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8 Attorney for RICHARD A. MARSHACK,
9 Chapter 7 Trustee

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11 UNITED STATES BANKRUPTCY COURT
12 CENTRAL DISTRICT OF CALIFORNIA, SANTA ANA DIVISION

13 In re:	)	CASE NO. 8:14-bk-10739-TA
14 ELIZABETH BARBANTI	)	MOTION: (1) FOR AUTHORIZATION
15	)	TO USE CASH COLLATERAL;
16	)	(2) TO OPERATE REAL PROPERTY;
17	)	(3) FOR TURNOVER ORDER;
18	)	DECLARATIONS OF DONALD W.
	)	SIEVEKE; CLARENCE YOSHIKANE;
	)	POINTS AND AUTHORITIES
	)	DATE: TBD
	)	TIME: TBD
	)	CTRM: 5B

19 RICHARD A. MARSHACK, Chapter 7 Trustee, hereby moves for the following orders,
20 all pertaining to the real property known commonly as 563 S. Fashion Park, Orange, CA. (the
21 "Property"):

22 (1) For authorization to use the cash collateral (rents) being collected for the
23 Property;

24 (2) For authority to operate the Property;

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1 (3) For an order directing the Debtor to turn over all keys, rents, deposits, rent
2 ledgers, leases, bills, lists of expenses and all contracts pertaining to the Property.

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Dated: 10/23/2014

/s/ Donald W. Sieveke

Donald W. Sieveke, Attorney for
RICHARD A. MARSHACK, Chapter 7 Trustee

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DECLARATION OF DONALD W. SIEVEKE

I, Donald W. Sieveke, declare:

1. I am the attorney for Richard A. Marshack, Chapter 7 Trustee in this case. If called as a witness, I could competently testify to the following.

2. The Debtor, Elizabeth Barbanti, filed a Chapter 11 petition for bankruptcy on February 5, 2014. Her case converted to Chapter 7 on June 9, 2014. Richard A. Marshack is the duly appointed Chapter 7 Trustee. I am employed to represent Mr. Marshack in this case.

3. I have conducted an examination of the Debtor and have independently investigated her financial affairs. After conferring with the Trustee and Clarence Yoshikane, the Trustee and I have decided to administer the property known commonly as 563 S. Fashion Park, Orange, CA.

4. This property is a four plex. The Debtor does not reside in the property. I have reviewed the proofs of claim filed by the holder of the first mortgage, Nationstar, and the second mortgage, Bank of America. As of the petition date (February, 2014), the Debtor owed \$525,000 against the first mortgage (accruing at \$3,056 per month) and \$244,000 against the second (accruing at \$760 per month). As of the petition date, the Debtor was in arrears \$117,334 as to the first mortgage and \$46,119 as to the second mortgage. Given the monthly payments accruing thereafter, I calculate that an additional \$30,000 may have accrued post-petition. Even so, I calculate that as of October, 2014, this property may have encumbrances totaling approximately \$800,000. Mr. Yoshikane advises me that this property should sell for a price between \$1 - 1.1 million. Even after deducting eight percent closing costs and commissions (\$80,000), there is a minimum of \$120,000 equity. I attach as Exhibit "A" the proof of claim filed by Nationstar. I attach as Exhibit "B" the proof of claim filed by Bank of America.

5. I have made repeated requests of the Debtor (through her legal representatives) to obtain the rent ledgers and other records pertaining to her management of this property. I have advised her that the rents are property of the estate. I have asked for an accounting of rents received since conversion, bank statements, and expenses paid. I have not received anything.

EXHIBIT "A"

B10 (Official Form 10) (04/13)

UNITED STATES BANKRUPTCY COURT		CENTRAL DISTRICT of CALIFORNIA	PROOF OF CLAIM
Name of Debtor: Elizabeth Barbanti		Case Number: 8:14-bk-10739-TA	
NOTE: Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503.			
Name of Creditor (the person or other entity to whom the debtor owes money or property): The Bank of New York Mellon FKA The Bank of New York Successor Trustee to JPMorgan Chase Bank N.A. As Trustee for the SARM 2004-S Trust Fund			
Name and address where notices should be sent: Nationstar Mortgage LLC Attention: Bankruptcy Department PO Box 630267 Irving, TX 75063 Telephone number: 877-343-5602 email:		COURT USE ONLY	
Name and address where payment should be sent (if different from above): Nationstar Mortgage LLC Attention: Bankruptcy Department 350 Highland Drive Lewisville, TX 75067 Telephone number: 877-343-5602 email:		<input type="checkbox"/> Check this box if this claim amends a previously filed claim. Court Claim Number: _____ (If known) Filed on: _____	
1. Amount of Claim as of Date Case Filed: \$ <u>525,397.50</u> If all or part of the claim is secured, complete item 4. If all or part of the claim is entitled to priority, complete item 5. <input checked="" type="checkbox"/> Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.			
2. Basis for Claim: <u>Money loaned.</u> (See instruction #2)			
3. Last four digits of any number by which creditor identifies debtor: 2712		3a. Debtor may have scheduled account as: _____ (See instruction #3a)	3b. Uniform Claim Identifier (optional): _____ (See instruction #3b)
4. Secured Claim (See instruction #4) Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information.		Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any: \$ <u>117,334.87</u>	
Nature of property or right of setoff: <input checked="" type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: <u>563 South Fashion Park Street #A, #B, #C, #D, Orange, CA 92866</u> Value of Property: \$ _____ Annual Interest Rate <u>2.625%</u> <input type="checkbox"/> Fixed or <input checked="" type="checkbox"/> Variable (when case was filed)		Basis for perfection: <u>Recorded Deed of Trust</u> Amount of Secured Claim: \$ <u>525,397.50</u> Amount Unsecured: \$ _____	
5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507 (a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount.			
<input checked="" type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507 (a)(1)(A) or (a)(1)(B).		<input type="checkbox"/> Wages, salaries, or commissions (up to \$12,475*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11 U.S.C. § 507 (a)(4).	
<input type="checkbox"/> Up to \$2,775* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. § 507 (a)(7).		<input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. § 507 (a)(8).	
		<input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. § 507 (a)(5).	
		<input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. § 507 (a)().	
		Amount entitled to priority: \$ _____	
*Amounts are subject to adjustment on 4/01/16 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.			
6. Credits. The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #6)			

B10 (Official Form 10) (04/13)

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7. Documents: Attached are redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, security agreements, or, in the case of a claim based on an open-end or revolving consumer credit agreement, a statement providing the information required by FRBP 3001(c)(3)(A). If the claim is secured, box 4 has been completed, and redacted copies of documents providing evidence of perfection of a security interest are attached. If the claim is secured by the debtor's principal residence, the Mortgage Proof of Claim Attachment is being filed with this claim. (See Instruction #7, and the definition of "redacted".) ***PLEASE SEE ATTACHMENT 7A***

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

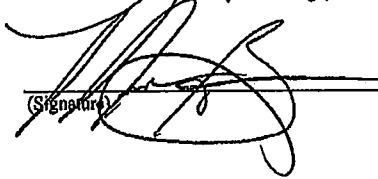
8. Signature: (See instruction #8)

Check the appropriate box.

- I am the creditor. I am the creditor's authorized agent. I am the trustee, or the debtor, or their authorized agent. I am a guarantor, surety, indorser, or other codebtor. (See Bankruptcy Rule 3004.) I am a guarantor, surety, indorser, or other codebtor. (See Bankruptcy Rule 3005.)

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.

Print Name: Matthew Baxter
Title: Assistant Secretary
Company: Nalsonstar Mortgage LLC
Address and telephone number (if different from notice address above):


(Signature) _____
5/8/14
(Date)

Telephone number: _____ email: _____

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, exceptions to these general rules may apply.

Items to be completed in Proof of Claim form

Court, Name of Debtor, and Case Number:
Fill in the federal judicial district in which the bankruptcy case was filed (for example, Central District of California), the debtor's full name, and the case number. If the creditor received a notice of the case from the bankruptcy court, all of this information is at the top of the notice.

