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Electronically Filed On: April 20, 2020

6 *Counsel for Shelley D. Krohn, Chapter 7 Trustee*

7
8 **UNITED STATES BANKRUPTCY COURT**
9 **DISTRICT OF NEVADA**

10 In re:
11 AMERI-DREAM REALTY, LLC,
12 Debtor.

Case No. BK-S-15-10110-GS
Chapter 7

**TRUSTEE’S FIRST OMNIBUS
OBJECTION TO PROOFS OF CLAIM
PURSUANT TO 11 U.S.C. § 502(b)(1) AND
FEDERAL RULE OF BANKRUPTCY
PROCEDURE 3007—CLAIM NUMBERS
33-1, 52-2, 53-1, 62-1, 71-2, 76-1, 79-1, 95-1,
135-1, 148-1, 150-2, 151-2, 206-1, 218-1, 345-
1, 494-1, 505-1, 506-1, 509-1, 550-1, 551-1,
15 552-1, 553-1, 554-1, 559-1, 611-1, 652-1, 661-
1, 668-1, 830-1, 842-1, 844-1, 845-1, 853-1,
16 858-1, 907-1, AND 917-1 BASED ON
17 IMPROPER ASSERTION OF A
18 PRIORITY CLAIM FOR UNPAID REAL
19 ESTATE COMMISSIONS**

Date of Hearing: May 22, 2020
Time of Hearing: 9:30 a.m.
Place: Courtroom No. To Be Determined
Foley Federal Building
300 Las Vegas Blvd., S.
Las Vegas, NV 89101

Judge: Honorable Gary Spraker¹

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26 ¹ Unless otherwise indicated, all chapter and section references are to the Bankruptcy Code, 11
27 U.S.C. §§ 101-1532, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037. The
28 Federal Rules of Civil Procedure will be referred to as “FRCP” and the Federal Rules of
Bankruptcy Procedure will be referred to as “FRBP.” The Local Rules of Practice for the United
States Bankruptcy Court for the District of Nevada shall be referred to as the “Local Rules”.

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1 Shelley D. Krohn (the “Trustee”), the duly appointed Chapter 7 Trustee in the above-
2 captioned bankruptcy case, by and through her counsel of record, Jacob L. Houmand, Esq. and
3 Bradley G. Sims, Esq. of the Houmand Law Firm, Ltd., hereby submits the *Trustee’s First*
4 *Omnibus Objection To Proofs Of Claim Pursuant To 11 U.S.C. § 502(B)(1) And Federal Rule Of*
5 *Bankruptcy Procedure 3007—Claim Numbers 33-1, 52-2, 53-1, 62-1, 71-2, 76-1, 79-1, 95-1, 135-*
6 *1, 148-1, 150-2, 151-2, 206-1, 218-1, 345-1, 494-1, 505-1, 506-1, 509-1, 550-1, 551-1, 552-1,*
7 *553-1, 554-1, 559-1, 611-1, 652-1, 661-1, 668-1, 830-1, 842-1, 844-1, 845-1, 853-1, 858-1, 907-*
8 *1, And 917-1 Based On Improper Assertion Of A Priority Claim For Unpaid Real Estate*
9 *Commissions* (the “Objection”). The Objection is based on the following Memorandum of Points
10 and Authorities and the *Declaration of Shelley D. Krohn In Support of Trustee’s First Omnibus*
11 *Objection To Proofs Of Claim Pursuant To 11 U.S.C. § 502(B)(1) And Federal Rule Of*
12 *Bankruptcy Procedure 3007—Claim Numbers 33-1, 52-2, 53-1, 62-1, 71-2, 76-1, 79-1, 95-1, 135-*
13 *1, 148-1, 150-2, 151-2, 206-1, 218-1, 345-1, 494-1, 505-1, 506-1, 509-1, 550-1, 551-1, 552-1,*
14 *553-1, 554-1, 559-1, 611-1, 652-1, 661-1, 668-1, 830-1, 842-1, 844-1, 845-1, 853-1, 858-1, 907-*
15 *1, And 917-1 Based On Improper Assertion Of A Priority Claim For Unpaid Real Estate*
16 *Commissions* (the “Trustee Declaration”), which is filed separately and concurrently with this
17 Court pursuant to Local Rule 9014(c)(2). The Objection is also based on the pleadings and papers
18 on file herein, and any argument that may be entertained at the hearing on the Objection.²

19 **In accordance with FRBP 3007(e)(1), the Trustee directs all claimants receiving this**
20 **objection to locate their names and claims in this objection.**

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27 ² The Trustee also requests that the Court take judicial notice of all pleadings filed in the above-
28 referenced bankruptcy case, including adversary proceedings, pursuant to Federal Rule of Evidence 201, incorporated by reference by FRBP 9017.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This Omnibus Objection relates to a series of claims that assert priority under Section 507(a)(4) for unpaid commissions for the sale of real estate. These claims are not entitled to priority pursuant to 11 U.S.C. § 507(a)(4) as they do not relate to the “sale of goods or services” as required by statute. For this reason, the Trustee seeks an order finding that these claims are not entitled to priority under Section 507(a)(4).

