IT IS ORDERED as set forth below:

Date: August 20, 2012

W. Homer Drake
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION

IN THE MATTER OF:	:	**CASE NUMBER**
DONNA MANEICE PAUL,	:	10-12365-WHD
DEBTOR.	:	
DONALD F. WALTON, UNITED STATES TRUSTEE,	:	ADVERSARY PROCEEDING NO: 11-1059-whd
PLAINTIFF,	:	
v.	:	
DONNA MANEICE PAUL,	:	IN PROCEEDINGS UNDER CHAPTER 7 OF THE BANKRUPTCY CODE
DEFENDANT.	:	

O R D E R

Before the court is a Motion to Dismiss Amended Complaint filed by Donna Maneice Paul (hereinafter the "Defendant") in the above-captioned adversary

proceeding. The issues involved herein arise from a complaint to revoke the Defendant's Chapter 7 discharge, filed by Donald F. Walton, United States Trustee (hereinafter the "Plaintiff"). Accordingly, this matter is a core proceeding, over which the Court has subject matter jurisdiction. *See* 28 U.S.C. § 157 (b)(2)(J); § 1334.

PROCEDURAL HISTORY AND FACTS

The Defendant is a medical doctor. She formed Rheumatology Specialists of Central Alabama, Inc. (hereinafter "RS Central") in September 2002. In February 2004, McKesson Corporation (hereinafter "McKesson") sued the Defendant and RS Central on an unpaid account of $212,438 in the United States District Court, Northern District of Alabama. In March 2004, the Defendant and her husband, William Donald Paul (hereinafter "Paul"), formed Rheumatology Specialists Arthritis & Osteoporosis Center, Inc. (hereinafter "RSAOC"). In June 2004, RS Central filed a voluntary Chapter 7 bankruptcy petition in the Middle District of Alabama.

McKesson filed an application for entry of default against the Defendant on August 18, 2004, and on August 19, 2004, the Defendant and Paul filed a petition for relief under Chapter 7 of the Bankruptcy Code in the United States Bankruptcy Court for the Middle District of Alabama. Both of these bankruptcy cases were dismissed

in July 2005, with the Defendant's case being dismissed on July 21, 2005 with a four-year bar to filing another bankruptcy petition.

In November 2006, RSAOC changed its name to Children & Adult Arthritis & Osteoporosis Center, Inc. (hereinafter “Children & Adult"). According to the Defendant, she practiced medicine with Children & Adult in Montgomery, Alabama until December 2007. At that time, the Defendant moved to Georgia to work for Piedmont Medical Care Corporation (hereinafter "Piedmont").

Thereafter, in September 2008, McKesson domesticated its judgment in Georgia and obtained and served a writ of garnishment against the Defendant in December 2008. The Defendant filed a voluntary Chapter 13 petition in this Court on January 21, 2009, prior to the expiration of the four-year filing ban imposed by the Alabama bankruptcy court. The Court dismissed the Defendant's Chapter 13 petition, pursuant to section 109(g) of the Bankruptcy Code, on February 17, 2009, concluding that the Defendant had "engaged in a pattern of conduct designed to hinder and evade [McKesson's] legitimate efforts to collect on its judgment debt." The Court also found that the Defendant's filing of a bankruptcy petition in violation of the four-year filing ban was "an attempt to abuse the bankruptcy process."

In April 2009, the Defendant left Piedmont to work for Rheumatology Arthritis Center, Inc. ("RAC"), a Georgia corporation formed by Paul in November 2008. On

September 21, 2009, she filed a second voluntary Chapter 13 petition, which was later converted to Chapter 7 case and dismissed upon the Plaintiff's motion, pursuant to section 707(a) of the Bankruptcy Code.

The Defendant commenced the instant case by filing a voluntary Chapter 7 petition on June 22, 2010. The Court discharged the Defendant on October 7, 2010 and closed her case. McKesson filed a motion to reopen the case on December 9, 2010, alleging that, after the case was closed, McKesson became aware of substantial errors and omissions in the Defendant's bankruptcy schedules. On January 26, 2010, the Court reopened the case.

On March 23, 2011, the Grand Jury for the United States District Court for the Middle District of Alabama, Northern Division, filed an indictment against the Defendant and Paul. On April 28, 2011, the Grand Jury filed a superseding indictment, and on August 31, 2011, it filed a second superseding indictment. Among other things, the indictment alleged that the Defendant falsely documented and reported payments she received from her former employers as loans, rather than income. On November 16, 2011, the Defendant and the United States of America filed a plea agreement (hereinafter the "Plea Agreement") wherein the Defendant pleaded guilty to tax evasion (Count 3 of the indictment) and filing a false tax return (Count 9 of the indictment). The Plea Agreement involved tax years 2004 through

2007. Under the Plea Agreement, as a result of her fraudulent characterization of her income during these years, the Defendant owed $14,202 in taxes for 2004, $8,755 in taxes for 2005, $35,424 in taxes for 2006, and $27,015 for 2007.

When the Defendant filed her last bankruptcy petition (10-12365-WHD), she prepared and filed Schedule E, in which stated that she owed the IRS $1,200 in income taxes arising from 2008 and $39,000 arising from payroll taxes associated with Children & Adult. She did not disclose any additional income tax liability for tax years 2005 through 2007.

