NOT FOR PUBLICATION

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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

NW LOGISTICS, LLC, Plaintiff - Appellant, v. ZWIGART, et al., Defendants - Appellees.	No. 25-3007 DC No. 8:23-cv-02432-MRA MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Monica Ramirez Almadani, District Judge, Presiding

Argued and Submitted September 15, 2026
Pasadena, California

Before: R. NELSON and DESAI, Circuit Judges, and SCHREIER, District Judge.**

Plaintiff NW Logistics, LLC appeals the district court's affirmance of the bankruptcy court's dismissal with prejudice of its adversary proceeding against

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable Karen E. Schreier, United States District Judge for the District of South Dakota, sitting by designation.

Eric and Luz Zwigart.[1] We have jurisdiction under 28 U.S.C. §§ 158(d)(1) and 1291. We affirm.[2]

"Where a bankruptcy court has dismissed a complaint for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6), and the dismissal has been affirmed by the district court, appellate review is de novo." *In re Zimmer*, 313 F.3d 1220, 1222 (9th Cir. 2002). "We generally review the denial of leave to amend for an abuse of discretion, but we review the futility of amendment de novo." *Rose Ct., LLC v. Select Portfolio Servicing, Inc.*, 119 F.4th 679, 685 (9th Cir. 2024) (citation modified) (citing, *inter alia*, *In re Turner*, 859 F.3d 1145, 1148 (9th Cir. 2017)).

1. NW Logistics argues that the loan Eric Zwigart acquired in October 2019 is nondischargeable under 11 U.S.C. § 523(a)(2)(A) because Eric's company, RPP, made false representations to fraudulently obtain the loan. But the relevant

[1] The second amended complaint includes only one substantive allegation against Luz Zwigart, and NW Logistics does not develop an argument challenging dismissal of that claim in its brief, so the claim against Luz Zwigart is forfeited. *See Indep. Towers of Wash. v. Washington*, 350 F.3d 925, 929 (9th Cir. 2003). Similarly, NW Logistics requests remand for consideration of its joinder motion, but does not develop an argument in support of this request. This claim is also forfeited. *See id.* at 929–30.

[2] We grant NW Logistics' motion to take judicial notice of information and documents filed in the relevant bankruptcy proceedings, *In re RPP Products, Inc.*, 8:22-BK-10191-SC (Bankr. C.D. Cal. Feb. 3, 2022), and *In re Eric Vaughn Zwigart & Luz Amparo Zwigart*, 8:22-BK-10494-SC (Bankr. C.D. Cal. Mar. 24, 2022). Fed. R. Evid. 201(b)(2); *see Rico v. Ducart*, 980 F.3d 1292, 1295 n.2 (9th Cir. 2020).

statements concerned RPP's overall financial health. *See Lamar, Archer & Cofrin, LLP v. Appling*, 584 U.S. 709, 720 (2018) ("[A] statement is 'respecting' a debtor's financial condition if it has a direct relation to or impact on the debtor's overall financial status."). Such statements cannot form the basis of a fraud exception to dischargeability. *See* 11 U.S.C. § 523(a)(2)(A).

NW Logistics argues in the alternative that some statements—specifically, statements made in e-mails dated December 24, 2020, and January 5, 2021—support a claim under 11 U.S.C. § 523(a)(2)(B). Notably, the second amended complaint did not assert a § 523(a)(2)(B) claim. But regardless, the timing of the relevant statements is fatal to NW Logistics' fraud claim. Only a loan "obtained by" a materially false statement in writing is nondischargeable under § 523(a)(2)(B). Even if Eric made false statements in writing after October 2019, the statements could not have induced NW Logistics to issue the loan because NW Logistics had *already* issued the loan. *See In re Boyajian*, 367 B.R. 138, 142 (B.A.P. 9th Cir. 2007) (recognizing the "obtained by" language in § 523(a)(2)(B) "inherently implies a unity of time").

NW Logistics also alleges that Eric fraudulently induced it to extend credit until December 2020 by making certain representations while also failing to disclose other defaulted loans and breach of contract lawsuits initiated against Eric by other parties in 2021. Although omissions respecting a debtor's financial

condition may be actionable under § 523(a)(2)(A), *see In re Manion*, 667 B.R. 473, 480–81 (B.A.P. 9th Cir. 2025), we agree with the bankruptcy court that NW Logistics did not plead facts sufficient to state a plausible fraud claim based on overlapping representations and omissions. First, the second amended complaint fails to allege that Eric had a duty to disclose other defaulted loans or the breach of contract lawsuits initiated against him by other parties in 2021. *See In re Belice*, 461 B.R. 564, 580 (B.A.P. 9th Cir. 2011). Second, it fails to plead facts supporting an inference that the relevant representations were false, that Eric or Scot Lamb knew them to be false when made, or that Eric intended to deceive NW Logistics with misrepresentations or omissions. Third, it does not identify what credit was "obtained by" the alleged omissions concerning the other defaulted loans. And fourth, the lawsuits initiated against Eric in 2021 could not have been facts withheld from NW Logistics to induce extensions of credit in 2020.

2. NW Logistics also argues that the bankruptcy court erred by dismissing NW Logistics' claim under 11 U.S.C. § 523(a)(4) because Eric's mismanagement of RPP's remaining assets violated a fiduciary duty under California's trust fund doctrine. But the second amended complaint contains only conclusory allegations in support of this § 523(a)(4) claim. And crucially, it does not state when RPP became insolvent or which assets were mismanaged or when, so it impossible to know if California's trust fund doctrine even applies. *See In re*

Weinberg, 410 B.R. 19, 28 (B.A.P. 9th Cir. 2009); *Berg & Berg Enters., LLC v. Boyle*, 178 Cal. App. 4th 1020, 1040–41 (2009).

3. Lastly, the bankruptcy court did not abuse its discretion by denying NW Logistics leave to amend for a third time. "We grant . . . particularly broad discretion to deny leave to amend when the plaintiff has already had a chance to amend, as here." *Est. of Strickland v. Nevada County*, 69 F.4th 614, 623 (9th Cir. 2023) (citation modified). And "[d]ismissal without leave to amend based on futility is appropriate when the proposed amendment would not save the plaintiff's complaint." *Rose Ct.*, 119 F.4th at 685. In its briefs and at oral argument, NW Logistics insisted that discovery is necessary to support its claims. But "the doors of discovery" are not unlocked "for a plaintiff armed with nothing more than conclusions," and so we will not unlock the doors based on NW Logistics' conclusory allegations. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678–79 (2009); *Est. of Strickland*, 69 F.4th at 623 ("[P]leading standards must be met before unlocking the doors of discovery." (citation modified)). Because NW Logistics has repeatedly failed to plead additional facts with which to sufficiently state a plausible fraud claim, any further amendment would be futile.

AFFIRMED.