

**Information to identify the case:**

Debtor 1

**Maria Kristul**

Social Security number or ITIN xxx-xx-8098

EIN --\_-----

First Name Middle Name Last Name

Debtor 2

(Spouse, if filing)

First Name Middle Name Last Name

Social Security number or ITIN -----

EIN --\_-----

United States Bankruptcy Court California Northern Bankruptcy Court

Case number: 20-30238

**Order of Discharge**

12/15

**IT IS ORDERED:** A discharge under 11 U.S.C. § 727 is granted to:

Maria Kristul  
 fka Maria Krishtul, fka Maria Lev Krishtul, fka  
 Maria Lev Kristul, fka Maria L. Krishtul

5/10/23

**By the court:** Hannah L. Blumenstiel  
 United States Bankruptcy Judge

**Explanation of Bankruptcy Discharge in a Chapter 7 Case**

This order does not close or dismiss the case, and it does not determine how much money, if any, the trustee will pay creditors.

**Creditors cannot collect discharged debts**

This order means that no one may make any attempt to collect a discharged debt from the debtors personally. For example, creditors cannot sue, garnish wages, assert a deficiency, or otherwise try to collect from the debtors personally on discharged debts. Creditors cannot contact the debtors by mail, phone, or otherwise in any attempt to collect the debt personally. Creditors who violate this order can be required to pay debtors damages and attorney's fees.

However, a creditor with a lien may enforce a claim against the debtors' property subject to that lien unless the lien was avoided or eliminated. For example, a creditor may have the right to foreclose a home mortgage or repossess an automobile.

This order does not prevent debtors from paying any debt voluntarily or from paying reaffirmed debts according to the reaffirmation agreement. 11 U.S.C. § 524(c), (f).

**Most debts are discharged**

Most debts are covered by the discharge, but not all. Generally, a discharge removes the debtors' personal liability for debts owed before the debtors' bankruptcy case was filed.

Also, if this case began under a different chapter of the Bankruptcy Code and was later converted to chapter 7, debts owed before the conversion are discharged.

In a case involving community property: Special rules protect certain community property owned by the debtor's spouse, even if that spouse did not file a bankruptcy case.

**For more information, see page 2 >**

### **Some debts are not discharged**

Examples of debts that are not discharged are:

- ◆ debts that are domestic support obligations;
- ◆ debts for most student loans;
- ◆ debts for most taxes;
- ◆ debts that the bankruptcy court has decided or will decide are not discharged in this bankruptcy case;
- ◆ debts for most fines, penalties, forfeitures, or criminal restitution obligations;
- ◆ some debts which the debtors did not properly list;
- ◆ debts for certain types of loans owed to pension, profit sharing, stock bonus, or retirement plans; and
- ◆ debts for death or personal injury caused by operating a vehicle while intoxicated.

Also, debts covered by a valid reaffirmation agreement are not discharged.

In addition, this discharge does not stop creditors from collecting from anyone else who is also liable on the debt, such as an insurance company or a person who cosigned or guaranteed a loan.

**This information is only a general summary of the bankruptcy discharge; some exceptions exist. Because the law is complicated, you should consult an attorney to determine the exact effect of the discharge in this case.**



Signed and Filed: April 24, 2023

*Dennis Montali*

DENNIS MONTALI  
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re	)	Bankruptcy Case
	)	No. 20-30238-HLB
MARIA KRISTUL,	)	
	)	Chapter 7
	)	
Debtor(s).	)	
	)	
_____		) Adversary Case No. 20-3061-DM
DAVID LEVIN, AS TRUSTEE TO THE	)	
STOLYAROV FAMILY TRUST,	)	
SUCCESSOR IN INTERESTS TO	)	
KATERINA STOLYAROV AND LEONID	)	
STOLYAROV,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
MARIA KRISTUL aka MARIA	)	
KRISHTYL, an individual,	)	
	)	
Defendant.	)	
	)	

**JUDGMENT**

For the reasons stated on the record at the oral ruling on April 21, 2023, and pursuant to the court's Order Approving Stipulation Re Bifurcation (Dkt. 111), Defendant Maria Kristul is entitled to a discharge in the underlying chapter 7

1 bankruptcy case and to judgment in her favor on Count 1 and  
2 Count 2 of the Second Amended Complaint (Dkt. 33) in this  
3 adversary proceeding. Because the court specifically determines  
4 that there is no just cause for delay, pursuant to Federal Rule  
5 of Civil Procedure 54(b), as incorporated by Federal Rule of  
6 Bankruptcy Procedure 7054,

7 JUDGMENT is entered in favor of Maria Kristul on Counts 1  
8 and 2, with Count 3 and 4 to be dealt with separately at a later  
9 date.

