IT IS ORDERED as set forth below:

Date: June 09, 2011

James R. Sacca
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

In Re:	)	
	)	
STEPHEN DARREL GROSS and ROXANNE GROSS,	)	
	)	
Debtors,	)	CASE NO. 09-88462
	)	
ADVANCE FINANCIAL CORPORATION,	)	ADVERSARY NO. 10-06065
	)	
Plaintiff,	)	
Vs.	)	
	)	
STEPHEN DARREL GROSS and, ROXANNE GROSS,	)	
	)	
Defendants.	)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above styled adversary proceeding came on for trial on February 2, 2011 on the Complaint filed by Advance Financial Corporation ("Plaintiff") against Stephen and Roxanne Gross (collectively, "Defendants"), to determine whether the debt they owe to Plaintiff is non-dischargeable pursuant to 11 U.S.C. § 523(a)(2)(A) . At the trial, Plaintiff stipulated that it was only proceeding

against Defendants pursuant to 11 U.S.C. § 523(a)(2)(A) and not pursuant to 11 U.S.C. § 523(a)(2)(B).[1] After hearing the testimony of Stephen Gross, Roxanne Gross and Andre Perry, an officer of Plaintiff, and after consideration of all of the evidence presented at the trial, the record of the within adversary proceeding, judicial notice of the proceedings and records of this Court in *In re SageRyder, LLC*, Case No. 07-71667-MHM (Bankr. N.D. Ga petition filed July 25, 2007) and argument of counsel, this Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

Defendants were the principal owners of SageRyder, Inc. ("SageRyder"). Stephen Gross was its chief executive officer. Roxanne Gross, his wife, worked in the business on a part time basis and handled administrative tasks, such as bookkeeping and payables. SageRyder was a retailer of projection screens and related equipment and services, primarily to schools, and either accepted payment by credit card or generated an invoice a customer would pay on terms.

On or about April 11, 2007, SageRyder entered into a Receivables Financing Agreement (the "Agreement") and a Security Agreement, assigning to Plaintiff all rights, title and interest in and to, *inter alia*, certain accounts receivable. Pursuant to the Agreement, and subject to the terms therein, Plaintiff would loan up to75% of the gross amount of the invoices presented to it by SageRyder. On

[1] Plaintiff cited § 523(a)(2) as the basis for relief in its complaint but did not specify if it sought relief under either subsection (A) or (B). In Paragraph 12(c) of the Pre-Trial Order, Plaintiff identified the applicable code sections under which it was seeking relief as §§ 523(a)(2)(A), (4) and (6). Plaintiff's Outline of the Case in the Pre-Trial Order also specified § 523(a)(2)(B), but it only recited the language from § 523(a)(2)(A). At the trial, the Court asked Plaintiff's counsel if it was only proceeding under subsection (A), and Plaintiff's counsel stated that was correct. Even if Plaintiff had proceeded under subsection (B), based on the record before it, the Court would have to find that Plaintiff had not met its burden of proof of showing that Debtors made a materially false statement in writing with respect to their or an insider's financial condition on which Plaintiff reasonably relied, and that Debtors made such a statement with the intent to deceive Plaintiff. The evidence presented also would not support a ruling for Plaintiff under §§ 523(a)(4) or (6).

or about April 11, 2007, Defendants individually executed personal guarantees in favor of Plaintiff, with respect to the obligations of SageRyder. After entering into the Agreement, SageRyder's invoices would direct the customer to send the payment to Plaintiff and Plaintiff would apply the payment to reduce the balance owed to it by SageRyder.

SageRyder provided invoices to Plaintiff to support a request for funding. Employees of SageRyder would submit invoices to Plaintiff, Plaintiff would conduct whatever due diligence it determined to be necessary and then Plaintiff would deposit the loan advance into SageRyder's bank account. Defendants did not directly transmit or deliver to Plaintiff, on behalf of SageRyder, any requests for advances of money from Plaintiff, but Stephen Gross would direct employees of SageRyder to submit invoices to Plaintiff for accounts that SageRyder had generated and on which a loan request would be made, usually every week. As part of its due diligence for making advances, Plaintiff did not request financial statements from SageRyder because it knew that SageRyder did not have the ability to generate a credible financial statement. Plaintiff did verify that some or all of the accounts on which they were asked to loan money were true in the amount represented. When draw requests were submitted, the invoices were submitted along with a request for an amount, but no written certification, representation or warranties were contemporaneously made to Plaintiff by SageRyder or Defendants. Plaintiff also had a prior loan with another company owned by Stephen Gross, which loan was satisfactorily paid.