II. JURISDICTION AND VENUE

This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1134. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). Venue before this Court is appropriate under 28 U.S.C. §§ 1408 and 1409. This matter constitutes a core proceeding under 28 U.S.C. § 157(b)(2). Pursuant to Local Rule 9014.2, if the Court determines that absent consent of the parties the Court cannot enter final orders or judgment regarding the Objection consistent with Article III of the United States Constitution, the Firm consents to entry of final orders and judgment by this Court. The statutory basis for the relief sought herein are Section 502(b)(1) and FRBP 3007.

II. CLAIMS OBJECTED TO IN THIS OMNIBUS OBJECTION

In accordance with FRBP 3007(e)(2) and (3) the following proofs of claim are objected to herein:

Claimant	Proof of Claim No.	Grounds for objection ³
Atwood, Adrienne	559-1	Claim improperly asserts a priority claim for unpaid wages/commission pursuant to Section 507(a)(4). <i>See</i> p. 14-16.
Brown, Mark	76-1	Claim improperly asserts a priority claim for unpaid wages/commission pursuant to Section

³ Unless otherwise stated, page references are to the page within this Objection stating the legal argument for the objection.

1			507(a)(4). <i>See</i> p. 14-16.
2	Chan, Ivy	554-1	Claim improperly asserts a priority claim for
3			unpaid wages/commission pursuant to Section
4			507(a)(4). <i>See</i> p. 14-16.
5	Chang, Kevin	830-1	Claim improperly asserts a priority claim for
6			unpaid wages/commission pursuant to Section
7			507(a)(4). <i>See</i> p. 14-16.
8	Chang, Kevin	842-1	Claim improperly asserts a priority claim for
9			unpaid wages/commission pursuant to Section
10			507(a)(4). <i>See</i> p. 14-16.
11	Chen, Feng (Grace	844-1	Claim improperly asserts a priority claim for
12	Chen, LLC)		unpaid wages/commission pursuant to Section
13			507(a)(4). <i>See</i> p. 14-16.
14	Chen, Hsiu Hui	218-1	Claim improperly asserts a priority claim for
15			unpaid wages/commission pursuant to Section
16			507(a)(4). <i>See</i> p. 14-16.
17	Chen, Rong (AKA	845-1	Claim improperly asserts a priority claim for
18	Kathy Chen)		unpaid wages/commission pursuant to Section
19			507(a)(4). <i>See</i> p. 14-16.
20	Chung, Joan	853-1	Claim improperly asserts a priority claim for
21			unpaid wages/commission pursuant to Section
22			507(a)(4). <i>See</i> p. 14-16.
23	Chung, Joan	858-1	Claim improperly asserts a priority claim for
24			unpaid wages/commission pursuant to Section
25			507(a)(4). <i>See</i> p. 14-16.
26	Cin, Zion	150-2	Claim improperly asserts a priority claim for
27			unpaid wages/commission pursuant to Section
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1			507(a)(4). <i>See</i> p. 14-16.
2	Cin, Zion	151-2	Claim improperly asserts a priority claim for
3			unpaid wages/commission pursuant to Section
4			507(a)(4). <i>See</i> p. 14-16.
5	Cinquegrani, Branden	62-1	Claim improperly asserts a priority claim for
6	C.		unpaid wages/commission pursuant to Section
7			507(a)(4). <i>See</i> p. 14-16.
8	Clapp, Lerma	505-1	Claim improperly asserts a secured claim and a
9			priority claim for unpaid wages/commission
10			pursuant to Section 507(a)(4). <i>See</i> p. 14-16.
11	Cruz, Edgardo	509-1	Unpaid Real Estate Commission. Creditor is
12			claiming a priority based upon the fact that the
13			transaction closed after the bankruptcy case was
14			filed. <i>See</i> p. 14-16.
15	Cruz, Edgardo	611-1	Unpaid Real Estate Commission. Claimant is
16			scheduling a priority based upon the section
17			titled "other", but he does not state a reason for
18			the priority. <i>See</i> p. 14-16.
19	Fang, Jeff Z.	52-2	Claim improperly asserts a priority claim for
20			unpaid wages/commission pursuant to Section
21			507(a)(4). <i>See</i> p. 14-16.
22	Fang, Jeff Z.	53-1	Claim improperly asserts a priority claim for
