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**UNITED STATES BANKRUPTCY COURT**

**DISTRICT OF NEVADA**

In re:  
AMERI-DREAM REALTY, LLC,  
  
Debtor.

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

**TRUSTEE’S OBJECTION TO PROOF OF  
CLAIM 98-1 PURSUANT TO 11 U.S.C. §  
502(b)(1) AND FEDERAL RULE OF  
BANKRUPTCY PROCEDURE 3007**

Date of Hearing: October 1, 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 Spraker <sup>1</sup>

Shelley D. Krohn (the “Trustee”), the duly appointed Chapter 7 Trustee in the above-captioned bankruptcy case, by and through her counsel of record, Jacob L. Houmand, Esq. and Bradley G. Sims, Esq. of the Houmand Law Firm, Ltd., hereby submits the *Trustee’s Objection To Proof Of Claim 98-1 Pursuant To 11 U.S.C. § 502(B)(1) And Federal Rule Of Bankruptcy Procedure 3007* (the “Objection”).

<sup>1</sup> Unless otherwise indicated, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037. The 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 The Objection is based on the following Memorandum of Points and Authorities and the  
2 *Declaration of Shelley D. Krohn In Support of Trustee’s Objection To Proof Of Claim 98-1*  
3 *Pursuant To 11 U.S.C. § 502(B)(1) And Federal Rule Of Bankruptcy Procedure 3007* (the  
4 “Trustee Declaration”), which is filed separately and concurrently with this Court pursuant to  
5 Local Rule 9014(c)(2). The Objection is also based on the pleadings and papers on file herein,  
6 and any argument that may be entertained at the hearing on the Objection.<sup>2</sup>

7 **MEMORANDUM OF POINTS AND AUTHORITIES**

8 **I. INTRODUCTION**

9 This Objection relates to a claim that has improperly asserted a secured claim. The Trustee  
10 seeks an order disallowing the secured portion of the claim.

11 **II. JURISDICTION AND VENUE**

12 This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1134. This  
13 is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). Venue before this Court is appropriate  
14 under 28 U.S.C. §§ 1408 and 1409. This matter constitutes a core proceeding under 28 U.S.C. §  
15 157(b)(2). Pursuant to Local Rule 9014.2, if the Court determines that absent consent of the  
16 parties the Court cannot enter final orders or judgment regarding the Objection consistent with  
17 Article III of the United States Constitution, the Firm consents to entry of final orders and  
18 judgment by this Court. The statutory basis for the relief sought herein are Section 502(b)(1) and  
19 FRBP 3007.

20 **III. STATEMENT OF FACTS**

21 1. On January 9, 2015 (the “Petition Date”), Ameri-Dream Realty, LLC (the  
22 “Debtor”) filed a voluntary bankruptcy pursuant to Chapter 7 of Title 11 of the United States  
23 Code [ECF No. 1]<sup>3</sup>.

24 \_\_\_\_\_  
25 <sup>2</sup> The Trustee also requests that the Court take judicial notice of all pleadings filed in the above-  
26 referenced bankruptcy case, including adversary proceedings, pursuant to Federal Rule of  
27 Evidence 201, incorporated by reference by FRBP 9017.

28 <sup>3</sup> 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.

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1 the amount of the claim is that of the objector to that claim. In short,  
 2 the allegations of the proof of claim are taken as true. **If those**  
 3 **allegations set forth all the necessary facts to establish a claim**  
 4 **and are not self-contradictory, they prima facie establish the**  
 5 **claim.** Should objection be taken, the objector is then called upon to  
 6 produce evidence and show facts tending to defeat the claim by  
 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.

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

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

(finding that the validity of the claim may be determined under state law); *In re Eastview Estates II*, 713 F.2d 443, 447 (9th Cir. 1983) (applying California law).

**B. The Claim in Question is Not Properly Secured.**

FRBP 3001(c)(1) requires that a claim based on a writing must attach a copy of that writing to the claim. Failure to provide appropriate documentation of a claim excludes the claim from prima facie validity under FRBP 3001(f). Moreover, any party asserting a secured proof of claim must provide documentation of that security interest and perfection thereof. In this case, the proof of claim in question asserts a secured claim in a security deposits with no evidence of a secured interest therein. Accordingly, the secured portion of this claim should be disallowed. The Trustee has no objection to the remaining priority claim.

**V. CONCLUSION**

For the foregoing reasons, the Trustee respectfully requests that the Court enter an order: (i) sustaining the Objections to claim number 98-1 and disallow the secured portion of the claim; and (ii) for such other and further relief as is just and proper.

Dated this 18th day of August, 2020.

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