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12 \*\*END OF JUDGMENT\*\*  
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8 Attorney for Defendant Maria Kristul

9 **UNITED STATES BANKRUPTCY COURT**  
10 **NORTHERN DISTRICT OF CALIFORNIA**  
11 **SAN FRANCISCO DIVISION**

12 **In re**

Case No. 20-30238 HLB

13 **MARIA KRISTUL**

14 **Debtor.**

15 **SSN: XXX-XX-8098**

Adv. Proc. No. 20-03061

16 **DAVID LEVIN, AS TRUSTEE TO**  
17 **THE STOLYAROV FAMILY**  
18 **TRUST, SUCCESSOR IN**  
19 **INTERESTS TO KATERINA**  
20 **STOLYAROV AND LEONID**  
21 **STOLYAROV,**

**DEFENDANT MARIA KRISTUL'S**  
**TRIAL BRIEF**

**Trial Date:** March 27-28, 2023

**Time:** 9:30 A.M.

**Room:** Via Tele/Videoconference  
[www.canb.uscourts.gov/calendars](http://www.canb.uscourts.gov/calendars)

**Judge:** Hon. Dennis Montali

22 Plaintiff,

23 vs.

24 **MARIA KRISTUL aka MARIA**  
25 **KRISHTYL, an individual,**

Courtroom 17  
Phillip Burton Federal Building  
450 Golden Gate Avenue  
16th Floor  
San Francisco, CA 94102

26 Defendant.

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**TO: THE HONORABLE DENNIS MONTALI, THE ABOVE-NAMED PLAINTIFF,  
THROUGH HIS ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE** that Defendant Maria Kristul (“Maria Kristul” and/or “Debtor”) hereby files *Defendant’s Trial Brief*, which includes the relevant statement of facts & memorandum of points and authorities. Concurrently herewith, Maria Kristul also has filed *Defendant Maria Kristul’s Exhibit List* and *Defendant Maria Kristul’s Witness List*. This trial brief is based this memorandum of points and authorities included herein, on such supplemental memoranda of points and authorities as may hereafter be filed with the Court or stated orally at the conclusion of any pre-trial hearings, and on any other evidence and/or arguments presented to the Court.

Dated: March 20, 2023

**BELVEDERE LEGAL, PC**

By:           /s/ Matthew D. Metzger            
Matthew D. Metzger  
Attorney for Defendant Maria Kristul

**I.**  
**INTRODUCTION**

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3 Plaintiff filed the above-captioned suit in August 3, 2020. After approximately two and one-  
4 half years of discovery and factual investigations, Plaintiff’s “theory of the case” appears to be right  
5 back where Plaintiff started – an unfounded and disputed allegation that the Debtor has an  
6 undisclosed interest in third-party Saxe Mortgage Company. Plaintiff makes much ado over  
7 Defendant Maria Kristul’s request to reduce her hours in order to care for her terminally ill husband,  
8 Mr. Joseph Kristul, who has since died. The Chapter 7 Trustee investigated the same theories and  
9 filed a Notice of Possible Dividends but ultimately filed a Form 1 No Asset Report on February 15,  
10 2022. Non-party Saxe Mortgage Company cooperated extensively with Plaintiff’s investigation,  
11 producing all responsive records requested and permitting Plaintiff’s expert, Mr. Joseph Petrucelli to  
12 inspect and investigate Non-Party Saxe Mortgage Company’s accounting platforms. Plaintiff’s  
13 theory of the case finally appears to have come to rest on Mr. Petrucelli’s opinions, which opinions  
14 Defendant Maria Kristul’s expert, Ms. Monica Ip, has rebutted. *See* Dkt. #s. 96, 101.

**III.**  
**LEGAL ARGUMENT**

**A. Plaintiff Cannot Meet Plaintiff’s Burden of Proof a Party Objecting Under Section 727**

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18 The party objecting to a debtor's discharge bears the burden of proving by a preponderance  
19 of the evidence that the debtor's discharge should be denied. *See* Fed. R. Bankr. P. 4005; *Khalil v.*  
20 *Developers Sur. & Indem. Co. (In re Khalil)*, 379 B.R. 163, 172 (9th Cir. BAP 2007). To satisfy the  
21 preponderance of evidence standard, the objecting party must “persuade the finder of fact that the  
22 proposition is more likely true than not.” *In re Arnold & Baker Farms*, 177 B.R. 648, 654 (9th Cir.  
23 BAP 1994), *aff’d*, 85 F.3d 1415 (9th Cir. 1996). The evidence will show that Plaintiff cannot meet  
24 Plaintiff’s burden.