Between June 5, 2007 and July 24, 2007, Plaintiff made the following loans and advances to SageRyder:

06/05/07	$ 25,000.00
06/12/07	7,000.00
06/12/07	5,000.00
06/19/07	23,000.00
06/22/07	24,000.00
07/24/07	76,000.00
TOTAL:	$160,000.00

In late May and June 2007, Stephen Gross noticed that SageRyder's sales and, consequently, accounts that could be financed, were declining. The company was also heading into the summer months when schools are not in session and sales were generally lower. Stephen Gross began exploring options for the business, including bringing in a new partner, refinancing and even filing for a Chapter 11 reorganization. SageRyder retained counsel in late May 2007 to assist the company with all of these options. Some of SageRyder's creditors filed lawsuits to collect debts in June of 2007, but Stephen Gross testified he did not actually find out about the lawsuits until the company was served in July 2007. Neither of the Defendants advised Plaintiff of these lawsuits or of the declining financial condition of the company or that the company was exploring the possibility of filing for Chapter 11 bankruptcy reorganization.

In early July 2007, Defendants' daughter was assaulted and hospitalized for quite some time in very serious condition. Both of the Defendants, particularly Stephen Gross, became less engaged in the business during this time because they were focused on the care and recovery of their daughter. Stephen Gross realized later in July that no weekly draw request had been made to Plaintiff for two or three weeks, so he instructed employees of SageRyder to gather up the invoices that had been generated by the business during that time and present them to Plaintiff to obtain funding. An

employee of SageRyder, other than one of the Defendants, made such a request about a week after instructed to do so by Stephen Gross, and on July 24, 2007, Plaintiff advanced $76,000 to SageRyder. SageRyder filed for Chapter 11 bankruptcy relief the next day, Case No. 07-71667, in the Northern District of Georgia. According to Stephen Gross' testimony, the timing of the bankruptcy filing was due to the filing of an application by one of SageRyder's vendors in a state court suit to enjoin SageRyder from operating. Andre Perry testified that had Plaintiff known that SageRyder was going to file for bankruptcy the next day, it would not have loaned SageRyder the $76,000.

After SageRyder filed for Chapter 11 relief, it continued to operate. Pursuant to orders in the *SageRyder* case in connection with SageRyder's request to use cash collateral, including the accounts in which Plaintiff had a security interest, Plaintiff turned over to SageRyder more than $62,000 of cash it collected from the receivables and SageRyder had to make specified monthly payments to Plaintiff, but Plaintiff was not required to finance any new receivables.[2] SageRyder made some payments to Plaintiff pursuant to these orders, but its case was ultimately converted from Chapter 11 to Chapter 7 on February 25, 2009.[3] In addition, the ProjectorLampCenter.com website, http://www.projectorlampcenter.com, an asset of SageRyder, which was collateral for the debt owed to Plaintiff, was sold for $30,000.00 and the proceeds credited to the amounts owed by SageRyder. After the *SageRyder* case was converted to Chapter 7 in February 2009 and SageRyder could no longer pay Plaintiff, Defendants personally paid Plaintiff pursuant to consent orders entered in a state

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[2] *See* Orders entered in *In re SageRyder, Inc.*, 07-71667-MHM, on August 3, 2007 [Docket No. 19], August 6, 2007 [Docket No. 24], September 12, 2007 [Docket No. 34] and November 30, 2007 [Docket No. 47] and the Protective Objection [Docket No 91] filed in that case by Plaintiff on August 15, 2007.

[3] *See* Order [Docket No. 191], *In re SageRyder, Inc.*, 07-71667-MHM.

court suit initiated by Plaintiff to collect on Defendants' personal guarantees. These payments ceased after October 1, 2009, when Defendants no longer had the ability to pay and they filed their own Chapter 7 bankruptcy case on October 28, 2009.

Plaintiff has not alleged nor did the evidence show that the accounts pledged to it by SageRyder did not exist, were invalid or had been unknowingly pledged to another creditor, nor did it allege that the collection of the accounts had been converted by Defendants. Plaintiff, rather, is seeking to have the debt owed to it by Defendants determined to be nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(A) because Defendants allegedly made materially false representations in the Agreement or thereafter failed to disclose to Plaintiff material facts they had an obligation to disclose to Plaintiff as set forth in the Agreement, on which representations and omissions Plaintiff claims it relied in making some or all of the advances.

