

**IT IS ORDERED as set forth below:**

**Date: August 21, 2013**



A handwritten signature in black ink, reading "James R. Sacca".

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**James R. Sacca**  
**U.S. Bankruptcy Court Judge**

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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

IN RE:	}	
	}	CASE NO. 11-77399-JRS
ANGELA LIEBEN,	}	
	}	CHAPTER 7
Debtor.	}	

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SPEEDSPORTZ, LLC, and	}	
JOHN REAVES,	}	ADVERSARY PROCEEDING
	}	
Plaintiffs,	}	
	}	NO. 11-05712-JRS
v.	}	
	}	
ANGELA LIEBEN,	}	
	}	
Defendant.	}	

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

“Dear Thief,” she wrote in her diary, “I’m writing this letter to understand you better and ask you why you’re such a dominant archetype in my life.” Debtor Angela Lieben says this

entry in her diary was just part of a fictional short story she was writing. Was her explanation true or just a novel defense on her part? Plaintiff John Reaves claims this letter was evidence that his former live-in girlfriend and bookkeeper stole money from him. The Court heard their stories during a two-day bench trial and must now determine what is fact and what is fiction. Were transfers from company bank accounts and charges on Reaves' credit cards authorized gifts between lovers? Or were they unauthorized and resulting from fraud, larceny, or embezzlement—and therefore non-dischargeable pursuant to 11 U.S.C. § 523(a)(2)(A) and/or 523(a)(4)?

### **Two Lives Intertwine**

Plaintiff John Reaves was and is the President and sole owner of a company called Speedsportz, LLC (“Speedsportz”), which is the other plaintiff in this case. Speedsportz is located in Tulsa, Oklahoma and refurbishes exotic cars—including Porsches, Ferraris, and Mercedes—for resale to customers across the country. Reaves had been in this business for about 30 years when he met Angela Lieben—a cosmetics salesperson—in 2001, when they both lived in Tulsa. Lieben and Reaves were originally introduced by Lieben's stepfather, who had known Reaves for about five or ten years. In the latter part of 2002—not long after Reaves and Lieben were first introduced—they began dating. Shortly after they started dating, Lieben moved in with Reaves and lived with him in his home until they had a brief separation in 2005, but she moved back into his home in 2006 after he experienced some medical problems.

While living with Reaves, Lieben also worked for his company. She started working for Speedsportz one day a week in 2004 on various projects. She continued working full-time as a cosmetics salesperson while doing some limited marketing and bookkeeping for the business. She stopped working for Speedsportz after the couple separated in 2005; but about the time she

moved back in with Reaves in 2006, she began putting in more and more hours for Speedsportz, quitting her other job in order to become the company's full-time office manager in late 2006. She remained in this position until she was terminated in late 2007.

While working as the full-time office manager for Speedsportz, Lieben's duties included managing payroll; paying bills; reconciling bank statements and monitoring account balances; and entering information in the company's QuickBooks accounting software. Generally, she did not have check-writing authority, but there were at least a few occasions in which Reaves phoned his bank to authorize Lieben's signature on specific checks while he was out of town. The standard procedure was that she would open the mail and prepare checks for Reaves to sign, attaching them to the bills for his review. She would then make entries into the company's accounting software, putting down the expense category under which the check should be booked, such as parts, utilities, shop supplies, etc.

Speedsportz was a very small business. When Lieben was working at Speedsportz full-time in 2006 and 2007, there were four or five employees in addition to Reaves: a shop foreman who worked on mechanical restoration, an assistant to the shop foreman who also worked on upholstery, a car salesman, a person who cleaned up around the shop, and Lieben, who was the office manager. Reaves primarily bought and sold vehicles and worked on engines and transmissions, but he spent very little time overseeing his company's finances.

Reaves paid Lieben to work at Speedsportz. He also gave her gifts and at one point got her a credit card under his personal account. In 2003, Reaves provided her with an American Express ("AMEX") card, but her use of the card was cancelled when she moved out in 2005. When Lieben moved back in and started working for Speedsportz full-time in 2006, Reaves paid her \$1,400.00 net monthly plus "room and board," as he put it. In addition, Reaves

acknowledged that during the course of their relationship he probably gave her about \$40,000.00 worth of jewelry, plus other gifts.

### **The Relationship Unravels, Exposing the Naked Truth**

The personal and professional relationship between Reaves and Lieben abruptly ended on October 30, 2007 when Reaves returned home from a business trip and discovered that Lieben had certain people doing certain photography in his home, of which he did not approve. Reaves was not pleased. He “put her out” of the house—to use his words—and terminated her employment. About a week after this incident, Reaves allowed Lieben to come back to Speedsportz to “straighten up the books,” and he gave her a final \$1,500.00 “going away present.”

It was not until after Reaves terminated Lieben that he says he discovered what he considered to be irregularities on a company bank statement. To investigate further, he had his accountant review the transactions on this bank account and the corresponding QuickBooks entries. Reaves claims he discovered payments on what appeared to be credit cards and insurance policies that were not his own, made with either electronic checks or by paper checks with unauthorized and forged signatures. In addition to the irregularities in the business account, Reaves reviewed his personal AMEX account statement and claims he found charges that he did not authorize. He also says he found unauthorized ATM withdrawals on his personal bank account and cash missing from his home and place of business. The allegedly unauthorized debits, charges, withdrawals, and missing cash total \$71,246.74<sup>1</sup> and are set forth on Appendix A to this Order.

### **The Disputed Transactions**

With respect to the transactions on Appendix A, Lieben does not dispute that almost all of the credit cards on which payments were made were her cards, that she signed Reaves’ name

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<sup>1</sup> Due to a math error, Appendix A incorrectly indicates that the total of these transactions is \$71,664.73.

to the checks, that she made the charges on the AMEX card, and that the payments to insurance companies were for her insurance.<sup>2</sup> But she does dispute that the transactions were unauthorized. Lieben contends that Reaves not only knew about the transactions, but he authorized them.