Creditor's Name and Address:
Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

1. Amount of Claim as of Date Case Filed:
State the total amount owed to the creditor on the date of the bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

2. Basis for Claim:
State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on delivering health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if an interested party objects to the claim.

3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:
State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.

3a. Debtor May Have Scheduled Account As:
Report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.

3b. Uniform Claim Identifier:
If you use a uniform claim identifier, you may report it here. A uniform claim identifier is an optional 24-character identifier that certain large creditors use to facilitate electronic payment in chapter 13 cases.

4. Secured Claim:
Check whether the claim is fully or partially secured. Skip this section if the

claim is entirely unsecured. (See Definitions.) If the claim is secured, check the box for the nature and value of property that secures the claim, attach copies of lien documentation, and state, as of the date of the bankruptcy filing, the annual interest rate (and whether it is fixed or variable), and the amount past due on the claim.

5. Amount of Claim Entitled to Priority Under 11 U.S.C. § 507 (a).
If any portion of the claim falls into any category shown, check the appropriate box(es) and state the amount entitled to priority. (See Definitions.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

6. Credits:
An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

7. Documents:
Attach redacted copies of any documents that show the debt exists and a lien secures the debt. You must also attach copies of documents that evidence perfection of any security interest and documents required by FRBP 3001(c) for claims based on an open-end or revolving consumer credit agreement or secured by a security interest in the debtor's principal residence. You may also attach a summary in addition to the documents themselves, FRBP 3001(c) and (d). If the claim is based on delivering health care goods or services, limit disclosing confidential health care information. Do not send original documents, as attachments may be destroyed after scanning.

8. Date and Signature:
The individual completing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what constitutes a signature. If you sign this form, you declare under penalty of perjury that the information provided is true and correct to the best of your knowledge, information, and reasonable belief. Your signature is also a certification that the claim meets the requirements of FRBP 9011(b). Whether the claim is filed electronically or in person, if your name is on the signature line, you are responsible for the declaration. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. If the claim is filed by an authorized agent, provide both the name of the individual filing the claim and the name of the agent. If the authorized agent is a servicer, identify the corporate servicer as the company. Criminal penalties apply for making a false statement on a proof of claim.

DEFINITIONS	INFORMATION
Debtor A debtor is the person, corporation, or other entity that has filed a bankruptcy case.	A claim also may be secured if the creditor owes the debtor money (has a right to setoff).
Creditor A creditor is a person, corporation, or other entity to whom debtor owes a debt that was incurred before the date of the bankruptcy filing. See 11 U.S.C. §101 (10).	Unsecured Claim An unsecured claim is one that does not meet the requirements of a secured claim. A claim may be partly unsecured if the amount of the claim exceeds the value of the property on which the creditor has a lien.
Claim A claim is the creditor's right to receive payment for a debt owed by the debtor on the date of the bankruptcy filing. See 11 U.S.C. §101 (5). A claim may be secured or unsecured.	Claim Entitled to Priority Under 11 U.S.C. § 507 (a) Priority claims are certain categories of unsecured claims that are paid from the available money or property in a bankruptcy case before other unsecured claims.
Proof of Claim A proof of claim is a form used by the creditor to indicate the amount of the debt owed by the debtor on the date of the bankruptcy filing. The creditor must file the form with the clerk of the same bankruptcy court in which the bankruptcy case was filed.	Redacted A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. A creditor must show only the last four digits of any social-security, individual's tax-identification, or financial-account number, only the initials of a minor's name, and only the year of any person's date of birth. If the claim is based on the delivery of health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information.
Secured Claim Under 11 U.S.C. § 506 (a) A secured claim is one backed by a lien on property of the debtor. The claim is secured so long as the creditor has the right to be paid from the property prior to other creditors. The amount of the secured claim cannot exceed the value of the property. Any amount owed to the creditor in excess of the value of the property is an unsecured claim. Examples of liens on property include a mortgage on real estate or a security interest in a car. A lien may be voluntarily granted by a debtor or may be obtained through a court proceeding. In some states, a court judgment is a lien.	Acknowledgment of Filing of Claim To receive acknowledgment of your filing, you may either enclose a stamped self-addressed envelope and a copy of this proof of claim or you may access the court's PACER system (www.pacer.pso.uscourts.gov) for a small fee to view your filed proof of claim.
	Offers to Purchase a Claim Certain entities are in the business of purchasing claims for an amount less than the face value of the claims. One or more of these entities may contact the creditor and offer to purchase the claim. Some of the written communications from these entities may easily be confused with official court documentation or communications from the debtor. These entities do not represent the bankruptcy court or the debtor. The creditor has no obligation to sell its claim. However, if the creditor decides to sell its claim, any transfer of such claim is subject to FRBP 3001(e), any applicable provisions of the Bankruptcy Code (11 U.S.C. § 101 <i>et seq.</i>), and any applicable orders of the bankruptcy court.

B 10A (Attachment A) (12/11)

Mortgage Proof of Claim Attachment

If you file a claim secured by a security interest in the debtor's principal residence, you must use this form as an attachment to your proof of claim. See Bankruptcy Rule 3001(c)(2).

Name of debtor: Elizabeth Barbanti Case number: 8:14-bk-10739-TA
 Name of creditor: The Bank of New York Mellon FKA The Bank of New York Successor Trustee to JPMorgan Chase Bank N.A. As Trustee for the SARM 2004-8 Trust Fund Last four digits of any number you use to identify the debtor's account: 2 7 1 2

Part 1: Statement of Principal and Interest Due as of the Petition Date

Itemize the principal and interest due on the claim as of the petition date (included in the Amount of Claim listed in Item 1 on your Proof of Claim form).

1. Principal due					(1) \$ <u>454,726.88</u>
2. Interest due	Interest rate	From mm/dd/yyyy	To mm/dd/yyyy	Amount	
	<u>2.750%</u>	<u>01/01/2011</u>	<u>05/31/2012</u>	\$ <u>17,716.40</u>	***Please see Attachment 1 for Interest Rates Continued***
	<u>3.000%</u>	<u>08/01/2012</u>	<u>11/30/2012</u>	\$ <u>6,820.90</u>	
	<u>2.875%</u>	<u>12/01/2012</u>	<u>05/31/2013</u>	+ \$ <u>6,536.70</u>	
	Total interest due as of the petition date			\$ <u>39,478.43</u>	Copy total here ▶ (2) + \$ <u>39,478.43</u>
3. Total principal and interest due					(3) \$ <u>494,205.31</u>

Part 2: Statement of Prepetition Fees, Expenses, and Charges

Itemize the fees, expenses, and charges due on the claim as of the petition date (included in the Amount of Claim listed in Item 1 on the Proof of Claim form).

Description	Dates incurred	Amount
1. Late charges		(1) \$ _____
2. Non-sufficient funds (NSF) fees		(2) \$ _____
3. Attorney's fees		(3) \$ _____
4. Filing fees and court costs		(4) \$ _____
5. Advertisement costs	<u>1/18/12;5/23/12;5/31/12;5/28/13</u>	(5) \$ <u>1,071.92</u>
6. Sheriff/auctioneer fees		(6) \$ _____
7. Title costs	<u>2/14/12</u>	(7) \$ <u>765.00</u>
8. Recording fees	<u>2/14/12</u>	(8) \$ <u>21.00</u>
9. Appraisal/broker's price opinion fees	<u>9/7/09;5/27/11;3/14/12;10/18/12</u>	(9) \$ <u>299.00</u>
10. Property inspection fees	<u>6/29/10;7/27/10;10/5/10;8/31/10;11/2/10;12/7/10;12/28/10;2/1/11;3/8/11;4/5/11;4/26/11;7/5/11;7/26/11;8/30/11;11/24/12;2/28/12;3/20/12;5/1/12;8/13/12</u>	(10) \$ <u>288.00</u>
11. Tax advances (non-escrow)		(11) \$ _____
12. Insurance advances (non-escrow)		(12) \$ _____
13. Escrow shortage or deficiency (Do not include amounts that are part of any installment payment listed in Part 3.)	<u>please see attached escrow statement</u>	(13) \$ <u>32,558.68</u>
14. Property preservation expenses. Specify: _____		(14) \$ _____
15. Other. Specify: <u>Foreclosure Fees</u>	<u>12/29/11;8/11/12</u>	(15) \$ <u>650.00</u>
16. Other. Specify: <u>FC Statutory Mailings</u>	<u>3/8/12;6/11/12</u>	(16) \$ <u>483.00</u>
17. Other. Specify: <u>Trsfr Stamps</u>	<u>7/2/12</u>	(17) \$ <u>-120.00</u>
17a. Other. Specify: _____		(17a) \$ _____
17b. Other. Specify: _____		(17b) \$ _____
17c. Other. Specify: _____		(17c) \$ _____
18. Total prepetition fees, expenses, and charges. Add all of the amounts listed above.		(18) \$ <u>36,016.60</u>

Part 3. Statement of Amount Necessary to Cure Default as of the Petition Date

Does the installment payment amount include an escrow deposit?