**B. Plaintiff Theory of the Case under Count 1 (11 U.S.C. § 727(a)(4)(A) Is Not Supported  
by any Facts**

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27 Section 727(a)(2)(A) provides that a debtor shall not be granted a discharge if within one  
28 year of the filing of a petition in bankruptcy she “has transferred, removed, destroyed, mutilated, or

1 concealed” her property “with intent to hinder, delay, or defraud a creditor.” *In re Adeeb*, 787 F.2d  
2 1339, 1342 (9th Cir. 1986). Section 727's denial of discharge is construed liberally in favor of the  
3 debtor and strictly against those objecting to discharge. *In re Devers*, 759 F.2d 751, 754 (9th  
4 Cir.1985). Accordingly, discharge of debts may be denied under section 727(a)(2)(A) only upon a  
5 finding of actual intent to hinder, delay, or defraud creditors. Constructive fraudulent intent cannot  
6 be the basis for denial of a discharge. *Id.* at 753. However, intent “may be established by  
7 circumstantial evidence, or by inferences drawn from a course of conduct.” *Id.* at 753–54.

8 Nothing in the record supports the allegation that the Debtor transferred any interest in non-  
9 party Saxe Mortgage Company or any other entity with the intent to hinder, delay or defraud a  
10 creditor.

11 **C. Plaintiff Theory of the Case under Count 2 (Section 727(a)(2)(A)) Is Not Supported by**  
12 **any Facts**

13 Section 727(a)(4)(A) states that a court shall grant a debtor a discharge unless “the debtor  
14 knowingly and fraudulently, in or in connection with the case—made a false oath or account.” To  
15 deny a debtor a discharge under § 727(a)(4)(A), the plaintiff must show that (1) the debtor  
16 knowingly and fraudulently made a false oath; and (2) the false oath related to a material fact. *In re*  
17 *Aubrey*, 111 B.R. 268, 274 (9th Cir. BAP 1990).

18 Materiality is broadly defined. A false statement is material if it bears a relationship to the  
19 debtor's business transactions or estate, or concerns the discovery of assets, business dealings, or the  
20 existence and disposition of the debtor's property. *In re Chalik*, 748 F.2d 616, 618 (11th Cir.1984).  
21 *See also In re Weiner*, 208 B.R. 69, 72 (9th Cir. BAP 1997), *rev'd on other grounds*, 161 F.3d 1216  
22 (9th Cir.1998) (citing *Chalik* and holding that a false statement is material if it “bears a relationship  
23 to the debtor's estate, and concerns the discovery of assets, or the existence and disposition of his  
24 property”).

25 Nothing in the record presents any facts that the Debtor made a false oath under § 727(2)(A).  
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1           **D. Third-Party Saxe Mortgage’s Assets Are Not Relevant to Debtor’s Bankruptcy**  
2           **Proceeding**

3           Plaintiff cannot, as a matter of law and fact, demonstrate that any portion of Debtor’s  
4 liability can be transferred to Saxe Mortgage (“Saxe”). Plaintiff has alleged that Debtor has an  
5 interest in Saxe, and her failure to disclose such an interest in this proceeding warrants denial of her  
6 discharge. Pretrial, Plaintiff has engaged in an ever-shifting scattershot approach to proving that she  
7 has such an interest—whichever of those various theories they land on at trial, none, as discussed  
8 below, will be successful, as they are without legal or factual merit. It is Plaintiff’s burden to prove  
9 its claims by a preponderance of the evidence, and Plaintiff falls far short of that threshold in all  
10 allegations pertaining to Saxe.

11                           **1. Plaintiff Has No Evidence the Money Used to Purchase Saxe Came From**  
12                           **Debtor or Her Husband Joseph Kristul**

13           Saxe is a private company solely owned by Eugene (“Gene”) Kristul. Gene Kristul will  
14 testify at trial that, in August of 2007, he purchased Saxe from its founding owner, using his savings  
15 for a down payment and financing the remainder. Gene will further testify that no portion of the  
16 funds used to purchase Saxe came from Debtor or Joseph Kristul. Plaintiff will not be able to proffer  
17 any evidence at trial to refute the fact that all of the funds used to purchase Saxe had no relationship  
18 to either Debtor or Joseph Kristul.