This list of transactions in Appendix A include a broad variety: allegedly forged checks, electronic payments, payments from Reaves' PayPal account, charges on Reaves' AMEX card, and cash withdrawals. Although Lieben testified that Reaves knew about the transactions and that she had authority to complete every transaction on the list, the Court does not find her story persuasive. Instead, most of the transactions appear to have been unauthorized. But the Court does find that she had at least implicit permission to make some of the transactions or that Reaves ratified them. After hearing the testimony at trial, the Court finds that the list of transactions in Appendix A includes both unauthorized and approved or ratified transactions.

### **The Unauthorized Transactions**

The Court finds that Speedsportz carried its burden of proof that three categories of transactions in Appendix A were unauthorized (the "Unauthorized Transactions"): (a) electronic checks to pay Lieben's debts (totaling \$37,151.34); (b) checks on which she signed Reaves' name to pay her debts (\$11,253.73); and (c) payroll reimbursement allowances on Lieben's paychecks (\$827.00).

As for the electronic and paper checks, the Court does not find Lieben's testimony that these checks were authorized to be credible for several reasons. First, none of these checks were of such an urgent nature that she could not have waited to get Reaves to sign them (as opposed to a check that would have to be paid to a supplier for product to work on a car while Reeves was out of town, for example). Second, Lieben has a history of dishonesty in similar types of

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<sup>2</sup> Lieben denies that the WFNNB (World Financial Network National Bank) card is hers and does not admit making the ATM withdrawals or taking petty cash from the company or cash from Reaves' home.

conduct,<sup>3</sup> and entries in her diaries and personal e-mails implicated her generally in this type of conduct against Reaves.<sup>4</sup> Third, it would seem unlikely that Reaves would allow Lieben to take out of the business what averaged out to be an extra \$3,000.00 per month at a time when Speedsportz was not particularly profitable. During the relevant period, the company's bank account was frequently overdrawn; it was not making enough money to pay its AMEX statement in full every month; and Reaves' draw from the company was not substantial. Finally, Lieben mislabeled so many of the transactions in QuickBooks—45 in all for a total of more than \$24,000.00—that the Court cannot accept that these were simply mistakes as she would have the Court believe. While testifying at trial, Lieben suggested that the errors were merely mistakes made because she was high on drugs. However, when asked why the errors only occurred on transactions for her personal expenses, her only explanation was that Reaves could have gone back and changed the books, but she offered no evidence to support this theory. Reaves testified that he does not even know how to open the QuickBooks software much less alter entries in it.

With regard to the payroll reimbursement allowances on Lieben's paychecks, the Court can imagine no plausible explanation for why Reaves might have authorized those transactions. These two payments were both categorized as "Reimb.," which, presumably stands for a reimbursement. But Lieben never testified to having incurred any expenses on behalf of

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<sup>3</sup> For example, Lieben was previously convicted of forgery with respect to an employer's check, and there were other instances where she was less than truthful on applications.

<sup>4</sup> Lieben's testimony and entries into her diaries and personal e-mails indicated that, during her relationship with Reaves, she was addicted to pain killers and "[didn't] know what [she] was doing half the time," as well as being addicted to shopping and having a fascination with pornography. In her diary, she wrote "I take money from John—of which I don't return—wind up spending on extremely frivolous items . . . ." In one diary entry apparently written before the Unauthorized Transactions took place, she wrote, "I feel terribly wrong and guilty for the things he does not even know about yet. I pray to God that when he opens the AMEX bill, he will not see what account that payment came from. Please God I pray that he does not look too close. Please God I pray to all the angels I will never ever steal from him or anyone else." This diary entry—like most of the diary entries introduced at trial—predates the time of the transactions for which Reaves seeks to recover; but these entries are relevant to her general state of mind and intentions toward Reaves because she wrote them during her relationship with him.

Speedsportz for which she would need to be reimbursed. More likely, the business expenses would have gone on a credit card (such as the AMEX) or they would have been paid out of the company bank account. Even if Lieben had incurred any such expenses, the Court simply does not believe that Reaves would have reimbursed her through payroll rather than just writing a check to her or giving her cash. Lieben was in charge of payroll, and apparently Reaves did not monitor payroll closely, so there is no reason to find that he acquiesced to these transactions.

In sum, the Court finds that Lieben is liable to Speedsportz for \$49,232.07 on account of these Unauthorized Transactions. All of the Unauthorized Transactions involve funds taken from the Speedsportz account, rather than Reaves' personal accounts, so Lieben is liable to Speedsportz—not Reaves—for these funds.

### **The Approved or Ratified Transactions**

With respect to the remaining transactions (the “Approved Transactions”), the Plaintiffs simply did not carry their burden of proof that the charges and withdrawals were either made by Lieben or that they were unauthorized and therefore procured by actual fraud, larceny, or embezzlement. The Court finds that Plaintiffs did not carry their burden that the following transactions on Appendix A were unauthorized: the AMEX charges (totaling \$8,080.74); FedEx charges (\$1,583.72); PayPal charges (\$6,100.21); ATM withdrawals (\$900.00); petty cash draws (\$2,260.00); cash taken from Reaves' home (\$1,440.00); and the debit transfers from Speedsportz to Lieben (\$1,650.00), one of which she classified as a “Loan” in QuickBooks while classifying the other as “Contract Labor.”

As for the AMEX and FedEx charges, Reaves signed all of the checks for these payments. His standard procedure was to have Lieben attach the unsigned check to the statement so that he could sign the check and review the statement. He had an opportunity to review each

of these statements, including the charges, the total amount owed, and the balance that was being paid. Yet he seemingly had no objection to paying for these charges until long after they were made and his relationship with Lieben had crumbled.

Regarding the PayPal charges, confirmation of those charges was sent to Reaves' personal e-mail, and it appears that many of those charges showed up on Reaves' MasterCard or his personal checking account statement. Similarly to the AMEX and FedEx charges, Reaves would have had the opportunity to review those charges every month on his statement before signing the check. For example, Exhibit 1.117 indicates that Lieben made a PayPal charge through Reaves' MasterCard and that Reaves paid this bill by check, but Reaves does not even suggest that this check was forged or otherwise unauthorized. According to Reaves, all of the charges on that MasterCard statement were unauthorized, yet he nevertheless signed the check to pay the bill. His challenge to those charges as unauthorized is not credible.