No

Yes Attach to the Proof of Claim form an escrow account statement prepared as of the petition date in a form consistent with applicable nonbankruptcy law.

1. Installment payments due	Date last payment received by creditor	<u>10/13/2011</u>	
		<small>mm/dd/yyyy</small>	
	Number of installment payments due	(1)	<u>37</u>
2. Amount of installment payments due	16 Installments @	2,202.21	\$ 35,235.36
	6 Installments @	2,257.21	\$ 13,543.26
	6 Installments @	2,230.16	\$ 13,380.96
	6 Installments @	2,203.85	\$ 13,223.10
	3 installments @	2,178.28	\$ 6,534.84
	Installments @	0.00	\$ 0.00
	Installments @	0.00	\$ 0.00
	Total installment payments due as of the petition date	\$ 81,917.52	Copy total here ▶ (2) \$ <u>81,917.52</u>
3. Calculation of cure amount	<u>Add total prepetition fees, expenses, and charges</u>		Copy total from Part 2 here ▶ + \$ <u>36,016.60</u>
	<u>Subtract total of unapplied funds (funds received but not credited to account)</u>		- \$ <u>-599.25</u>
	<u>Subtract amounts for which debtor is entitled to a refund</u>		- \$ _____
	Total amount necessary to cure default as of the petition date		(3) \$ <u>117,334.87</u>

Copy total onto Item 4 of Proof of Claim form

First post-petition payment in amount of \$3,056.48 due on 3/1/2014

Attachment 1

Interest Rates Continued...

From Date	To Date	Interest Rate	Interest Due
06/01/2013	11/30/2013	2.750%	\$6,252.49
12/01/2013	02/05/2014	2.625%	\$2,152.94
		Total Interest Due	\$39,478.43

Attachment 7A

Attached are redacted copies of any documents that support the claim, such as promissory notes, purchase order, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements in support of right to seek a lift of the automatic stay and foreclose if necessary.

4/23/2014



Annual Escrow Account Disclosure Statement

ELIZABETH BARBANTI

563 S FASHION PARK ST A-
 ORANGE, CA 92866

Loan Number	
Analysis Date	February 11, 2014
Previous Payment	
Principal & Interest	\$ 2,178.28
Escrow	\$ 878.20
Total	\$ 3,056.48
New Payment	
Effective Date	March 1, 2014
Principal & Interest	\$ 2,178.28
Escrow	\$ 878.20
Total	\$ 3,056.48

The purpose of the Coming Year Escrow Projection is to determine the lowest balance "Low Point" to which your escrow account will decline over the upcoming year. The purpose of the Low Balance Summary is to compare the projected and allowable low point amounts. If the projected low point is greater than the allowable low point, there is a surplus. If the projected low point is less than the allowable low point, there is a shortage and/or deficiency which will be recovered by an adjustment to your monthly payment over a specified number of months. The adjustment amount(s) appears in the Low Balance Summary and New Payment Information.

Our records indicate that you have filed a bankruptcy. This statement is sent for informational purposes only and is not an attempt to collect a debt. It does not alter or affect the terms of your bankruptcy proceedings. Please disregard the payment information if it conflicts with any order or requirement of the court. If you filed a Chapter 13, any unpaid amounts prior to the filing of your bankruptcy petition may be paid through and in accordance with your bankruptcy plan. If you are a Chapter 13 debtor whose plan requires you to make regular post petition payments directly to the Chapter 13 trustee, any payment should be remitted to the trustee directly and not to Nationstar Mortgage LLC.

Tax	\$ 8,450.34
Insurance	\$ 2,088.00
Lender-Placed Insurance	\$ -
Mortgage Insurance	\$ -
Annual Total	\$ 10,538.34
Approximate Monthly Deposit	\$ 878.20
Monthly Deposit Without Mortgage Insurance	\$ 878.20
RESPA Cushion (About Two Monthly Deposits)	\$ 1,756.39

Bankruptcy Filing Date	February 5, 2014
Total Escrow Funds Advanced by Your Servicer at Filing Date	\$ 28,333.52
Plus Balance Required at Filing to Maintain RESPA Minimum	\$ 4,225.16
Minus Escrow Account Balance at Filing Date	\$ -
Total Shortage at Filing Date	\$ 32,558.68

This column shows your new monthly escrow deposits over the next escrow cycle.

These columns show when each of your escrow accounts is expected to be paid during the next escrow cycle.

This column shows what your escrow balance would be without any additional funds.

This column shows the calculation of the amount of funds needed to maintain your RESPA cushion* through the next escrow cycle.

Month	Escrow Payment	Tax Disbursements	Insurance Disbursements	Mortgage Insurance Disbursements	LPI Disbursements	Balance	Required Balance	
						Beginning Balance \$ 4,225.16		
Mar 2014	\$ 878.20	\$ -	\$ -	\$ -	\$ -	\$ 878.20	\$ 5,103.36	
Apr 2014	\$ 878.20	\$ 4,225.17	\$ -	\$ -	\$ -	\$ (2,468.77)	\$ 1,756.39 *	
May 2014	\$ 878.20	\$ -	\$ -	\$ -	\$ -	\$ (1,590.57)	\$ 2,634.59	
Jun 2014	\$ 878.20	\$ -	\$ -	\$ -	\$ -	\$ (712.37)	\$ 3,512.79	
Jul 2014	\$ 878.20	\$ -	\$ -	\$ -	\$ -	\$ 165.83	\$ 4,390.99	
Aug 2014	\$ 878.20	\$ -	\$ -	\$ -	\$ -	\$ 1,044.03	\$ 5,269.19	
Sep 2014	\$ 878.20	\$ -	\$ -	\$ -	\$ -	\$ 1,922.23	\$ 6,147.39	
Oct 2014	\$ 878.20	\$ -	\$ 2,088.00	\$ -	\$ -	\$ 712.43	\$ 4,937.59	
Nov 2014	\$ 878.20	\$ -	\$ -	\$ -	\$ -	\$ 1,590.63	\$ 5,815.79	
Dec 2014	\$ 878.20	\$ 4,225.17	\$ -	\$ -	\$ -	\$ (1,756.34)	\$ 2,468.82	
Jan 2015	\$ 878.20	\$ -	\$ -	\$ -	\$ -	\$ (878.14)	\$ 3,347.02	
Feb 2015	\$ 878.20	\$ -	\$ -	\$ -	\$ -	\$ 0.06	\$ 4,225.22	
Totals	\$ 10,538.40	\$ 8,450.34	\$ 2,088.00	\$ -	\$ -			
							Balance Required at Filing to Maintain RESPA Cushion*	\$ 4,225.16

* - The cushion allowed by federal law (RESPA) is two times your monthly escrow payment excluding any mortgage insurance payments, unless your state's laws specify a lower amount. The highlighted value in the Required Balance column indicates where the RESPA cushion limit is set--this is lowest balance your Escrow account will reach during the next Escrow cycle and all of the other values in the column are based on it.

