

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



NOT FOR PUBLICATION
UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re:
PEOPLE WHO CARE YOUTH CENTER,
INC.,

Debtor.

PEOPLE WHO CARE YOUTH CENTER,
INC.,

Plaintiff.

v.
AMMEC, INC., and GRETA CURTIS,

Defendants.

Case No. 2:18-bk-10290-RK
Chapter 11
Adv. No. 2:18-ap-01139-RK

**BANKRUPTCY COURT’S PROPOSED
FINDINGS OF FACT AND
CONCLUSIONS OF FACT AFTER TRIAL
OF PLAINTIFF’S AMENDED
COMPLAINT**

Trial Dates
January 28 and February 18 and 19,
2021, June 29 and 30, 2022, and June
16, 2023

TO THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, AND THE PARTIES TO THIS ADVERSARY PROCEEDING, PLAINTIFF PEOPLE WHO CARE YOUTH CENTER, INC., DEFENDANTS AMMEC, INC, AND GRETA CURTIS, AND THEIR COUNSEL OF RECORD.

Pursuant to Federal Rules of Bankruptcy Procedure 7052 and 9033, the undersigned United States Bankruptcy Judge on behalf of the United States Bankruptcy

1 Court for the Central District of California after the trial of Plaintiff's First Cause of Action
2 for Slander of Title in this adversary proceeding hereby issues the following proposed
3 findings of fact and conclusions of law regarding Plaintiff's Amended Complaint
4 containing its First, Second, Third and Fourth Causes of Action for consideration by the
5 United States District Court for the Central District of California.

6 Plaintiff's First Cause of Action for Slander of Title is a claim that arises under
7 nonbankruptcy California state law, and the Bankruptcy Court lacks authority to enter a
8 final judgment on such claim absent the consent of all parties, which has not been given.
9 *See Stern v. Marshall*, 564 U.S. 462 (2011).

10 When the trial of adversary proceeding was commenced, Plaintiff's First Cause of
11 Action for Slander of Title was the sole remaining claim in this adversary proceeding
12 which has not been adjudicated by the Bankruptcy Court. Previously, the Bankruptcy
13 Court adjudicated the other claims in this adversary proceeding on Plaintiff's motion for
14 summary adjudication, determining that those other claims arose under bankruptcy law,
15 and the Bankruptcy Court had authority to enter a final judgment on such claims.
16 However, in light of subsequent, intervening Ninth Circuit case law, the Bankruptcy Court
17 on its own motion reconsidered and modified its order on partial summary adjudication,
18 vacating its judgments in favor of Plaintiff on its third cause of action for lien avoidance
19 and its fourth cause of action for declaratory relief regarding lien avoidance. The
20 Bankruptcy Court's prior ruling granting partial summary adjudication on Plaintiff's second
21 cause of action for claim disallowance and on its fourth cause of action for declaratory
22 relief regarding claim disallowance remains in effect.

23 The Bankruptcy Court previously determined that Plaintiff's Second Cause of
24 Action for Disallowance of Claim, its Third Cause of Action for Avoidance of Lien and its
25 Fourth Cause of Action regarding Disallowance of Claim and Avoidance of Lien are
26 claims that arise under the Bankruptcy Code, and the Bankruptcy Court has authority to
27 enter a final judgment on such claims absent the consent of the parties. Since the
28 Bankruptcy Court's prior ruling on Plaintiff's Second Cause of Action for Disallowance of

1 Claim and Fourth Cause of Action as to Disallowance of Claim still stands, the
2 Bankruptcy Court having jurisdiction to enter a final judgment on these claims will enter a
3 final judgment as to these claims by a separate order and judgment. However, since the
4 Bankruptcy Court has reconsidered and vacated its grant of partial summary adjudication
5 on Plaintiff's Third Cause of Action for Avoidance of Lien and Fourth Cause of Action as
6 to Avoidance of Lien, the Bankruptcy Court has instead finds that the resolution of these
7 two claims depends on the same factual determinations as the First Cause of Action for
8 Slander of Title and concludes that the resolution of these two claims along with the First
9 Cause of Action should be determined by the District Court upon the following proposed
10 findings of fact and conclusions of law.

11 **I. INTRODUCTION**

12 1. On January 28, 2021, February 18 and 19, 2021, on June 29 and 30, 2022,
13 and June 16, 2023, the Bankruptcy Court conducted a trial on the Amended Complaint
14 [Adversary Proceeding Docket No. 44] in this adversary proceeding¹ filed by Plaintiff
15 People Who Care Youth Center, Inc. ("Plaintiff" or "Debtor") against Ammec, Inc.
16 ("Ammec" or "Defendant") and Greta Curtis ("Curtis" or "Defendant") (Ammec and Curtis,
17 collectively, "Defendants"). The trial focused on the First Cause of Action of the
18 Amended Complaint for Slander of Title. However, the trial addresses the remaining
19 unadjudicated causes of action after the Bankruptcy Court's modification of its order
20 granting partial summary adjudication in favor of Plaintiff, which set aside the granting of
21 partial summary adjudication in favor of Plaintiff on the Third Cause of Action for Lien
22 Avoidance and the Fourth Cause of Action for Declaratory Relief as to Lien Avoidance.

23 _____
24 ¹ On May 8, 2018, Plaintiff People Who Care Youth Center, Inc. filed an adversary
25 complaint against Defendants Greta Curtis and Ammec, Inc. for: (1) Slander of Title; (2)
26 Disallowance of Claim [11 U.S.C. § 502(b)]; (3) Avoidance of Lien; [FRBP 7001]; (4)
27 Declaratory relief; (5) Punitive Damages; and (6) Attorneys' Fees and Costs. Adversary
28 Proceeding Docket No. 1. On October 26, 2018, Plaintiff filed its Amended Complaint
with the same headings, but omitted certain material attached to the original complaint
which had been stricken by order of the bankruptcy Code. Adversary Proceeding Docket
No. 44. The proposed findings of fact and conclusions of law herein only relate to the first
claim for relief of Slander of Title in the Amended Complaint.

1 The court's granting of partial summary adjudication in favor of Plaintiff on the Second
2 Cause of Action for Claim Disallowance and the Fourth Cause of Action for Declaratory
3 Relief remains in effect.

4 2. The Bankruptcy Court received into evidence the trial declaration of witness
5 Eric Radley [Adversary Proceeding Docket No. 171], subject to the Bankruptcy Court's
6 rulings on evidentiary objections [Adversary Proceeding Docket No. 173], and heard his
7 testimony on cross-examination and re-direct examination at trial.

8 3. The Bankruptcy Court received into evidence the trial declaration of witness
9 Barrington Radley, also known as "Ronnie" [Adversary Proceeding Docket No. 170],
10 subject to the Bankruptcy Court's rulings on evidentiary objections [Adversary Proceeding
11 Docket No. 174], and heard his testimony on cross-examination and re-direct
12 examination at trial.

13 4. The Bankruptcy Court received into evidence the trial declaration of witness
14 Michelle McArn (McArn) [Adversary Proceeding Docket No. 172], subject to the
15 Bankruptcy Court's rulings on evidentiary objections [Adversary Proceeding Docket No.
16 175], and heard her testimony on cross-examination and re-direct examination at trial.

17 5. The Bankruptcy Court received into evidence the trial declaration of witness
18 Greta Curtis (Curtis) [Adversary Proceeding Docket No. 204], subject to the Bankruptcy
19 Court's rulings on evidentiary objections [Adversary Proceeding Docket No. 205], and
20 heard her testimony on cross-examination and re-direct examination at trial.

21 6. The Bankruptcy Court received into evidence the trial declaration of witness
22 Sherman Lee (Lee) [Adversary Proceeding Docket No. 167], subject to the Bankruptcy
23 Court's rulings on evidentiary objections [Adversary Proceeding Docket No. 195], and
24 heard his testimony on cross-examination and re-direct examination at trial.

25 7. The Bankruptcy Court heard direct testimony of the subpoenaed third-party
26 witness Rudy Trabanino at trial, and Defendants did not cross-examine him.

27 8. The following exhibits from the *Amended Joint Pre-trial Stipulation as*
28 *Modified at the Hearing on Joint Pre-trial Conference; Order thereon (JPTS)*[Adversary

1 Proceeding Docket No. 162] were admitted into evidence, 2/19/21 Trial Transcript at
2 205:10-12:²

Exhibit	JPTS ¶ No.	Plaintiff's Exhibit No.	Defendants' Exhibit No.
Recorded notice of Disputed Mechanic's Lien.	74, 81, 87	P-1	D-1
Email from Habitat for Humanity with attached Habitat for Humanity Monthly Total Sales Receipts for September, October, November 2017	75	P-2	N/A
One photograph of Habitat Restore pink "pull tag receipt" ticket	76, 83, 89	P-3	D-3
Two photographs of lumber purportedly at Habitat for Humanity	77	P-4	N/A
Nine photographs of lumber purportedly at Debtor's Property	78, 84, 90	P-5	D-4
Text Messages from Michelle McArn	79	P-7	D-6
Text Messages from Eric Radley	80	P-6	D-7
Appraisal of the 1500 W. Slauson Avenue, Los Angeles, CA building	82, 88	N/A	D-2
Habitat Restore "pink" pull tag hold ticket	83	P-3	D-3
Two photographs of Curtis's lumber inside 1500 W. Slauson Avenue, L.A., CA building before being affixed to the second story of the building	84, 91	See P-4	D-5
Pleading filed by Sherman Lee in the involuntary bankruptcy case of <i>In re Ammec, Inc.</i> , case number 1:16-bk-10598-MB (Bankr. C.D. Cal.) [Docket No. 142]	N/A	P-8	N/A

25 ² Citation to the trial transcripts in this adversary proceeding are in the format of
26 "[Month/Day/Year] Trial Transcript at [Page:Line-Line]" or, if the citation continues onto
27 a different page "[Page:Line- Page:Line]." Pages cited are the page numbers of the
28 transcripts, not the court's docket entry bates stamp page numbers. The parties in their
papers refer to the Trial Transcripts as "Hr Tr" (Hearing Transcript). The Bankruptcy
Court prefers not to use this abbreviation for the sake of clarity.

1	Deposition Transcript of Greta Curtis on March 25, 2019	N/A	P-10	N/A
---	---	-----	------	-----

2
3
4 9. The Bankruptcy Court also heard the trial testimony of John-Patrick M. Fritz
5 regarding Plaintiff's claim of attorneys' fees and litigation costs as pecuniary damages on
6 its slander of title cause of action and received into evidence his declarations in support
7 of Plaintiff's first and second motions for attorneys' fees and costs and the reply to
8 Defendants' opposition to Plaintiff's second motion for attorneys' fees and costs and the
9 exhibits attached thereto which set forth the billing entries for the claimed fees and the
10 breakdown of costs, and the reformatted records of attorneys' fees [Adversary
11 Proceeding Docket Nos. 146, 221, 273 and 275].

12 10. Upon consideration of all evidence and argument presented at trial, and
13 upon those matters that the Bankruptcy Court may take judicial notice³ pursuant to
14 Federal Rule of Evidence 201, and upon those findings of facts and conclusions of law
15 established in the JPTS, and after due deliberation and good cause appearing therefor,
16 and pursuant to Rule 52 of the Federal Rules of Civil Procedure, as incorporated by
17 Rules 7052 and 9033 of the Federal Rules of Bankruptcy Procedure, the Bankruptcy
18 Court issues the following proposed findings of fact and conclusions of law.

19 **II. JURISDICTION**

20 11. The Bankruptcy Court has jurisdiction over this adversary proceeding
21 pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper before the Bankruptcy Court
22 pursuant to 28 U.S.C. §§ 1408 and 1409. The claims of the adversary proceeding are
23 core proceedings pursuant to 28 U.S.C. § 157(b)(2)(O), except for Plaintiff's first cause of
24 action for slander of title which is a noncore proceeding arising under nonbankruptcy
25 California state law, absent the consent of all parties, which has not been given. See

26 ³ Plaintiff separately and concurrently filed its request for judicial notice ("RJN") with
27 the proposed findings and conclusions. Declaration of John-Patrick M. Fritz in Support of
28 Request for Judicial Notice in Support of Plaintiff's Proposed Findings of Fact and
Conclusions of Law After Trial [Adversary Proceeding Docket No. 219].

1 Defendants Greta Curtis and Ammec, Inc.'s Proposed Findings of Fact and Conclusion[s]
2 of Law in Support of First Cause of Action for Slander of Title in the Amended Complaint
3 Following Trial (Defendants' Proposed Findings) at 2 [Adversary Proceeding Docket No.
4 269] ("Defendants do not dispute the court[']s jurisdiction over the adversary proceeding
5 but they do take issue with the Bankruptcy Court entering a judgment in this matter and
6 respectfully requested the Bankruptcy Court to refer the matter to the District Court for a
7 final judgment.").

8 12. On December 22, 2022, the Bankruptcy Court issued an Order Requesting
9 Statements Regarding Scope of Referral to United States District Court Pursuant to
10 Federal Rule of Bankruptcy Procedure 9033 [Adversary Proceeding Docket No. 314] in
11 order for the parties to address the Bankruptcy Court's ability to enter a final judgment in
12 this adversary proceeding. In response to the Bankruptcy Court's order, Plaintiff and
13 Defendants filed responses [Adversary Proceeding Docket Nos. 316 and 317], on
14 January 6, 2023. Having considered the responses, the Bankruptcy Court rules as
15 follows.

16 13. Defendants expressly declined to consent to the Bankruptcy Court entering
17 final judgment in this adversary proceeding as indicated in the joint status report filed on
18 January 15, 2019 [Adversary Proceeding Docket No. 63] and in their proposed findings of
19 fact and conclusions of law after trial [Adversary Proceeding Docket No. 269]. Based on
20 Defendants' responses, they still do not consent to the Bankruptcy Court entering a final
21 judgment in this adversary proceeding. Since the slander of title claim is a noncore claim
22 arising under state law (that is, a claim being noncore does not involve a substantive right
23 arising under federal bankruptcy law), and subject to the Supreme Court's decision in
24 *Stern v. Marshall*, 564 U.S. 462 (2011), holding that an Article III tribunal (that is, the
25 United States District Court) is required to enter final judgment on a noncore claim, such
26 as Plaintiff's slander of title claim, the Bankruptcy Court as an Article I tribunal lacks
27 authority to enter final judgment on such a claim. The Bankruptcy Court may try such a
28 claim, but must submit proposed findings of fact and conclusions of law to the United
States District Court for de novo review pursuant to Federal Rule of Bankruptcy

1 Procedure 9033. 28 U.S.C. § 157(c)(1) and (2). *See also, Executive Benefits Insurance*
2 *Agency v. Arkison*, 573 U.S. 25 (2014). Accordingly, the Bankruptcy Court is issuing
3 these proposed findings of fact and conclusions of law on Plaintiff's first cause of action
4 for slander of title for de novo review by the United States District Court pursuant to
5 Federal Rule of Bankruptcy Procedure 9033.

6 14. Plaintiff asserts that it largely agrees with the Bankruptcy Court's stated
7 position, but argues that Defendants have consented to the Bankruptcy Court's authority
8 to enter a final judgment on all causes of action based on their conduct after the filing of
9 the January 15, 2019 joint status report indicating their lack of consent to Bankruptcy
10 Court authority. Plaintiff contends that Defendants filed a motion for summary judgment
11 [Adversary Proceeding Docket No. 69] where they asked for final judgment, and
12 therefore, Defendants consented to the jurisdiction of the bankruptcy court to adjudicate
13 non-core, related proceedings despite self-serving and one-sided assertions of non-
14 consent. *See Wellness International Network, Ltd. v. Sharif*, 575 U.S. 665, 682-683
15 (2015). In the conclusion portion of Defendants' motion for summary judgment, they
16 argued that the Bankruptcy Court lacked jurisdiction to disallow their lien claim because
17 they did not file a proof of claim in the underlying bankruptcy case. Adversary
18 Proceeding Docket No. 69, 8:26-27. This was not an affirmative indication that
19 Defendants were consenting to Bankruptcy Court jurisdiction in this adversary
20 proceeding, though as previously discussed, while Defendants sought a favorable ruling
21 from the Bankruptcy Court on their summary judgment motion in asking that the
22 Bankruptcy Court grant summary judgment in their favor, technically speaking, they
23 should have requested that the Bankruptcy Court issue a report and recommendation to
24 the District Court that their summary judgment motion be granted and that the District
25 Court enter a final judgment on their motion. While this oversight is probably explained
26 by Defendants' lack of understanding of Bankruptcy Court jurisdiction, it does not
27 definitively indicate that they consented to Bankruptcy Court jurisdiction to enter a final
28 judgment.

15. Regarding the other claims in Plaintiff's adversary complaint, although the

1 Bankruptcy Court previously granted partial summary adjudication on those claims, the
2 Bankruptcy Court did not enter a final judgment on those claims pursuant to Federal Rule
3 of Bankruptcy Procedure 7054, making Federal Rule of Civil Procedure 54(b) applicable.
4 A final judgment can be entered only when all the claims in the adversary proceeding are
5 adjudicated, including the first cause of action for slander of title to be finally adjudicated
6 by the United States District Court pursuant to Federal Rule of Bankruptcy Procedure
7 9033. Subsequently, after trial, the Bankruptcy Court modified its ruling on Plaintiff's
8 motion for partial summary adjudication and vacated the granting of partial summary
9 adjudication in favor of Plaintiff on the Third Cause of Action for Lien Avoidance and the
10 Fourth Cause of Action for Declaratory Relief as to Lien Avoidance.

11 16. The Bankruptcy Court determines that Plaintiff's second cause of action for
12 disallowance of claim pursuant to 11 U.S.C. § 502(b) is a constitutionally core claim for
13 which the Bankruptcy Court may enter final judgment as claim allowance is a core
14 bankruptcy function, and likewise, the same is true as to the fourth cause of action for
15 declaratory relief as to claim disallowance.

16 17. The Bankruptcy Court also determines that the third cause of action for lien
17 avoidance pursuant to Federal Rule of Bankruptcy Procedure 7001 is also a
18 constitutionally core claim for which the bankruptcy court may enter final judgment as
19 held by the Bankruptcy Appellate Panel of the Ninth Circuit in *In re Washington Coast I,*
20 *L.L.C.*, 485 B.R. 393 (9th Cir. BAP 2012), because lien avoidance relates to claim
21 allowance, and likewise, the same is true as to the fourth cause of action for declaratory
22 relief as to lien avoidance. However, because lien avoidance is dependent on same
23 factual findings as the slander of title claim, the Bankruptcy Court determines that the lien
24 avoidance claims should be determined by the District Court.

25 18. Accordingly, while the Bankruptcy Court may hear Plaintiff's tort claim for
26 slander of title under nonbankruptcy law, it lacks authority to enter a final judgment on
27 such claim, and must issue and submit proposed findings of fact and conclusions of law
28 for de novo review by the United States District Court pursuant to 28 U.S.C. §157(c)(1)
and Federal Rule of Bankruptcy Procedure 9033.

1 19. As stated earlier, the Bankruptcy Court determines that it may enter a final
2 judgment on Plaintiff's Second, Third and Fourth Causes of Action, and the Bankruptcy
3 Court has granted Plaintiff partial summary adjudication in its favor on the Second Cause
4 of Action for Claim Disallowance and the Fourth Cause of Action as to Claim
5 Disallowance. Although the Bankruptcy Court has authority to enter a final judgment on
6 the Plaintiff's Third Cause of Action as to Lien Avoidance and Fourth Cause of Action for
7 Declaratory Relief as to Lien Avoidance, the Bankruptcy Court only issues proposed
8 findings of fact and conclusions of law on these claims because its factual findings are
9 dependent on the proposed factual findings on the slander of title claim which is subject
10 to de novo review by the District Court.

11 **III. FINDINGS OF FACT⁴**

12 **A. The Parties**

13 20. Plaintiff People Who Care Youth Center, Inc., is a non-profit corporation, and
14 its mission is to provide child daycare and afterschool programs to low-income working
15 parents in South Central Los Angeles. JPTS at 2, Admitted/Adjudicated Fact No. 2
16 [Adversary Proceeding Docket No. 162].⁵

17 21. Plaintiff's primary asset is real property consisting of two commercial buildings
18 located at 1502 and 1512 West Slauson Avenue, Los Angeles, California 90047 (the
19 1502 Property and 1512 Property, respectively, and, collectively, the Property). JPTS at
20 2, Admitted/Adjudicated Fact No. 3 [Adversary Proceeding Docket No. 162].

21 22. Michelle McArn (McArn) is the president of the board of directors for Plaintiff.
22 Declaration of Michelle McArn (McArn Declaration), ¶ 2 [Adversary Proceeding Docket
23 No. 172].

24 23. Michelle McArn is married to Eric Radley. McArn Declaration, ¶ 5 [Adversary

25 ⁴ To the extent any proposed findings of fact are recommended conclusions of law, the
26 Bankruptcy Court adopts them as such.

27 ⁵ The Joint Pretrial Stipulation listed admitted facts and facts adjudicated on Plaintiff's
28 motion for summary adjudication together. JPTS at 2-5 [Adversary Proceeding
Docket No. 162],

1 Proceeding Docket No. 172].

2 24. According to McArn, her husband, Eric Radley, has helped her and the
3 Plaintiff with extensive renovation and repair of the Plaintiff's Property, and McArn
4 considers Eric to be an agent of the Plaintiff in many respects, including the repair and
5 renovation of the Property. McArn Declaration, ¶ 6 [Adversary Proceeding Docket No.
6 172]; *see also* 2/18/21 Trial Transcript at 237:1-23 (McArn testimony).

7 25. Eric Radley's cousin, Barrington Radley, has also helped the Plaintiff in its
8 renovations on the Property since 2017. McArn Declaration, ¶ 7 [Adversary Proceeding
9 Docket No. 172]; Declaration of Barrington Radley (Barrington Radley Declaration), ¶¶ 3,
10 7-9 [Adversary Proceeding Docket No. 170].

11 26. Eric Radley testified that he has approximately 30 years of handyman work
12 repairing buildings with his cousin, Barrington Radley. Eric Radley Declaration, ¶ 22
13 [Adversary Proceeding Docket No. 171].

14 27. Barrington Radley is a retired building inspector, and he is a builder of
15 commercial and residential properties with over 40 years of experience in building and
16 construction. Barrington Radley Declaration, ¶ 4 [Adversary Proceeding Docket No.
17 170].

18 28. Barrington Radley testified that he has extensive background, experience,
19 and expertise as a contractor, builder, and building inspector. Barrington Radley
20 Declaration, ¶¶ 4-6 [Adversary Proceeding Docket No. 170].

21 29. Greta Curtis (Curtis) is the president of Ammec, Inc. (Ammec). JPTS at 4,
22 Admitted Fact No. 22 [Adversary Proceeding Docket No. 162].

23 30. Greta Curtis was formerly a practicing attorney for 20 years before she was
24 disbarred on December 20, 2014. Curtis Declaration, ¶ 33 [Adversary Proceeding
25 Docket No. 204]; McArn Declaration, ¶¶ 14-18 [Adversary Proceeding Docket No. 172]
26 (McArn testimony that she allowed Curtis to store at Plaintiff's Property files from the
27 closing of Curtis's law office after Curtis lost her law license); License Status, Disciplinary
28 and Administrative History for Greta Sedéal Curtis, California Bar No. 175248 (State Bar

1 of California website accessed on March 22, 2023 at
2 <https://apps.calbar.ca.gov/attorney/Licensee/Detail/175248>); 2/18/21 Trial Transcript at
3 44:20-23 (court noting on the record at trial that Curtis is a disbarred attorney); *see also*,
4 Federal Rule of Evidence 201 (judicial notice of a fact that is not subject to reasonable
5 dispute, such as Curtis's disbarment by order of the California Supreme Court in 2014 as
6 reflected on the State Bar of California's website at
7 <https://apps.calbar.ca.gov/attorney/Licensee/Detail/175248> and the California Appellate
8 Courts Case Information website at
9 <https://appellatecases.courtinfo.ca.gov/search/case/dockets>.⁶

10 31. Eric Radley and Greta Curtis were acquaintances who met in fall or winter of
11 2016 in the Clerk's Office at the courthouse in Torrance, California, where Eric Radley

13 ⁶ The docket notes for the disposition of Curtis's discipline case by the California Supreme
14 Court on the California Appellate Court Case Information website stated *inter alia*
15 as follows: "The court orders that Greta Sedeal Curtis, State Bar Number 175248,
is disbarred from the practice of law in California and that her name is stricken from
the roll of attorneys.

16 Greta Sedeal Curtis must make restitution to the following payees:

- 17 (1) Anna and Larry Troup in the amount of \$18,461.38 plus 10 percent interest per year
from September 1, 2010; and
18 (2) Kathryn Carr in the amount of \$209,410.38 plus 10 percent interest per year from
February 18, 2010.

19 Any restitution owed to the Client Security Fund is enforceable as provided in Business
and Professions Code section 6140.5, subdivisions (c) and (d)."

20 As reflected in these docket notes, the California Supreme Court adopted the
21 recommendations of the State Bar Court that Curtis be disbarred and ordered to pay
restitution to her clients, the Troups and Ms. Carr, as stated in the State Bar Court
22 opinion filed on June 12, 2014 posted on the State Bar's website at
<https://apps.calbar.ca.gov/courtDocs/10-O-07369-2.pdf>. The State Bar Court in its
23 opinion stated: "Here, respondent [Curtis] misappropriated a total of \$249,926.53
(\$18,461.38 + 231,465.15). Respondent's misappropriation in the Carr matter is
24 particularly disturbing because she took her client's money on the pretense that she
was going to safeguard it from the IRS. Respondent used fear to manipulate Carr
25 into putting her life savings into respondent's care, and then immediately began
using those funds for respondent's own benefit. Respondent demonstrated no
26 recognition of her duty to protect and account for her clients' funds and has made
little effort to make her clients whole. Accordingly, the court finds that the interests
27 of public protection mandate a recommendation of disbarment." *Id.* at 25.

1 was having difficulty looking up court records and Curtis approached him and offered to
2 help, telling him that she was an attorney; later, they exchanged contact information, and
3 Curtis told Eric Radley that if he ever needed legal help to give her a call. Eric Radley
4 Declaration, ¶¶ 5-7 [Adversary Proceeding Docket No. 171]; Trial Declaration of Greta
5 Curtis (Curtis Declaration) at 2, ¶2 [Adversary Proceeding Docket No. 204] (“I met
6 Plaintiff’s agent, Eric Radley, in the Torrance courthouse.”). At the time Curtis told Eric
7 Radley that she was a lawyer in 2016, she was no longer a lawyer, having been
8 disbarred about two years earlier in 2014, and there is no evidence that Curtis disclosed
9 her disbarment to Eric Radley at the time.

10 32. Eric Radley did not call Curtis, but a few months later, Curtis called him up,
11 and he told Curtis about McArn’s work with Plaintiff, that is, McArn having taking over
12 management of Plaintiff a month earlier, and telling Curtis about all of Plaintiff’s problems,
13 including its debt problems with Acon Development, Inc., and Curtis told him that she
14 could help. Eric Radley Declaration, ¶¶ 8-10 [Adversary Proceeding Docket No. 171].

15 33. In the spring of 2017, Eric Radley introduced McArn to Curtis. McArn
16 Declaration, ¶ 8 [Adversary Proceeding Docket No. 172]; Eric Radley Declaration, ¶¶ 9-
17 11 [Adversary Proceeding Docket No. 171]. Curtis said to McArn that she was a lawyer
18 and that she could help Plaintiff with its financial problems, management, and refinancing
19 Plaintiff’s debts with Acon Development, Inc. (“Acon”). McArn Declaration, ¶ 9
20 [Adversary Proceeding Docket No. 172]. At the time Curtis told McArn that she was a
21 lawyer in 2017, she was no longer a lawyer, having been disbarred over two years earlier
22 in 2014, and there is no evidence that Curtis disclosed her disbarment to McArn at the
23 time.

24 34. McArn gave Curtis Plaintiff’s files, books, and records, so that Curtis could
25 help with Plaintiff’s financial and legal issues and refinancing. McArn Declaration, ¶ 10
26 [Adversary Proceeding Docket No. 172]; Eric Radley Declaration, ¶¶ 9-11 [Adversary
27 Proceeding Docket No. 171].

28

1 **B. Procedural Background**

2 35. Plaintiff filed for bankruptcy protection on January 10, 2018 (the “Petition
3 Date”) by filing a voluntary petition for relief under Chapter 11 of the United States
4 Bankruptcy Code, 11 U.S.C. JPTS at 2, Admitted/Adjudicated Fact No. 1 [Adversary
5 Proceeding Docket No. 162].

6 36. When Plaintiff was attempting to refinance the Property, Plaintiff learned for
7 the first time that, on October 19, 2017 (the “Recording Date”), Curtis, either on behalf of
8 herself or on behalf of Ammec, recorded a “Claim of Lien” (Doc. No. 20171200769) (the
9 Lien) on the Property for \$40,000 allegedly related to construction work at the Property
10 (the “Alleged Obligation”). JPTS at 2, Admitted/Adjudicated Fact No. 4 [Adversary
11 Proceeding Docket No. 162].

12 37. On May 8, 2018, Plaintiff filed this adversary proceeding (Adversary
13 Proceeding), bearing case number 2:18-ap-01139-RK, objecting to the claims of Ammec
14 and Curtis and seeking to void any lien that Defendants may have. JPTS at 5,
15 Admitted/Adjudicated Fact No. 26 [Adversary Proceeding Docket No. 162].

16 38. On November 14, 2019, the Bankruptcy Court entered its *Order Granting*
17 *Motion for Partial Summary Adjudication of Plaintiff’s Amended Complaint* [Adversary
18 *Proceeding Docket No. 120*] (“Partial Summary Adjudication Order”), granting in favor of
19 Plaintiff and against Defendants partial summary adjudication of the Second, Third,
20 Fourth Causes of Action in the Complaint. Request for Judicial Notice (RJN), Exhibit 1,
21 Partial Summary Adjudication Order [Adversary Proceeding Docket No. 142].

22 39. Pursuant to the Partial Summary Adjudication Order, Defendants are not
23 entitled to any allowed claim against Plaintiff or its bankruptcy estate in Plaintiff’s
24 bankruptcy case, and any proofs of claim filed by the Defendants are deemed untimely
25 and are disallowed pursuant to 11 U.S.C. § 502(b)(9). JPTS at 5, Admitted/Adjudicated
26 Fact No. 33 [Adversary Proceeding Docket No. 162].

27 40. Based on the Partial Summary Adjudication Order, the Joint Pretrial
28 Stipulation stated that any and all liens asserted by the Defendants against the Property

1 are void and unenforceable. JPTS at 5, Admitted/Adjudicated Fact No. 34 [Adversary
2 Proceeding Docket No. 162]. However, in light of the partial modification and vacation of
3 the Partial Summary Adjudication Order, this statement is no longer a fact established by
4 the Partial Summary Adjudication Order.

5 41. As a result of the Partial Summary Adjudication Order, the first cause of
6 action in the Complaint for slander of title was the only cause of action remaining for trial.
7 *See generally*, RJN, Exhibit 1, Partial Summary Adjudication Order [Adversary
8 Proceeding Docket No. 142]. However, in light of the Bankruptcy Court's reconsideration
9 of the Partial Summary Adjudication Order, Plaintiff's third cause of action for lien
10 avoidance and its fourth cause of action as to lien avoidance also remained for
11 adjudication at trial.

12 **C. The Purchase of the Lumber**

13 42. Eric and Barrington Radley devoted several months in 2017 and 2018 to
14 repairing the Plaintiff's Property. Eric Radley Declaration, ¶ 23 [Adversary Proceeding
15 Docket No. 171]; Barrington Radley Declaration, ¶¶ 7-10 [Adversary Proceeding Docket
16 No. 170].

17 43. Eric Radley testified that Greta Curtis had told him that she wanted to build a
18 house for herself, and that he told Curtis that his cousin Barrington Radley had a lot of
19 building experience. Eric Radley Declaration, ¶ 13 [Adversary Proceeding Docket No.
20 171].

21 44. Eric Radley took several trips to Habitat for Humanity Restore (Habitat) to get
22 materials for renovating the Property, including carpet, linoleum, and many miscellaneous
23 items. Eric Radley Declaration, ¶ 24 [Adversary Proceeding Docket No. 171].

24 45. Eric Radley testified that on one trip to Habitat, he saw a large cache of
25 lumber in the parking lot for sale for \$4,000 and that over the course of ten days or so, he
26 negotiated down the price on the lumber to \$1,000. Eric Radley Declaration, ¶ 25
27 [Adversary Proceeding Docket No. 171].

28 46. According to Eric Radley, the large cache of lumber was approximately 50

1 panels of 12-foot, 14-foot, and 16-foot prefabricated lumber walls in a pile, in addition to
2 approximately ten small, short (8-foot or less) prefabricated lumber walls. Eric Radley
3 Declaration, ¶ 26 [Adversary Proceeding Docket No. 171]; Barrington Radley Declaration,
4 ¶ 19 [Adversary Proceeding Docket No. 170].

5 47. Eric Radley testified that he told Greta Curtis about this deal on the lumber,
6 and Eric Radley suggested to Greta Curtis that they could both buy the lumber, \$500
7 each, and split it so that she could build a new house and so that Plaintiff could renovate
8 the 1502 Property. Eric Radley Declaration, ¶ 27 [Adversary Proceeding Docket No.
9 171].

10 48. On September 6, 2017, Greta Curtis, Eric Radley, and Barrington Radley, all
11 met at Habitat to buy the lumber. Eric Radley Declaration, ¶¶ 25-32 [Adversary
12 Proceeding Docket No. 171]; Curtis Declaration at 8, ¶¶ 23-24 [Adversary Proceeding
13 Docket No. 204].

14 49. According to Eric Radley in his trial testimony, on September 6, 2017, he
15 made an agreement on behalf of himself with Greta Curtis to purchase a large pile of
16 lumber. 2/18/21 Trial Transcript at 145:3-10; Trial Exhibit P-3 (pull tag receipt for lumber
17 dated 9/6/2017).

18 50. According to Eric Radley, as he testified at trial, he intended to split the
19 lumber “50/50” with Greta Curtis, and he made an agreement with her to do so. 2/18/21
20 Trial Transcript at 117:15-20 (Eric Radley testimony); Eric Radley Declaration, ¶ 27
21 [Adversary Proceeding Docket No. 171]. This testimony of Eric Radley is corroborated
22 by his cousin, Barrington Radley, who testified that he heard the conversation between
23 his cousin Eric Radley and Greta Curtis in the Habitat parking lot about the lumber in
24 which Eric and Greta Curtis agreed to buy the lumber jointly. Barrington Radley
25 Declaration, ¶ 21 [Adversary Proceeding Docket No. 170].

26 51. According to Eric Radley, Greta Curtis told him that she did not have \$500
27 cash on hand for her 50-percent share of the lumber, so they made an agreement that
28 Eric would pay the full \$1,000 in cash to buy the lumber, but that Curtis would arrange for

1 and take care of the transportation of the lumber for the total \$1,000 that Eric was
2 contributing. Eric Radley Declaration, ¶ 31 [Adversary Proceeding Docket No. 171];
3 2/18/21 Trial Transcript at 172:2-25 (Eric Radley testimony). Eric Radley's testimony on
4 this point is corroborated by the testimony of his cousin Barrington, who heard the
5 conversation between Eric and Curtis at Habitat. Barrington Radley Declaration, ¶¶ 22-24
6 [Adversary Proceeding Docket No. 170].

7 52. According to Eric and Barrington Radley, Greta Curtis stated that she would
8 arrange for the transportation of the lumber. 2/18/21 Trial Transcript at 196:1-4
9 (Barrington Radley testimony); Barrington Radley Declaration, ¶ 25 [Adversary
10 Proceeding Docket No. 170]; 2/18/21 Trial Transcript at 119:1-17 (Eric Radley testimony).

11 53. Eric Radley testified in his trial declaration that he gave Greta Curtis \$1,000 in
12 cash to buy the lumber. Eric Radley Declaration, ¶ 32 [Adversary Proceeding Docket No.
13 171]. Eric Radley's testimony on this point is corroborated by the testimony of his cousin
14 Barrington, who heard the conversation between Eric and Curtis at Habitat. 2/18/21 Trial
15 Transcript at 194:14 and 195:12-24 (Barrington Radley testimony). At trial, Curtis asked
16 the following questions, and Barrington gave testimony in response as follows:

17 Q: Did you see Eric Radley give me \$500?

18 A. No. I saw him give you a thousand dollars.

19 ***

20 Q. Did you, did you see who paid for the lumber that day?

21 A. I saw Eric give you the money, and then you turned around and gave the
22 lady your credit card. And you guys spoke. I was right behind you, but you
23 guys were speaking at the time you were paying.

24 *Id.* The Bankruptcy Court finds this testimony of Eric and Barrington Radley to be
25 credible.

26 54. Greta Curtis in her trial testimony disputed the version of Habitat lumber
27 purchase transaction given by Eric and Barrington Radley in their trial testimony. Curtis
28 Declaration [Adversary Proceeding Docket No. 204]. According to Curtis, while she

1 admits that Eric Radley was the one who told her about the lumber, she purchased the
2 lumber on her own for herself, and not jointly with Eric Radley. Curtis Declaration at 8-9,
3 ¶¶ 23-26 [Adversary Proceeding Docket No. 204]. Curtis testified that when Eric Radley
4 told her about the lumber, she agreed that she would buy it because she wanted to use it
5 to do some new construction on a lot she owned, but that she never agreed that she
6 would give half of the lumber to Plaintiff as a donation. Curtis Declaration at 8-9, ¶¶ 23-26
7 [Adversary Proceeding Docket No. 204]. Curtis denied that there was any agreement or
8 “alleged partnership” between her and Plaintiff for the purchase of the lumber. Curtis
9 Declaration at 8, ¶ 24 [Adversary Proceeding Docket No. 204]. As Curtis stated in her
10 trial declaration, “I did not become aware of the alleged partnership PWC [People Who
11 Care] and I entered until I read Eric Radley’s trial declaration.” *Id.* Curtis testified that
12 she made the purchase of the lumber with her bank debit card for \$1,000 and that Eric
13 Radley did not give her \$1,000 in cash, or he or Plaintiff did not give her any amount,
14 towards the purchase of the lumber. Curtis Declaration at 8, ¶ 24 [Adversary Proceeding
15 Docket No. 204]. Defendants argue that testimony of McArn who went to Habitat with her
16 husband Eric Radley to buy the lumber that “he had money in his pocket, thousand dollar
17 check” indicates that there was no cash exchanged since Eric Radley had brought a
18 check to Habitat. Defendants Greta Curtis and Ammec, Inc’s Objections to Plaintiff’s
19 Proposed Findings of Fact and Conclusions of Law in Support of the First Cause of
20 Action for Slander of Title in the Amended Complaint Following Trial (Defendants’
21 Objections to Plaintiff’s Proposed Findings) at 17-18 [Adversary Proceeding Docket No.
22 270], referring to McArn Testimony, 2/19/21 Trial Transcript at 26:20-24.

23 55. Although the testimony of the witnesses about the Habitat lumber purchase
24 transaction is conflicting in a number of respects, the following facts are undisputed by
25 the parties:

- 26 a. On September 6, 2017, there was a purchase of approximately 50
27 prefabricated wooden walls of lumber for the total purchase price of
28 \$1,000 from Habitat for Humanity Restore. 2/18/21 Trial Transcript at

1 64:11-16 (Greta Curtis testimony); 2/18/21 Trial Transcript at 119:1-13
2 (Eric Radley testimony).

3 b. The total amount of lumber purchased was approximately 50
4 prefabricated wood wall panels. 2/18/21 Trial Transcript at 195:1-2
5 (Barrington Radley testimony); Eric Radley Declaration, ¶ 26 [Adversary
6 Proceeding Docket No. 171]; Curtis Declaration at 8-10, ¶ 23-32
7 [Adversary Proceeding Docket No. 204] (contending that Plaintiff by Eric
8 and Barrington Radley took 30 panels, half of the lumber).

9 c. Greta Curtis paid \$1,000 to Habitat for purchase of the wood using her
10 credit or debit card. 2/18/21 Trial Transcript at 195:21-22 (Barrington
11 Radley testimony); Curtis Declaration, ¶ 24 [Adversary Proceeding
12 Docket No. 204].

13 56. Having considered the written and oral testimony of the witnesses about the
14 purchase of the lumber, Eric and Barrington Radley, McArn and Curtis, the Bankruptcy
15 Court finds that the testimony of Eric and Barrington Radley and McArn to be more
16 credible than the testimony of Curtis. Specifically, the Bankruptcy Court finds that the
17 testimony given by Eric and Barrington Radley that Eric Radley and Curtis agreed to
18 purchase the lumber jointly, each to take half, and that Eric Radley gave Curtis \$1,000 in
19 cash for the purchase to be credible. Regarding the existence of the agreement, it is
20 undisputed that Eric Radley found the lumber at Habitat, negotiated the price down to
21 \$1,000 and told Curtis about the lumber deal. It is also undisputed that Eric Radley was
22 interested in using some of the lumber to help renovate the Plaintiff's Property and that
23 he knew that Curtis might be interested in some lumber to build on her new property, and
24 telling her would help get the deal of purchasing 50 panels from Habitat for \$1,000 down
25 from \$4,000. There is no plausible reason why Eric and Barrington Radley and McArn
26 would have gone to Habitat with Curtis about the lumber unless Eric Radley and/or
27 Plaintiff would benefit from the purchase of the lumber, either as a joint purchase by Eric
28 Radley and a purchase by Curtis with a promise of a donation of some lumber to Plaintiff.

1 At the time of the purchase in September 2017, Curtis and Eric Radley and McArn were
2 on speaking terms, if not friends. Thus, when these parties went to Habitat to look at the
3 lumber available for purchase at a bargain price, they had an understanding that some of
4 the lumber would go to Eric Radley and/or Plaintiff, and not just Curtis.

5 57. Although it is undisputed that Curtis was the person who used her debit or
6 credit card to make the actual purchase of the lumber from Habitat for \$1,000, the
7 Bankruptcy Court having heard the oral testimony of Eric and Barrington Radley at trial
8 and observing their demeanor while testifying, finds their testimony is credible that Eric
9 Radley and Curtis orally agreed that they would buy the lumber jointly “50/50” and that
10 Eric gave Curtis \$1,000 in cash for the purchase. It is true that the testimony of a cash
11 transfer may lack some persuasiveness because there is no written documentation of the
12 transfer, but the Bankruptcy Court, having observed the demeanor of the witnesses,
13 gives credence to the testimony of Eric and Barrington Radley that Eric gave \$1,000 in
14 cash to Curtis to be used towards the purchase. The Bankruptcy Court especially gives
15 credence to the testimony of Barrington Radley, who testified that he overheard Eric
16 Radley and Curtis making the oral agreement for a joint purchase of the lumber and that
17 he saw Eric give Curtis the \$1,000 in cash. While Eric Radley’s share of the \$1,000
18 lumber purchase was only \$500, he gave Curtis \$1,000, and his explanation of his giving
19 her more than \$500 is credible, stating that she told him that she did not have any cash
20 with her, so he gave her the \$1,000 to cover the purchase transaction, but then she
21 surprised him by taking the cash and pulling out her credit or debit card to pay for the
22 lumber. Regarding Defendants’ argument that based on McArn’s testimony about a
23 \$1,000 check, Eric Radley did not give Curtis \$1,000 in cash, the Bankruptcy Court does
24 not give credence to this argument because although McArn went to Habitat with Eric,
25 she did not go into the store and did not observe the actual purchase of the lumber, and
26 therefore, she is not a percipient witness of the purchase transaction and does not have

27
28

1 personal knowledge of who actually purchased the lumber.⁷ Eric and Barrington Radley
2 were percipient witnesses to the purchase transaction, and the Bankruptcy Court finds
3 that their testimony that Eric gave Curtis \$1,000 in cash as his contribution for the
4 purchase of the lumber to be based on personal knowledge and credible.

5 **D. Moving a Portion of Lumber to Plaintiff's Property and Its Use by**
6 **Plaintiff**

7 58. Eric and Barrington Radley testified that on the day of the lumber was
8 purchased, they took five small, prefabricated walls from the purchase and loaded them
9 into a pick-up truck (which is all that the truck could carry) and moved them to Plaintiff's
10 Property. 2/18/21 Trial Transcript at 197:17-21 and 202:6-10 (Barrington Radley
11 testimony); 2/18/21 Trial Transcript at 121:3-7 (Eric Radley testimony) 122:14-24 (same);
12 Eric Radley Declaration, ¶ 33 [Adversary Proceeding Docket No. 171]; Barrington Radley
13 Declaration, ¶ 29 [Adversary Proceeding Docket No. 170].

14 59. Barrington Radley testified that in the parking lot at Habitat, Eric Radley told
15 Greta Curtis that he (Eric) and Barrington would take about five of the small prefabricated
16 walls at that time in the pick-up truck, and Curtis did not object. Barrington Radley
17 Declaration, ¶ 28 [Adversary Proceeding Docket No. 170].

18 60. According to Eric Radley, he intended to give his share of the lumber to
19 Plaintiff. 2/18/21 Trial Transcript at 154:1-3 (Eric Radley testimony).

20 61. According to McArn, although her husband, Eric Radley, purchased the
21 lumber with his own money, she understood that he intended that his portion of the
22 lumber would be used to help Plaintiff with its renovations at the Property, which was
23 shown as that same day he and Barrington Radley loaded the five short, prefabricated
24 walls into the pick-up truck and drove them to Plaintiff's Property. 2/19/21 Trial Transcript
25 at 58:3-25 (McArn testimony).

26 _____
27 ⁷ To the extent that McArn's testimony on this point is probative, it indicates that Eric
28 Radley took money to Habitat to make a purchase of lumber, and was not looking
for a donation from Curtis.

1 62. Eric and Barrington Radley testified that they used the lumber from those five
2 small, prefabricated walls to build five doorways for bathrooms at the 1502 Property and
3 that was the extent of their use of the lumber, that is, they used all of this lumber, none of
4 it went to waste, and they did not build any drop-down ceilings, bookcases, or additional
5 walls. Eric Radley Declaration, ¶ 34 [Adversary Proceeding Docket No. 171]; Barrington
6 Radley Declaration, ¶ 30 [Adversary Proceeding Docket No. 170].

7 63. Curtis in her trial testimony disputed the version of move of the purchased
8 Habitat lumber to Plaintiff's Property given by Eric and Barrington Radley in their trial
9 testimony. Curtis Declaration at 8-9, ¶¶25-27 [Adversary Proceeding Docket No. 204].
10 Curtis in her trial declaration testified that after she purchased the lumber, she left it at the
11 Habitat for Humanity premises "because of the large volume I needed a semi-tractor
12 trailer with a flat bed trailer to move the lumber panels." *Id.*, ¶25. Curtis further testified
13 the lumber was not moved until a month later when her brother Gregory Curtis arranged
14 for a semi-tractor to move the lumber to a secured space in a private yard with another
15 individual. *Id.* In her trial declaration, Curtis absolutely denied that she gave her
16 permission to Eric Radley, Barrington Radley or Plaintiff to take any of the lumber: "I
17 never gave Eric Radley, Barrington Radley nor Plaintiff permission to take any of my
18 lumber panels from the Habitat parking lot nor from the lot I secured after I moved the
19 lumber from Habitat either on September 6, 2017 or after I made the purchase." *Id.*, ¶27.
20 Curtis also testified that she never agreed to donate any of the lumber to Plaintiff: "I never
21 agreed to give half of my lumber to Plaintiff nor did I agree to store 50% of the lumber
22 Plaintiff is claiming belonged to it in the Eric Radley trial declaration at ¶39." *Id.*, ¶26.

23 64. In support of Curtis's testimony and Defendants' position, Sherman Lee was
24 called as a witness who testified in his trial declaration that he was an acquaintance of
25 Curtis and helped her move the lumber from the Habitat premises to a yard in Compton,
26 California, on October 5, 2017. Trial Declaration of Sherman Lee [Adversary Proceeding
27 Docket No. 167]. Lee testified in his trial declaration that he saw some of the lumber in
28 Plaintiff's building before he helped Curtis move the other lumber from the Habitat

1 parking lot on October 5, 2017. *Id.*, ¶18.

2 65. Having considered the written and oral testimony of the witnesses about the
3 move of some of the purchased lumber to Plaintiff's Property on the date of the purchase
4 on September 6, 2017, Eric and Barrington Radley, Curtis and Lee, the Bankruptcy Court
5 finds that the testimony of Eric and Barrington Radley to be more credible than the
6 testimony of Curtis. Specifically, the Bankruptcy Court finds that the testimony given by
7 Eric and Barrington Radley that Eric Radley told Curtis that they were taking some of the
8 lumber in the pickup truck they drove to Habitat and that she did not object to be credible.
9 It is undisputed that Eric Radley had negotiated the deal with Habitat for the lumber and
10 told Curtis about it, that is, Eric Radley and Curtis were still on good terms, and that they
11 and Barrington Radley all met at Habitat and were together when the lumber was
12 eventually purchased there. As stated previously, the Bankruptcy Court finds that the
13 purchase of the lumber was jointly by Eric Radley and Curtis. Plaintiff's version of the
14 facts that after the joint purchase of the lumber from Habitat, Eric Radley took some of
15 the lumber he purchased with Curtis after telling her that he was taking some of it is more
16 consistent with the evidence than Curtis's version of the facts. Curtis's version of the
17 facts is essentially that Eric Radley induced Curtis to buy the lumber from Habitat, so that
18 he and Barrington Radley could lie in wait until she left the Habitat premises after the
19 purchase and steal some lumber for Plaintiff without her knowledge and consent.
20 Curtis's version of the facts is not credible in light of the state of the parties' relationship
21 at the time that they were on speaking, if not good, terms. The parties all knew that they
22 were going to Habitat together for the purchase of lumber, also together, and Eric Radley
23 brought \$1,000.00 for the purchase of the lumber and was prepared to take some of his
24 share of the lumber right after purchase, and Curtis was not as prepared to take her
25 share of the lumber after their purchase from the Habitat premises.

26 66. The Bankruptcy Court having heard the oral testimony of Eric and Barrington
27 Radley at trial and observing their demeanor while testifying, finds their testimony is
28 credible that Eric Radley told Curtis that he was taking some of the lumber and that she

1 did not object. That the portion of the lumber that Eric Radley took with Barrington
2 Radley's assistance, that is, the 5 wood panels that fit in the pickup truck they drove to
3 Habitat, was only a small portion of the purchased lumber, is consistent with their
4 testimony that Eric Radley and Curtis agreed to make a joint purchase. Moreover, the
5 testimony of Eric and Barrington Radley is credible also because the amount of lumber
6 that Eric Radley claimed and took on the date of the purchase was certainly less than half
7 of the lumber that Eric Radley was entitled to in the joint purchase.

