court finds that ARM's claim under § 523(a)(2)(B) is the strongest one and determines that the Crop Loan for the Debtors' 2016 crop is nondischargeable for the following reasons.

As with any claim of nondischargeability, the starting point must be with the statute itself. Section 523(a)(2)(B) provides that

> (a) A discharge under section 727, 1141, 1228(a), or 1328(b) of this title does not discharge an individual debtor from any debt—
> …

> (2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by—
> …
> (B) use of a statement in writing—
>
> (i) that is materially false;
>
> (ii) respecting the debtor's or an insider's financial condition;
>
> (iii) on which the creditor to whom the debtor is liable for such money, property, services, or credit reasonably relied; and
>
> (iv) that the debtor caused to be made or published with intent to deceive.

11 U.S.C. § 523(a)(2)(B). A creditor seeking to have a debt excepted from discharge carries the burden of proof and must satisfy that burden by a preponderance of the evidence. *Grogan v. Garner,* 498 U.S. 279, 291 (1991). "The failure of the plaintiff to prove any one of the ... elements contained in section 523(a)(2)(B) will result in a dismissal of the dischargeability complaint." *Insouth Bank v. Michael* (*In re Michael*), 265 B.R. 593, 597–98 (Bankr. W.D. Tenn. 2001) (internal quotations and citations omitted). "[E]xceptions to discharge are to be strictly construed against the creditor" and "liberally in favor of the debtor." *Rembert v. AT & T Universal Card Svcs., Inc.* (*In re Rembert*), 141 F.3d 277, 281 (6th Cir. 1998) (citation omitted); *In re Michael*, 265 B.R. at 597. "[T]he benefit of any doubt" must go to the debtor. *XL/Datacomp, Inc. v. Wilson* (*In re Omegas Grp., Inc.*), 16 F.3d 1443, 1452 (6th Cir. 1994) (citation omitted).

There are four main elements a creditor must prove in a § 523(a)(2)(B) action. The first of these is that the debtor used a written statement about his financial condition to obtain money, property, services or an extension of credit.

> For purposes of § 523(a)(2)(B), a written statement respecting a debtor's financial condition may be described as one representing the debtor's net worth, overall financial health, or ability to generate income so as to enable an accurate assessment to be made of the debtor's creditworthiness.

Midwest Comm. Fed. Cr. Union v. Sharp (*In re Sharp*), 357 B.R. 760, 765 (Bankr. N.D. Ohio 2007). "[A] statement is 'respecting' a debtor's financial condition if it has a direct relation to or impact on the debtor's overall financial status." *Lamar, Archer & Cofrin, LLP v. Appling*, 138 S. Ct. 1752, 1761 (2018). Documents which satisfy this element "include balance sheets, income statements, statements of changes in financial position, or income and debt statements that provide what may be described as the debtor or insider's net worth, overall financial health, or equation of assets and liabilities." *Haney v. Copeland* (*In re Copeland*), 291 B.R. 740, 783 (Bankr. E.D. Tenn. 2003) (internal quotations and citations omitted). Loan applications which "contain[ ] detailed information concerning the sources of the Debtor's income, thereby enabling an assessment of her creditworthiness" also satisfy § 523(a)(2)(B)'s writing requirement. *In re Sharp*, 357

B.R. at 765. "[D]ocuments from another source but authorized by the Defendant, as well as any documents personally supplied to the Plaintiff by the Defendant [also] fall within the scope of § 523(a)(2)(B)." *Regions Bank v. Whisnant* (*In re Whisnant*), 411 B.R. 559, 564–65 (Bankr. E.D. Tenn. 2009) (internal quotations and citations omitted). "As long as the written statement is written, signed, adopted or used by the debtor, the basic precondition concerning the writing requirement to the non-dischargeability complaint under section 523(a)(2)(B) is met." *In re Michael*, 265 B.R. at 598. Documents submitted in support of a debtor's request for an extension, renewal, or refinancing of credit satisfy the first element of § 523(a)(2)(B). *Id.*

The Court concludes that the Application and the Farm List in this proceeding clearly satisfy the first element of § 523(a)(2)(B). The Debtors admitted preparing and signing the Application. In signing the Application, the Debtors warrantied that the "application and any schedule, explanations, or additional information attached, is submitted on behalf of the undersigned for the purpose of procuring, establishing and maintaining credit from time to time from ARM." (*See* Crop Loan Appl. at § 11, ECF No. 1-1.) They also attested that the information provided on the Application and in any "schedule, explanations, or additional information attached" to the Application was "complete, true, and correct as [of] the" time they signed the Application. (*Id.*) The Debtors admitted that they prepared the Farm List and submitted it to ARM during the application process. The list was a statement in writing about the Debtors' need for $1.9 million in crop financing and the Debtors' ability to repay the entire loan. As the court in *In re Michael* made clear, documents submitted in support of the request to obtain financing come within the purview of § 523(a)(2)(B).

