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10 UNITED STATES BANKRUPTCY COURT
 11 SOUTHERN DISTRICT OF CALIFORNIA

12 In re:

13 JUDITH JEAN HOFFMAN,
 14 Debtor.

Case No.: 13-05478-MM7

Adv. Proc. No.:

Chapter 7

COMPLAINT FOR

15 LESLIE T. GLADSTONE,
 16 Plaintiff,

17 v.

18 JUDITH JEAN HOFFMAN; ROBERT HOFFMAN;
 19 HOFFMAN PROPERTIES,
 20 Defendants.

- (1) **DECLARATORY RELIEF TO DETERMINE THE NATURE AND EXTENT OF PROPERTY OF THE ESTATE;**
- (2) **THE SALE OF THE ESTATE'S INTEREST IN THE AND THE INTEREST OF ANY CO-OWNER IN REAL PROPERTY;**
- (3) **TURNOVER OF REAL PROPERTY OF THE ESTATE;**
- (4) **TURNOVER OF PERSONAL PROPERTY OF THE ESTATE;**
- (5) **CONVERSION;**
- (6) **INJUNCTIVE RELIEF;**
- (7) **VIOLATION OF AUTOMATIC STAY.**

[11 U.S.C. §542; Fed. R. Bankr. P. 7065;
 Fed. R. Civ. P. 65; 11 U.S.C. §362]

Date: None set
 Time: None set
 Dept: Three
 Judge: Honorable Margaret M. Mann

21 Plaintiff LESLIE T. GLADSTONE, Trustee, alleges as follows:

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JURISDICTION

1. Jurisdiction of the United States District Court for the Southern District of California over the above-captioned adversary proceeding is founded on Title 28, §§1334(b) and (d), United States Code, in that this action arises in or is related to the above-captioned case under Chapter 7 of Title 11, United States Code. This proceeding is a “core proceeding,” which may be referred to the United States Bankruptcy Court pursuant to title 28, §157(b)(2), United States Code, in that it is a proceeding to preserve and recover property that the Trustee is informed and believes is property of the bankruptcy estate within the meaning of 28 U.S.C. §§157(b)(2)(A), (E), and (O). This action has been so referred by operation of General Order 312-D of the United States District Court, Southern District of California.

VENUE

2. Venue of this action is proper under Title 28, Section 1409, United States Code, in that this action arises in or relates to the above-captioned case under Chapter 7 of Title 11, United States Code, which case is now pending in the Southern District of California.

3. On or about May 24, 2013, the Debtor filed a petition for relief under Chapter 11 of the Bankruptcy Code in the above court, commencing bankruptcy case no. 13-05478-MM11.

4. On March 27, 2014 the Court ordered the Debtor’s Chapter 11 to be converted to Chapter 7 [Docket Entry No. 171].

PARTIES

5. Leslie T. Gladstone, Chapter 7 Trustee is the duly-appointed and qualified Trustee in the above-captioned case under chapter 7 of Title 11, United States Code (the “Trustee” and/or “Plaintiff”).

6. The Trustee is informed and believes and thereon alleges that Debtor, Judith Hoffman, (the “Debtor”) is an individual residing in the County of San Diego, California.

7. The Trustee is informed and believes and thereon alleges that Robert Hoffman, is an individual residing in the County of Phillips, Kansas.

1 on or about May 19, 2014 after the Trustee secured a temporary restraining order forcing Debtor to
2 stop spending the rental income.

3 17. The Trustee is informed and believes and thereon alleges that subsequent to the
4 purchase of the Alabama Property, Debtor and Robert Hoffman entered into a partnership agreement
5 on or about February 16, 1989, entitled Hoffman Properties (the "Partnership"). The Partnership
6 Agreement provides in pertinent part as follows:

7 The parties hereto have previously purchased certain real property located at 4032
8 Alabama Street, San Diego, California 92104. Title to said property was taken by the
9 parties as tenants-in-common. Notwithstanding the form of said title, the parties
10 intend and desire that such real property shall be considered and be treated as the
property of and as an asset of the Partnership. See Partnership Agreement, paragraph
1.2.