23			unpaid wages/commission pursuant to Section
24			507(a)(4). <i>See</i> p. 14-16.
25	Flores, Sandra	551-1	Claim improperly asserts a priority claim for
26			unpaid wages/commission pursuant to Section
27			507(a)(4). <i>See</i> p. 14-16.
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1	Flores, Sandra	552-1	Claim improperly asserts a priority claim for
2			unpaid wages/commission pursuant to Section
3			507(a)(4). <i>See</i> p. 14-16.
4	Flores, Sandra	553-1	Claim improperly asserts a priority claim for
5			unpaid wages/commission pursuant to Section
6			507(a)(4). <i>See</i> p. 14-16.
7	Kallfelz, Lance	907-1	Claim improperly asserts a priority claim for
8			unpaid wages/commission pursuant to Section
9			507(a)(4). <i>See</i> p. 14-16.
10	Kordick, Thomas	95-1	Claim improperly asserts a priority claim for
11			unpaid wages/commission pursuant to Section
12			507(a)(4). <i>See</i> p. 14-16.
13	Lam, Chi Kin (Freddie)	71-2	Claim improperly asserts a secured claim and a
14			priority claim for unpaid wages/commission
15			pursuant to Section 507(a)(4). <i>See</i> p. 14-16.
16	Lay, Elly	494-1	Claim improperly asserts a priority claim for
17			unpaid wages/commission pursuant to Section
18			507(a)(4). <i>See</i> p. 14-16.
19	Li, Lan	135-1	Claim improperly asserts a priority claim for
20			unpaid wages/commission pursuant to Section
21			507(a)(4). <i>See</i> p. 14-16.
22	Loh, Georgiana	206-1	Claim improperly asserts a priority claim for
23			unpaid wages/commission pursuant to Section
24			507(a)(4). <i>See</i> p. 14-16.
25	Malasarte, Elvie	661-1	Unpaid Real Estate Commissions. Claimant is
26			claiming a priority based upon the fact that the
27			transaction closed after the bankruptcy case was
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1			filed. <i>See</i> p. 14-16.
2	Ochoa, Felipe	148-1	Unpaid Real Estate Commissions. Creditor is
3			claiming a priority under Section 507. Creditor
4			has listed the priority under other, stating
5			“contract signed after bankruptcy was filed.”
6			<i>See</i> p. 14-16.
7	Palaez, M. Esperanza	917-1	Claim improperly asserts a priority claim for
8			unpaid wages/commission pursuant to Section
9			507(a)(4). <i>See</i> p. 14-16.
10	Poon, Phillip	79-1	Claim improperly asserts a priority claim for
11			unpaid wages/commission pursuant to Section
12			507(a)(4). <i>See</i> p. 14-16.
13	Real Estate by Design,	33-1	Claim improperly asserts a priority claim for
14	LLC.		unpaid wages/commission pursuant to Section
15			507(a)(4). <i>See</i> p. 14-16.
16	Whisenhunt, Maria	652-1	Claim improperly asserts a priority claim for
17	Theresa		unpaid wages/commission pursuant to Section
18			507(a)(4). <i>See</i> p. 14-16.
19	Xie, Beth	550-1	Claim improperly asserts a priority claim for
20			unpaid wages/commission pursuant to Section
21			507(a)(4). <i>See</i> p. 14-16.
22	Yao, Yung-Gi	668-1	Claim improperly asserts a priority claim for
23			unpaid wages/commission pursuant to Section
24			507(a)(4). <i>See</i> p. 14-16.
25	Zhang, Esperanza Zhiyi	345-1	Unpaid Real Estate Commission. Creditor is
26			claiming a priority, but does not specify the
27			sub-section. <i>See</i> p. 14-16.
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1 2 3 4	Zhao, Xia (Jean) 506-1	Unpaid Real Estate Commission. Creditor is claiming a priority based upon the fact that the transaction closed after the bankruptcy case was filed. <i>See</i> p. 14-16.
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III. STATEMENT OF FACTS

1. On January 9, 2015 (the “Petition Date”), the Debtor filed a voluntary bankruptcy pursuant to Chapter 7 of Title 11 of the United States Code [ECF No. 1]⁴. *See* Trustee Declaration.

2. On January 9, 2015, Victoria L. Nelson (“Trustee Nelson”) was appointed as the Chapter 7 Trustee in the Debtor’s bankruptcy case [ECF No. 4]. *See* Trustee Declaration.