Plaintiff contends the following conditions or events occurred with respect to SageRyder, which it asserts were materially adverse to SageRyder and of which, Defendants admit, neither SageRyder nor Defendants advised Plaintiff:

(1) Consumer complaints were filed by customers whose credit card accounts had been charged for merchandise which was not subsequently delivered;

(2) Four suits were filed in 2007, including in June and July 2007, by vendors for non-payment,[4] in one of which a creditor filed an application for injunctive relief to cease SageRyder's operations;

(3) Stephen Gross consulted with and SageRyder retained legal counsel as early as May 29,

[4] Statement of Financial Affairs [Docket No. 35], *In re SageRyder, Inc.*, 07-71667-MHM (see Answer to Question No. 4).

2007 for the purpose of, *inter alia*, considering relief under Chapter 11[5] and Gross' preparation of and execution of papers necessary to file a bankruptcy petition for SageRyder, shortly before the filing of the bankruptcy petition on July 25, 2007; and

(4) Defendants caused SageRyder to pay, for the personal benefit of Defendants or their affiliated companies, the following: athletic club dues, health insurance premiums, $19,000.00 to Stephen Gross, and payments exceeding $135,942.00 to related entities of which Stephen Gross was the sole stockholder or member.

Plaintiff contends that each of the foregoing conditions or events rendered the following material representations, made pursuant to the Agreement (the "Representations"), to be false:

(a) the financial statements delivered or to be delivered by SageRyder to Plaintiff accurately reflect its financial condition, and there has been no adverse change in the financial condition, the operations or any other of its status since the date of the financial statements delivered to Plaintiff most recently prior to the date of the Agreement;

(b) there are no actions or proceedings which are pending or threatened against SageRyder which might result in any material adverse change in its financial condition;

(c) all written information furnished by SageRyder to Plaintiff is and shall be true and correct as of the date with respect to which each such information was or is furnished;

(d) SageRyder is solvent, and able to pay its debts as they become due, and has capital sufficient to carry on its business;

(e) SageRyder now owns property having a value both at fair valuation and at present fair saleable value greater than the amount required to pay its debts;

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[5] Statement of Financial Affairs, *In re SageRyder, Inc.*, 07-71667-MHM (see Answer to Question No. 5).

(f) SageRyder is not in default under any material contract, lease or commitment to which it is a party or by which it is bound;

(g) SageRyder does not know of any dispute regarding any contract, lease or commitment which is material to SageRyder's continued financial success and well-being;

(h) All of SageRyder's representations, warranties and covenants shall remain true until the repayment in full of all of the Obligations and termination of the Agreement; and

(i) All monies and other property obtained by SageRyder from Plaintiff will be used solely for business purposes.[6]

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[6] The text of the Agreement provides in pertinent part:

> 7. We make the following warranties, representations and covenants with and to you, understanding that you have relied upon each of them and will continue to rely upon each of them in making loans and advances to us:
>
> (a) the financial statements delivered or to be delivered by us to you at or prior to the date of this agreement and at all times subsequent thereto accurately reflect our financial condition, and there has been no adverse change in the financial condition, the operations or any other of our status since the date of the financial statements delivered to you most recently prior to the date of this agreement;
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> . . . .
>
> (h) there are no actions or proceedings which are pending or threatened against us which might result in any material adverse change in our financial condition or materially adversely affect the collateral and we shall, promptly upon becoming aware of any such pending or threatened action or proceeding, give written notice thereof to you;
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> . . . .
>
> (j) all written information now, heretofore or hereafter furnished by us to you is and shall be true and correct as of the date with respect to which each such information was or is furnished;
>
> . . . .
>
> (n) we are solvent, are able to pay our debts as they become due and have capital sufficient to carry on our business, now own property having a value both at fair valuation and at present fair saleable value greater than the amount required to pay our debts, and will not be rendered insolvent by the execution and delivery of this agreement or by completion of the transactions contemplated hereunder;
>
> . . . .
>
> (r) we are not in default under any material contract, lease or commitment to which it is a party or by which it is bound, nor do we know of any dispute regarding any contract, lease or commitment which is material to our continued financial success and well-being;
>
> . . . .
>
> (u) we will notify you promptly of, and shall settle all customer disputes

. . . .