11 18. The Trustee is informed and believes and thereon alleges that pursuant to the
12 Partnership Agreement, the Debtor and Robert Hoffman transferred their interest to the Partnership
13 as of February 16, 1989. A true and correct copy of the partnership agreement dated February 16,
14 1989 is attached herewith as Exhibit 2 and incorporated by reference.

15 19. The Trustee is informed and believes and thereon alleges that the Alabama Property
16 is encumbered by a first deed of trust in favor of World Savings in the amount of five hundred forty
17 three thousand (\$543,000.00), which was recorded on January 30, 2006 as Document No. 2006-
18 0067646 in the official records of the San Diego County Recorder's Office (the "First Deed of
19 Trust"). A true and correct copy of said Deed of Trust is attached herewith as Exhibit 3 and
20 incorporated by reference.

21 20. The Trustee is informed and believes and thereon alleges that Robert Hoffman served
22 Debtor with a notice entitled Notice of Expulsion Of Partner And Dissolution Of Hoffman Properties
23 Partnership Dated October 28, 2009. Said Notice was delivered on October 30, 2009 to Debtor's
24 address of 2918 Marquette Street, San Diego California 92106. A true and correct copy of said
25 Notice is attached herewith as Exhibit 4 and incorporated by reference. In effect, Debtor was ejected
26 from the Partnership for failure to produce accounting on the Partnership. Moreover, Debtor, 341(a)
27 meeting of creditors of June 24, 2013, admitted to having been served with the Notice of Expulsion.

1 A true and correct copy of Kristin Mihelic Declaration is part of this Court's record [Docket Entry
2 No. 161]. A copy of said document is attached herewith as Exhibit 5 and incorporated by reference.

3 21. On her Schedule A, Real Property, the Debtor scheduled, among other things, the
4 Alabama Property as a co-owner of the Alabama Property. A true and correct copy of the Debtor's
5 Schedule A is attached herewith as Exhibit 6 and incorporated by reference. Moreover, in her
6 Declaration regarding the Motion for Insider Compensation, Debtor states, "I own a 50% share of
7 the Property [sic], and I own this share in my individual capacity in a tenancy in common . . .the
8 Partnership does not own the property, or any percentage or interest in the Property." A true and
9 correct copy of the Motion for Insider Compensation, Supplemental Declaration of Judith Hoffman,
10 and paragraph 7 is attached herewith as Exhibit 6 and incorporated by reference.

11 22. The Debtor subsequently amended Schedule A, Real Property, on April 18, 2014 and
12 delete her co-owned interest in the Alabama Property. A true and correct copy of the Debtor's
13 Amended Schedule A is attached herewith as Exhibit 8 and incorporated by reference.

14 23. The Debtor proceeded to amend Schedule B, Personal Property, and Schedule C,
15 Property Claimed As Exempt, on May 20, 2014, and claimed exempt the cash amount in Debtor's
16 possession of \$14,927.00. A true and correct copy of the Debtor's Amended Schedule B and C is
17 attached herewith as Exhibit 9 and 10 and incorporated by reference. However, the Debtor's
18 amended schedules are devoid as to any claim of ownership interest on the funds in the Debtor's
19 possession and any basis for the entitlement to exemption.

20 24. At the May 7, 2014 341(a) meeting of creditors, the Debtor admitted that she does not
21 have other sources of income, other than the rental income derived from the Alabama Property.

22 25. At the May 7, 2014 341(a) meeting of creditors, the Debtor admitted, she had
23 collected April 2014 rent and May 2014.

24 26. At the May 7, 2014 341(a) meeting of creditors, the Debtor admitted to having spent
25 the amount of at least \$11,710.00 held in the debtor in possession bank account(s) at the time of
26 conversion on March 27, 2014.