3. On January 28, 2015, the Court entered an *Amended Notice of Chapter 7 Bankruptcy Case* [ECF No. 12] that established May 14, 2015, as the deadline for creditors to file proofs of claim. *See* Trustee Declaration.

4. On February 9, 2015, Trustee Nelson filed an *Application for Order Authorizing Employment of the Garden City Group, LLC As Claims and Noticing Agent* [ECF No. 88]. *See* Trustee Declaration.

5. On February 27, 2015, the Court entered an *Order Granting Application for Order Authorizing Employment of the Garden City Group, LLC As Claims and Noticing Agent* [ECF No. 128]. *See* Trustee Declaration.

6. Since its employment, GCG has been maintaining the Proofs of Claim that have been submitted by creditors. *See* Trustee Declaration.

7. On January 13, 2018, Trustee Nelson died. *See* Trustee Declaration.

8. On January 19, 2018, the Trustee was appointed as the successor Chapter 7 Trustee in the Debtor’s bankruptcy case. *See* Trustee Declaration.

9. On February 17, 2015, Real Estate by Design, LLC filed a timely claim claiming

⁴ All references to “ECF No.” are to the numbers assigned to the documents filed in the case as they appear on the docket maintained by the clerk of the court.

1 priority under 11 U.S.C. § 507(a)(4) in the amount of \$250.00. Pursuant to LR 3007(a)(4), a true
2 and correct copy of the first page of Claim 33-1 is attached hereto as **Exhibit “1”**.

3 10. On March 6, 2015, Chi Kin (Freddie) Lam filed a claim claiming both a secured
4 claim and a priority under 11 U.S.C. § 507(a)(4) in the amount of \$2,525.00. An amended claim
5 was filed on October 20, 2015, which continued to assert both a secured and priority claim in the
6 amount of \$2,525.00. Pursuant to LR 3007(a)(4), a true and correct copy of the first page of
7 Claim 71-2 is attached hereto as **Exhibit “2”**.

8 11. On March 10, 2015, Mark Brown filed a claim claiming priority under 11 U.S.C. §
9 507(a)(4) in the amount of \$1,408.00. Pursuant to LR 3007(a)(4), a true and correct copy of the
10 first page of Claim 76-1 is attached hereto as **Exhibit “3”**.

11 12. On March 11, 2015, Phillip Poon filed a claim claiming priority under 11 U.S.C. §
12 507(a)(4) in the amount of \$2,300.00. Pursuant to LR 3007(a)(4), a true and correct copy of the
13 first page of Claim 79-1 is attached hereto as **Exhibit “4”**.

14 13. On March 19, 2015, Thomas Kordick filed a claim claiming priority under 11
15 U.S.C. § 507(a)(4) in the amount of \$6,875.00. Pursuant to LR 3007(a)(4), a true and correct copy
16 of the first page of Claim 95-1 is attached hereto as **Exhibit “5”**.

17 14. On April 7, 2015, Lan Li filed a claim claiming priority under 11 U.S.C. §
18 507(a)(4) in the amount of \$5,128.00. Pursuant to LR 3007(a)(4), a true and correct copy of the
19 first page of Claim 135-1 is attached hereto as **Exhibit “6”**.

20 15. On April 10, 2015, Felipe Ochoa filed a claim claiming priority under 11 U.S.C. §
21 507(a)(4) in the amount of \$5,093.00. Pursuant to LR 3007(a)(4), a true and correct copy of the
22 first page of Claim 148-1 is attached hereto as **Exhibit “7”**.

23 16. On April 10, 2015, Zion Cin filed a claim claiming priority under 11 U.S.C. §
24 507(a)(4) in the amount of \$5,860.00. On April 24, 2015, Zion Cin filed an amended claim again
25 asserting a priority claim in the amount of \$5,860.00 under 11 U.S.C. § 507(a)(4). Pursuant to LR
26 3007(a)(4), a true and correct copy of the first page of Claim 150-2 is attached hereto as **Exhibit**
27 **“8”**.

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1 17. On April 10, 2015, Zion Cin filed a claim claiming priority under 11 U.S.C. §
2 507(a)(4) in the amount of \$4,425.00. On April 24, 2015, Zion Cin filed an amended claim again
3 asserting a priority claim in the amount of \$4,425.00 under 11 U.S.C. § 507(a)(4). Pursuant to LR
4 3007(a)(4), a true and correct copy of the first page of Claim 151-2 is attached hereto as **Exhibit**
5 **“9”**.