8. We represent, warrant and covenant to you that all of our representations, warranties and covenants contained in this Agreement (whenever appearing herein) shall be true at the time of our execution of this agreement, shall survive the execution, delivery and acceptance hereof by the parties hereto and the closing of the transaction described herein or related hereto, shall remain true until the repayment in full of all of the Obligations and termination of this agreement, and shall be remade by us at the time each loan or advance is made pursuant to this agreement.

9. Until payment or satisfaction in full of all Obligations and termination of this agreement, unless we obtain your prior written consent waiving or modifying any of our covenants hereunder in any specific instance, we agree as follows:

. . . .

(b) we shall promptly advise you in writing of any material adverse change in our business, assets or condition, financial or otherwise, the occurrence of any default hereunder or the occurrence of any event which, if uncured, will become a default hereunder after notice or lapse of time (or both);

. . . .

(d) all monies and other property obtained by us from you pursuant to this agreement will be used solely for business purposes.

Pl.'s Ex. A attached to Complaint.

The Personal Guarantees of Defendants provide in pertinent part:

For value received, and in order to induce you now or hereafter to enter into with SageRyder, Inc. . . . (hereafter together with its successors and assigns called "Obligor") any agreement . . . or to make loans, advances or otherwise extend credit to Obligor, any or all of the foregoing being to the direct interest and advantage of the undersigned, the undersigned, jointly and severally if more than one, hereby absolutely, irrevocably and unconditionally guarantees to you the continuing performance and the full and prompt payment at maturity, whether by acceleration or otherwise, of any and all indebtedness and/or obligations of Obligor owing to you pursuant to the various agreements evidencing financial arrangements between Obligor and you . . . , however and whenever incurred or evidenced by your records, the accuracy of which records is hereby expressly stipulated to be conclusive upon the undersigned or undersigned if more than one.

. . . .

Payment of any sums due to you hereunder will be made by you, and the undersigned further agrees to indemnify you and hold you harmless from and against any losses which you may sustain and expenses you might incur as a result of any breach or default by Obligor under any agreement with you. The liability of the undersigned shall be equal to the Obligations of Obligor from time to time as herein described. This guaranty is absolute, irrevocable, unconditional and continuing, regardless of the validity, regularity, or enforceability of any of the Obligations covered by this guaranty. . . .

Pl.'s Ex. B attached to Complaint.

The Court finds that there was no evidence presented regarding the materiality of the consumer complaints. The Court also finds that the only evidence before it with respect to the payment to Stephen Gross and the affiliated companies was that the payments to the affiliated entities were for goods and services provided by those entities at a fair or below market value and that the payments to Gross were for compensation and benefits as an officer and employee of the company. The Court also finds that there was no evidence that the representations made by the Defendants in the Agreement were not true at the time of the execution of the Agreement and their Guarantees. Consequently, in determining whether Defendants committed fraud under § 523(a)(2)(A), the Court shall focus on Defendants' failure, after the execution of the Agreement and their Guarantees, to disclose to Plaintiff lawsuits of vendors and SageRyder's consideration of and filing for a Chapter 11 bankruptcy relief.

CONCLUSIONS OF LAW

One of the principle forms of relief the bankruptcy process affords debtors is a discharge of debt. Section 523 of the Bankruptcy Code provides carefully drawn exceptions to this general rule, which must be construed strictly against the creditor and liberally in favor of the debtor "to give effect to the fresh start policy of the Bankruptcy Code." *Hope v. Walker (In re Walker)*, 48 F.3d 1161, 1164-65 (11th Cir. 1995); *accord Equitable Bank v. Miller (In re Miller)*, 39 F.3d 301, 304 (11th Cir. 1994); *St. Laurent v. Ambrose (In re St. Laurent)*, 991 F.2d 672, 680 (11th Cir.1993); *Murphy & Robinson Inv. Co. v. Cross (Matter of Cross)*, 666 F.2d 873, 880-81 (5th Cir. Unit B 1982); *Carlan v. Dover (In re Dover)*, 185 B.R. 85, 88 (Bankr. N.D. Ga. 1995). The plaintiff bears the burden to prove by a preponderance of the evidence that his or her debt is non-dischargeable under § 523(a)(2)(A). *Grogan v. Garner*, 498 U.S. 279, 289–91, 111 S. Ct. 654, 661 (1991).