At the trial, the Debtors offered two main arguments against the conclusion that the Farm List qualified as a written financial statement under § 523(a)(2)(B). First, the Debtors asserted that they did not physically attach the Farm List to the Application. The Court finds it irrelevant in this proceeding that the Farm List was not physically stapled or paper-clipped to the Application. The Debtors admitted they submitted the list to ARM during the application process and ARM's representative testified that ARM used the Farm List in considering the Debtors' Application. More importantly, this argument ignores the fact that during his May 4, 2018 deposition, Trent Blankenship admitted under oath that the Farm List was part of the Crop Loan Application. (*See* Trial Ex. 10, May 4, 2018 Dep. of [Trent] Blankenship at 34 ("Q. And the listing of … Blankenship farmland. Is that part of the application? A. Yes.")).

The Debtors' second argument against the conclusion that the Farm List satisfies § 523(a)(2)(B)'s first element was that the list was merely a projection of how much land they would farm in 2016. As the Court noted *supra*, there is nothing on the Farm List that indicates it was merely a projection of acreage for 2016. The Debtors did not submit anything that demonstrated they ever informed ARM that the list was a simple projection. Additionally, Wendi Blankenship testified at her May 4, 2018 deposition that she assembled the Farm List by copying the list of land they farmed in 2015. (*See* Trial Ex. 11, May 4, 2018

Dep. of Wendi Blankenship at 12.) The Debtors' 578 Report for 2015 belies Ms. Blankenship's sworn deposition testimony. The 2016 Farm List includes over 8,000 acres. The 2015 578 Report indicates that the Debtors only farmed 5,200 acres of row crops in 2015. (*See* Trial Ex. 6.) If the Farm List were merely a projection of the acres they were going to farm in 2016 instead of a concrete representation of their need for $1.9 million in crop financing and the ability to repay the loan, why did the Debtors list over 8,000 acres in farmland on that list when they stated they based the list on acreage farmed in 2015? The Court finds that the Debtors' arguments against the conclusion that the Farm List was a written statement about the Debtors' financial condition to be without merit. The Farm List was not a mere projection. It was a representation by the Debtors that they were going to farm over 8,000 acres in 2016.

The second element of § 523(a)(2)(B) requires the statement in writing to be materially false. "A statement is materially false if the information offers a substantially untruthful picture of the financial condition of the debtor that affects the creditor's decision to extend credit." *In re Michael*, 265 B.R. at 598 (citation omitted). "In looking to whether a statement is substantially inaccurate, the size of the discrepancy is a key factor[.]" *In re Sharp*, 357 B.R. at 765-66. "[A]n omission, concealment or understatement of liabilities" or assets may also qualify a statement as materially false. *Carson v. Chamberlain* (*In re Chamberlain*), 330 B.R. 195, 203 (Bankr. S.D. Ohio 2005). "Materiality is determined in part by the size of the discrepancy." *Agribank, FCB v. Gordon* (*In re Gordon*), 277 B.R. 796, 802 (Bankr. M.D. Ga. 2001) (internal citation omitted).

According to the complaint in this proceeding, ARM approved the Crop Loan based on the acreage the Debtors set forth in the Application and the Farm List. At trial, ARM's representative Jack Dalton testified that ARM made the decision to loan the Debtors approximately $1.9 million based on their representations that they were going to farm around 8,000 acres in 2016. As stated *supra*, there were substantial differences in the size of the acreage the Debtors asserted they were going to farm according to the Farm List and the amount of land that they actually farmed. The Debtors farmed approximately 3,000 acres less than what they said they would in the Application. This reduced acreage resulted in proceeds that were approximately $1.5 million less than Trent Blankenship's $4 million projection. (*See* Trial Ex. 4, Tr. of June 9, 2016 Hr'g at 16.) Even on land that the Debtors actually farmed in 2016, they overstated the acres on the Farm List. The Debtors indicated they were going to farm 400 acres of Jon Graves' farm in Decatur County. At the trial in this matter, however, Graves testified that the Debtors only farmed 160 acres of his land. Similarly, the Debtors indicated they were going to farm 56 acres of land owned by Willard Park, but he testified at the trial that the Debtors only farmed 29 acres. The Crop Loan Application instructed the Debtors to list the "tillable acres" for 2016. Clearly, the Debtors were misleading in overstating the amount of land on these two farms. The Court feels confident that these were not the only farms on which the Debtors overstated the tillable acreage. The Court concludes that a discrepancy of