8 **E. Moving Lumber to the Compton Storage Lot**

9 67. According to Barrington Radley, on a later date, the remaining portion of Eric
10 Radley's share of the lumber was loaded with a forklift onto a flatbed truck and moved to
11 a lot in Compton, California. 2/18/21 Trial Transcript at 202:21-204:11 (Barrington
12 Radley testimony).

13 68. According to Eric and Barrington Radley, they assisted Greta Curtis and a few
14 other men to load approximately half of the remaining lumber which Eric considered as
15 his, using a forklift onto the flatbed truck to be transported to the lot in Compton and
16 unloaded it there. Eric Radley Declaration, ¶¶ 35-38 [Adversary Proceeding Docket No.
17 171]; Barrington Radley Declaration, ¶¶ 31-34 [Adversary Proceeding Docket No. 170].

18 69. The witnesses in their trial testimony either could not remember when the
19 lumber was moved to the Compton lot or disagreed as to whether the lumber was moved
20 there in September or October 2017. 2/19/21 Trial Transcript at 170:19-171:9 (Sherman
21 Lee testimony); Eric Radley Declaration, ¶ 35 [Adversary Proceeding Docket No. 171]
22 (testifying the move was approximately a week after purchase).

23 70. Eric Radley testified that he considered the first half of the lumber that he and
24 Barrington Radley had just helped to move to the Compton lot to be his or Plaintiff's half
25 of the lumber, and so he and Barrington were done with the moving process as far as his
26 or Plaintiff's half of the lumber was concerned, particularly as Barrington had already
27 showed Greta Curtis and her brother how to load the lumber with the forklift. Eric Radley
28 Declaration, ¶ 39 [Adversary Proceeding Docket No. 171].

1 71. Eric Radley testified that he chose to store his remaining half of the lumber at
2 the Compton lot because the lumber could not all be stored at Plaintiff's Property
3 because of risk of theft and vandalism, in addition to the impracticability of vehicles
4 having to move in and out of Plaintiff's parking lot. 2/18/21 Trial Transcript at 173:5-23
5 (Eric Radley testimony).

6 72. Eric and Barrington Radley testified that neither Plaintiff nor its agents took
7 any wood other than the five small, prefabricated wood walls that had been originally
8 taken in the pick-up truck on the date of purchase. 2/18/21 Trial Transcript at 213:15-
9 214:19 (Barrington Radley testimony); Barrington Radley Declaration, ¶ 39 [Adversary
10 Proceeding Docket No. 170].

11 73. Curtis in her trial testimony disputed the version of the lumber being moved
12 from Habitat to Compton was owned in part by Eric Radley, and not wholly owned by her,
13 given by Eric and Barrington Radley in their trial testimony. Trial Declaration of Greta
14 Curtis (Curtis Declaration) [Adversary Proceeding Docket No. 204]. Curtis testified in her
15 trial declaration that she purchased the lumber from Habitat by and for herself, and not
16 jointly with Eric Radley, and that she left the lumber at Habitat after the purchase on
17 September 6, 2017 because the lumber was too voluminous to move without a tractor
18 trailer. *Id.*, ¶ 25. Curtis further testified that her brother Gregory Curtis arranged for a
19 semi tractor trailer with a flat bed trailer to move the lumber a month later to a private
20 yard after she and her brother secured space in that yard. *Id.* In her trial declaration,
21 Curtis testified that she "counted the lumber panels with my driver before the move day
22 on September 8, 2017." *Id.*, ¶31. This statement by Curtis about September 8, 2017 is
23 unclear whether she was referring to the day she counted the lumber panels or the day
24 the lumber was moved. Curtis also testified about her count of the lumber panels: "When
25 we did move the lumber panels we were short by approximately 30." *Id.*, ¶30. Regarding
26 these allegedly missing 30 panels, Curtis stated in her trial declaration: "I filed the
27 mechanic's lien against Plaintiff's real property because its' [sic] agents, Eric Radley and
28 Barrington Radley, stole over 30 lumber panels from me in the course of a month." *Id.*,

1 ¶30.

2 74. Defendants' witness, Sherman Lee, testified in his trial declaration that on
3 October 5, 2017, he assisted Curtis in moving lumber from Habitat to a yard in Compton,
4 California, and that Eric and Barrington Radley were with her at the Compton vacant yard
5 and that they also assisted in moving the lumber from Habitat to the Compton lot. Lee
6 Trial Declaration at 2, ¶6. Lee further testified that both Eric and Barrington Radley
7 helped him and several other men in removing the lumber from a 40 foot flatbed truck
8 that she and her brother Gregory Curtis rented to move the lumber and that they made
9 two trips on October 5, 2017 and unloaded the flatbed truck twice. *Id.*, at 3 ¶9. Lee also
10 testified that on October 6, 2017, he reported to the Habitat store to complete the move of
11 the lumber to the vacant lot in Compton, but Eric and Barrington Radley did not appear to
12 help with moving the remaining lumber. *Id.* At 3, ¶ 10.

13 75. Having considered the written and oral testimony of the witnesses about the
14 move of the purchased lumber remaining at Habitat to a private yard in Compton,
15 California, secured by Curtis on October 5 and 6, 2017, Eric and Barrington Radley,
16 Curtis and Lee, the Bankruptcy Court finds that the testimony of Eric and Barrington
17 Radley to be more credible than the testimony of Curtis. Specifically, the Bankruptcy
18 Court finds that the testimony given by Eric and Barrington Radley that they worked with
19 Lee and the other men that were helping Curtis move the lumber from Habitat to
20 Compton, which included the remaining lumber in Eric Radley's one-half share, and that
21 they were concerned about the security of the lumber if stored at the Plaintiff's Property.
22 As stated previously, the Bankruptcy Court finds that the purchase of the lumber was joint
23 by Eric Radley and Curtis.

24 76. Plaintiff's version of the facts that after the joint purchase of the lumber from
25 Habitat, Eric Radley with his cousin Barrington Radley moved his remaining lumber to the
26 Compton lot with Curtis's one-half share with the assistance of Curtis's helpers is more
27 consistent with the evidence than Curtis's version of the facts. Curtis's version of the
28 facts is essentially that Eric and Barrington Radley stole 30 wood panels from her, though

1 admittedly, they helped move the lumber, which she contends was all hers to the
2 Compton lot which she had arranged for. Curtis's version of the facts is not credible in
3 light of the state of the parties' relationship at the time that they were on speaking, if not
4 good, terms, and they were helping each other move the lumber from Habitat after they
5 made the joint purchase. The parties all knew that after they made the purchase from
6 Habitat, they had to move the lumber before they could use it, and they worked together
7 to move the lumber from Habitat. If Curtis had counted the lumber panels with her driver
8 on September 8, 2017 and found that there were 30 missing lumber panels as she
9 testified, it would seem that she would have confronted Eric and Barrington Radley about
10 her suspicions that they took her lumber as soon as she had her suspicions rather than
11 letting them, the alleged thieves, help move the lumber to the Compton lot a month later
12 on October 5, 2017. It is undisputed that Eric and Barrington Radley and Curtis were at
13 the Compton lot for moving lumber there from Habitat on October 5, 2017, and there is
14 no testimony or evidence that Curtis shared her current suspicions with them that they
15 stole lumber from her or demanded return of the lumber to her or some sort of
16 accounting. Lee's testimony that Eric and Barrington Radley only showed up to move the
17 lumber on only one of the two days of moving the lumber on October 5 and 6, 2017 is
18 consistent with their testimony that they were only helping to move the remaining part of
19 Eric's one-half share of the lumber and were not participating in the move of the lumber
20 after Eric's share had been moved to the lot. Moreover, the testimony of Curtis and Lee
21 and Defendants' physical evidence of photographs do not substantiate Curtis's claim that
22 Eric and Barrington Radley took 30 lumber panels, theft or not. Defendants' position on
23 the nature of the move of the lumber from Habitat to Compton is less credible than
24 Plaintiff's position.

25 **F. Moving and Storing the Other Half of the Lumber**

26 77. Eric Radley testified that about a week or so after the purchase of the lumber,
27 he and Barrington Radley went back to Habitat for other renovation materials for the 1502
28 Property, and they discovered that all of the lumber was now gone, and there were only a

1 few of the small, short wall panels left. Eric Radley Declaration, ¶ 40 [Adversary
2 Proceeding Docket No. 171].

3 78. Eric and Barrington Radley testified that they found the lumber at the
4 Compton vacant lot, left out in the open, but surrounded by a fence and locked. Eric
5 Radley Declaration, ¶ 41 [Adversary Proceeding Docket No. 171]; Barrington Radley
6 Declaration, ¶ 36 [Adversary Proceeding Docket No. 170].

7 79. Barrington and Eric Radley testified that they went to the vacant lot in
8 Compton several times trying to get the Plaintiff's half of the lumber, but the gate was
9 always locked, and they could not get Greta Curtis to have someone unlock it for them.
10 Eric Radley Declaration, ¶ 42 [Adversary Proceeding Docket No. 171]; Barrington Radley
11 Declaration, ¶ 37 [Adversary Proceeding Docket No. 170].

12 80. Barrington and Eric Radley testified that a year later, they went back to the lot
13 in Compton, and the lumber was still there, damaged beyond repair by being left out in
14 the weather. Eric Radley Declaration, ¶ 43 [Adversary Proceeding Docket No. 171];
15 Barrington Radley Declaration, ¶ 38 [Adversary Proceeding Docket No. 170].

16 81. In her trial declaration, Greta Curtis disputed the testimony of Eric and
17 Barrington Radley that she denied them or Plaintiff access to the Compton lot. Curtis
18 Declaration at 10, ¶ 29. Curtis testified in her trial declaration: "I never received a
19 request from Eric Radley nor Michelle Mcarn to access the Oak Street lot where I stored
20 my lumber panels. Barrington Radley asked me after I moved the lumber there who had
21 a key and I told him my brother and I." *Id.*

22 82. Having considered the written and oral testimony of the witnesses about the
23 Curtis's denial of access of Eric and Barrington Radley to the Compton lot for retrieval of
24 the remaining lumber in Eric's one-half share of the lumber, Eric and Barrington Radley
25 and Curtis, the Bankruptcy Court finds that the testimony of Eric and Barrington Radley to
26 be more credible than the testimony of Curtis. Curtis in her trial testimony admitted that
27 Barrington Radley asked her who had the key to the lock at the lot and that she told him
28 that she and her brother were the ones who had the key. From this admission, the

1 Bankruptcy Court infers that Barrington Radley had asked Curtis for access to the lot and
2 that she refused. The Bankruptcy Court also finds credible the testimony of Eric and
3 Barrington Radley that Curtis refused them access to the lot when they sought to retrieve
4 the remaining lumber in Eric's one-half share of the lumber.

5 83. The significance of Curtis's denial of access of Eric and Barrington Radley to
6 the Compton lot to retrieve lumber is that it corroborates the evidence that Eric Radley
7 purchased the lumber with Curtis and believed that he purchased the lumber and was
8 requesting Curtis to give his access to the locked Compton lot to retrieve his share.
9 Curtis's position is that Eric and Barrington Radley stole the purchased lumber which was
10 all hers, but she admitted that at least, Barrington Radley had inquired about access to
11 the Compton lot and she told him that she had the key to the lot, which indicates that he
12 asked her for access to the lot. Based on Curtis's testimony, Defendants' position is that
13 the Radley cousins were asking her to unlock the Compton lot so they can steal more
14 lumber from her, which does not make any sense as it begs the question why would they
15 need to ask her for access to the lot if they were stealing more lumber from her.
16 Defendants' position on the reason for denial of access is simply not credible.

17 **G. Defendants' Filing of the Lien**

18 84. On October 19, 2017, Greta Curtis, either on behalf of herself or on behalf of
19 Ammec, recorded the Lien on the Property. Lien, Trial Exhibit P-1 (showing recording
20 date of October 19, 2017); JPTS at 2, Admitted/Adjudicated Fact No. 4 [Adversary
21 Proceeding Docket No. 162].

22 85. The Lien expressly asserted: "In accordance with an agreement to provide
23 labor and/or material, I did furnish the following labor and/or materials: 20 Prefabricated
24 Wood Wall Panels @ a cost of \$2,000 a piece... of a total value of \$40,000." Lien, Trial
25 Exhibit P-1 at 2.

26 86. The Lien asserted that the labor and/or material described therein was
27 furnished on the property commonly known as 1500 W. Slauson Avenue, Los Angeles,
28 CA 90047, owned by People Who Care Youth Center, Inc., with a copy of the property's

1 legal description attached, and that Greta Curtis, as President of Ammec, Inc., thereby
2 claimed a lien under the laws of the State of California for the allegedly unpaid amount of
3 \$40,000 for labor and/or material allegedly furnished on the property owned by People
4 Who Care Youth Center, Inc., starting on September 16, 2017 and ending on October 13,
5 2017. Lien, Trial Exhibit P-1.

6 87. The Lien was signed under a declaration of penalty of perjury under the laws
7 of the State of California by Greta Curtis, as President of Ammec, Inc., listing Ammec as
8 the person claiming the Lien. Lien, Trial Exhibit P-1 at 3.

9 88. The Certificate of Service that a copy of the Lien was mailed to People Who
10 Care Youth Center, Inc., on October 17, 2017, was completed and signed by Greta
11 Curtis. Lien, Trial Exhibit P-1 at 3.

12 **H. Defendants Refuse to Remove the Lien**

13 89. McArn testified that Plaintiff, through her and Eric Radley's efforts, was trying
14 to refinance the Property, and Eric and McArn learned of the Lien for the first time in late
15 2017 when they received a phone call from Lending Xpress, the Plaintiff's refinancing
16 broker, about the Lien. McArn Declaration, ¶ 22 [Adversary Proceeding Docket No. 172];
17 Eric Radley Declaration ¶ 53 [Adversary Proceeding Docket No. 171].

18 90. McArn and Eric Radley called Greta Curtis and left a voicemail saying to
19 remove the Lien by noon or that they would file a police report at the 77th Division police
20 station, which is the station nearest to the Property. McArn Declaration, ¶ 23 [Adversary
21 Proceeding Docket No. 172].

22 91. The Lien was notarized. Lien, Trial Exhibit P-1 at 5-6.

23 92. McArn and Eric Radley went to the notary's office and told the notary that if
24 the Lien was not removed that they would file a police report on account of the Lien being
25 false. 2/18/21 Trial Transcript at 162:14-20 and 165:11-17 (Eric Radley Testimony).

26 93. McArn testified that while she and Eric Radley were going to the police
27 station, Curtis had gone to the sheriff station, each side attempting to file reports against
28 each other for alleged theft of each other's share of the lumber and, in Plaintiff's case,

1 removal of the Lien, as well. 2/19/21 Trial Transcript at 37:13-18 (McArn testimony).

2 94. McArn and Eric Radley testified that they went to the police station; when they
3 were at the police station, they received a return telephone call from Curtis, who said that
4 she was at the sheriff's station filing her own report; neither the police nor the sheriff
5 accepted the reports of either parties, saying that it was a civil matter. McArn
6 Declaration, ¶¶ 24-27 [Adversary Proceeding Docket No. 172]; Eric Radley Declaration
7 ¶¶ 55-58 [Adversary Proceeding Docket No. 171]; 2/18/21 Trial Transcript at 165:19-25
8 (Eric Radley Testimony); 2/19/21 Trial Transcript at 37:13-18, 40:7- 42:19 (McArn
9 Testimony).

10 95. Eric Radley testified that in October or November 2017, on behalf of Plaintiff,
11 and as Plaintiff's agent, he sent a text message to Curtis demanding that she remove the
12 Lien, but she refused to do so. Eric Radley Declaration, ¶ 60 [Adversary Proceeding
13 Docket No. 171]; Text Messages from Eric Radley, Trial Exhibit P-6 at 14.

14 96. Although Plaintiff made several demands on the Defendants to remove the
15 Disputed Lien from the Property, Defendants refused to comply with such demands.
16 JPTS at 5. Admitted/Adjudicated Fact No. 31 [Adversary Proceeding Docket No. 162];
17 see also, McArn Declaration, ¶¶ 22-27 [Adversary Proceeding Docket No. 172]; Eric
18 Radley Declaration ¶¶ 53, 55-58, 60 [Adversary Proceeding Docket No. 171]; 2/18/21
19 Trial Transcript at 165:19-25 (Eric Radley Testimony); 2/19/21 Trial Transcript at 40:7-
20 42:19 (McArn Testimony).

21 **I. Defendants' Malice and Ill Will in Filing the Lien**

22 97. Greta Curtis knew about Plaintiff's financial and legal problems with Acon
23 because Eric Radley had told her about them when she called him up in early 2017. Eric
24 Radley Declaration, ¶ 10 [Adversary Proceeding Docket No. 171]. Curtis gained Eric
25 Radley's confidence after they first met in fall or winter of 2016 at the Torrance
26 Courthouse and when she told him that she was an attorney and offered to help him with
27 his search of court record. *Id.*, ¶¶ 5-7. Curtis's representation to Eric Radley that she was
28 an attorney was misleading and deceptive in order to gain his confidence because while

1 it was true that she was an attorney in the past, she was no longer an attorney at the time
2 she told him she was an attorney, having been disbarred two years prior.

3 98. Curtis gained access to Plaintiff's financial information when McArn gave
4 Greta Curtis the Plaintiff's files, books, and records because Curtis told McArn that she
5 (Curtis) could help with the Plaintiff's financial and legal issues and refinancing. McArn
6 Declaration, ¶¶ 9-10 [Adversary Proceeding Docket No. 172]. Curtis gained McArn's
7 confidence because Curtis said to McArn that she (Curtis) was a lawyer and that she
8 could help her and Eric Radley with the Plaintiff's financial problems, management, and
9 refinancing Plaintiff's debts with Acon. McArn Declaration, ¶¶ 8-10 [Adversary
10 Proceeding Docket No. 172]. Curtis's representation to McArn that she was an attorney
11 was deceptive and gained his confidence because while it was true that she was an
12 attorney in the past, she was no longer an attorney at the time she told McArn she was
13 an attorney, having been disbarred two years prior. It is unlikely that McArn would have
14 given Curtis access to Plaintiff's financial information if she (McArn) had known that
15 Curtis had been disbarred. Later, McArn found out that Curtis had been disciplined and
16 disbarred when another lawyer told McArn about Curtis's state bar record. *Id.*, ¶14.

17 99. Greta Curtis testified that she researched the California law, legal treatises,
18 and subject matter of mechanic's liens before filing the Lien. 2/19/21 Trial Transcript at
19 137:1- 138:11 (Curtis testimony).

20 100. Greta Curtis filed the Lien asserting: "In accordance with an **agreement** to
21 provide labor and/or material, I did furnish the following labor and/or materials: **20**
22 Prefabricated Wood Wall Panels @ a cost of **\$2,000** a piece... of a total value of
23 **\$40,000.**" Lien, Trial Exhibit P-1 at 2. (emphasis added).

24 101. Aside from the incidents surrounding the lumber, other incidents transpired
25 between the parties leading up to the filing of the Lien, as discussed below:

26 102. As Eric Radley testified, in the summer of 2017, he discussed doing a real
27 estate deal with Greta Curtis in Gardena, California (the Gardena Deal), but when Curtis
28 could not come up with her half of the money for the deal, he told her that he would need

1 to move forward with another investor, and in response, Curtis told him that she would
2 sue him for breach of contract. Eric Radley Declaration, ¶¶ 14-21 [Adversary Proceeding
3 Docket No. 171].

4 103. As McArn testified, during spring and summer of 2017, while Greta Curtis
5 was helping the Plaintiff with its legal and financial problems, she (Curtis) tried to get
6 McArn to have the Plaintiff employ Curtis and pay Curtis compensation for helping with
7 Plaintiff's affairs, but McArn refused. McArn Declaration, ¶ 12 [Adversary Proceeding
8 Docket No. 172].

9 104. McArn further testified that Curtis also asked McArn to put her (Curtis) on
10 Plaintiff's board. McArn Declaration, ¶ 13 [Adversary Proceeding Docket No. 172].

11 105. McArn testified that she had considered putting Curtis on the Plaintiff's
12 board before she (McArn) learned that Curtis was a disbarred attorney when another
13 attorney informed McArn about Curtis's state bar record and that Curtis had been
14 disciplined and disbarred, and consequently, McArn decided not to put Curtis on the
15 board. McArn Declaration, ¶ 14 [Adversary Proceeding Docket No. 172].

16 106. McArn also testified that Curtis had asked McArn to allow her (Curtis) to
17 move many of Curtis's personal property items in storage from the closing of Curtis's law
18 office into a small warehouse at Plaintiff's Property for storage. McArn Declaration, ¶¶
19 15-21 [Adversary Proceeding Docket No. 172]. McArn agreed to allow Curtis to move
20 her files from her law office into Plaintiff's Property, but refused to allow Curtis's many
21 other personal property items to be moved to Plaintiff's Property for storage because
22 Plaintiff was preparing to use the property for child care, and this made Curtis angry. *Id.*

23 107. McArn testified that it is her belief that the culmination of Eric Radley not
24 doing the Gardena Deal with Curtis, in addition to McArn refusing to put Curtis on
25 Plaintiff's board, refusing to give Curtis an employment contract, and refusing to allow
26 Curtis to store Curtis's personal property at Plaintiff's Property, ultimately made Curtis so
27 angry that Curtis filed the Lien as a way of trying to get something out of Plaintiff or
28 otherwise getting back at McArn and Eric Radley. McArn Declaration, ¶ 21 [Adversary

1 Proceeding Docket No. 172].

2 108. During the period from the Recording Date through January 17, 2018, or
3 ninety (90) days after the Recording Date, the Lien Enforcement Deadline, neither of the
4 Defendants commenced a court or other legal proceeding to enforce, maintain, or
5 continue the Lien. JPTS at 2, Admitted/Adjudicated Fact No. 5 [Adversary Proceeding
6 Docket No. 162]; ⁸ see also, California Civil Code § 8460(a) (“The claimant shall
7 commence an action to enforce a lien within 90 days after recordation of the claim of lien.
8 If the claimant does not commence an action to enforce the lien within that time, the claim
9 of lien expires and is unenforceable.”). However, the 90-day period under state law for
10 enforcing Defendants’ purported mechanic’s lien was tolled by 11 U.S.C. § 108(c) as
11 filing of such action was an act to enforce a lien that is otherwise stayed by the automatic
12 stay in Plaintiff’s bankruptcy case under 11 U.S.C. § 362(a) and filing a notice of intent to
13 enforce the lien pursuant to 11 U.S.C. § 546(b) would not have been required to continue
14 or maintain perfection of the lien. *Philmont Management, Inc. v. In re 450 S. Western*
15 *Ave., LLC (In re 450 S. Western Ave., LLC)*, No. 21-60060, 2023 WL 2851378 (9th Cir.

16 _____
17 ⁸ The case docket sheet for Curtis’s state court lawsuit to enforce the Lien, *Curtis v. People*
18 *Who Care Youth Center, Inc.*, No. BC 690787 (Superior Court of California,
19 County of Los Angeles), and the file-stamped copy of the complaint conclusively
20 established the dates of recording of the Lien on October 19, 2017 and the filing of
21 the lawsuit on January 18, 2018, 91 days after the date of lien recordation. These
22 documents were unobjected-to Exhibits 1 and 2 to Declaration of John-Patrick M.
23 Fritz in support of Plaintiff’s Motion for Summary Judgment [Adversary
24 Proceeding Docket No. 122]. Curtis improperly tried to manufacture a genuine
25 issue of material fact to deny Plaintiff summary adjudication by giving untruthful
26 testimony in her declaration opposing summary adjudication by testifying that she
27 “did file a complaint exactly 89 days after recordation of the mechanics’ lien.
28 There are approximately 89 calendar days from October 20, 2017 to January 17,
2018.” Declaration of Greta Curtis in Defendants’ Opposition to Plaintiff’s Motion
for Partial Summary Adjudication at 17 [Adversary Proceeding Docket No. 129].
Curtis’s declaration was made in bad faith because it misstated the date of lien
recordation as October 20, 2017 and the date of filing of her state court lawsuit as
January 17, 2018 to support her false claim that her lawsuit to enforce the lien was
filed 89 days after lien recordation. Curtis’s testimony in her declaration was
objectionable as not the best evidence of the filing dates of her lien and her lawsuit,
and the best evidence of the facts were copies of the recorded lien and file-stamped
complaint. However, the Bankruptcy Court now considers Curtis’s factual
misstatement as not material as the grant of partial summary adjudication on the
lien avoidance claims has been vacated.

1 Apr. 10, 2023), *following In re Hunters Run Limited Partnership*, 875 F.2d 1425 (9th Cir.
2 1989); *but see, In re Baldwin Builders*, 232 B.R. 406, 410-416 (9th Cir. BAP 1999).

3 109. After Plaintiff filed for bankruptcy, Curtis filed her state court complaint (the
4 State Court Complaint) on January 18, 2018, one day after the Lien Enforcement
5 Deadline, which commenced her state court lawsuit (the “State Court Lawsuit”) bearing
6 case number BC690787, with case title “*Greta Curtis vs. People Who Care Youth Center*
7 *Inc.*,” in an attempt to enforce the Lien against the Plaintiff. JPTS at 2-3,
8 Admitted/Adjudicated Fact No. 5 [Adversary Proceeding Docket No. 162].

9 110. Defendants were aware of Plaintiff’s bankruptcy case and retention of
10 bankruptcy counsel by at least January 26, 2018 when Plaintiff’s counsel sent Curtis a
11 letter informing her of the bankruptcy filing and that filing the State Court Lawsuit violated
12 the automatic stay and was void. JPTS at 3, Admitted/Adjudicated Facts Nos. 7-9
13 [Adversary Proceeding Docket No. 162].

14 111. While Plaintiff’s bankruptcy case was pending, Curtis continued to litigate
15 the State Court Lawsuit by amending it to add as defendants McArn, Eric Radley,
16 Barrington Radley, and McArn’s four children, even though they never received service of
17 any of these papers against them personally. McArn Declaration, ¶ 40 [Adversary
18 Proceeding Docket No. 172]; JPTS, Admitted/Adjudicated Facts Nos. 10-17 [Adversary
19 Proceeding Docket No. 162].

20 112. At trial, Curtis also admitted to violating the automatic stay by making a
21 claim against Plaintiff with the California Labor Commission Board in or about November
22 or December 2018. 6/29/22 Trial Transcript at 127:13-128:13.

23 113. On November 5, 2018, the state court held a hearing on its order to show
24 cause, no appearances were made on the record, and the state court entered a minute
25 order dismissing the State Court Complaint. JPTS 4, Admitted/Adjudicated Fact No. 19
26 [Adversary Proceeding Docket No. 162].

27
28

1 **J. Plaintiff's Claim for Damages from Defendants' Filing the Lien Interfering**
2 **with Its Loan Refinancing**

3 114. Plaintiff was facing a foreclosure or sheriff's sale at the hands of a large,
4 secured creditor, Acon Development, Inc. ("Acon"). Declaration of John-Patrick M. Fritz
5 in Support of Request for Judicial Notice in Support of Plaintiff's Proposed Findings of
6 Fact and Conclusions of Law After Trial [Adversary Proceeding Docket No. 219].(RJN),
7 Exhibit 3, Acon Development, Inc.'s Notice of Motion and Motion to Dismiss Case under
8 11 U.S.C. § 1112(b); Memorandum of Points and Authorities (Acon's Motion to Dismiss
9 Bankruptcy Case) [Bankruptcy Case Docket No. 123 at 12 and Bankruptcy Case Docket
10 No. 123-1 at 4]; 2/19/21 Trial Transcript at 45:8- 46:1 (McArn Testimony).

11 115. McArn testified that Plaintiff was working with a loan broker, Lending
12 Xpress, to refinance the existing loan on the Property, where the refinancing loan
13 proceedings would be used to pay off certain liens, such as for Acon, and Lending
14 Xpress was prepared to provide Plaintiff a loan to pay off Acon, property taxes, and the
15 other liens until Defendants' Lien for \$40,000 appeared on the preliminary title report for
16 the property. 2/19/21 Trial Transcript at 79:1-7 (McArn testimony).

17 116. McArn testified that Defendants' Lien caused damage to Plaintiff because
18 the lien prevented Plaintiff from refinancing. 2/18/21 Trial Transcript at 259:23-25 (McArn
19 testimony); 2/19/21 Trial Transcript at 53:10-25 (McArn testimony).

20 117. McArn testified that Plaintiff had arranged for \$950,000 of refinancing from
21 Lending Xpress. 2/19/21 Trial Transcript at 65:1-14 (McArn testimony). McArn also
22 testified that the Lending Xpress refinancing was to be junior to the existing lien of the
23 City of Los Angeles. 2/19/21 Trial Transcript at 82:4-16 (McArn testimony). McArn
24 testified that Lending Xpress cancelled the refinancing in 2017 because of the
25 mechanic's lien before the bankruptcy case was filed in 2018. 2/19/21 Trial Transcript at
26 81:11-25 (McArn testimony). McArn testified that Lending Xpress would not fund a loan
27 to Plaintiff because the existence of a mechanic's lien created a cloud on title due to
28 borrower irresponsibility. 2/19/21 Trial Transcript at 88:3-10 (McArn testimony).

1 118. McArn testified that Plaintiff was damaged by Defendants' Lien because it
2 delayed Plaintiff from being able to do a lot of things with the refinancing money. 2/19/21
3 Trial Transcript at 63:7-25 (McArn testimony).

4 119. Plaintiff was eventually able to successfully refinance the Property by the
5 end of 2020 with another lender Danco Inc. 2/19/21 Trial Transcript at 80:22-25 (McArn
6 testimony).

7 120. From the time of the bankruptcy filing date in January 2018 until the
8 refinancing at the end of 2020, interest and attorneys' fees on the secured claim of Acon
9 Development Inc. increased. 2/19/21 Trial Transcript at 81:1-4 (McArn testimony).

10 121. As indicated by Acon's proof of claim, the per diem interest accrued on its
11 lien at the rate of \$82.94. RJN [Adversary Proceeding Docket No. 219], Exhibit 6, Acon
12 Development, Inc.'s Proof of Claim No. 9, at 4.

13 122. Also, as indicated on Acon's proof of claim, its claim for attorneys' fees
14 increased by \$121,629.85 from the date of filing of Plaintiff's bankruptcy petition on
15 January 10, 2018 to March 3, 2020. RJN [Adversary Proceeding Docket No. 219],
16 Exhibit 6, Acon Development, Inc.'s Proof of Claim No. 9, at 4.

17 123. After successfully refinancing, on December 17, 2020, Plaintiff paid Acon's
18 secured claim, with interest, in the total amount of \$550,000, plus attorneys' fees in the
19 amount of \$116,865.16. RJN [Adversary Proceeding Docket No. 219], Exhibit 5,
20 Plaintiff's Notice of Motion and Motion for Order Authorizing Release of Financing
21 Proceeds to Reorganized Debtor; Memorandum of Points and Authorities; Declaration of
22 Michelle McArn in Support (Plaintiff's Motion for Order Authorizing Release of Financing
23 Proceeds) [Bankruptcy Case Docket No. 273 at 8, 15, 16].

24 **K. Plaintiff's Claim for Attorneys' Fees and Costs as Damages in Removing**
25 **Defendants' Lien**

26 124. As a result of the Defendants' refusal to voluntarily remove the Disputed
27 Lien from the Property and litigation related thereto, the Plaintiff was forced to incur legal
28 fees and costs to remove the disputed Lien from the Property. JPTS at 5,

1 Admitted/Adjudicated Fact No. 32 [Adversary Proceeding Docket No. 162].

2 125. McArn testified that Plaintiff incurred damages by having to hire an attorney
3 to remove Defendants' purported mechanic's lien. 2/19/21 Trial Transcript at 62:9-16
4 (McArn testimony).

5 126. The amount of attorneys' fees and costs incurred by the Plaintiff were the
6 subject of hearings set for May 27, 2021, but, due to repeated requests by Defendants for
7 continuance, serially rescheduled for over twelve months and eventually heard at trial on
8 June 29 and 30, 2022.

9 127. Plaintiff requests the Bankruptcy Court to take judicial notice of the motion
10 and reply brief in support of Plaintiff's attorneys' fees and costs filed as Adversary
11 Proceeding Docket Nos. 146 and 153, asserting \$189,569.50 in fees and \$6,351.05 in
12 costs. Plaintiff's Notice of Motion and Motion for Attorneys' Fees and Costs;
13 Memorandum of Points and Authorities in Support Thereof; Declaration of John-Patrick
14 M. Fritz, Esq. (Plaintiff's First Motion for Attorneys' Fees) [Adversary Proceeding Docket
15 No. 146]; RJN [Adversary Proceeding Docket No. 219], Exhibit 2, Reply to Defendants'
16 Opposition to Debtor's Motion for Attorneys' Fees and Costs [Adversary Proceeding
17 Docket No. 153 at 28:16-19]. Plaintiff's motion and reply brief in support of its attorneys'
18 fees and costs are not proper subjects for judicial notice under Federal Rule of Evidence
19 201 as they consist of legal argument and evidence disputed by Defendants. The motion
20 and reply brief contain evidence in support of Plaintiff's claim for attorneys' fees and
21 costs, which the court may consider in determining the facts relating to such claim, the
22 billing statements of Plaintiff's counsel in particular, which Defendants have had
23 opportunities to review and cross-examine Plaintiff's counsel about.

24 128. Plaintiff requests the Bankruptcy Court to take judicial notice of the motion
25 and reply brief in support of Plaintiff's attorneys' fees and costs filed as Adversary
26 Proceeding Docket Nos. 221 and 273. Plaintiff's motion and reply brief in support of its
27 attorneys' fees and costs are not proper subjects for judicial notice under Federal Rule of
28 Evidence 201 as they consist of legal argument and evidence disputed by Defendants.

1 The motion and reply brief contain evidence in support of Plaintiff's claim for attorneys'
2 fees and costs, which the court may consider in determining the facts relating to such
3 claim, the billing statements of Plaintiff's counsel in particular, which Defendants have
4 had opportunities to review Plaintiff' counsel's billing entries before trial and cross-
5 examine Plaintiff's counsel during trial.

6 129. Plaintiff requests the Bankruptcy Court to take judicial notice of the
7 summary of all fees filed by Plaintiff, summarizing three periods with detailed time entries
8 attached as Exhibits A, B, and C thereto: (A) \$189,569.50;⁹ (B) \$95,913.00; (C)
9 \$36,737.50. Adversary Proceeding Docket No. 275. Plaintiff's summary of its attorneys'
10 fees and costs is not a proper subject for judicial notice under Federal Rule of Evidence
11 201 as it consists of evidence disputed by Defendants. The summary of fees with
12 detailed time entries constitute evidence in support of Plaintiff's claim for attorneys' fees
13 and costs incurred to remove Defendants' lien, which the court may consider in
14 determining the facts relating to such claim, the time entries of Plaintiff's counsel in
15 particular which Defendants have had opportunities to review and cross-examine
16 Plaintiff's counsel about.

17 130. At the trial on June 29, 2022, Plaintiff agreed to limit attorney fee damages
18 to only those billing entries by one attorney, John-Patrick M. Fritz (billing initials "JPF").
19 6/29/22 Trial Transcript at 11:3- 12:24 and 19:20- 20-6.

20 131. At trial on June 29 and 30, 2022, the Bankruptcy Court made oral
21 preliminary rulings on the fees charged, as reflected in **Exhibit 1** attached hereto.

22 132. As set forth in Plaintiff's First Motion for Attorneys' Fees [Adversary
23 Proceeding Docket No. 146], Plaintiff asserts that Defendants were unnecessarily
24 combative and added unnecessary procedural expense to the litigation from the start:

25 a. Instead of answering the complaint, Curtis filed a motion to dismiss the
26

27 ⁹ This figure was later voluntarily reduced by Plaintiff to \$189,757.50 in recognition that
28 some entries were not related to this matter.

1 adversary proceeding for lack of personal jurisdiction, alleging a failure
2 to serve her or Ammec. Curtis also opposed the entry of default
3 judgment and immediately sought sanctions against Plaintiff's counsel
4 for \$2,500. After a series of briefing in opposition and replies, entry of
5 default was withdrawn, and the Plaintiff again served Curtis with another
6 summons on or about July 19, 2018, by which time more than 60 days
7 had passed since the complaint was filed. This was the start of
8 Defendants' unending efforts to cause delay and increase the cost of
9 litigation through various procedural objections and avoid the
10 substantive merits of the suit.

11 b. Curtis's next move was to file a motion to dismiss the complaint for
12 failure to state a claim under Federal Rule of Civil Procedure 12(b)(6).
13 Although Curtis filed her motion on August 20, 2018, and the local rules
14 require only 21 days' notice, Curtis scheduled the hearing for October
15 16, 2018, nearly 60 days out, causing more than a month of
16 unnecessary delay. Although the Bankruptcy Court denied Curtis's
17 motion to dismiss the complaint, Plaintiff's counsel was nonetheless
18 required to analyze the motion, prepare an opposition, attend the
19 hearing, and prepare and lodge the order. It was not until November 2,
20 2018, that Curtis ultimately filed an answer to Plaintiff's amended
21 Complaint, by which time nearly six months had passed since the start
22 of the adversary proceeding.

23 c. Curtis also filed a counterclaim against Plaintiff, six months after the
24 Claims Bar Date had passed, causing Plaintiff's counsel to prepare and
25 file a motion to dismiss the cross-complaint and for violation of the
26 automatic stay. Curtis did not respond on the merits but (like with her
27 initial pleadings in the adversary proceeding) opposed based on
28 technical grounds regarding insufficient service and seeking to have the

1 motion rescheduled from December 11, 2018, until after the New Year,
2 based on her alleged vacation schedule spanning 24 days and
3 (coincidentally) beginning December 12, 2018 (the day after the then-
4 scheduled hearing) up to January 3, 2019. This would have caused
5 more undue delay, and Plaintiff's counsel was forced to prepare a reply
6 (which Plaintiff's counsel did and filed within one day to avoid such
7 further delay) and explain why Curtis was wrong in her calculation of
8 insufficient service days under the Local Bankruptcy Rules. As a result
9 of Plaintiff's counsel's diligent and speedy response, Curtis voluntarily
10 stipulated to dismiss her cross-complaint with prejudice the next week.
11 Although Plaintiff was making steady progress in challenging the
12 Disputed Mechanic's Lien in furtherance of its crucial refinancing efforts,
13 Curtis's litigation strategy of increasing cost and delay had forced
14 Plaintiff's counsel to go through at least four rounds of motion practice
15 over the course of six months just to get through the answer phase of
16 the lawsuit.

17 d. Plaintiff's counsel also soon learned that Curtis had further violated the
18 automatic stay by filing a complaint against Plaintiff with the California
19 Labor Commission Board in or about November or December 2018.
20 Because of the close temporal proximity to the other stay violation in
21 connection with the cross-complaint in the adversary proceeding,
22 Plaintiff's counsel was forced to prepare a stay letter and making phone
23 calls to the Labor Board informing them of the automatic stay and
24 pending bankruptcy case to ensure that Curtis was not carrying the
25 litigation asserting the claim underlying the mechanic's lien over into
26 other forums.

27 e. In an effort to avoid further delay by another round of contested motion
28 practice about whether service had been effectuated, Plaintiff's counsel

1 had Plaintiff's discovery personally served on Curtis by a process server
2 to ensure receipt. Nonetheless, Curtis opposed the discovery on other
3 grounds in what would become an expensive, unpleasant, and ongoing
4 series of discovery disputes for most of March, all of April, and
5 continuing into mid-May 2019.

6 f. Shortly after the Bankruptcy Court signed the order setting the discovery
7 deadlines, Plaintiff's counsel propounded discovery on Curtis and
8 Ammec on or about February 19, 2019, so that the defendants would
9 have 30 days to respond, and then there would be adequate time to
10 bring a discovery motion if needed. Depositions of Curtis and Ammec's
11 person most knowledgeable were set for March 27, 2019, and then
12 rescheduled to March 25, 2019, at the defendants' request. However,
13 as soon as Plaintiff's counsel had agreed to reschedule the depositions
14 (at defendants' request), Curtis then freshly raised additional objections
15 in an attempt to not produce documents and not appear at deposition.

16 g. Plaintiff's counsel was forced to render additional legal services to
17 Plaintiff by engaging in telephone calls with Curtis to "meet and confer,"
18 analyze Curtis's various letters and emails objecting to discovery, and
19 preparing response correspondence to hold Curtis to discovery
20 production and attendance of depositions. Because written decisions on
21 discovery disputes very rarely rise to the level of binding authority from
22 the Ninth Circuit or the Supreme Court, most discovery disputes must be
23 resolved based on common practice, reasonability, and whatever non-
24 binding federal discovery case decisions may be available. Despite
25 Plaintiff's counsel crafting its discovery in consultation with respected
26 treatises and practice guides on federal discovery, and Plaintiff's
27 counsel preparing several correspondence with citation to treatise and
28 case law to compel discovery, Curtis would invariably object on the

1 grounds that this was not binding authority while occasionally citing a
2 non-binding case of her own. These correspondence exchanges were
3 extremely time consuming in research, reference, and preparation, and
4 mostly done on short notice leading up to the impending discovery
5 deadline or deposition date. Nonetheless, it was imperative that
6 Plaintiff's counsel conduct the discovery and take the additional steps to
7 ensure that Curtis attended depositions so as to properly and
8 adequately prepare for trial.

9 h. Ultimately, Curtis sat for deposition – both personally and as the person
10 most knowledgeable for Ammec – but was highly uncooperative and
11 disruptive during the deposition. At several points during the
12 depositions, Curtis would object and refuse to answer lines of
13 questioning for various reasons that were without merit, and insist that
14 not her, but Ammec's other officer, Carlos Montenegro, would be the
15 person to question regarding these topics. Because of Curtis's
16 persistent obstruction, Plaintiff's counsel was forced to notice a second
17 set of depositions of Ammec's person most knowledgeable and Carlos
18 Montenegro. Once again, this led to meritless written objection
19 correspondence from Curtis, followed by Plaintiff's counsel having to
20 prepare replies with researched case law and treatise citation to compel
21 production and attendance at the deposition. Most shocking in this
22 particular exchange was the written statement from Curtis and
23 Montenegro that Montenegro was not an officer of Ammec, even
24 though: (i) he was the signed listed officer on the Secretary of State
25 corporate records; (ii) Curtis repeatedly stated that Montenegro was an
26 officer of Ammec; and (iii) a few weeks later Montenegro would attend a
27 third-party deposition and state on the record that he is an officer of
28 Ammec. At the second deposition of Ammec's person most

1 knowledgeable, Montenegro did not appear, and Curtis appeared a
2 second time to act as the “person most knowledgeable” on the issues
3 that she previously stated she had no knowledge, and, once again
4 refused to answer while making baseless objections to the lines of
5 questioning. Thus, what should have been (and could have been) one
6 simple day of depositions with Curtis became a labored process of two
7 days of depositions and hours of additional disputed letters and
8 telephone exchanges simply to compel attendance at deposition.

9 i. These depositions and discovery were necessary because Curtis is a
10 key witness in the dispute. To keep costs down, based upon concerns
11 about credibility, bias, cost, and the amount at issue in the dispute,
12 Debtor made the specific litigation discovery decision to notice only the
13 deposition of Curtis (personally and as Ammec’s person most
14 knowledgeable) despite Defendants’ listing several other potential
15 witnesses that were Curtis’ family members and acquaintances.
16 Without these discovery efforts, the Debtor would be left completely
17 unprepared and exposed for whatever Curtis might attempt to do at trial.
18 Unfortunately, the Curtis deposition fight was only the first stage of the
19 discovery disputes.

20 j. Curtis listed certain employees at Habitat for Humanity as witnesses in
21 her initial Federal Rule of Civil Procedure 26 disclosures, and, after
22 Curtis gave further details on who these persons were and what they
23 might know during the course of her deposition on March 25, 2019,
24 Plaintiff’s counsel diligently began setting up a deposition of these
25 employees and a document production to Habitat for Humanity.
26 Plaintiff’s counsel exchanged telephone calls and emails with a Habitat
27 for Humanity vice president to set up a convenient time and place for
28 depositions. Plaintiff’s counsel also prepared subpoenas as third-party

1 witnesses. By the time that all the logistics were arranged with Habitat
2 for Humanity for the depositions, the parties were nearing the discovery
3 cutoff of April 30, 2019. Curtis objected to the scheduling and attempted
4 to interfere with the depositions going forward, causing Plaintiff's
5 counsel to render additional legal services to keep the depositions on
6 track.

7 k. The depositions of the Habitat for Humanity employees were necessary
8 because Curtis had listed them as key witnesses in the dispute. While
9 many of Defendants' potential witnesses in their Federal Rule of Civil
10 Procedure 26 disclosures were family members or associates that might
11 be subject to bias impeachment, the Habitat for Humanity employees
12 presented a different situation with true third-party witnesses who may
13 have been neutral and percipient witnesses to key facts in the dispute.
14 Plaintiff had to get on record what these witnesses knew or did not know
15 in preparation for trial if Curtis intended to call them. Plaintiff's counsel
16 conducted and completed these depositions in one morning to keep
17 costs down.

18 i. The discovery disputes between Curtis and the Debtor entered a third
19 (and highly litigious and expensive) stage because Curtis waited too late
20 to propound discovery on the Plaintiff. All of the discovery demands that
21 Plaintiff's counsel received from Curtis were served on or after April 11,
22 2019, which did not provide the requisite 30-day notice period to answer
23 under the Federal Rules of Civil Procedure. One exception to the 30-
24 day rule is that depositions can be set on "reasonable notice" and
25 documents can be produced at or before a deposition in less than 30
26 days if reasonable (though some courts view this as an impermissible
27 run-around of the 30-day rule). Nonetheless, one type of discovery
28 demand where this "30-day run-around" exception absolutely will not

1 work is a demand for inspection of real property under Federal Rule of
2 Civil Procedure 34. Curtis was determined to gain access to Plaintiff's
3 Property, but being beyond the 30-day notice requirement of Federal
4 Rule of Civil Procedure 34(b)(2), she had no way of doing so. Thus,
5 Curtis insisted on noticing a deposition of the Debtor's board members
6 at the Property on less than 30 days' notice. It absurd that one party
7 could unilaterally insist on setting a deposition anywhere it pleased,
8 even in an adversary's place of business. In order to protect the Debtor
9 from this harassment and discovery abuse, on instruction from the
10 client, Plaintiff's counsel prepared objections to Curtis's discovery but
11 offered to host the depositions at Plaintiff's counsel's offices.

12 m. Curtis was adamant about conducting the deposition at Plaintiff's
13 Property, refused to alter her position despite telephone and
14 correspondence exchanges with Plaintiff's counsel, and filed a motion to
15 force the deposition at Plaintiff's Property and (for the second time in the
16 case) seek monetary sanctions against Plaintiff's counsel.
17 Consequently, Plaintiff's counsel was required to render legal services
18 to Plaintiff by analyzing Curtis's 100 pages of motion and exhibits,
19 prepare an opposition complete with evidentiary objections,
20 declarations, and exhibits, totaling nearly 500 pages. The Bankruptcy
21 Court entered an order denying Curtis's discovery motion without oral
22 argument a week before the scheduled hearings based on the papers
23 alone.

24 n. In the meantime, while the discovery disputes were ongoing, Curtis filed
25 a motion for summary judgment against Plaintiff on March 4, 2019, and
26 set it for hearing on April 30, 2019. Many of Curtis's legal arguments
27 were confused and nonsensical, but, nonetheless Plaintiff was forced to
28 incur legal fees and respond or risk losing the case on summary

1 judgment. Plaintiff's counsel was forced to analyze Curtis's motion and
2 prepared a 30-page opposition, which was as much opposition to
3 Curtis's position as explanation of legal theories and doctrines that
4 Defendants had misconstrued in their motion. Responding to a motion
5 for summary judgment is not a light task, and Plaintiff's counsel was
6 required to prepare not only the opposing memorandum of points and
7 authorities, but separate declarations in opposition, evidentiary
8 objections, and a separate statement of disputed facts. Next, Curtis
9 would file her replies, subsequent declarations, and evidentiary
10 objections of her own. Plaintiff's counsel was forced to review these
11 replies and prepare for and attend the hearing on the motion, which the
12 Bankruptcy Court ultimately denied, except for using the opportunity to
13 establish certain undisputed facts between the parties.

14 o. On September 16, 2019, Plaintiff's counsel filed Plaintiff's motion for
15 partial summary adjudication ("Motion for Partial Summary
16 Adjudication") on voiding the mechanic's lien based on application of a
17 number of bankruptcy code sections, setting it for hearing on November
18 5, 2019. The preparation of the motion also required a separate
19 statement of facts and conclusions of law, and declarations and exhibits
20 in support.

21 p. Curtis and Ammec opposed Plaintiff's Motion for Partial Summary
22 Adjudication, but their opposition failed to provide a substantive
23 response on the issues; instead, the opposition proffered misguided
24 procedural arguments about the federal rules and meandered into
25 irrelevant arguments on discovery disputes. Thus, Plaintiff's counsel
26 was forced to respond to Defendants' opposition papers by first
27 untangling a series of nonsensical objections that barely touched on the
28 substance of the Motion for Partial Summary Adjudication and then

1 (after making some sense of them) completely refuting them. Plaintiff's
2 refutation of Defendants' arguments covered both facts and law.
3 Factually, Defendants had contradicted their previous testimony
4 regarding lien assignment, blatantly misrepresented the counting of
5 days in the 90-day requisite period for filing suit to enforce a mechanic's
6 lien, attempted to re-characterize the dismissal of Curtis's counterclaim
7 that was wholly at odds with the record in the case, and
8 mischaracterized oral argument from a previous hearing as an
9 "evidentiary" one. Legally, Defendants proffered an incorrect
10 interpretation of 11 U.S.C. § 362 in relation to 11 U.S.C. § 546(b) and
11 insisted on a reading of Federal Rule of Civil Procedure 56 in an
12 irrational manner that would render FRBP 7056 a nullity. Plaintiff was
13 forced to incur attorneys' fees to respond and prevailed on all of these
14 issues in Plaintiff's reply and at the hearing on the Motion for Partial
15 Summary Adjudication.

16 q. Plaintiff's counsel's fees were reasonable and necessary because when
17 the Plaintiff prevailed on the Motion for Partial Summary Adjudication, it
18 significantly reduced the number of issues and amount of evidence
19 necessary for trial, and it invalidated the Defendants' Lien and
20 disallowed all claims that the Defendants had against Plaintiff, the
21 Property, and the bankruptcy estate.