19           Plaintiff’s Second Amended Complaint (“Complaint”) alleges that a portion of a loan from  
20 World Savings Bank FSB (“World Savings Loan”) was used to purchase Saxe and that Gene Kristul  
21 is a “co-borrower” on the World Savings Loan. There is no merit to this theory. Gene Kristul will  
22 testify that he has never received any portion of any loan taken out by Debtor and Joseph Kristul,  
23 Gene Kristul; and the promissory note associated with the World Savings Loan confirms that only  
24 Debtor and Joseph Kristul were the borrowers. The sole basis for Plaintiff’s allegation thus appears  
25 to be that deed of trust associated with the loan for Debtor and Joseph Kristul’s residence at 270  
26 Santa Clara Avenue, San Francisco, CA 94127 (the “Property”) also lists Gene Kristul. This proves  
27 nothing. Gene Kristul’s parents put him on the title to the Property when he was 21 years old for  
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1 estate planning reasons. That is why it also appears on the grant deed; and it is not evidence that  
2 Gene Kristul received any portion of the loan funds, let alone that those funds were used to purchase  
3 Saxe.

4 **2. Plaintiff Has No Evidence that Debtor or Joseph Kristul Diverted Funds to**  
5 **Saxe**

6 Gene Kristul will provide detailed testimony concerning Saxe’s business operations. This  
7 testimony, combined with the detailed financial records Saxe has produced, will foreclose Plaintiff’s  
8 allegation that Debtor and Joseph Kristul diverted funds belonging to their creditors into Saxe.

9 Gene Kristul will explain that Saxe is a privately held, hard money lender. Saxe provides its  
10 customers with loans funded by private investors. Saxe generates revenue from fees associated with  
11 each loan, and the investors receive interest on their principal investment, as well as the eventual  
12 repayment of that principal over the life of the mortgage. Saxe is a small company, with three  
13 employees, including Debtor, in addition to Eugene Kristul, Saxe’s owner. As such, Gene Kristul is  
14 personally aware of all mortgages that Saxe originates.

15 Gene Kristul will testify that neither Debtor nor Joseph Kristul has ever invested in, or  
16 otherwise diverted funds to Saxe. His testimony will be supported by Saxe’s Loan Master Report  
17 generated from Saxe’s Applied Business Solutions (“ABS”) database. SAXE0409-SAXE3804. The  
18 Loan Master Report provides details for every mortgage closed by Saxe from July of 2007 through  
19 January of 2023. Among these details are the identity of each investor for that loan. *See Id.* If Debtor  
20 or Joseph Kristul had invested funds in Saxe, they would be listed in this report, but they are not.

21 Gene Kristul will also testify that no funds from Debtor or Joseph Kristul or their investors  
22 were ever used to cover Saxe’s operating expenses, but rather all such expenses were paid out of fee  
23 revenue generated by the business. All such fee revenue generated by Saxe appears in Saxe’s  
24 Quickbooks Online (“Quickbooks”) database as do the company's expenses; and the profit and loss  
25 statements and other financial reports generated therefrom show this. Saxe has produced essentially  
26 all financial reports available from its Quickbooks, including its general ledger; and gave Plaintiff’s  
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1 expert access to both its Quickbooks and ABS database. These records corroborate Gene Kristul's  
2 testimony that no money was diverted or invested into Saxe by Debtor or Joseph Kristul.

3 In light of the lack of any evidence supporting this allegation, Plaintiff may point to the fact  
4 that shortly after Gene Kristul bought Saxe in 2007, he recorded the dba "TN Financial" to insinuate  
5 that Debtor and/or Joseph Kristul must have invested money in Saxe, given the similarity between  
6 that dba and the name of a company with which they were formerly associated. However, Gene  
7 Kristul will explain that he recorded the dba TN Financial because at the time he was considering  
8 doing conventional loans under that dba and TN Financial already had name recognition in that  
9 space. He will also testify that because he did not decide to do conventional mortgages, instead  
10 sticking with hard money loans exclusively, he never used TN Financial commercially, never  
11 opened a bank account for TN Financial, and that Saxe never received any payments in the name of  
12 TN Financial. Thus, TN Financial's registration lapsed after five years, and it was not renewed.  
13 Plaintiff has no evidence to the contrary and certainly no evidence that this fleeting association  
14 between Saxe and this dba was related to any kind of investment or diversion of funds by Debtor or  
15 Joseph Kristul into Saxe.

16 **3. Debtor Is Not an Owner of Saxe and Plaintiff Has No Evidence to the**  
17 **Contrary**

18 There is no document in existence that names anyone other than Gene Kristul as the owner  
19 of Saxe; and Plaintiff does not possess any evidence to support their allegations that Debtor holds an  
20 ownership interest in Saxe.