6 18. On April 22, 2015, Georgiana Loh filed a claim claiming priority under 11 U.S.C.
7 § 507(a)(4) in the amount of \$642.78. Pursuant to LR 3007(a)(4), a true and correct copy of the
8 first page of Claim 206-1 is attached hereto as **Exhibit “10”**.

9 19. On April 24, 2015, Hsiu Hui Chen filed a claim claiming priority under 11 U.S.C.
10 § 507(a)(4) in the amount of \$489.76. Pursuant to LR 3007(a)(4), a true and correct copy of the
11 first page of Claim 218-1 is attached hereto as **Exhibit “11”**.

12 20. On April 27, 2015, Jeff Z. Fang filed a claim claiming priority under 11 U.S.C. §
13 507(a)(4) in the amount of \$6,000.00. Pursuant to LR 3007(a)(4), a true and correct copy of the
14 first page of Claim 53-1 is attached hereto as **Exhibit “12”**.

15 21. On May 7, 2015, Zhiyi Zhang, LLC filed a claim claiming priority in the amount
16 of \$13,199.97.00 for real estate commissions, with no indication as to the basis for the priority of
17 the claim. Pursuant to LR 3007(a)(4), a true and correct copy of the first page of Claim 345-1 is
18 attached hereto as **Exhibit “13”**.

19 22. On May 8, 2015, Elly Lay filed a claim claiming priority under 11 U.S.C. §
20 507(a)(4) in the amount of \$6,300.00. Pursuant to LR 3007(a)(4), a true and correct copy of the
21 first page of Claim 494-1 is attached hereto as **Exhibit “14”**.

22 23. On May 8, 2015, Lerma Clapp filed a claim claiming both a secured claim and a
23 priority claim under an unspecified section of 11 U.S.C. § 507(a) in the amount of \$7,350.00.
24 Pursuant to LR 3007(a)(4), a true and correct copy of the first page of Claim 505-1 is attached
25 hereto as **Exhibit “15”**.

26 24. On May 9, 2015, Xia (Jean) Zhao filed a claim claiming priority under an
27 unspecified section of 11 U.S.C. § 507(a) in the amount of \$4,805.00. Pursuant to LR 3007(a)(4),
28 a true and correct copy of the first page of Claim 506-1 is attached hereto as **Exhibit “16”**.

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1 25. On May 11, 2015, Edgardo Cruz filed a claim claiming priority under an
2 unspecified section of 11 U.S.C. § 507(a) in the amount of \$6,929.70. Pursuant to LR 3007(a)(4),
3 a true and correct copy of the first page of Claim 509-1 is attached hereto as **Exhibit “17”**.

4 26. On May 11, 2015, Beth Xie filed a claim claiming priority under 11 U.S.C. §
5 507(a)(4) in the amount of \$5,550.00. Pursuant to LR 3007(a)(4), a true and correct copy of the
6 first page of Claim 550-1 is attached hereto as **Exhibit “18”**.

7 27. On May 11, 2015, Sandra Flores filed a claim claiming priority under 11 U.S.C. §
8 507(a)(4) in the amount of \$3,715.00. Pursuant to LR 3007(a)(4), a true and correct copy of the
9 first page of Claim 551-1 is attached hereto as **Exhibit “19”**.

10 28. On May 11, 2015, Sandra Flores filed a claim claiming priority under 11 U.S.C. §
11 507(a)(4) in the amount of \$3,490.00. Pursuant to LR 3007(a)(4), a true and correct copy of the
12 first page of Claim 552-1 is attached hereto as **Exhibit “20”**.

13 29. On May 11, 2015, Sandra Flores filed a claim claiming priority under 11 U.S.C. §
14 507(a)(4) in the amount of \$2,845.00. Pursuant to LR 3007(a)(4), a true and correct copy of the
15 first page of Claim 553-1 is attached hereto as **Exhibit “21”**.

16 30. On May 11, 2015, Ivy Chan filed a claim claiming priority under 11 U.S.C. §
17 507(a)(4) in the amount of \$10,405.00. Pursuant to LR 3007(a)(4), a true and correct copy of the
18 first page of Claim 554-1 is attached hereto as **Exhibit “22”**.

19 31. On May 11, 2015, Adrienne Atwood filed a claim claiming priority under 11
20 U.S.C. § 507(a)(4) in the amount of \$7,180.00. Pursuant to LR 3007(a)(4), a true and correct copy
21 of the first page of Claim 559-1 is attached hereto as **Exhibit “23”**.

22 32. On May 11, 2015, Edgardo Cruz filed a claim claiming priority under an
23 unspecified section of 11 U.S.C. § 507(a) in the amount of \$4,709.85. Pursuant to LR 3007(a)(4),
24 a true and correct copy of the first page of Claim 611-1 is attached hereto as **Exhibit “24”**.