With respect to the ATM withdrawals, Lieben would have had to have had possession of the card to make those withdrawals. Reaves failed to prove that Lieben withdrew the money and failed to explain how she would have come into possession of the card without his permission.

In regards to the petty cash withdrawals and cash taken from the house, the evidence was simply too vague. Reaves could have picked any number and asserted that she took that amount, but he produced no evidence—other than his testimony—to support that claim. The Court also cannot believe that more than \$2,000.00 of petty cash can go missing over a 20-plus month period without the owner of a very small business knowing about it sooner.

As for the debit transfers from Speedsportz to Lieben's account, the Court fails to see how Lieben could have made these transfers without Reaves' authorization. Presumably his bank had security measures in place to prevent Lieben or anyone else from going to a bank teller



to transfer money out of his account without his permission.<sup>5</sup> With regards to the \$1,000.00 transfer (Ex. 1.5), Lieben logged it in the QuickBooks as a loan, so it appears her intention was to repay it. Moreover, the QuickBooks ledgers were provided regularly to the company's accountant, who should have designated it on the company's financial statements as a loan for Reaves to see and object to if necessary. And the \$650.00 transfer (Ex. 1.24)—logged as Contract Labor—very well could have been payment for services rendered, considering that Lieben had performed various tasks for Speedsportz beyond her standard bookkeeping and accounts payable duties; or it could have simply been a way for Reaves to give her some additional money while running it through the business.

Accordingly, the Plaintiffs did not prove by a preponderance of the evidence that any of the Approved Transactions were both performed by Lieben and unauthorized. Instead, the Court finds that to the extent that Lieben performed these transactions, Reaves acquiesced to her doing so. But as for the Unauthorized Transactions, the Court finds that Lieben performed these transactions without Reaves' knowledge or consent. Now the Court must determine whether these debts should be nondischargeable in bankruptcy pursuant to 11 U.S.C. §§ 523(a)(2)(A) or 523(a)(4) due to being incurred through fraud, larceny, or embezzlement.

### **Dischargeability of the Unauthorized Transactions**

Section 727 of the Bankruptcy Code provides that the Court shall grant a debtor a discharge from all debts that arose prior to the debtor's Chapter 7 bankruptcy filing, except for certain types of debts listed in § 523. 11 U.S.C. § 727(b). This discharge is one of the primary benefits for debtors, enabling them to get a "fresh start." But this fresh start is only available to

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<sup>5</sup> It is clear that these transfers were not electronic transfers, since they are evidenced by handwritten documents called "Debit Transfers." *See, e.g.*, Ex. 1.24.4.

the “honest but unfortunate debtor.” *Grogan v. Garner*, 498 U.S. 279, 287 (1991) (citation and quotations omitted).

Section 523 of the Bankruptcy Code provides a list of certain debts that are nondischargeable because the debtor was not just honest and unfortunate but instead committed certain conduct that Congress has frowned upon. To prevent honest and unfortunate debtors from being ensnared by one of these exceptions, courts must construe them strictly in favor of the debtor. *United States v. Fretz (In re Fretz)*, 244 F.3d 1323, 1327 (11th Cir. 2001). And a plaintiff seeking to prove an exception to discharge has the burden of doing so by a preponderance of the evidence. *Grogan*, 498 U.S. at 287–88. Here, the Plaintiffs rely on two provisions of this section: Section 523(a)(2)(A)—relating to debts obtained by fraud—and Section 523(a)(4)—relating to debts stemming from embezzlement or larceny.

#### **Section 523(a)(2)(A): Fraud**

Section 523(a)(2)(A) of the Bankruptcy Code provides an exception from discharge for any debt “for money, property, [or] services . . . to the extent obtained by false pretenses, a false representation, or actual fraud.” 11 U.S.C. § 523(a)(2)(A). The plaintiffs bear the burden of proving this exception to the general rule that debts are discharged in bankruptcy. *Schweig v. Hunter (In re Hunter)*, 780 F.2d 1577, 1579 (11th Cir. 1986) *abrogated on other grounds by Grogan v. Garner*, 498 U.S. 279 (1991). In order to satisfy their burden under § 523(a)(2)(A), the plaintiff-creditors must prove that (1) the debtor made a false representation to deceive the plaintiffs, (2) the plaintiffs justifiably relied on that representation, and (3) the plaintiffs sustained a loss resulting from relying on the misrepresentation.<sup>6</sup> *Securities and Exchange*

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<sup>6</sup> These elements are substantially similar to actual fraud as defined under Oklahoma law, where the relevant events took place. *See Croslin v. Enerlex, Inc.*, 2013 OK 34 (2013) (defining actual fraud as “the intentional misrepresentation or concealment of a material fact, with an intent to deceive, which substantially affects another person.”).

*Commission v. Bilzerian (In re Bilzerian)*, 153 F.3d 1278, 1281 (11th Cir. 1998) (footnote omitted).

In order to satisfy the first element, the Plaintiffs must prove that Lieben made a fraudulent statement (or omission) with the intention of deceiving them. In addition to fraudulent statements, omissions of material facts may also be fraudulent, but only when the defendant is under a duty to disclose those facts. *Chiarella v. United States*, 445 U.S. 222, 228 (1980). A “duty to disclose arises when one party has information that the other party is entitled to know because of a fiduciary or other similar relation of trust and confidence between them.” *Id.* at 228 (punctuation and citation omitted). Intent to deceive is a key component of fraud analysis under § 523(a)(2)(A) because 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.” *In re Hunter*, 780 F.2d at 1579 (citations omitted).