22 r. Plaintiff's counsel's attorneys' fees were also reasonable and necessary to
23 prepare the mandatory joint pretrial stipulation with Curtis and Ammec, and
24 to prepare for and attended the pretrial conference on October 1, 2019,
25 which has been continued to December 17, 2019, on account of the Motion
26 for Partial Summary Adjudication.

27 133. As set forth in Plaintiff's Second Motion for Attorneys' Fees [Adversary
28

1 Proceeding Docket No. 221], Plaintiff again asserts that Defendants were unnecessarily
2 combative and added unnecessary procedural expense to the litigation:

3 s. Plaintiff's counsel prepared a joint pretrial stipulation and exchanged
4 emails with Defendants regarding the stipulation. The parties continued
5 to have disputes regarding the pretrial stipulation, and Plaintiff's counsel
6 had to prepare a notice of dispute for hearing, prepare for and attended
7 the status conference on December 17, 2019, and prevailed on
8 Plaintiff's version of the joint pretrial stipulation. See Plaintiff's Notice of
9 Motion and Second Motion for Attorneys Fees and Costs; Memorandum
10 of Points and Authorities in Support Thereof; Declaration of John-Patrick
11 M. Fritz, Esq.

12 t. Plaintiff's counsel prepared and timely filed Plaintiff's direct testimony
13 declarations on February 7, 2020, in advance of the trial scheduled for
14 April 23 and 24, 2020. However, due to the complications of Covid 19,
15 on March 16, 2020, Plaintiff filed motions and applications to reschedule
16 the in-person trial, and on March 17, 2020, the Bankruptcy Court
17 vacated the trial dates and set a status conference for April 28, 2020.
18 For the remainder of 2020, Plaintiff's counsel would attend continued
19 status conferences and report to the Bankruptcy Court on availability of
20 remote trial procedures for Plaintiff, witnesses, and parties to conduct
21 the trial, which the Bankruptcy Court ultimately set as a remote trial
22 scheduled for January 28 and 29, 2021.

23 u. Defendants at first objected to remote trial and remote trial procedures,
24 and Plaintiff's counsel had to prepare briefing and status report on
25 proposed procedures for remote trial [Adversary Proceeding Docket No.
26 186], which Defendants opposed for, among other reasons, the
27 assertion that Curtis did not own a computer and insisted on an in-
28 person trial with only the witness Barrington Radley being allowed to

- 1 appear remotely [Adversary Proceeding Docket No. 187]. Plaintiff's
2 counsel was required to analyze such objections, prepare for, and
3 attend status conferences to move the matter along to remote trial.
- 4 v. In preparation for trial, Plaintiff's counsel prepared and served a third-
5 party witness subpoena on Habitat for Humanity to appear at trial for
6 examination.
- 7 w. In January 2021, Plaintiff's counsel prepared and filed evidentiary
8 objections to Defendants' three direct witness trial declarations, and
9 Plaintiff's counsel had to expend significant time preparing for a two-day
10 trial scheduled for January 28 and 29, 2021.
- 11 x. At the first day of trial, January 28, 2021, neither Curtis nor counsel for
12 Ammec appeared for trial at 9:00 a.m. The Bankruptcy Court waited,
13 then took a recess to allow more time for Defendants to appear, but at
14 9:30 a.m., Defendants were still not present, and the Bankruptcy Court
15 took a default against Defendants. 1/28/21 Trial Transcript at 3:7- 4:25.
- 16 y. The Bankruptcy Court permitted trial to continue with Plaintiff's counsel
17 taking the live direct testimony of Mr. Rudy Trabanino, store manager for
18 Habitat for Humanity. Just after direct testimony concluded, Ammec's
19 counsel, Mr. Barriage, appeared at the trial at approximately 9:50 a.m.
20 1/28/21 Trial Transcript at 10:1- 11:9. At the court's request, Plaintiff's
21 counsel summarized and repeated Mr. Trabanino's testimony for Mr.
22 Barriage, and Mr. Barriage did not wish to cross-examine, so the
23 witness was excused. 1/28/21 Trial Transcript at 18:1-7. Just then
24 Curtis appeared by telephone (not video) at the trial, and after another
25 recess of ten minutes, trial commenced again 10:21 a.m. with Curtis
26 present by video, and the Bankruptcy Court reversed its previous
27 decision for a default. 1/28/21 Trial Transcript at 23:20-16.
- 28 z. Instead of getting on with the actual trial though, the Bankruptcy Court

1 was forced to address Defendants' failure to file Curtis's trial declaration.
2 1/28/21 Trial Transcript at 24:24- 25:12. Curtis's trial declaration was
3 due by no later than February 21, 2020. JPTS, ¶¶ 107, 115 [Adversary
4 Proceeding Docket No. 162]; Adversary Proceeding Docket No. 163, ¶4.
5 aa. On the first day of trial, after almost 90 minutes of delay for Defendants'
6 failure to timely appear, Curtis tried to sandbag Plaintiff by attempting to
7 testify live without having filed her trial declaration, as required in the
8 Joint Pretrial Stipulation [Adversary Proceeding Docket No. 162]. See,
9 1/28/21 Trial Transcript at 24:23- 32:14. Curtis first argued why she
10 should be allowed to ambush the Plaintiff with live testimony, and, when
11 that failed, attempted to explain her lapse, and the Bankruptcy Court
12 graciously continued the trial in the interest of justice so that Curtis could
13 file her late trial declaration, and the trial was rescheduled for February
14 18 and 19, 2021. In such a manner, practically an entire morning of trial
15 was wasted by Defendants' inability to competently appear at trial or
16 otherwise file the most important one of all their trial declarations.
17 Defendants appeared to have been unprepared on a substantive level,
18 as well, because near the end of the hearing, Curtis asked: "At the risk
19 of sounding stupid, what is the claim that we're litigating?" 1/28/21 Trial
20 Transcript at 40:25- 41:1. Of course, all of these actions by Defendants
21 unnecessarily increased the cost of the litigation, forcing Plaintiff's
22 counsel to incur attorneys' fees to prepare for trial and attend a half-day
23 of trial only to have the matter rescheduled by three weeks.
24 bb. On February 4, 2021, Curtis filed her late trial declaration [Adversary
25 Proceeding Docket No. 204]. The trial declaration contained an
26 explanation that Curtis had contracted Covid-19 during January 2020
27 and had been incapacitated for five weeks while her breathing was
28 extremely laborious, particularly due to being extremely ill with COPD.

1 Adversary Proceeding Docket No. 204 ¶ 49. Somewhat incongruously,
2 despite this battle with Covid-19 in January/February 2020, in July 2020
3 (a time when no vaccine had been developed at all) Curtis made no
4 mention of the matter but insisted on in-person trial hearings because
5 she had no computer, mentioning no health concerns at all, even while
6 the country hit progressively worse waves of Covid infection and
7 hospitalization in July 2020. See, Adversary Proceeding Docket No.
8 187.

9 cc. Plaintiff's counsel was required to analyze Curtis's late trial declaration,
10 prepare and file evidentiary objections, and prepare for trial a second
11 time due to the delay.

12 dd. To keep costs down, Plaintiff's counsel had only one attorney appear for
13 the two-day trial encompassing oral arguments on evidentiary
14 objections, cross-examination, re-direct, and rehabilitation testimony.
15 See Plaintiff's Second Motion for Attorneys' Fees [Adversary Proceeding
16 Docket No. 221].

17 ee. On the original first day of trial, January 28, 2021, Debtor's counsel
18 expressed a view that the trial could be done in one day. 1/28/21 Trial
19 Transcript at 36:1-2. Indeed, earlier that day, evidence had been
20 admitted that all the lumber sold by the Habitat for Humanity Store for
21 the entire month of September 2017 was less than \$3,000. 1/28/21 Trial
22 Transcript at 9:1-19. From that point forward, the trial primarily
23 concerned Defendants' failed attempts to justify an indefensible
24 "mechanic's" lien, and it would seem unfathomable that such a defense
25 could take two full days, particularly because (as of February 3, 2021,
26 when Curtis filed her late trial declaration) it was undisputed that the
27 total purchase price of 50 prefabricated walls of lumber was only \$1,000,
28 which was so obviously out of proportion with Defendants' mechanic's

1 Lien asserting a claim of \$40,000.

2 ff. Based on the undisputed facts, Defendants' Lien was so indefensible

3 that at the outset of trial the Court stated the obvious: "... I have to know

4 what exactly... what the thinking was to go into the lien is, or what was

5 the reason for the lien. Because it's a little unclear to me, you know,

6 where the \$40,000 comes from, and, you know, what makes this a

7 mechanics lien." 2/18/21 Trial Transcript at 16:14-18. Very early on in

8 the trial, the Bankruptcy Court continued to question Curtis under oath

9 trying to understand how these facts (alleged tort of conversion) could

10 possibly justify a mechanic's lien. 2/18/21 Trial Transcript at 67:15-

11 75:3. Very early on in the trial, the Bankruptcy Court also questioned

12 Curtis directly on how \$1,000 purchase of lumber could justify a \$40,000

13 lien. 2/18/21 Trial Transcript at 64:7-21. Thus, within the first two hours

14 of trial (2/18/21 Trial Transcript at 56:6 [Bankruptcy Court resumes after

15 morning recess]), the Bankruptcy Court had already addressed the main

16 problem with Defendants' claimed "mechanic's" Lien for \$40,000. The

17 rest of the trial was largely Curtis attempting to defend her indefensible

18 actions over the course of two days, which only further proved

19 Defendants' malice in filing the lien. Nonetheless, Plaintiff's counsel

20 was forced to provide services and incur additional service fees for a

21 two-day trial where the vast majority of the time was spent by Ms. Curtis

22 arguing with the Bankruptcy Court and attempting to justify a \$40,000

23 lien for a dispute over \$1,000 of lumber.

24 gg. At trial Defendants engaged in extensive arguments on evidentiary

25 objections. 2/18/21 Trial Transcript at 108:10-19 (THE COURT: ...

26 there's been extensive argument on objections, I don't think we're going

27 to get to the defense witnesses today... I think the actual testimony itself

28 is not going to be that long, but we've had very extensive argument on

1 these objections...). Even after actual testimony was under way,
2 though, the Bankruptcy Court noted that the trial was still taking a lot
3 longer than expected. 2/18/21 Trial Transcript at 109:11-14 and 245:20-
4 21. As a result, what could have been a much shorter trial was
5 extended unnecessarily by Defendants' constant arguments, adding to
6 Plaintiff's attorneys' fees.

7 hh. Defendants caused the trial to be longer than necessary with a series of
8 inane legal arguments (all of which failed). For example, on January 28,
9 2021, Curtis argued that Amec could call her as an adverse witness for
10 direct testimony, and, thus, Curtis was not required to file a trial
11 declaration. 1/28/21 Trial Transcript at 26:25- 27:7. On February 18,
12 2021, Curtis argued that she (a disbarred attorney) could testify as an
13 expert witness on the subject matter of bankruptcy law (of all things) to a
14 presiding bankruptcy judge. 2/18/21 Trial Transcript at 42:20- 45:6. In
15 the middle of trial Curtis attempted to make a motion for directed verdict
16 based upon a case that she had not presented to the Court previously
17 and without having the citation. 2/19/21 Trial Transcript at 95:2-21. Mr.
18 Barriage provided the cite to the Bankruptcy Court, and the Bankruptcy
19 Court reserved ruling until the end of evidence. 2/19/21 Trial Transcript
20 at 96:6-16. At the close of evidence, the Bankruptcy Court allowed
21 Defendants the opportunity to make their motion for directed verdict, but
22 Defendants did not even know what legal authority or federal rule
23 governed such motion. 2/19/21 Trial Transcript at 205:22- 208:25.

24 ii. Extensive arguments about evidentiary objections and baseless legal
25 arguments aside, trial took more than two days in large part because
26 from a factual standpoint Curtis was completely unable to justify her
27 filing a "mechanic's" Lien for \$40,000 relevant to less than \$1,000 of
28 lumber where there was no agreement for the lumber between the

1 parties.

2 jj. After trial concluded on February 19, 2021, Plaintiff's counsel had to
3 expend significant time reviewing over 550 pages of hearing transcripts
4 across the three-day trial to prepare proposed Findings of Facts and
5 Conclusions of Law (originally and timely filed by Plaintiff at Adversary
6 Proceeding Docket No. 217 on April 19, 2021.

7 **IV. CONCLUSIONS OF LAW¹⁰**

8 **A. Plaintiff's First Cause of Action for Slander of Title - Elements**

9 134. The elements of a claim of slander of title are: (1) a publication, (2) which is
10 without privilege or justification and thus with malice, express or implied, and (3) is false,
11 either knowingly so or made without regard to its truthfulness, and (4) causes direct and
12 immediate pecuniary loss. *Howard v. Shaniel*, 113 Cal.App.3d 256, 263-264 (1980);
13 *accord, Manhattan Loft, LLC v. Mercury Liquors, Inc.*, 173 Cal.App.4th 1040, 1051
14 (2009). These four elements will be discussed out of order below, addressing first
15 publication, then falsity, before turning to privilege and malice, and, finally, pecuniary
16 loss.

17 **B. Slander of Title Legal Element Number 1: Publication**

18 135. The first element of publication for slander of title is met by the evidence of
19 Defendants' filing of the Lien in the Los Angeles County Recorder's Office, which is a
20 publication. JPTS at 2, Admitted/Adjudicated Fact No. 4 [Adversary Proceeding Docket
21 No. 162]; Trial Exhibit P-1 (Lien); 2/18/21 Trial Transcript at 15:10-13 (no dispute as to
22 publication element number 1). The uncontroverted evidence shows that Defendants
23 "published" the Lien by recording it in the County Recorder's Office.

24

25

26

27 ¹⁰ To the extent any proposed conclusions of law are findings of fact, the Bankruptcy
28 Court adopts them as such.

1 **C. Slander of Title Legal Element Number 3: Defendants' Statement in the**
2 **Lien Was False**

3 **i. The Statement in the Lien that the Parties Had an**
4 **Agreement Was False Because There Was No Agreement**

5 136. The second element of false statement in a publication knowingly so or
6 without regard to its truthfulness is met by the evidence that Defendants knowingly made
7 a false statement in the Lien in which Defendants expressly asserted: "In accordance
8 with an **agreement** to provide labor and/or material, I did furnish the following labor
9 and/or materials: **20** Prefabricated Wood Wall Panels @ a cost of **\$2,000** a piece... of a
10 total value of **\$40,000.**" Trial Exhibit P-1 at 2 (emphasis added).

11 137. The evidence indicates that this statement was false because: (1) there was
12 no agreement between the parties for Defendants to supply Plaintiff with any lumber; (2)
13 Defendants did not supply 20 wood panels to Plaintiff, that is, at most, there were 5
14 panels at issue; (3) the panels did not cost \$2,000 a piece; and (4) whether there were 5
15 panels or 20 panels involved, the total value was not \$40,000.

16 138. As set forth in the above proposed findings of fact, the parties did not have
17 any agreement for Defendants to supply lumber to Plaintiff or its agents, including Eric
18 Radley. The lumber at issue in this case was purchased from Habitat for Humanity jointly
19 by Eric Radley and Defendant Greta Curtis "50/50" for a total purchase price of
20 \$1,000.00. Eric Radley gave \$1,000 in cash to Curtis to purchase the lumber, and she
21 used her credit card to buy the lumber, keeping Eric Radley's cash. Eric Radley was
22 entitled to 50 percent of the lumber consisting of 50 prefabricated wood panels, and on
23 the day of the purchase, he took 5 of the 25 wood panels (half of the 50 wood panels
24 purchased by him and Curtis) that he was entitled to take after telling Curtis that he was
25 taking these panels and she did not object. Because Eric Radley took from his share of
26 the lumber, there was no need for any agreement for Defendant Curtis to "supply" him
27 with the lumber.

28 139. In any event, based on the admissions of Defendant Curtis in her trial

1 testimony, the statement in the Lien that Defendants had an agreement to supply Plaintiff
2 with lumber was false because she testified that Eric and Barrington Radley stole her
3 lumber, or in other words, they took the lumber which she says was entirely hers without
4 her knowledge or permission. If the Radleys “stole” Curtis’s lumber, there was no
5 agreement for her to supply it to them. Thus, it was false for Defendants to state in the
6 Lien that there was an “agreement” between them and Plaintiff.

7 140. Regarding this purported “agreement,” Curtis testified at trial that she
8 intended to “donate” some of her lumber to Plaintiff. 2/19/21 Trial Transcript at 121:1-11
9 (Curtis testimony). But this concept of a “donation” does not fit with the rest of the
10 evidence. Barrington Radley testified that he heard Curtis say to Eric Radley, “take what
11 you need,” from the lumber on the day of purchase. 2/18/21 Trial Transcript at 211:25
12 (Barrington Radley testimony). But Barrington Radley testified at trial in response to a
13 question asked by Curtis that he thought it strange for Curtis to call it a “donation”
14 because Eric Radley had purchased half of the lumber: “I don’t know if you were donating
15 them or what the arrangement was. I do know this. That you were buying that wood -- I
16 don’t see why you would donate them and half the wood was – you guys were buying
17 that wood in conjunction.” 2/18/21 Trial Transcript at 212:3-7 (Barrington Radley
18 testimony).

19 141. Even if assuming *arguendo* that Curtis had an intention to donate some of
20 her lumber to Plaintiff, that purported intention did not rise to the level of an agreement as
21 Curtis testified at trial that she later changed her mind after Eric and Barrington Radley
22 had already taken five prefabricated wood walls to Plaintiff’s Property. 2/19/21 Trial
23 Transcript at 119:11-17 (Curtis testimony). After Curtis purportedly changed her mind (at
24 which time Eric and Barrington Radley had already taken the five prefabricated walls to
25 Plaintiff’s Property), Curtis alleged that Plaintiff had stolen the lumber from her and that
26 there was no agreement between the parties and that this was a tort of conversion.
27 2/19/21 Trial Transcript at 122:13-123:12 (Curtis testimony). Curtis testified that she had
28 made no commitment as to when or how much lumber to donate to Plaintiff, and thus Eric

1 and Barrington Radley had taken the lumber without her knowledge or consent, and,
2 therefore, without any agreement between the parties. 2/19/21 Trial Transcript at 127:3-
3 128:4 (Curtis testimony); *see also*, 2/18/21 Trial Transcript at 68:5- 70:24 (Curtis
4 testimony):

5 THE COURT: ... So there was no agreement that they could take the panels,
6 right?

7 CURTIS: Right, your Honor.

8 THE COURT: And so... you're saying this is theft, right?

9 CURTIS: I don't see it as being anything else.

10 2/18/21 Trial Transcript at 70:17-24 (Curtis testimony).

11 142. Defendants knew the statement about an agreement in the Lien was false
12 because Curtis knew that there was no agreement: "I did not become aware of the
13 alleged partnership PWC and I entered into until I read Eric Radley's trial declaration."
14 Curtis Trial Declaration [Adversary Proceeding Docket No. 204 ¶ 24]. Eric Radley and
15 Barrington Radley testified that the only agreement ever had been for Eric and Curtis to
16 split the cost of the lumber and transportation – not that Curtis would supply Plaintiff with
17 any lumber. 2/18/21 Trial Transcript at 117:15-20 (Eric Radley testimony); 2/18/21 Trial
18 Transcript at 192:12-17 and 195:21-196:4 (Barrington Radley testimony).

19 143. Defendants, that Curtis personally and as Ammec's principal, knew that the
20 statement in the Lien that there was an "agreement" for Curtis to supply lumber to Plaintiff
21 was false because Curtis repeatedly testified that the Lien was based not on an
22 agreement, but on a tort of conversion for theft of the lumber. Curtis Declaration
23 [Adversary Proceeding Docket No. 204 ¶ 30] ("I filed the mechanic's lien against
24 Plaintiff's real property because its' agents, Eric Radley and Barrington Radley, **stole**
25 over 30 lumber panels from me in the course of a month.") (emphasis added); 2/18/21
26 Trial Transcript at 74:24-75:3 (Curtis testimony) (Mechanic's Lien based on several acts
27 that Curtis did not agree to); Trial Exhibit P-6 at 14 (text message from Curtis to Eric
28 Radley on 11/3/2017 stating "I will gladly remove my mechanic's lien when you pay my

1 money for the lumber you and Ronnie **stole** from me. Now that is a felony that can put
2 your wife and kids away also.”) (emphasis added); Defendants’ Trial Exhibit 7 at 12
3 (same text message).

4 144. Accordingly, the second element of slander of title in a false published
5 statement is met based on the evidence of Defendants’ statement in the Lien about the
6 existence of an “agreement” between the parties was false, and the evidence showing
7 that Defendants knew it was false.

8 **ii. The Statement in the Lien that Defendants Provided Plaintiff**
9 **with 20 Walls Was False Because the Walls Given to Plaintiff**
10 **Were At Most 5 Walls which Belonged to Eric Radley**

11 145. Defendants made a false statement in the Lien by asserting that Defendant
12 Curtis had provided Plaintiff with “20 Prefabricated Wood Wall Panels” because the
13 evidence showed that Plaintiff had only five of the total 50 walls; in particular,
14 photographic evidence showed three walls of lumber inside the Plaintiff’s building and the
15 other two walls cut up and stacked in Plaintiff’s parking lot.

16 146. As discussed in the proposed findings of fact above, Curtis did not supply
17 Plaintiff with any materials; rather, the five wood walls obtained by Plaintiff were supplied
18 by Eric Radley from his half of the lumber. As Eric and Barrington Radley credibly
19 testified, they took only five of the prefabricated walls from Habitat for Humanity, and they
20 denied taking any more than the five walls. 2/18/21 Trial Transcript at 124:14-25 &
21 124:12-126:19-25 (Eric Radley testimony); 2/18/21 Trial Transcript at 213:20- 214:19
22 (Barrington Radley testimony).

23 147. The trial exhibits from both sides showing the lumber at Plaintiff’s Property
24 show nothing more than three prefabricated wood wall panels inside at Plaintiff’s Property
25 and some small piles of cut-up lumber stacked in the parking lot outside at Plaintiff’s
26 Property, which altogether appear to sum up to the five small, prefabricated walls taken
27 by Eric and Barrington. See, Lumber Photographs, Trial Exhibit P-5; see *also*, Trial
28 Exhibit P-10 (Curtis Deposition Transcript at 37:12-22-25, 77:11-78 and Exhibit 4, 8-15

1 thereto); *see also*, Lumber Photographs, Trial Exhibit D-5; *see also*, 2/18/21 Trial
2 Transcript at 136:7, 138:1-7 (Eric Radley testimony).

3 148. The lumber jointly purchased by Eric Radley and Curtis and moved to
4 Plaintiff's Property was only a small portion of the total 50 panels of lumber located at
5 Habitat for Humanity, which is easily discernible from comparing the photograph of all 50
6 walls at Habitat compared to the photographs of the lumber at Plaintiff's Property. *See*,
7 Lumber Photographs, Trial Exhibit P-4, *cf.* Lumber Photographs, Trial Exhibit P-5.

8 149. Most of the lumber – all of it other than the five walls that Eric and
9 Barrington Radley took on the day of purchase – ended up in Defendants' possession at
10 a lot in Compton. 2/18/21 Trial Transcript at 126:12 (Eric Radley testimony); 2/18/21 Trial
11 Transcript at 214:3-215:9 (Barrington Radley testimony).

12 150. Therefore, the Bankruptcy Court finds and concludes that it was false for
13 Defendants to have asserted in the Lien that Plaintiff had obtained 20 of the prefabricated
14 walls.

15 151. At trial, Curtis attempted to make it appear as if Plaintiff had taken more
16 lumber than just the five walls by testifying that she had taken all the photographs inside
17 Plaintiff's building and outside in Plaintiff's parking lot of the lumber at Plaintiff's Property
18 on the same day. 2/19/21 Trial Transcript at 186:12-14 (Curtis testimony). However, the
19 Bankruptcy Court finds Curtis's testimony unreliable and contradicted by her prior sworn
20 deposition testimony, discussed in greater detail immediately below.

21 152. During trial, Plaintiff introduced into evidence the transcript of the deposition
22 of Greta Curtis, taken on March 25, 2019. 2/18/21 Trial Transcript at 58:14-16
23 (introducing Curtis Deposition Transcript, Trial Exhibit P-10). The Bankruptcy Court
24 notes that the lumber photographs in Plaintiff's Trial Exhibit P-5 matches Curtis's
25 Deposition Exhibits 4 and 8-15, all showing lumber at Plaintiff's Property.

26 153. During her deposition, Curtis checked her phone to verify the date that she
27 took the photographs and stated that the photo of lumber inside Plaintiff's property
28 (Deposition Exhibit 4) (Trial Exhibit P-4 at page 1) was taken between September 15 and

1 20, 2017. Trial Exhibit P-10, 3/25/2019 Curtis Deposition Transcript at 37:12-38:12.

2 154. During the deposition, Curtis checked her phone to verify the date that she
3 took the photos and testified that the photos of lumber cut up and stacked outside in
4 Plaintiff's parking lot were taken on October 12, 2017. 3/25/2019 Curtis Deposition
5 Transcript at 78:21-79:15 & Exhibit 8-15 thereto.

6 155. During her deposition, Curtis further testified that the wood shown in
7 Deposition Exhibit 4 as being inside Plaintiff's Property was the same wood that was cut
8 up and stacked in Plaintiff's parking lot in Deposition Exhibit 8 at 15 because Curtis
9 testified that she saw Eric and Barrington Radley cutting up the wood back on September
10 16, 2017, when she took the photograph of the wood inside. 3/25/2019 Curtis Deposition
11 Transcript at 79:16-80:6.

12 156. The inconsistent statements between Curtis's deposition testimony and trial
13 testimony calls into question the trustworthiness of the statements, and the Bankruptcy
14 Court finds that the deposition testimony is more trustworthy than the trial testimony
15 regarding the dates of the photographs because it was closer in time to the actual events,
16 and Curtis stated that she checked her phone for the dates of the photographs, whereas
17 during trial Curtis made her self-serving statement off the cuff to bolster her version of
18 events as Plaintiff argues.

19 157. Eric Radley testified that some of the photographs of the wood in the
20 parking lot was from the same five prefabricated walls taken from Habitat for Humanity,
21 and that only three walls were shown standing in the picture inside the Plaintiff's
22 Property, and that the wood cut up in the parking lot was from the other two walls.
23 2/19/21 Trial Transcript at 193:12-194:22 (Eric Radley testimony); Trial Exhibit P-5
24 (pictures of lumber at Plaintiff's Property).

25 158. Eric Radley also testified that some of the photographs of the wood cut up
26 in the parking lot was not even the same wood that was taken from Habitat for Humanity,
27 but different wood purchased from a different lot. 2/19/21 Trial Transcript at 191:6-
28 192:25 (Eric Radley testimony), Exhibit P-5 at 5 of 8 (photograph of lumber).

1 159. Thus, the preponderance of the evidence shows that Plaintiff had no more
2 than five of the total 50 prefabricated wood walls purchased from the Habitat for
3 Humanity Restore store, that Defendants' statement in the Lien that Plaintiff had taken 20
4 walls was false, and that Defendants knew it was false, or at the very least, they had no
5 reasonable grounds to believe the statement that Plaintiff had taken 20 walls was true.

6 **iii. Lien Was False Because of the Assertion of a \$40,000 Claim**

7 160. The Bankruptcy Court finds and concludes that Defendants made a false
8 statement in the Lien by asserting a cost at \$2,000 per wall, for a total claim of \$40,000.

9 161. Defendants knew that the Lien was a false statement – or at the very least
10 made the statement without regard to its truthfulness – when Defendants asserted “a cost
11 of \$2,000 a piece... of a total value of **\$40,000**” because Curtis admitted at her deposition
12 that she had no basis to value the lumber allegedly taken by Plaintiff: “... I’m not a
13 contractor. I’m not a construction person so I – I can’t really give you a value.” Trial
14 Exhibit P-10 (3/25/2019 Curtis Deposition Transcript at 55:23-56:3). At trial, Curtis
15 reiterated her testimony that she is not a contractor and did not know about lumber.
16 2/19/21 Trial Transcript at 120:15-25 (Curtis testimony).

17 162. Moreover, Curtis knew, or should have known, that the statement of value
18 of \$40,000 for five walls (or even 20 walls) of lumber in the Lien was false, and Curtis
19 made that statement with reckless disregard for its truthfulness because the purchase
20 price of all 50 walls of the lumber from Habitat was only \$1,000. Curtis Declaration at 8,
21 ¶ 24 [Adversary Proceeding Docket No. 204]. *Appel v. Burman*, 159 Cal.App.3d 1209,
22 1214 (1984) (malice where publisher “knows that the statement is false **or** acts in
23 reckless disregard of its truth or falsity”) (emphasis added) (quoting Rest. 2d Torts §
24 623A).

25 163. The Bankruptcy Court finds and concludes that the value of lumber in
26 question was not anywhere near \$40,000 based on cost, and, therefore, the Lien was
27 false in its assertion of its claim of value for the lumber was \$40,000 asserted to be based
28 on cost. The falsities of Defendants' statements in the Lien as to the \$40,000 value – as

1 well as the existence of an agreement and amount of lumber – are discussed in greater
2 detail immediately below in connection with malice and lack of privilege.

3 **C. Slander of Title Legal Element Number 2: Without Privilege or**
4 **Justification and Thus with Malice, Express or Implied**

5 **i. No Privilege for Mechanic’s Lien and Falsity Regarding**
6 **“Agreement”**

7 164. Defendants contend as a defense that the filing of the Lien was privileged.
8 Defendants’ Answer, Affirmative Defense No. 17 [Adversary Proceeding Docket No. 51].

9 165. The Bankruptcy Court finds and concludes that Defendants affirmative
10 defense fails and that Defendants did not have any such privilege to file a mechanic’s
11 lien.

12 166. In California, the right to file a mechanic’s lien is statutory, and the
13 applicable statute states: “A person that provides work authorized for a work
14 improvement, including [a material supplier] ... has a lien right under this chapter
15 [Chapter 4, Mechanics Lien].” California Civil Code § 8400(c).

16 167. Curtis asserted in her trial testimony that she is a material supplier of
17 lumber. 2/18/21 Trial Transcript at 71:4-6 (Curtis testimony).

18 168. The Bankruptcy Court finds and concludes that Curtis did not supply
19 Plaintiff with any materials because the five wood walls obtained by Plaintiff were
20 supplied by Eric Radley from his half of the lumber jointly purchased by him and Curtis.

21 169. However, even assuming *arguendo* if Curtis did “supply” the lumber to
22 Plaintiff (and regardless of whether it was 5 or 20 prefabricated walls), Defendants still
23 would have no privilege to file a mechanics lien because there was no “work authorized
24 for a work improvement.”

25 170. The statute specifies that “work is authorized for a work improvement” only
26 if it meets either one of two criteria: (a) “It is provided at the request of or agreed to by the
27 owner,” or (b) “It is provided or authorized by a direct contractor, subcontractor, architect,
28 project manager, or other person having charge of all or part of the work of improvement

1 or site improvement.” California Civil Code § 8404.

2 171. The evidence in this case shows that there was no request of, or agreement
3 between, the parties for Curtis to supply lumber, and therefore, California Civil Code §
4 8404(a) does not apply.

5 172. The evidence in this case also shows there was no direct contractor,
6 subcontractor, architect, project manager or other person having charge of all or part of
7 the work of improvement or site improvement because Curtis does not meet the definition
8 of any of these enumerated parties for California Civil Code § 8404(b) to apply. Curtis
9 was not Plaintiff’s contractor, subcontractor, architect or project manager regarding the
10 installation of the lumber and she was not an “other person,” having charge or all or part
11 of the work of improvement or site improvement of Plaintiff’s Property. As previously
12 stated, Curtis considered herself as having the lumber taken from her without her
13 knowledge or agreement, that is, stolen from her without her agreement, which if true,
14 would constitute a tortious conversion of her property, not her contractual improvement of
15 Plaintiff’s Property. *See, Lee v. Hanley*, 61 Cal.4th 1225, 1240 (2015)(“Conversion is the
16 wrongful exercise of dominion over the property of another. The elements of a conversion
17 claim are: (1) the plaintiff’s ownership or right to possession of the property; (2) the
18 defendant’s conversion by a wrongful act or disposition of property rights; and (3)
19 damages. . . .”)(internal quotation marks and citation omitted).

20 173. The evidence of this case indicates that the Lien was Defendants’ improper
21 self-help remedy not supported in the law to address a purported tort claim of conversion
22 against the Plaintiff as Curtis testified that she filed the Lien because “Debtor’s employee
23 took my wood without my permission,” 2/18/21 Trial Transcript at 67:18-21 (Curtis
24 testimony). In order for Defendants to have a lien on real property based on a purported
25 tort claim of conversion, they needed to institute a lawsuit on the claim and obtain a
26 money judgment as a prerequisite for a judgment lien on Plaintiff’s real property. *See*
27 California Code of Civil Procedure §697.310(a); *see also, e.g., Meyer v. Sheh*, 74
28 Cal.App.5th 830, 837 (2022); Ahart, *Rutter Group Practice Guide: Enforcing Judgments*

1 *and Debts*, ¶¶ 6:11.20 and 6.173 (online edition, June 2023 update). Defendants simply
2 recorded the Lien against Plaintiff's Property without filing suit and obtaining a money
3 judgment as required by California law, and basically filed the Lien without any legal
4 authority.

5 174. In an attempt to justify the Lien in response to the Bankruptcy Court's
6 comment that an agreement is necessary for a mechanic's lien, Curtis immediately
7 changed her position and testified that there was an agreement for her to donate lumber.
8 2/18/21 Trial Transcript at 68:2-9 (Curtis testimony). Upon further questioning by the
9 Bankruptcy Court, Curtis admitted that there was no agreement and that this was a claim
10 for conversion based on theft:

11 THE COURT: Well, there was no agreement – right. So, there was no agreement
12 that they could take the panels, right?

13 THE WITNESS [CURTIS] Right, your Honor.

14 THE COURT: And so – well, isn't that – you're saying this is theft, right?

15 THE WITNESS [CURTIS]: I don't see it as being anything else.

16 2/18/21 Trial Transcript at 70:17-24 (Curtis testimony).

17 175. Curtis repeatedly testified that the lumber was "stolen." Curtis Declaration
18 at 10, ¶30 [Adversary Proceeding Docket No. 204] ("I filed the mechanic's lien against
19 Plaintiff's real property because its' agents, Eric Radley and Barrington Radley, stole over
20 30 lumber panels from me in the course of a month.").

21 176. Curtis sent a text message to Eric Radley on November 3, 2017, stating: "I
22 got your message and I will gladly remove my mechanics lien when you pay my money
23 for the lumber you and Ronny stole from me. Now that is a felony. They can put your
24 wife and kids away, also. You have 24 hours to pay." 2/18/21 Trial Transcript at 79:15-
25 20; Trial Exhibit P-6 at 13-14 (text message).

26 177. Curtis testified at trial that she filed the Lien as way of getting a quick
27 prejudgment remedy for payment because a lawsuit for conversion would take too long:

28 MR BARRIAGE: Ms. Curtis, why did you not file a lawsuit for conversion?

1 CURTIS: Well, I didn't want to -- I didn't want things to linger on for a long time. I
2 knew the mechanic's lien had specific requirements. I only had so much time to
3 try to build something and get something, you know ...
4 2/19/21 Trial Transcript at 130:25-131:5 (Curtis testimony); *see also*, 2/19/21 Trial
5 Transcript at 135:12-20 (Curtis testimony) ("I just wanted my money for what they took
6 from me without my permission ... and I didn't want to go through any protracted litigation
7 with them ...").

8 178. Defendants argue that their publication of their purported mechanic's lien
9 was privileged under the litigation privilege of California Civil Code §47 and thus, not
10 actionable for the tort of slander of title. Defendants' Proposed Findings) at 3 [Adversary
11 Proceeding Docket No. 269]; Defendants Greta Curtis and Ammec, Inc's Objections to
12 Plaintiff's Proposed Findings of Fact and Conclusions of Law in Support of the First
13 Cause of Action for Slander of Title in the Amended Complaint Following Trial
14 (Defendants' Objections to Plaintiff's Proposed Findings) at 2-5 [Adversary Proceeding
15 Docket No. 270]. Defendants in support of their argument cite the case of *RGC*
16 *Gaslamp, LLC v. Ehmcke Sheet Metal Co., Inc.*, 56 Cal.App.5th 413 (2020) for the
17 proposition that "the filing of a mechanic's lien constitutes protected activity, **even if the**
18 **lien was invalid or otherwise improper**" and the case of *Frank Pisano & Associates v.*
19 *Taggart*, 29 Cal.App.3d 1 (1972) for the proposition that "**it's a privileged act to file a**
20 **mechanic's lien, that privilege is not lost if it turns out that the mechanic's lien was**
21 **not something that was ultimately valid or appropriate to do so.**"¹¹ Defendants'
22 Proposed Findings at 3 and 11 [Adversary Proceeding Docket No. 269] (emphasis in

23 _____
24 ¹¹ In their papers, Defendants repeatedly assert the statement purportedly quoted from the
25 opinion in *Frank Pisano & Associates v. Taggart* that "it's a privileged act to file a
26 mechanic's lien, that privilege is not lost if it turns out that the mechanic's lien was
27 not something that was ultimately valid or appropriate to do so." Defendants'
28 Objections to Plaintiff's Proposed Findings) at *passim* [Adversary Proceeding
Docket No. 270], *citing Frank Pisano & Associates v. Taggart* (1972) 29
Cal.App.3d 1. Defendants did not in their papers provide a pinpoint page citation to
this purported quote, and the Bankruptcy Court was unable to locate the purported
quotation in the *Frank Pisano & Associates v. Taggart* opinion.

1 original).

2 179. The Bankruptcy Court overrules and rejects Defendants' argument based
3 on the *RGC Gaslamp* case as distinguishable because in *RGC Gaslamp* and *Frank*
4 *Pisano Associates* in those cases, there were colorable claims by contractors with
5 agreements (a subcontractor doing sheet metal fabrication and installation work for the
6 owner in *RGC Gaslamp*, and a contractor providing engineering services for subdivision
7 purposes to owner's predecessor-in-interest in *Frank Pisano Associates*), but, in this
8 case, Plaintiff and Defendants had no agreement, Defendants' allegation was based on
9 theft – that the lumber was stolen without their consent or agreement – and Defendants
10 bypassed the requirements for a judgment lien based on a tort liability of conversion. As
11 the court in *RGS Gaslamp* stated, "In general, the privilege applies 'to any
12 communication (1) made in judicial or quasi-judicial proceedings; (2) by litigants or other
13 participants authorized by law; (3) to achieve the objects of the litigation; and (4) that
14 [has] some connection or logical relation to the action.'" 56 Cal.App.5th at 435. Similarly,
15 in *Frank Pisano Associates*, the privilege attached in that case because the filing of the
16 lien was permitted by law by a contractor which had an agreement and the lien had a
17 reasonable relationship to an action to foreclose the lien for unpaid services which had
18 been agreed to. 29 Cal.App.3d at 25. Defendants' Lien does not meet this standard as
19 stated in *RGC Gaslamp* because they were not "litigants or other participants authorized
20 by law" to file a mechanic's lien because there was no "work authorized for a work
21 improvement" either as (1) "provided at the request of or agreed to by the owner" under
22 California Civil Code §8404(a) (i.e., Curtis did not provide lumber at request of, or agreed
23 to, by the property owner, Plaintiff; the lumber was provided by Eric Radley, and Plaintiff
24 made no request of Curtis for lumber, nor did it make any agreement with Curtis for
25 lumber) or (2) "provided or authorized by a direct contractor, subcontractor, architect,
26 project manager or other person having charge of all or part of the work improvement or
27 site improvement" under California Civil Code §8404(b) (i.e., Curtis who did not supply
28 lumber to Plaintiff does not meet any of these contractor categories), and, thus,

1 Defendants were not “litigants or other persons authorized by law” to file a mechanic’s
2 lien as they did, and thus, lacked standing to file the Lien. Moreover, filing a mechanic’s
3 lien by Defendants had no “connection or logical relation” to what at best would be a
4 potential action for conversion, which requires a money judgment and judgment lien to
5 attach to Plaintiff’s Property. See *LiMandri v. Judkins*, 52 Cal.App.4th 326, 345 (1997).
6 Based on Defendants’ lack of standing to assert a mechanic’s lien and lack of connection
7 or logical relation of a mechanic’s lien to their potential conversion claim, the Bankruptcy
8 Court finds and concludes that Defendants’ purported mechanic’s lien had no legal basis
9 and that there was no applicable litigation privilege for Defendants. 6/29/22 Trial
10 Transcript at 21:22- 22:20. The Bankruptcy Court finds and concludes that Defendants
11 had no basis to argue that they had an absolute privilege in recording their purported
12 mechanic’s lien where they did not meet the standard for the litigation privilege as
13 recognized in *RGC Gaslamp*.

14 180. Accordingly, the Bankruptcy Court finds and concludes that Defendants had
15 neither a privilege nor justification to file a mechanic’s lien under California law where
16 there was no request by, or agreement with, Plaintiff, for Defendants to supply materials
17 to Plaintiff, and instead Defendants improperly used the Lien to encumber Plaintiff’s
18 Property based on a totally unwarranted interpretation of the California mechanic’s lien
19 statute, to enforce a purported claim based on tort of conversion. Defendants made a
20 patently false statement that they knew to be false when they filed the Lien stating: “In
21 accordance with an **agreement** to provide labor and/or material, I did furnish the
22 following labor and/or materials: 20 Prefabricated Wood Wall Panels @ a cost of \$2,000
23 a piece... of a total value of **\$40,000.**” Trial Exhibit P-1 at 2 (Lien) (emphasis added).

24 181. The Bankruptcy Court rejects Defendants’ argument that their filing of a
25 mechanic’s lien was absolutely privileged under California Civil Code § 47.

26 **ii. Malice Based Upon No Reasonable Grounds for Believing that**
27 **Defendants’ Lien Claim was for \$40,000 of Lumber**

28 182. “Malice” means that the defendant “(1) was motivated by hatred or ill will

1 towards the plaintiff or (2) lacked reasonable grounds for its belief in the truth of the
2 publication and therefore acted in reckless disregard of the plaintiff's rights." *Schep v.*
3 *Capital One, N.A.*, 12 Cal.App.5th 1331, 1337 (2017) (internal citations and quotations
4 omitted). The test for malice is in the disjunctive, requiring in the alternative only the first
5 or the second finding to establish the claim.

6 183. The Bankruptcy Court finds and concludes that Defendants lacked
7 reasonable grounds for believing the truth of the Lien in stating that there was an
8 "**agreement** to provide labor and/or material ..." for all the reasons discussed above
9 based on the factual findings herein, and, therefore, Defendants acted with malice in
10 making that false statement.

11 184. The Bankruptcy Court further finds and concludes that Defendants lacked
12 reasonable grounds for believing the truth of their statement that the Lien could be based
13 on a claim for lumber that cost \$40,000, and, therefore, acted with malice in this regard.
14 6/29/22 Trial Transcript at 47:17- 48:23 and 124:20- 125:2 and 226:6-12.

15 185. The evidence is undisputed that the total purchase price of all 50 walls of
16 lumber at issue in this case, including the 5 walls obtained by Plaintiff, was only \$1,000.
17 Curtis Declaration at 8, ¶ 24 [Adversary Proceeding Docket No. 204]; see *also*, 2/18/21
18 Trial Transcript at 64:11-16 (Curtis testimony).

19 186. Rudy Trabanino, the store manager for Habitat where the lumber was
20 purchased testified at trial that according to the store's records, the entire amount of all
21 lumber sold by the store for the entire month of September 2017 was only \$2,861.50.
22 1/28/21 Trial Transcript at 9:12-19 (Rudy Trabanino testimony); Trial Exhibit P-2 at 2
23 (Habitat store records). While Defendants objected to this testimony, which objection
24 was overruled, the Bankruptcy Court determines that the testimony is only secondary
25 evidence, which only corroborates Defendants' admission in Curtis's testimony that the
26 total cost of the lumber was only \$1,000. See Defendants' Objections to Plaintiff's
27 Proposed Findings) at 7-9 [Adversary Proceeding Docket No. 270],

28 187. Eric Radley, who has approximately 30 years of experience in handyman

1 work repairing buildings, testified that the lumber taken by Plaintiff, if purchased new at a
2 retailer such as Home Depot, would cost \$200 or \$300, in new condition, not weathered.
3 2/18/21 Trial Transcript at 176:6-9 (Eric Radley testimony). Eric Radley further testified
4 that if the lumber was assembled into prefabricated wooden walls, the cost would be
5 \$100 per wall with the materials and labor. 2/18/21 Trial Transcript at 184:12 (Eric
6 Radley testimony). According to Eric Radley's testimony, with five prefabricated walls in
7 Plaintiff's possession, the amount of lumber at issue could not be more than \$200 of
8 materials, and, even with labor, no more than \$700 total (i.e., all the lumber at \$200, plus
9 \$100 of labor per wall x 5 walls). While Defendants objected to this testimony, which
10 objection was overruled, the Bankruptcy Court determines that the testimony is only
11 secondary evidence which only corroborates Defendants' admission in Curtis's testimony
12 that the total cost of the lumber was only \$1,000.

13 188. Plaintiff's witnesses consistently testified that Plaintiff only got 5 of the total
14 50 prefabricated wood walls purchased from Habitat. Eric Radley Declaration, ¶¶ 26, 33,
15 34 [Adversary Proceeding Docket No. 171]; Barrington Radley Declaration, ¶¶ 19, 27, 29,
16 30 [Adversary Proceeding Docket No. 170]; 2/18/21 Trial Transcript at 124:12-126:19-25
17 (Eric Radley testimony); 2/18/21 Trial Transcript at 213:20-214:19 (Barrington Radley
18 testimony). The photographic evidence supports the finding that Plaintiff only got 5 wood
19 walls from the lumber purchased from Habitat. The Bankruptcy Court finds that this
20 evidence that Plaintiff only got 5 of the 50 wood walls purchased from Habitat to be
21 credible.

22 189. Defendants' testimony about how much lumber was allegedly stolen from
23 Defendants and used in Plaintiff's Property was not credible because it was inconsistent
24 as noted below:

- 25 a. In the Lien, Defendants asserted that Plaintiff had taken "20 –
26 Prefabricated Wood Wall Panels @ a cost of \$2,000 a piece." Trial
27 Exhibit P-1 at 2 (Lien).
- 28 b. In her trial declaration, Curtis testified that the number of wood panels

1 taken by Plaintiff was 30. Curtis Declaration, ¶ 30 [Adversary
2 Proceeding Docket No. 204] (“... Eric Radley and Barrington Radley,
3 stole over 30 lumber panels from me...”).

4 c. Curtis testified at trial that 30 wood panels being taken by Plaintiff.
5 2/18/21 Trial Transcript at 63:16 (Curtis testimony).

6 190. Curtis testified that her claim of \$40,000 damages as stated in the Lien was
7 “based upon what it would cost me to replace those panels.” 2/18/21 Trial Transcript at
8 84:6-7 (Curtis testimony). The Bankruptcy Court does not find this testimony of Curtis to
9 be credible because its credibility is undermined by her own calculations given in her
10 other testimony. In her first day of testimony, Curtis testified that the replacement value
11 of the lumber would be \$250 to \$500 per prefabricated wall. 2/18/21 Trial Transcript at
12 63:9-11 (Curtis testimony). The basis for this valuation was the inadmissible hearsay
13 from Curtis’s conversations with unidentified Home Depot or Lowe’s employees. 2/18/21
14 Trial Transcript at 65:13-67:7 (Curtis testimony). In her second day of testimony, Curtis
15 testified that the replacement value of the lumber would be \$200 per prefabricated wall.
16 2/19/21 Trial Transcript at 144:25- 145:5 (Curtis testimony). Curtis did not establish her
17 knowledge or foundation for her estimation of the value of lumber as she admitted that
18 she cannot value lumber. 2/19/21 Trial Transcript at 120:15, 23-25 (Curtis testimony)
19 (“... I don’t know much about this. I’m not a contractor or anything.”) See *also*, Trial
20 Exhibit P-10 (3/25/2019 Curtis Deposition Transcript at 55:23-56:3) (“... I’m not a
21 contractor. I’m not a construction person so I – I can’t really give you a value.”).
22 Nevertheless, even if it were true that Plaintiff had taken 20 or 30 of the prefabricated
23 walls (which is not supported by the preponderance of the evidence that Plaintiff had only
24 obtained five walls), and even if the Bankruptcy Court adopted values of either \$200 per
25 wall or \$500 per wall, Defendants’ claim would still be only in the range of only \$4,000 (20
26 walls at \$200 per wall) to \$15,000 (30 walls at \$500 per wall), and this range based on
27 Curtis’s estimation testimony falls nowhere near the Lien’s claim of \$40,000 in damages:
28

No. Of Walls	Value Per Wall	Total
20	\$200.00	\$4,000.00
20	\$250.00	\$5,000.00
20	\$500.00	\$10,000.00
30	\$200.00	\$6,000.00
30	\$250.00	\$7,500.00
30	\$500.00	\$15,000.00

191. On the last day of trial, Curtis calculated her claim at 20 prefabricated walls multiplied by \$200 per wall. 2/19/21 Trial Transcript at 144:23-145:5 (Curtis testimony). Thus, even by Curtis’s own calculation, the value of the lumber constituting Defendants’ damages from Plaintiff’s taking as asserted in the Lien would have been only \$4,000. Accordingly, there is no justification for asserting in the Lien \$40,000 of damages, which is 10 times the amount computed by Defendant Curtis, Defendant Ammec’s principal. The Bankruptcy Court finds and concludes that Defendants knew – or reasonably should have known – that the claim for \$40,000 in the Lien was false, made with malice, and willfully intended to harm Plaintiff.

192. Defendants’ other attempts to justify their \$40,000 lien claim also fail. Curtis stated in her trial declaration that her contractor indicated that it would cost approximately \$60,000 to replace the lumber to build a new house on her real property, but that testimony is inadmissible hearsay lacking foundation. Curtis Declaration, ¶ 32 [Adversary Proceeding Docket No. 204]; see *also*, 2/18/21 Trial Transcript at 42:14-19 (Curtis testimony) (sustaining objection for lack of foundation).