4/23/2014



Annual Escrow Account Disclosure Statement

Escrow Account Transactions Prior to Bankruptcy Filing							
Transaction Date	Description	Servicer Advance to Escrow	Borrower Deposit to Escrow	Servicer Recovery from Escrow	Payment from Escrow	Escrow Account Balance	Total Servicer Advances
7/3/2012	Escrow Advance Recovery	\$ -	\$ -	\$ (11,721.11)	\$ -	\$ 11,721.11	\$ 11,721.11
7/3/2012	Escrow Debit Adj.	\$ -	\$ -	\$ -	\$ 11,721.11	\$ -	\$ 11,721.11
10/2/2012	Escrow Advance - Insurance	\$ 2,043.00	\$ -	\$ -	\$ -	\$ 2,043.00	\$ 13,764.11
10/2/2012	Hazard Insurance Disbursed	\$ -	\$ -	\$ -	\$ 2,043.00	\$ -	\$ 13,764.11
11/16/2012	Escrow Advance - Tax	\$ 4,128.12	\$ -	\$ -	\$ -	\$ 4,128.12	\$ 17,892.23
11/16/2012	County Tax Disbursed	\$ -	\$ -	\$ -	\$ 4,128.12	\$ -	\$ 17,892.23
3/19/2013	Escrow Advance - Tax	\$ 4,128.12	\$ -	\$ -	\$ -	\$ 4,128.12	\$ 22,020.35
3/19/2013	County Tax Disbursed	\$ -	\$ -	\$ -	\$ 4,128.12	\$ -	\$ 22,020.35
10/1/2013	Escrow Advance - Insurance	\$ 2,088.00	\$ -	\$ -	\$ -	\$ 2,088.00	\$ 24,108.35
10/1/2013	Hazard Insurance Disbursed	\$ -	\$ -	\$ -	\$ 2,088.00	\$ -	\$ 24,108.35
11/19/2013	Escrow Advance - Tax	\$ 4,225.17	\$ -	\$ -	\$ -	\$ 4,225.17	\$ 28,333.52
11/19/2013	County Tax Disbursed	\$ -	\$ -	\$ -	\$ 4,225.17	\$ -	\$ 28,333.52
	Subtotals	\$ 16,612.41	\$ -	\$ (11,721.11)	\$ 28,333.52	\$ -	\$ 28,333.52

EXHIBIT "B"

B 10 (Official Form 10) (04/13)

UNITED STATES BANKRUPTCY COURT <u>Central</u> DISTRICT OF <u>California</u>		PROOF OF CLAIM
Name of Debtor: Elizabeth Barbanti		Case Number: 8:14-bk-10739-TA
NOTE: Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503.		
Name of Creditor (the person or other entity to whom the debtor owes money or property): Bank of America, N.A.		COURT USE ONLY
Name and address where notices should be sent: PROBER & RAPHAEL ATTORNEYS FOR SECURED CREDITOR P.O. Box 4365 Woodland Hills, CA 91365-4365 (818) 227-0100 Telephone number: _____ email: _____		<input type="checkbox"/> Check this box if this claim amends a previously filed claim. Court Claim Number: _____ (If known) Filed on: _____
Name and address where payment should be sent (if different from above): Bank of America, N.A. ATTN: PAYMENT PROCESSING P.O. Box 660933 Dallas, TX 75266-0933 Telephone number: 1-800-669-6607 email: _____		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars.
1. Amount of Claim as of Date Case Filed: \$ <u>244,582.28</u>		
If all or part of the claim is secured, complete item 4. If all or part of the claim is entitled to priority, complete item 5.		
<input checked="" type="checkbox"/> Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.		
2. Basis for Claim: <u>Mortgage Note</u> (See instruction #2)		
3. Last four digits of any number by which creditor identifies debtor: 0862 <u>(B,500-18445A,NF)</u>	3a. Debtor may have scheduled account as: <u>Bank of America</u> (See instruction #3a)	3b. Uniform Claim Identifier (optional): _____ (See instruction #3b)
4. Secured Claim (See instruction #4) Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information.		Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any: \$ <u>46,119.31</u>
Nature of property or right of setoff: <input checked="" type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: <u>563 South Fashion Park Street, Orange, CA 92866</u>		Basis for perfection: <u>Recorded Mortgage/Deed of Trust</u>
Value of Property: \$ _____		Amount of Secured Claim: \$ <u>244,582.28</u>
Annual Interest Rate <u>4.5</u> % <input type="checkbox"/> Fixed or <input checked="" type="checkbox"/> Variable (when case was filed)		Amount Unsecured: \$ _____
5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507 (a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount.		
<input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507 (a)(1)(A) or (a)(1)(B).	<input type="checkbox"/> Wages, salaries, or commissions (up to \$12,475*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11 U.S.C. § 507 (a)(4).	<input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. § 507 (a)(5).
<input type="checkbox"/> Up to \$2,775* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. § 507 (a)(7).	<input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. § 507 (a)(8).	<input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. § 507 (a)(____).
		Amount entitled to priority: \$ _____
*Amounts are subject to adjustment on 4/01/16 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.		
6. Credits. The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #6)		

B 10 (Official Form 10) (04/13)

2

7. Documents: Attached are redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, security agreements, or, in the case of a claim based on an open-end or revolving consumer credit agreement, a statement providing the information required by FRBP 3001(c)(3)(A). If the claim is secured, box 4 has been completed, and redacted copies of documents providing evidence of perfection of a security interest are attached. If the claim is secured by the debtor's principal residence, the Mortgage Proof of Claim Attachment is being filed with this claim. (See instruction #7, and the definition of "redacted".)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

8. Signature: (See instruction #8)

Check the appropriate box.

- I am the creditor. I am the creditor's authorized agent. I am the trustee, or the debtor, or their authorized agent. I am a guarantor, surety, indorser, or other codebtor. (See Bankruptcy Rule 3005.)
 (See Bankruptcy Rule 3004.)

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.

Print Name: Halie L. Leonard
 Title: Attorney
 Company: Prober & Raphael, A Law Corporation
 Address and telephone number (if different from notice address above):
P.O. Box 4365
Woodland Hills, CA 91365-4365
 Telephone number: (818) 227-0100 email: cmartin@pralc.com

 (Signature) 10/20/2014
 (Date)

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In certain circumstances, such as in bankruptcy cases not filed voluntarily by the debtor, exceptions to these general rules may apply.

Items to be completed in Proof of Claim form

Court, Name of Debtor, and Case Number:
 Fill in the federal judicial district in which the bankruptcy case was filed (for example, Central District of California), the debtor's full name, and the case number. If the creditor received a notice of the case from the bankruptcy court, all of this information is at the top of the notice.

Creditor's Name and Address:
 Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

1. Amount of Claim as of Date Case Filed:
 State the total amount owed to the creditor on the date of the bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

2. Basis for Claim:
 State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on delivering health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if an interested party objects to the claim.

3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:
 State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.

3a. Debtor May Have Scheduled Account As:
 Report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.

3b. Uniform Claim Identifier:
 If you use a uniform claim identifier, you may report it here. A uniform claim identifier is an optional 24-character identifier that certain large creditors use to facilitate electronic payment in chapter 13 cases.

4. Secured Claim:
 Check whether the claim is fully or partially secured. Skip this section if the

claim is entirely unsecured. (See Definitions.) If the claim is secured, check the box for the nature and value of property that secures the claim, attach copies of lien documentation, and state, as of the date of the bankruptcy filing, the annual interest rate (and whether it is fixed or variable), and the amount past due on the claim.

5. Amount of Claim Entitled to Priority Under 11 U.S.C. § 507 (a).
 If any portion of the claim falls into any category shown, check the appropriate box(es) and state the amount entitled to priority. (See Definitions.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

6. Credits:
 An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

7. Documents:
 Attach redacted copies of any documents that show the debt exists and a lien secures the debt. You must also attach copies of documents that evidence perfection of any security interest and documents required by FRBP 3001(c) for claims based on an open-end or revolving consumer credit agreement or secured by a security interest in the debtor's principal residence. You may also attach a summary in addition to the documents themselves. FRBP 3001(c) and (d). If the claim is based on delivering health care goods or services, limit disclosing confidential health care information. Do not send original documents, as attachments may be destroyed after scanning.