Here, Lieben made both fraudulent statements and fraudulent omissions while intending to deceive Speedsportz. She mischaracterized the nature of many of the Unauthorized Transactions by logging them in QuickBooks as legitimate business expenses, when in fact she was using the company’s money to pay her personal expenses. The sheer number of these mislabeled transactions (45 total)—coupled with the fact that the mislabeling only occurred on transactions for her personal expenses—indicates that her goal was to conceal where the money was really going. She was under a duty to disclose to Reaves where the company’s money was being spent because he had a special relationship with him, as he was both her boss and her live-in lover. Particularly as the Speedsportz employee charged with payroll, accounts payable, and monitoring the company’s finances, Lieben had a duty to Speedsportz to disclose to its principal the extent and true nature of transactions using company money. Her failure to do so constituted

a fraudulent omission because her goal was to conceal the Unauthorized Transactions and deceive Speedsportz.

As for the second element, plaintiffs seeking nondischargeability under § 523(a)(2)(A) must also show that they justifiably relied on the debtor's fraudulent conduct. *Field v. Mans*, 516 U.S. 59, 73–76 (1995).<sup>7</sup> A plaintiff may justifiably rely on a representation “even if he might have ascertained the falsity of the representation had he made an investigation.” *Id.* at 70 (citation omitted). In other words, a plaintiff's “negligence in failing to discover an intentional misrepresentation is no defense.” *Eugene Parks Law Corp. Defined Benefit Pension Plan v. Kirsch (In re Kirsh)*, 973 F.2d 1454, 1459 (9th Cir. 1992) (citation omitted). But a plaintiff “cannot purport to rely on preposterous representations or close his eyes to avoid discovery of the truth.” *Id.* (citation and punctuation omitted).

Here, although Reaves' reliance on Lieben and his failure to uncover her fraud sooner may not have been reasonable, it was justifiable. She was his girlfriend. She lived in his home. He trusted her. In hindsight, he should have paid closer attention to his company's finances, but the fact remains unchanged that Reaves was justified in relying on Lieben to pay only appropriate company expenses out of the business bank account without appropriating these funds for her personal benefit, hiding her scheme from him all the while. And Lieben's concealment made it harder for Reaves to uncover her fraud: even if he had made some sort of cursory investigation into the accounting records, without knowing exactly what payments were being paid and when, he would have had little indication that the checks were being used to finance Lieben's personal endeavors because the transactions were often misreported.

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<sup>7</sup> Reliance must be justifiable, but need not reach the heightened standard that a reasonableness requirement would impose. *Field*, 516 U.S. at 77. However, the Court may consider reasonableness as it relates to justifiable reliance. *Id.* at 76. The Supreme Court explained that reasonableness is not completely irrelevant, “for the greater the distance between the reliance claimed and the limits of the reasonable, the greater the doubt about reliance in fact.” *Id.* at 74.

As for the third element, Speedsportz clearly sustained a loss as a result of the Unauthorized Transactions to the tune of \$49,232.07, as explained above. In sum, the Court concludes that Speedsportz has met its burden and proved by a preponderance of the evidence that Lieben's debt on account of the Unauthorized Transactions is nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(A).

#### **Section 523(a)(4): Embezzlement and Larceny**

The Plaintiffs also allege that Lieben's debts to them are nondischargeable because she committed larceny and/or embezzlement. Section 523(a)(4) of the Bankruptcy Code excepts from discharge debts "for fraud or defalcation while acting in a fiduciary capacity, embezzlement or larceny." 11 U.S.C. § 523(a)(4). While fraud or defalcation must occur in a fiduciary capacity, larceny or embezzlement do not have to occur while the debtor is acting in a fiduciary capacity to provide a basis for nondischargeability under this provision. *Transamerica Commercial Finance Corp. v. Littleton (In re Littleton)*, 942 F.2d 551, 555 (9th Cir. 1991); *Griff v. Marsh (In re Marsh)*, 449 B.R. 431, 437 (Bankr. N.D. Ga. 2011). The Plaintiffs do not accuse Lieben of defalcation while acting in a fiduciary capacity, but they have alleged that she committed larceny and/or embezzlement.

Larceny and embezzlement are quite similar. Larceny is "the taking of personal property accomplished by fraud or stealth, and with intent to deprive another thereof." 21 Okl. Stat. Ann. § 1701. Embezzlement is the "fraudulent appropriation of property by a person to whom such property has been entrusted or into whose hands it has lawfully come." *Moore v. United States*, 160 U.S. 268, 269 (1895).<sup>8</sup> Embezzlement "differs from larceny in the fact that the original

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<sup>8</sup> Oklahoma's definition of embezzlement in its criminal code is nearly identical, defining it as "the fraudulent appropriation of property of any person or legal entity, legally obtained, to any use or purpose not intended or authorized by its owner." 21 Okl. Stat. Ann. § 1451.

taking of the property was lawful, or with the consent of the owner, while in larceny the felonious intent must have existed at the time of the taking.” *Id.* at 269–70. Simply put, larceny involves taking someone’s property without any right to possess it, and embezzlement involves fraudulently keeping someone’s property for oneself after being entrusted with it by the owner.

Here, the Court concludes that the Plaintiffs have proven by a preponderance of the evidence that Lieben’s debts for the Unauthorized Transactions are nondischargeable because she incurred them through embezzlement. While it does not matter for purposes of nondischargeability whether she committed larceny or embezzlement, it does appear that embezzlement is the more appropriate characterization.<sup>9</sup> The parties agree that Lieben had at least some check-writing—but not necessarily signing—authority. Reaves entrusted her with paying the company’s payroll and other bills. She had the checkbook and the password for online banking. She then used this checkbook and her access to online banking to appropriate money that belonged to Speedsportz to pay her own personal expenses. And as explained above, this misappropriation was fraudulent because she misrepresented and concealed where the money was going. In sum, the Court concludes that Speedsportz has met its burden and proved