21 Nevertheless, Plaintiff has put forth alternating theories arguing that Debtor has an  
22 undisclosed ownership interest in Saxe. The foregoing analysis demonstrates Plaintiff cannot  
23 support any of these theories. Plaintiff's focus, indicated throughout its aggressive discovery  
24 campaign against Saxe prior to trial, has now turned to claims that since Debtor received high  
25 wages, both W-2 and 1099, during her employment with Saxe, she must therefore hold an equity  
26 interest in Saxe. This theory lacks any support in law, ignores repeated testimony and evidence  
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1 provided by Saxe, and runs counter to the economic realities of how privately held companies  
2 compensate high-value employees.

3 Gene Kristul will testify concerning how Debtor, his mother, has been compensated during  
4 the course of her employment with Saxe, making clear that Debtor has never been anything more  
5 than an employee of Saxe; and all of the documents corroborate this.

6 Gene Kristul will testify that Debtor was hired, in 2007, both because of her familial  
7 connection to him and because of her relevant skill set and decades of experience in the industry.  
8 Her duties as Director of Operations included running operations, underwriting loans, managing  
9 processing, document preparations, and other services. Gene Kristul will testify that because Debtor  
10 was a valuable employee and because he wanted to support his parents in a way that did offend their  
11 pride, as a direct handout would, he compensated Debtor generously, giving her roughly 50% of  
12 Saxe's total origination fee revenue,<sup>1</sup> with some variance depending on his parents' financial needs  
13 and other factors. Debtor's expert Monic Ip will testify that Saxe's records confirm this, as will the  
14 Court's own review of the records.<sup>2</sup> And because Saxe is a profitable company and Debtor received  
15 50% of the company's total origination fee revenue, Debtor was well compensated for her work  
16 while in this position.

17 Debtor was compensated in this manner until November of 2019, when she requested to  
18 work a reduced schedule in order to care for her husband who had recently been diagnosed with  
19 aggressive brain cancer, a circumstance that also made Debtor and her husband less resistant to  
20 receiving direct assistance from their son Gene. Her request was granted, and thereafter her yearly  
21 compensation was set at \$100,000. Debtor is still employed by Saxe, working in this reduced role at  
22 the same annual salary.

23 There is nothing improper about either the amount of compensation Debtor received, or her  
24 decision to work less and take a reduced salary, and certainly nothing in the manner in which she

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25 <sup>1</sup> While Plaintiff and their expert appear inclined to blur this fact in order to make it fit their theories, Debtor's  
26 compensation was calculated based on *all* the origination fees earned by Saxe, rather than only the origination fees from  
loans originated by Debtor, in particular.

27 <sup>2</sup> These records, notably, include the 1099s and W-2s that Debtor, like other Saxe employees, received from Saxe. These  
28 records do not include a single K-1 from Saxe to Maria because she never received one, only Gene Kristul, the sole  
owner of Saxe, ever received a K-1.

1 was compensated indicates that she was an owner of Saxe. As a fundamental matter, Gene Kristul,  
2 as the 100% owner and president of Saxe, is free to pay his employees at levels he deems  
3 appropriate. That he paid his mother well in no way imputes an ownership interest. Quite the  
4 opposite, as there is often an inverse correlation between the amount of W-2 wages a person is paid  
5 and the amount of equity in the company they receive. W-2 wages and equity are alternative forms  
6 of compensation, and in this instance, Gene Kristul opted for the former as compensation for this  
7 employee. Hiring and compensating his mother was a way for Gene Kristul to both gain the services  
8 of a very experienced and competent mortgage professional and support his parents after they lost  
9 their lone source of income when their company shut down in 2007. He has always been the sole  
10 owner of Saxe; and Plaintiff does not have evidence to the contrary.

11 Nor is there anything improper about the changes made to Debtor's terms of employment.  
12 Any attempt by Plaintiff at trial to argue that Debtor's voluntary decision to reduce hours and take a  
13 reduced salary was improper runs afoul of bedrock constitutional protections and should be quickly  
14 dismissed. *See United States v. Kozminski*, 487 U.S. 931, 944 (1988) (recognizing that, with certain  
15 exceptions—not applicable here—compelling someone to work through “legal coercion” violates  
16 the 13th Amendment). Debtor had good reason for the change in employment—not that she needs to  
17 provide a reason for such a voluntary change—which was her need to care for her ailing husband.  
18 Debtor's decision to work less, and get paid less, does not implicate improper actions on the part of  
19 Debtor or Saxe. And any insinuation that Debtor should have continued in her high-paying job to  
20 satisfy debt represents precisely the “legal coercion” the 13th Amendment forbids.