8. Date and Signature:
 The individual completing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what constitutes a signature. If you sign this form, you declare under penalty of perjury that the information provided is true and correct to the best of your knowledge, information, and reasonable belief. Your signature is also a certification that the claim meets the requirements of FRBP 9011(b). Whether the claim is filed electronically or in person, if your name is on the signature line, you are responsible for the declaration. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. If the claim is filed by an authorized agent, provide both the name of the individual filing the claim and the name of the agent. If the authorized agent is a servicer, identify the corporate servicer as the company. Criminal penalties apply for making a false statement on a proof of claim.

DEFINITIONS

INFORMATION

Debtor

A debtor is the person, corporation, or other entity that has filed a bankruptcy case.

Creditor

A creditor is a person, corporation, or other entity to whom debtor owes a debt that was incurred before the date of the bankruptcy filing. See 11 U.S.C. § 101 (10).

Claim

A claim is the creditor's right to receive payment for a debt owed by the debtor on the date of the bankruptcy filing. See 11 U.S.C. § 101 (5). A claim may be secured or unsecured.

Proof of Claim

A proof of claim is a form used by the creditor to indicate the amount of the debt owed by the debtor on the date of the bankruptcy filing. The creditor must file the form with the clerk of the same bankruptcy court in which the bankruptcy case was filed.

Secured Claim Under 11 U.S.C. § 506 (a)

A secured claim is one backed by a lien on property of the debtor. The claim is secured so long as the creditor has the right to be paid from the property prior to other creditors. The amount of the secured claim cannot exceed the value of the property. Any amount owed to the creditor in excess of the value of the property is an unsecured claim. Examples of liens on property include a mortgage on real estate or a security interest in a car. A lien may be voluntarily granted by a debtor or may be obtained through a court proceeding. In some states, a court judgment is a lien.

A claim also may be secured if the creditor owes the debtor money (has a right to setoff).

Unsecured Claim

An unsecured claim is one that does not meet the requirements of a secured claim. A claim may be partly unsecured if the amount of the claim exceeds the value of the property on which the creditor has a lien.

Claim Entitled to Priority Under 11 U.S.C. § 507 (a)

Priority claims are certain categories of unsecured claims that are paid from the available money or property in a bankruptcy case before other unsecured claims.

Redacted

A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. A creditor must show only the last four digits of any social-security, individual's tax-identification, or financial-account number, only the initials of a minor's name, and only the year of any person's date of birth. If the claim is based on the delivery of health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information.

Evidence of Perfection

Evidence of perfection may include a mortgage, lien, certificate of title, financing statement, or other document showing that the lien has been filed or recorded.

Acknowledgment of Filing of Claim

To receive acknowledgment of your filing, you may either enclose a stamped self-addressed envelope and a copy of this proof of claim or you may access the court's PACER system (www.pacer.psc.uscourts.gov) for a small fee to view your filed proof of claim.

Offers to Purchase a Claim

Certain entities are in the business of purchasing claims for an amount less than the face value of the claims. One or more of these entities may contact the creditor and offer to purchase the claim. Some of the written communications from these entities may easily be confused with official court documentation or communications from the debtor. These entities do not represent the bankruptcy court or the debtor. The creditor has no obligation to sell its claim. However, if the creditor decides to sell its claim, any transfer of such claim is subject to FRBP 3001(c), any applicable provisions of the Bankruptcy Code (11 U.S.C. § 101 *et seq.*), and any applicable orders of the bankruptcy court.

B 10A (Attachment A) (12/11)

Mortgage Proof of Claim Attachment

If you file a claim secured by a security interest in the debtor's principal residence, you must use this form as an attachment to your proof of claim. See Bankruptcy Rule 3001(c)(2).

Name of debtor: Elizabeth Barbanti Case number: 8:14-bk-10739-TA

Name of creditor: Bank of America, N.A Last four digits of any number you use to identify the debtor's account: 0862

Part 1: Statement of Principal and Interest Due as of the Petition Date

Itemize the principal and interest due on the claim as of the petition date (included in the Amount of Claim listed in Item 1 on your Proof of Claim form).

1. Principal due (1) \$ 198,462.97

2. Interest due	Interest rate	From mm/dd/yyyy	To mm/dd/yyyy	Amount
	4.5 %	04/01/2009	12/31/2013	\$42,452.10
	%			\$
	%			+ \$
Total interest due as of the petition date				\$ 42,452.10
				Copy total here ▶ (2) + \$ 42,452.10

3. Total principal and interest due (3) \$ 240,915.07

Part 2: Statement of Prepetition Fees, Expenses, and Charges

Itemize the fees, expenses, and charges due on the claim as of the petition date (included in the Amount of Claim listed in Item 1 on the Proof of Claim form).

Description	Dates incurred	Amount
1. Late charges	See Attachment	(1) \$ 1,787.30
2. Non-sufficient funds (NSF) fees		(2) \$
3. Attorney's fees		(3) \$
4. Filing fees and court costs		(4) \$
5. Advertisement costs		(5) \$
6. Sheriff/auctioneer fees	04/12/2013	(6) \$ 1,750.00
7. Title costs		(7) \$
8. Recording fees		(8) \$
9. Appraisal/broker's price opinion fees		(9) \$
10. Property inspection fees		(10) \$
11. Tax advances (non-escrow)		(11) \$
12. Insurance advances (non-escrow)		(12) \$
13. Escrow shortage or deficiency (Do not include amounts that are part of any installment payment listed in Part 3.)		(13) \$
14. Property preservation expenses. Specify:		(14) \$
15. Other. Specify: Mailing Fees	04/12/2013	(15) \$ 129.91
16. Other. Specify:		(16) \$
17. Other. Specify:		(17) + \$
18. Total prepetition fees, expenses, and charges. Add all of the amounts listed above.		(18) \$ 3,667.21

Attachment of Late Fee

Date	Amount
10/25/2013	\$37.92
9/25/2013	\$36.70
8/25/2013	\$37.92
7/25/2013	\$36.70
6/25/2013	\$37.92
5/25/2013	\$34.25
4/25/2013	\$37.92
3/25/2013	\$37.82
2/25/2013	\$37.82
1/25/2013	\$36.60
12/25/2012	\$37.82
11/25/2012	\$36.60
10/25/2012	\$37.82
9/25/2012	\$37.82
8/25/2012	\$36.60
7/25/2012	\$37.82
6/25/2012	\$36.60
5/25/2012	\$37.82
4/25/2012	\$35.38
3/25/2012	\$37.82
2/25/2012	\$37.93
1/25/2012	\$36.70
12/25/2011	\$37.93
11/25/2011	\$36.70
10/25/2011	\$37.93
9/25/2011	\$37.93
8/25/2011	\$36.70
7/25/2011	\$37.93
6/25/2011	\$36.70
5/25/2011	\$37.93
4/25/2011	\$34.26
3/25/2011	\$37.93
2/25/2011	\$37.93
1/25/2011	\$36.70
12/25/2010	\$37.93
11/25/2010	\$36.70
10/25/2010	\$37.93

9/25/2010	\$37.93
8/25/2010	\$36.70
7/25/2010	\$37.93
6/25/2010	\$36.70
5/25/2010	\$37.93
4/25/2010	\$34.26
3/25/2010	\$37.93
10/25/2009	\$37.93
9/20/2009	\$37.93
8/20/2009	\$36.70
7/20/2009	\$37.93
Total	\$1,787.30

Part 3. Statement of Amount Necessary to Cure Default as of the Petition Date

Does the installment payment amount include an escrow deposit?

No

Yes Attach to the Proof of Claim form an escrow account statement prepared as of the petition date in a form consistent with applicable nonbankruptcy law.