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<sup>9</sup> Admittedly, the question of whether Lieben was entrusted with company funds is a close call. During the time she worked for Speedsportz, she was permitted to write or print out checks. However, there were only very limited instances where Lieben was permitted to sign the company checks in Reaves’ name. Reaves testified that on those few instances, he phoned the bank to authorize the signature, and this authority was evidenced by certain markings the bank employee made on the checks. Beyond this limited authority, Lieben did not have authority to sign checks out of the Speedsportz account. On the other hand, as the company’s office manager, Lieben had significant control over the company finances and basically paid the bills, subject to Reaves’ signature, which basically amounted to a rubber stamp. Additionally, not only was she the sole person looking at the accounting records on a regular basis, but she also had some authority to make online payments using the Speedsportz account. At least one other court has concluded that a debtor commits embezzlement under these circumstances. *See In re Gamble-Ledbetter*, 419 B.R. 682, 695–98 (Bankr. E.D. Tex. 2009) (concluding that bookkeeper’s debt for embezzlement was nondischargeable even though the bookkeeper did not have check-signing authority). And even if she did not have legal possession of the company’s funds, her debts to Speedsportz would still be nondischargeable because she would have then committed larceny.

by a preponderance of the evidence that Lieben's debt on account of the Unauthorized Transactions is nondischargeable pursuant to 11 U.S.C. § 523(a)(4).

### **Punitive Damages**

While the Court finds that Lieben is liable to Speedsportz for the Unauthorized Transactions and concludes that these debts are nondischargeable because she committed fraud and embezzlement, the Court declines to award punitive damages. Punitive damages awards are designed to "punish the wrongdoer for the wrong committed upon society" and to deter specific conduct. *Buzzard v. Farmers Ins. Co., Inc.*, 1991 OK 127, 824 P.2d 1105, 1115 (1991). The trier of fact has discretion over whether or not to award punitive damages. *Sides v. John Cordes, Inc.*, 1999 OK 36, 981 P.2d 301, 305 n.10 (1999) (citation omitted). The amount of punitive damages awarded in any particular case will likely be specific to that defendant, and the fact finder may take into consideration the financial resources of the defendant. *See Timmons v. Royal Globe Ins. Co.*, 1982 OK 97, 653 P.2d 907, 919 (1982).

Here, the Court finds that a punitive damages award—on top of the nondischargeable \$49,232.07 debt to Speedsportz for the Unauthorized Transactions—is unnecessary to punish Lieben any further and would do little if anything to deter future misconduct. Considering that Lieben is bankrupt, she will have a very difficult time paying off her nondischargeable debt for the Unauthorized Transactions. She will certainly feel the pain of dealing with this debt, which will remain with her until it is paid in full. The Court finds that the burden of this nondischargeable debt is punishment enough. And even if the Court were to award a million, billion, or trillion dollars in punitive damages, Speedsportz would be no more likely to collect that money, and Lieben would be no more deterred from committing future wrongdoing than she

already is as a result of the burden of this nondischargeable debt for the Unauthorized Transactions.

Moreover, the Court is not blind to the fact that Lieben would not have been able to get away with misappropriating so much money from Speedsportz for so long if Reaves had been properly overseeing his company's finances. Speedsportz is a small operation with only a handful of employees. The money Lieben was able to take from the company represented a significant portion of the monthly business expenses, and if Reaves were more diligent he would have certainly caught on much sooner. Not only was Reaves aware of Lieben's history of financial problems, he lived with her and was likely a witness to her expensive habits. Although these facts do not excuse Lieben from liability, they weigh in the Court's decision to deny punitive damages.

### **Conclusion**

For the reasons stated above, it is hereby

ORDERED that judgment shall be entered in favor of Plaintiff Speedsportz, LLC and against Debtor Angela Lieben in the amount of \$49,232.07, which shall be nondischargeable pursuant to 11 U.S.C. §§ 523(a)(2)(A) and 523(a)(4). Any other relief sought in the Complaint is denied, including the request for punitive damages.



## Appendix A

1.1	01/20/06	Capital One – Electronic Check #4086 – Unauthorized	\$ 436.17
1.2.	01/31/06	Spinsite – American Express Charge – Unauthorized	34.99
1.3.	02/01/06	Forged Check #4130 written to Angela Lieben – Unauthorized	397.50
1.4.	02/07/06	Capital One – Electronic Check #4123 – Unauthorized	1,000.00
1.5.	02/10/06	Debit Transfer from Business Checking to Angela Lieben Account Unauthorized	1,000.00
1.6.	02/15/06	Spinsite – American Express Charge – Unauthorized	34.99
1.7.	02/28/06	Capital One – Check #4156 – Forged	435.00
1.8.	03/08/06	Spinsite – American Express Charge – Unauthorized	34.99
1.9.	03/10/06	Delta Airlines – American Express Charge – Unauthorized	328.10
1.10.	03/13/06	Farmers Insurance Exchange – Check #4189 – Forged	97.45
1.11.	03/17/06	Capital One – Electronic Check #4298 – Unauthorized	1,058.24
1.12.	04/03/06	Capital One – Electronic Check #4223 – Unauthorized	1,104.53
1.13.	04/03/06	GE Money Bank – Check #4229 – Unauthorized	500.00
1.14.	04/07/10	Spinsite – American Express Charge – Unauthorized	34.99
1.15.	04/10/06	Farmers Insurance – Check #4299 Forged	189.86
1.16.	04/25/06	Capital One – Electronic Check #4265 – Unauthorized	1,000.00
1.17.	05/07/06	Spinsite – American Express Charge – Unauthorized	34.99
1.18.	05/08/06	Capital One – Electronic Check #4266 – Unauthorized	750.00
1.19.	05/15/06	Southwest Airlines – American Express Charge – Unauthorized	202.60
1.20.	05/22/06	Capital One – Electronic Check #4313 - Unauthorized	525.30
1.21	06/06/06	Spinsite – American Express Charge – Unauthorized	34.99
1.22.	06/07/06	Capital One – Electronic Check #4314 – Unauthorized	860.00
1.23.	06/11/06	Delta Airlines – American Express Charge – Unauthorized	428.11
1.24.	06/15/06	Debit Transfer from Business to Angela Lieben Acct- Unauthorized	650.00
1.25	06/27/06	Capital One – Electronic Check #4360 – Unauthorized	742.00
1.26	07/04/06	Premtech Service – Check #4399 – Forged	83.62
1.27.	07/19/06	Skincare – American Express Charge – Unauthorized	65.00
1.28	07/25/06	Skincare – American Express Charge – Unauthorized	65.00
1.29.	07/28/06	Dr. Carlson, MD – Check #4416 – Forged – Unauthorized	269.00
1.30.	07/30/06	Spinsite – American Express Charge – Unauthorized	34.99
1.31.	7/31/06	Capital One – Electronic Check #4421 – Unauthorized	725.00
1.32.	08/01/06	Skin Care Institute – American Express Charge – Unauthorized	65.00
1.33	08/08/06	Skin Care Institute – American Express Charge – Unauthorized	65.00
1.34.	08/14/06	WFNNB – Electronic Check #4437 – Unauthorized	306.13
1.35.	08/29/06	Spinsite – American Express Charge – Unauthorized	34.99
1.36.	08/30/06	Southwest Airliens – American Express Charge – Unauthorized	223.20
1.37.	09/05/06	Unauthorized Cash Withdrawal – ATM	200.00
1.38.	09/05/06	Unauthorized Cash Withdrawal – ATM	200.00
1.39.	09/06/06	Juniper Bank – Check #3987 – Forged	450.00*
1.40.	09/06/06	Farmers Insurance – Check #4485 – Forged	173.24
1.41.	09/06/06	W. Assessment Management – Check #4486 – Forged	667.13
1.42.	09/12/06	Capital One – Electronic Check #4484 – Unauthorized	1,000.00