25 33. On May 11, 2015, Maria Theresa Whisenhunt filed a claim claiming priority under
26 11 U.S.C. § 507(a)(4) in the amount of \$5,855.00. Pursuant to LR 3007(a)(4), a true and correct
27 copy of the first page of Claim 652-1 is attached hereto as **Exhibit “25”**.

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1 34. On May 12, 2015, Jeff Z. Fang filed a claim claiming priority under 11 U.S.C. §
2 507(a)(4) in the amount of \$3,200.00. Pursuant to LR 3007(a)(4), a true and correct copy of the
3 first page of Claim 52-2 is attached hereto as **Exhibit “26”**.

4 35. On May 12, 2015, Elvie Malasarte filed a claim claiming priority under an
5 unspecified section of 11 U.S.C. § 507(a) in the amount of \$4,380.00. Pursuant to LR 3007(a)(4),
6 a true and correct copy of the first page of Claim 661-1 is attached hereto as **Exhibit “27”**.

7 36. On May 12, 2015, Yung-Gi Yao filed a claim claiming priority under 11 U.S.C. §
8 507(a)(4) in the amount of \$9,987.00. Pursuant to LR 3007(a)(4), a true and correct copy of the
9 first page of Claim 668-1 is attached hereto as **Exhibit “28”**.

10 37. On May 14, 2020, Branden C. Cinquegrani filed a claim claiming priority under 11
11 U.S.C. § 507(a)(4) in the amount of \$10,905.00. Pursuant to LR 3007(a)(4), a true and correct
12 copy of the first page of Claim 62-1 is attached hereto as **Exhibit “29”**.

13 38. On May 14, 2015, Kevin Chang filed a claim claiming priority under 11 U.S.C. §
14 507(a)(4) in the amount of \$4,230.00. Pursuant to LR 3007(a)(4), a true and correct copy of the
15 first page of 830-1 is attached hereto as **Exhibit “30”**.

16 39. On May 14, 2015, Kevin Chang filed a claim claiming priority under 11 U.S.C. §
17 507(a)(4) in the amount of \$3,450.00. Pursuant to LR 3007(a)(4), a true and correct copy of the
18 first page of Claim 842-1 is attached hereto as **Exhibit “31”**.

19 40. On May 14, 2015, Feng Chen (Grace Chen, LLC) filed a claim claiming priority
20 under 11 U.S.C. § 507(a)(4) in the amount of \$9,898.34. Pursuant to LR 3007(a)(4), a true and
21 correct copy of the first page of Claim 844-1 is attached hereto as **Exhibit “32”**.

22 41. On May 14, 2015, Rong Chen (AKA Kathy Chen) filed a claim claiming priority
23 under 11 U.S.C. § 507(a)(4) in the amount of \$3,434.40. Pursuant to LR 3007(a)(4), a true and
24 correct copy of the first page of Claim 845-1 is attached hereto as **Exhibit “33”**.

25 42. On May 14, 2015, Joan Chung filed a claim claiming priority under 11 U.S.C. §
26 507(a)(4) in the amount of \$5,263.00. Pursuant to LR 3007(a)(4), a true and correct copy of the
27 first page of Claim 853-1 is attached hereto as **Exhibit “34”**.

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1 43. On May 14, 2015, Joan Chung filed a claim claiming priority under 11 U.S.C. §
2 507(a)(4) in the amount of \$1,909.70. Pursuant to LR 3007(a)(4), a true and correct copy of the
3 first page of Claim 858-1 is attached hereto as **Exhibit “35”**.

4 44. On May 14, 2015, Lance Kallfelz filed a claim claiming priority under 11 U.S.C. §
5 507(a)(4) in the amount of \$12,475.00. Pursuant to LR 3007(a)(4), a true and correct copy of the
6 first page of Claim 907-1 is attached hereto as **Exhibit “36”**.

7 45. On May 14, 2015, M. Esperanza Palaez filed a claim claiming priority under 11
8 U.S.C. § 507(a)(4) in the amount of \$4,992.99. Pursuant to LR 3007(a)(4), a true and correct copy
9 of the first page of Claim 917-1 is attached hereto as **Exhibit “37”**.

10 46. On February 10, 2020, the Court entered an *Order Granting Ex Parte Motion to*
11 *Permit the Joinder of Objections to Proofs of Claim Pursuant to Federal Rule of Bankruptcy*
12 *Procedure 3007(c)* (the “Joinder Order”) [ECF No. 306].

13 47. The Joinder Order allows the Trustee to object to multiple proofs of claim in a
14 single objection when the legal theory underpinning the objection is identical.