27 27. At the May 7, 2014 341(a) meeting of creditors, the Debtor admitted having utilized
28 the Alabama Property rental income to pay personal expenses.

1 A true and correct copy of Kristin Mihelic Declaration is part of this Court's record [Docket Entry
2 No. 161]. A copy of said document is attached herewith as Exhibit 5 and incorporated by reference.

3 21. On her Schedule A, Real Property, the Debtor scheduled, among other things, the
4 Alabama Property as a co-owner of the Alabama Property. A true and correct copy of the Debtor's
5 Schedule A is attached herewith as Exhibit 6 and incorporated by reference. Moreover, in her
6 Declaration regarding the Motion for Insider Compensation, Debtor states, "I own a 50% share of
7 the Property [sic], and I own this share in my individual capacity in a tenancy in common . . . the
8 Partnership does not own the property, or any percentage or interest in the Property." A true and
9 correct copy of the Motion for Insider Compensation, Supplemental Declaration of Judith Hoffman,
10 and paragraph 7 is attached herewith as Exhibit 6 and incorporated by reference.

11 22. The Debtor subsequently amended Schedule A, Real Property, on April 18, 2014 and
12 delete her co-owned interest in the Alabama Property. A true and correct copy of the Debtor's
13 Amended Schedule A is attached herewith as Exhibit 8 and incorporated by reference.

14 23. The Debtor proceeded to amend Schedule B, Personal Property, and Schedule C,
15 Property Claimed As Exempt, on May 20, 2014, and claimed exempt the cash amount in Debtor's
16 possession of \$14,927.00. A true and correct copy of the Debtor's Amended Schedule B and C is
17 attached herewith as Exhibit 9 and 10 and incorporated by reference. However, the Debtor's
18 amended schedules are devoid as to any claim of ownership interest on the funds in the Debtor's
19 possession and any basis for the entitlement to exemption.

20 24. At the May 7, 2014 341(a) meeting of creditors, the Debtor admitted that she does not
21 have other sources of income, other than the rental income derived from the Alabama Property.

22 25. At the May 7, 2014 341(a) meeting of creditors, the Debtor admitted, she had
23 collected April 2014 rent and May 2014.

24 26. At the May 7, 2014 341(a) meeting of creditors, the Debtor admitted to having spent
25 the amount of at least \$11,710.00 held in the debtor in possession bank account(s) at the time of
26 conversion on March 27, 2014.

27 27. At the May 7, 2014 341(a) meeting of creditors, the Debtor admitted having utilized
28 the Alabama Property rental income to pay personal expenses.

HP

1 determine both the Plaintiff's and the Defendants' respective rights in the Alabama Property and the
2 Partnership.

3 **SECOND CLAIM FOR RELIEF**

4 **[Sale of the Estate's Interest and the Interest of Any Co-Owner in Real Property Against ALL**
5 **Defendants]**

6 35. Plaintiff realleges and incorporates by reference the allegations contained in
7 paragraphs 1 through 34, as though fully set forth herein.

8 36. In the event, the Court finds that the Alabama Property is not owned by the
9 Partnership, but rather as tenants in common, Plaintiff desires to sell the Debtor's Chapter 7
10 Bankruptcy Estate's interest and the interest of any co-owner in real property, in this case, Robert
11 Hoffman.

12 37. Pursuant to section 363(h) of the Bankruptcy Code, the Plaintiff may sell both the
13 Estate's interest and the interest of any co-owner in property in which the debtor had, at the time of
14 commencement of the case, and undivided interest as a tenant in common, joint tenant, or tenant by
15 the entirety, only if:

16 a. partition in kind of such property among the estate and such co-owners is
17 impracticable;

18 b. sale of the estate's undivided interest in such property would realize significantly
19 less for the estate than sale of such property free of interests of such co-owners;

20 c. the benefit of the estate of a sale of such property free of the interests of co-owners
21 outweighs the detriment, if any to co-owners; and

22 d. such property is not used in the production, transmission, or distribution, for sale, of
23 electric energy or of natural or synthetic gas for heat, light or power.