193. At trial, when Curtis could not show that Defendants’ purported mechanic’s mechanic’s lien for \$40,000 was based on an agreement, she instead asserted that the \$40,000 valuation for the Lien was “what the end product would have been worth *to me*,” 2/18/21 Trial Transcript at 65:4 (Curtis testimony), and “... my ability to build my new home ...” 2/18/21 Trial Transcript at 84:6-8 (Curtis testimony), and added speculative lost profits at resale: “The \$40,000 was based upon what I believe it was worth, not what I paid for it. I might as well sell, I could sell it retail.” 2/18/21 Trial Transcript at 84:6-11

1 (Curtis testimony). Later, however, Curtis testified that she had had no intention of selling
2 the lumber. 2/19/21 Trial Transcript at 186:23-187:3 (Curtis testimony)). This testimony
3 is not credible because while an owner of property may give a lay opinion of the value of
4 property he or she owns pursuant to Federal Rule of Evidence 701, Curtis cannot testify
5 as to the value of the property as this Bankruptcy Court has found that the lumber
6 obtained by Plaintiff was owned by Eric Radley from his share of the joint purchase with
7 Curtis. If Curtis was not the owner of the lumber taken by Plaintiff, then her lay opinion of
8 value is inadmissible. Moreover, even assuming *arguendo* that Curtis was the owner of
9 all of the lumber, her opinion of value of the lumber obtained by Plaintiff at \$40,000 is not
10 based on credible evidence of value because the total purchase price of all the lumber
11 purchased, of which the lumber taken was a small portion (5 out of 50 wood panels), was
12 only \$1,000, and thus, the Bankruptcy Court determines that that Curtis's valuation
13 opinion of the lumber she has contended was stolen from her at \$40,000 is not supported
14 by the evidence and is not credible.

15 194. All of the foregoing failed attempts by Defendants to justify the \$40,000
16 claim of damages asserted in the Lien shows that Curtis for herself and as representative
17 of Defendant Ammec knew or should have known that Defendants' claim was really one
18 for the tort of conversion and not the basis of a statutory mechanic's lien based on an
19 agreement, which never existed. As observed by the California Supreme Court, "The
20 differences between contract and tort give rise to distinctions in assessing damages and
21 in evaluating underlying motives for particular courses of conduct. Contract damages
22 seek to approximate the agreed-upon performance . . . and are generally limited to those
23 within the contemplation of the parties when the contract was entered into or at least
24 reasonably foreseeable by them at that time; consequential damages beyond the
25 expectations of the parties are not recoverable." *Applied Equipment Corp. v. Litton Saudi*
26 *Arabia, Ltd.*, 7 Cal.4th 503, 515 (1994) (internal citations omitted). Defendants' Lien
27 asserting an inflated claim of damages of \$40,000 for alleged theft of lumber by Plaintiff
28 could be only supported by resort to a proper lawsuit asserting the tort of conversion. As

1 Plaintiff argues, what Curtis would consequentially do with the lumber, such as building a
2 house or reselling it, had no bearing on contractual damages for a purported mechanic's
3 lien asserted in the amount of \$40,000. Curtis as a former lawyer either knew or
4 reasonably should have known that she could not legitimately assert a mechanic's lien in
5 this manner as she testified that she researched the subject matter of mechanic's liens
6 before filing Defendants' Lien. 2/19/21 Trial Transcript at 137:1-138:11 (Curtis
7 testimony).

8 195. The Bankruptcy Court finds and concludes that Defendants acted with
9 malice in filing the Lien as a mechanic's lien because the statutory basis for a mechanic's
10 lien based on a contract or agreement was nonexistent. Malice exists if Defendants
11 either did not believe the statement to be true **or unreasonably believed the statement**
12 **to be true.** *McGrory v. Applied Signal Technology, Inc.*, 212 Cal.App.4th 1510, 1540
13 (2013) ("The issue is not the truth or falsity of the statements but whether they were
14 made recklessly **without reasonable belief in their truth.**") (emphasis added).

15 196. Defendants had no reasonable grounds to believe that the lumber in
16 Plaintiff's possession was worth \$40,000 based on cost as asserted in the Lien in light of
17 the evidence before the Bankruptcy Court. The cost of all 50 walls purchased from
18 Habitat by Curtis either by herself or with Eric Radley, not just the 5 walls obtained by
19 Plaintiff, was only \$1,000 – a fact which Curtis knew and has admitted. The \$1,000 cost
20 of the lumber is corroborated by the evidence of the total lumber sales for the Habitat
21 store for the entire month of September 2017 of only \$2,861.50. According to Eric Radley
22 based on 30 years of construction experience, the range of value of the 5 wood walls he
23 took for Plaintiff was a \$200 to \$700 retail replacement cost. Curtis's own calculations of
24 valuation of the walls allegedly taken by Plaintiff ranged from \$4,000 to \$15,000 at most.
25 Therefore, the preponderance of the evidence shows that Defendants acted with malice
26 against Plaintiff because they did not have reasonable grounds to believe and assert a
27 mechanic's lien against Plaintiff's Property in the amount of \$40,000 for lumber valued at
28 cost.

1 **iii. Malice Towards Plaintiff Shown by Curtis's Ill Will**

2 197. As previously noted, "Malice" means that the defendant "(1) was motivated
3 by hatred or ill will towards the plaintiff or (2) lacked reasonable grounds for its belief in
4 the truth of the publication and therefore acted in reckless disregard of the plaintiff's
5 rights." *Schep v. Capital One, N.A.*, 12 Cal.App.5th at 1337 (internal citations and
6 quotations omitted).

7 198. The Bankruptcy Court finds and concludes that Defendants through Curtis
8 were motivated by ill will towards Plaintiff in filing their illegitimate Lien.

9 199. Curtis knew that Plaintiff was facing the loss of the Property to Acon
10 Development Inc. ("Acon") with a potential foreclosure or sheriff's sale. Curtis
11 Declaration at 5, ¶ 14 (knowledge of Acon's judgment), ¶ 16 (knowledge of Plaintiff's
12 "financial and administrative problems") [Adversary Proceeding Docket No. 204].

13 200. Curtis knew that Plaintiff needed to refinance the Property to save it from
14 foreclosure or sheriff's sale. McArn Declaration, ¶¶ 9, 10, 12 [Adversary Proceeding
15 Docket No. 172]; Curtis Declaration at 4, ¶¶ 10, 11 [Adversary Proceeding Docket No.
16 204].

17 201. Curtis researched mechanic's liens and knew she could obtain payment by
18 putting the Lien, a purported mechanic's lien, on Plaintiff's Property or otherwise force
19 Plaintiff to incur substantial attorneys' fees to remove the lien – a prospect that Curtis
20 knew that Plaintiff could not afford because Curtis knew that Plaintiff lacked cash
21 resources. Curtis Declaration at 4, ¶ 11 [Adversary Proceeding Docket No. 204]; 2/19/21
22 Trial Transcript at 137:1- 138:11 (Curtis testimony); 2/19/21 Trial Transcript at 130:25-
23 131:5 (Curtis testimony); *see also*, 2/19/21 Trial Transcript at 135:12-20 (Curtis
24 testimony).

25 202. Curtis as a former attorney had 20 years of experience and knowledge
26 about using the legal system to seek advantage against Plaintiff. 2/18/21 Trial Transcript
27 at 44:22 (judicial notice); Curtis Declaration at 11, ¶ 33 [Adversary Proceeding Docket
28 No. 204].

1 203. Defendants' misuse of a mechanic's lien to claim \$40,000 from Plaintiff
2 where the lumber in question had a value of less than \$1,000 was an abuse of legal
3 process which demonstrates their ill will towards Plaintiff and intent to prejudice Plaintiff.

4 204. Defendants' ill will towards Plaintiff was further demonstrated by Curtis's
5 actions against Plaintiff's agents and their family members after the date that Plaintiff filed
6 its bankruptcy petition on January 10, 2018. After Plaintiff filed for bankruptcy, Curtis filed
7 a state court complaint to attempt to enforce the Lien, and rather than proceed against
8 Plaintiff in its corporate capacity where Plaintiff was represented and protected by
9 attorneys, Curtis amended her state court complaint to name Eric Radley, Michelle
10 McArn, their four children, and Barrington Radley personally on the Lien which was
11 recorded only against the corporate Plaintiff and its real property and attempted to obtain
12 judgments against them personally for several months until the state court ultimately
13 dismissed Curtis's complaint on November 5, 2018. JPTS at 2-4, Admitted/Adjudicated
14 Facts Nos. 6-19. Not only did this demonstrate a personal vendetta by Curtis against
15 Plaintiff and people affiliated with its management, but it also perpetuated in the state
16 court action Defendants' false statements published in the Lien: (i) falsely stating that
17 there was an agreement between Defendants and Plaintiff, (ii) falsely stating that Plaintiff
18 had taken 20 walls, and (iii) falsely asserting that the lumber had a value of \$40,000
19 based on cost.

20 205. Defendant Curtis continued to demonstrate her ill will towards Plaintiff
21 during the pendency of its bankruptcy case by opposing Plaintiff's motion for
22 authorization to refinance and demanding that \$40,000 and more for attorneys' fees be
23 set aside to pay the Lien to Defendants, thereby continuing to perpetuate the false
24 statements in the Lien and attempt to extract \$40,000 from the Plaintiff's bankruptcy case
25 through the Lien. RJN [Adversary Proceeding Docket No. 219], Exhibit 7, Greta Curtis's
26 Notice of Opposition and Request for a Hearing re: Plaintiff's Motion for Order Authorizing
27 Post-Petition Financing Pursuant to Section 364 of the Bankruptcy Code, etc.,
28 Bankruptcy Case Docket No. 84 at 9.

1 **D. Slander of Title Element Number 4: Damages - Direct and Immediate**
2 **Pecuniary Loss**

3 206. Plaintiff contends that Defendants' Lien caused direct and immediate
4 pecuniary loss to Plaintiff.

5 **i. Plaintiff's Claim for Damages from Accrual of Acon's Attorneys'**
6 **Fees and Interest on Acon's Senior Lien**

7 207. Plaintiff contends that it suffered damages from Defendants' slander of title
8 from accrual of additional interest and attorneys' fees on the senior lien of Acon
9 Development, Inc. (Acon). In support of this claim for damages, Plaintiff largely relies
10 upon the testimony of McArn and the payoff of Acon's secured claim, including additional
11 interest and attorneys' fees accruing after its unsuccessful refinancing attempt in 2017
12 allegedly thwarted by Defendants' Lien.

13 208. McArn testified that Plaintiff had arranged a refinancing loan with Lending
14 Xpress in the fall of 2017. 2/19/21 Trial Transcript at 79:1-7 (McArn testimony). McArn
15 further testified that when Lending Xpress did a final preliminary title report and
16 discovered Defendants' Lien, Lending Xpress would not do the refinancing. 2/18/21 Trial
17 Transcript at 259:23-25 (McArn testimony); 2/19/21 Trial Transcript at 53:10-25 (McArn
18 testimony); 2/19/21 Trial Transcript at 88:3-10 (McArn testimony).

19 209. Much later, Plaintiff eventually was able to successfully close a refinancing
20 of its existing loans on December 16, 2020. RJN [Adversary Proceeding Docket No.
21 219], Exhibit 4, Plaintiff's Notice of: (I) Plan Effective Date; (II) Deadline for Filing Contract
22 and Lease Rejection Claims; (III) Deadline for Filing Administrative Claims; and (IV)
23 Deadline for Filing Final Fee Applications for Estate Professionals, Bankruptcy Case
24 Docket No. 269. As part of the successful December 2020 refinancing, Plaintiff paid to
25 Acon on its secured claim the amount of \$550,000, of which at least \$88,911.68 was
26 comprised of interest that had accrued since the date on which Plaintiff filed for
27 bankruptcy on January 10, 2018. RJN [Adversary Proceeding Docket No. 219], Exhibit 5,
28 Plaintiff's Motion for Order Authorizing Release of Financing Proceeds [Bankruptcy Case

1 Docket No. 273]; RJN [Adversary Proceeding Docket No. 219], Exhibit 6, Acon
2 Development, Inc.'s Proof of Claim No. 9 (per diem interest rate of \$82.94; 1,072 days
3 between Petition Date and refinancing date). Plaintiff contends that this accrual of
4 interest was a direct and immediate pecuniary loss to Plaintiff because if the Lien had not
5 derailed the refinancing with Lending Xpress in fall of 2017, all of that interest of
6 \$88,911.68 to Acon would not have accrued.

7 210. Also, as part of its successful December 2020 refinancing, Plaintiff paid
8 Acon's attorneys' fees as part of Acon's secured claim in the amount of \$116,865.16, all
9 of which was comprised of attorneys' fees accrued since the date Plaintiff filed for
10 bankruptcy on January 10, 2018. RJN [Adversary Proceeding Docket No. 219], Exhibit 5,
11 Plaintiff's Motion for Order Authorizing Release of Financing Proceeds [Bankruptcy Case
12 Docket No. 273]; RJN [Adversary Proceeding Docket No. 219], Exhibit 6, Acon
13 Development, Inc.'s Proof of Claim No. 9. Plaintiff contends that the accrual of Acon's
14 additional attorneys' fees was a direct and immediate pecuniary loss to Plaintiff because
15 if the Lien had not derailed the refinancing with Lending Xpress in fall of 2017, none of
16 those attorneys' fees of \$116,865.16 would have accrued.

17 211. Defendants dispute Plaintiff's contentions and argues that its damages
18 consisting of additional attorneys' fees and interest paid to Acon on its successful
19 refinancing were not caused by their filing the Lien, asserting: (1) Plaintiff had been facing
20 foreclosure for over a year as a result of not paying its secured creditor Acon, which had
21 nothing to do with Defendants' Lien; (2) the Lending Xpress loan was aborted by McArn
22 because Plaintiff would have had money left over from its refinancing and she made a
23 business decision not to pay Defendants on the Lien; (3) Plaintiff's contentions that failure
24 of the Lending Xpress loan was caused by Defendants' Lien is based on McArn's
25 hearsay statements not supported by any documents, such as a preliminary title report
26 showing the Lien or a letter of declination from Lending Xpress; (3) Plaintiff already had a
27 reputation for fiscal irresponsibility for failure to pay its creditors generally as shown in its
28 bankruptcy schedules, and not just because of Defendants' Lien; (4) Defendants' Lien

1 had terminated by operation of law well before Plaintiff filed its adversary proceeding
2 against Defendants in May 2018, and a lender could have refinanced because the Lien
3 had not been foreclosed upon and was no longer an impediment to refinancing; (5)
4 Plaintiff's reorganization efforts were delayed anyway because Plaintiff had to work out a
5 subordination agreement between the City of Los Angeles and a new lender as reflected
6 in its monthly operating reports and Plaintiff's opposition to Acon's dismissal motion; and
7 (6) the publication of the Lien was privileged under California law. Defendants'
8 Objections to Plaintiff's Proposed Findings) at 25-30 [Adversary Proceeding Docket No.
9 270].

10 212. Having considered the arguments of the parties and the relevant evidence
11 on the issue of whether Defendants' Lien caused Plaintiff to suffer damages from
12 additional interest and attorneys' fees from the Acon secured claim and lien due to delay
13 in refinancing, the Bankruptcy Court finds and concludes that although many of
14 Defendants' arguments lack merit, the evidence indicates that the Lien was not a "but for"
15 or sole cause of Plaintiff's direct and immediate pecuniary loss from having to pay
16 additional accruing interest and attorneys' fees on Acon's lien, and Defendants'
17 opposition to Plaintiff's claim for damages from having to pay more on Acon's claim is
18 meritorious. In this regard, the Bankruptcy Court takes judicial notice of its files and
19 records in this adversary proceeding and in the underlying bankruptcy case, including
20 pleadings and orders filed in these proceedings. See *In re Clark*, 525 B.R. 442, 449
21 (Bankr. D. Idaho 2015), *aff'd*, BAP No. ID-15-1065-KiFJu, 016 WL 1377807 (9th Cir. BAP
22 Mar. 29, 2016). Plaintiff filed its bankruptcy petition on January 10, 2018, and as stated
23 in its status report filed in the bankruptcy case on February 14, 2018, Plaintiff stated that
24 it filed for bankruptcy because Acon intended to immediately foreclose on its lien and
25 while its refinancing transaction with Lending Xpress started in late 2017 was still
26 pending, there were issues that had to be worked out with the lender, which included an
27 unresolved Los Angeles County tax lien of \$206,000 as well as Defendants' purported
28 mechanic's lien claimed to be \$40,000, which Plaintiff asserted was fraudulent. Plaintiff's

1 Case Status Report [Bankruptcy Case Docket No. 25]. As stated in Plaintiff's status
2 report filed in the bankruptcy case on December 17, 2018, Plaintiff stated that it was still
3 negotiating a refinancing loan with Lending Xpress, but that it finally resolved its issue
4 with the county tax lien on November 30, 2018 when the county filed an amended proof
5 of claim reducing its claim from \$205,000 to \$15,000 [Bankruptcy Case Docket No. 54].

6 213. Meanwhile, on May 8, 2018, Plaintiff had filed its complaint commencing
7 this adversary proceeding which asserted the slander of title and declaratory relief claims
8 to nullify Defendants' Lien [Adversary Proceeding Docket No. 1]. On September 16,
9 2019, Plaintiff filed a motion for partial summary judgment on its second through sixth
10 causes of action [Adversary Proceeding Docket No. 120], and on November 14, 2019,
11 the Bankruptcy Court entered its order granting Plaintiff partial summary judgment, which
12 *inter alia* declared Defendants' Lien to be void under state law [Adversary Proceeding
13 Docket No. 142]. The Bankruptcy Court's order granting Plaintiff partial summary
14 adjudication, the Partial Summary Adjudication Order, was not a final judgment because
15 no party had requested that the court enter a final judgment on the claims adjudicated on
16 partial summary adjudication and because not all the claims in the adversary proceeding
17 were adjudicated as the first cause of action for slander of title remained unadjudicated.

18 214. However, the Lien was not an impediment to Plaintiff obtaining refinancing
19 as on August 7, 2019, Plaintiff filed a motion for authorization for postpetition financing to
20 refinance its loan [Bankruptcy Case Docket No. 77], which was granted by order entered
21 on August 29, 2019 [Bankruptcy Case Docket No. 92] in spite of Defendants' opposition
22 to the motion on grounds that the refinancing would not pay off the Lien [Bankruptcy
23 Case Dockets No. 84 and 86]. Although Plaintiff's motion for authorization for
24 postpetition financing to refinance its loan was granted, Plaintiff stated in its status report
25 that another issue emerged which needed to be dealt with for it to refinance its loan, that
26 is, Plaintiff had to obtain a subordination agreement with the City of Los Angeles to
27 subordinate its existing lien in order for the lender to refinance. The need to negotiate a
28 subordination agreement with the City of Los Angeles, which apparently required

1 approval of the Los Angeles City Council, was another impediment that Plaintiff
2 encountered regarding refinancing its loan.

3 215. On September 9, 2020, Plaintiff filed a second motion for authorization of
4 postpetition financing to refinance its loan with a different lender [Bankruptcy Case Docket
5 No. 209]. As stated in its moving papers, the prior lender, Lending Xpress, backed out of
6 the refinancing transaction in March 2020 due to the pandemic. *Id.* Plaintiff's explanation
7 that the prior lender, Lending Xpress, backed out of further refinancing negotiations was
8 its sensitivity to the then current economic environment of the pandemic, not because of
9 Defendants' Lien. *Id.*

10 216. After this motion was granted, Plaintiff was able to work out a subordination
11 agreement with the City of Los Angeles and obtain its refinancing to pay off the existing
12 lien of Acon. However, although Defendants' Lien was an impediment to refinancing, the
13 evidence indicates that it was only one of a number of impediments for refinancing, and
14 that the Lien by itself was not the cause of the delay in Plaintiff obtaining refinancing to
15 attribute to it as the cause of Plaintiff's increased cost of refinancing through accruals of
16 additional interest and attorneys' fees from Acon's lien in order to shift the burden of the
17 cost to Defendants. Accordingly, the Bankruptcy Court finds and concludes that Plaintiff
18 did not suffer damages from accruals of additional interest and attorneys' fees paid to
19 Acon from delayed refinancing due to Defendants' Lien. The preponderance of the
20 evidence does not support McArn's testimony which is not corroborated by documentary
21 evidence that Defendant's Lien was the cause of these accruals resulting in direct and
22 immediate pecuniary loss to Plaintiff. The evidence shows that Plaintiff had other issues
23 to resolve in order to obtain refinancing, which included negotiating a reduction of the Los
24 Angeles County tax claim, negotiating a lien subordination agreement with the City of Los
25 Angeles City and dealing with the original lender's reluctance to go forward due to the
26 pandemic, and the delay in refinancing Plaintiff's existing loan would have occurred
27 anyway, regardless of Defendants' Lien. Accordingly, the Bankruptcy Court finds that it is
28 not appropriate to include the additional accruals of interest and attorneys' fees relating to

1 the Acon lien postpetition in the damages from the slander of title from Defendants' Lien
2 for lack of evidentiary showing that such damages resulted from direct and immediate
3 pecuniary loss to Plaintiff.

4 ii. **Plaintiff's Claim for Damages in Incurring Attorneys' Fees and**
5 **Costs for Removing Defendants' Lien**

6 217. Additionally or alternatively, Plaintiff claims damages from Defendants for
7 slander of title based on the attorneys' fees and costs it incurred in removing Defendants'
8 Lien. "In an action for wrongful disparagement of title, a plaintiff may recover (1) the
9 expense of legal proceeding necessary to remove the doubt cast by the
10 disparagement..." *Klein v. Access Insurance Co.*, 17 Cal.App.5th 595, 624 (2017).
11 "[T]he expense of legal proceedings necessary to remove the doubt cast by the
12 disparagement and to clear title is a recognized form of pecuniary damages in such
13 cases." *Sumner Hill Homeowners' Assn., Inc. v. Rio Mesa Holdings, LLC*, 205
14 Cal.App.4th 999, 1032 (2012). "[W]here title was disparaged in a recorded instrument,
15 **attorney fees and costs** necessary to clear title or remove the doubt cast on it by
16 defendant's falsehood are, **by themselves**, sufficient pecuniary damages for purposes of
17 a cause of action for slander of title." *Id.* at 1031 (emphasis added).

18 218. Plaintiff contends that the award of Plaintiff's attorneys' fees is a hybrid
19 matter that can be supported independently and alternatively by *Sumner Hill*
20 *Homeowners' Association, Inc. v. Rio Mesa Holdings, LLC*, 205 Cal.App.4th 999 (2012),
21 as part of the case in chief on slander of title, or California Civil Code § 8488 based on a
22 motion. 6/30/22 Trial Transcript at 3:1-11.

23 219. As recognized in the Joint Pretrial Stipulation and shown in these proposed
24 findings of fact and recommended conclusions of law, as a result of Defendants' refusal
25 to voluntarily remove the Lien from Plaintiff's Property, Plaintiff was forced to incur legal
26 fees and costs to remove Defendants' Lien from the Property. JPTS,
27 Admitted/Adjudicated Fact No. 32 [Adversary Proceeding Docket No. 162]. Plaintiff
28

1 contends that Defendants' Lien caused direct and immediate pecuniary loss to Plaintiff by
2 forcing Plaintiff to incur legal fees to remove the Lien.

3 220. Defendants contend that Plaintiff is not entitled to attorneys' fees for
4 removal of a mechanic's lien under California Civil Code § 8400 *et seq.* because Plaintiff
5 never alleged a claim under those statutory provisions, specifically the attorneys' fee
6 provision of California Civil Code §8488(c), and never pleaded nor utilized the expedited
7 lien release procedure under California Civil Code § 8482 to claim attorneys' fees under
8 California Civil Code § 8488(c). See Evidentiary Objections of Greta Curtis to Plaintiff's
9 Motion for Attorney Fees and Costs at 3-8 [Adversary Proceeding Docket No. 290].

10 221. Plaintiff contends that it was not required to pursue remedies through only
11 the statutory construct of California Civil Code § 8480 *et seq.* because that very statutory
12 construct specifically states that parties maintain other causes of action, as well. "This
13 article does not bar any other cause of action or claim for relief by the owner of the
14 property." California Civil Code § 8480(b). Therefore, Plaintiff contends that it is entitled
15 to recover attorneys' fees under *Sumner Hill Homeowners Association* alone and
16 independent of the statutory construct. In this regard, as discussed herein, the
17 Bankruptcy Court agrees with Plaintiff that attorneys' fees may be awarded as an
18 element of damages on its slander of title claim based on the case law in *Sumner Hill*
19 *Homeowners Association*.

20 222. Plaintiff argues that the Bankruptcy Court should reject and overrule
21 Defendants' argument that a 10-day release notice under the California Civil Code §8482
22 was required to be awarded attorneys' fees. Plaintiff contends that where a property
23 owner disputes a wrongful mechanic's lien, the property owner is entitled to reasonable
24 attorneys' fees if it is the prevailing party under California Civil Code § 8488(c). Plaintiff
25 notes that subsection does not mention the 10-day notice of California Civil Code §8482
26 at all. Plaintiff argues that California Civil Code § 8488(c) reflects the common law
27 doctrine, as expressed in *Sumner Hill Homeowners Association v. Rio Mesa Holdings,*
28 *LLC*, 205 Cal.App.4th 999 (2012), that a property owner can obtain reasonable attorneys'

1 fees when forced to commence legal processes to remove cloud on title caused by a
2 wrongful mechanic's lien and that moreover, the 10-day notice requirement of California
3 Civil Code §8482 is rooted in the statutory construct for colorable mechanic's liens, where
4 the notice provisions reference naming and identifying the contractor, sub-contractor,
5 construction lender, and construction work site, which have all the hallmarks of legitimate
6 mechanic's liens. California Civil Code § 8482 (citing in turn to California Civil Code §
7 8100). In this regard, the Bankruptcy Court disagrees with Plaintiff that the attorneys' fee
8 provision of California Civil Code § 8488(c) generally provides for attorneys' fees in any
9 proceeding to remove a mechanic's lien; rather the attorneys' fee provision relates only to
10 a proceeding on a petition for release of the lien under California Civil Code § 8482,
11 which as Defendants argue was not pleaded in Plaintiff's complaint or brought in this
12 adversary proceeding. However, the Bankruptcy Court disagrees with Defendants that
13 Plaintiff may not be awarded attorneys' fees and costs for removal of the Lien on grounds
14 that Plaintiff's exclusive remedy for an award of attorneys' fees was under California Civil
15 Code § 8488(c).

16 223. Plaintiff argues that the Bankruptcy Court should find and conclude that
17 Defendants' purported mechanic's lien was filed in bad faith and not appropriate for the
18 mechanic's lien construct in the first place, and that Plaintiff's notice to Defendants by
19 filing the complaint was sufficient to effectuate the purpose reflected in California Civil
20 Code §8480 *et seq.*, particularly because this construct "does not bar any other cause of
21 action or claim for relief by the owner of the property." California Civil Code § 8480(b). In
22 this regard, based on the preponderance of the evidence, the Bankruptcy Court agrees
23 with this argument to the extent Plaintiff argues that Defendants' purported mechanic's
24 lien was filed in bad faith and that the statutory construction of California Civil Code §
25 8480 *et seq.*, does not bar any other cause of action or claim for relief by it as the owner
26 of the subject property.

27 224. The Bankruptcy Court finds and concludes in agreement with Plaintiff that
28 there is a sound policy rationale for awarding attorneys' fees which is explained in the

1 case of *Sumner Hill Homeowners' Association, Inc.*, which is applicable here. Attorneys'
2 fees and costs are a recoverable damage component in a valid slander of title cause of
3 action. *Sumner Hill Homeowners' Association, Inc. v. Rio Mesa Holdings, LLC*, 205
4 Cal.App.4th at 1031. "Attorneys' fees are permissible as special damages in slander of
5 title actions because the defendant ... by intentional and calculated action leaves the
6 plaintiff with only one course of action: that is, litigation ... Fairness requires the plaintiff to
7 have some recourse against the intentional malicious acts of defendant." *Id.* at 1032
8 (internal quotations omitted).

9 225. "[I]t is helpful to note the analogy between a cause of action for slander of
10 title and that of malicious prosecution. As one case put it, 'to clear a slandered title is
11 akin to defending an unfounded lawsuit,' since in both instances the defendant's tortious
12 conduct was 'calculated to result in litigation.'" *Sumner Hill Homeowners' Association,*
13 *Inc. v. Rio Mesa Holdings, LLC*, 205 Cal.App.4th at 1033. "[W]hat we are dealing with
14 here, as in the case of malicious prosecution, is a tort in which the case law has deemed
15 such attorney fees and costs to be a form of special damages flowing from the
16 defendant's tortious conduct." *Id.* at 1034. "[A]llowing recovery in the present case are
17 **especially compelling** when it is considered that the slander of title here was a recorded
18 document." *Id.* (emphasis in the original).

19 226. The Bankruptcy Court finds and concludes in agreement with Plaintiff that
20 Defendants' conduct in filing the Lien and in their defense litigation tactics throughout this
21 case were designed to inflict unnecessary litigation costs and put the Plaintiff which was
22 a debtor in possession with a fiduciary duty to its creditors and bankruptcy estate in the
23 untenable position of paying an inflated bogus claim of \$40,000 in full as a secured claim
24 ahead of other creditors or litigate and defend the integrity of the bankruptcy estate. The
25 Bankruptcy Court finds and concludes in agreement with Plaintiff that it is fair to award a
26 reasonable amount of attorneys' fees to Plaintiff as special damages on the slander of
27 title claim because Defendants by calculated design increased the cost of the litigation to
28

1 attempt to dissuade Plaintiff and force Plaintiff to instead pay their bogus \$40,000 claim
2 as “tribute” as Plaintiff calls it. ¹²

3 227. The Bankruptcy Court finds and concludes that based on the
4 preponderance of the evidence, Defendants were unnecessarily combative and added
5 unnecessary procedural expense to the litigation which resulted in protracted
6 proceedings from the start. *See, e.g., Calvo Fisher & Jacob, LLP v. Lujan*, 234
7 Cal.App.4th 608, 626-627 (2015); *Peak-Las Positas Partners v. Bollag*, 172 Cal.App.4th
8 101, 113-114 (2009). Having observed litigation proceedings between the parties in this
9 adversary proceeding and in the underlying bankruptcy case, the Bankruptcy Court finds
10 and concludes that the description of the litigation proceedings between the parties in
11 Plaintiff’s First Motion for Attorneys’ Fees [Adversary Proceeding Docket No. 146] is fair
12 and accurate.

13 228. As argued by Plaintiff, of particular concern in this case was Plaintiff’s role
14 as a fiduciary of the bankruptcy estate and Plaintiff’s management’s consistent position
15 that Defendants were not owed any money at all from the Plaintiff. Thus, as Plaintiff
16 argues, Plaintiff and the bankruptcy estate were faced with the prospect of having to pay
17 \$40,000 to Defendants on what the Plaintiff considered to be outright fraud unless it
18 litigated to remove Defendants’ disputed mechanic’s lien. As Plaintiff argues, when the
19 Plaintiff decided to commence the adversary proceeding, it was possible that the litigation
20 might have been of little cost, particularly as Defendants had not filed a proof of claim,
21 and an adversary proceeding was merely a procedural step under Federal Rule of
22 Bankruptcy Procedure 7001(2) necessary to remove a lien. After filing suit, the Plaintiff
23 was put in the difficult position of deciding between (i) meritorious litigation to invalidate
24 the Lien and (ii) paying \$40,000 of meritless tribute to Defendants. According to Plaintiff,

25 ¹² Plaintiff’s calling Defendants’ demand for payment of the Lien as “tribute” is apt as one
26 definition of the term by the Merriam-Webster Dictionary is as follows: “an
27 exorbitant charge levied by a person or group having the power of coercion”
28 Merriam-Webster Dictionary (online edition accessed on March 24, 2023 at
<https://www.merriam-webster.com/dictionary/tribute>).

1 in similar cases involving the representation of a Chapter 7 trustee and a debtor in
2 possession in the shoes of a trustee, the cost of litigating a dispute may reach and
3 outstretch the amount of the disputed claim, and such balancing conundrums are often
4 solved by the interplay of two factors: first, that some amount of the claim is actually valid,
5 and second, that the parties engage in a dialogue for a good faith settlement. While
6 Plaintiff cites no authority for this proposition, based on the experience of the
7 undersigned, it sounds correct. As argued by Plaintiff, in this case, those two mitigating
8 factors did not exist because it maintains that it owes Defendants nothing at all, and the
9 parties never went to mediation. In the only joint status report filed in this case,
10 Defendants stated that they wanted the matter set for mediation. Adversary Proceeding
11 Docket No. 63 at § E.3. According to Plaintiff, with experienced counsel, it was prepared
12 to attempt mediation when raised at the status conference hearing, but neither Ammec's
13 attorney nor Curtis *in pro per* appeared at the status conference on January 29, 2019,
14 and the Bankruptcy Court issued an order to show cause. Adversary Proceeding Docket
15 Nos. 64 and 65. See Plaintiff's First Motion for Attorneys' Fees [Adversary Proceeding
16 Docket No. 146].

17 229. Plaintiff argues that this adversary proceeding could have been much
18 simpler, except that Defendants willfully engaged the Plaintiff in numerous and repetitive
19 procedural skirmishes to cause delay and increase the cost of litigation, including: (i) a
20 motion challenging personal jurisdiction; (ii) a motion to dismiss the complaint for failure
21 to state a claim for which relief could be granted, which Plaintiff ultimately defeated; (iii)
22 an attempt to avoid deposition and production of documents, which Plaintiff ultimately
23 defeated; (iv) attempts to avoid the deposition of Ammec's officer and person most
24 knowledgeable, Carlos Montenegro, which the Plaintiff did not overcome because the
25 Plaintiff decided that it was not economical to incur additional expenses by commencing
26 more discovery dispute motions against Defendants; (v) attempts to harass Plaintiff and
27 its management by forcing a deposition to be taken on Plaintiff's Property and bringing a
28 motion on this discovery dispute, which Plaintiff ultimately defeated; (vi) Defendants'

1 premature motion for summary judgment that argued for a lien-pass-through theory that
2 would have eviscerated the Bankruptcy Code's ability to address disputed liens, which
3 Plaintiff ultimately defeated; and (vii) a wildly off-point opposition to the Plaintiff's motion
4 for partial summary adjudication, which Plaintiff ultimately overcame and prevailed.
5 According to Plaintiff, to sum up, this litigation was made expensive by Defendants'
6 extremely aggressive and unsupportable litigation tactics. According to Plaintiff, this
7 adversary proceeding could have been comprised of a complaint, an answer, three
8 depositions (Curtis and two employees from Habitat for Humanity), and two days of trial.
9 See Plaintiff's First Motion for Attorneys' Fees [Adversary Proceeding Docket No. 146].

10 230. According to Plaintiff, the time, services rendered, and fees directly related
11 to prosecuting the Plaintiff's claim against Defendants were not out of proportion with the
12 amount of their purported mechanic's lien. Plaintiff argues that these were core activities
13 necessary to prosecute this lawsuit by the Plaintiff: (1) initial investigation of the claim
14 [January 2018]; (2) preparation of the complaint [May 2018]; (3) preparation of a joint
15 status report, exchanging Federal Rule of Civil Procedure 26 disclosures, and attending
16 the status conference [January 2019]; (4) propounding discovery [February 2019]; (5)
17 preparing a motion for partial summary adjudication, attending the hearing thereon, and
18 preparing the order [August, September, November 2019]. All of these tasks totaled
19 \$47,334.50. Plaintiff argues that with a base claim of \$40,000, plus interest and
20 Defendants' potential attorneys' fees, the amount of \$47,334.50 incurred for Plaintiff's
21 attorneys' fees are not out of proportion for the amount at issue. Plaintiff further argues
22 that by way of analogy, California state law permits disputed mechanic's liens to be
23 released with a bond "in an amount equal to 125% of the amount of the claim of the lien."
24 California Civil Code § 8424(b). Plaintiff notes that an amount of \$50,000 is equal to
25 125% of the \$40,000 disputed mechanic's lien and that Plaintiff's total attorneys' fees and
26 costs related to this task are below this amount. See Plaintiff's Reply to Defendants'
27 Opposition to Debtor's Motion for Attorneys' Fees and Costs (Plaintiff's Reply to
28 Defendants' Opposition to First Motion for Attorneys' Fees) [Adversary Proceeding

1 Docket No. 153]; Declaration of John-Patrick M. Fritz, Esq., in Support of Reply to
2 Defendants' Opposition to Debtor's Motion for Attorneys' Fees and Costs (Fritz
3 Declaration in Support of Plaintiff's Reply to Defendants' Opposition to First Motion for
4 Attorneys' Fees) [Adversary Proceeding Docket No. 155].

5 231. Plaintiff further argues that beyond the sum of \$47,334.50 discussed
6 immediately above, the Bankruptcy Court should find and conclude that the lion's share
7 of the rest of Plaintiff's fees were caused by Defendants' scorched-earth litigation tactics
8 in forcing Plaintiff to fight numerous procedural skirmishes, unprincipled discovery fights,
9 and Defendants' nearly incomprehensible legal theories in their pleadings throughout this
10 multi-year litigation, all as discussed herein.

11 232. According to Plaintiff, Curtis has made much of the minor and early dispute
12 in this case about the service of the original complaint on Defendants at her P.O. Box and
13 Ammec's business address, which Curtis claims is a "vacant lot" despite it being (i)
14 Ammec's business address since at least 2016 through trial in February 2021, (ii) the
15 process server address on the Secretary of State website, and (iii) the address listed on
16 the recorded Disputed Mechanic's Lien. Plaintiff argues that nonetheless, these litigated
17 disputes served a purpose and benefited the Plaintiff. Plaintiff notes that regardless,
18 these fees account for only approximately \$26,212.00 of the total. See Plaintiff's Reply to
19 Defendants' Opposition to First Motion for Attorneys' Fees [Adversary Proceeding Docket
20 No. 153]; Fritz Declaration in Support of Plaintiff's Reply to Defendants' Opposition to
21 First Motion for Attorneys' Fees [Adversary Proceeding Docket No. 155].

22 233. As argued by Plaintiff, although the Bankruptcy Court ruled that the
23 complaint had not been served properly, that ruling was based on a scrivener error on the
24 missing last digit of the zip code, which neither side identified or briefed, and which was
25 only raised in the Bankruptcy Court's tentative ruling. Plaintiff argues that upon fixing the
26 scrivener error, personal jurisdiction was established. Moreover, according to Plaintiff, it
27 needed to defend against the personal jurisdiction service motion to help establish what
28 might be required for alternative service if Defendants were hiding behind a "vacant lot"

1 and P.O. Box for addresses. See California Code of Civil Procedure § 413.30 (“court ...
2 may direct that summons be served in a manner which is reasonably calculated to give
3 actual notice to the party to be served”). Plaintiff notes that the court may designate an
4 agent for service or otherwise deem modified service sufficient when the defendant files
5 pleadings on the one hand but willfully evades service on the other hand. *BP Products*
6 *North America, Inc. v. Dagra*, 232 F.R.D. 263, 264-265 (E.D. Va. 2005); *Rio Properties,*
7 *Inc. v. Rio Int’l Interlink*, 284 F.3d 1007, 1018 (9th Cir. 2002) (“scofflaw, playing hide-and-
8 seek with the federal court”); *Popular Enterprises, LLC v. Webcom Media Group, Inc.*,
9 225 F.R.D. 560, 563 (E.D. Tenn. 2004). See Plaintiff’s Reply to Defendants’ Opposition
10 to First Motion for Attorneys’ Fees [Adversary Proceeding Docket No. 153]; Fritz
11 Declaration in Support of Plaintiff’s Reply to Defendants’ Opposition to First Motion for
12 Attorneys’ Fees [Adversary Proceeding Docket No. 155].

13 234. As argued by Plaintiff, the service of process and personal jurisdiction
14 issues are an illustrative example of the litigation games that Defendants have used to
15 unnecessarily increase costs of litigation. Plaintiff argues that for all of 2018 and 2019,
16 Ammec’s vacant lot address of 4118 First Street, Los Angeles, CA 90063 remained the
17 address for Ammec’s agent for service of process, and the P.O. Box as the business
18 mailing address. Plaintiff argues that it pressed the issue of personal jurisdiction and
19 default so as to make sure that it could accomplish service of the complaint on
20 Defendants by getting an explanation from Curtis as to why Ammec put a vacant lot
21 address on the lien and Secretary of State process server listing. See Plaintiff’s Reply to
22 Defendants’ Opposition to First Motion for Attorneys’ Fees [Adversary Proceeding Docket
23 No. 153]; Fritz Declaration in Support of Plaintiff’s Reply to Defendants’ Opposition to
24 First Motion for Attorneys’ Fees [Adversary Proceeding Docket No. 155].

25 235. As argued by Plaintiff, Defendants apparently understood the Federal Rules
26 of Civil Procedure well enough to know that litigants cannot serve Defendants by mail at
27 the P.O. Box or Ammec at a vacant lot, and, thus, Ammec would be nearly service-proof.
28 It is only through the less restrictive service requirements of Federal Rule of Bankruptcy

1 Procedure 7004 that the Plaintiff would be able to achieve service with the corrected zip
2 code. Nonetheless, Defendants continued to argue and rely on the vacant lot, P.O. Box,
3 and Federal Rule of Civil Procedure 4 argument even after service was made. See
4 Plaintiff's Reply to Defendants' Opposition to First Motion for Attorneys' Fees [Adversary
5 Proceeding Docket No. 153]; Fritz Declaration in Support of Plaintiff's Reply to
6 Defendants' Opposition to First Motion for Attorneys' Fees [Adversary Proceeding Docket
7 No. 155].

8 236. Plaintiff argues that the Bankruptcy Court should find and conclude that a
9 reasonable and appropriate amount of charges are attributable to Plaintiff's counsel
10 responding to Defendants' unnecessary litigation pleadings. According to Plaintiff, these
11 tasks ranged from: (1) defeating Defendants' motion to dismiss for failure to state a claim
12 under Federal Rule of Civil Procedure 12(b)(6) [October 2018]; (2) successfully moving to
13 dismiss Curtis's untimely counterclaim [November 2018]; (3) preparing the stipulation to
14 dismiss Curtis's counterclaim with prejudice and responding to her stay violation when
15 she filed a claim with State Labor Commission to assert the same counterclaim that had
16 just been dismissed [December 2018]; (4) successfully opposing Defendants' motion for
17 summary judgment and attending the original hearing and continued hearing thereon
18 [March, April, June, July 2019]; (5) successfully opposing Defendants' discovery motion
19 to compel the deposition of Debtor's director, which was most inappropriately noticed by
20 Curtis at the Debtor's own premises [May 2019]; and (6) successfully responding to and
21 overcoming Defendants' opposition to Debtor's motion for partial summary adjudication,
22 which voided the wrongful lien [October 2019]. All of these tasks combined totaled
23 approximately \$115,314.00 in fees. See Plaintiff's Reply to Defendants' Opposition to
24 First Motion for Attorneys' Fees [Adversary Proceeding Docket No. 153]; Fritz Declaration
25 in Support of Plaintiff's Reply to Defendants' Opposition to First Motion for Attorneys'
26 Fees [Adversary Proceeding Docket No. 155].

27 237. As argued by Plaintiff, Defendants unnecessarily raised the cost of this
28 litigation with their baseless motion to dismiss under Federal Rule of Civil Procedure

1 12(b)(6). Plaintiff argues that Curtis attempts to deflect by claiming victory on having the
2 reference to her state license disbarment stricken from the record under Federal Rule of
3 Civil Procedure 12(f), but a review of the time entries in October 2018 as well as those
4 pleadings show that this was a minor issue compared to the larger issue of Defendants
5 attempting to dismiss the entire complaint. See, Adversary Proceeding Docket Nos. 38
6 and 40 (motions); 42 and 43 (oppositions); 47 and 48 (orders). In Plaintiff's opinion,
7 striking the state bar decision was tangential, and the complaint survived in almost its
8 entirety. See, Adversary Proceeding Docket No. 48 (striking paragraphs 15, 43, 44, and
9 Exhibit "B" to the complaint). Plaintiff argues that if Defendants had prevailed, then the
10 entire complaint would have been dismissed, and Plaintiff would have been required to
11 pay \$40,000 for the wrongful mechanic's lien, which is a result that surely did not come to
12 pass. See Plaintiff's Reply to Defendants' Opposition to First Motion for Attorneys' Fees
13 [Adversary Proceeding Docket No. 153]; Fritz Declaration in Support of Plaintiff's Reply to
14 Defendants' Opposition to First Motion for Attorneys' Fees [Adversary Proceeding Docket
15 No. 155].

16 238. As argued by Plaintiff, once Defendants were forced to answer the
17 complaint, Curtis attempted to go on the offensive and make additional new claims
18 against Plaintiff. In November and December 2018, Plaintiff successfully dismissed
19 Curtis's counterclaim against the Debtor with prejudice in the adversary proceeding.
20 Then Plaintiff successfully stopped Curtis's stay violation when she filed a claim with the
21 Labor Commission; and if there is any question of whether this labor claim relates to this
22 adversary proceeding, the Bankruptcy Court notes that Curtis's motion to dismiss under
23 Federal Rule of Civil Procedure 12(b)(6), specifically stated: "Ms. Curtis was an employee
24 of theirs [the Debtor] whom they have failed to compensate in wages and will be making
25 a claim with the Labor Board for her wages." Adversary Proceeding Docket No. 40 at 6:9-
26 11. See Plaintiff's Reply to Defendants' Opposition to First Motion for Attorneys' Fees
27 [Adversary Proceeding Docket No. 153]; Fritz Declaration in Support of Plaintiff's Reply to
28 Defendants' Opposition to First Motion for Attorneys' Fees [Adversary Proceeding Docket

1 No. 155].

2 239. As argued by Plaintiff, with Defendants' counterclaims foiled and discovery
3 underway, Defendants took a new tact to frustrate the Debtor's case and brought
4 Defendants' motion for summary judgment (the Motion for Summary Judgment) in
5 February 2019. Adversary Proceeding Docket Nos. 69-73. Plaintiff notes that due to the
6 Defendants' deficiencies in their Motion for Summary Judgment, the original hearing was
7 continued for further briefing. Adversary Proceeding Docket No. 89. Plaintiff also notes
8 that then, the original hearing was rescheduled again because Ammec's counsel did not
9 appear. Adversary Proceeding Docket No. 112. Plaintiff further notes that with these
10 continuances, the work on opposing Defendants' Motion for Summary Judgment covered
11 March, April, June, and July 2019. Plaintiff argues that Defendants' Motion for Summary
12 Judgment was completely lacking in merit, arguing for an unprecedented and unfounded
13 lien pass-through theory that would eviscerate Chapter 11 of the Bankruptcy Code, 11
14 U.S.C., if given credence and misapplying Bankruptcy Code Sections 506(d) and 546.
15 Plaintiff argues that worse yet, Defendants' Motion for Summary Judgment ignored the
16 highly problematic issue that the case revolved around a factual dispute, their motion was
17 filed prior to close of discovery, and summary judgment is rarely granted for actions
18 based on tort or vague and ambiguous contract terms because such actions involve
19 competing factual inferences and the credibility of extrinsic evidence. See Stevenson
20 and Fitzgerald, *Rutter Group Practice Guide: Federal Civil Procedure Before Trial:
21 California and Ninth Circuit Edition*, ¶¶ 14:265 and 14:272 (online edition, April 2023
22 update), *citing inter alia*, *Goodman v. Staples The Office Superstore, LLC*, 644 F.3d 817,
23 823-24 (9th Cir. 2011) and *Welles v. Turner Entertainment Co.*, 503 F.3d 728, 737 (9th
24 Cir.2007). Plaintiff argues that it soundly defeated Defendants' Motion for Summary
25 Judgment, but at high cost because of the nature of the proceeding, which requires a
26 memorandum of points and authorities, a separate statement of facts and conclusions of
27 law, declarations, exhibits, and evidentiary objections. Plaintiff argues that nonetheless,
28 Plaintiff was forced to incur attorneys' fees to oppose Defendants' Motion for Summary

1 Judgment because if Plaintiff had lost the motion, then Plaintiff would have lost the entire
2 lawsuit. In total, the work in defending against Defendants' meritless Motion for
3 Summary Judgment totaled approximately \$64,823.50. See Plaintiff's Reply to
4 Defendants' Opposition to First Motion for Attorneys' Fees [Adversary Proceeding Docket
5 No. 153]; Fritz Declaration in Support of Plaintiff's Reply to Defendants' Opposition to
6 First Motion for Attorneys' Fees [Adversary Proceeding Docket No. 155].

7 240. As argued by Plaintiff, in the midst of the Motion for Summary Judgment
8 dispute, Defendants discovered that they had neglected their discovery deadlines and
9 attempted a failed scheme to find a loophole and force their way into the Plaintiff's
10 property for an inspection under the guise of a deposition. According to Plaintiff, it
11 successfully defended against this scheme of Defendants. Plaintiff argues that
12 Defendants brought a motion to compel discovery and asked for the extreme remedy of
13 terminating sanctions against the Plaintiff to have the complaint completely dismissed.
14 Adversary Proceeding Docket No. 95 at 8-9. Plaintiff notes that it had to respond or
15 otherwise face the possibility of a complete loss on its complaint. Plaintiff notes that it
16 successfully opposed the motion, and the motion was denied without so much as even a
17 hearing. Adversary Proceeding Docket No. 102. Plaintiff argues that nonetheless,
18 Defendants' conduct in the discovery dispute was so egregious, and their motion papers
19 so meritless, that Plaintiff still had to incur approximately \$21,573.50 of fees in May 2019.
20 See Plaintiff's Reply to Defendants' Opposition to First Motion for Attorneys' Fees
21 [Adversary Proceeding Docket No. 153]; Fritz Declaration in Support of Plaintiff's Reply to
22 Defendants' Opposition to First Motion for Attorneys' Fees [Adversary Proceeding Docket
23 No. 155].

24 241. Plaintiff argues that the Bankruptcy Court should find and conclude that its
25 attorneys' fees are appropriate and reasonable for preparing and prevailing on Plaintiff's
26 Motion for Partial Summary Adjudication on this complex and undecided legal issue.
27 Plaintiff contends that it was very unfortunate that Defendants' opposition papers were so
28 irrelevant but simultaneously so very combative (see Adversary Proceeding Docket Nos.

1 127-133), so as to necessitate a response on a whole new set of issues largely irrelevant
2 to the real issues in the Motion for Partial Summary Adjudication. Plaintiff notes that it
3 prevailed on all issues, facts, and law in its Motion for Partial Summary Adjudication
4 Motion for Partial Summary Adjudication (see, Adversary Proceeding Docket Nos. 142
5 and 143), but the time necessary to respond to Defendants' off-point opposition (which
6 included a reply, evidentiary objections, and further declarations) was approximately
7 \$18,068.00 in the month of October 2019. See Plaintiff's Reply to Defendants'
8 Opposition to First Motion for Attorneys' Fees [Adversary Proceeding Docket No. 153];
9 Fritz Declaration in Support of Plaintiff's Reply to Defendants' Opposition to First Motion
10 for Attorneys' Fees [Adversary Proceeding Docket No. 155]. However, the Bankruptcy
11 Court has now partially modified and vacating its order granting partial summary
12 adjudication in favor of Plaintiff, and that given that Plaintiff's partial summary
13 adjudication motion was not dispositive in its favor on its claims to remove Defendants'
14 lien, the fees and costs incurred on the partial summary adjudication motion were not
15 reasonable and necessary to remove the lien.