CONCLUSIONS OF LAW

A. *Motion to Dismiss Standard*

The Defendant seeks dismissal of the Complaint because it fails to state a claim for which relief can be granted under Federal Rule of Civil Procedure 12 (b)(6) (made applicable to this proceeding by FED. R. BANK. P. 7012). For a complaint to survive a motion to dismiss under Rule 12(b)(6), the complaint must contain sufficient factual matter to "state a claim of relief that is plausible on its face." *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the

misconduct alleged." *Id.* The plausibility requirement demands more than the mere possibility that the defendant acted unlawfully. *Id.* When searching for plausibility within the plaintiff's allegations, the Court must construe the complaint "in a light most favorable to the plaintiff," by assuming that the factual contentions within the complaint are true. *Id; see also Brooks v. Blue Cross and Blue Shield of Florida, Inc.*, 116 F.3d 1364, 1369 (11th Cir. 1997).

B. *Section 727(d)*

The Plaintiff requests that the Court revoke the Defendant's discharge. Section 727(d)(1) of the Bankruptcy Code provides: "On request of the trustee, a creditor, or the United States trustee, and after notice and a hearing, the court shall revoke a discharge granted . . . if . . . such discharge was obtained through the fraud of the debtor, and the requesting party did not know of such fraud until after the granting of such discharge." 11 U.S.C. § 727(d)(1). Accordingly, to prevail under section 727(d)(1), the plaintiff must establish, by a preponderance of the evidence, that: "(1) the debtor obtained the discharge through fraud; (2) the creditor possessed no knowledge of the debtor's fraud prior to the granting of the discharge; and (3) the fraud, if known, would have resulted in the denial of the discharge under 11 U.S.C.

§ 727(a)." *In re Matos,* 267 Fed. Appx. 884 (11th Cir. 2008).[1] These requirements are construed "liberally in favor of the debtor," as the revocation of a discharge is an "extraordinary remedy." *Id*.

A "complaint seeking revocation of discharge pursuant to § 727(d)(1) may be based upon a determination under § 727(a)(4) that the debtors knowingly and fraudulently made a false oath or account in connection with their bankruptcy case." *In re Staub*, 208 B.R. 602, 604 (Bankr. S.D. Ga. 1997); *In re DePriest*, 414 B.R. 518, 521 (Bankr. W.D. Mo. 2009). "The elements that a plaintiff must prove under section 727(a)(4)(A) are that '(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.'" *In re Roubieu*, 2005 WL 6459370 (Bankr. N.D. Ga. Jul. 6, 2005) (Massey, J.). Both statements and omissions made in schedules and statements of financial affairs may qualify as a false oath made in connection with the bankruptcy case. *See In re Stamat*, 635 F.3d 974, 982 (7th Cir. 2011).

The Plaintiff has alleged that the Defendant set out on a scheme to defraud the United States government by paying less taxes than she should have paid. In

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[1] This opinion is cited pursuant to Rule 36–2 of the 11th Circuit Rules, which provides that an unpublished opinion is not binding precedent, but may be cited as persuasive authority. 11th Cir. R. 36–2.

furtherance of this goal, the Plaintiff submits, the Defendant filed tax returns that improperly characterized her income as loans made to her from her medical practice. And then, when she filed her bankruptcy petition, she furthered that fraud by continuing to assert the lie -- that she earned less money than she actually earned and, accordingly, had no tax liability arising from the years in which she perpetrated the fraud. The Plaintiff alleges that the Defendant's schedules were false because they did not include all of the Defendant's debts, the falsity was material to understanding her financial circumstances, and she filed the false schedules with fraudulent intent. In fact, the sum and substance of the complaint bears out the Plaintiff's allegation that the Defendant acted to cover up her prior tax evasion. The Court agrees with the Plaintiff that the complaint is perfectly specific as to what the Plaintiff contends constituted the Defendant's fraudulent conduct.

As to the second requirement, the plaintiff must establish that it was not aware of facts that would have put the plaintiff "on notice of a possible fraud." *Mid-Tech Consulting, Inc. v. Swendra*, 938 F.2d 885, 888 (8th Cir. 1991). In this manner, the plaintiff must "investigate diligently any possibly fraudulent conduct before discharge." *Id*.

The Defendant submits that the complaint fails to establish that the Plaintiff was not aware of any facts that would have put him on notice of the possibility that

the Defendant had used her bankruptcy schedules to cover up her tax fraud. The Defendant is correct that the complaint is slim on facts in this regard. However, the Court is unclear as to what facts may be missing. After all, the Plaintiff has stated, as a fact, that he was not aware of the Defendant's fraud before the discharge was entered. Ultimately, whether the Plaintiff was aware of the fraud prior to the entry of the Defendant's discharge will likely be a mixed question of fact and law, as he may be found to have been aware of facts that would, if diligently investigated, have led him to discover the "fraud." But at this stage, the Plaintiff has properly pled the fact that he was not aware of the fraud and he has alleged no facts that would establish that he did have access to any information that would have triggered his duty to investigate. It is true that the Plaintiff will have the ultimate burden to prove a negative -- that he was not aware of any facts that would have put him notice of the fraud and, if so, that he investigated those facts diligently and still failed to discover the fraud. But that must await a later time, after discovery, possibly at the summary judgment stage, or even at trial.

CONCLUSION

Accordingly, as the Plaintiff has pled sufficient facts that, if taken as true, could support the relief requested in the complaint, the Court finds that the Defendant's Motion to Dismiss should be and, hereby is, **DENIED**.

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