21  
22 **a) Plaintiff's Expert Report Consists of Unsupported Opinion and**  
23 **Conjecture**

24 In the face of the foregoing evidence that Debtor was nothing more than a Saxe employee,  
25 Plaintiff's expert, Joseph Petrucelli, is left to speculate that Debtor's high compensation coupled  
26 with her familial relationship to Gene Kristul must represent something more. Specifically, Mr.  
27 Petrucelli states, “After reviewing the documents provided by Saxe it is my opinion that Maria has  
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1 significant influence over the operations and well-established book of business making her a  
2 business partner.” Petrucelli Opinion, ¶ 17. Neither this conclusion nor the extrapolated value which  
3 he assigns to her purported partnership interest is based on anything other than conjecture or  
4 unfounded extrapolation.

5 First, Mr. Petrucelli’s claim that Debtor “has significant influence over the operations” of  
6 Saxe is apparently based on nothing more than that Debtor was the mother of Saxe’s owner and that  
7 she received significant compensation. *See id.*, ¶¶ 17-19. With regards to the significance of the  
8 familial relationship, Mr. Petrucelli’s careful wording demonstrates that he has no actual evidence  
9 that this gives Debtor “significant influence over the operations” of Saxe but rather that he  
10 *speculates that it could*. *See, e.g., id.*, ¶ 16 (“Due to the mother/son close related party relationship,  
11 ***it would be easy to*** divert the loans to Gene to give the impression that Maria is no longer a business  
12 partner or significant generator of revenue.”) (emphasis added), ¶ 17 (“The issue here is the close  
13 related party relationship with her son, which clearly ***enables*** the parties to shift income.”)  
14 (emphasis added), ¶ 19 (“In this case, Maria needs to show less income to complete bankruptcy and  
15 avoid creditors and basically due to the related nature of the relationship ***can accomplish*** shielding  
16 value and income from [sic] the bankruptcy proceeding.”) (emphasis added). Mr. Petrucelli  
17 carefully does not state that, in fact, any of these things happened; and he can’t, because there is no  
18 evidence that they did.

19 And with regards to the fact that Debtor earned significant compensation, Mr. Petrucelli  
20 acknowledges that Debtor was compensated based on formula that is consistent with “the way loan  
21 originators are paid” and that she was paid according to a different formula over the last three years  
22 that yielded her less money. *Id.*, ¶18. Without explanation, analysis, or citation to any evidence, he  
23 jumps from these facts to the conclusion that Debtor “is acting as a business partner and/or has  
24 significant influence as a result of her established relationships in generating loan originations.” *Id.*  
25 This is nothing but a bald supposition and it ignores evidence (elsewhere acknowledged, *see id.*, p.  
26 4) that Debtor’s reduction in compensation was attendant with a reduction in hours worked and her  
27 husband’s failing health. Instead, the opinion surmises that because of the mother-son relationship,  
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1 Debtor would have been able to shift income to her son to hide her significant revenue generation—  
2 without any evidence that this actually occurred. This “opinion” is nothing but a conclusory  
3 accusation that suits Plaintiff’s theory of the case.

4 The second leg of the stool on which Mr. Petrucelli rests his opinion that Debtor was  
5 actually Gene Kristul’s business partner, rather than employee, is that she had a “well-established  
6 book of business.” Mr. Petrucelli cites to nothing, evidentiary or legal, that would support his  
7 analytical leap from his conclusion that Debtor had a “well-established book of business” to his  
8 conclusion she must have been Gene Kristul’s business partner. In fact, as Gene Kristul will testify,  
9 in the mortgage and real estate industry, frequently people are hired as employees because of the  
10 book of business they have and are highly compensated, *in the form of wages*, for the value that  
11 brings. Thus, whether or not Debtor had a well-established book of business is irrelevant to whether  
12 she was actually Gene Kristul’s business partner, as opposed to his employee, and the fact that she  
13 was paid significant wages is actually consistent with her being an employee who compensated in  
14 this way for the value that she brought to the company, as opposed to a partner who was  
15 compensated via a grant of equity. Mr. Petrucelli nowhere addresses these facts or evidence.