1. Installment payments due	Date last payment received by creditor	<u>04/20/2009</u> mm/dd/yyyy	
	Number of installment payments due	(1) <u>57</u>	
2. Amount of installment payments due	<u>26</u> installments @	\$ <u>758.51</u>	
	<u>16</u> installments @	\$ <u>734.04</u>	Please see attached addendum
	<u>4</u> installments @	+ \$ <u>732.04</u>	
	Total installment payments due as of the petition date	\$ <u>42,452.10</u>	Copy total here ▶ (2) \$ <u>42,452.10</u>

3. Calculation of cure amount	Add total prepetition fees, expenses, and charges	Copy total from Part 2 here ▶	+ \$ <u>3,667.21</u>
	Subtract total of unapplied funds (funds received but not credited to account)		- \$ <u>0.00</u>
	Subtract amounts for which debtor is entitled to a refund		- \$ <u> </u>
	Total amount necessary to cure default as of the petition date		(3) \$ <u>46,119.31</u>

Post-Petition Due Date: 2/25/2014
 Post-Petition Payment Amount: \$ 758.51

Copy total onto Item 4 of Proof of Claim form

Bank of America, N.A. services the loan on the property referenced in this proof of claim. In the event the automatic stay in this case is modified, this case dismisses, and/or the debtor obtains a discharge and a foreclosure action is commenced on the mortgaged property, the foreclosure will be conducted in the name of BANK OF AMERICA N.A., "NOTEHOLDER".

Note holder, directly or through an agent, has possession of the promissory note. The promissory note is either made payable to Note holder or has been duly endorsed.

SPECIAL NOTICE

THE FOLLOWING NOTICE IS GIVEN TO YOU IN THE EVENT THAT THE FEDERAL FAIR DEBT COLLECTIONS ACT APPLIES TO THIS COMMUNICATION.

The following statement provides you with notice of certain rights which you may have by law. Nothing in this statement modifies or changes the hearing date or response time specified in the attached documents or your need to take legal action to protect your rights in this matter. No provision of the following statement modifies or removes your need to comply with local rules concerning the attached documents.

CONSUMER DISCLOSURE

This communication is made in an attempt to collect on a debt or judgment and any information obtained will be used for that purpose. Please be advised that if you notify Prober and Raphael within 30 days that all or a part of your obligation or judgment is disputed, then Prober and Raphael will mail to you a written verification of the obligations or judgment and the amounts owed to Bank of America, N.A

In addition and upon your request within 30 days, you will be provided with the name and address of the original creditor, if different from the current creditor.

EXHIBIT "C"

Attorney or Party Name, Address, Telephone and FAX Nos., State Bar No. & Email Address John E. Mortimer 43980 Mahlon Vail Circle Temecula, CA 92592 951-330-0063 Fax: 949-502-0816 130526 mortimercourtnotice@gmail.com	FOR COURT USE ONLY
UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA	
In re: <p style="text-align: center;">Elizabeth Barbanti</p> <p style="text-align: right;">Debtor(s).</p>	CASE NO.: 8:14-bk-10739-SC-TA CHAPTER: 11 NOTICE OF MOTION AND MOTION IN INDIVIDUAL CHAPTER 11 CASE FOR ORDER AUTHORIZING INTERIM USE OF CASH COLLATERAL [11 U.S.C. § 363] This motion is being made under <u>ONLY ONE</u> of the following notice procedures: <input type="checkbox"/> Hearing requested on emergency basis: LBR 9075-1(a); or <input type="checkbox"/> Hearing requested on shortened notice: LBR 9075-1(b); or <input checked="" type="checkbox"/> Hearing set on regular notice: LBR 9013-1(c): DATE: March 12, 2014 TIME: 10:00 AM COURTROOM: 5B PLACE: 411 West Fourth St., Santa Ana, CA 92701

- PLEASE TAKE NOTICE THAT** Debtor moves this court for an order authorizing interim use of cash collateral.
- NOTICE PROVISIONS AND DEADLINES FOR FILING AND SERVING A WRITTEN RESPONSE:** Your rights might be affected by this Motion. You may want to consult an attorney. Refer to the box checked below for the deadline to file and serve a written response. If you fail to timely file and serve a written response, the court may treat such failure as a waiver of your right to oppose the Motion and may grant the requested relief. You must serve a copy of your opposition upon the Debtor, the Debtor's attorney, the United States trustee, and also serve a copy on the judge pursuant to LBR 5005-2(d) and the Court Manual.

- a. **Hearing Requested on Emergency Basis under LBR 9075-1(a):** Debtor has contacted the court and requested an emergency hearing on less than 48 hours notice. If the court grants the request, you will receive a separate Notice of Hearing that identifies the deadline for the Debtor to file and serve the Motion and the deadline for you to file and serve a written response. If the court denies the request to set an emergency hearing, the Debtor will provide written notice of a regular hearing date or other disposition of this motion and the deadline for filing an opposition.
- b. **Hearing Requested on Shortened Notice under LBR 9075-1(b):** Debtor has filed a separate motion asking the court to set a hearing on shortened notice, titled Application for Order Setting Hearing on Shortened Notice (Application). If the court grants the Application, the Debtor will serve you with another document providing notice. The deadline to file and serve a written response will be contained in this document. If the court denies the Application, the Debtor will provide written notice of a regular hearing date or other proposed disposition of this motion.
- c. /s/ **Hearing Set on Regular Notice: Notice Provided Under LBR 9013-1(c):** This Motion is set for hearing on regular notice pursuant to LBR 9013-1(c). The full Motion and supporting documentation are attached, including the legal and factual grounds upon which the Motion is made. If you wish to oppose this Motion, you must file a written response with the court and serve it as stated above **no later than 14 days prior to the hearing**. Your response must comply with LBR 9013-1(f). The undersigned hereby verifies that the hearing date and time selected were available for this type of Motion according to the judge's self-calendaring procedures [LBR 9013-1(b)].
- d. **Other (specify):** _____

Date: February 19, 2014

By: /s/ John E. Mortimer
Signature of Debtor or attorney for Debtor

Name: John E. Mortimer
Printed name of Debtor or attorney for Debtor

MOTION FOR ORDER AUTHORIZING INTERIM USE OF CASH COLLATERAL

1. The use of collateral may generate cash that is Cash Collateral in which one or more creditors have or claim a lien or other security interest. The Debtor cannot use Cash Collateral without consent of the creditor(s) or a court order. The Debtor believes that Cash Collateral may be generated in this case and so seeks the court's order authorizing its use and providing adequate protection for that use to the affected creditor(s), as discussed below.
2. The Debtor in this case has filed a voluntary petition. The court has jurisdiction to grant the relief requested in this motion pursuant to 28 U.S.C. § 157 and 11 U.S.C. § 363.
3. The Debtor believes that the use of Cash Collateral is necessary for the Debtor to continue the Debtor's operations and to reorganize.
4. Information about each collateral owned by the Debtor for which the Debtor seeks court permission to use Cash Collateral, and Debtor's proposed budget for each collateral is/are set forth as follows:

a. Collateral and budget #1

(1) Value of collateral: \$ 550,000.00

(2) Type of collateral

Real Property

Street address: 563 S Fashion Park

Unit/suite no.: A, B, C, D

City, state, zip code: Orange, CA 92866

Legal description or document recording number (include county of recording):
see attached

Equipment (describe manufacturer, type, and characteristics):

Serial number(s):

Location:

Vehicle (describe year, manufacturer, type and model):

Vehicle identification number:

Location of vehicle:

Other personal property (describe type, identifying information, and location)

(3) Income/rent generated: \$ 6295.00 per month

(4) Liens:

1st Lien holder: Nationstar
Monthly payment: \$ 3,561.00
Amount in arrears: \$ 110,000.00

Principal balance due: \$ 570,000.00
Due date: 1st of Every Month

2nd Lien holder: Bank of America
Monthly payment: \$ 756.00
Amount in arrears: \$ 29,031.00

Principal balance due: \$ 198,462.00
Due date: 1st of Every Month

3rd Lien holder: _____
Monthly payment: \$ _____
Amount in arrears: \$ _____

Principal balance due: \$ _____
Due date: _____

Additional liens:

(5) Equity in the collateral: \$ 0.00

(6) The Debtor offers the equity in the collateral as adequate protection.