15 48. The Trustee now seeks an order finding that Claims 33-1, 52-2, 53-1, 62-1, 71-2,
16 76-1, 79-1, 95-1, 135-1, 148-1, 150-2, 151-2, 206-1, 218-1, 345-1, 494-1, 505-1, 506-1, 509-1,
17 550-1, 551-1, 552-1, 553-1, 554-1, 559-1, 611-1, 652-1, 661-1, 668-1, 830-1, 842-1, 844-1, 845-
18 1, 853-1, 858-1, 907-1, and 917-1 are not entitled to priority under Section 507(a)(4), and
19 reclassifying these claims as general unsecured claims.

20 **IV. LEGAL ARGUMENT**

21 **A. The Standard for Disallowance of Proofs of Claim**

22 Pursuant to section 502, a filed proof of claim is deemed allowed, unless a party in interest
23 objects thereto. *See* 11 U.S.C. § 502(a). The United States Court of Appeals for the Ninth Circuit
24 has described the obligations of a creditor in establishing their claim and the burdens relating to
25 proofs of claim objections:

26 Inasmuch as Rule 3001(f) and section 502(a) provide that a claim or
27 interest as to which proof is filed is "deemed allowed," the burden
28 of initially going forward with the evidence as to the validity and
the amount of the claim is that of the objector to that claim. In short,
the allegations of the proof of claim are taken as true. **If those**

1 **allegations set forth all the necessary facts to establish a claim**
 2 **and are not self-contradictory, they prima facie establish the**
 3 **claim.** Should objection be taken, the objector is then called upon to
 4 produce evidence and show facts tending to defeat the claim by
 5 probative force equal to that of the allegations of the proofs of claim
 themselves. But **the ultimate burden of persuasion is always on**
 the claimant. Thus, it may be said that the proof of claim is some
 evidence as to its validity and amount.

6 *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991) (quoting 3 L. King, COLLIER ON
 7 BANKRUPTCY § 502.02, at 502-22 (15th ed. 1991)) (emphasis removed) (emphasis added); *see*
 8 *also Lundell v. Anchor Constr. Specialists, Inc.*, 223 F.3d 1035, 1040 (9th Cir. 2000) (holding that
 9 the bankruptcy court correctly understood that the ultimate burden of persuasion was on the
 10 creditor); *Spencer v. Pugh (In re Pugh)*, 157 B.R. 898, 901 (B.A.P. 9th Cir. 1993) (holding
 11 claimant bears ultimate burden of persuasion as to validity and amount of the claim by a
 12 preponderance of the evidence). Accordingly, to be entitled to prima facie validity of a claim, a
 13 proof of claim must set forth all necessary facts to establish the claim. *Wright*, 931 F.2d at 623.
 14 Furthermore, the ultimate burden is always on the claimant, and a claim must be denied if the
 15 claimant cannot carry this burden after an objection showing facts tending to defeat the claim. *Id.*
 16 If the objector produces sufficient evidence to negate one or more of the sworn facts in the proof
 17 of claim, the burden reverts to the claimant to prove the validity of the claim by a preponderance
 18 of the evidence. *See Lundell*, 223 F.3d at 1039 (citations omitted).

19 In accordance with Section 502(b), the validity and amount of the claim shall be
 20 determined as of the date of the filing of the bankruptcy petition. Section 502(b)(1) requires
 21 disallowance of a claim if “such claim is unenforceable against the debtor and property of the
 22 debtor, under any agreement or applicable law for a reason other than because such claim is
 23 contingent or unmatured . . .” 11 U.S.C. § 502(b)(1). The “applicable law” referenced in Section
 24 502(b)(1) includes bankruptcy law as well as other federal and state laws. A trustee is therefore
 25 allowed to raise any federal or state law defenses to a claim. *See In re G.I. Indus., Inc.*, 204 F.3d
 26 1276, 1281 (9th Cir. 2000) (stating that a claim cannot be allowed under Section 502(b)(1) if it is
 27 unenforceable under nonbankruptcy law); *Johnson v. Righetti*, 756 F.2d 738, 741 (9th Cir. 1985)
 28 (finding that the validity of the claim may be determined under state law); *In re Eastview Estates*

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1 *II*, 713 F.2d 443, 447 (9th Cir. 1983) (applying California law).