1.43.	09/26/06	Gable & Gotwals – Check #4531 – Forged	356.00
1.44.	09/28/06	Spinsite – American Express Charge – Unauthorized	34.99
1.45.	10/03/06	Banana Republic – Electronic Check #4438 – Unauthorized	1,000.00*
1.46.	10/07/06	Delta Airlines – American Express Charge – Unauthorized	478.10
1.47.	10/07/06	Hotel.com – American Express Charge – Unauthorized	302.90
1.48.	10/28/06	Spinsite – American Express Charge – Unauthorized	34.99
1.49.	10/30/06	Unauthorized Cash Withdrawal – ATM	500.00
1.50.	10/28/06	Spinsite – American Express Charge – Unauthorized	34.99
1.51.	11/22/06	Capital One – Electronic Check #4555 – Unauthorized	29.00
1.52.	11/06/06	Capital One – Electronic Check #4567 – Unauthorized	2,500.00
1.53.	11/12/06	Juniper Bank – Check #4582 – Forged	458.33
1.54.	11/13/06	Target National Bank – Check #4583 – Forged	970.27
1.55.	11/21/06	WFNNB – Electronic Check #4594 – Unauthorized	397.23
1.56.	11/27/06	Spinsite – American Express Charge – Unauthorized	34.99
1.57.	12/05/06	G.E. Money Bank – Check #4616 – Unauthorized	301.50
1.58.	12/12/06	American Express – Check #4656 – Forged – Unknown Account	1,500.00
1.59.	12/14/06	Paypal – Personal Checking Debit Charge – Unauthorized	9.99
1.60.	12/14/06	Paypal – Personal Checking Debit Charge – Unauthorized	54.05
1.61.	12/15/06	Target National Bank – Check #4657 – Forged	500.00*
1.62.	12/15/06	Paypal – Mastercard Charge – Unauthorized	142.50
1.63.	12/15/06	Paypal – Mastercard Charge – Unauthorized	83.00
1.64.	12/16/06	Paypal – Mastercard Charge – Unauthorized	165.00
1.65.	12/21/06	Juniper Bank – Check #4655 – Forged	450.00*
1.66.	12/21/06	Paypal – Personal Checking Debit Charge – Unauthorized	212.50
1.67.	12/27/06	Paypal – Personal Checking Debit Charge – Unauthorized	36.75
1.68.	12/27/06	Spinsite – American Express Charge – Unauthorized	34.99
1.69.	01/02/07	Capital One – Electronic Check 4671 – Unauthorized	1,000.00*
1.70.	01/04/07	WFNNB – Electronic Check #4693 – Unauthorized	130.11*
1.71.	01/08/07	Juniper Bank – Check #4687 – Forged	426.70*
1.72.	01/10/07	Paypal – Personal Checking Debit Charge – Unauthorized	133.95
1.73.	01/10/07	Delta Airlines – American Express Charge – Unauthorized	448.30
1.74.	01/11/07	Target National Bank – Check #4727 – Forged	625.00*
1.75.	01/06/07	Paypal – Personal Checking Debit Charge – Unauthorized	24.45
1.76.	01/20/07	Paypal – American Express Charge – Unauthorized	26.95
1.77.	01/22/07	Capital One – Electronic Check #4722 – Unauthorized	1,000.00*
1.78.	01/24/07	Paypal - Mastercard Charge – Unauthorized	160.00
1.79.	01/26/07	Spinsite – American Express Charge – Unauthorized	34.99
1.80.	01/26/07	Skincare Institute – American Express Charge – Unauthorized	65.00
1.81.	01/30/07	Skincare Institute – American Express Charge – Unauthorized	65.00
1.82.	02/12/07	Corel Corporation – American Express Charge – Unauthorized	63.99
1.83.	02/12/07	Capital One – Electronic Payment – Unauthorized	545.00
1.84.	02/15/07	Paypal – Personal Checking Debit Charge – Unauthorized	108.77
1.85.	02/21/07	Symantec – American Express Charge – Unauthorized	49.99
1.86.	02/21/07	Nupp.Legal – American Express Charge – Unauthorized	14.95
1.87.	02/25/07	Spinsite – American Express Charge – Unauthorized	34.99