16 242. According to Plaintiff, during the first segment of this case through the
17 hearing on Plaintiff's initially successful Motion for Partial Summary Adjudication, Plaintiff
18 incurred approximately \$115,314.00 in fees just to respond to Defendants' meritless
19 briefing and unprincipled discovery disputes. That figure is more than double the fees
20 incurred by Plaintiff (\$47,334.50) in its prosecution of the underlying claim, and it is more
21 than quadruple the fees incurred by Plaintiff (\$26,212.00) on the personal jurisdiction and
22 default judgment dispute. See Plaintiff's Reply to Defendants' Opposition to First Motion
23 for Attorneys' Fees [Adversary Proceeding Docket No. 153 at 20]; Fritz Declaration in
24 Support of Plaintiff's Reply to Defendants' Opposition to First Motion for Attorneys' Fees
25 [Adversary Proceeding Docket No. 155].

26 243. Plaintiff argues that although it could have filed for a final summary
27 adjudication under Federal Rule of Civil Procedure 54 to remove the mechanic's lien after
28 partial summary judgment (which might have ended the litigation and attorneys' fees at

1 that point, as reflected in the first fee motion. See Plaintiff's First Motion for Attorneys'
2 Fees [Adversary Proceeding Docket No. 146]; Plaintiff's Reply to Defendants' Opposition
3 to First Motion for Attorneys' Fees [Adversary Proceeding Docket No. 153]; Fritz
4 Declaration in Support of Plaintiff's Reply to Defendants' Opposition to First Motion for
5 Attorneys' Fees [Adversary Proceeding Docket No. 155]; 6/29/22 Trial Transcript at 40:7-
6 17 and 47:10-16). As the Bankruptcy Court has partially modified and vacated its order
7 granting partial summary adjudication in Plaintiff's favor, this argument is moot as the
8 adversary proceeding had to go to trial on the claims in Plaintiff's amended complaint to
9 remove Defendants' lien, primarily the slander of title claim.

10 244. However, Plaintiff argues that it was reasonable to **not** incur the additional
11 procedural costs of making a Federal Rule of Civil Procedure 54 motion at that time
12 because partial summary adjudication had been issued in November 2019, and the joint
13 pretrial conference was scheduled for substantially the same time, with trial to commence
14 in April 2020. 6/30/22 Trial Transcript at 61:15- 62:6. Plaintiff argues that just before trial
15 was to commence, Covid-19 caused a shutdown of court trials in mid-March 2020, which
16 could not have been anticipated by Plaintiff and for which it cannot be justifiably held
17 accountable; the trial was continued numerous times throughout 2020, 2021 and 2022,
18 partly due to the pandemic, but partly at the request of Defendants. See 6/30/22 Trial
19 Transcript at 32:7-12. To some extent, the Bankruptcy Court agrees with Plaintiff on this
20 point because in the end, it was necessary to go to trial on Plaintiff's claims in the
21 amended complaint for removal of Defendants' lien, specifically, the slander of title claim.

22 245. Plaintiff argues that the difficulty in this particular case necessitating more
23 attorneys' fees (which it argues under the circumstances are reasonable and appropriate
24 here) continued even after the trial ended in terms of preparing the Proposed Findings
25 and Conclusions because of Curtis's shifting and inconsistent explanations over three
26 days of trial (a trial unnecessarily extended by Defendants' baseless arguments and
27 unsupported defenses). For example, in reviewing more than 550 pages of trial hearing
28 transcripts, Curtis advanced multiple inconsistent positions regarding how much lumber

1 Debtor allegedly stole and how much it was worth, ranging from \$4,000 to \$60,000. See,
2 Plaintiff's Proposed Findings and Conclusions [Adversary Proceeding Docket No. 217] ¶¶
3 152-163 (summarizing trial evidence with pinpoint citations). As another example, during
4 trial, in an attempt to justify the false mechanic's lien, Curtis vacillated before finally
5 admitting to the Court that there had been no agreement to form the basis of the lien, and
6 therefore, that a mechanic's lien was not proper. See Plaintiff's Proposed Findings and
7 Conclusions [Adversary Proceeding Docket No. 217] ¶¶ 139-143 (summarizing trial
8 evidence with pinpoint citations). Plaintiff's counsel had to review the entirety of the 550
9 pages of trial transcripts and then check it against Curtis's previous deposition transcript
10 for inconsistencies and falsehoods, which increased Plaintiff's attorneys' fees. See
11 Adversary Proceeding Docket No. 221.

12 246. Plaintiff argues that the difficulty of this particular case, necessitating more
13 of Plaintiff's attorneys' fees, was also increased by having to prove Curtis's malice by way
14 of circumstantial evidence. Plaintiff argues that Curtis certainly would not admit malice,
15 so Plaintiff's counsel had to establish the nature of the pre-existing relationship between
16 the parties, the events that led up to the wrongful lien, and the events that transpired
17 afterwards, including Curtis's knowledge and experience as a former lawyer in choosing
18 to file the wrongful lien as an improper prejudgment remedy for a disputed tort claim
19 instead of labor/material contract. See Plaintiff's Proposed Findings and Conclusions
20 [Adversary Proceeding Docket No. 217] ¶¶ 168-174 (summarizing trial evidence with
21 pinpoint citations). Adversary Proceeding Docket No. 221.

22 247. Plaintiff argues that the claimed fees are reasonable and should be
23 awarded in favor of Plaintiff and against Defendants under the circumstances. Plaintiff
24 argues that in determining the reasonableness of attorneys' fees, the court should
25 consider the "protracted and contentious nature" of the action. *In re Roger*, No EDCV 15-
26 00087 SJO, 2015 WL 7566647 (C.D. Cal. Nov. 25, 2015), slip op. at *10 (noting that that
27 protracted and contentious nature of the suit underlying an attorneys' fees demand of
28 over \$1,000,000 militated strongly in favor of the bankruptcy court abstaining from

1 hearing the matter so that the state trial court could determine them, precisely because
2 the trial court was familiar with the protracted and contentious nature of the action). Both
3 California and federal law commit the determination of reasonableness of attorneys' fees
4 to the discretion of the trial courts. *Id.*, citing, *Southwest Media, Inc. v. Rau*, 708 F.2d
5 419, 422 (9th Cir. 1983). As Plaintiff notes, higher attorneys' fees can be considered
6 reasonable when those higher fees are due to time-consuming discovery and many
7 contentious motions. *Ringfree USA Corp. v. Ringfree Company, Ltd.*, No. CV 06-7813
8 CAS (CTx), 2009 WL 10673144, slip op. at *1 (C.D. Cal. Jan.12, 2009). Plaintiff argues
9 here, considering the time-consuming discovery and many contentious pleadings that the
10 Plaintiff had to fight against Defendants, the fees are reasonable and appropriate.
11 Adversary Proceeding Docket Nos. 153 and 155.

12 248. Plaintiff argues that the fees are reasonable and the award is fair because
13 of the utilitarian purpose of dissuading dilatory tactics and unnecessary litigation. By way
14 of analogy, one court has noted the usefulness of awarding fees on a contractual
15 attorneys' fees clauses for breach to prevent frivolous and dilatory tactics by the
16 breaching party. *Markt v. Ro-Mart, Inc.*, 471 F.Supp. 1292, 1299 (N.D. Cal. 1979). By
17 way of another analogy, in the context of removing and remanding cases under 28
18 U.S.C. § 1447, courts have noted that "an award of fees and costs [against the party that
19 wrongfully removes an action] is permitted simply as a means of reimbursing the plaintiff
20 for the 'wholly unnecessary litigation cost the [other party] inflicted.'" *Alpert v. Screen*
21 *Actors Guild, Inc.*, No. CV 04-10059 SVW(CWx), 2005 WL 8154963 (C.D. Cal. May 24,
22 2005), slip op. at *1. Plaintiff argues that here, the lion's share of fees in this adversary
23 proceeding was incurred as a result of Defendants' frivolous and dilatory tactics and
24 largely unnecessary litigation costs. Accordingly, Plaintiff argues that the award of these
25 fees in favor of Plaintiff and against Defendants is proper, fair, and reasonable to respond
26 to Defendants' litigation tactics. Adversary Proceeding Docket Nos. 153 and 155.

27 249. Plaintiff argues that where attorneys' fees are inextricably linked between
28 related claims, those fees may be allowed and rewarded, and attorneys' fees need not be

1 apportioned when incurred for presentation on an issue common to both a cause of
2 action in which fees are proper and on in which they are not allowed. *Sumner Hill*
3 *Homeowners' Association, Inc. v. Rio Mesa Holdings, LLC*, 205 Cal.App.4th at 1035.

4 250. Plaintiff argues that attorneys' fees are recoverable for avoiding
5 Defendants' wrongful lien and that the core nucleus of operative facts for the causes of
6 action were the same – it was the wrongful lien that slandered title, and Defendants
7 stalwartly refused to voluntarily remove the lien, such that it was only through Plaintiff's
8 application of legal process that would clear title. Plaintiff argues that Defendants should
9 not enjoy a windfall of avoiding liability for Plaintiff's attorneys' fees simply because
10 Plaintiff is able to void the lien with one legal theory over another, for the damage is
11 already done where Defendants file a wrongful lien and then force Plaintiff to incur those
12 attorneys' fees to remove it – especially over Defendants' vigorous defense of the
13 wrongful lien. Plaintiff argues that if the Bankruptcy Court were to award the Plaintiff
14 victory on lien avoidance on all causes of action except slander of title remaining for trial,
15 and decide that (A) all fees up to that point were not related to slander of title, while (B) all
16 fees thereafter are related to slander of title but unnecessary and unreasonable because
17 the lien was voided just at that moment, the result would be an irrational one, because
18 (A) Plaintiff already incurred \$147,629.25¹³ in attorneys' fees to prevail, plus (B) another
19 \$121,078.00¹⁴ of attorneys' fees through trial on slander of title so that any portion of the
20 attorneys' fees at all could be recoverable as special damages. Plaintiff argues that if the
21 Bankruptcy Court were to award Plaintiff no attorneys' fees despite Plaintiff prevailing on
22 all the causes of action, it would work the bizarre incentive to encourage tortfeasors to file
23 wrongful liens and discourage property owners from ever challenging them. Plaintiff
24 further argues that moreover, the result would be an actual victory for Defendants
25 because they would have been permitted to make a grossly inflated wrongful lien claim

26 _____
27 ¹³ Exhibit 1 hereto, part "A".

28 ¹⁴ Exhibit 1 hereto, parts "A" and "B".

1 for \$40,000, insist on being paid \$40,000 from a court-approved refinancing, actually
2 have the wrongful lien proven to be wrong and grossly inflated, and not incur any liability
3 for Defendants' tortious wrongful conduct for slandering title, despite forcing Plaintiff to
4 incur hundreds of thousands of dollars of attorneys' fees to remove the wrongful lien.
5 Plaintiff thus argues that the Bankruptcy Court should therefore find and conclude that
6 the amount of attorneys' fees claimed must be awarded to Plaintiff as damages. Under
7 these circumstances, Plaintiff argues that it was reasonable for it to continue to incur
8 attorneys' fees to finish the litigation of the final claim in the suit for slander of title, even
9 though the Plaintiff prevailed on voiding the lien on a complimentary theory on its Motion
10 for Partial Summary Adjudication right before trial.

11 251. Plaintiff argues that the Bankruptcy Court should overrule and reject
12 Defendants' argument that Plaintiff cannot recover attorneys' fees for prevailing on
13 slander of title for those fees incurred in pursuit of damages. Plaintiff argues that
14 Defendants' reliance on *Seeley v. Seymour*, 190 Cal.App.3d 844, 865-866 (1987), is
15 misplaced. In a slander of title or "wrongful disparagement of title" case, the following
16 damages are all recoverable: "expense of legal proceedings necessary to remove the
17 doubt cast by the disparagement" and "financial loss resulting from the impairment of
18 vendability of the property" and "general damages for the time and inconvenience
19 suffered by plaintiff in removing the doubt cast upon his property." *Id.* at 865 (referring to
20 Restatement of Torts). According to Plaintiff, all of Plaintiff's attorneys' fees fall into one
21 category or another. Plaintiff notes that Defendants rely on the statement in *Seeley v.*
22 *Seymour* that: "Although attorneys' fees and litigation expenses reasonably necessary to
23 remove the memorandum from the record were recoverable, those incurred merely in
24 pursuit of damages against [defendant] and the other defendants were not." *Id.* at 865-
25 866. Plaintiff argues that *Seeley v. Seymour* is distinguishable on its facts because in
26 this case, it is only by the judicial efficiency of splitting the First Cause of Action for
27 Slander of Title from the others to obtain partial summary adjudication on lien avoidance
28 that the lien was avoided prior to the completion of the full trial. Plaintiff further argues

1 that but, to be clear, Plaintiff's Complaint was one complaint for slander of title and lien
2 avoidance, it would turn the case law and Restatement of Torts on its head to say that
3 Plaintiff cannot recover attorneys' fees for prevailing for slander of title because through
4 good lawyering Plaintiff succeeded in voiding the lien at the interlocutory stage on partial
5 summary adjudication. Plaintiff also argues that at that point, the wrongful lien had
6 already slandered title, and Plaintiff had already incurred more than \$180,000 in
7 attorneys' fees to remove the wrongful lien over Defendants' unrelenting defense but
8 could not recover attorneys' fees as a measure of damages without completing the
9 remaining slander of title claim. According to Plaintiff, it would be contrary to the
10 reasoning of *Sumner Hill Homeowners' Association, Inc. v. Rio Mesa Holdings, LLC*, 205
11 Cal.App.4th at 1031, which specifically supports attorneys' fees rewards as special
12 damages for slander of title, to deny Plaintiff attorneys' fees because on the eve of trial
13 for slander of title Plaintiff succeeded in a complimentary cause of action to void the lien.
14 Plaintiff thus argues that *Seeley v. Seymour* is also distinguishable on its facts because it
15 involved "other defendants" and multiple causes of action, including negligence and
16 indemnity that went beyond the slander of title claim against that particular defendant.
17 *Seeley v. Seymour*, 190 Cal.App.4th at 852 and 865-866. Plaintiff argues that an award
18 of Plaintiff's attorneys' fees in the amount requested and set forth on **Exhibit 1** hereto is
19 wholly appropriate here on both slander of title and voiding the lien. Since the
20 Bankruptcy Court has partially modified and vacated the Partial Summary Adjudication
21 Order, this dispute is somewhat moot as the Bankruptcy Court has only considered what
22 attorneys' fees and costs were reasonable and necessary to remove Defendants' lien as
23 a cloud on title to Plaintiff's property. Defendants' lien was not removed upon avoidance
24 through partial summary adjudication, and thus, the slander of title claim, including the
25 issue of damages, had to be litigated at trial.

26 252. Plaintiff argues that its attorneys' fees incurred through partial summary
27 adjudication to avoid the lien were reasonable, and that the majority of the fees incurred
28 were necessitated in response to Defendants' actions. Plaintiff provided a breakdown of

1 the fees for that period. Fritz Declaration at 3-5 [Adversary Proceeding Docket No. 155];
2 Reply [Adversary Proceeding Docket No. 153] at 20. Plaintiff argues that the Bankruptcy
3 Court should find and conclude and allow the amount of \$147,629.25 for the period
4 through granting of Partial Summary Adjudication, as set forth on **Exhibit 1** attached
5 hereto, as reasonable and appropriate. As discussed herein, since the Bankruptcy Court
6 has partially modified and vacated the Partial Summary Adjudication Order, it has not
7 considered the reasonableness and necessity of attorneys' fees and costs incurred by
8 Plaintiff as of entry of the Partial Summary Adjudication Order.

9 253. As argued by Plaintiff, for all the reasons explained above, Defendants filed
10 an improper lien, and, accordingly, the Bankruptcy Court should find and conclude that
11 the burden of Plaintiff's attorneys' fees shifted to Defendants. 6/29/22 Trial Transcript at
12 12:21-13-3. Plaintiff argues that the Bankruptcy Court should find and conclude that,
13 inevitably, somebody suffers when an improper lien is filed, and the cost to remove the
14 wrongful lien either comes out of the Plaintiff's resources or out of the Plaintiff's law firm's
15 resources, and, therefore, to deny attorneys' fees to the Plaintiff results in a windfall to
16 the Defendants that asserted the wrongful lien. 6/29/22 Trial Transcript at 12:12-20.
17 Plaintiff argues that whatever arrangement made between the Plaintiff and its counsel
18 does not relieve Defendants of their responsibility or liability, which would be a windfall to
19 Defendants for their wrongful conduct. 6/29/22 Trial Transcript at 12:21-13:6.

20 254. Plaintiff argues that the Bankruptcy Court should overrule Defendants'
21 argument and find and conclude that there was not a more streamlined or inexpensive
22 method for Plaintiff to have removed the false Lien because, regardless of what process
23 Plaintiff might have used, it is evident that the real expense attendant to any process
24 would be responding to Defendants' vigorous litigation. As discussed herein, the
25 Bankruptcy Court has considered the reasonableness and necessity of the attorneys'
26 fees and costs incurred by Plaintiff in removing Defendants' lien as a cloud on title to its
27 property.

28 255. Plaintiff argues that the Bankruptcy Court should reject Defendants'

1 assertion that Defendants did nothing to enforce the mechanic's lien and find and
2 conclude that for almost 19 months during this bankruptcy case, Defendants did in fact
3 attempt to enforce the lien and collect \$40,000 from the bankruptcy estate. Plaintiff notes
4 that on March 4, 2019, Defendants filed a motion for summary judgment and argued that
5 the lien would "ride through" bankruptcy unaffected. Defendants' Motion for Summary
6 Judgment at 5:1-17 [Adversary Proceeding Docket No. 69]. Plaintiff argues that the
7 Bankruptcy Court should find and conclude that Defendants had intended to wait out the
8 bankruptcy case and then enforce the Lien against Plaintiff outside of bankruptcy and
9 that Defendants repeatedly argued throughout this case that they had a "properly
10 perfected mechanic's lien" that would pass through bankruptcy unaffected – an argument
11 that the Bankruptcy Court should find and conclude is incorrect and, therefore, reject.
12 Defendants' Motion for Summary Judgment at 6:22-7:28 [Adversary Proceeding Docket
13 No. 69]. Plaintiff notes that in Defendants' reply briefing on their motion for summary
14 judgment, they again asserted that "[t]he mechanic's lien cannot be avoided as a matter
15 of law," Defendants' Reply to Plaintiff's Opposition to Summary Judgment Motion at 2:7
16 [Adversary Proceeding Docket No. 85], and, again, "there is no way the Debtor can avoid
17 Defendants' mechanics' lien ... the Debtor's [Plaintiff's] plan must provide that
18 Defendants who hold a properly perfected mechanics' lien on the Debtor's collateral ...
19 be paid in full on the effective date of the plan or [] have the right to retain their lien and
20 later receive payments with interest." *Id.* at 9:1-6. Plaintiff argues that the Bankruptcy
21 Court should find and conclude that, clearly, Defendants still intended to assert and
22 enforce their lien more than a year into this bankruptcy case, necessitating Plaintiff to
23 incur attorneys' fees to remove the wrongful lien.

24 256. Plaintiff argues that the Bankruptcy Court should have read Defendants'
25 cited cases of *Green v. Smith*, 261 Cal.App.2d 392 (1968) and *Pool v. City of Oakland*,
26 42 Cal.3d 1051, 1066 (1986), and find them unavailing, and should overrule and reject
27 Defendants' argument that Plaintiff could have mitigated damages by using a so-called
28 "*Lambert*" Motion or filing legal process in state court under California Civil Code § 8482

1 instead of filing an adversary proceeding and that the suggestion that Defendants would
2 have removed their lien and not litigated to defend the wrongful lien if only another state
3 court legal process had been used is simply belied by the Defendants' scorched-earth
4 defense of the wrongful lien in in this proceeding. See Defendants['] Supplemental
5 Authorities Supporting Claim/Defense Plaintiff Failed to Mitigate Its Damages and Failed
6 to Plead Attorney Fee Authorizing Statute [Adversary Proceeding Docket No. 313]. *citing*
7 *inter alia, Lambert v. Superior Court*, 228 Cal.App.3d 383 (1991).

8 257. Plaintiff argues that the Bankruptcy Court has jurisdiction over all disputes
9 as to claims and property of the estate, which are core proceedings of the most central
10 variety. 28 U.S.C. § 157. The bankruptcy court claim objection process, combined with
11 the due process safeguards of an adversary proceeding when addressing the validity of a
12 lien, provide an efficient process to handle matters central to the debtor-creditor rights
13 that are common in bankruptcy. See *In re Peck Jeep Eagle Inc.*, No. 17-0013 8-LA7,
14 2021 WL 1511640 (Bankr. S.D. Cal. April 15, 2021), slip op. at *2; Federal Rules of
15 Bankruptcy Procedure 3007 and 7001(2); 28 U.S.C. § 157(b)(2)(A), (B), (K). Plaintiffs
16 argue that if creditors (particularly those creditors with wrongful liens) could divest the
17 Bankruptcy Court of jurisdiction by insisting that the lien-tortfeasor's choice of forum be
18 given precedent over that of a bankruptcy debtor's central reorganization efforts in the
19 single Bankruptcy Court – as Defendants here argue for – then the entire construct of
20 federal supremacy and the bankruptcy laws of Congress would be undermined. See
21 United States Constitution, Article I, § 8 (bankruptcy clause).

22 258. “One of the goals of the Bankruptcy Code and process is to administer
23 claims in an efficient manner, and the claim objection process is the most efficient
24 manner to administer claims against the estate.” *In re Brand Affinity Technologies, Inc.*,
25 2016 WL 8316889 (Bankr. C.D. Cal. Feb. 24, 2016), slip op. at *2. Plaintiff argues that if
26 Defendants thought there was a more efficient process, Defendants could have made a
27 motion for relief from the automatic stay under 11 U.S.C. § 362(a) or moved to transfer
28 the matter to another court. See *Matter of Interco Inc.*, 139 B.R. 718, 719 (Bankr. E.D.

1 Mo. 1992) (noting relief from stay and transfer options). Defendants never took any such
2 steps. Plaintiff argues that instead, Defendants appeared in this forum, the Bankruptcy
3 Court, and vigorously defended their wrongful lien, and only after having lost those
4 vigorous legal battles in Bankruptcy Court, and now argue that a more efficient process
5 or venue existed, seeking to penalize Plaintiff after-the-fact for Defendants' scorched-
6 earth litigation tactics in this adversary proceeding.

7 259. Plaintiff argues that the Bankruptcy Court should overrule and reject
8 Defendants' argument of second-guessing Plaintiff about what legal theories or legal
9 processes that the Plaintiff could have or should have used instead of this adversary
10 proceeding. 6/29/22 Trial Transcript at 34:11-14. Plaintiff argues that the Bankruptcy
11 Court should overrule and reject Defendants' arguments that Plaintiff could have
12 mitigated damages by using the *Lambert* motion in state court or giving a 10-day notice
13 for release of lien under California Civil Code § 8482. 6/30/22 Trial Transcript at 147:3-
14 151:6; *see also, Lambert v. Superior Court*, 228 Cal.App.3d 383, 387-388 (1991) (stating
15 that an owner may bring a motion to contest a mechanic's lien in a contractor's lien
16 enforcement action or file an action for declaratory or injunctive relief if no such lien
17 enforcement action had been brought). Plaintiff further argues that the Bankruptcy Court
18 should find and conclude that using the state court process was not a justifiable
19 alternative to the adversary proceeding because, as Curtis had acknowledged,
20 Defendants had not served Plaintiff with the state court complaint for their lien.

21 260. Plaintiff argues that it is clear that Defendants would have argued for the
22 validity of their wrongful mechanic's lien regardless of whether the legal process played
23 out in state court or bankruptcy court. Plaintiff notes that even during closing arguments
24 at trial, more than two and a half years after the Bankruptcy Court ruled that Defendants'
25 wrongful mechanic's lien was void on partial summary adjudication, Curtis was still
26 arguing that the Lien had been properly perfected under Ninth Circuit law. 6/30/22 Trial
27 Transcript at 109:3-111:10. Plaintiff argued that Defendants continued to show a
28 misunderstanding of the interplay of mechanic's lien law and bankruptcy law all the way

1 through closing arguments, more than two years after the Bankruptcy Court had ruled on
2 these issues on partial summary adjudication. 6/30/22 Trial Transcript at 118:19-120:1.
3 While Plaintiff is technically correct on these points, the Bankruptcy Court set aside its
4 Partial Summary Adjudication Order, and Defendants continued to assert the validity of
5 their lien at trial. Plaintiff argues that the Bankruptcy Court should find and conclude that
6 a 10-day notice and demand period under California Civil Code § 8482 would have made
7 no difference, because when Plaintiff filed and served the complaint, Defendants were
8 provided 30 days to admit the invalidity for the lien, but instead argued for the validity of
9 the wrongful lien for the next 18 months through a contested ruling on summary
10 adjudication. 6/30/22 Trial Transcript at 131:14-133:17 (Curtis testimony); *see also*,
11 Federal Rule of Bankruptcy Procedure 7012 (30 days from issuance of summons for
12 response to adversary complaint if service is made). Plaintiff points out that Defendants
13 asserted to the Bankruptcy Court that their wrongful Lien for \$40,000 should be paid by
14 Plaintiff, even more than a year after the complaint had been filed. 6/30/22 Trial
15 Transcript at 140:5-19. Plaintiff argues that the Bankruptcy Court should find and
16 conclude that some legal process by Plaintiff was reasonable and necessary for a judicial
17 declaration that the Lien was void over Defendants' continual opposition.

18 261. Plaintiff argues that the Bankruptcy Court should find and conclude that the
19 Lien was void because it did not meet statutory requirements, and that a judicial
20 declaration from a court through legal process was necessary to declare the Lien void.
21 6/29/22 Trial Transcript at 77:25-78:3 (court comments). Plaintiff argues that the Lien was
22 wrongful and a cloud on title necessitating a judicial declaration to have it removed.
23 6/29/22 Trial Transcript at 202:1-12. Thus, Plaintiff argues that obtaining that judicial
24 declaration necessitated Plaintiff's attorneys' fees.

25 262. Plaintiff argues that the Bankruptcy Court should find and conclude that the
26 majority of the attorneys' fees incurred up through partial summary adjudication to
27 invalidate the Lien were appropriate and reasonable. Plaintiff argues that many of the
28 legal fees were made necessary by Defendants' conduct, which necessitated Plaintiff to

1 respond. Plaintiff notes that starting with service of process and personal jurisdiction,
2 Defendants' only addresses of record were a P.O. Box and a vacant lot, and appear to
3 have been part of Defendants' strategy to shield themselves from legal service while
4 nonetheless filing lawsuits and liens against Plaintiff from those addresses. 6/29/22 Trial
5 Transcript at 94:8-24. Plaintiff notes that the Bankruptcy Court identified an error in a
6 missing digit in the zip code on service, which was not an argument raised by
7 Defendants, and Plaintiff had to re-serve the complaint, but the same issues and
8 arguments by Defendants as to their P.O. Box and vacant lot for service would have
9 remained and needed to be decided after the zip code issue was fixed. 6/29/22 Trial
10 Transcript at 94:8-24 and 103:7-104:6.

11 263. Plaintiff argues that even if the Bankruptcy Court does not allow the fees
12 associated with ineffective service of the first complaint, 6/29/22 Trial Transcript at 110:7-
13 10 (court comments that such fees are nonchargeable), that would account for only
14 \$26,212 of the total fees (portions of which were charged by Plaintiff's professionals other
15 than Mr. Fritz for which Plaintiff is not seeking anymore). See Plaintiff's Reply to
16 Defendants' Opposition to First Motion for Attorneys' Fees at 20 [Adversary Proceeding
17 Docket No. 153]; Fritz Declaration in Support of Plaintiff's Reply to Defendants'
18 Opposition to First Motion for Attorneys' Fees [Adversary Proceeding Docket No. 155].

19 264. Plaintiff argues that the Bankruptcy Court should find and conclude that
20 Plaintiff's attorneys' fees were reasonable in discovery where Defendants took
21 unreasonable positions to drive up the cost of the litigation. Plaintiff argues that for
22 example, where Curtis refused to answer questions on behalf of Ammec, stating that
23 Carlos Montenegro was the person knowledgeable about the matter, then Mr.
24 Montenegro refusing to show up for the deposition and Ms. Curtis showing up a second
25 time instead, and Plaintiff made the decision to not incur further fees on the issue by
26 choosing not to file a motion to compel. 6/29/22 Trial Transcript at 170:21-182:25;
27 Adversary Proceeding Docket No. 146. As another example, Plaintiff points out,
28 Defendants attempted to force a deposition to take place on a sidewalk, which was

1 clearly not reasonable, and then brought an emergency motion to compel, which the
2 Bankruptcy Court denied, but not before the Plaintiff was forced to incur attorneys' fees to
3 respond. 6/29/22 Trial Transcript at 172:21-175:18; Plaintiff's First Motion for Attorneys'
4 Fees [Adversary Proceeding Docket No. 146].

5 265. Plaintiff argues that as the bankruptcy case progressed, Defendants took
6 additional steps to enforce the wrongful lien in the main bankruptcy case when Curtis
7 Defendants filed the only oppositions to Plaintiff's refinancing motion and argued that the
8 refinancing did not provide adequate protection for the lien for \$40,000. See Bankruptcy
9 Case Docket No. 84 at 9:12-26. Plaintiff notes that Curtis also argued that Defendants
10 "are entitled to be paid in full on the effective date of the plan or have the right to retain
11 their lien and later receive payments with interest." See Curtis's Opposition to Plaintiff's
12 Motion for Order Authorizing Post-Petition Financing at 10:1-2 [Bankruptcy Case Docket
13 No. 84]; Ammec, Inc.'s Opposition to Plaintiff's Motion for Order Authorizing Post-Petition
14 Financing at 8:2-3 [Bankruptcy Case Docket No. 86] (arguing same). Ammec asserted:
15 "Curtis/Ammec have a perfected lien that must be replaced with another lien of equal
16 quality as the mechanic's lien." Ammec, Inc.'s Opposition to Plaintiff's Motion for Order
17 Authorizing Post-Petition Financing at 7:8-9 [Bankruptcy Case Docket No. 86]. The
18 Bankruptcy Court ordered that \$40,000 be impounded until the dispute over the
19 mechanic's lien could be resolved. Order Authorizing Post-Petition Financing at 4:4-10
20 [Bankruptcy Case Docket No. 92]. Plaintiff argues that clearly, Defendants were
21 attempting to enforce the mechanic's lien well into August 2019, some 19 months after
22 Plaintiff filed its bankruptcy petition in January 2018. As Plaintiff argues, Defendants'
23 abuse of civil proceedings crossed over from merely filing the lien to actively attempting
24 to enforce the lien through judicial proceedings in this court, despite the complete
25 invalidity of their purported mechanic's lien and \$40,000 claim. Accordingly, Plaintiff
26 argues that the Bankruptcy Court should find and conclude that Plaintiff's attorneys' fees
27 as set forth on **Exhibit 1** hereto are reasonable and appropriate award of damages in
28 favor of Plaintiff and against Defendants.

1 **iii. Mitigation of Damages**

2 266. In their evidentiary objections to Plaintiff's motion for attorneys' fees and
3 costs [Adversary Proceeding Docket No. 290] and their supplemental brief regarding
4 mitigation of damages [Adversary Proceeding Docket No. 313], Defendants make two
5 primary arguments against the award of attorneys' fees to Plaintiff: (1) Plaintiff should not
6 be awarded the attorneys' fees because it failed to mitigate these damages since it could
7 have proceeded against Defendants in a more efficient, cost-effective manner; and (2)
8 Plaintiff failed to specifically plead a claim to recover attorneys' fees in the complaint
9 under California Code of Civil Procedure § 8488(c).

10 267. Plaintiff incurred approximately \$270,707.25 in attorneys' fees to remove a
11 \$40,000 mechanic's lien. Plaintiff argues that at first glance, the fees appear excessive,
12 but considering the extensive litigation and Defendants' aggressive defense of their
13 invalid mechanic's lien, Plaintiff argues that the attorneys' fees are reasonable and
14 should be awarded to it. That is, according to Plaintiff, it is entitled to attorneys' fees and
15 costs because it prevailed in its slander of title cause of action.

16 268. Defendants argue that Plaintiff failed to mitigate damages because there
17 were at least three more expedient and cost-effective procedures that were available
18 under California law to Plaintiff that it failed to utilize and, instead, created excessive
19 attorneys' fees. According to Defendants, these three methods were: (1) filing a petition
20 for release of a mechanic's lien under California Civil Code § 8482 in state court; (2) filing
21 a motion for removal of mechanic's lien under California Code of Civil Procedure §
22 765.010 in state court; and (3) filing a so-called *Lambert* Motion to remove the
23 mechanic's lien in state court. Defendants['] Supplemental Authorities Supporting
24 Claim/Defense Plaintiff Failed to Mitigate Its[] Damages and Failed to Plead Attorney Fee
25 Authorizing Statute (Defendants' Supplemental Brief on Mitigation) [Adversary
26 Proceeding Docket No. 313]. Defendants also asserted that Plaintiff could have just
27 asked Defendants to remove the mechanic's lien by sending them a demand letter. *Id.* It
28 is not disputed that Plaintiff did not pursue any of these options, for various reasons,

1 instead Plaintiff both prosecuted and defended its claims in this adversary proceeding
2 and has prevailed on most of its claims.

3 269. Plaintiff seeks attorneys' fees based on the first cause of action in its
4 amended complaint for slander of title. The elements of slander of title are: (1) a
5 publication, (2) which is without privilege or justification, (3) which is false, and (4) which
6 causes direct and immediate pecuniary loss. *Manhattan Loft, LLC v. Mercury Liquors,*
7 *Inc.*, 173 Cal.App.4th at 1051. As Plaintiff argues, attorneys' fees and litigation costs are
8 recoverable as pecuniary damages in a slander of title action when the litigation is
9 necessary to remove the doubt cast upon vendibility or value of plaintiff's property.
10 *Sumner Hill Homeowners' Association, Inc. v. Rio Mesa Holdings, LLC*, 205 Cal.App.4th
11 at 1032; *accord, Compass Bank v. Petersen*, 886 F.Supp.2d 1186, 1198 (C.D. Cal.
12 2012). Plaintiff argues here that it proved the mechanic's lien imposed by Defendants
13 was a publication which was recorded without privilege, which was false and caused
14 pecuniary loss because of the attorneys' fees and costs that Plaintiff incurred.

15 270. In their supplemental brief, Defendants argue that they should not be liable
16 for the entire amount of attorneys' fees that Plaintiff incurred during the slander of title
17 litigation because there were more efficient ways to deal with Defendants' asserted
18 mechanic's lien [Adversary Proceeding Docket No. 313]. To support this argument,
19 Defendants cite to the Restatement of Torts (First), § 918 which states:

20 (1) Except as stated in Subsection (2), a person injured by the tort of another is not
21 entitled to recover damages for such harm as he could have avoided by the use of
22 due care after the commission of the tort.

23 (2) A person is not prevented from recovering damages for a particular harm
24 resulting from a tort if the tortfeasor intended such harm or adverted to it and was
25 recklessly disregarding of it, unless the injured person with knowledge of the
danger of such harm intentionally or heedlessly failed to protect his own interests.

26 Restatement (First) of Torts § 918 (1939) (March 2023 update). Plaintiff argues that
27 Defendants seem to focus on the first part of this Restatement section and ignore the
28 second part. Defendants argue Plaintiff is not entitled to attorneys' fees because Plaintiff

1 could have avoided some of the fees under various procedural short-cuts. For example,
2 Defendants suggest Plaintiff could have filed a so-called "*Lambert Motion*" in state court
3 and simply asked them to remove the lien or provided a 10-day notice under California
4 Civil Code § 8482 ("An owner of property may not petition the court for a release order
5 under this article unless at least 10 days before filing the petition the owner gives the
6 claimant notice demanding that the claimant execute and record a release of the claim of
7 lien . . ."). Plaintiff asserts that this argument is not persuasive because throughout this
8 adversary proceeding, Defendants maintained they had a valid lien, even after the
9 Bankruptcy Court ruled in favor of Plaintiff on its declaratory relief claim, granting partial
10 summary adjudication which declared the mechanic's lien void, and Defendants
11 challenged every step of the adversary process. Plaintiff argues that there is no doubt
12 that Defendants would have opposed any of the more efficient methods they suggest
13 Plaintiff should have followed, noting also, Defendants argue that Plaintiff could have filed
14 a "*Lambert Motion*" in the previously pending litigation related to the State Court
15 Complaint that Defendants admit they failed to serve on Plaintiff. In any event, while
16 conceivably, Plaintiff could have filed a *Lambert* motion to remove Defendants'
17 mechanic's lien, it appears that such a motion would have been a contested matter within
18 the meaning of Federal Rule of Bankruptcy Procedure 9014 as Plaintiff had already filed
19 for bankruptcy, and the litigation of such a matter would have involved the same factual
20 issues as the slander of title and lien avoidance claims, that is, who owned the lumber,
21 and whether there was any agreement between Plaintiff and Defendants to support their
22 claimed mechanic's lien, and thus, the Bankruptcy Court does not agree with Defendants
23 that filing a *Lambert* motion to remove the mechanic's lien would have avoided Plaintiff's
24 incurrence of attorneys' fees and costs in litigating the slander of title claim. *See Lambert*
25 *v. Superior Court*, 228 Cal.App.3d at 387-388. In this case, Defendants had filed their
26 action to enforce the mechanic's lien in state court after Plaintiff filed for bankruptcy, and
27 the lien enforcement action was filed in violation of the automatic stay and was thus void.
28 Therefore, Plaintiff could not have filed a *Lambert* motion in Defendants' lien enforcement

1 action and had to bring an action for declaratory relief, which it did in this adversary
2 proceeding.¹⁵ Even if Plaintiff could have filed a *Lambert* motion in Defendants’
3 mechanic’s lien enforcement action, the parties would have had to litigate the factual
4 issues relating the validity or invalidity of the lien involving ownership of the lumber and
5 whether an agreement existed between Plaintiff and Defendants for provision of the
6 lumber as they litigated in this adversary proceeding.

7 271. Plaintiff argues that Defendants fail to address the second part of
8 Restatement of Torts (First) § 918. Plaintiff is not prevented from recovering damages for
9 a particular harm resulting from Defendants’ baseless mechanic’s lien unless Plaintiff
10 intentionally or heedlessly failed to protect its own interest. Plaintiff argues that there is
11 no indication that Plaintiff intentionally or heedlessly failed to protect their interest and
12 that the evidence shows Plaintiff never failed to protect their interest. Plaintiff argues that
13 in fact, it carefully and rigorously prosecuted their slander of title claim so that it would not
14 have to pay Defendants \$40,000 for a false mechanic’s lien. Defendants’ main argument
15 is not that Plaintiff failed to protect its own interest, their main argument is that Plaintiff
16 was overly aggressive in prosecuting the slander of title cause of action. Plaintiff argues
17 that considering Defendants improperly recorded a mechanic’s lien against Plaintiff’s
18

19 ¹⁵ As noted in *Manela v. Stone*, 66 Cal.App.5th 90 (2021), “the grant of a motion to remove
20 a mechanic’s lien is essentially a judgment in the underlying [mechanic’s lien]
21 foreclosure action that no lien exist---a judgment that, upon recordation, removes
22 the lien from the public records ... [a]nd ... is a final, appealable judgment for
23 which writ relief would ordinarily be denied.” *Id.* at 101-102, *citing and quoting*,
24 *Howard S. Wright Construction Co. v. Superior Court*, 106 Cal.App.4th 314, 318
25 (2003)(internal quotation marks omitted). “A motion to remove a mechanic’s lien
26 should be granted only when the lienholders . . . fail to make a threshold showing of
27 the ‘probable validity’ of the lien.” *Id.* at 102, *citing*, *Lambert v. Superior Court*,
28 228 Cal.App.3d at 387. Since there was no proper lien enforcement action pending
due to the automatic stay in Plaintiff’s bankruptcy case, Plaintiff would have had to
file an action for declaratory relief and bring a motion to remove the lien based on
Lambert and litigate the factual issues relating to the validity of the lien, which it
did anyway. Whether a *Lambert* motion would have saved litigation expense is
speculative, and the Bankruptcy Court has taken into account that the awardable
reasonable and necessary attorneys’ fees and litigation costs are less than claimed
by Plaintiff by focusing on the litigation of the factual issues central to resolution of
Plaintiff’s claims to remove Defendants’ lien.

1 property and vigorously argued that they had a valid mechanic's lien throughout the
2 litigation, Plaintiff was only responding to Defendants' litigation tactics which incurred the
3 substantial attorneys' fees in this litigation.

4 272. Plaintiff argues that Defendants did not meet their burden to prove that it
5 failed to mitigate any damages. *Agam v. Gavra*, 236 Cal.App.4th 91 (2015). The
6 standard for mitigation of damages is set forth in *Valle de Oro Bank v. Gamboa*, 26
7 Cal.App.4th 1686 (1994). "Typically, the rule of mitigation of damages comes into play
8 when the event producing injury or damage has already occurred and it then has become
9 the obligation of the injured or damaged party to avoid continuing or enhanced damages
10 through reasonable efforts." *Id.* at 1691.

11 273. Plaintiff argues that the inquiry under the doctrine of mitigation of damages
12 is whether the injured party "act[ed] reasonably and with due diligence, in good faith."
13 *Green v. Smith*, 261 Cal.App.2d 392, 397 (1968). "The reasonableness of the efforts of
14 the injured party must be judged in the light of the situation confronting him at the time
15 the loss was threatened and not by the judgment of hindsight." *Id.* at 396. "The fact that
16 reasonable measures other than the one taken would have avoided damage is not, in
17 and of itself, proof of the fact that the one taken, though unsuccessful, was unreasonable.
18 ... If a choice of two reasonable courses presents itself, the person whose wrong forced
19 the choice cannot complain that one rather than the other is chosen." *Id.* at 397 (internal
20 citations omitted). Also, "[t]he fact that in retrospect a reasonable alternative course of
21 action is shown to have been feasible is not proof of the fact that the course actually
22 pursued by plaintiff was unreasonable." *Id.* at 398. "It is sufficient if [Plaintiff] acts
23 reasonably and with due diligence, in good faith." *Id.* at 397. Plaintiff notes that in this
24 case, Defendants urge the court to consider the options that Plaintiff did not pursue but
25 have not shown that the course of actions Plaintiff took were unreasonable.

26 274. Plaintiff argues that even though the Bankruptcy Court voided the
27 mechanic's lien against the property with its Partial Summary Adjudication Order entered
28 on November 14, 2019 granting in favor of Plaintiff for the disallowance of claim,

1 declaratory relief and lien avoidance causes of action, and ruled that “Any and all liens
2 asserted by the Defendants against the Property are void and unenforceable,”
3 Defendants continued to argue that their mechanic’s lien was valid in the slander of title
4 portion of the litigation. Adversary Proceeding Docket No. 142. As in *Seeley v.*
5 *Seymore*, 190 Cal.App.3d 844, 858 (1987), a recorded document that may have no effect
6 on title can still give rise to a slander of title cause of action. Plaintiff notes that in this
7 case, the Bankruptcy Court did not immediately award fees regarding the lien
8 avoidance/declaratory relief causes of action because there was a pending slander of title
9 cause of action. Plaintiff argues that it prevailed in the slander of title cause of action and
10 proved there were damages in the form of attorneys’ fees, that Defendants also contend
11 the lien was void, pursuant to state law, by the time Plaintiff filed their adversary
12 proceeding and Plaintiff did not need to proceed with the litigation; and that however,
13 Defendants expected Plaintiff to have understood the mechanic’s lien was void either
14 because of the declaratory relief ruling or through expiration of the state court process,
15 while Defendants continued to defend the mechanic’s lien in the pending adversary
16 proceeding during litigation of the slander of title cause of action. In this regard, the
17 Bankruptcy Court agrees with Plaintiff that it had to proceed to litigate the adversary
18 proceeding through trial to establish its claims to remove Defendants’ lien, the slander of
19 title claim in particular, as the Partial Summary Adjudication Order was partially modified
20 and vacated, necessitating a trial on the claims to remove the lien.

21 275. Defendants argue that Plaintiff failed to mitigate their damages by refusing
22 to pay Curtis the \$40,000 when the original lender, Lender Xpress, offered a refinancing
23 loan to Plaintiff. Defendants’ Proposed Findings at 12 [Adversary Proceeding Docket No.
24 269]. Defendants specifically argue: “Plaintiff’s CEO/President Michelle Mc[A]rn stated
25 that she was not going to pay Curtis no matter how much money she had left over
26 because of the malice and hate Mc[A]rn and Eric Radley fostered against Curtis after she
27 [Curtis] cut off their pillage of Curtis’[s] lumber.” *Id.* While it is undisputed that McArn
28 was not willing to pay Curtis for the Lien, it is not a reasonable mitigation measure for the

1 victim of the tort of slander of title, Plaintiff, to give the perpetrators of the slander of title,
2 Defendants, what they demand, or as Plaintiff asserts, to pay baseless tribute to
3 Defendants. In hindsight, it may have been more economical for Plaintiff to have paid the
4 tribute demanded by Defendants for release of the Lien, but the cost of litigation over the
5 validity of the Lien ran up in large part from Defendants' aggressive litigation tactics. The
6 Bankruptcy Court disagrees with Defendants that Plaintiff should have mitigated their
7 damages from slander of title by paying off Defendants for the wrongful lien, the
8 instrument of slander of title.

9 276. Plaintiff argues that Defendants basically argue that Plaintiff could have
10 mitigated their attorneys' fees damages while Defendants fought Plaintiff every step of
11 the litigation process and that they cannot use the doctrine of mitigation of damages as a
12 shield and a sword. *See American Express Travel Related Services Co., Inc. v. D & A*
13 *Corp.*, No. CV-F-04-6737 OWW/TAG, 2007 WL 3217565 (E.D. Cal. 2007), slip op. at *43
14 (The use of the doctrine in a breach of contract "case did not provide a shield against the
15 unwarranted piling up of damages, but rather constituted a sword against the Bank's
16 contractual right to recover damages resulting from [defendant's] admitted breach of
17 contract." *Id.*, discussing *Valle de Oro Bank v. Gamboa*, 26 Cal.App.4th 1686, 1694
18 (1994)). Plaintiff argues that in other words, Defendants recorded a false \$40,000
19 mechanics lien for loss of personal property valued at cost against Plaintiff's Property that
20 Curtis admitted at trial did not cost or otherwise show was worth \$40,000, then she and
21 her co-defendant, Ammec, vigorously fought the slander of title cause of action to defend
22 the false lien, and now Defendants do not want to pay for the consequences of their
23 actions resulting in incurrence of attorneys' fees by Plaintiff. Plaintiff notes that
24 Defendants argue that Plaintiff should have mitigated the damages for attorneys' fees
25 and somehow simplified the process so that Plaintiff did not incur such a significant
26 amount of attorneys' fees. Plaintiff argues that it acted reasonably and with due
27 diligence, in good faith, while Defendants fought every step of the litigation which caused
28 Plaintiff to incur the large amount of attorneys' fees, and that Plaintiff should be awarded

1 all reasonable fees.

2 277. According to Plaintiff, Defendants state they were never asked to remove
3 the lien before or after Plaintiff filed its Chapter 11 bankruptcy petition. Supplemental
4 Brief, Adversary Proceeding Docket No. 313, 3:16-17. Plaintiff argues that this statement
5 is in direct conflict with the admitted or adjudicated facts that were part of the joint pretrial
6 stipulation and order thereon. According to the Amended Joint Pre-Trial Stipulation as
7 Modified at the Hearing on Joint Pre-Trial Conference (“JPTS”) [Adversary Proceeding
8 Docket No. 162], the following facts were admitted or were adjudicated on partial
9 summary adjudication and required no proof for trial: “Although the Plaintiff made several
10 demands on the Defendants to remove the Disputed Lien from the Property, the
11 Defendants have refused to comply with such demands. . . . As a result of the Defendants’
12 refusal to voluntarily remove the Disputed Lien from the Property and litigation related
13 thereto, the Plaintiff was forced to incur legal fees and costs to remove the Disputed Lien
14 from the Property.” JPTS at 5, Admitted/Adjudicated Facts Nos. 31 and 32 [Adversary
15 Proceeding Docket No. 162]. As argued by Plaintiff, Defendants imply that Plaintiff could
16 have simply asked Defendants to remove the mechanic’s lien which would have saved
17 costs, but considering Defendants argued the validity of their lien during every step of
18 litigation for this adversary proceeding, including the slander of title portion of the
19 litigation, Defendants’ implication that they would have just remove the lien if they had
20 simply been asked is not credible. The Bankruptcy Court also notes the testimony of the
21 witnesses that Plaintiff by McArn and Eric Radley and Defendants by Curtis filed police
22 reports with the local authorities on each other before Plaintiff filed its bankruptcy case
23 with Plaintiff demanding that Curtis remove the Lien and with Curtis demanding that the
24 Lien be paid because Plaintiff and its agents stole the lumber. Based on the foregoing,
25 there is no factual basis to support Defendants’ claim that they were not asked to remove
26 the Lien.

27 278. Having considered the arguments and briefing of the parties, the
28 Bankruptcy Court agrees with Plaintiff that it did not fail to mitigate its damages by

1 pursuing all of the causes of action in the adversary complaint, including the slander of
2 title cause of action. On this record, the Bankruptcy Court finds and concludes that (1)
3 given that Defendants' purported mechanic's lien was a cloud on title of Plaintiff's
4 Property, asserting a slander of title cause of action in this adversary proceeding was an
5 appropriate legal remedy; and (2) given the vindictive nature of Defendants' actions in
6 filing a baseless mechanic's lien to extract \$40,000 in tribute from Plaintiff, sending
7 threatening emails to Plaintiff's president, McArn, and its agent, Eric Radley, suing in
8 state court their family members with no apparent involvement in the lumber transaction,
9 attempting a litigation strategy to bypass Plaintiff's bankruptcy case to enforce the
10 baseless lien outside of bankruptcy, and asserting meritless litigating positions in this
11 adversary proceeding, Plaintiff was justified in seeking a judicial declaration that
12 Defendants' Lien was void and a slander of title. Obtaining a judicial declaration that
13 Defendants' Lien was void and a slander of title was a silver stake needed to kill off their
14 fraudulent lien given Defendants' persistence in enforcing the lien despite its patent
15 invalidity. In the view of the Bankruptcy Court, it was also essential for Plaintiff to obtain
16 a factual finding that the lumber obtained by Plaintiff was through purchase by its agent,
17 Eric Radley, and not by larceny or conversion of lumber owned by Curtis in order to deter
18 Defendants from pursuing enforcement of the Lien outside of Plaintiff's bankruptcy case
19 through harassment of Plaintiff and its agents and interfering with Plaintiff's
20 reorganization under its confirmed bankruptcy plan, and this necessity involved additional
21 incurrence of attorneys' fees and costs.