3,000 acres and $1.5 million in profits is "substantially untruthful" and materially false. The Debtors farmed almost 50% less land than what they said they were going to. Therefore, the Court determines that ARM has satisfied the second element of its § 523(a)(2)(B) claim.

The Debtors offered two arguments against the conclusion that the Farm List was false. First, they returned to their projected acreage argument. They asserted that the Farm List was merely a projection of what they intended to farm in 2016. In making this argument, they stated that they simply copied the list of what they farmed in 2015. As stated *supra*, this is problematic. First, the 2015 578 Report indicates the Debtors only farmed 5,200 acres of row crops in 2015. There is no way, mathematically or otherwise, to copy a list of 5,200 acres and end up with a list of over 8,000 acres.

The Debtors also argued that they included some of the leases listed on the Farm List because they were in the process of seeking Court permission to assume them. This argument is also weak. In advancing this argument, the Debtors failed to acknowledge several significant facts: (1) the Omnibus Motion to assume the leases was not filed in the Blankenship Farms case until June 20, 2016—over a month after the Farm List was prepared and submitted to ARM; (2) the Debtors were unsuccessful in assuming all the leases listed in the Omnibus Motion; and (3) the Court orders granting their request to assume the leases were not entered until August 19, 2016, and September 13, 2016. (*See* Case No. 16-10840, ECF Nos. 96 & 107.) Additionally, and perhaps more importantly, the Debtors admitted at both their depositions and at the trial that they did not grow row crops on all of the land they leased. They used some of the land for their cattle operation. The loan from ARM was for the costs associated with planting and harvesting their 2016 soybean crop, not the Debtors' entire farming operation. The Court concludes that the Debtors did not have the right to plant soybeans on over 8,200 acres at the time of preparing and submitting the Farm List to ARM. Thus, the Farm List was false at the time it was submitted to ARM and at the time ARM made the decision to extend financing to the Debtors.

The third element of § 523(a)(2)(B) requires ARM to demonstrate that it reasonably relied on the materially false Application. "Generally, courts have held that 'reasonable reliance' is a question of fact to be determined in light of the totality of the circumstances." *Sec. Seed & Chem., Inc. v. French* (*In re French*), 563 B.R. 212, 222 (Bankr. W.D. Ky. 2016) (internal quotation marks and citations omitted). "What is reasonable depends upon the relative sophistication of the lender and the circumstances of the transaction." *First Nat'l Bank of Centerville v. Sansom* (*In re Sansom*), 224 B.R. 49, 54–55 (Bankr. M.D. Tenn. 1998). "A creditor's reliance is 'reasonable' under § 523(a)(2)(B) only if a prudent person in the creditor's position would have relied on the misrepresentation." *Willens v. Bones* (*In re Bones*), 395 B.R. 407, 432 (Bankr. E.D. Mich. 2008) (internal quotation marks and citation omitted). The Sixth Circuit has held that there are five factors that may affect the reasonableness of a creditor's reliance:

> (1) whether the creditor had a close personal relationship or friendship with the debtor; (2) whether there had been previous business dealings with the debtor that gave rise to a relationship of trust; (3) whether the debt was incurred for personal or commercial reasons; (4) whether there were any "red flags" that would have alerted an ordinarily prudent lender to the possibility that the representations relied upon were not accurate; and (5) whether even minimal investigation would have revealed the inaccuracy of the debtor's representations.

Oster v. Clarkston State Bank (*In re Oster*), 474 F. App'x 422, 425 (6th Cir. 2012) (citation omitted). As the court in *Bank of Louisville v. Perez* (*In re Perez*), 52 B.R. 824 (Bankr. W.D. Ky. 1985) recognized

> reliance by a creditor on a false financial statement has been judicially determined unreasonable when:
>
> 1). The creditor knew the financial information was not accurate;
>
> 2). The statement contained inadequate financial information;
>
> 3). The creditor's investigation of the statement suggested its falsity or incompleteness; and
>
> 4). The creditor failed to verify information in the statement.