(7) The use or sale of the Cash Collateral generates more collateral (Replacement Collateral) each month
(check one):

The collateral generates rents each month of \$ 6,295.00.

The sale of collateral generates working capital, which allows the generation of more products to
sell each month, giving creditor sufficient Replacement Collateral to justify the use of Cash
Collateral. The Replacement Collateral is \$ _____ per month.

(8) The generation of Replacement Collateral, as described above, is offered as adequate protection.

(9) Proposed Budget:

INCOME:

Rent: \$ 6,295.00

Sales: \$ _____

Other: \$ _____

Total Income: \$ 6,295.00

EXPENSES:

1st Lien Holder \$ 3,561.00
2nd Lien holder: \$ 0.00
3rd Lien holder: \$ _____
Repairs: \$ 1,480.00
Building: \$ _____
Plumbing: \$ _____
Electrical: \$ _____
Flooring: \$ _____
Other: \$ _____
Cleaning: \$ _____
Pest control: \$ _____
Landscaping: \$ 120.00
Insurance: \$ 50.00
Fire/liability: \$ 11.42
Other: \$ _____
Management: \$ _____
Electricity: \$ 55.73
Gas: \$ _____
Water: \$ 223.02
Trash Disposal: \$ 52.59
Supplies: \$ _____
Advertising: \$ _____
Other: \$ _____
Other: \$ _____
Other: \$ _____
Other: \$ _____

Total Expenses: \$ 5,553.76
Net Income: \$ 500.00

b. Collateral and budget #2

(1) Value of collateral: \$ 540,000.00

(2) Type of collateral

Real Property

Street address: 787 South Laurinda Lane

Unit/suite no.: _____

City, state, zip code: Orange, CA 92869

Legal description or document recording number (include county of recording):
see attached

Equipment (describe manufacturer, type, and characteristics):

Serial number(s): _____

Location: _____

Vehicle (describe year, manufacturer, type and model):

Vehicle identification number: _____

Location of vehicle: _____

Other personal property (describe type, identifying information, and location)

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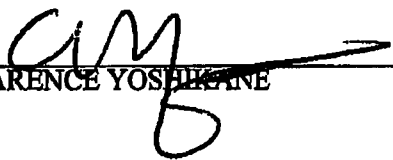
DECLARATION OF CLARENCE YOSHIKANE

I, Clarence Yoshikane, declare:

1. I am a real estate sales person employed by BHHS / Berkshire Hathaway Home Services. I am being employed as the real estate sales person for Richard A. Marshack, Chapter 7 Trustee in this case. If called as a witness, I could competently testify to the following.

2. I have inspected the exterior of the premises known as 563 S. Fashion Park, Orange, CA ("the Property"). This property is a fourplex rental unit. I have experience in selling this type of property. I have reviewed the recent comparable sales for this property. My review of comparable sales leads me to believe that the Property may be worth between \$1,000,000 to 1,100,000. It is important that this property continue to be well-maintained and that the units have paying tenants. The lack of either would adversely affect value.

I declare under penalty of perjury the foregoing is true and correct. Executed this 22nd day of October, 2014, at Irvine, California.


CLARENCE YOSHIKANE

of the Building +
interests of (2) of the units

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I.

**THE TRUSTEE IS ENTITLED TO AN ORDER
AUTHORIZING THE USE OF CASH COLLATERAL**

Bankruptcy Code Section 721 authorizes the "trustee to operate the business of the debtor for a limited period, if such operation is in the best interest of the estate and consistent with the orderly liquidation of the estate". Section 363(c)(3), however, imposes an absolute prohibition on the use, sale or lease of cash collateral unless (1) the creditor with an interest in the collateral consents, or (2) the court authorizes the use after notice and a hearing.

Cash collateral is defined in section 363(a) as "cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents whenever acquired in which the estate and an entity other than the estate have an interest . . . ". Nationstar and Bank of America hold deeds of trust in the property with an "assignment of rents" provision. Recordation of an assignments of rents creates a present security interest; California Civil Code 2938(a),(b). Priority as between several mortgages holding assignments is established upon recordation date; Civil Code 2938(h).

Absent the consent of the secured party, the use of cash collateral is authorized only to the extent it is used to pay the actual and necessary expenses of operation. Matter of Plaza Family Partnership, 95 B.R. 166 (E.D. Calif. 1989); In re MadCat Two, Inc., 120 B.R. 990 (Bankr. E.D. Ark. 1990). The Trustee proposes to pay from the Cash Collateral the following expenses necessary to the operation of the Property: maintenance and repairs, utilities, insurance, taxes, and management fees.

Pursuant to Section 363(e) of the Bankruptcy Code, the Court may condition the use of property, including cash collateral, as necessary to provide adequate protection of an entity's interest in such cash collateral. Adequate protection is intended to accommodate for the risk of "decrease in the value of [the secured creditor's] interest in such property". A debtor has the burden of proof with respect to establishing the sufficiency of adequate protection.

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1 Generally, adequate protection is sought where the collateral is expected to depreciate
2 during the course of the bankruptcy, either through use or time; In re George Ruggiere Chrysler-
3 Plymouth, Inc., 727 F. 2d 1017, 1019 (11th Cir. 1984). The question of whether a secured
4 party's interest in collateral is adequately protected, by its nature, must be determined on a case-
5 by-case basis; In re Belco, Inc. 38 B.R. 525, 527 (Bankr. W.D. Okl. 1984).

6 To determine whether a secured party's interest in cash collateral is adequately protected
7 the court must determine (1) the value of the cash collateral, and (2) whether the proposed use of
8 the cash collateral threatens such value; George Ruggiere, 727 F. 2d at 1020; see also United
9 Savings Association of Texas v. Timbers of Innwood Forest Associates, 484 U.S. 365, 108 S. Ct.
10 626, 630 (1988). If the collateral in which the creditor has a security interest is worth less than
11 the amount owed to the creditor, the debtor must only provide adequate compensation to the
12 extent that the value of the collateral is decreasing; Timbers, 108 S. Ct. at 629; In re McCombs
13 Properties VI, Ltd., 88 B.R. 261, 266 (Bankr. C.D. Cal. 1988) (post-Timbers, adequate
14 protection must be provided if the value of the collateral is likely to diminish during the time the
15 cash collateral is used).

16 The Trustee does not believe based on its discussions with professionals that the
17 mortgagees' collateral is declining in value. If the Trustee is authorized to use Cash Collateral
18 and pay the expenses proposed in the Motion, the Trustee believes that the collection of rental
19 proceeds from the operations will be vastly improved when compared to the Debtor's
20 management, where rents have been collected for a lengthy period and mortgages have not been
21 paid.

22 The Trustee's purpose for requesting the use of the Cash Collateral is the preservation of
23 the Properties against any diminution in value. The right to use the Cash Collateral for this
24 purpose is well-recognized. See, e.g., In re Marion Street Partnership, 108 B.R. 218, 227
25 (Bankr. D. Minn. 1989) (allowed the debtor to use the cash collateral to pay the ordinary
26 expenses and management fees without requiring further adequate protection); In re Orlando
27 Trout Creek Ranch, 80 B.R. 190, 192 (Bankr. N.D. Cal. 1987) (adequate protection exists when
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1 the debtor uses cash collateral for its ordinary and necessary operating expenses so long as the
2 value of the underlying collateral is maintained); Stein v. United States Farmers Home Admin.
3 (In re Stein), 19 B.R. 458, 460 (Bankr. E.D. Pa. 1982) (use of cash collateral authorized despite
4 creditor being undersecured when such use was necessary to the continued operations of the
5 debtor); Hartigan v. Pine Lake Village Apartment Co. (In re Pine Lake Village Apartment Co.),
6 16 B.R. 750, 756 - 57 (Bankr. S.D. N.Y. 1982) (debtor permitted to use cash collateral generated
7 from rental income to enhance the value of real property which also secured creditor's claim).

8 The use of Cash Collateral pursuant to the terms set forth above is justified in these cases
9 because, absent the use of the Cash Collateral, the Properties will suffer immediate and
10 irreparable harm and the value of the Property will suffer, all to the injury of the estate's
11 creditors, including the mortgagees.