22 **iv. Whether Plaintiff Specifically Pleaded Attorneys' Fees**

23 279. Defendants contend that Plaintiff did not make a proper claim for attorneys'
24 fees in the adversary complaint because it never explicitly cited to California Civil Code §
25 8488(c) and did not comply with Federal Rule of Civil Procedure 26(e) which required a
26 duty to disclose. Plaintiff argues that this argument is not persuasive. Plaintiff notes that
27 under California Civil Code § 8488(c), the prevailing party is entitled to attorneys' fees.
28 Plaintiff argues that there is no language in California Civil Code § 8488(c) that requires

1 attorneys' fees to be specifically pled in the complaint. Plaintiff argues that Defendants
2 did not cite to any case law that requires California Civil Code §8488(c) to be specifically
3 pleaded. Federal Rule of Civil Procedure 26(e) relates to discovery. Plaintiff seeks
4 attorneys' fees as an element of their slander of title claim which are allowed under
5 *Sumner Hill Homeowners' Association, Inc.*, 205 Cal.App.4th at 1032.

6 280. Plaintiff notes that to support Defendants' argument that Plaintiff was
7 required to state they seek attorneys' fees, they cite to California Civil Code § 8484 which
8 relates to a petition for release of an order. Pursuant to California Civil Code § 8484(a)-
9 (h),

10 A petition for a release order shall be verified and shall allege all of the following:

- 11 (a) The date of recordation of the claim of lien. A certified copy of the claim of lien
12 shall be attached to the petition.
13 (b) The county in which the claim of lien is recorded.
14 (c) The book and page or series number of the place in the official records where
15 the claim of lien is recorded.
16 (d) The legal description of the property subject to the claim of lien.
17 (e) Whether an extension of credit has been granted under Section 8460, if so to
18 what date, and that the time for commencement of an action to enforce the lien
19 has expired.
20 (f) That the owner has given the claimant notice under Section 8482 demanding
21 that the claimant execute and record a release of the lien and that the claimant
22 is unable or unwilling to do so or cannot with reasonable diligence be found.
23 (g) Whether an action to enforce the lien is pending.
24 (h) Whether the owner of the property or interest in the property has filed for relief
25 in bankruptcy or there is another restraint that prevents the claimant from
26 commencing an action to enforce the lien.

27 California Civil Code § 8484. Plaintiff argues that despite Defendants' statement in their
28 supplemental brief at 10:6-19 that Plaintiff was require to "claim that the owner has
incurred and will incur attorney's fees in bringing and prosecuting the petition," there is no
provision of § 8484 that requires a claim of attorneys' fees. Plaintiff argues that it
appears Defendants did not accurately cite the requirements of California Civil Code §
8484 and that regardless, the adversary complaint clearly indicates that Plaintiff sought
attorneys' fees.

28 281. Plaintiff argues that based on the adversary complaint, Defendants had

1 sufficient notice that Plaintiff sought attorneys' fees. Plaintiff clearly met the pleading
2 requirements of Federal Rule of Civil Procedure 8(a)(1)-(3) ("A pleading that states a
3 claim for relief must contain: (1) a short and plain statement of the grounds for the court's
4 jurisdiction, unless the court already has jurisdiction and the claim needs no new
5 jurisdictional support; (2) a short and plain statement of the claim showing that the
6 pleader is entitled to relief; and (3) a demand for the relief sought, which may include
7 relief in the alternative or different types of relief."). Plaintiff argues that it sought
8 attorneys' fees under their slander of title claim as pecuniary damages. In the caption of
9 the complaint, Plaintiff listed the following: "Complaint for: . . . (6) Attorneys' Fees and
10 Costs." Complaint at 1 [Adversary Proceeding Docket No. 1]. Plaintiff notes that in the
11 body of the complaint, in the first cause of action for slander of title, Plaintiff alleges it
12 suffered pecuniary loss and "costs and fees associated with obtaining clear title."
13 Complaint at 5:3-6. At the end of the complaint, in the claim for relief section for the first
14 cause of action (slander of title), Plaintiff sought "Attorneys' fees and costs associated
15 with this Complaint to remove doubt cast by Defendants' disparagement of the Property."
16 Complaint at 7:5-6. Plaintiff notes that additionally, it sought attorneys' fees and costs on
17 all claims for relief. Complaint at 7:17. Plaintiff argues that the complaint contained
18 sufficient information to put Defendants on notice that Plaintiff sought attorneys' fees.

19 282. The Bankruptcy Court notes that Plaintiff alleged in its amended complaint
20 at paragraph 27: "Debtor has suffered pecuniary damage as a result of Defendants' false
21 publication, in an amount to be proven at trial, for, among other things, chilled offers for
22 purchase of the Property, false claims against Debtor's estate on account of the false
23 Alleged Obligation, and the costs and fees associated with obtaining clear title."
24 Amended Complaint [Adversary Proceeding Docket No. 44]. The prayer for relief in the
25 amended complaint requested an award of attorneys' fees and costs on all causes of
26 action, including the slander of title claim. *Id.* In light of this record, the Bankruptcy Court
27 finds and concludes that Defendants had adequate notice of Plaintiff's claims for
28 attorneys' fees and costs in prosecuting its claims to remove their lien, the slander of title
claim in particular.

1 283. Plaintiff argues that additionally, the Bankruptcy Court awarded attorneys'
2 fees and costs to Plaintiff in its November 14, 2019 order the other causes of action in
3 this adversary complaint for the disallowance of claim, avoidance of lien and declaratory
4 relief causes of action, Adversary Proceeding Docket No. 142, and that the Bankruptcy
5 Court waited to award these fees and costs until parties completed the slander of title
6 litigation. Plaintiff argues that Defendants knew that additional fees and costs would be
7 incurred to complete the slander of title litigation and knew they would potentially be liable
8 for these additional fees and costs.

9 284. The Bankruptcy Court generally agrees with Plaintiff that its claim for
10 attorneys' fees was sufficiently pleaded to give notice that it was seeking an award of
11 attorneys' fees and costs because such an award was expressly requested in Plaintiff's
12 original complaint and its amended complaint, which is the operative complaint. The
13 Bankruptcy Court also agrees with Plaintiff that California Civil Code §8488(c) is the
14 exclusive remedy for an award of attorneys' fees and costs for statutory removal of a
15 mechanic's lien which needed to have been pleaded in this case if Plaintiff was seeking
16 statutory attorneys' fees, but that the Bankruptcy Court also agrees with Plaintiff that it
17 may seek an award of attorneys' fees and costs as an element of damages on its
18 common law tort slander of title claim based on the common law as shown in the
19 previously cited case of *Sumner Hill Homeowners Association v. Rio Mesa Holdings,*
20 *LLC*. The Bankruptcy Court, however, disagrees with Plaintiff's assertion that the
21 Bankruptcy Court has already awarded it attorneys' fees and costs in the Partial
22 Summary Adjudication Order as the court only stated that Plaintiff was entitled to apply
23 for such an award, not that it was making an award at that time, as the consideration of
24 motions for an award of attorneys' fees and costs comes normally at the end of litigation
25 after entry of a final order or judgment, and the litigation of the adversary proceeding has
26 not been completed as the slander of title cause of action had not been adjudicated. See
27 Local Bankruptcy Rule 7054-1(g). For the foregoing reasons, Plaintiff is not precluded
28 from claiming an award of attorneys' fees and costs in this adversary proceeding.

1 **E. Defendants’ Additional Arguments in Opposition to Plaintiff’s Slander**
2 **of Title Claim**

3 285. In addition to Defendants’ argument that the Lien was privileged, which has
4 been addressed above, they argue that Plaintiff has failed to prove that it incurred
5 damages as a result of publication of the purported mechanic’s lien. Defendants’
6 Proposed Findings at 12-13 [Adversary Proceeding Docket No. 269]; Defendants’
7 Objections to Plaintiff’s Proposed Findings) at 5-11 [Adversary Proceeding Docket No.
8 270].

9 286. Defendants first argue that Plaintiff on its Schedule A/B of its bankruptcy
10 schedules filed in the bankruptcy case listed potential causes of action against Greta
11 Curtis as its assets, leaving blank the inquiry as to “Nature of claim,” stating the “Amount
12 requested” as “\$0.00” and stating the “Current value of debtor’s interest” as “Unknown”
13 and that these statements on the bankruptcy schedules are judicial admissions that
14 Plaintiff suffered no damages as a result of the potential causes of action against Curtis.
15 Defendants’ Proposed Findings at 4 [Adversary Proceeding Docket No. 269];
16 Defendants’ Objections to Plaintiff’s Proposed Findings) at 5-6 [Adversary Proceeding
17 Docket No. 270], *citing and quoting*, Schedule A/B – Assets – Real and Personal
18 Property [Bankruptcy Case Docket No. 15]. The Bankruptcy Court initially notes that it is
19 an open question in the Ninth Circuit whether or not the doctrine of judicial admissions
20 applies to bankruptcy schedules. *See, In re Barker*, 839 F.3d 1189, 1195-1196 (9th Cir.
21 2016). Thus, the Bankruptcy Court has doubts about the applicability of the doctrine of
22 judicial admission here. The Bankruptcy Court also has doubts about whether these
23 schedules are judicial admissions because the schedule of assets reflect the assets of
24 the debtor and bankruptcy estate as of the date of the filing of the bankruptcy petition, the
25 commencement of the bankruptcy case, and the Plaintiff had not filed a claim against
26 Curtis at that time and there would have been no amount requested in a claim that had
27 not been filed. Moreover, Plaintiff in its bankruptcy schedules indicated that the current
28 value of its potential causes of action against Curtis were unknown, which is not zero or
no damages. Finally, regarding Defendants’ judicial admission argument, the

1 Bankruptcy Court notes that based on the pleadings, the damages claimed by the
2 Plaintiff occurred after the date of the filing of its bankruptcy petition, that is, for additional
3 accruals of interest and attorneys' fees on Acon's lien incurred after the petition was filed
4 and for attorneys' fees and costs that were incurred by Plaintiff in bringing this adversary
5 proceeding to expunge Defendants' Lien instituted after the petition was filed. Thus, the
6 statements in Plaintiff's bankruptcy schedules cannot be considered judicial admissions
7 that there were no damages as the damages accrued afterwards and there is uncertainty
8 in the law as to whether statements in bankruptcy schedules constitute judicial
9 admissions.

10 287. Defendants also argue that the Bankruptcy Court's Partial
11 Summary Adjudication Order in favor of Plaintiff rendered the remaining issues in this
12 adversary proceeding "moot" because the Bankruptcy Court determined that their
13 purported mechanic's lien expired by operation of law and thus, Plaintiff should have
14 mitigated its damages from incurring attorneys' fees and costs subsequently.
15 Defendants' Objections to Plaintiff's Proposed Findings) at 10, 26 [Adversary Proceeding
16 Docket No. 270]. This argument lacks merit because the Bankruptcy Court's Partial
17 Summary Adjudication Order determining that Defendants' Lien was void was not a final
18 judgment as not all the claims in the adversary proceeding were adjudicated pursuant to
19 Federal Rules of Bankruptcy Procedure 7054 and Federal Rule of Civil Procedure 54,
20 and Defendants did not act to release the Lien once the Bankruptcy Court granted partial
21 summary adjudication to Plaintiff, and thus, the Lien remained and remains a cloud on
22 title to Plaintiff's Property. Moreover, Defendants have continued to oppose Plaintiff's
23 remaining claim for slander of title, requiring Plaintiff to continue to litigate this adversary
24 proceeding as Defendants have not conceded that the Lien is void and have not removed
25 it from title to Plaintiff's Property. Finally, the Bankruptcy Court partially modified and
26 vacated the Partial Summary Adjudication Order, which retracted its ruling that the lien
27 was void for failure to comply with the notice filing requirement of 11 U.S.C. § 546(b), and
28 thus, the claims to void or remove the lien had to be tried.

287. Defendants further argue that Plaintiff is estopped from claiming damages

1 from them because Plaintiff as the owner of real property received the benefit of
2 Defendants' labor, material and/or services, which enhanced the value of the property.
3 Defendants' Proposed Findings at 14 [Adversary Proceeding Docket No. 269].
4 Defendants argue that "[t]he real property interest of a person who did not contract for a
5 work of improvement on that property is subject to a lien if the work for which the lien is
6 claimed is provided with the person[']s knowledge" and that "[t]he owner has received the
7 benefit of the improvement, the noncontracting owner is placed in the position of a party
8 to the contract by the conclusive presumption that the work was done at his or her
9 instance or request." *Id.*, citing, California Civil Code §8442(b); *Blakemore Equipment*
10 *Co. v. Braddock, Logan & Valley*, 269 Cal.App.2d 12, 17 (1969); *M. Arthur Gensler, Jr. &*
11 *Associates, Inc. v. Larry Barrett, Inc.*, 7 Cal.3d 695, 708 (1972); and *Nolte v. Smith*, 189
12 Cal.App.2d 140, 144 (1961). Defendants argue factually that Plaintiff received the
13 benefits of Curtis's lumber, which enhanced Plaintiff's property, and while testimony from
14 Plaintiff's witnesses was that Plaintiff did not know who the lumber belonged to, it
15 accepted the benefits of the lumber. *Id.* While the Bankruptcy Court recognizes that the
16 legitimacy of these cited authorities, the Bankruptcy Court determines that these
17 authorities are inapposite because factually speaking, Plaintiff did not benefit from lumber
18 owned by Curtis, but lumber purchased by Eric Radley, and thus, there is no factual basis
19 for an estoppel to support a determination of the Lien at issue to be an equitable
20 mechanic's lien under California Civil Code § 8442(b).

21 289. Regarding Defendants' estoppel argument, they alternatively assert that
22 there was an agreement between Curtis and Eric Radley for the purchase of the lumber
23 that supports an estoppel against Plaintiff. Defendants' Objections to Plaintiff's Proposed
24 Findings at 4 and n. 1 [Adversary Proceeding Docket No. 270]. Defendants argue: "The
25 common law doctrine of estoppel created an agreement between Curtis and Plaintiff as a
26 result of Eric Radley's offer to Curtis on behalf of Plaintiff to pay for half the lumber and
27 Curtis'[s] acceptance of the offer." *Id.* at 4. However, as Defendants assert in a footnote:
28 "Eric Radley never paid the \$500 or \$1000 to Curtis because he did not have cash he
only had a check per Mc[A]rn's testimony." *Id.* at 4 n. 1. This assertion is an admission

1 by Defendants that there was a contract or agreement between Eric Radley and Curtis
2 for the joint purchase of the lumber as Plaintiff argues. These circumstances, if true,
3 would indicate that Eric Radley and Curtis had a contract for purpose of the lumber
4 jointly, but Eric Radley breached the contract for nonpayment of his share of the
5 purchase price, and he would still be entitled to his share of the lumber, but owing Curtis
6 for his share of the purchase price. However, as the Bankruptcy Court has found, Eric
7 Radley did pay for his one-half share of the joint purchase of the lumber by giving \$1,000
8 in cash to Curtis. Accordingly, the Bankruptcy Court determines that there is no estoppel
9 here to support a mechanic's lien because the lumber provided to Plaintiff was from Eric
10 Radley's one-half share of the lumber, not Curtis's one-half share.

11 290. Defendants also make a second alternative assertion for their estoppel
12 argument that Curtis made a charitable subscription to Plaintiff: "Although Plaintiff alleges
13 Curtis and Plaintiff did not have an agreement for the lumber the contrary is true. Curtis
14 always maintained in her testimony that she planned to donate some lumber to Plaintiff
15 the exact amount was never designated. Curtis'[s] pledge was a charitable subscription
16 that was enforceable, against her, under the common law of promissory estoppel."
17 Defendants' Objections to Plaintiff's Proposed Findings at 4 [Adversary Proceeding
18 Docket No. 270]. The Bankruptcy Court determines that this alternative assertion lacks
19 merit because Defendants cite no legal authority in support this assertion and these
20 circumstances do not indicate any enforceable agreement to supply material to support a
21 mechanic's lien for failure of consideration as well as factually, the lumber provided to
22 Plaintiff came from Eric Radley.

23 291. Defendants also argue that Plaintiff is not entitled to an award of attorneys'
24 fees because Plaintiff could not assign its right to obtain attorneys' fees to Plaintiff's
25 counsel because slander of title is a tort and the common law does not provide for
26 assignment of torts. Defendants' Supplemental Brief on Mitigation at 10-11 [Adversary
27 Proceeding Docket No. 313]. Defendants argue that the Bankruptcy Court's order
28 approving the first interim fee application of counsel for Plaintiff [Bankruptcy Case Docket
No. 116] was an improper attempt to assign the right to proceed against them to recover

1 attorneys' fees and costs allegedly waived by counsel in the bankruptcy case. *Id.*, citing,
2 *Pony v. County of Los Angeles*, 433 F.3d 1138, 1145 (9th Cir. 2006). Defendants
3 contend that as reflected in the order on counsel's first interim fee application, counsel's
4 commitment to pursue Defendants in the adversary proceeding was an accord and
5 satisfaction of the fee dispute between Plaintiff and its counsel and that the fee dispute
6 was resolved with accepting 50 percent of the claimed fees and agreeing to seek the
7 remainder of the claimed fees from Defendants, which Defendants argue is an accord
8 and satisfaction coupled with an assignment. *Id.* According to Defendants, the Ninth
9 Circuit held in the *Pony* case that a plaintiff may assign the right to collect attorneys' fees,
10 but it may not transfer the right to seek the fees, and therefore, an award of attorneys'
11 fees and costs against them may not be maintained. *Id.* The Bankruptcy Court finds and
12 concludes that Defendants' argument that Plaintiff may not seek an award of attorneys'
13 fees and costs on its slander of title claim in this adversary proceeding on grounds that
14 Plaintiff made an improper assignment of its right to proceed against them for fees and
15 costs lacks merit. The operative agreement between Plaintiff and its counsel resolving
16 their dispute over counsel's first interim fee application in the bankruptcy case is set forth
17 in the Stipulation between Debtor and Levene, Neale, Bender, Yoo & Brill L.L.P.
18 Regarding First Interim Fee Application of Levene, Neale, Bender, Yoo & Brill L.L.P. for
19 Approval of Fees and Reimbursement of Expenses [Bankruptcy Case Docket No. 107]
20 which stated: "The Debtor [Plaintiff] approves of all of the fees and costs set forth in the
21 Application . . . LNBYB [Plaintiff's counsel] will not seek recovery from the Debtor for
22 payment of any of the fees for services rendered by LNBYB in connection with the
23 Adversary Proceeding, except that any money that the Debtor or LNBYB may recover
24 from Defendants for awards of attorneys' fees and costs in favor of Debtor and against
25 Defendants in the Adversary Proceeding shall be used to pay LNBYB's fees and
26 expenses for services rendered in and related to the Adversary Proceeding." This
27 language does not constitute an assignment of Plaintiff's rights to seek damages on its
28 tort claims as Defendants argue. Under this language, Plaintiff maintained its rights to
seek and collect damages from Defendants on its claims in the adversary proceeding,

1 including the slander of title tort claim, but that it agreed that if Plaintiff recovered awards
2 of attorneys' fees and costs in its favor and against Defendants in the adversary
3 proceeding, Plaintiff and counsel agreed that such awards were to be used to pay
4 counsel's fees and expenses rendered in and related to the adversary proceeding. The
5 case of *Pony v. County of Los Angeles* is inapplicable because that case involved an
6 express contractual provision between the plaintiff and her counsel in which she assigned
7 her right to seek an award of attorneys' fees to her counsel, which right is nonassignable
8 under California law applicable to personal injury torts as recognized by the Ninth Circuit.
9 In this case, there was no such assignment. It also appears that *Pony v. County of Los*
10 *Angeles* is inapplicable because the California case law relied upon by the Ninth Circuit
11 to hold that tort rights are nonassignable only pertained to personal injury torts, and not
12 property torts like slander of title at issue in this case.

13 **F. Whether the Attorneys' Fees and Costs Claimed by Plaintiff to**
14 **Clear Title Were Reasonable and Necessary**

15 292. As previously noted, Plaintiff seeks an award of attorneys' fees and costs
16 on its first cause of action for slander of title. The elements of slander of title are: (1) a
17 publication, (2) which is without privilege or justification, (3) which is false, and (4) which
18 causes direct and immediate pecuniary loss. *Manhattan Loft, LLC v. Mercury Liquors,*
19 *Inc.*, 173 Cal.App.4th at 1051. As Plaintiff argues, attorneys' fees and litigation costs are
20 recoverable as pecuniary damages in a slander of title action when the litigation is
21 necessary to remove the doubt cast upon vendibility or value of plaintiff's property.
22 *Sumner Hill Homeowners' Association, Inc. v. Rio Mesa Holdings, LLC*, 205 Cal.App.4th
23 at 1032; accord, *Compass Bank v. Petersen*, 886 F.Supp.2d at 1198. Plaintiff argues
24 that it has proved the purported mechanic's lien imposed by Defendants was a
25 publication which was recorded without privilege, which was false and caused pecuniary
26 loss because of the attorneys' fees and costs that Plaintiff incurred to remove the lien.

27 293. As previously noted, Plaintiff incurred approximately \$270,707.25 in
28 attorneys' fees to remove Defendants' \$40,000 purported mechanic's lien, and as Plaintiff

1 acknowledges that at first glance, the fees appear excessive, but Plaintiff argues that
2 considering the extensive litigation and Defendants' aggressive defense of their invalid
3 mechanic's lien, these attorneys' fees are reasonable and should be awarded to Plaintiff.
4 That is, according to Plaintiff, it is entitled to attorneys' fees and costs it now claims
5 because it prevailed on its slander of title cause of action to remove Defendants' lien as a
6 cloud on title to its property.

7 294. As recognized in the *Sumner Hill Homeowners' Association* case, "[w]hen a
8 defendant's tortious conduct (i.e., the unprivileged publication of a falsehood constituting
9 a slander of title) forces the plaintiff to litigate in order to clear his title, the plaintiff's
10 attorneys' fees and costs are necessary to accomplish that purpose constitute actual
11 harm or injury to the plaintiff that was proximately caused by the tort and therefore should
12 be compensated." 205 Cal.App.4th at 1032, *citing Wright v. Rogers*, 172 Cal.App.2d 349,
13 366 (1959). Accordingly, attorneys' fees and costs are recoverable as damages for
14 pecuniary loss from a slander of title, and such damages are "independently recoverable,
15 and are not merely an add-on to other forms of pecuniary loss." *Id.* at 1031-1032.

16 295. Also, as stated in *Sumner Hill Homeowners' Association*, "Pecuniary loss'
17 is an essential element of a slander of title cause of action." 205 Cal.App.4th at 1030,
18 *citing and quoting, Manhattan Loft, LLC v. Mercury Liquors, Inc.*, 173 Cal.App.4th at 1057.
19 As further stated by the court in *Sumner Hill Homeowners' Association*, "[t]his element is
20 described in the Restatement Second of Torts, section 633, subdivision (1), as follows:
21 'The pecuniary loss for which a published of injurious falsehood is subject to liability is
22 restriction to [¶] (a) the pecuniary loss that results directly and immediately from the effect
23 of the conduct of third persons, including impairment of vendibility or value caused by
24 disparagement, and [¶] (b) *the expense of measures reasonably necessary to counteract*
25 *publication, including litigation to remove the doubt cast upon vendibility or value by*
26 *disparagement.*'" 205 Cal.App.4th at 1030 (italics added in original). Regarding this
27 Restatement provision, the court in *Sumner Hill Homeowners' Association* stated:
28 "California courts have adopted the Restatement definition of pecuniary damages for
purposes of a slander of title cause of action." *Id.*, *citing inter alia, Appel v. Burman*, 159

1 Cal.App.3d 1209, 1215 (1984). Significantly for purposes of this case, the Bankruptcy
2 Court notes that “the expense of measures reasonably necessary to counteract
3 publication, including litigation to remove the doubt cast upon vendibility or value by
4 disparagement” are compensable as pecuniary loss damages with an emphasis on
5 “reasonably necessary” measures. *Id.*; see also, *Wright v. Rogers*, 172 Cal.App.3d at
6 366 (“The Restatement says the publisher of disparaging matter is liable for ‘the expense
7 of litigation reasonably necessary to remove the doubt cas[t] by the disparagement upon
8 the other's property in the thing or upon the quality thereof.’ (Rest., Torts, § 633(b).”).

9 296. In *Mai v. HKT Cal, Inc.*, 66 Cal.App.5th 255 (2021), the court made
10 Instructive comments regarding claiming attorneys’ fees as damages applicable here:

11 In limited circumstances, it is permissible for plaintiffs to recover attorney's
12 fees as damages. The claim that Mai made here—that she was forced to procure
13 the services of an attorney to defend herself in the Fike suit as a result of
14 Robinson's fraud—falls into one of these limited categories known as the “tort of
15 another” theory. While such doctrines are sometimes described as exceptions to
16 the general “American rule” that each party pays for their own attorney's fees (see,
17 e.g., *Gray v. Don Miller & Associates, Inc.* (1984) 35 Cal.3d 498, 505, 198
18 Cal.Rptr. 551, 674 P.2d 253; *Flyer's Body Shop Profit Sharing Plan v. Ticor Title
19 Ins. Co.* (1986) 185 Cal.App.3d 1149, 1155, 230 Cal.Rptr. 276), this
20 characterization can be misleading. It is better to conceptualize these cases as
21 claims for compensatory damages where the facts happen to permit the plaintiff to
22 seek attorney's fees as a type of compensatory award. As our Supreme Court has
23 stated, attorney's fees that are recoverable as damages function in “the same way
24 that medical fees would be part of the damages in a personal injury action.”
25 (*Brandt v. Superior Court* (1985) 37 Cal.3d 813, 817, 210 Cal.Rptr. 211, 693 P.2d
26 796 (*Brandt*)). In this context, an award of fees is “not really an ‘exception’ at all
27 but an application of the usual measure of ... damages.” (*Sooy v. Peter* (1990) 220
28 Cal.App.3d 1305, 1310, 270 Cal.Rptr. 151 (*Sooy*)).

29 For that reason, it is critical to distinguish attorney's fees as damages “from
30 ‘attorney's fees qua attorney's fees.’” (*Third Eye Blind, Inc. v. Near North
31 Entertainment Ins. Services, LLC* (2005) 127 Cal.App.4th 1311, 1325, 26
32 Cal.Rptr.3d 452.) Although this fundamental distinction has been described
33 repeatedly (see *Brandt, supra*, 37 Cal.3d at p. 817, 210 Cal.Rptr. 211, 693 P.2d
34 796; *Sooy, supra*, 220 Cal.App.3d at p. 1310, 270 Cal.Rptr. 151), it persists in
35 causing occasional confusion in both trial and appellate courts. But the distinction
36 is far more than academic. It affects the burden that plaintiffs bear to produce
37 evidence in support of their substantive claims, and it differs in significant ways
38 from the requirements for a posttrial motion for fees as costs. (See Code Civ.
Proc., § 1033.5, subd. (a)(10).)

1 *Id.* at 260-261 (footnotes omitted).

2 297. The court in *Mai* provided additional guidance in showing how attorneys'
3 fees as damages are proven:

4
5 . . . In our view, the considerations are quite different when reviewing a judgment
6 following a full trial, as opposed to a postjudgment motion where most or all the
7 evidence is presented by declaration. Moreover, it is difficult to justify a different
8 rule for proving attorney's fees than would apply to other similar expenses
9 recoverable as damages. Rather than looking to the standards governing posttrial
10 motions for attorney's fees, as *Copenbarger* did, we find more helpful guidance in
11 the general principles governing a plaintiff's burden of production to establish
12 compensatory damages.

13 The plaintiff's responsibility in making a preliminary showing of medical
14 expenses in personal injury cases provides a helpful starting place, since it
15 constitutes a close analogue: " 'When a pedestrian is struck by a car, he goes to a
16 physician for treatment of his injuries, and the motorist, if liable in tort, must pay
17 the pedestrian's medical fees. Similarly, ... an insurance company's refusal to pay
18 benefits has required the insured to seek the services of an attorney to obtain
19 those benefits, and the insurer, because its conduct was tortious, should pay the
20 insured's legal fees.' " (*Brandt, supra*, 37 Cal.3d at p. 817, 210 Cal.Rptr. 211, 693
21 P.2d 796.) Phrasing the *Brandt* principle for broader application on the facts of our
22 case, where a defendant's conduct requires the plaintiff to incur attorney's fees in
23 prosecuting or defending a lawsuit (generally involving a third party), the defendant
24 should pay the plaintiff's legal fees. To support a claim for medical expenses as
25 damages, plaintiffs must demonstrate the amount of each claimed expense.
26 (*Haning et al., California Practice Guide: Personal Injury* (2020) Damages, ch. 3-C,
27 §§ 3:350–3:351.) Beyond this, plaintiffs must also show the expenses were
28 reasonable and incurred as a result of injuries caused by the defendant.
(*McAllister v. George* (1977) 73 Cal.App.3d 258, 264, 140 Cal.Rptr. 702
(*McAllister*); *Gimbel v. Laramie* (1960) 181 Cal.App.2d 77, 81, 5 Cal.Rptr. 88
(*Gimbel*.) Testimony that they paid the cost of medical treatment for injuries
caused by the defendant is sufficient evidence that such costs were reasonable,
and satisfies the plaintiff's initial burden of production. (*Malinson v. Black* (1948) 83
Cal.App.2d 375, 379, 188 P.2d 788 (*Malinson*.)

Similar standards govern other cases involving damage to property. (See,
e.g., *Laubscher v. Blake* (1935) 7 Cal.App.2d 376, 383, 46 P.2d 836 [finding the
cross-complainant's evidence that he paid a certain amount to repair his car in an
accident caused by the defendant sufficient to support the award of damages].)
We see no reason why the same principles should not apply in any case where
the plaintiff pays for professional services to deal with the consequences of the
defendant's unlawful action, and then seeks to recover those costs as
compensatory damages against the defendant. A *prima facie* case as to the costs

1 incurred and their reasonableness can be established by the plaintiff's testimony
2 that bills for the services were paid.

3 *Id.* at 265-266.

4 298. Based on this standard set forth in *Sumner Hill Homeowners' Association*
5 and *Mai*, Plaintiff must show that the attorneys' fees and costs it claims as damages from
6 the disparagement of title of its property were reasonable and necessary to remove the
7 lien as a disparaging cloud on title with evidence that the fees and costs were actually
8 incurred. Where attorneys' fees and costs are claimed as damages, they are not
9 awarded as costs pursuant to California Code of Civil Procedure § 1021, for example, but
10 as proven up as an element of damages as part of the substantive claim. *Id.* In this
11 case, Plaintiff's claim of damages from incurring attorneys' fees and costs on its slander
12 of title claim is determined by the court as the trier of fact, here, the Bankruptcy Court
13 subject to de novo review by the District Court.

14 299. Plaintiff has shown that the attorneys' fees and litigation costs to remove
15 the Lien as a disparaging cloud on title were actually incurred as shown by evidence
16 admitted at trial that services were rendered by its counsel for services to remove the lien
17 as a cloud on title in the form of invoices from counsel with billing entries for each service
18 rendered as attested to by the declaration of its counsel, Mr. Fritz. Records of Attorneys'
19 Fees in Format Requested by the Court; Declaration of John-Patrick M. Fritz, Esq.,
20 Adversary Proceeding Docket No. 275, filed on February 25, 2022; 6/29/22 Trial
21 Transcript at 168. That Plaintiff is obligated to pay these fees and expenses for counsel's
22 services representing Plaintiff in the bankruptcy case, including any adversary
23 proceedings, is substantiated by the employment application of its counsel [Adversary
24 Proceeding Docket No. 17) signed by its president, McArn, and its counsel, Mr. Fritz,
25 which application was approved by court order [Adversary Proceeding Docket No. 26], as
26 well as the Retainer Agreement between counsel and Plaintiff, which was filed at the
27 Bankruptcy Court's request [Adversary Proceeding Docket No. 320].. This obligation was
28 modified by the stipulation between Plaintiff and counsel on counsel's first interim fee
application providing that counsel would agree to limit payment of its allowed fees and

1 costs in a certain amount, but that any award of attorneys' fees and costs in the
2 adversary proceeding would be used to pay the entire allowed fee amount [Adversary
3 Proceeding Docket No. 107]. Although Plaintiff has not paid the attorneys' fees and costs
4 billed by its counsel as claimed as damages in this adversary proceeding, Plaintiff is
5 contractually obligated to pay such attorneys' fees and costs if awarded in this adversary
6 proceeding to counsel pursuant to the agreement for employment authorization for
7 counsel as approved by the Bankruptcy Court and the subject contract modification
8 between Plaintiff and counsel. While cases such as *Mai v. HKT Cal, Inc.*, and the cases
9 cited therein indicate that proof of payment of attorneys' fees by a plaintiff is sufficient
10 evidence to establish a prima facie case of attorneys' fees as damages, those cases did
11 not state that this is the only method of proving attorneys' fees as damages. The
12 Bankruptcy Court finds and concludes that these arrangements establish that Plaintiff will
13 have suffered such damages in the form of attorneys' fees and costs allowed and
14 awarded in this adversary proceeding. That is, the documentation of the retainer
15 agreement between Plaintiff and counsel, the employment application for counsel signed
16 by Plaintiff's president, the modification of the employment agreement by stipulation
17 between Plaintiff and counsel, the billing entries prepared by counsel who testified under
18 oath in his declarations filed in support of the fee motions and at trial as well as his
19 testimony at trial are sufficient to establish a prima facie showing that Plaintiff incurred
20 attorneys' fees and expenses to remove Defendants' lien.

21 300. In this case, the Bankruptcy Court conducted two additional days of trial on
22 the issue of attorneys' fees and costs as damages. Defendants were provided with the
23 billing entries and the counsel declaration in support thereof in advance of trial, and they
24 had the opportunity to cross-examine the attorney who performed the services reflected
25 in the billing entries and to offer evidence in opposition thereto. The Bankruptcy Court
26 made oral rulings on the billing entries and Defendants' objections thereto as reflected on
27 Exhibit 1 attached thereto, which was prepared by Plaintiff's counsel and submitted with
28 Plaintiff's proposed findings of fact and conclusions of law [Adversary Proceeding Docket
No. 309].

1 301. “A judge may also take judicial notice of the documents the plaintiff’s
2 attorney prepared that are in the court file as a means of providing evidence of the legal
3 work that was performed.” California Center for Judicial Education & Research,
4 *California Judges Benchbook: Civil Proceedings – Trial*, §16.45 (online edition, June
5 2022 update), citing, *Mai v. HKT Cal, Inc.*, 66 Cal.App.5th at 523-525. “The court [in *Mai*
6 *v. HKT Cal, Inc.*] also held that a judge has the ability and discretion to make midtrial
7 adjustments in procedure to remedy what the judge considers a manifestly unfair result.
8 *Id.*, citing, *Mai v. HKT Cal., Inc.*, 66 Cal.App.5th at 511, 526.

9 302. Allowance and awarding of Plaintiff’s attorneys’ fees and costs against
10 Defendants in this adversary proceeding as pecuniary loss damages are dependent on
11 Plaintiff’s showing that such fees and costs were necessary and reasonable. See, e.g.,
12 *Frank Pisano & Associates v. Taggart*, 29 Cal.App.3d at 25 (“The pecuniary loss for
13 which a publisher of disparaging matter is liable is restricted to that pecuniary loss which
14 directly and immediately results from the impairment of vendibility or the thing in question
15 caused by the publication of the disparaging matter and **the expense of litigation**
16 **reasonably necessary to remove the doubt cast by the disparagement on the**
17 **property.**”) (emphasis added), citing, *Davis v. Wood*, 61 Cal.App.2d 788, 797 (1943);
18 *Gudger v. Manton*, 21 Cal.2d 537, 554-555 (1943); Restatement of Torts (First), §624
(1938)(online edition March 2023 update).

19 303. The guidance in California law as to what the standard is for the Bankruptcy
20 Court to apply in this case in determining an award of attorneys’ fees and costs as
21 damages for a tort is sparse in that the award is not statutory or contractual, and not
22 made as costs, but as damages, and there is little case law on what constitutes
23 reasonable and necessary expenses, that is, whether the lodestar method, percentage
24 method or some other method should be applied. See California Center for Judicial
25 Education & Research, *California Judges Benchbook: Civil Proceedings – Trial*, §16.45
26 (general rule), §§ 16.100-14.104 (statutory fees – lodestar method) and §§16.133-16.135
27 (nonstatutory fees for common fund and substantial benefit cases – percentage method).
28 As previously noted, the court in *Sumner Hill Homeowners’ Association*, following the

1 Restatement Second of Torts, section 633, subdivision (1), stated that pecuniary loss
2 damages from a slander of title includes “*the expense of measures reasonably necessary*
3 *to counteract publication, including litigation to remove the doubt cast upon vendibility or*
4 *value by disparagement.*” 205 Cal.App.4th at 1030 (italics added in original). In other
5 words, in this case, Plaintiff must show that it incurred reasonable and necessary
6 expense, including attorneys’ fees to remove Defendants’ improper mechanic’s lien. As
7 to what constitutes reasonable and necessary fees, the Bankruptcy Court looks to the law
8 of determining reasonable and necessary attorneys’ fees under the Bankruptcy Code by
9 analogy.

10 304. In that the attorneys’ fees and costs at issue were incurred by Plaintiff
11 pursuant to the employment agreement between Plaintiff and its counsel approved by the
12 Bankruptcy Court in this case, which provides for compensation for professional services
13 rendered pursuant to 11 U.S.C. § 330. Thus, the Bankruptcy Court considers the
14 application of the standard for allowance of reasonable and necessary fees under 11
15 U.S.C. § 330 as helpful guidance in determining whether the fees and expenses to
16 remove Defendants’ lien were reasonable and necessary. However, the analysis of
17 determining attorneys’ fees and litigation costs as damages for a tort is not exactly the
18 same as reasonable compensation of bankruptcy estate professionals under 11 U.S.C. §
19 330 as evaluating whether or not attorneys’ fees and litigation costs were reasonable and
20 necessary to remove a cloud on title is somewhat retrospective as to what actually was
21 reasonable and necessary to effectuate relief in removing the lien as opposed to what is
22 reasonably likely to benefit the estate, which is more of a prospective view.

23 305. The Bankruptcy Court cites and quotes one of its recent opinions on
24 allowance and awarding reasonable and necessary attorneys’ fees under 11 U.S.C. §
25 330 in *In re Trinh*, No. 2:18-bk-117475-RK Chapter 7, 2022 WL 898758 (Bankr. C.D. Cal.
26 Mar. 28, 2022):

27 **11 U.S.C. § 330**

28 Under 11 U.S.C. § 330(a)(1), a bankruptcy court is authorized to award
“reasonable compensation for actual, necessary services rendered by ... an

1 attorney” and any paraprofessional person employed by an attorney. The court
2 also has the power to award a reduced fee to a professional requesting
3 compensation under Section 330. 11 U.S.C. § 330(a)(2).

4 In determining fees allowed to a professional of a bankruptcy estate, the
5 court must examine “all relevant factors, including: (A) the time spent on [the]
6 services; (B) the rates charged for [the] services; (C) whether the services were
7 necessary to the administration of, or beneficial at the time at which the service
8 was rendered toward the completion of [the case]; (D) whether the services were
9 performed within a reasonable amount of time commensurate with the complexity,
10 importance, and nature of the problem, issue, or task addressed; (E) with respect
11 to a professional person, whether the person is board certified or otherwise has
12 demonstrated skill and experience in the bankruptcy field; and (F) whether the
13 compensation is reasonable based on the customary compensation charged by
14 comparably skilled practitioners in [nonbankruptcy cases].” 11 U.S.C. § 330(a)(3).
15 The court also must not allow compensation for (i) unnecessary duplication of
16 services, or (ii) services that were not:

- 17 (I) Reasonably likely to benefit the debtor's estate, or
- 18 (II) Necessary to the administration of the case.

19 11 U.S.C. § 330(a)(4)(A)(ii).

20 **ii. The Lodestar Method**

21 Courts customarily apply a formula known as the ‘lodestar’ method to
22 complement these statutory factors, multiplying a reasonable number of hours
23 expended by a reasonable hourly rate to determine allowable compensation.
24 *Unsecured Creditors’ Committee v. Puget Sound Plywood, Inc.*, 924 F.2d 955, 960
25 (9th Cir. 1991); *In re Manoa Finance Co., Inc.*, 853 F.2d 687, 691 (9th Cir. 1988).
26 In *Manoa Finance Company*, the Ninth Circuit held that a compensation award
27 based on the lodestar method is “presumptively a reasonable fee.” 853 F.2d at
28 691. Although courts customarily begin a fee determination by applying the
lodestar method—the “primary” fee calculation formula adopted by the Ninth
Circuit—the lodestar is not exclusively applied, given the “uniqueness of
bankruptcy proceedings.” *Unsecured Creditors’ Committee v. Puget Sound
Plywood, Inc.*, 924 F.2d at 960. Further, a court may downwardly adjust a law
firm's fees with reference to the work actually and reasonably performed, the value
of that work to the estate, the performance of the firm's attorneys, the reasonable
hourly rates for such work, and the prevailing community rates, among other
factors. *In re Morry Waksberg M.D., Inc.*, 692 Fed. Appx. 840, 842 (9th Cir. June
6, 2017) (quoting *In re Manoa Finance Co., Inc.*, 853 F.2d at 691).

When determining the amount of reasonable fees, the court's examination
... should include the following questions: First, were the services authorized?
Second, were the services necessary or beneficial to the administration of the
estate at the time they were rendered? Third, are the services adequately
documented? Fourth, are the fees requested reasonable, taking into consideration

1 the factors set forth in § 330(a)(3)? Finally, ... the court must [also consider]
2 whether the professional exercised reasonable billing judgment.

3 *In re Mednet*, 251 B.R. 103, 108 (9th Cir. BAP 2000) (citation omitted).

4 Regarding the requirement that bankruptcy estate professionals exercise
5 billing judgment, the Ninth Circuit has stated that employment authorization does
6 “not give [the professional] free reign to run up a tab without considering the
7 maximum probable recovery.” *Unsecured Creditors’ Committee v. Puget Sound
8 Plywood, Inc.*, 924 F.2d at 958. Before undertaking work on a bankruptcy matter, a
9 professional is obligated to consider:

8 (a) Is the burden of the probable cost of legal services disproportionately
9 large in relation to the size of the estate and maximum probable recovery?

10 (b) To what extent will the estate suffer if the services are not rendered?

11 (c) To what extent may the estate benefit if the services are rendered and
12 what is the likelihood of the disputed issues being resolved successfully?

13 *Id.* at 959-960 (citation omitted). Moreover, “ [w]hen a cost benefit analysis
14 indicates that the only parties who will likely benefit from [a service] are the trustee
15 and his professionals,’ the service is unwarranted and a court does not abuse its
16 discretion in denying fees for those services.” *In re Mednet*, 251 B.R. at 108-109
17 (quoting *In re Riverside-Linden Investment Co.*, 925 F.2d 320, 321 (9th Cir.
18 1991)).

17 A bankruptcy court has broad discretion to determine the number of hours
18 reasonably expended by a professional. *Wechsler v. Macke International Trade,
19 Inc. (In re Macke International Trade, Inc.)*, 370 B.R. 236, 254 (9th Cir. BAP 2007).
20 “[E]ven where evidence supports [that] a particular number of hours [were]
21 worked, the court may give credit for fewer hours if the time claimed is ‘excessive,
22 redundant, or otherwise unnecessary.’ ” *Id.* (quoting *Dawson v. Washington
23 Mutual Bank, F.A. (In re Dawson)*, 390 F.3d 1139, 1152 (9th Cir. 2004)).

21 While “the applicant must demonstrate only that the services were
22 ‘reasonably likely’ to benefit the estate at the time the services were rendered,” *In
23 re Mednet*, 251 B.R. at 108, “an attorney fee application in bankruptcy will be
24 denied to the extent that the services rendered were for the benefit of the debtor
25 and did not benefit the estate.” *In re Crown Oil, Inc.*, 257 B.R. 531, 540 (Bankr. D.
26 Mont. 2000) (quoting *Keate v. Miller (In re Kohl)*, 95 F.3d 713 (8th Cir. 1996))
27 (citations and internal quotation marks omitted). “This rule is based on the
28 legislative history of the Bankruptcy Code section 330(a) and the unfairness of
allowing the debtor to deplete the estate by pursuing its interests to the detriment
of creditors.” *Id.* (citations and internal quotation marks omitted). “The same
unfairness occurs when a debtor’s professionals seek to deplete the estate ... to
the detriment of the estate and creditors.” *In re Crown Oil, Inc.*, 257 B.R. at 540.

1 Nevertheless, the court in *Crown Oil* observed:

2 ... [Courts] do not conclude that only successful actions may be
3 compensated under § 330. To the contrary, so long as there was a
4 reasonable chance of success which outweighed the cost in pursuing the
5 action, the fees relating thereto are compensable. Moreover, professionals
6 must often perform significant work in making the determination whether a
7 particular course of action could be successful. Such services are also
8 compensable so long as, at the outset, it was not clear that success was
9 remote.

10 *In re Crown Oil, Inc.*, 257 B.R. at 541 (quoting *In re Jefsaba, Inc.*, 172 B.R. 786,
11 789 (Bankr. E.D. Pa. 1994)) (internal quotation marks omitted). That is, as the
12 court in *Crown Oil* further observed:

13 One bankruptcy court writes: “The Court does not expect the
14 attorney to succeed in every endeavor he undertakes on behalf of the
15 client. But the endeavor for which the estate is expected to pay must be
16 reasonably calculated to produce a benefit to the estate.”

17 *In re Crown Oil, Inc.*, 257 B.R. at 241 (quoting *In re Hunt*, 124 B.R. 263, 267
18 (Bankr. S.D. Ohio 1990).

19 *In re Trinh*, slip op. at *3-5.

20 306. The Bankruptcy Court has also found instructive observation of the
21 Supreme Court of the United States in *Hensley v. Eckerhart*, 461 U.S. 424 (1983),
22 although involving a statutory fee award pursuant to 42 U.S.C. §1988:

23 A request for attorney's fees should not result in a second major litigation.
24 Ideally, of course, litigants will settle the amount of a fee. Where settlement is not
25 possible, the fee applicant bears the burden of establishing entitlement to an
26 award and documenting the appropriate hours expended and hourly rates. The
27 applicant should exercise “billing judgment” with respect to hours worked, see
28 *supra*, at 1939–1940, and should maintain billing time records in a manner that will
29 enable a reviewing court to identify distinct claims.

30 We reemphasize that the district court has discretion in determining the
31 amount of a fee award. This is appropriate in view of the district court's superior
32 understanding of the litigation and the desirability of avoiding frequent appellate
33 review of what essentially are factual matters. It remains important, however, for
34 the district court to provide a concise but clear explanation of its reasons for the
35 fee award. When an adjustment is requested on the basis of either the exceptional
36 or limited nature of the relief obtained by the plaintiff, the district court should make
37 clear that it has considered the relationship between the amount of the fee
38 awarded and the results obtained.

1 *Id.* at 437-438 (footnote omitted).
2

3 307. As previously noted, Plaintiff has acknowledged that it incurred
4 approximately \$270,707.25 in attorneys' fees to remove a \$40,000 purported mechanic's
5 lien of Defendants, which Plaintiff is now claiming as damages for having to remove the
6 lien. Plaintiff argues that at first glance, the fees appear excessive, but considering the
7 extensive litigation and Defendants' aggressive defense of their invalid mechanic's lien,
8 the attorneys' fees are reasonable and should be awarded to Plaintiff. That is, according
9 to Plaintiff, it is entitled to all of these claimed attorneys' fees and costs because it
10 prevailed in its slander of title cause of action.

11 308. As the Supreme Court stated in *Hensley v. Eckerhart*, "Ideally, of course,
12 litigants will settle the amount of a fee." 461 U.S. at 437. Although Plaintiff offered at trial
13 to settle the amount of fees as damages at \$135,000, or half of the claimed fees, there
14 was no settlement as Defendants rejected Plaintiff's offer. 6/29/22 Trial Transcript at 7-
15 19.

16 309. As the Supreme Court further stated in *Hensley v. Eckerhart*, "Where
17 settlement is not possible, the fee applicant bears the burden of establishing entitlement
18 to an award and documenting the appropriate hours expended and hourly rates." 461
19 U.S. at 437. As previously stated, *Hensley v. Eckerhart* was a statutory fee case in which
20 the lodestar method is generally applied.

21 310. In this case, Plaintiff's counsel offered its billing statements with individual
22 billing entries showing the hours expended and hourly rates for services rendered to
23 Plaintiff in work to remove Defendants' purported mechanic's lien, which were received
24 into evidence, and during two days of trial, counsel gave testimony regarding these
25 services, which was subject to cross-examination by Defendants, who were given the
26 billing statements in advance of trial and were able to file written objections to the billing
27 statements and entries. 6/29/22 Trial Transcript at 26-226; 6/30/22 Trial Transcript at 8-
28 65.

311. The Bankruptcy Court has reviewed Defendants' written objections to the

1 Individual billing entries and statements of Plaintiff's counsel, noting that the objections to
2 the individual billing entries were categorial objections, which were already reflected in
3 Defendants' pleadings already addressed above, and not specifically addressed to the
4 individual billing entries themselves. The Bankruptcy Court made oral rulings on
5 Defendants' objections to the individual billing entries, which are reflected in Exhibit 1
6 attached hereto, which had been prepared and submitted by Plaintiff with its proposed
7 findings of fact and conclusions of law [Adversary Proceeding Docket No. 309].
8 Generally speaking, the Bankruptcy Court finds and concludes that Plaintiff's counsel
9 documented the hours expended and the hourly rates for work actually performed for
10 Plaintiff to remove Defendants' lien as reflected on Exhibit 1 attached hereto, which note
11 the Bankruptcy Court's oral rulings at trial. The Bankruptcy Court considers these oral
12 rulings as tentative as it believes that they are not the end of the analysis.