24 38. Debtor and Robert Hoffman hold record title to the Alabama Property as tenants in
25 common; however, Debtor and Robert Hoffman transferred their interest to Debtor and Robert
26 Hoffman transferred their interest to the Partnership as of February 16, 1989.

27 39. The Debtor's interest in the Partnership is property of the Estate.

28 40. The Defendants are co-owners of the Alabama Property.

HP

1 49. By this complaint, Plaintiff demands that the Defendants turnover all of their rights,
2 title, and interests in the Alabama Property, if the Court finds that the Alabama Property is not
3 owned by the Partnership, but rather as tenants in common.

4 **FOURTH CLAIM FOR RELIEF**

5 **[For Turnover of Personal Property Against Defendant Debtor]**

6 50. Plaintiff realleges and incorporates by reference the allegations contained in
7 paragraphs 1 through 49, as though fully set forth herein.

8 51. Plaintiff is informed and believes and thereupon alleges, the Debtor has attempted to
9 claim exempt the cash amount in Debtor's possession of \$14,927.00; however, Plaintiff is informed
10 and believes that these are funds derived from the Alabama Property that belong to the Partnership.

11 52. Plaintiff is informed and believes and thereupon alleges, that Debtor has spent these
12 funds for her personal use. At the May 7, 2014 341(a) meeting of creditors, the Debtor admitted that
13 she does not have other sources of income, other than the rental income derived from the Alabama
14 Property.

15 53. Plaintiff is informed and believes and thereupon alleges, the Debtor, has spent the
16 amount of at least \$11,710.00 held in the debtor in possession bank account(s) at the time of
17 conversion on March 27, 2014; however, Plaintiff is informed and believes that these are funds
18 derived from the Alabama Property that belong to the Partnership.

19 54. Plaintiff is informed and believes and thereupon alleges that said income is property
20 Alabama Property which is owned by the Partnership which is part of the estate within the meaning
21 of 11 U.S.C. section 541.

22 55. Plaintiff is informed and believes and thereupon alleges that Debtor is required to
23 deliver to the Trustee the amount of not less than \$26,637.00, minus the amount of \$244.66, which
24 the Debtor turned over to the Trustee on May 23, 2014.

25 **FIFTH CLAIM FOR RELIEF**

26 **[For Conversion of Personal Property Against Defendant Debtor]**

27 56. Plaintiff realleges and incorporates by reference the allegations contained in
28 paragraphs 1 through 55, as though fully set forth herein.

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(ii) Modifying, altering, transferring, moving or destroying all or any part of the books and records and any and all electronic data compilations and-or computer-stored, produced, or received information including, but not limited to, computer input data, computer output data, magnetic tapes, computer cards and tapes, computer runs and stored information concerning or relating to the Alabama Property; and

(iii) Doing any act which will, or which will tend to, impair, defeat, divert, prevent or prejudice the preservation of the rental income derived from the Alabama Property; and

(iv) Destroying, concealing, transferring, or failing to preserve any document which evidences, reflects, or pertains to Debtor's disposition of income derived from the Alabama Property.

62. Plaintiff is informed and believes and thereupon alleges that this bankruptcy estate has no adequate remedy at law as the acts complained of and the resulting harm cannot be compensated monetarily. If Debtor is not prevented from taking the acts described above, the bankruptcy estate will suffer irreparable damage.

63. Plaintiff is informed and believes and thereupon alleges that this injunctive relief is necessary until the Court can make a determination of this action.

64. Plaintiff requests injunctive relief preventing Debtor from doing the acts set forth above, pending further order and/or judgment from this Court.

SEVENTH CLAIM FOR RELIEF

[Willful Violation of the Automatic Stay—11 U.S.C. §362(a)(3) & (k)(1) Against Defendant Debtor]

65. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 64, as though fully set forth herein.