16 This leg of Mr. Petrucelli’s analytical stool—as well as the value he assigns to Debtor’s  
17 purported “business pipeline” also willfully ignores and/or mischaracterizes the evidence as it  
18 relates to Debtor’s contribution to Saxe’s origination fee revenue and its relationship to her  
19 compensation. Mr. Petrucelli extrapolates from the amount that Debtor was paid and its relationship  
20 to Saxe’s total revenue, during the period of 2007-19, that Debtor’s “book of business was stable.”  
21 *Id.*, ¶ 13. He also values her “business pipeline”—which he elsewhere characterizes as “the  
22 economic benefit stream” attributable to Debtor and, thus, the value of her purported interest in  
23 Saxe—based on her average compensation for this period multiplied by a posited 1.2 multiplier.<sup>3</sup>  
24 *Id.*, ¶¶ 11, 12 & 20. However, as Mr. Petrucelli acknowledges elsewhere, *see id.*, ¶ 18, Debtor’s  
25 compensation was not calculated based on the origination fees earned only from those loans *she*  
26 originated, but rather from *all* loans originated by both her and Gene Kristul. Thus, her

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27 <sup>3</sup> Mr. Petrucelli’s baldly characterizes 1.2 as a “common industry multiplier,” with no citation to support. *See id.*, ¶ 12.  
28 Mr. Kristul, who has been in the industry for decades will testify that he has never heard of any such multiplier.

1 compensation does not indicate *her* contribution to Saxe’s origination revenue and cannot be used  
2 for this purpose. Moreover, Mr. Petrucelli ignores evidence (again, apparent in his report) that  
3 Saxe’s revenue did not significantly decrease after Debtor stopped originating loans for Saxe  
4 starting in 2015, *see id.*, p. 6 (table titled “The Income Profitability of Saxe”), which belies his  
5 assertions regarding “the economic benefit stream” she brought or brings to Saxe.

6 Finally, there is no merit to Mr. Petrucelli’s conclusion that his inability to line up certain  
7 numbers contained in reports from various Saxe sources (i.e., ABS, Quickbooks, and Saxe’s outside  
8 bookkeeper Mr. Wai), “is further evidence that the reduction in income is for the purpose of these  
9 bankruptcy proceedings and not the pattern of business behavior reflected in the past.” *Id.*, ¶ 21. As  
10 an initial matter, given the errors and omissions in Mr. Petrucelli’s analysis discussed above, as well  
11 as his own admitted shortcomings in it, *see, e.g., id.*, ¶ 20 (stating that “[a] detailed valuation should  
12 be done of the Saxe Mortgage business” but then jumping to the conclusion that his “rule of thumb  
13 approach”—whatever that is—is sufficient), his conclusion that these discrepancies exist is not  
14 entitled to much weight if any. And, indeed, testimony by James Wai (Saxe’s outside bookkeeper)  
15 and Ms. Ip (Debtor’s expert) will refute this. But, moreover, any such discrepancies would prove  
16 nothing. Saxe is 100% owned by Gene Kristul who is free to keep its books as he wishes, as long as  
17 they are sufficient to meet Saxe’s obligations to tax authorities and real estate regulators, which they  
18 do. And as both Gene Kristul and Mr. Wai will testify, ABS is not used to track or calculate any  
19 person’s compensation, the Debtor’s or anyone else’s, or to even track Saxe revenue or expenses  
20 more generally; it is used to service the loans Saxe writes. Rather, Saxe uses Quickbooks to record  
21 its revenue and expenses, including origination income and labor costs. Thus, if there are any  
22 discrepancies between the information in these databases and/or what Mr. Petrucelli refers to as “a  
23 ledger from the CPA that shows the calculations of Maria’s salary and income,” they are not  
24 probative of any effort by Debtor or Saxe to hide anything, but rather the different purposes for  
25 which they are used.

26 In short, Mr. Petrucelli’s opinion does nothing to advance Plaintiff’s case or fill the  
27 evidentiary holes therein but rather is just more of the same sort of hand-waiving, which Plaintiff

1 hopes will create enough uncertainty in the Court’s mind that it will look past his case’s  
2 shortcomings.

3 **4. Plaintiff Cannot Demonstrate That Debtor Is Owed Unpaid Commission by**  
4 **Saxe**

5 The theory was previously floated by the trustee—but ultimately abandoned after reviewing  
6 the evidence, that Debtor made a fraudulent transfer by foregoing a commission to which she was  
7 entitled during her employment with Saxe. It is unclear, at this point, whether Plaintiff has also  
8 abandoned this theory, but, if not, it will fail, as it is fundamentally inconsistent with how Debtor  
9 was compensated. Specifically, as Gene Kristul will testify and all documentation shows, Debtor  
10 was never compensated in the form of commissions from loans that she specifically originated.  
11 Rather, prior to December 2019, Debtor was paid roughly 50% of Saxe’s origination fee revenue  
12 generated from all its mortgages, not just those originated by Debtor, and then, starting in December  
13 2019, Debtor was paid a set salary of \$100,000 a year. Thus, Debtor was never entitled to any  
14 commissions and, thus, did not (and could not) forego receiving them.<sup>4</sup> Thus, like all of Plaintiff’s  
15 other theories by which they would try to transform Maria’s debts into Saxe’s, this one fails.