13 312. As the Supreme Court also stated in *Hensley v. Eckerhart*, the applicant
14 (i.e., counsel "should exercise 'billing judgment'" 461 U.S. at 437. In this regard, the
15 Supreme Court in *Hensley v. Eckerhart* elaborated by stating:

16 The district court also should exclude from this initial fee calculation hours
17 that were not "reasonably expended." S.Rep. No. 94-1011, p. 6 (1976). Cases
18 may be overstaffed, and the skill and experience of lawyers vary widely. Counsel
19 for the prevailing party should make a good faith effort to exclude from a fee
20 request hours that are excessive, redundant, or otherwise unnecessary, just as a
21 lawyer in private practice ethically is obligated to exclude such hours from his fee
22 submission. "In the private sector, 'billing judgment' is an important component in
23 fee setting. It is no less important here. Hours that are not properly billed to one's
24 *client* also are not properly billed to one's *adversary* pursuant to statutory
25 authority." *Copeland v. Marshall*, 205 U.S.App.D.C. 390, 401, 641 F.2d 880, 891
26 (1980) (en banc) (emphasis in original).

27 *Id.* at 434.

28 313. In the bankruptcy context, "billing judgment" is important also as a
requirement of 11 U.S.C. § 330 that bankruptcy estate professionals exercise billing
judgment as the Ninth Circuit has stated that employment authorization does "not give
[the professional] free reign to run up a tab without considering the maximum probable
recovery." *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc.*, 924 F.2d at

1 958. That is, before undertaking work on a bankruptcy matter, a professional is obligated
2 to consider: (a) Is the burden of the probable cost of legal services disproportionately
3 large in relation to the size of the estate and maximum probable recovery? (b) To what
4 extent will the estate suffer if the services are not rendered? (c) To what extent may the
5 estate benefit if the services are rendered and what is the likelihood of the disputed
6 issues being resolved successfully? *Id.* at 959-960 (citation omitted). Moreover, “[w]hen
7 a cost benefit analysis indicates that the only parties who will likely benefit from [a
8 service] are the trustee and his professionals,’ the service is unwarranted and a court
9 does not abuse its discretion in denying fees for those services.” *In re Mednet*, 251 B.R.
10 at 108-109 (quoting *In re Riverside-Linden Investment Co.*, 925 F.2d 320, 321 (9th Cir.
11 1991)).

12 314. In hindsight, it is problematic to award Plaintiff attorneys' fees of some
13 \$270,000 as reasonably and necessarily incurred to remove a \$40,000 purported lien
14 clouding title, or the amount of fees was six, almost seven, times the amount of the lien
15 amount. That is, as Defendants argue, Plaintiff could have saved itself much of these
16 incurred fees by paying them off their fraudulent mechanic's lien, which as Plaintiff
17 argues that to make payment of such unreasonable tribute would have breached its
18 fiduciary duty to the creditors of the bankruptcy estate. While the Bankruptcy Court
19 agrees with Plaintiff's position, this agreement does not necessary mean that every fee
20 that has been billed by Plaintiff's counsel was reasonable and necessary to remove
21 Defendants' Lien.

22 315. In Plaintiff's counsel's first fee motion covering the period from January 17,
23 2018 to November 5, 2019, fees totaling \$189,757.50 for 364.5 hours of professional time
24 and costs totaling \$6,351.05 were sought. Adversary Proceeding Docket No. 146, filed
25 on November 26, 2019, at 23-37 [internal page citation at 20-34] and Exhibits A and B
26 attached thereto (billing entries and breakdown of costs). The first fee motion stated that
27 the authority for such fees and costs was California Civil Code § 8488(c). *Id.* at 32
28 [internal page citation at 29]. In the reply to Defendants' opposition to the first fee motion,
counsel provided a breakdown of the fees as follows: (1) Prosecution of Complaint:

1 \$47,334.50; (2) Personal Jurisdiction and Default Judgment Dispute: \$26,312.00; and (3)
2 Responding to Defendants' Motions and Discovery: \$115,314.00. Adversary Proceeding
3 Docket No. 153, filed on December 10, 2019, at 10-22 (internal page citation at 5-17).

4 316. In Plaintiff's counsel's second fee motion covering the period from
5 November 6, 2019 to April 19, 2021, fees totaling \$95,913.00 for 172.3 hours of
6 professional time and costs totaling \$6,351.05 were sought. Adversary Proceeding
7 Docket No. 221, filed on April 29, 2021, at 19-29 (internal page citations at 22-32 and
8 Exhibits A and B attached thereto (billing statements and breakdown of costs). In the
9 reply to Defendants' opposition to the second fee motion, additional fees totaling
10 \$28,198.50 were sought for the period from April 29, 2021 to January 11, 2022. Docket
11 No. 273, filed on January 12, 2022 at 16-18 (internal page citation at 14-16) and Exhibits
12 A and B attached thereto (billing entries and breakdown of costs). According to the billing
13 entries for the second fee motion and the reply, most of the services listed in the billing
14 entries were for trial preparation and work.

15 317. Regarding billing judgment of its counsel, as previously noted, Plaintiff
16 argues that this adversary proceeding could have been much simpler, except that
17 Defendants willfully engaged the Plaintiff in numerous and repetitive procedural
18 skirmishes to cause delay and increase the cost of litigation, including: (i) a motion
19 challenging personal jurisdiction; (ii) a motion to dismiss the complaint for failure to state
20 a claim for which relief could be granted, which Plaintiff ultimately defeated; (iii) an
21 attempt to avoid deposition and production of documents, which Plaintiff ultimately
22 defeated; (iv) attempts to avoid the deposition of Ammec's officer and person most
23 knowledgeable, Carlos Montenegro, which the Plaintiff did not overcome because the
24 Plaintiff decided that it was not economical to incur additional expenses by commencing
25 more discovery dispute motions against Defendants; (v) attempts to harass Plaintiff and
26 its management by forcing a deposition to be taken on Plaintiff's Property and bringing a
27 motion on this discovery dispute, which Plaintiff ultimately defeated; (vi) Defendants'
28 premature motion for summary judgment that argued for a lien-pass-through theory that
would have eviscerated the Bankruptcy Code's ability to address disputed liens, which

1 Plaintiff ultimately defeated; and (vii) a wildly off-point opposition to the Plaintiff's motion
2 for partial summary adjudication, which Plaintiff ultimately overcame and prevailed.
3 According to Plaintiff, to sum up, this litigation was made expensive by Defendants'
4 extremely aggressive and unsupportable litigation tactics. According to Plaintiff, this
5 adversary proceeding could have been comprised of a complaint, an answer, three
6 depositions (Curtis and two employees from Habitat for Humanity), and two days of trial.
7 Actually, this is a fair assessment of what was reasonable and necessary to remove
8 Defendants' lien as discussed herein.

9 318. While the Bankruptcy Court agrees with Plaintiff's observation that the
10 adversary proceeding could have been much simpler, the Bankruptcy Court's agreement
11 does not necessary mean that every fee that has been billed by Plaintiff's counsel was
12 reasonable and necessary to remove Defendants' Lien. Having reviewed all of the
13 pleadings, including the original and amended complaints and the responses thereto and
14 having presided over all of the litigation proceedings, the Bankruptcy Court is thoroughly
15 familiar with the nature of the proceedings in this litigation. As such, the Bankruptcy
16 Court is of the view that this litigation was rather simple and straightforward as the key
17 factual issues were whether (1) Eric Radley and Curtis jointly purchased the lumber that
18 Plaintiff obtained and used or Curtis purchased it on her own; (2) if Curtis purchased on
19 her own, whether Plaintiff benefitted from use of her lumber knowing it came from her.
20 These factual issues were raised in Plaintiff's first cause of action for slander of title and
21 third cause of action for avoidance of lien. Factually, if Eric Radley bought the lumber
22 obtained by Plaintiff or he stole it without Curtis's agreement, there was no basis for
23 Defendants' mechanic's lien which required an agreement between Plaintiff and
24 Defendants for them to provide materials to Plaintiff (i.e., the lumber). The
25 preponderance of the evidence as discussed above showed that the lumber obtained by
26 Plaintiff was purchased by Eric Radley, and there was no basis for Defendants to claim a
27 mechanic's lien for that lumber, and there was never any agreement between Defendants
28 to Plaintiff for them to provide Plaintiff with the lumber to base a mechanic's lien in favor
of Defendants, and there was no factual basis for valuing the lien at the inflated price of

1 \$40,000.

2 319. In the Bankruptcy Court's view, this adversary proceeding involved rather
3 ordinary, straightforward civil tort litigation claims. However, as Plaintiff argues,
4 complexity was added in this adversary proceeding due to Defendants' obstructionist
5 litigation tactics and positions. The Bankruptcy Court agrees with this argument to some
6 extent, but it does not agree that all of the claimed fees and costs were reasonable and
7 necessary to remove Defendants' Lien.

8 320. As previously noted, Plaintiff argues that the time, services rendered, and
9 fees directly related to prosecuting the Plaintiff's claim against Defendants were not out of
10 proportion with the amount of their purported mechanic's lien. That is, according to
11 Plaintiff, these were core activities necessary to prosecute this lawsuit by the Plaintiff: (1)
12 initial investigation of the claim [January 2018]; (2) preparation of the complaint [May
13 2018]; (3) preparation of a joint status report, exchanging Federal Rule of Civil Procedure
14 26 disclosures, and attending the status conference [January 2019]; (4) propounding
15 discovery [February 2019]; (5) preparing a motion for partial summary adjudication,
16 attending the hearing thereon, and preparing the order [August, September, November
17 2019]. All of these tasks totaled \$47,334.50. Plaintiff argues that with a base claim of
18 \$40,000, plus interest and Defendants' potential attorneys' fees, the amount of
19 \$47,334.50 incurred for Plaintiff's attorneys' fees are not out of proportion for the amount
20 at issue. Plaintiff further argues that by way of analogy, California state law permits
21 disputed mechanic's liens to be released with a bond "in an amount equal to 125% of the
22 amount of the claim of the lien." California Civil Code § 8424(b). Plaintiff notes that an
23 amount of \$50,000 is equal to 125% of the \$40,000 disputed mechanic's lien and that
24 Plaintiff's total attorneys' fees and costs related to this task are below this amount.

25 321. The Bankruptcy Court does not agree with this analysis and does not adopt
26 this argument of Plaintiff to justify these fees. First of all, these fees only represent a
27 small portion of the total fees claimed by Plaintiff and should not be considered in
28 isolation. That is, the Bankruptcy Court determines that it needs to evaluate Plaintiff's

1 request for an award of fees in its totality. Second, even looking at these fees in
2 isolation, the Bankruptcy Court would find that not all of the fees were reasonable and
3 necessary. For example, the fees claimed for attending the status conference on
4 January 28, 2019 in the amount of \$1,914 (2.9 hours for preparation and attendance)
5 appears excessive in a case where the amount in controversy is \$40,000. Counsel
6 appeared in person for the status conference rather remotely by telephone, which is a
7 matter which involves billing discretion. The amount of fees for work on Plaintiff's motion
8 for partial summary adjudication of \$24,650 (42.3 hours of work at an hourly billing rate of
9 \$580)¹⁶ appears excessive in a \$40,000 case, especially since the only issue was a legal
10 one whether Defendants timely filed a lawsuit or equivalent notice to enforce their
11 purported mechanic's lien within 90 day statutory time period, and whether the deadline
12 to file such enforcement lawsuit was tolled from the automatic stay which arose upon
13 Plaintiff's bankruptcy case filing. Because Plaintiff's partial summary adjudication motion
14 was essentially about this one legal issue, in the Bankruptcy Court's view, it was not
15 reasonable and necessary to have expended 42.3 hours of attorney time on what should
16 have been a simple motion, and moreover, as it turns out, granting partial summary
17 adjudication on this issue was not reasonable or necessary as subsequently Ninth Circuit
18 case law clarified that the deadline was tolled, and there was no basis to avoid the lien for
19 failure to file a notice under 11 U.S.C. § 546(b) as argued by Plaintiff in its motion for
20 partial summary adjudication. The temporary granting of Plaintiff's summary adjudication
21 motion which the Bankruptcy Court later rescinded based on newly determined case law
22 did not result in services reasonable and necessary to remove the lien as the lien was not
23 eventually removed based on partial summary adjudication. The case had to be tried on
24 the factual issues of whether the lumber which was the subject of Defendants' lien was

25
26 ¹⁶ In these proposed findings of fact and conclusions of law, the Bankruptcy Court has
27 made rough computations of time spent on specific proceedings or tasks based on
28 the billing entries reflected on Exhibit 1 attached hereto. The Bankruptcy Court in
its computations has attempted to be accurate as possible in these computations, but
they may not be exact.

1 jointly purchased by Eric Radley and Greta Curtis or Greta Curtis alone, and if Curtis
2 purchased the lumber alone, whether she had a lien for benefiting Plaintiff with a gift of
3 the lumber, or whether Eric Radley converted the lumber on Plaintiff's behalf.

4 322. Not much discovery was needed to try this matter as Plaintiff knew that its
5 case was based on the testimony of its witnesses, Eric Radley and Barrington Radley,
6 that Eric Radley jointly purchased the lumber with Greta Curtis and the lumber that he
7 took for Plaintiff was from his one-half share, and Plaintiff only needed to take the
8 deposition of Greta Curtis as a participant in the lumber purchase transaction and to take
9 the deposition of Habitat for Humanity regarding the purchase price of the lumber since
10 Curtis inflated the value of the lumber. Accordingly, the Bankruptcy Court does not find
11 and conclude that the sum total of \$47,334.30 was reasonable and necessary for these
12 services based on counsel's exercise of billing judgment.

13 323. Plaintiff further argues that beyond the sum of \$47,334.50 discussed
14 immediately above, the Bankruptcy Court should find and conclude that the lion's share
15 of the rest of Plaintiff's fees were caused by Defendants' scorched-earth litigation tactics
16 in forcing Plaintiff to fight numerous procedural skirmishes, unprincipled discovery fights,
17 and Defendants' nearly incomprehensible legal theories in their pleadings throughout this
18 multi-year litigation, all as discussed herein.

19 324. In support of this contention, Plaintiff argues that Curtis has made much of
20 the minor and early dispute in this case about the service of the original complaint on
21 Defendants at her P.O. Box and Ammec's business address, which Curtis claims is a
22 "vacant lot" despite it being (i) Ammec's business address since at least 2016 through
23 trial in February 2021, (ii) the process server address on the Secretary of State website,
24 and (iii) the address listed on the recorded Disputed Mechanic's Lien. Nonetheless,
25 these litigated disputes served a purpose and benefited the Plaintiff. Plaintiff notes that
26 regardless, these fees account for only approximately \$26,212.00 of the total. The
27 Bankruptcy Court does not find that it was reasonable and necessary to incur \$26,212.00
28 in attorneys' fees and costs representing approximately 46 hours of attorney time in

1 effecting sufficient service of process on Defendants in a \$40,000 case to remedy
2 counsel's initial reliance on incorrect information in Ammec's filings with the California
3 Secretary of State and inadequate due diligence in finding a service address for Curtis for
4 purposes of Federal Rule of Bankruptcy Procedure 7004(b)(2) and (3). Plaintiff's counsel
5 just needed to make another attempt at proper service on Defendants once Defendants
6 objected to the initial service. Regardless of whether Defendants' filings with the
7 California Secretary of State were misleading or not, it should not have taken 46 hours of
8 attorney time to fix the service of process problem, and neither Plaintiff as the client nor
9 Defendants as a matter of damages should be burdened with fees from inefficiency. The
10 Bankruptcy Court finds and concludes that 10 hours of attorney time (\$5,600 based on an
11 hourly rate of \$560) at most would have been reasonable and necessary for services
12 relating to service of process on Defendants, though the work of finding proper service
13 addresses for Defendants and effecting service should have been handled by lower cost
14 billing professionals. (However, the Bankruptcy Court observes here that counsel has
15 waived fees incurred for services by other professionals at the firm, which was a proper
16 exercise of billing judgment.)

16 325. Regarding counsel's billing judgment, Plaintiff argues that the incurred
17 attorneys' fees increased more than anticipated, but were reasonable and necessary
18 because Defendants willfully engaged the Plaintiff in numerous and repetitive procedural
19 skirmishes to cause delay and increase the cost of litigation, including: (i) a motion
20 challenging personal jurisdiction; (ii) a motion to dismiss the complaint for failure to state
21 a claim for which relief could be granted, which Plaintiff ultimately defeated; (iii) an
22 attempt to avoid deposition and production of documents, which Plaintiff ultimately
23 defeated; (iv) attempts to avoid the deposition of Ammec's officer and person most
24 knowledgeable, Carlos Montenegro, which the Plaintiff did not overcome because the
25 Plaintiff decided that it was not economical to incur additional expenses by commencing
26 more discovery dispute motions against Defendants; (v) attempts to harass Plaintiff and
27 its management by forcing a deposition to be taken on Plaintiff's Property and bringing a
28 motion on this discovery dispute, which Plaintiff ultimately defeated; (vi) Defendants'

1 premature motion for summary judgment that argued for a lien-pass-through theory that
2 would have eviscerated the Bankruptcy Code's ability to address disputed liens, which
3 Plaintiff ultimately defeated; and (vii) a wildly off-point opposition to the Plaintiff's motion
4 for partial summary adjudication, which Plaintiff overcame and prevailed temporarily.

5 326. As previously stated, the Bankruptcy Court generally agrees with this
6 characterization by Plaintiff of Defendants' litigation positions and tactics in this
7 adversary proceeding, that is, generally speaking, Defendants' litigating positions
8 generally lacked merit and mostly not difficult to oppose, but this does not mean that the
9 claimed fees and costs dealing with Defendants' litigation positions and tactics were
10 reasonable and necessary to remove the Lien or that Plaintiff's counsel was exempt from
11 exercising reasonable business judgment in claiming fees. One prominent example is
12 the billing of 53.3 hours of attorney time opposing Defendants' motion for summary
13 judgment. The amount of fees for work on Defendants' motion for summary judgment of
14 \$30,914 (53.3 hours of work at an hourly billing rate of \$580) appears excessive in a
15 \$40,000 case, especially since the arguments made by Defendants that they were
16 entitled to summary judgment on the slander of title claim because the Bankruptcy Court
17 lacked jurisdiction to enter a final judgment on that claim, that Defendants were entitled to
18 summary judgment on the other claims because they had not filed a proof of claim in the
19 bankruptcy case, they had a properly perfected mechanic's lien and thus, their lien
20 passed through unaffected by the bankruptcy case clearly lacked merit. The Bankruptcy
21 Court has jurisdiction over Plaintiff's slander of title claim involving property of Plaintiff's
22 bankruptcy estate as a noncore claim under nonbankruptcy law to hear and determine
23 such claim subject to de novo review by the United States District Court pursuant to 28
24 U.S.C. §§157(c) and 1334, showing that Defendants were not entitled to judgment as a
25 matter of law on this ground. *See Executive Benefits Insurance Agency v. Arkison*, 573
26 U.S. 25 (2014); Federal Rule of Bankruptcy Procedure 9033. Although Defendants did
27 not file a proof of claim for the lien claim, Plaintiff could challenge the lien on its property
28 as an asset of the bankruptcy estate through an adversary proceeding to avoid lien
pursuant to 28 U.S.C. §§157(b)(2)(K) and 1334 and Federal Rule of Bankruptcy

1 Procedure 7001, showing that Defendants were not entitled to summary judgment on this
2 ground. Moreover, Plaintiffs offered evidence to controvert the validity of Defendants' lien
3 to demonstrate genuine issues of material fact to warrant denial of summary judgment.
4 These are simple and straightforward counterarguments to Defendants' arguments for
5 their summary judgment motion which should not have taken 53 hours of attorney time
6 from Plaintiff's counsel.

7 327. Another example of fees that may not have been entirely reasonable and
8 necessary is from Plaintiff's premature motions for attorneys' fees filed before trial and
9 entry of final judgment. Generally, motions for attorneys' fees are brought after entry of a
10 final order or judgment as recognized in Local Bankruptcy Rule 7054-1(g) when fees as
11 costs may be taxed. This is especially true in this adversary proceeding because the
12 claimed attorneys' fees here are not taxed as costs, but awarded as damages as proven
13 at trial. Apparently, Plaintiff's counsel was under the mistaken impression that the
14 Bankruptcy Court could award attorneys' fees as costs before the adversary proceeding
15 was concluded and that fees as damages on the slander of title claim could be sought by
16 motion rather than proven at trial as an element of damages, which is clearly incorrect.
17 Plaintiff seeks fees of \$17,690 for 30.5 hours of attorney time at an hourly rate of \$580 for
18 Plaintiff's first motion for an award of attorneys' fees and costs and \$7,260 for 12 hours of
19 attorney time at an hourly rate of \$605 for Plaintiff's second motion for an award of
20 attorneys' fees and costs, for a total amount of fees of \$24,950. For example, the fees
21 claimed for Plaintiff's two fee motions, which the Bankruptcy Court considers as
22 premature, in the total amount of \$24,950 (42.5 hours for of attorney time) appears
23 excessive in a case where the amount in controversy is \$40,000. However, in mitigation,
24 counsel would have needed to expend time to prove up the fees as damages on the
25 slander of title claim at trial, and counsel in the fee calculation reflected in Exhibit 1 has
26 not claimed fees for any work to prepare for, and during, the two day trial on fees as
27 damages on June 29 and 30, 2022, which included the testimony of counsel regarding
28 the claimed fees. Moreover, counsel has not billed for work in preparing the billing
entries showing the fees for service on work to remove Defendants' lien served on

1 Defendants before trial. However, some of the work may be accounted for in the billing
2 of 41.1 hours of attorney time at \$605 for a total amount of fees of \$24,865.55 in
3 preparing of Plaintiff's original proposed findings of fact and conclusions of law, which
4 addresses in part the claim for an award of attorneys' fees and costs. While Plaintiff's
5 original and amended proposed findings of fact and conclusions of law are detailed, the
6 amount of fees for preparing the original proposed findings and conclusions of law in the
7 amount of \$24,865.55 (41.1 hours of attorney time) appears excessive in a case where
8 the amount in controversy is \$40,000. The Bankruptcy Court notes that the claimed fees
9 as damages do not include attorney time for preparing the amended proposed findings of
10 fact and conclusions of law lodged by Plaintiff after the two days of trial on fees as
11 damages.

12 328. Another small example of fees not reasonably and necessarily incurred to
13 remove Defendants' Lien is the 1.7 hours of attorney time spent on Curtis's postpetition
14 complaint with the California Labor Commissioner for alleged prepetition wages that are
15 claimed on Exhibit 1 as damages for slander of title, which should not be included as
16 damages since Curtis's purported wage claim has nothing to do with removal of a
17 mechanic's lien through the slander of title claim.

18 329. The Bankruptcy Court notes that in mitigation of damages, Plaintiff's
19 counsel agreed not to assert fees as damages for work performed by counsel's firm other
20 than Mr. Fritz, its lead counsel, representing 15.95 percent of the fees that had been
21 previously requested by the firm. 6/29/22 Trial Transcript at 11.

22 330. Defendants argue that Plaintiff failed to mitigate its damages because there
23 were at least three more expedient and cost-effective procedures that were available
24 under California law to Plaintiff that it failed to utilize and, instead, created excessive
25 attorneys' fees. According to Defendants, these three methods were: (1) filing a petition
26 for release of a mechanic's lien under California Civil Code § 8482 in state court; (2) filing
27 a motion for removal of mechanic's lien under California Code of Civil Procedure §
28 765.010 in state court; and (3) filing a so-called *Lambert* Motion to remove the
mechanic's lien in state court. It is conceivable that possibly if Plaintiff had utilized one of

1 these methods to remove Defendants' Lien that Plaintiff's incurrence of attorneys' fees
2 and costs to remove the lien could have been reduced. However, this is a matter of
3 speculation and may not have been necessarily the case as Plaintiff argues, and the
4 Bankruptcy Court agrees, that this case became much more expensive because
5 Defendants were unnecessarily combative and added unnecessary procedural expense
6 to the litigation from the start. *See, e.g., Calvo Fisher & Jacob, LLP v. Lujan*, 234
7 Cal.App.4th 608, 626-627 (2015); *Peak-Las Positas Partners v. Bollag*, 172 Cal.App.4th
8 101, 113-114 (2009). Having observed litigation proceedings between the parties in this
9 adversary proceeding and in the underlying bankruptcy case, the Bankruptcy Court finds
10 and concludes that the descriptions of the litigation proceedings between the parties in
11 Plaintiff's fee motions were fair and accurate.

12 331. It is problematic that in this case, the award of attorneys' fees exceeds the
13 amount of other compensatory damages, which as discussed above, the Bankruptcy
14 Court determines that there were no other such damages other than the legal expenses
15 in incurring attorneys' fees and costs to remove the lien in the amount of \$40,000, which
16 was the amount in controversy. Here, the amount of attorneys' fees and costs sought as
17 damages exceeds \$270,000, which exceeds the other compensatory damages, which
18 appear to be none, and which exceeds by the amount of controversy of \$40,000, by
19 several times, or six times to be more exact. As one California authority has stated: "A
20 judge may properly find that an award of attorneys' fees to a prevailing plaintiff in an
21 amount greater than the amount of damages recovered is reasonable, when the amount
22 of fees the plaintiff incurred was increased by the defendant's own conduct, for example,
23 in resisting the plaintiff's discovery requests, requiring the plaintiff to bring numerous
24 motions to compel the defendant to comply with the plaintiff's discovery requests, and in
25 propounding broad requests for production to the plaintiff that required significant efforts
26 by the plaintiff's attorney to gather and prepare the documents for production." California
27 Center for Judicial Education & Research, *California Judges Benchbook: Civil*
28 *Proceedings – Trial*, §16.87, *citing, Calvo Fisher & Jacob, LLP v. Lujan*, 234 Cal.App.4th
608, 626-627 (2015). This authority further noted in *Peak-Las Positas Partners v. Bollag*,

1 172 Cal.App.4th 101, 113-114 (2009) that in a real property dispute, the trial judge was
2 not precluded from awarding the plaintiff attorneys' fees in an amount that exceeded the
3 purchase price of property, when the judge found that the defendant interjected collateral
4 issues to complicate the litigation, that the defendant's vigorous defense necessitated a
5 great deal of work by the plaintiff's attorneys, and that there was no duplication of
6 litigation efforts by the plaintiff's attorneys. *Id.* This authority also noted in *Cheema v.*
7 *L.S. Trucking, Inc.*, 39 Cal.App.5th 1142, 1153-1154 (2019) that the appellate court noted
8 that while the total recovery of \$19,113.84 in a breach of contract action was relatively
9 small in relation to the amount of attorneys' fees awarded, \$100,415, this ratio was not
10 dispositive if the judge determined that the effort that the plaintiff's attorneys expended
11 was reasonably necessary to accomplish this recovery, and that defendant cited no
12 authority for the proposition that a fee award must always be less than the damage
13 award, and the appellate court was aware of no such authority. *Id.* These California
14 legal authorities provide illustrative examples showing that a fee award may exceed the
15 other award of damages if circumstances warrant, such as defendant's litigious conduct
16 exacerbating the cost of plaintiff's representation, which is the case here.

16 332. As previously noted, the Ninth Circuit in requiring that bankruptcy estate
17 professionals exercise billing judgment stated that employment authorization does "not
18 give [the professional] free reign to run up a tab without considering the maximum
19 probable recovery." *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc.*, 924
20 F.2d at 958. Moreover, as the Ninth Circuit has also recognized that before undertaking
21 work on a bankruptcy matter, a professional is obligated to consider whether the burden
22 of the probable cost of legal services disproportionately large in relation to the size of the
23 estate and maximum probable recovery. *Id.* at 959-960 (citation omitted). Counsel for
24 Plaintiff knew that the amount in controversy was the \$40,000 claimed in Defendants'
25 Lien, and counsel did not have free rein to run up the tab without considering the
26 maximum probable recovery which might be arguably considered to be the expungement
27 of the \$40,000 lien. Plaintiff and its counsel appears to recognize that a \$270,000 fee bill
28 appears excessive in light of the amount in controversy, but the Bankruptcy Court agrees

1 with Plaintiff that paying unreasonable tribute to Defendants on their illegitimate lien is not
2 what Plaintiff should have done to mitigate its damages, which in the Bankruptcy Court's
3 view is antithetical to our system of legal justice. The Bankruptcy Court agrees with
4 Plaintiff's argument in part that the litigation of this case was made more costly than
5 expected due to the factually and legally meritless positions and obstructionist tactics of
6 Defendants in this adversary proceeding. Such ill behavior justifies an award of
7 attorneys' fees and costs in excess of any other compensatory damages or the amount in
8 controversy. However, as discussed above, the Bankruptcy Court does not consider all
9 of the fees claimed by counsel to have been reasonable and necessary to remove
10 Defendants' Lien.

11 333. In consideration of what was reasonable and necessary fees to remove
12 Defendants' lien, the Bankruptcy Court has considered the relatively straightforward
13 nature of this civil tort litigation, the exercise of billing judgment by Plaintiff's counsel or
14 lack thereof, and the difficulties in dealing with the factually and legally meritless positions
15 and obstructionist tactics of Defendants. Under the authority of the *Sumner Hill*
16 *Homeowners' Association* case, the Bankruptcy Court considers what attorneys' fees and
17 litigation costs were reasonable and necessary to remove Defendants' lien as a slander
18 of title, and this consideration is generally in retrospect, that is, what was needed to
19 remove the lien, and what was reasonable. In retrospect, Plaintiff should have adhered
20 more to its original and simpler plan of preparing and filing the complaint, taking minimal
21 discovery consisting of depositions of Greta Curtis and the Habitat employees and trying
22 the factual issue of the purchase of the lumber to remove the lien. The Bankruptcy Court
23 determines that 24.0 hours of attorney time were reasonable and necessary for counsel
24 to investigate Plaintiff's slander of title and lien avoidance claims and prepare a complaint
25 to remove Defendants' purported lien. The factual basis for the claims to remove the lien
26 in the slander of title and lien avoidance claims was the testimony of Plaintiff's witnesses,
27 Eric and Barrington Radley, that Eric Radley was the joint purchaser and owner of the
28 lumber that Defendants claimed was the subject of their purported mechanic's lien based
on Greta Curtis's claim that she was the sole purchaser and owner of the lumber. It

1 should not have taken much attorney time to investigate Plaintiff's claims to remove
2 Defendants' lien based on this straightforward evidence and prepare a complaint. The
3 Bankruptcy Court does not allocate time spent for amending the complaint to address
4 Defendants' objections which it sustained and for taking Defendants' default which were
5 not reasonable and necessary to remove Defendants' lien, and the enormous cost of
6 over \$26,000 in attorneys' fees was not reasonable and necessary to effectuate service
7 of process on Defendants. The Bankruptcy Court also notes that Plaintiff's claim
8 disallowance claim was not necessary to remove Defendants' lien as that claim was
9 directed at achieving plan confirmation in the underlying bankruptcy case. The
10 Bankruptcy Court further that the services in prosecuting Plaintiff's lien avoidance claim
11 were not reasonable and necessary as the litigation of that claim did not result in a
12 pretrial disposition resulting in the removal of Defendants' lien as that claim was
13 dependent on the same factual issues as the slander of title claim, that is, who purchased
14 the lumber, and that the grant of partial summary adjudication was improvident based on
15 newly established Ninth Circuit case law. The Bankruptcy Court determines that 24.0
16 hours of attorney time were reasonable and necessary to respond to Defendants'
17 motions to dismiss and summary judgment and attend other pretrial proceedings,
18 including status conferences. Defendants' arguments in support of their motions to
19 dismiss and summary judgment were somewhat insubstantial and were not difficult to
20 require much attorney time to refute. The Bankruptcy Court does not allow time spent on
21 Plaintiff's motion for partial summary adjudication as the motion was unsuccessful in
22 removing the Defendants' lien and that Plaintiff's case for lien avoidance had to be tried
23 with the slander of title claim anyway. The Bankruptcy Court determines that 32.0 hours
24 of attorney time were reasonable and necessary for discovery proceedings as Plaintiff
25 only need to take the depositions of Greta Curtis and employees at Habitat for Humanity
26 as to respond to Defendants' discovery requests relating to the slander of title claim. The
27 Bankruptcy Court determines that 24.0 hours of attorney time was reasonable and
28 necessary for preparation for trial on the factual issues relating to the removal of
Defendants' lien, which primarily related to the purchase of the lumber, that is, preparing

1 trial declarations of Plaintiff's fact witnesses, Eric and Barrington Radley, the submission
2 of the trial exhibits, which were minimal in number (i.e. about 10 exhibits for Plaintiff), and
3 generally undisputed as Defendants submitted substantially the same exhibits, and
4 preparation of cross-examination of Greta Curtis. The Bankruptcy Court determines that
5 40.0 hours of attorney time were reasonable and necessary for the five days of trial of the
6 claims to remove Defendants' lien. The Bankruptcy Court determines that 24.0 hours of
7 attorney time were reasonable for post-trial work in preparing and lodging proposed
8 findings of fact and conclusions of law to remove Defendants' lien. In total, the
9 Bankruptcy Court determines that the total attorney time reasonable and necessary to
10 remove Defendants' lien is 168.0 hours. The services were rendered by Mr. Fritz, whose
11 hourly rate ranged between \$565.00 in 2018 to \$605.00 in 2022. The Bankruptcy Court
12 determines that a reasonable hourly rate for Mr. Fritz in this case is \$585.00. Thus, the
13 reasonable and necessary fees incurred by Plaintiff to remove Defendants' lien is 168.0
14 hours at Mr. Fritz's reasonable hourly rate of \$585.00 for a total of \$98,280.00.

15 334. Plaintiff claims litigation costs as part of its pecuniary damages to remove
16 Defendants' lien in support of its slander of title claim as set forth in its fee motion papers,
17 \$22,402.81 in its first fee motion covering the period from January 17, 2018 to September
18 30, 2019 [Adversary Proceeding Docket No. 146 at 52]. \$6,013.20 in its second fee
19 motion covering the period from October 1, 2019 to April 28, 2021 [Adversary Proceeding
20 Docket No. 221 at 59], and \$872.22 in its reply to Defendants' opposition to its second
21 fee motion covering the period from April 29, 2021 to January 11, 2022, for a total of
22 \$29,288.23. This sum is relatively large in comparison to \$40,000.00 amount of
23 Defendants' asserted lien, which should have necessitated an exercise of reasonable
24 billing judgment. The Bankruptcy Court notes that the litigation costs asserted by Plaintiff
25 substantially consists of costs which are not taxable costs within the meaning of
26 California Code of Civil Procedure § 1033 and 1033.5, which provisions govern recovery
27 of litigation costs in civil cases other than a limited civil case under California law. In the
28 cited California case that recognizes that attorneys' fees and litigation costs are
awardable as pecuniary damages for a slander of title claim to remove a matter

1 constituting an improper cloud on title, *Sumner Hill Homeowners' Association v. Rio*
2 *Mesa Holdings, LLC*, 205 Cal.Ap.4th at 1027-1038, the court did not address which
3 litigation costs are so awardable, that is, as between litigation costs taxable under
4 California Code of Civil Procedure §§ 1033 and 1033.5 and those which are not so
5 taxable. In awarding litigation costs as pecuniary damages on a slander of title claim
6 under California law, the Bankruptcy Court determines that it can only award litigation
7 costs expressly recognized as litigation costs under California law, that is, pursuant to
8 California Code of Civil Procedure §§.1033 and 1033.5. Accordingly, the Bankruptcy
9 Court determines that most of the costs claimed by Plaintiff are not taxable as litigation
10 costs under California Code of Civil Procedure §§ 1033 and 1033.3 and that the only
11 awardable litigation costs are the court reporting fees of \$897.00 for depositions and a
12 witness fee of \$40.00 for a total of \$937.00, which were reasonable and necessary to
13 remove Defendants' lien in proving up Plaintiff's slander of title cause of action. The
14 other claimed litigation costs, such as Westlaw research, attorney service costs, postage,
15 UCC search, Pacer, court transcripts not ordered by the court, etc., are not taxable
16 litigation costs within the meaning of California Code of Civil Procedure § 1033.5, and
17 thus, not awardable.

18 335. Based on all of these considerations, the Bankruptcy Court finds and
19 determines that the reasonable and necessary attorneys' fees and costs incurred by
20 Plaintiff in removing the improper lien of Defendants is \$99,217.00, consisting of
21 \$98,280.00 in attorneys' fees and \$937.00 in litigation costs.

22 **G. Conclusion as to Plaintiff's First Cause of Action (Slander of Title)**

23 336. The Bankruptcy Court finds and concludes that the preponderance of the
24 evidence shows that Defendants slandered title to Plaintiff's property when Defendants
25 published the Lien, which contained: (i) a false statement that there was an agreement
26 between the parties; (ii) a false statement that Defendants had a contract claim for
27 \$40,000; (iii) a false statement that Plaintiff had taken 20 walls of lumber from
28 Defendants; and (iv) a false statement that the lumber that was the subject of the Lien
had a value of \$40,000 based on cost.

1 337. The Bankruptcy Court finds and concludes that the preponderance of the
2 evidence shows that Defendants had no privilege to file the Lien as a purported
3 mechanic's lien because there was no "work authorized for a work improvement" under
4 California Civil Code §§ 8400 and 8404, there was no agreement or contract between the
5 parties, and the Defendants' purported claim for conversion sounded in tort, not contract.

6 338. The Bankruptcy Court finds and concludes that the preponderance of the
7 evidence shows that Defendants' filing of the Lien was with malice because: (i)
8 Defendants knew that the Lien's assertion of an "agreement" was a false statement; (ii)
9 Defendants knew that the lumber in Plaintiff's possession did not have a value of \$40,000
10 based on cost as stated in the Lien; (iii) moreover, Defendants could not have reasonably
11 believed that the lumber in Plaintiff's possession had a value of \$40,000 based on cost as
12 stated in the Lien; and (iv) Defendants knew that Plaintiff had not taken 20 prefabricated
13 walls as stated in the Lien, or (v) at the very least, Defendants should reasonably should
14 have reasonably known from the observation of the lumber and photographs taken by
15 Curtis that Plaintiff had taken only 5 – not 20 – of the prefabricated wood walls.
16 Moreover, the Bankruptcy Court finds and concludes that Defendants acted with malice
17 in filing the lien because Plaintiff did not take any of Defendants' lumber as the five wood
18 walls in Plaintiff's possession had belonged to Eric Radley by purchase, which he gave to
19 Plaintiff.

20 339. The Bankruptcy Court finds and concludes that the preponderance of the
21 evidence shows that Defendants' filing of the Lien was with malice based on ill will
22 because (i) Defendants through Curtis used the Lien as an improper prejudgment remedy
23 for a tort claim against Plaintiff in the amount of \$40,000 for the value of the lumber
24 based on cost as represented in the Lien when the lumber cost at most \$1,000, and
25 Defendants knew through Curtis, with her legal knowledge and experience as a former
26 lawyer, that the illegitimate Lien would put Plaintiff in the impossible position of paying a
27 baseless claim of \$40,000 or otherwise force Plaintiff to hire attorneys and incur
28 thousands of dollars of attorneys' fees to remove the Lien; (ii) Defendants through Curtis

1 continued to prosecute the illegitimate Lien claim against Eric Radley, Barrington Radley,
2 McArn, and McArn's four children in state court after Plaintiff filed for bankruptcy and was
3 represented by counsel; and (iii) Defendants through Curtis continued to perpetuate the
4 falsities of the Lien in the bankruptcy case in filing an objection to Plaintiff's refinancing
5 motion and demanding that \$40,000 and more for Defendants' alleged attorneys' fees be
6 set aside to pay Defendants from the bankruptcy estate on account of the Lien.

7 340. The Bankruptcy Court finds and concludes that the preponderance of the
8 evidence shows that ultimately, Defendants' improper and unjustified filing of the Lien
9 caused damages to Plaintiff by forcing Plaintiff to hire attorneys and incur reasonable and
10 necessary attorneys' fees and costs, in an amount of \$99,217.00 to defend against the
11 false Lien and clear it from title, which was reasonable and appropriate under the
12 circumstances based on Defendants' conduct through this litigation.

13 341. The Bankruptcy Court finds and concludes that the preponderance of the
14 evidence shows that Plaintiff did not fail to mitigate its damages as discussed above.

15 **H. Plaintiff's Second Cause of Action (Disallowance of Claim)**

16 342. In previously granting partial summary adjudication in favor of Plaintiff on its
17 Second Cause of Action (Disallowance of Claim), there is no need for further adjudication
18 by the Bankruptcy Court on this cause of action. The Bankruptcy Court has determined
19 that it has authority to enter a final judgment on the second cause of action and is
20 entering a final judgment on this claim concurrently herewith as it expressly determines
21 that there is no just reason for delay in entering a final judgment on the claim pursuant to
22 Federal Rule of Civil Procedure 54(b), made applicable to this adversary proceeding by
23 Federal Rule of Bankruptcy Procedure 7054.

24 **I. Plaintiff's Third Cause of Action (Avoidance of Lien)**

25 343. Because the Bankruptcy Court modified and vacated its prior ruling granting
26 partial summary adjudication in favor of Plaintiff on its Third Cause of Action (Avoidance
27 of Lien), this cause of action remains to be adjudicated.

28 344. Plaintiff in its Amended Complaint [Adversary Docket No. 44] alleges that

1 pursuant to Federal Rule of Bankruptcy Procedure 7001, the Bankruptcy Court should
2 void Defendants' purported mechanic's lien because: (1) Defendants did not advance any
3 funds, product or services on account of the alleged obligation owed by Plaintiff in
4 exchange for the lien; (2) no amount is owing to Defendants on account of the alleged
5 obligation owed by Plaintiff; and (3) Defendants' claims based on the alleged obligation
6 and lien are unenforceable.

7 345. Based on the evidence supporting the above proposed findings of fact and
8 conclusions of law on Plaintiff's first cause of action for slander of title, the Bankruptcy
9 Court determines that Plaintiff has shown by a preponderance of the evidence that
10 Defendants' purported mechanic's lien should be avoided because they did not advance
11 any funds, product or service to support the alleged obligation in exchange for the lien,
12 that no amount is owing by Plaintiff to Defendants on account of the alleged obligation
13 and that Defendants' claims based on the alleged obligation and lien are unenforceable
14 as there is no such obligation as alleged.

15 346. However, the Bankruptcy Court's determination of Plaintiff's Third Cause of
16 Action (Avoidance of Lien) is dependent on its above proposed findings of fact and
17 conclusions of law on Plaintiff's First Cause of Action (Slander of Title), which are subject
18 to de novo review by the United States District Court.

19 347. In the interests of comity and consistency, the Bankruptcy Court's
20 determination of Plaintiff's Third Cause of Action (Avoidance of Lien) is subject to the
21 approval of the proposed findings of fact and conclusions of law on Plaintiff's First Cause
22 of Action (Slander of Title) by the United States District Court. Given the amount in
23 controversy, and the factual nature of the primary litigation dispute between the parties,
24 the ultimate determination of this litigation should be made by the United States District
25 Court.

26 **J. Plaintiff's Fourth Cause of Action (Declaratory Relief) as to Claim**
27 **Disallowance**

28 348. In previously granting partial summary adjudication in favor of Plaintiff on its
Fourth Cause of Action (Declaratory Relief) as to Disallowance of Claim, there is no need

1 for further adjudication by the Bankruptcy Court on this cause of action. The Bankruptcy
2 Court has determined that it has authority to enter a final judgment on the second cause
3 of action and is entering a final judgment on this claim concurrently herewith as it
4 expressly determines that there is no just reason for delay in entering a final judgment on
5 the claim pursuant to Federal Rule of Civil Procedure 54(b), made applicable to this
6 adversary proceeding by Federal Rule of Bankruptcy Procedure 7054.

7 **K. Plaintiff's Fourth Cause of Action (Declaratory Relief) as to Avoidance**
8 **of Lien**

9 349. Because the Bankruptcy Court modified and vacated its prior ruling granting
10 partial summary adjudication in favor of Plaintiff on its Fourth Cause of Action
11 (Declaratory Relief) as to Avoidance of Lien, this cause of action remains to be
12 adjudicated.

13 350. Plaintiff in its Amended Complaint [Adversary Docket No. 44] alleges that
14 pursuant to Federal Rule of Bankruptcy Procedure 7001, the Bankruptcy Court should
15 void Defendants' purported mechanic's lien because: (1) Defendants did not advance any
16 funds, product or services on account of the alleged obligation owed by Plaintiff in
17 exchange for the lien; (2) no amount is owing to Defendants on account of the alleged
18 obligation owed by Plaintiff; and (3) Defendants' claims based on the alleged obligation
19 and lien are unenforceable and grant declaratory relief for avoidance of the lien.

20 351. Based on the evidence supporting the above proposed findings of fact and
21 conclusions of law on Plaintiff's first cause of action for slander of title, the Bankruptcy
22 Court determines that Plaintiff has shown by a preponderance of the evidence that
23 Defendants' purported mechanic's lien should be avoided because they did not advance
24 any funds, product or service to support the alleged obligation in exchange for the lien,
25 that no amount is owing by Plaintiff to Defendants on account of the alleged obligation
26 and that Defendants' claims based on the alleged obligation and lien are unenforceable
27 as there is no such obligation as alleged, and declaratory relief to avoid the lien should be
28 granted.

352. However, the Bankruptcy Court's determination of Plaintiff's Fourth Cause

1 of Action (Declaratory Relief) as to Avoidance of Lien is dependent on its above proposed
2 findings of fact and conclusions of law on Plaintiff's First Cause of Action (Slander of
3 Title), which are subject to de novo review by the United States District Court.

4 353. In the interests of comity and consistency, the Bankruptcy Court's
5 determination of Plaintiff's Fourth Cause of Action (Declaratory Relief) as to Avoidance of
6 Lien is subject to the approval of the proposed findings of fact and conclusions of law on
7 Plaintiff's First Cause of Action (Slander of Title) by the United States District Court

8 **V. FURTHER PROCEEDINGS**

9 354. Although the Bankruptcy Court has authority to enter a final judgment on
10 Second, Third and Fourth Causes of Action, the Bankruptcy Court will only enter a final
11 judgment on Plaintiff's Second Cause of Action and its Fourth Cause of Action as to
12 Disallowance of Claim only.

13 355. As to Plaintiff's remaining causes of action, the Bankruptcy Court issues the
14 above proposed findings of fact and conclusions of law for de novo review by the United
15 States District Court. Based on the above proposed findings of fact and conclusions of
16 law, the Bankruptcy Court respectfully recommends that the District Court approve and
17 adopt the above proposed findings of fact and conclusions of law and enter a final
18 judgment in favor of Plaintiff on its First Cause of Action (Slander of Title), Third Cause of
19 Action (Avoidance of Lien) and Fourth Cause of Action (Declaratory Relief) as to
20 Avoidance of Lien.

21 356. Pursuant to Federal Rule of Bankruptcy Procedure 9033(a), "[i]n a
22 proceeding in which the bankruptcy court has issued proposed findings of fact and
23 conclusions of law, the clerk shall serve forthwith copies on all parties by mail and note
24 the date of mailing on the docket." (The references to the "clerk" in Rule 9033 are to the
25 "bankruptcy clerk," or the clerk of the Bankruptcy Court, pursuant to Federal Rule of
26 Bankruptcy Procedure 9001(3).)

27 357. Pursuant to Federal Rule of Bankruptcy Procedure 9033(b), within 14 days
28 after being served with a copy of the Bankruptcy Court's proposed findings of fact and

1 conclusions of law, a party may serve and file with the clerk of the court written objections
2 which identify the specific findings or conclusions objected to and state the grounds for
3 each objection, and a party may respond to another party's objections within 14 days
4 after being served with a copy thereof. Also, pursuant to Federal Rule of Bankruptcy
5 Procedure 9033(b), a party objecting to the Bankruptcy Judge's proposed findings or
6 conclusions shall arrange promptly for the transcription of the record, or such portions of
7 it as all parties may agree upon or the bankruptcy judge deems sufficient, unless the
8 district judge otherwise directs.

9 358. Failure to file objections within the specified time may waive the right to
10 object to these proposed findings of fact and recommended conclusions of law. Federal
11 Rule of Bankruptcy Procedure 9033; *In re Delano Retail Partners, LLC*, No. 11-37711-B-
12 7, Adv. No. 13-2250-B, 2014 WL 4966476, slip op. at *13 (Bankr. E.D. Cal. Sept. 29,
13 2014), *citing*, *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir.1998) and *Martinez v. Ylst*,
14 951 F.2d 1153 (9th Cir.1991).

15 359. Pursuant to Federal Rule of Bankruptcy Procedure 9033(c), the Bankruptcy
16 Judge may for cause extend the time for filing objections by any party not to exceed 21
17 days from the expiration of the time otherwise prescribed by Rule 9033. A request to
18 extend the time for filing objections must be made before the time for filing objections has
19 expired, except that a request made no more than 21 days after the expiration of time for
20 filing objections may be granted upon a showing of excusable neglect.

21 360. The Bankruptcy Judge will review the objections and responses thereto to
22 these proposed findings of fact and conclusions of law, and may amend the proposed
23 findings of fact and conclusions of law and submit them to the United States District
24 Court, or may submit the original proposed findings of fact and conclusions of law to the
25 United States District Court. In this regard, the Bankruptcy Court will apply the
26 procedures of Local Civil Rule L.R. 72-3 of the United States District Court for the Central
27 District of California applicable to reports and recommendations of the United States
28 Magistrate Judges to its proposed findings of fact and conclusions of law issued pursuant

1 to Federal Rule of Bankruptcy Procedure 9033.

2 361. Pursuant to Federal Rule of Bankruptcy Procedure 9033(d), the District
3 Judge shall make a de novo review upon the record or, after additional evidence, of any
4 portion of the Bankruptcy Judge's findings of fact or conclusions of law to which specific
5 written objections has been made in accordance with Rule 9033, and the District Judge
6 may accept, reject or modify the proposed findings of fact or conclusions of law, receive
7 further evidence or recommit the matter to the Bankruptcy Judge with instructions.