12 II.

13 THE TRUSTEE IS ENTITLED TO AN ORDER 14 AUTHORIZING OPERATION OF THE PROPERTY

15 A. The Court May Authorize Operation of the Rental Units

16 Bankruptcy Code Section 721 provides:

17 "The court may authorize the trustee to operate the business of the debtor for a limited
18 period, if such operation is in the best interest of the estate and consistent with the orderly
19 liquidation of the estate".

20 Continued operation may be authorized when it appears that the business could be sold as
21 a going concern for a better price than an ordinary liquidation would produce or when sudden
22 termination of a business would cause great hardship to innocent third parties as, for instance,
23 the patients in a nursing home. See 6 Lawrence King, Collier on Bankruptcy Sect. 721.01 at
24 721-2 (15th ed. 2008), citing In re Quarter Moon Livestock Co. Inc., 116 B.R. 775 (Bankr. D.
25 Idaho 1990). A trustee should operate a business for a short period of time when the trustee
26 believes that the business can be sold as an ongoing business for a substantially higher price than
27 if the business is closed down and the assets liquidated piecemeal or in bulk. See, Executive
28 Office for U.S. Trustees, U.S. Dep't of Justice, Handbook for Chapter 7 Trustee, 8-15 (2001,

1 with January 1, 2005 amendments). The Trustee can seek authority to operate the business while
2 the trustee attempted to dispose of it as a going concern. Id.

3 **B. Operation of the Rental Units is in the Best Interests of the Estate and**
4 **Consistent With the Orderly Liquidation of the Property**

5 As reflected in Collier's, going concern value and hardship to innocent third parties are
6 two factors for the Court to take into account in considering a best interest of the estate in
7 authorizing a trustee to operate a debtor's business under Section 721. As set forth in the
8 Sieveke Declaration, in this case both factors are present. First, continued operation of the rental
9 units is necessary for the Trustee to preserve the going concern value of the Property until it can
10 be sold. In general, occupied rental property has more sale value than rental properties that are
11 vacant and not producing income.

12 Second, denying the Trustee the authority to operate the rental units could cause great
13 hardship on the innocent third party tenants occupying the rental units who would have to
14 immediately move and find a new place to live. The well-being of the tenants and the conditions
15 of their rental units are of great concern to the Trustee, especially when the Debtor has
16 abandoned management. At this point, the Trustee needs a property manager placed in charge
17 immediately, to ensure that the units are being maintained, the landscaping maintained, and rents
18 collected. The Trustee must also obtain a policy of liability insurance (it appears that the lenders
19 have taken out "forced" insurance covering damage to the property). Finally, the Property
20 appears to have significant equity. As per the Declaration of Donald W. Sieveke, the Trustee
21 believes that the S. Fashion Park Property may contain as much as \$150,000. As such, operation
22 of the rental units is in the best interest of the Estate and consistent with the orderly liquidation
23 of the Estate.

24 Finally, continued operation of the rental units will allow the Trustee to enhance the
25 value of the Properties as well as generate funds in excess of the estimated operating expenses,
26 and will prevent harm to the innocent third party tenants, it is believed that no harm will come to
27 the Estate if the rental operations were to continue. Rather, the Estate and its creditors will
28 benefit. Since the Trustee anticipates it will take some time before being able to conclude a

1 sale, it is clear that he must operate the Properties in the interim to preserve their value. Thus,
2 good cause exists to grant the Motion and authorize the Trustee to operate the Properties.

3 **III.**

4 **THE TRUSTEE IS ENTITLED TO A TURNOVER ORDER
5 TO TAKE POSSESSION OF THE PROPERTY**

6 11 U.S.C. §542(a) provides: "Except as provided in subsection (c) or (d) of this section,
7 an entity, other than a custodian, in possession, custody, or control, during the case, of property
8 that the trustee may use, sell, or lease under section 363 of this title, or that the debtor may
9 exempt under section 522 of this title, shall deliver to the trustee, and account for, such property
10 or the value of such property, unless such property is of inconsequential value or benefit to the
11 estate".

12 Section 542(a) applies to the Debtor, since he is an "entity" under the definition of
13 Section 101(15). In order for Section 542(a) to apply, the property must be that which "the
14 trustee may use, sell, or lease under section 363", or that "the debtor may exempt". Under
15 Section 363(b), the only property that the Trustee may use, sell or lease is property of the estate.
16 Therefore, the Debtor is required to deliver to the Trustee property of the estate. Section 521(4)
17 also imposes the duty upon a debtor to "surrender to the trustee all property of the estate and any
18 recorded information, including books, documents, records, and papers, relating to property of
19 the estate . . . ". F.R.B.P. 7001(1) makes clear that an adversary proceeding is not required "to
20 compel the debtor to deliver property to the trustee . . .".

21 **IV.**

22 **CONCLUSION**

23 Based on the foregoing, the Trustee respectfully submits that good cause exists for
24 granting the Motion and respectfully requests that the Court enter an order as follows:

25 1. Authorizing the Trustee to use Cash Collateral in the form of rents, from the
26 Property, under the following terms and conditions:

- 27 (a) The Trustee shall collect and account for rents for the property;
28 (b) The Trustee may pay expenses consistent with a budget which will be

1 established as soon as its management professional can inspect the proeprty;

2 (c) any additional sums as agreed by the holder of the first and second
3 mortgage holders of the Property, or as further ordered by Court.

4 (d) The Trustee shall hold any residual rents pending further order of court.

5 (e) The Trustee may use the Cash Collateral under the above terms for a
6 period of one (1) year from entry of Order, or until the Trustee no longer operates the subject
7 property, whichever is less.

8 2. The Trustee is hereby authorized to take control and possession of the property
9 known as 563 S. Fashion Park Street, Orange.

10 3. The Trustee and his agents are further authorized to collect rents, execute lease
11 agreements, evict tenants pursuant to applicable state law, pay expenses for operating the
12 properties, including but not limited to property management, repairs, maintenance, utilities,
13 mortgages, real property taxes, and insurance.

14 4. The Trustee is further authorized to market the above premises for sale, subject to
15 further order of court.

16 5. The Trustee is authorized to continue the operation of the Properties for a period
17 of one (1) year from entry of this Order or until such time as the Trustee is able to secure an offer
18 to purchase the Properties and close the sale on the Properties, whichever is less.

19 6. The Debtor and her legal representatives and agents shall forthwith deliver to the
20 Trustee:

21 (a) All deposits collected for the Property;

22 (b) A copy of all leases executed for the Property;

23 (c) An Accounting of all rents collected for the Property since February 1,
24 2014 through the date of delivery;

25 (d) An accounting of each tenant's payment of rents, including the date and
26 amount of payment, and any arrears, from February 1, 2014 through date of delivery;

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1 (e) A copy of all insurance binders obtained for the Property since February
2 1, 2014 to the date of delivery;

3 (f) An accounting of all disbursements for the Property since February 1,
4 2014 to date of delivery;

5 (g) All keys to the Property;

6 (h) Copies of all agreements pertaining to the Property, including any laundry
7 equipment, service contracts, equipment rental contracts.

8 (i) Copies of all bank accounts in which rents for the Property have been
9 deposited since February 1, 2014 through date of delivery, and all cancelled checks;

10 (j) Copies of all checks written for payment of expenses pertaining to the
11 Property since February 1, 2014 through date of delivery;

12 (k) Rent ledgers for each tenant of the Property, from February 1, 2014 to date
13 of delivery.

14 (l) All rents paid to Debtor from February 1, 2014 to present date;

15 (m) A current list of all payables pertaining to the Property;

16 (n) copies of any credit card statements in which expenses pertaining to the
17 Property were paid.

18 7. For such other and further relief as the Court deems just and proper under the
19 circumstances of this case.

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/s/ Donald W. Sieveke

22 Dated: 10/23/2014

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Donald W. Sieveke, Attorney for
RICHARD A. MARSHACK, Chapter 7 Trustee

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