66. Plaintiff is informed and believes and thereupon alleges that the rental income derived from the Alabama Property belongs to the Partnership, which is property of the estate.

1 67. Plaintiff is informed and believes and thereupon alleges that Defendant Debtor is in
2 possession of and is exercising control over the rental income in violation of the automatic stay
3 under 11 U.S.C. §362(a)(3).

4 68. Plaintiff has informed Defendant Debtor that the rental income is property of the
5 estate.

6 69. Plaintiff has made demands on Defendant Debtor to turn over the rental income to
7 the estate.

8 70. Notwithstanding the Plaintiff's demand, Defendant Debtor has refused and failed,
9 and continue to refuse and fail to turn over the rental income to the Trustee.

10 71. Plaintiff is informed and believes and thereupon alleges that Defendant Debtor's
11 refusal and failure to turn over the rental income to the estate as requested by the Trustee is willful.

12 72. Plaintiff is informed and believes and thereupon alleges that the estate has been
13 injured by Defendant Debtor's willful violation of the automatic stay in an amount to be proven at
14 trial.

15 73. Plaintiff is informed and believes and thereupon alleges that the Plaintiff is entitled
16 to an award of actual damages, including attorney's fees and costs, and punitive damages under 11
17 U.S.C. §363(k)(1) for Defendant Debtor's willful violation of the automatic stay.

18 WHEREFORE, Plaintiff requests for judgment as follows:

19 FIRST CLAIM FOR RELIEF

- 20 1. Declaring that the Alabama Property is property of the Partnership.
21 2. Declaring that the Partnership is property of the estate subject to the administration
22 by the Plaintiff.

23 SECOND CLAIM FOR RELIEF

- 24 1. Authorizing Plaintiff to sell the Property and its interest and the interest of Robert
25 Hoffman, if any, pursuant to 11 U.S.C. section 363(h);
26 2. Permitting Robert Hoffman, if he is found to have an interest in the Alabama
27 Property, to purchase the Property at the price at which such sale is to be consummated prior to the
28 consummation of such sale pursuant to 11 U.S.C. section 363(i);

1 3. For the costs and expenses of the sale, including attorneys' fees, and the cost of suit
2 incurred herein, to be paid from the proceeds of the sale of the Alabama Property prior to the
3 distribution of sale proceeds pursuant to 11 U.S.C. section 363(j); and

4 4. For such other and further relief as is just and appropriate.

5 THIRD CLAIM FOR RELIEF

6 1. That judgment be entered requiring the Defendants to turnover all of their rights,
7 title, and interests in the Alabama Property.

8 FOURTH CLAIM FOR RELIEF

9 1. For a declaration and determination that the funds in the Debtor's possession in the
10 amount of at least \$26,637.00, minus the amount of \$244.66, which the Debtor turned over to the
11 Trustee on May 23, 2014, are property of the estate.

12 2. For an order compelling Debtor to transfer any and all said funds in her possession,
13 custody or control to the Trustee.

14 FIFTH CLAIM FOR RELIEF

15 1. For a declaration and determination that Debtor converted funds belonging to the
16 Partnership in an amount to be proven at trial.

17 SIXTH CLAIM FOR RELIEF

18 1. A preliminary injunction with the terms set forth above.

19 SEVENTH CLAIM FOR RELIEF

20 2. For an order finding Debtor in willful violation of the automatic stay.

21 3. For actual damages, including but not limited to, attorneys' fees and costs in an
22 amount to be proven at trial.

23 4. For punitive damages.

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ALL CLAIMS FOR RELIEF

1. For reasonable attorney's fees incurred in connection with this action, to the extent recoverable;
2. For costs and expenses of suit; and
3. For such other and further relief as the Court deems just and proper.

Dated: June 3, 2014

FINANCIAL LAW GROUP

By: /s/ Maria J. Nunez
Maria J. Nunez
Attorneys for Leslie T. Gladstone,
Chapter 7 Trustee