16 **5. Direct and Rebuttal Testimony via Declaration of Defendant’s Expert**  
17 **witness, Ms. Monica Ip, Evidentia Consulting**

18 To avoid duplication, Defendant Maria Kristul incorporates herein via reference the verified  
19 expert declaration of Monica Ip (Dkt. #96) as well as Ms. Ip’s rebuttal declaration (Dkt. #101). In  
20 brief, Ms. Ip’s expert declaration (Dkt. # 96) reviews all evidence produced from non-party Saxe  
21 Mortgage Company in order to produce a summary chart at the end of the report measuring  
22 Defendant Maria Kristul’s annual income as a percentage of annual fee income from non-party Saxe  
23 Mortgage Company from inception through November 2019. Ms. Ip’s rebuttal declaration (Dkt. #  
24 101) reviews and rebuts the expert report from Plaintiff’s expert, Mr. Joseph Petrucelli.

25 \_\_\_\_\_  
26 <sup>4</sup> Gene Kristul will also testify and other evidence will show that Debtor has further not originated  
27 any loan since 2015. Thus, even if she was ever entitled to commissions from loans she originated  
28 (she wasn’t) no such commissions could have been unpaid at the time she filed for bankruptcy  
protection

1 Critically, Ms. Ip's rebuttal declaration concludes with the following four (4) summary  
2 opinions:

- 3 1. Contrary to Mr. Petrucelli's assertion, the 1099s and W-2s issued by Saxe to Ms.  
4 Kristul are recorded in SMC's general ledger.
- 5 2. Saxe used either the Broker Commission field or the Loan Origination Fee field in  
6 the ABS system to document the loan origination fees generated from each loan. Broker  
7 Commissions or Loan Origination Fees earned by SMC are recorded as loan origination fee  
8 income in the general ledger.
- 9 3. I understand that as long as it is not below minimum wage, Mr. Gene Kristul is free  
10 to compensate Ms. Kristul in any way he wants. Precisely because Mr. Kristul and Ms.  
11 Kristul are related parties, the compensation Ms. Kristul received cannot be presumed to be  
12 at market or reflect any compensation structure that may be typical for the industry that  
13 SMC is in.
- 14 4. Mr. Petrucelli's estimate of the value of Ms. Kristul's pipeline is unreliable and  
15 flawed. While Petrocelli opines about value, he does not specifically identify  
16 the context of the asset he is valuing, he does not identify the standard of value,  
17 he does not identify the source of his "rule of thumb," and he offers no  
18 persuasive evidence that his rule of thumb is applicable.

19 Declaration of Monica Ip in Support of Defendant's Rebuttal Expert Report Dated March 20,  
20 2023., § V, pg. 2-3.

### 21 III.

#### 22 EXHIBITS AND CONFIDENTIALITY

23 To assist the Court, Defendant's Exhibit List identifies which documents are confidential  
24 pursuant to the stipulated protective order. Exhibits A-H, J & K are not confidential and concern filings  
25 on the main bankruptcy case docket. All exhibits from Exhibit I through Exhibit OO are evidence and  
26 data sources reviewed by Defendant's expert, Ms. Monica Ip and cited in Ms. Ip's declarations.

27 Additionally, given that much of the trial testimony may reference confidential information,  
28 both Defendant and Plaintiff appear to agree that the Court may consider allowing trial testimony to  
proceed under seal, at least with regards to information marked CONFIDENTIAL from Defendant  
Maria Kristul or non-party Saxe Mortgage Company.

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**IV.**  
**CONCLUSION**

For the foregoing reasons, Defendant requests:

1. Plaintiff take nothing by way of the Complaint and judgment in Defendant’s favor;
2. an award for attorney’s fees, pursuant to the mutuality provision contained in Cal. Civ. Code section 1717, as a recoverable cost under Cal. Code Civ. Proc. §§ 1032 and 1033.5;
3. an award of costs of suit; and
4. for such further relief as the Court deems appropriate.

Dated: March 20, 2023

**BELVEDERE LEGAL, PC**

By:           /s/ Matthew D. Metzger            
Matthew D. Metzger  
Attorney for Defendant Maria Kristul