Id. at 827.

In the instant case, ARM claims that they reasonably relied on the representations of the Debtors in deciding whether to approve the Crop Loan. There is nothing in the record that indicates ARM knew the information Debtors provided in the Application was inaccurate. The Debtors indicated on the Application that they were in bankruptcy, listed all farmed acreage and accompanying rents—thereby containing adequate information to give a full financial picture. (*See* Compl. Ex. A and B.) In fact, ARM's Jack Dalton testified during the trial that if ARM had been notified that the acreage provided for in the Application was incorrect, they would have re-evaluated the loan and most likely would not have loaned the Debtors the entire $1.9 million. Instead, ARM loaned Debtors the amount of money necessary to plant 8,000 acres, but the Debtors only planted 5,000. (Trial Ex. 2 at 5, and ECF No. 66 at 1.) There was no indication that the Debtors and ARM had any type of personal or business relationship prior to the Crop Loan. In signing the Application, the Debtors attested that they were going to use the loan proceeds to plant soybeans on all of the farms listed on the accompanying Farm List. Additionally, the Debtors filed several pleadings in this Court in which they asserted they were going to use the loan proceeds to plant approximately 8,000 acres of soybean crops. ARM participated in the June 9, 2016 hearing wherein Trent Blankenship testified about the truthfulness of the Application. Trent Blankenship testified under oath on more than one occasion that he was going to farm approximately 8,000 acres of soybean crops in 2016. (*See* Trial Ex. 3, Tr. of June 2, 2016 Hr'g at 51-52; Trial Ex. 4, Tr. of June 9, 2016 Hr'g at 12, 30-33.) Accordingly, the Court concludes that ARM has met its burden of proving that it reasonably relied on the financial information in the Application and the Farm List.

The final element of 11 U.S.C. § 523(a)(2)(B) requires ARM to prove that the Debtors intended to deceive ARM when they created the statement in writing. As the Sixth Circuit held in *Martin v. Bank of Germantown* (*In re Martin*), 761 F.2d 1163, 1167 (6th Cir. 1985), a § 523(a)(2)(B) cause of action may be sustained by showing that "the debtor either intended to deceive ... or acted with gross recklessness[.]"

> An intent to deceive does not require that the Defendant acted with a malignant heart. While obviously satisfied if actual fraud is proved…[intent to deceive] is also met if a debtor is reckless when submitting financial statements that he knows are not true, not only if the debtor possesses a subjective intent to deceive. Furthermore, the intent to deceive may be inferred through the Defendant's actions and is established if he personally submitted or allowed to be submitted financial documents that he knew were untrue, even without a subjective intent to deceive.

In re Whisnant, 411 B.R. at 570 (internal quotations and citations omitted). Because debtors will rarely, if ever, admit to an actual intent to defraud, "intent is only rarely ascertainable by direct evidence[.]" *In re Sharp*, 357 B.R. at 767. Thus, "the use of circumstantial [evidence] is usually necessary to determine whether the debtor acted with the requisite intent to deceive." *Id.* Additionally, "intent may be inferred where the debtor made no effort to verify facts stated and had no reasonable grounds to believe that the facts were correct." *Amsouth Fin'l Corp. v. Warner* (*In re Warner*), 169 B.R. 155, 162 (Bankr. W.D. Tenn. 1994) (internal citations omitted). A "court may consider the totality of the circumstances to make an inference whether the debtor submitted a false financial statement with the intent to deceive." *In re French*, 563 B.R. at 223.

In the present case, Debtors clearly misrepresented their acreage and projected income in applying for the 2016 Crop Loan. In both their response to the dischargeability complaint and at the trial in this matter, the Debtors repeatedly asserted they did not act maliciously in preparing and submitting the Farm List to ARM. However, they also repeatedly asserted that they simply copied the list of land they farmed in 2015 in making the Farm List. As stated *supra*, this statement is disingenuous. The Debtor's 578 Report for 2015 shows they only planted row crops on 5,200 acres that year. Farmers are required to file 578 reports with the FSA each year. Logic dictates then that the Debtors knew the amount of acreage they reportedly farmed in 2015. They never disputed that they farmed only 5,200 acres in 2015. Thus, there is simply no way for the Debtors to simultaneously claim that the Farm List was merely a projection of what they planned to farm in 2016 and that it was based on the actual acres they farmed in 2015. It also seems inconceivable that the Debtors anticipated being able to increase their row crop production by almost 50% while being in an active bankruptcy case.