Section 523(a)(2)(A) of the Bankruptcy Code provides in relevant part:

> (a) A discharge under . . . 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–
>
> (A) false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition;

11 U.S.C. § 523(a)(2)(A) (2011).

It is well established in the Eleventh Circuit that to prevail under § 523(a)(2)(A), Plaintiff must show the following four elements of fraud are satisfied:

> (1) the debtor made a false representation, other than an oral statement respecting the debtor's (or an insider's) financial condition, with intent to deceive the creditor;
>
> (2) the creditor actually relied on the misrepresentation;
>
> (3) the creditor's reliance was justifiable; and
>
> (4) the misrepresentation caused a loss to the creditor.

In re Bucciarelli, 429 B.R. 372, 375 (Bankr. N.D. Ga. 2010) (citing *In re Bilzerian*, 100 F.3d 886, 892 (11th Cir. 1996); *accord In re Johannessen*, 76 F.3d 347, 350 (11th Cir. 1996); *Schweig v. Hunter (In re Hunter)*, 780 F.2d 1577, 1579 (11th Cir. 1986).

In order to establish the first element in this case, Plaintiff must prove that Defendants made a false representation with the intent to deceive Plaintiff and that the representation was not one respecting SageRyder's financial condition. Plaintiff has failed to establish this element on either account.

First, Plaintiff contends that the post-execution breach of the Representations Defendants

made in the Agreement at the time of the signing of the Agreement are within the scope of § 523(a)(2)(A) because they are continuous in nature. Because fraud is founded in tort law, not contract, "[a] contractual agreement to renew a promise on a day to day basis does not of itself give rise to a tort claim for fraud. To maintain an action in tort the creditor must show the debtor actually renewed the promise each day by means of some overt conduct." *Miracle v. Hollister (In re Hollister)*, 13 B.R. 178, 184 (Bankr. N.D. Tex. 1981). "[A] statement of intent to perform an act in the future will generally not form the basis of a false representation that is actionable under section 523(a)(2)(A) unless the creditor can establish that the debtor lacked the subjective intent to perform the act at the time the statement was made." *Bancorpsouth Bank v. Callaway (In re Callaway)*, Adversary No. 05-1113, 2006 WL 6589022, at *21 (Bankr. N.D. Ga. Nov. 28, 2006) (citing *In re Allison,* 960 F.2d. 481 (5th Cir. 1992)); *accord In re Bullock,* 317 B.R. 885 (Bankr. M.D. Ala. 2004*); In re Turner*, 12 B.R. 497 (Bankr. N.D. Ga. 1981); *see Neal v. Clark*, 95 U.S. 704, 708 (1877) ("[T]he 'fraud' referred to in [§ 523(a)(2)(A)] means positive fraud, or fraud in fact, involving moral turpitude or intentional wrong."); *In re Hunter*, 780 F.2d at 1579 ("The debtor must be guilty of positive fraud, or fraud in fact, involving moral turpitude or intentional wrong, and not implied fraud, or fraud in law, which may exist without the imputation of bad faith or immorality."). Because there was no evidence that the representations made at the time of the execution of the Agreement were not true or that Defendants actually reaffirmed those representations contemporaneously with a request for funding thereafter, the omissions alleged by Plaintiff are not actionable under § 523(a)(2)(A).

Second, whether a debtor intended to deceive a creditor is a determination under § 523(a)(2)(A) that "depends largely upon [the trial court's] assessment of the credibility and

demeanor of the debtor." *In re Miller*, 39 F.3d at 305 (quoting *In re Burgess*, 955 F.2d 134, 137 (1st Cir.1992)) (internal quotation marks omitted). Such a determination must be made in view of the totality of the circumstances. *Id.* In addition, the Court may infer fraudulent intent based on the circumstances, but "if there is room for an inference of honest intent, the question of nondischargeability must be resolved in the debtor's favor." *In re Callaway*, 2006 WL 6589022, at *15 (quoting *In re Collier*, 231 B.R. 618 (Bankr. N.D. Ohio 1999)) (internal quotation marks omitted).