2 **B. The Claims in Question Are Not Entitled to Priority Under Section 507(a)(4)**

3 Section 507(a)(4) states:

4 (a) The following expenses and claims have priority in the
5 following order:

6 *****

7 (4) Fourth, allowed unsecured claims, but only to the extent
8 of \$10,000 for each individual or corporation, as the case
9 may be, earned within 180 days before the date of the filing
10 of the petition or the date of the cessation of the debtor’s
11 business, whichever occurs first, for—

12 (A) wages, salaries, or commissions, including
13 vacation, severance, and sick leave pay earned
14 by an individual; or

15 (B) sales commissions earned by an individual or by
16 a corporation with only 1 employee, acting as an
17 independent contractor in the sale of goods or
18 services for the debtor in the ordinary course of the
19 debtor’s business if, and only if, during the 12
20 months preceding that date, at least 75 percent of
21 the amount that the individual or corporation earned
22 by acting as an independent contractor in the sale of
23 goods or services was earned from the debtor.

24 Section 507(a)(4) gives priority in distribution to claims of employees of the debtor for
25 prepetition wages, salaries and commissions under subsection (a)(4)(A), and claims of certain
26 independent contractors for prepetition commissions earned from the debtor under subsection
27 (a)(4)(B). 11 U.S.C. § 507(a)(4). Courts have held that priority status under Section 507(a)(4)(A)
28 is accorded only to employees and that independent contractors must meet the requirements under
Section 507(a)(4)(B) to receive a priority claim.

For an independent contractor commissions to qualify for the priority, “the independent
contractor must have been acting as such for the debtor with regard to the sale of goods or
services in the ordinary course of the debtor’s business. In addition, during the twelve months
preceding the earlier of the date of the filing of the petition or the cessation of the debtor’s
business, the independent contractor must have earned from the debtor at least 75 percent of the

1 total amount earned by such independent contractor from the sale of goods or services.” 4 Collier
2 On Bankruptcy ¶ 507.06[3][b] (Alan N. Resnick & Henry J. Sommer, eds., 16th ed.).

3 Section 507(a)(4)(B)⁵ contemplates sales commissions earned by sales representatives of a
4 debtor. *See In re W. Wayne Transp., Inc.*, No. 00–10028C–7G, 2001 WL 1699665, *2 (Bankr.
5 M.D.N.C. Oct.5, 2001) (stating that the priority is for sales commissions earned from the sale of
6 good or services “on behalf of a debtor”); Bankruptcy Reform Act of 1994, Pub.L. No. 103–394,
7 sec. 207 (entitled “Priority for Independent Sales Representative”).

8 The term “goods” is not defined in the Bankruptcy Code. *See* 4 Collier On Bankruptcy, ¶
9 503.16[1] (Alan N. Resnick & Henry J. Sommer eds, 16th ed.). However, the definition of
10 “goods” used in the Uniform Commercial Code (“UCC”) has been adopted by most courts.
11 Under Nevada Law, “[g]oods” means all things (including specially manufactured goods) which
12 are movable at the time of identification to the contract for sale other than the money in which the
13 price is to be paid, investment securities (Article 8) and things in action. ‘Goods’ also includes the
14 unborn young of animals and growing crops and other identified things attached to realty as
15 described in the section on goods to be severed from realty. N.R.S. § 104.2107. Thus, it appears
16 that commission earned by the sale of real estate, not a good, would be excluded from
17 Section 507(a)(4)(B).

18 The claims in question all originate from independent contractors for commissions relating
19 to the sale of real estate. Pursuant to 11 U.S.C. § 507(a)(4), an independent contractor is entitled
20 to commissions *only* for the sale of goods or services. Because real estate is neither a good, nor a
21 service, the claims in question are not entitled to priority treatment under 11 U.S.C. § 507(a)(4).
22 Accordingly, these claims should be reclassified as general unsecured claims.

23 **V. CONCLUSION**

24 For the foregoing reasons, the Trustee respectfully requests that the Court enter an order
25 (i) sustaining the Objections to claim numbers 33-1, 52-2, 53-1, 62-1, 71-2, 76-1, 79-1, 95-1, 135-
26 1, 148-1, 150-2, 151-2, 206-1, 218-1, 345-1, 494-1, 505-1, 506-1, 509-1, 550-1, 551-1, 552-1,

27
28 ⁵ The wage priority provision was previously found in § 507(a)(3). That subsection was renumbered as § 507(a)(4) in 2005. *See* Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109–8, § 212.

1 553-1, 554-1, 559-1, 611-1, 652-1, 661-1, 668-1, 830-1, 842-1, 844-1, 845-1, 853-1, 858-1, 907-
2 1, And 917-1 and reclassify these claims as general unsecured claims; (ii) for such other and
3 further relief as is just and proper.

4 Dated this 20th day of April, 2020.

5 **HOUMAND LAW FIRM, LTD.**

6
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