1.88.	03/07/07	Prime Shipping Club – American Express Charge – Unauthorized	\$ 79.00
1.89.	03/07/07	Amazon.com – American Express Charge – Unauthorized	22.23
1.90.	03/07/07	Amazon.com – American Express Charge – Unauthorized	181.59
1.91.	03/08/07	Amazon.com – American Express Charge – Unauthorized	41.45
1.92.	03/08/07	Capital One – Electronic Payment – Unauthorized	1,050.00*
1.93.	03/09/07	Target National Bank – Check #4766 – Forged	550.00*
1.94.	03/14/07	Paypal – Business Checking Debit Charge – Unauthorized	29.89
1.95.	03/15/07	Juniper Bank – Check #4762 – Forged	479.85*
1.96.	03/15/07	Paypal – Business Checking Debit Charge – Unauthorized	38.75
1.97.	03/19/07	Paypal – Business Checking Debit Charge – Unauthorized	52.19
1.98.	03/20/07	Express – Check #4767 - Forged	268.58
1.99.	03/20/07	Paypal – Business Checking Debit Charge – Unauthorized	104.99
1.100.	03/20/07	WFNNB – Electronic Check #4768 – Unauthorized	392.93*
1.101.	03/27/07	Spinsite – American Express Charge – Unauthorized	34.99
1.102.	03/29/07	Banana Republic – Electronic Check #4779 – Unauthorized	997.52*
1.103.	3/29/07	Redenvelope – American Express Charge – Unauthorized	61.95
1.104.	03/29/07	Redenvelope – American Express Charge – Unauthorized	61.95
1.105.	03/30/07	Paypal – Business Checking Debit Charge – Unauthorized	135.00
1.106.	04/02/07	Capital One – Electronic Payment – Unauthorized	1,046.11*
1.107.	04/03/07	Southwest Airlines – American Express Charge – Unauthorized	112.80
1.108.	04/10/07	Capital One – Electronic Payment – Unauthorized	472.31*
1.109.	04/12/07	Delta Airlines – American Express Charge – Unauthorized	438.30
1.110.	04/13/07	Paypal – Personal Checking Debit Charge – Unauthorized	38.38
1.111.	04/17/07	Paypal – Personal Checking Debit Charge – Unauthorized	36.49
1.112.	04/19/07	Juniper Bank – Electronic Payment – Unauthorized	490.42*
1.113.	04/24/07	Juniper Bank – Check #4797 – Forged	479.85*
1.114.	04/26/07	Paypal – Personal Checking Debit Charge – Unauthorized	23.54
1.115.	04/26/07	Spinsite – American Express Charge – Unauthorized	34.99
1.116.	04/27/07	Paypal – Personal Checking Debit Charge – Unauthorized	38.57
1.117.	04/30/07	Paypal – Mastercard Charge – Unauthorized	188.77
1.118.	04/30/07	Amazon.com – American Express Charge – Unauthorized	105.94
1.119.	04/30/07	Amazon.com – American Express Charge – Unauthorized	140.99
1.120.	05/02/07	Paypal – Personal Checking Debit Charge – Unauthorized	19.94
1.121.	05/02/07	Paypal – Business Checking Debit Charge – Unauthorized	212.34
1.122.	05/04/07	Capital One – Electronic Payment – Unauthorized	973.39*
1.123.	05/11/07	Paypal – Business Checking Debit Charge – Unauthorized	365.00
1.124.	05/11/07	Paypal – Mastercard Charge – Unauthorized	303.37
1.125.	05/16/07	Paypal – Personal Checking Debit Charge – Unauthorized	31.31
1.126.	05/18/07	Capital One – Electronic Payment – Unauthorized	776.67*
1.127.	05/18/07	Juniper Bank – Electronic Payment – Unauthorized	475.31*
1.128.	05/19/07	Paypal – Mastercard Charge – Unauthorized	21.96
1.129.	05/22/07	Paypal – Mastercard Charge – Unauthorized	23.30
1.130.	05/22/07	Paypal – Mastercard Charge – Unauthorized	277.00
1.131.	05/28/07	Paypal – Mastercard Charge – Unauthorized	56.98
1.132.	05/26/07	Spinsite – American Express Charge – Unauthorized	34.99
1.133.	05/29/07	Paypal – Personal Checking Debit Charge – Unauthorized	62.19

1.134	06/01/07	Paypal – Personal Checking Debit Charge – Unauthorized	\$ 62.95
1.135	06/01/07	Capital One – Electronic Payment – Unauthorized	746.62*
1.136	06/04/07	Paypal – Business Checking Debit Charge – Unauthorized	12.99
1.137	06/14/07	Paypal – Personal Checking Debit Charge – Unauthorized	13.99
1.138	06/15/07	Paypal – Business Checking Debit Charge – Unauthorized	64.52*
1.139	06/18/07	Paypal – Personal Checking Debit Charge – Unauthorized	108.99
1.140	06/18/07	Paypal – Personal Checking Debit Charge – Unauthorized	84.30
1.141	06/19/07	Juniper Bank – Electronic Payment – Unauthorized	283.11
1.142	06/19/07	Capital One – Electronic Payment – Unauthorized	784.26
1.143	06/20/07	Paypal – Personal Checking Debit Charge – Unauthorized	20.32
1.144	06/22/07	Farmers Insurance – Check #4835 – Forged	418.62*
1.145	06/22/07	Hermes – American Express Charge – Unauthorized	490.00
1.146	06/22/07	Pillscare – American Express Charge – Unauthorized	119.95
1.147	06/25/07	Spinsite – American Express Charge – Unauthorized	34.99
1.148	06/26/07	Medical Center-South – Check #4837 – Forged	326.00
1.149	06/26/07	Paypal – Personal Checking Debit Charge – Unauthorized	11.25
1.150	06/26/07	Paypal – Business Checking Debit Charge – Unauthorized	61.95
1.151	06/26/07	Paypal – Business Checking Debit Charge – Unauthorized	55.00
1.152	06/27/07	Capital One – Electronic Payment – Unauthorized	879.86*
1.153	06/29/07	Paypal – Business Checking Debit Charge – Unauthorized	134.97
1.154	06/29/07	Paypal – Business Checking Debit Charge – Unauthorized	46.59
1.155	06/29/07	Banana Republic – Electronic Check #4836 – Unauthorized	353.06*
1.156	07/02/07	Paypal – Business Checking Debit Charge – Unauthorized	409.98
1.157	07/02/07	Amazon.com – American Express Charge – Unauthorized	133.62
1.158	07/02/07	Amazon.com - American Express Charge – Unauthorized	14.95
1.159	07/03/07	Neiman Marcus – American Express Charge – Unauthorized	609.00
1.160	07/05/07	Juniper Bank – Check #4841 – Forged	304.91
1.161	07/05/07	Paypal – Personal Checking Debit Charge – Unauthorized	6.48
1.162	07/06/07	Neiman Marcus – American Express Charge – Unauthorized	173.00
1.163	07/06/07	Paypal – Personal Checking Debit Charge – Unauthorized	13.23
1.164	07/10/07	Paypal – Personal Checking Debit Charge – Unauthorized	35.74
1.165	07/13/07	Juniper Bank – Electronic Payment – Unauthorized	304.91
1.166	07/16/07	Target National Bank – Electronic Payment – Unauthorized	527.71
1.167	07/16/07	Capital One – Electronic Payment – Unauthorized	513.35
1.168	07/16/07	Neiman Marcus - American Express Charge – Unauthorized	314.50
1.169	07/31/07	Spinsite – American Express Charge – Unauthorized	34.99
1.170	08/02/07	Capital One – Electronic Payment – Unauthorized	861.13
1.171	08/02/07	Target National Bank – Electronic Payment – Unauthorized	483.73
1.172	08/02/07	Juniper Bank – Electronic Payment – Unauthorized	287.17
1.173	08/10/07	River City – Check #5261 – Forged	108.57
1.174	08/10/07	Target National Bank – Check #4869 – Forged	665.75
1.175	08/10/07	Paypal – Business Checking Debit Charge – Unauthorized	184.00
1.176	08/10/07	Paypal – Personal Checking Debit Charge – Unauthorized	330.69
1.177	08/13/07	Paypal – Personal Checking Debit Charge – Unauthorized	10.98
1.178	08/14/07	Southwest Airlines – American Express Charge – Unauthorized	112.80
1.179	08/17/07	Paypal – Personal Checking Debit Charge – Unauthorized	37.02