At the trial, the Debtors also stated that they were required to submit receipts to ARM before they could receive any loan proceeds for the costs associated with planting their 2016 soybean crop. ARM's representative Jack Dalton agreed with this assertion and stated that this was the course of dealing for this loan. He also testified that ARM disbursed all of the $1.9 million in loan proceeds to the Debtors. The

Court, therefore, presumes that the Debtors submitted sufficient documentary evidence to receive the entirety of the loan proceeds. This seems curious given the fact that the debtors only actually planted approximately 5,000 acres. Had the Debtors only submitted receipts to ARM for the costs associated with planting approximately 5,000 acres, it seems logical to assume that they would have asserted that the inputs and other costs were substantially higher than they anticipated. They did not do this.

Although it is true that the Debtors claimed that approximately $1 million of their soybean crop was stolen, the Debtors offered no evidence of this. They did not take any affirmative steps against the alleged thief. When asked if he ever confronted the alleged wrongdoer, Trent Blankenship stated that he did not think it was "proper" to do so. When asked whether he reported the theft to law enforcement, he said he had not. He reported it to his attorneys and claimed that he had done all he could to resolve the situation. The Court finds the Debtors' allegations with respect to the alleged theft to be without merit.

The Court concludes that the Debtors represented to ARM that they were in need of financing to plant approximately 8,200 acres of soybeans in 2016. The Debtors attested that the Farm List was an accurate representation of the amount of land they were going to farm soybeans on in 2016. The Debtors stated that they made this list by "copying" the list of land they farmed in 2015. According to Wendi Blankenship's sworn testimony at her May 4, 2018 deposition, the only alteration they made to the list of land from 2015 was to add FSA farm numbers to the list. The Debtors' 2015 578 Report shows they only planted row crops on 5,200 acres of land in 2015. As a result of these facts, the Court concludes that ARM has met its burden of demonstrating that Debtors submitted the 2016 Crop Loan Application and the Farm List attached thereto with an intent to deceive ARM. Thus, ARM has met its last burden with respect to its § 523(a)(2)(B) dischargeability claim.

III. CONCLUSION

The Court concludes that ARM has demonstrated by a preponderance of the evidence that the Debtors submitted a written statement about their financial condition that was materially false and was created with an intent to deceive. ARM has also proven that it reasonably relied on this statement when deciding to loan the Debtors $1.9 million for their 2016 soybean crop. For this reason, ARM is granted a nondischargeable judgment against the Debtors in the amount of $355,012.44 plus attorney's fees and costs associated with this proceeding. Russell Savory will be directed to file an application for reasonable attorney's fees and expenses incurred in prosecution of this adversary proceeding, along with a detailed invoice documenting these fees and expenses, by January 30, 2019.

An order will be entered in accordance herewith.

IT IS SO ORDERED.

Mailing List
Debtors
Marianna Williams, Chapter 7 Trustee
Russell W. Savory, attorney for Agrifund, LLC

Dated: January 02, 2019
The following is SO ORDERED:

Jimmy L. Croom
Jimmy L. Croom
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

In re

JAMES TRENT BLANKENSHIP and
WENDY DEANN BLANKENSHIP,

Debtors.

Case No. 16-10839

Chapter 7

Agrifund, LLC, dba
Ag Resource Management,

Plaintiff,

v.

Adv. Proc. No. 17-5098

James Trent Blankenship and
Wendy Deann Blankenship,

Defendants.

ORDER GRANTING DEFENDANT'S COMPLAINT TO DETERMINE DISCHARGEABILITY OF DEBT

For the reasons set forth in the Court's Memorandum Opinion re: Complaint to Determine Dischargeability of Debt, Agrifund, LLC, dba Ag Resource Management is granted a non-dischargeable judgment against the Debtors under 11 U.S.C. § 523(a)(2)(B) in the amount of $355,012.44 plus attorney's fees and costs associated with this proceeding. Russell Savory is

hereby directed to file an application for reasonable attorney's fees and expenses incurred in prosecution of this adversary proceeding, along with a detailed invoice documenting these fees and expenses, by January 30, 2019.

IT IS SO ORDERED.

Mailing List
Debtor
Marianna Williams, Chapter 7 Trustee
Russell W. Savory, attorney for Agrifund, LLC