The Plaintiff did not carry its burden of proof that Defendants intended to deceive Plaintiff at either the time the Agreement was executed or the time a request was made thereafter. Plaintiff argues that Defendants' fraudulent intent is established by their failure to disclose, prior to receiving the advances from Plaintiff, the contemplated Chapter 11 filing and the pendency of vendor lawsuits. The evidence showed, however, that Defendants did not intend to defraud Plaintiff at the time the advances were made because (a) SageRyder pledged valid accounts receivable to Plaintiff to secure the advances, (b) SageRyder turned over the proceeds of account collections to Plaintiff, (c) SageRyder filed for Chapter 11 with the intention of reorganizing rather than liquidating and with the intention of paying Plaintiff, (d) even after the filing of the bankruptcy, SageRyder made payments to Plaintiff until the conversion of SageRyder's case to Chapter 7 in February 2009 and (e) Defendants, thereafter, personally continued to pay Plaintiff for over seven months until they filed their own Chapter 7 bankruptcy on October 1, 2009, more than two years after the last advance by Plaintiff to SageRyder.

Third, Plaintiff did not establish that Defendants' representations were *not* respecting SageRyder's financial condition. Fraudulent statements respecting a debtor's or insider's financial

condition, whether written or oral, are not actionable under § 523(a)(2)(A). *WFI Ga. Inc. f/k/a/ Suntech Sys., Inc. v. Phillips (In re Phillips)*, Adversary No. 06-9028, 2007 WL 7141216, at *2 (Bankr. N.D. Ga. Apr. 4, 2007) (citing *Rose v. Lauer (In re Lauer)*, 371 F.3d 406, 413 (8th Cir. 2004)). The Bankruptcy Code does not define the term, "financial condition," and courts differ on the scope of its interpretation, variously interpreting it broadly or narrowly. *Id.* at *2; *Schneiderman v. Bogdanovich (In re Bogdanovich)*, 292 F.3d 104, 112–113 (2d Cir.2002) (collecting cases). Under the broad interpretation, any statement, oral or written, about *any aspect* of a debtor's financial condition would be considered a "statement respecting the debtor's financial condition." *See In re Phillips*, 2007 WL 7141216, at *2; *In re Bogdanovich*, 292 F.3d at 112. Under the narrow interpretation, a statement is made "respecting the debtor's financial condition" only when it relates to the debtor's "overall financial health." *In re Phillips*, 2007 WL 7141216, at *2 (citations and internal quotation marks omitted). Under either of these approaches, the Representations alleged by Plaintiff, as set forth in paragraph (a), (b) and (d) through (g) of the Court's Findings of Fact above, were "respecting the financial condition" of SageRyder and, consequently, do not render the debt non-dischargeable under § 523(a)(2)(A).[7] All of those representations refer to SageRyder's financial condition, solvency or materiality to or success of the operation of the business.

Plaintiff argues Defendants made false representations of the kind contemplated by § 523(a)(2)(A) when they failed to disclose the lawsuits filed by vendors against SageRyder and that Defendants were exploring the possibility of filing for Chapter 11 bankruptcy petition for SageRyder.

[7] With respect to the representations in (i) and (h), above, the Court has found insufficient evidence to support a breach of the representation in (i) and that the breach of the representation in (h) is not actionable under § 523(a)(2)(A). With respect to the representation in (c), above, the Plaintiff did not specify what written information was not true and correct and the evidence does not support a finding that any written information that was furnished was not true and correct on the date it was furnished to Plaintiff.

Under the broad interpretation, the lawsuits to collect debts and the filing of a bankruptcy petition clearly relate to SageRyder's financial condition. As such, even if Defendants' silence with respect to both of these facts constituted a false representation, both would be statements related to SageRyder's financial condition under the broad interpretation and not actionable under § 523(a)(2)(A).

The same is true under the narrow interpretation of the phrase "statement respecting a debtor's or an insider's financial condition." Lawsuits based on SageRyder's failure to pay its debts and Debtors' contemplation and actual filing of a Chapter 11 bankruptcy petition, by their very nature, relate to SageRyder's overall financial health. As such, even under the narrow interpretation, Defendants' silence with respect to these facts would be statements related to SageRyder's financial condition, thereby leaving Plaintiff with no claim under § 523(a)(2)(A).

CONCLUSION

For the reasons stated above, the Court finds that Stephen Darrell Gross and Roxanne Gross are entitled to a discharge of the debt owed by them to Advance Financial Corporation.

[END OF DOCUMENT]