1.180.	08/17/07	Dr. Digital River.com – American Express Charge – Unauthorized	\$ 69.98
1.181.	08/21/07	Adobe Systems – American Express Charge – Unauthorized	649.00
1.182.	08/21/07	WFNNB – Electronic Check #4816 – Unauthorized	520.64
1.183.	08/23/07	Amazon.com – American Express Charge – Unauthorized	45.90
1.184.	08/23/07	Amazon.com – American Express Charge – Unauthorized	32.98
1.185.	08/23/07	Amazon.com – American Express Charge – Unauthorized	57.53
1.186.	08/24/07	Banana Republic – Electronic Check #4789 – Unauthorized	280.51
1.187.	08/24/07	Paypal – Business Checking Debit Charge – Unauthorized	73.95
1.188.	08/24/07	Paypal – Personal Checking Debit Charge – Unauthorized	24.29
1.189.	08/24/07	Paypal – Personal Checking Debit Charge – Unauthorized	14.59
1.190.	08/24/07	Surepayroll – Unauthorized Payroll Allowance	352.00
1.191.	08/24/07	Spinsite – American Express Charge – Unauthorized	34.99
1.192.	08/24/07	Paypal – Business Checking Debit Charge – Unauthorized	202.94
1.193.	08/27/07	Paypal – Personal Checking Debit Charge – Unauthorized	115.50
1.194.	08/28/07	Paypal – Personal Checking Debit Charge – Unauthorized	39.09
1.195.	08/28/07	Paypal – Personal Checking Debit Charge – Unauthorized	17.45
1.196.	08/29/07	Capital One – Electronic Payment – Unauthorized	1,058.21
1.197.	08/29/07	Juniper Bank – Electronic Payment – Unauthorized	473.54
1.198.	08/30/07	Paypal – Personal Checking Debit Charge – Unauthorized	61.00
1.199.	08/30/07	Office Depot – American Express Charge – Unauthorized	189.39
1.200.	09/05/07	Network Solutions – American Express Charge – Unauthorized	59.98
1.201.	09/07/07	Surepayroll – Unauthorized Payroll Allowance	475.00
1.202.	09/12/07	Capital One – Electronic Payment – Unauthorized	1,079.42*
1.203.	09/12/07	Target National Bank – Electronic Payment – Unauthorized	360.82
1.204.	09/13/07	Paypal – Personal Checking Debit Charge – Unauthorized	4.99
1.205.	09/17/07	Paypal – Personal Checking Debit Charge – Unauthorized	50.00
1.206.	09/26/07	Target National Bank – Electronic Payment – Unauthorized	486.63
1.207.	09/29/07	Spinsite – American Express Charge – Unauthorized	34.99
1.208.	10/02/07	Paypal – Personal Checking Debit Charge – Unauthorized	225.50
1.209.	10/02/07	Juniper Bank – Electronic Payment – Unauthorized	336.64
1.210.	10/09/07	Target National Bank – Electronic Payment – Unauthorized	996.78
1.211.	10/09/07	Capital One – Electronic Payment – Unauthorized	762.42
1.212.	10/09/07	Banana Republic – Electronic Payment – Unauthorized	574.85
1.213.	10/19/07	Paypal – Personal Checking Debit Charge – Unauthorized	183.61
1.214.	10/22/07	Paypal – Personal Checking Debit Charge – Unauthorized	13.95
1.215.	10/24/07	Paypal – Personal Checking Debit Charge – Unauthorized	176.98
1.216.	10/25/07	Farmers Insurance – Electronic Payment – Unauthorized	611.10
1.217.	10/29/07	Spinsite – American Express Charge – Unauthorized	34.99
1.218.	2006/2007	Federal Express – Unauthorized Shipments	1,583.72
1.219.	2006/2007	Cash – Taken from Home – Unauthorized	1,440.00
1.220.	2006/2007	Petty Cash – Unauthorized Petty Cash Draw (No Receipts)	2,260.00

**TOTAL** **\$ 71,664.73**

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