8 IT IS SO ORDERED.

9 ###

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Date: September 26, 2023



Robert Kwan
United States Bankruptcy Judge

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 1

ATTACHMENT – PRELIMINARY RULINGS ON ATTORNEYS’ FEES

Exhibit 1 to Findings and Conclusions

Part "A" - January 23, 2018, to November 5, 2019

CHARGE DATE	WORK CODE DESCRIPTION	DESCRIPTION	LAWYER'S INITIALS	HOURS WORKED	AMOUNT CHARGED	LAWYER'S RATE	Court Ruling	AMOUNT ALLOWED
01/23/2018	ANALYSIS OF	lawsuit filed by Greta Curtis	jpf	0.2	113	565		113
01/25/2018	PREPARATION OF	notice of stay against Greta Curtis lawsuit	jpf	0.3	169.5	565		169.5
01/25/2018	PREPARATION OF	notice of stay against Acon lawsuit	jpf	0.2	113	565	Waived 6/29/22 Hr Tr 58:16	0
01/25/2018	PREPARATION OF	stay violation letter to Greta Curtis	jpf	0.3	169.5	565		169.5
01/25/2018	ANALYSIS OF	decision and order to disbar Greta Curtis for information in motion to avoid lien	jpf	0.7	395.5	565		395.5
02/13/2018	ANALYSIS OF	article re: fraud by a church pastor and Greta Curtis	jpf	0.1	56.5	565		56.5
02/14/2018	TELEPHONE CONFERENCE WITH	Bill Tanner re: prepetition litigation	jpf	0.3	169.5	565	6/29/22 Hr Tr 68:21	84.75
03/21/2018	TELEPHONE CONFERENCE WITH	client re: Greta Curtis issues	jpf	0.1	56.5	565		56.5
05/07/2018	PREPARATION OF	complaint against Greta Curtis and Ammec Inc.	jpf	0.3	169.5	565		169.5
06/11/2018	PREPARATION OF	request for default judgment against Ammec Inc. in lien avoidance lawsuit	jpf	0.2	113	565		113
06/11/2018	PREPARATION OF	request for default judgment against	jpf	0.2	113	565		113

		Ammec Inc. in lien avoidance lawsuit						
06/12/2018	PREPARATION OF	opposition to motion to dismiss complaint against Greta Curtis	jpf	0.2	113	565		113
06/12/2018	PREPARATION OF	opposition to Greta Curtis motion to dismiss for lack of personal jurisdiction	jpf	5.1	2881.5	565		2881.5
06/13/2018	ANALYSIS OF	Clerk's notice of entered default	jpf	0.1	56.5	565		56.5
06/13/2018	PREPARATION OF	opposition to Curtis motion to dismiss adversary proceeding	jpf	0.3	169.5	565		169.5
06/18/2018	TELEPHONE CONFERENCE WITH	Greta Curtis re: default entered against Ammec, Inc.	jpf	0.1	56.5	565		56.5
06/20/2018	ANALYSIS OF	amended notice of motion from Greta Curtis	jpf	0.1	56.5	565		56.5
06/21/2018	PREPARATION OF	opposition to motion to dismiss by Greta Curtis	jpf	1.3	734.5	565		734.5
06/21/2018	PREPARATION OF	opposition to motion to dismiss by Greta Curtis	jpf	0.9	508.5	565		508.5
06/22/2018	PREPARATION OF	opposition to motion to dismiss Greta Curtis complaint	jpf	0.5	282.5	565		282.5
06/22/2018	ANALYSIS OF	voluminous state court litigation record involving Greta Curtis as plaintiff or defendant	jpf	4.7	2655.5	565		2655.5

06/25/2018	ANALYSIS OF	motion to excise default against Ammec	jpf	0.8	452	565		452
06/25/2018	PREPARATION OF	joint status report in adversary proceeding against Curtis and Ammec	jpf	0.4	226	565		226
07/02/2018	PREPARATION OF	opposition to Ammec motion to dismiss complaint for lack of personal jurisdiction	jpf	5.4	3051	565		3051
07/03/2018	PREPARATION OF	opposition to motion to dismiss complaint for lack of personal jurisdiction for Ammec	jpf	2.2	1243	565		1243
07/03/2018	PREPARATION OF	opposition to motion to dismiss complaint for lack of personal jurisdiction for Ammec	jpf	1.8	1017	565		1017
07/03/2018	PREPARATION OF	opposition to motion to dismiss complaint for lack of personal jurisdiction for Curtis	jpf	1.9	1073.5	565		1073.5
07/03/2018	PREPARATION OF	opposition to motion to dismiss complaint for lack of personal jurisdiction for Ammec and Curtis with exhibits	jpf	0.4	226	565		226
07/12/2018	TELEPHONE CONFERENCE W/ CLIENT	re: lawsuit with Greta and evidentiary objections	jpf	0.6	339	565		339

07/12/2018	ANALYSIS OF	litigation pleadings received from Greta Curtis and Ammec's counsel on mechanic lien lawsuit	jpf	0.2	113	565		113
07/16/2018	PREPARATION FOR HEARING	motions to dismiss for lack of personal jurisdiction in Ammec/Curtis case	jpf	0.6	339	565		339
07/16/2018	ANALYSIS OF	possible personal service on Curtis and Ammec	jpf	0.6	339	565		339
07/16/2018	ANALYSIS OF	amended and updated service list for alias summons of complaint on Curtis and Ammec	jpf	0.1	56.5	565		56.5
07/16/2018	TELEPHONE CONFERENCE W/ CLIENT	re: service of summons on Curtis and Ammec	jpf	0.1	56.5	565		56.5
07/17/2018	EMAIL EXCHANGE WITH	Jason Suh re: Ammec/Curtis hearing	jpf	0.1	56.5	565	6/29/22 Hr Tr 98:10	0
07/17/2018	PREPARATION FOR HEARING	on Ammec/Curtis motions to dismiss	jpf	0.2	113	565		113
07/17/2018	APPEARANCE AT HEARING	motion to dismiss the complaints on service on Greta Curtis and Ammec, and adversary proceeding status conference	jpf	3.6	2034	565		2034
07/17/2018	PREPARATION OF CORRESPONDENCE	to client re: results of hearing on Ammec/Curtis adversary proceeding matters	jpf	0.1	56.5	565		56.5

07/18/2018	ANALYSIS OF	possible service list addresses for Greta Curtis	jpf	0.7	395.5	565		395.5
07/19/2018	PREPARATION OF	service of Curtis/Ammec complaint	jpf	0.1	56.5	565		56.5
07/19/2018	ANALYSIS OF	service issues for complaint on Curtis and Ammec	jpf	0.4	226	565		226
07/19/2018	PREPARATION OF	proposed order on Ammec's motion to dismiss complaint	jpf	0.4	226	565		226
07/19/2018	PREPARATION OF	proposed order on Curtis' motion to dismiss complaint	jpf	0.3	169.5	565		169.5
07/20/2018	TELEPHONE CONFERENCE WITH	John Barriage re: proposed orders on motions to dismiss complaint	jpf	0.1	56.5	565		56.5
07/23/2018	TELEPHONE CONFERENCE WITH	John Barriage re: email address for sending proposed orders on motions to dismiss	jpf	0.1	56.5	565		56.5
07/23/2018	PREPARATION OF CORRESPONDENCE	to John Barriage re: proposed orders on motions to dismiss	jpf	0.1	56.5	565		56.5
07/23/2018	EMAIL EXCHANGE WITH	John Barriage re: proposed orders on motions to dismiss	jpf	0.1	56.5	565		56.5
07/23/2018	PREPARATION OF	proposed orders on motions to dismiss	jpf	0.1	56.5	565		56.5
07/23/2018	TELEPHONE CONFERENCE W/ CLIENT	re: Ammec mechanic lien and lawsuit	jpf	0.1	56.5	565		56.5
07/24/2018	PREPARATION OF	withdrawal of request for default judgment	jpf	0.4	226	565	6/29/22 Hr Tr 110:7	0

08/22/2018	ANALYSIS OF	motion to dismiss	jpf	0.2	113	565		113
09/27/2018	ANALYSIS OF	state court mechanic lien lawsuit by Greta Curtis for possible	jpf	0.4	226	565	6/29/22 Hr Tr 117:15	0
09/27/2018	TELEPHONE CONFERENCE W/ CLIENT	re: state court lawsuit by Greta Curtis and hearing on default	jpf	0.1	56.5	565	6/29/22 Hr Tr 117:25	0
10/02/2018	TELEPHONE CONFERENCE W/ CLIENT	re: Greta Curtis lien litigation	jpf	0.3	169.5	565		169.5
10/02/2018	ANALYSIS OF	filed opposition to Curtis and Ammec motion to dismiss complaint	jpf	0.2	113	565		113
10/30/2018	ANALYSIS OF	court's signed orders on Ammec's and Curtis' motions to dismiss adversary proceeding complaint	jpf	0.2	113	565		113
11/19/2018	PREPARATION OF	motion to dismiss cross-claim of Greta Curtis	jpf	0.2	113	565		113
11/19/2018	PREPARATION OF	motion to dismiss Curtis' cross-complaint	jpf	2.2	1243	565		1243
11/20/2018	TELEPHONE CONFERENCE W/ CLIENT	motion to dismiss Curtis' counterclaims	jpf	0.1	56.5	565		56.5
11/20/2018	TELEPHONE CONF. W/ COURT STAFF	re: hearing date on motion to dismiss Curtis Cross-claim	jpf	0.1	56.5	565		56.5
11/20/2018	PREPARATION OF	request for judicial notice in support of motion to dismiss Curtis Cross-claim	jpf	0.4	226	565		226

11/20/2018	PREPARATION OF	motion to dismiss Curtis Cross-claim	jpf	0.4	226	565		226
11/28/2018	PREPARATION OF	limited reply to Curtis opposition on motion to dismiss cross-complaint	jpf	1.1	621.5	565		621.5
12/03/2018	ANALYSIS OF	Labor Commission letter and action against debtor	jpf	0.1	56.5	565		56.5
12/03/2018	TELEPHONE CONFERENCE WITH	to Labor Commissioner letter and action against debtor and possible stay violation	jpf	0.1	56.5	565		56.5
12/03/2018	TELEPHONE CONFERENCE WITH	to Labor Commissioner letter and action against debtor and possible stay violation	jpf	0.1	56.5	565		56.5
12/04/2018	TELEPHONE CONFERENCE W/ CLIENT	re: court's voluntary dismissal of state court lawsuit by Greta Curtis	jpf	0.1	56.5	565		56.5
12/04/2018	TELEPHONE CONFERENCE WITH	Labor Commission re: lawsuit against Debtor	jpf	0.2	113	565		113
12/04/2018	PREPARATION OF CORRESPONDENCE	to client re: Labor Commission lawsuit against Debtor	jpf	0.1	56.5	565		56.5
12/04/2018	ANALYSIS OF CORRESPONDENCE	from Greta Curtis re: offer to voluntarily dismiss counter-claim in bankruptcy	jpf	0.1	56.5	565		56.5
12/04/2018	PREPARATION OF	stipulation to voluntarily dismiss Curtis cross-complaint	jpf	0.7	395.5	565		395.5

12/04/2018	PREPARATION OF CORRESPONDENCE	to Curtis re: stipulation to voluntarily dismiss Curtis cross-complaint	jpf	0.1	56.5	565		56.5
12/04/2018	TELEPHONE CONFERENCE W/ CLIENT	re: stipulation to voluntarily dismiss Curtis cross-complaint	jpf	0.2	113	565		113
12/04/2018	PREPARATION OF	proposed order granting stipulation to voluntarily dismiss Curtis cross-complaint	jpf	0.2	113	565		113
12/04/2018	PREPARATION OF	notice of voluntary withdrawal of motion to dismiss Curtis cross-complaint	jpf	0.2	113	565		113
12/04/2018	TELEPHONE CONF. W/ COURT STAFF	re: notice of voluntary withdrawal of motion to dismiss Curtis cross-complaint	jpf	0.1	56.5	565		56.5
12/04/2018	PREPARATION OF CORRESPONDENCE	to Labor Commissioner re: stay violation	jpf	0.5	282.5	565		282.5
12/05/2018	TELEPHONE CONFERENCE W/ CLIENT	re: Curtis motion to dismiss counterclaim	jpf	0.1	56.5	565		56.5
12/05/2018	PREPARATION OF CORRESPONDENCE	to Labor Commission re: potential stay violation	jpf	0.1	56.5	565		56.5
12/05/2018	TELEPHONE CONFERENCE WITH	Labor Commissioner re: stay violation	jpf	0.1	56.5	565		56.5
12/05/2018	PREPARATION OF CORRESPONDENCE	to Labor Commissioner re:	jpf	0.1	56.5	565		56.5

		stay violation						
12/07/2018	ANALYSIS OF	Labor Commission lawsuit filed by Greta Curtis	jpf	0.1	56.5	565		56.5
12/10/2018	TELEPHONE CONFERENCE W/ CLIENT	Curtis stay violation with labor board	jpf	0.1	56.5	565		56.5
12/10/2018	TELEPHONE CONFERENCE WITH	Labor commissioner re: stay violation; email to labor commission re: same	jpf	0.1	56.5	565		56.5
12/19/2018	PREPARATION OF	discovery interrogatories to Greta Curtis	jpf	0.8	452	565		452
01/09/2019	PREPARATION OF	joint status report for Curtis adversary proceeding	jpf	0.6	348	580		348
01/09/2019	PREPARATION OF	initial disclosures for discovery under Rule 26 for Curtis litigation	jpf	0.6	348	580		348
01/10/2019	PREPARATION OF CORRESPONDENCE	to client re: initial disclosures under Rule 26 in lawsuit against Curtis on mechanic's lien	jpf	0.1	58	580		58
01/10/2019	PREPARATION OF	Rule 26 meet and confer letter to Curtis and Ammec	jpf	0.3	174	580		174
01/10/2019	PREPARATION OF	initial disclosures for Curtis and Ammec lawsuit	jpf	0.2	116	580		116
01/10/2019	PREPARATION OF	initial disclosures and meet and confer letter to Curtis and Ammec	jpf	1.4	812	580		812

01/14/2019	ANALYSIS OF	joint status report completed by Greta Curtis	jpf	0.1	58	580		58
01/14/2019	ANALYSIS OF	Rule 26 disclosures from Greta Curtis	jpf	0.1	58	580		58
01/14/2019	PREPARATION OF	special interrogatories to Curtis and Ammec	jpf	1.2	696	580		696
01/15/2019	TELEPHONE CONFERENCE W/ CLIENT	joint status report and litigation strategy against Greta Curtis on fraudulent mechanic's lien	jpf	0.7	406	580		406
01/28/2019	PREPARATION FOR HEARING	on Curtis and Ammec status conference	jpf	0.4	232	580		232
01/29/2019	APPEARANCE AT HEARING	on Curtis adversary proceeding status conference	jpf	2.9	1682	580		1682
02/01/2019	ANALYSIS OF	signed scheduling order on Curtis adversary proceeding	jpf	0.1	58	580		58
02/01/2019	ANALYSIS OF	order to show cause why Curtis and Ammec should not be sanctioned	jpf	0.1	58	580		58
02/07/2019	PREPARATION OF CORRESPONDENCE	to client re: update on court's order to show cause and scheduling order in lawsuit against Curtis and Ammec	jpf	0.1	58	580		58
02/13/2019	PREPARATION OF	discovery requests to Ammec and Curtis	jpf	3.3	1914	580		1914
02/13/2019	PREPARATION OF	discovery requests to Ammec and Curtis	jpf	0.4	232	580		232

02/14/2019	PREPARATION OF	requests for admission to Curtis	jpf	0.5	290	580		290
02/15/2019	PREPARATION OF	requests for admissions in Curtis litigation	jpf	0.9	522	580		522
02/15/2019	PREPARATION OF	requests for production of documents in Curtis litigation	jpf	0.2	116	580		116
02/15/2019	PREPARATION OF	special interrogatories in Curtis litigation	jpf	1	580	580		580
02/15/2019	PREPARATION OF	notice of subpoena to Ammec as FRCP 30(b)(6) witness	jpf	0.4	232	580		232
02/18/2019	PREPARATION OF	discovery requests to Curtis in adversary proceeding litigation	jpf	1.1	638	580		638
02/19/2019	TELEPHONE CONFERENCE W/ CLIENT	re: Curtis litigation and discovery	jpf	0.4	232	580		232
02/19/2019	PREPARATION OF	discovery in Curtis lawsuit	jpf	1.7	986	580		986
02/19/2019	PREPARATION OF	discovery to Ammec in Curtis Lawsuit	jpf	0.8	464	580		464
03/06/2019	ANALYSIS OF	Curtis opposition to order to show cause for sanctions	jpf	0.1	58	580		58
03/06/2019	ANALYSIS OF	motion for summary judgment filed by Greta Curtis	jpf	0.5	290	580		290
03/06/2019	ANALYSIS OF	case law re: lien pass through without proof of claim for Greta Curtis motion for summary judgment	jpf	1.6	928	580		928

03/11/2019	ANALYSIS OF	case law re: lien pass through for preparation of opposition to Curtis' motion for summary judgment	jpf	2.3	1334	580		1334
03/12/2019	PREPARATION OF	opposition to motion for summary judgment	jpf	1.7	986	580		986
03/14/2019	ANALYSIS OF	case law on lien and proof of claim issue for opposition to Curtis' motion for summary judgment	jpf	0.8	464	580		464
03/14/2019	PREPARATION OF	opposition to Curtis' motion for summary judgment	jpf	0.9	522	580		522
03/14/2019	PREPARATION OF	opposition to Curtis' motion for summary judgment	jpf	2.4	1392	580		1392
03/20/2019	PREPARATION FOR MEETING	on deposition of Curtis and Ammec	jpf	0.2	116	580		116
03/20/2019	TELEPHONE CONFERENCE WITH	Greta Curtis re: deposition	jpf	0.1	58	580		58
03/20/2019	TELEPHONE CONFERENCE WITH	Greta Curtis and John Barriage re: deposition schedule	jpf	0.2	116	580		116
03/20/2019	PREPARATION OF	amended deposition notices for rescheduled depositions	jpf	0.4	232	580		232
03/20/2019	PREPARATION OF CORRESPONDENCE	to Greta Curtis and John Barriage re: deposition schedule	jpf	0.2	116	580		116
03/22/2019	ANALYSIS OF CORRESPONDENCE	from Curtis re: refusal to appear at deposition	jpf	0.1	58	580		58

03/22/2019	PREPARATION OF CORRESPONDENCE	to Curtis re: refusal to appear at deposition	jpf	1.6	928	580		928
03/22/2019	PREPARATION FOR DEPOSITION	of Greta Curtis	jpf	0.4	232	580		232
03/24/2019	PREPARATION FOR DEPOSITION	of Greta Curtis	jpf	3.8	2204	580		2204
03/25/2019	PREPARATION FOR DEPOSITION	for Greta Curtis and Ammec Inc.	jpf	1.3	754	580		754
03/25/2019	APPEARANCE AT	deposition of Greta Curtis	jpf	3.2	1856	580		1856
03/25/2019	PREPARATION FOR DEPOSITION	for Ammec Inc.	jpf	0.4	232	580		232
03/25/2019	APPEARANCE AT	deposition of Ammec Inc.	jpf	1.4	812	580		812
03/25/2019	TELEPHONE CONFERENCE W/ CLIENT	re: results of deposition for Ammec Inc. and Greta Curtis	jpf	0.1	58	580		58
03/26/2019	PREPARATION OF	opposition to Curtis' motion for summary judgment	jpf	4.2	2436	580		2436
03/26/2019	PREPARATION OF	opposition to Curtis' motion for summary judgment	jpf	0.7	406	580		406
03/27/2019	PREPARATION OF	opposition to Curtis motion for summary judgment	jpf	0.9	522	580		522
03/27/2019	PREPARATION OF	opposition to Curtis motion for summary judgment	jpf	2.1	1218	580		1218
03/27/2019	ANALYSIS OF	Curtis' responses to discovery	jpf	0.3	174	580		174
03/27/2019	ANALYSIS OF	Curtis litigation history	jpf	0.7	406	580		406
03/29/2019	PREPARATION OF	discovery to third parties in Curtis lawsuit	jpf	1.1	638	580		638

03/29/2019	TELEPHONE CONFERENCE W/ CLIENT	re: information and witnesses on Curtis lawsuit	jpf	0.6	348	580		348
04/01/2019	PREPARATION OF	discovery to Habitat for Humanity on Curtis lawsuit	jpf	0.2	116	580		116
04/01/2019	TELEPHONE CONFERENCE WITH	Habitat for Humanity re: subpoena of records and persons	jpf	0.3	174	580		174
04/01/2019	PREPARATION OF	subpoena to Habitat for Humanity	jpf	0.3	174	580		174
04/03/2019	PREPARATION OF	declaration in support of opposition to Curtis' motion for summary judgment	jpf	1.2	696	580		696
04/03/2019	PREPARATION OF	opposition to Curtis' motion for summary judgment	jpf	4.8	2784	580		2784
04/04/2019	PREPARATION OF CORRESPONDENCE	to client opposition to Curtis' motion for summary judgment	jpf	0.2	116	580		116
04/04/2019	PREPARATION OF	deposition subpoena to Habitat for Humanity employees	jpf	0.3	174	580		174
04/04/2019	PREPARATION OF	notice of deposition to Ammec's officer Carlos Montenegro	jpf	0.1	58	580		58
04/04/2019	PREPARATION OF	opposition to Curtis' motion for summary judgment	jpf	0.3	174	580		174
04/04/2019	TELEPHONE CONFERENCE W/ CLIENT	re: declarations in support of opposition to summary judgment	jpf	0.1	58	580		58

04/04/2019	PREPARATION OF	opposition to Curtis' motion for summary judgment	jpf	5.1	2958	580		2958
04/05/2019	PREPARATION OF	discovery to Habitat for Humanity and Ammec	jpf	2.1	1218	580		1218
04/05/2019	PREPARATION OF	evidentiary objections to Curtis declaration on summary judgment	jpf	1.4	812	580		812
04/05/2019	PREPARATION OF	opposition to motion for summary judgment	jpf	1.6	928	580		928
04/08/2019	PREPARATION OF	opposition to summary judgment	jpf	1.1	638	580		638
04/08/2019	PREPARATION OF	opposition to summary judgment	jpf	3.3	1914	580		1914
04/08/2019	TELEPHONE CONFERENCE W/ CLIENT	re: declarations in support of motion for summary judgment	jpf	0.1	58	580		58
04/08/2019	PREPARATION OF	opposition to motion for summary judgment	jpf	1.1	638	580		638
04/08/2019	PREPARATION OF	opposition to motion for summary judgment	jpf	0.3	174	580		174
04/09/2019	PREPARATION OF CORRESPONDENCE	to Greta Curtis and John Barriage re: courtesy copies of opposition to motion for summary judgment	jpf	0.4	232	580		232
04/10/2019	ANALYSIS OF	deposition transcripts of Curtis and Ammec	jpf	0.2	116	580		116
04/10/2019	TELEPHONE CONFERENCE W/	re: deposition transcripts of Curtis	jpf	0.2	116	580		116

	CLIENT	and Ammec						
04/12/2019	PREPARATION OF	depositions of Ammec and Habitat for Humanity	jpf	0.2	116	580		116
04/15/2019	ANALYSIS OF	discovery objection from Carlos Montenegro	jpf	0.1	58	580		58
04/15/2019	ANALYSIS OF	document production request from Greta Curtis	jpf	0.1	58	580		58
04/16/2019	ANALYSIS OF	discovery responses and propounded discovery from Greta Curtis	jpf	0.5	290	580		290
04/16/2019	PREPARATION OF CORRESPONDENCE	to client re: Greta Curtis discovery requests	jpf	0.1	58	580		58
04/16/2019	TELEPHONE CONFERENCE WITH	Eric Radley re: Habitat for Humanity and Greta dispute	jpf	0.1	58	580		58
04/16/2019	PREPARATION OF	meet and confer letter to Ammec to compel Montenegro's deposition attendance	jpf	2.4	1392	580		1392
04/17/2019	PREPARATION OF	discovery meet and confer letter to Curtis and Ammec	jpf	0.6	348	580		348
04/17/2019	PREPARATION FOR DEPOSITION	of Carlos Montenegro and Ammec's person most knowledgeable	jpf	1.7	986	580		986
04/17/2019	ANALYSIS OF	email from Ammec's counsel re: discovery dispute	jpf	0.2	116	580		116
04/17/2019	PREPARATION OF CORRESPONDENCE	to Ammec's counsel re: discovery dispute	jpf	0.8	464	580		464

04/17/2019	ANALYSIS OF CORRESPONDENCE	from Greta Curtis re: discovery dispute	jpf	0.1	58	580		58
04/18/2019	PREPARATION FOR DEPOSITION	of Carlos Montenegro	jpf	0.2	116	580		116
04/18/2019	TELEPHONE CONFERENCE WITH	Eric Radley re: Greta Curtis and litigation	jpf	0.2	116	580		116
04/18/2019	ANALYSIS OF	Curtis' reply in support of motion for summary judgment	jpf	0.4	232	580		232
04/18/2019	ANALYSIS OF	ancillary supporting documents for Curtis' reply in support of motion for summary judgment	jpf	0.3	174	580		174
04/18/2019	ANALYSIS OF	evidentiary objections in support of Curtis' reply on motion for summary judgment	jpf	0.2	116	580		116
04/18/2019	TELEPHONE CONFERENCE WITH	Habitat for Humanity re: witness depositions	jpf	0.2	116	580		116
04/18/2019	APPEARANCE AT	deposition of Greta Curtis as Person Most Knowledgeable of Ammec Inc.	jpf	1.2	696	580		696
04/18/2019		investigation into allegation by Curtis that she left receipt with office building staff	jpf	0.2	116	580		116
04/18/2019	ANALYSIS OF	Curtis' discovery requests to People Who Care	jpf	1.1	638	580		638

04/19/2019	PREPARATION OF CORRESPONDENCE	to Habitat for Humanity re: depositions	jpf	0.4	232	580		232
04/19/2019	PREPARATION OF	discovery responses to Greta Curtis	jpf	0.3	174	580		174
04/19/2019	TELEPHONE CONFERENCE W/ CLIENT	re: Curtis discovery	jpf	0.2	116	580		116
04/22/2019	PREPARATION OF	objections and response to Curtis' notice of deposition to Debtor	jpf	2.3	1334	580		1334
04/22/2019	PREPARATION OF	objections and response to Curtis' notice of deposition to Debtor	jpf	1.6	928	580		928
04/23/2019	PREPARATION OF	amended deposition notices for Habitat for Humanity	jpf	0.9	522	580		522
04/23/2019	PREPARATION OF	discovery responses and objections to Curtis' notice of deposition	jpf	0.7	406	580		406
04/24/2019	ANALYSIS OF	amended deposition notice from Greta Curtis	jpf	0.1	58	580		58
04/24/2019	PREPARATION OF CORRESPONDENCE	to client re: amended deposition notice from Greta Curtis	jpf	0.2	116	580		116
04/24/2019	TELEPHONE CONFERENCE W/ CLIENT	re: deposition scheduling	jpf	0.3	174	580		174
04/24/2019	PREPARATION OF CORRESPONDENCE	to Greta Curtis re: deposition of Debtor's person most knowledgeable	jpf	0.2	116	580		116

04/24/2019	PREPARATION OF	discovery responses to Greta Curtis	jpf	0.3	174	580		174
04/24/2019	PREPARATION OF	discovery responses to Curtis	jpf	0.3	174	580		174
04/24/2019	PREPARATION OF	discovery dispute declaration	jpf	1.4	812	580		812
04/25/2019	PREPARATION OF	discovery responses to Greta Curtis	jpf	0.2	116	580		116
04/25/2019	CONFERENCE WITH CLIENT	for deposition of Michelle McArn by Greta Curtis	jpf	0.7	406	580		406
04/25/2019	ANALYSIS OF	Court's order continuing hearing on motion for summary judgment	jpf	0.2	116	580		116
04/25/2019	TELEPHONE CONFERENCE WITH	client re: pictures for deposition	jpf	0.2	116	580		116
04/25/2019	PREPARATION FOR DEPOSITION	of Habitat for Humanity	jpf	0.4	232	580		232
04/26/2019	APPEARANCE AT	deposition of Habitat for Humanity in Curtis/Ammec litigation	jpf	5.3	3074	580		3074
04/26/2019	ANALYSIS OF	Greta Curtis application for ordre shortening time on motion to compel discovery	jpf	0.1	58	580		58
04/26/2019	ANALYSIS OF	court order denying Greta Curtis application for ordre shortening time on motion to compel discovery	jpf	0.1	58	580		58
04/29/2019	ANALYSIS OF	order and tentative ruling on motion for summary judgment	jpf	0.1	58	580		58

		hearing						
05/03/2019	ANALYSIS OF	discovery sanctions motion by Greta Curtis	jpf	0.2	116	580		116
05/03/2019	ANALYSIS OF	discovery sanctions motion by Greta Curtis	jpf	0.4	232	580		232
05/10/2019	PREPARATION OF	opposition to motion to compel discovery	jpf	3.1	1798	580		1798
05/11/2019	PREPARATION OF	opposition to Curtis motion to compel discovery	jpf	2.7	1566	580		1566
05/11/2019	PREPARATION OF	opposition to motion to compel discovery	jpf	2.9	1682	580		1682
05/12/2019	PREPARATION OF	opposition to motion to compel discovery	jpf	5.6	3248	580		3248
05/12/2019	PREPARATION OF	opposition to motion to compel discovery	jpf	1.1	638	580		638
05/13/2019	PREPARATION OF	opposition to motion to compel discovery	jpf	1.2	696	580		696
05/13/2019	PREPARATION OF	opposition to motion to compel discovery	jpf	3.7	2146	580		2146
05/13/2019	PREPARATION OF	Fritz declaration in support of opposition to motion to compel discovery	jpf	2.2	1276	580		1276
05/13/2019	PREPARATION OF	opposition to motion to compel discovery	jpf	3.4	1972	580		1972
05/14/2019	PREPARATION OF	evidentiary objections to Curtis	jpf	1.6	928	580		928

		Declaration on discovery sanctions						
05/14/2019	PREPARATION OF	opposition to Curtis' motion to compel discovery	jpf	1.4	812	580		812
05/14/2019	TELEPHONE CONFERENCE W/ CLIENT	regarding declaration in opposition to Curtis motion to compel	jpf	0.1	58	580		58
05/14/2019	PREPARATION OF	opposition to Curtis' motion to compel discovery	jpf	1.3	754	580		754
05/20/2019	ANALYSIS OF	revisions/corrections to deposition of Greta Curtis	jpf	0.1	58	580		58
05/20/2019	ANALYSIS OF	court order denying Curtis' motion to compel deposition	jpf	0.1	58	580		58
05/28/2019	ANALYSIS OF	Curtis and Ammec renewed motion for summary judgment	jpf	0.4	232	580		232
05/29/2019	ANALYSIS OF	deposition transcripts from Habitat for Humanity	jpf	0.2	116	580		116
06/03/2019	PREPARATION OF	opposition to motion for summary judgment	jpf	4.1	2378	580		2378
06/04/2019	PREPARATION OF	opposition papers for motion for summary judgment	jpf	0.8	464	580		464
06/09/2019	PREPARATION FOR HEARING	on motion for summary judgment by Curtis and Ammec	jpf	2.3	1334	580		1334
06/11/2019	APPEARANCE AT HEARING	on motion for summary judgment	jpf	3.1	1798	580		1798

07/11/2019	ANALYSIS OF	other litigation cases involving Greta Curtis	jpf	0.3	174	580		174
07/12/2019	ANALYSIS OF	mechanics' lien issues in Curtis litigation	jpf	1.2	696	580		696
07/16/2019	APPEARANCE AT HEARING	on motion for summary judgment	jpf	3.9	2262	580		2262
07/24/2019	PREPARATION OF	declaration in support of evidence for trial against Curtis and Ammec	jpf	0.6	348	580		348
07/30/2019	ANALYSIS OF	court's order granting and denying in part Curtis motion for summary judgment	jpf	0.1	58	580		58
08/14/2019	ANALYSIS OF	evidence, impeachment, and trial issues in evaluation of Curtis' settlement offer	jpf	1.3	754	580		754
08/20/2019	ANALYSIS OF	issues re: motion for summary judgment against Curtis on grounds of section 546(b)	jpf	0.3	174	580		174
08/20/2019	ANALYSIS OF	case re: 546(b) notice requirements on Curtis' lien	jpf	0.3	174	580		174
09/09/2019	PREPARATION OF	motion for summary judgment against Curtis	jpf	0.4	232	580		232
09/10/2019	PREPARATION OF	motion for summary judgment against Curtis	jpf	0.4	232	580		232
09/10/2019	PREPARATION OF	motion for summary judgment against	jpf	1.1	638	580		638

		Curtis						
09/10/2019	PREPARATION OF	proposed findings of fact and conclusions of law in support of MSJ against Curtis and Ammec	jpf	1.9	1102	580		1102
09/10/2019	PREPARATION OF	motion for summary judgment against Curtis	jpf	2.2	1276	580		1276
09/11/2019	PREPARATION OF	motion for summary judgment	jpf	0.9	522	580		522
09/12/2019	PREPARATION OF	motion for summary judgment against Curtis and Ammec	jpf	0.7	406	580		406
09/13/2019	PREPARATION OF	joint pretrial stipulation for Curtis lawsuit	jpf	2.3	1334	580		1334
09/16/2019	PREPARATION OF	pretrial joint stipulation for Curtis lawsuit	jpf	0.7	406	580		406
09/16/2019	PREPARATION OF	pretrial plaintiff witness list	jpf	0.1	58	580		58
09/16/2019	PREPARATION OF CORRESPONDENCE	to Curtis and Barriage re: joint pretrial stipulation and witness list	jpf	0.1	58	580		58
09/20/2019	PREPARATION OF	joint pretrial stipulation	jpf	2.4	1392	580		1392
09/20/2019	PREPARATION OF CORRESPONDENCE	to Curtis re: joint pretrial stipulation	jpf	0.6	348	580		348
09/23/2019	ANALYSIS OF	Curtis revisions to joint pretrial stipulation	jpf	0.2	116	580		116
09/23/2019	ANALYSIS OF	Curtis' witness list; preparation of email to Curtis re: same	jpf	0.1	58	580		58
09/23/2019	PREPARATION OF	joint pretrial stipulation	jpf	0.4	232	580		232

09/23/2019	PREPARATION OF CORRESPONDENCE	to Curtis and Barriage re: joint pretrial stipulation	jpf	0.1	58	580		58
09/24/2019	ANALYSIS OF	Curtis' witness list	jpf	0.1	58	580		58
09/24/2019	PREPARATION OF	joint pretrial stipulation with Curtis and Barriage	jpf	0.3	174	580		174
09/24/2019	PREPARATION OF CORRESPONDENCE	to Curtis and Barriage re: final version of joint pretrial stipulation for signatures	jpf	0.1	58	580		58
09/30/2019	ANALYSIS OF	discovery production text messages from Curtis	jpf	0.4	232	580		232
10/01/2019	PREPARATION FOR HEARING	on pretrial status conference	jpf	0.4	232	580		232
10/01/2019	APPEARANCE AT HEARING	on pretrial status conference	jpf	1.6	928	580		928
10/02/2019	PREPARATION OF	notice of continued hearing on pretrial conference	jpf	0.2	116	580		116
10/02/2019	PREPARATION OF CORRESPONDENCE	to client re: update on Curtis litigation and pretrial stipulation and conference	jpf	0.3	174	580		174
10/11/2019	ANALYSIS OF CORRESPONDENCE	from Curtis re: argument that MSJ is untimely filed and threatening Rule 9011 sanctions	jpf	0.1	58	580		58
10/11/2019	PREPARATION OF CORRESPONDENCE	in response to letter from Curtis re: argument that MSJ is untimely filed and	jpf	0.3	174	580		174

		threatening Rule 9011 sanctions						
10/11/2019	PREPARATION OF	(further preparation) in response to letter from Curtis re: argument that MSJ is untimely filed and threatening Rule 9011 sanctions	jpf	0.2	116	580		116
10/16/2019	ANALYSIS OF	Curtis opposition to motion for summary judgment	jpf	1.8	1044	580		1044
10/18/2019	PREPARATION OF	reply to opposition of Curtis to Debtor's motion for summary judgment	jpf	0.8	464	580		464
10/21/2019	PREPARATION OF	reply to Curtis and Ammec opposition to motion for summary	jpf	3.1	1798	580		1798
10/19/2019	PREPARATION OF	reply to Curtis and Ammec opposition to motion for summary	jpf	5.9	3422	580		3422
10/20/2019	PREPARATION OF	reply to Curtis and Ammec opposition to motion for summary	jpf	5.1	2958	580		2958
10/20/2019	PREPARATION OF	reply to Curtis and Ammec opposition to motion for summary	jpf	2.2	1276	580		1276
10/21/2019	PREPARATION OF	reply to Curtis and Ammec opposition to motion for summary	jpf	1.8	1044	580		1044
10/21/2019	PREPARATION OF	evidentiary objections to Curtis	jpf	1.2	696	580		696

		declaration						
10/21/2019	PREPARATION OF	evidentiary objections to Lee declaration	jpf	0.8	464	580		464
10/21/2019	PREPARATION OF	evidentiary objections to White declaration	jpf	0.7	406	580		406
10/22/2019	PREPARATION OF	reply to Curtis and Ammec opposition to Debtor's motion for summary judgment	jpf	3.1	1798	580		1798
11/05/2019	PREPARATION FOR HEARING	on motion for summary adjudication of claim disallowance and lien avoidance	jpf	2.4	1392	580		1392
11/05/2019	ANALYSIS OF	court's tentative ruling on motion for summary adjudication of claim disallowance and lien avoidance	jpf	0.1	58	580		58
11/05/2019	TELEPHONE CONFERENCE W/ CLIENT	re: court's tentative ruling on motion for summary adjudication of claim disallowance and lien avoidance	jpf	0.1	58	580		58
11/05/2019	ANALYSIS OF	joint pretrial stipulation in preparation for hearing on motion for summary adjudication of claim disallowance and lien avoidance	jpf	0.3	174	580		174

11/05/2019	APPEARANCE AT HEARING	on motion for summary adjudication of claim disallowance and lien avoidance	jpf	3.7	2146	580		2146
11/05/2019	PREPARATION OF	proposed order on motion for summary adjudication of claim disallowance and lien avoidance	jpf	0.6	348	580		348
11/05/2019	PREPARATION OF	amended separate statement of undisputed facts and conclusions of law on motion for summary adjudication of claim disallowance and lien avoidance	jpf	0.3	174	580		174
11/05/2019	PREPARATION OF	notice of rescheduled hearing on pretrial conference in Curtis lien dispute	jpf	0.1	58	580		58
TOTAL								\$147,629.25

Remainder of page left intentionally blank. See next page.

Exhibit 1 to Findings and Conclusions

Part "B" - November 6, 2019, to April 19, 2021

CHARGE DATE	WORK CODE DESCRIPTION	DESCRIPTION	LAWYER'S INITIALS	HOURS WORKED	AMOUNT CHARGED	LAWYER'S RATE	Court Ruling	AMOUNT ALLOWED
11/14/2019	ANALYSIS OF	signed order on Debtor's motion for summary adjudication	jpf	0.2	116	580		116
11/14/2019	ANALYSIS OF	signed statement of undisputed material facts and conclusions of law on Debtor's motion for summary adjudication	jpf	0.2	116	580		116
11/15/2019	PREPARATION OF	motion for attorneys' fees and costs against Curtis and Ammec	jpf	1.1	638	580		638
11/18/2019	PREPARATION OF	joint pretrial stipulation with Curtis	jpf	1	580	580		580

		and Ammec						
11/20/2019	PREPARATION OF	motion for attorneys' fees and costs against Curtis and Ammec	jpf	1.1	638	580		638
11/21/2019	PREPARATION OF CORRESPONDENCE	to Greta Curtis and John Barriage re: amended joint pretrial stipulation	jpf	0.1	58	580		58
11/21/2019	PREPARATION OF	amended joint pretrial stipulation	jpf	0.1	58	580		58
11/25/2019	PREPARATION OF	motion for attorneys' fees and costs against Curtis and Ammec	jpf	0.8	464	580		464
11/26/2019	PREPARATION OF	motion for fees and costs against Curtis and Ammec	jpf	2.4	1392	580		1392
11/26/2019	PREPARATION OF	supplement	jpf	0.2	116	580		116

		and exhibit C to motion for fees and costs against Curtis and Ammec						
12/02/2019	ANALYSIS OF	Curtis' revisions to joint pretrial stipulation	jpf	0.2	116	580		116
12/02/2019	PREPARATION OF	joint pretrial stipulation with Curtis and Ammec	jpf	0.7	406	580		406
12/02/2019	PREPARATION OF CORRESPONDENCE	to Curtis and Barriage re: joint pretrial stipulation revisions	jpf	0.1	58	580		58
12/02/2019	PREPARATION OF	joint pretrial stipulation in adversary proceeding with Curtis and Ammec	jpf	1.3	754	580		754
12/03/2019	PREPARATION OF	notice of joint pretrial stipulation	jpf	0.9	522	580		522

		dispute						
12/05/2019	PREPARATION OF	reply on attorneys' fees objections	jpf	4.4	2552	580		2552
12/06/2019	PREPARATION OF	reply on motion for attorneys' fees award against Curtis and Ammec	jpf	4.7	2726	580		2726
12/09/2019	PREPARATION OF	reply brief to Curtis' opposition to attorneys fees motion	jpf	3.9	2262	580		2262
12/09/2019	PREPARATION OF	evidentiary objections to Curtis declartaion	jpf	1.9	1102	580		1102
12/09/2019	PREPARATION OF	declaration of Michelle McArn in support of reply for attorneys' fees award	jpf	1.7	986	580		986
12/09/2019	PREPARATION OF	declaration	jpf	1.8	1044	580		1044

		of JP Fritz in support of attorneys' fees award						
12/09/2019	PREPARATION OF	reply brief to Curtis' opposition to attorneys fees motion	jpf	2.1	1218	580		1218
12/09/2019	ANALYSIS OF	court's tentative ruling on joint pretrial status conference	jpf	0.1	58	580		58
12/09/2019	PREPARATION FOR HEARING	joint pretrial status conference	jpf	0.1	58	580		58
12/07/2019	ANALYSIS OF	Curtis' cited case law in opposition to motion for attorneys' fees	jpf	1.9	1102	580		1102
12/08/2019	PREPARATION OF	reply to Curtis' opposition for attorneys'	jpf	4.6	2668	580		2668

		fees motion						
12/17/2019	APPEARANCE AT HEARING	on joint pretrial conference	jpf	1.2	696	580		696
12/17/2019	PREPARATION OF	joint pretrial stipulation for uploading	jpf	0.8	464	580		464
12/17/2019	PREPARATION OF	notice of joint pretrial stipulation for uploading	jpf	0.3	174	580		174
12/17/2019	PREPARATION OF	pretrial scheduling order	jpf	0.2	116	580		116
12/18/2019	PREPARATION OF	joint pretrial stipulation in response to court's rejection of prior version based on incomplete sentence drafted by Defendants	jpf	0.3	174	580		174
01/27/2020	PREPARATION OF	trial declaration for Eric	jpf	1.6	952	595		952

		Radley						
02/07/2020	PREPARATION OF	declaration of Barrington Radley for trial	jpf	1.2	714	595		714
02/07/2020	PREPARATION OF	Eric Radley's declaration for trial	jpf	3.6	2142	595		2142
02/07/2020	PREPARATION OF	Michelle McArn's declaration for trial	jpf	1.3	773.5	595		773.5
02/24/2020	ANALYSIS OF	Curtis' evidentiary objections to declaration of Michelle McArn	jpf	0.1	59.5	595		59.5
02/24/2020	ANALYSIS OF	Curtis' evidentiary objections to declaration of Eric Radley	jpf	0.1	59.5	595		59.5
02/24/2020	ANALYSIS OF	Curtis' evidentiary objections to declaration of Barrington	jpf	0.1	59.5	595		59.5

		Radley						
03/16/2020	PREPARATION OF	motion to reschedule trial	jpf	1.1	654.5	595		654.5
03/16/2020	PREPARATION OF	proposed order on motion to reschedule trial	jpf	0.4	238	595		238
03/17/2020	TELEPHONE CONF. W/ COURT STAFF	re: filing of application for order shortening time on motion to reschedule trial	jpf	0.1	59.5	595		59.5
03/17/2020	ANALYSIS OF	order re: application for order shortening time on motion to reschedule trial	jpf	0.1	59.5	595		59.5
03/17/2020	PREPARATION OF	subpoenas for Habitat for Humanity witnesses for	jpf	0.1	59.5	595		59.5

		trial						
06/16/2020	PREPARATION FOR HEARING	on Curtis pretrial conference	jpf	0.3	178.5	595		178.5
07/07/2020	PREPARATION OF	brief re: remote trial procedures	jpf	0.6	357	595		357
08/04/2020	APPEARANCE AT	status conference re: setting trial	jpf	0.5	297.5	595		297.5
09/30/2020	APPEARANCE AT HEARING	pretrial status conference against Curtis and Ammec	jpf	1.2	714	595		714
10/01/2020	PREPARATION OF	pretrial scheduling order	jpf	0.2	119	595		119
12/03/2020	PREPARATION OF	trial subpoenas for habitat for humanity employees	jpf	0.2	119	595		119
12/18/2020	PREPARATION OF	trial subpoena and cover letter for	jpf	0.8	476	595		476

		Habitat for Humanity						
01/10/2021	PREPARATION OF	trial	jpf	2.2	1331	605		1331
01/11/2021	EMAIL EXCHANGE WITH	client re: Curtis trial preparation	jpf	0.1	60.5	605		60.5
01/11/2021	PREPARATION OF	evidentiary objections to declaration of Phillip White	jpf	0.8	484	605		484
01/11/2021	PREPARATION OF	evidentiary objections and preparation for trial	jpf	4.3	2601.5	605		2601.5
01/17/2021	PREPARATION FOR HEARING	pretrial status conference	jpf	0.4	242	605		242
01/18/2021	PREPARATION FOR TRIAL	on disputed mechanic lien	jpf	2.4	1452	605		1452
01/19/2021	PREPARATION FOR TRIAL	on Curtis disputed lien	jpf	0.4	242	605		242
01/19/2021	APPEARANCE AT HEARING	pretrial status hearing to test	jpf	0.4	242	605		242

		courtroom technology						
01/20/2021	TELEPHONE CONF. W/ COURT STAFF	re: scheduling witnesses for trial	jpf	0.1	60.5	605		60.5
01/20/2021	ANALYSIS OF	pretrial scheduling order to prepare for trial	jpf	0.1	60.5	605		60.5
01/22/2021	TELEPHONE CONF. W/ COURT STAFF	re: trial exhibits and witness scheduling	jpf	0.1	60.5	605		60.5
01/23/2021	PREPARATION FOR TRIAL	on Curtis and Ammec lien	jpf	1.1	665.5	605		665.5
01/24/2021	PREPARATION FOR TRIAL	on disputed mechanic lien	jpf	0.6	363	605		363
01/25/2021	PREPARATION FOR TRIAL	against Curtis and Ammec	jpf	2.3	1391.5	605		1391.5
01/26/2021	PREPARATION FOR TRIAL	on Curtis mechanic lien	jpf	1.3	786.5	605		786.5
01/27/2021	PREPARATION FOR TRIAL	against Curtis and Ammec	jpf	1.3	786.5	605		786.5
01/27/2021	PREPARATION OF	motion in	jpf	0.8	484	605		484

		limine to exclude impeachment exhibits by Curtis						
01/27/2021	TELEPHONE CONFERENCE W/ CLIENT	prepare for trial	jpf	1.2	726	605		726
01/27/2021	PREPARATION FOR TRIAL	on Curtis and Ammec dispute	jpf	3.7	2238.5	605		2238.5
01/28/2021	PREPARATION FOR TRIAL	against Curtis and Ammec	jpf	3.8	2299	605		2299
01/28/2021	APPEARANCE AT TRIAL	against Curtis and Ammec	jpf	2.1	1270.5	605		1270.5
02/04/2021	ANALYSIS OF	Greta Curtis trial declaration	jpf	0.4	242	605		242
02/04/2021	PREPARATION OF CORRESPONDENCE	to client re: Greta Curtis trial declaration	jpf	0.1	60.5	605		60.5
02/04/2021	TELEPHONE CONFERENCE W/ CLIENT	preparation for trial and response to Greta Curtis declaration	jpf	0.4	242	605		242

02/08/2021	PREPARATION OF	evidentiary objection to Greta Curtis declaration	jpf	1.6	968	605		968
02/09/2021	PREPARATION OF	evidentiary objections to Curtis declaration	jpf	2.9	1754.5	605		1754.5
02/11/2021	PREPARATION OF	evidentiary objection to Curtis trial declaration	jpf	0.1	60.5	605		60.5
02/15/2021	PREPARATION FOR TRIAL	on Curtis mechanic lien	jpf	0.8	484	605		484
02/16/2021	PREPARATION FOR TRIAL	slander of title	jpf	0.8	484	605		484
02/17/2021	PREPARATION FOR TRIAL	on Mechanic's lien	jpf	2.1	1270.5	605		1270.5
02/18/2021	PREPARATION FOR TRIAL	morning portion of trial day 1 against Curtis and Ammec	jpf	3.1	1875.5	605		1875.5
02/18/2021	PREPARATION FOR TRIAL	afternoon portion of trial day 1 against Curtis	jpf	3.6	2178	605		2178

		and Ammec						
02/19/2021	PREPARATION FOR TRIAL	morning portion of trial day 2 against Curtis and Ammec	jpf	3.6	2178	605		2178
02/19/2021	PREPARATION FOR TRIAL	afternoon portion of trial day 2 against Curtis and Ammec	jpf	1.8	1089	605		1089
02/22/2021	PREPARATION OF	post-trial findings of facts and conclusions of law	jpf	2.4	1452	605		1452
02/27/2021	PREPARATION OF	findings of facts and conclusions of law after trial	jpf	1.8	1089	605		1089
03/06/2021	PREPARATION OF	findings of fact and conclusions of law after trial	jpf	1.1	665.5	605		665.5
03/08/2021	PREPARATION OF	post-trial findings of	jpf	0.8	484	605		484

		fact and conclusions of law						
03/12/2021	PREPARATION OF	findings of fact and conclusions of law after trial	jpf	0.3	181.5	605		181.5
03/19/2021	PREPARATION OF	findings of fact and conclusions of law after trial	jpf	0.6	363	605		363
03/19/2021	PREPARATION OF	findings of fact and conclusions of law after trial	jpf	4.2	2541	605		2541
03/22/2021	PREPARATION OF	proposed findings of fact and conclusions of law after trial	jpf	2.4	1452	605		1452
03/22/2021	PREPARATION OF	proposed findings of fact and conclusions of law after	jpf	1.4	847	605		847

		trial						
03/23/2021	PREPARATION OF	proposed findings of fact and conclusions of law after trial	jpf	1.6	968	605		968
03/29/2021	ANALYSIS OF	court scheduling order on closing arguments, findings and conclusions, and attorneys' fees damages	jpf	0.2	121	605		121
03/29/2021	PREPARATION OF	findings of fact and conclusions of law after trial	jpf	1.8	1089	605		1089
04/04/2021	PREPARATION OF	findings of facts and conclusions of law after trial	jpf	0.8	484	605		484
04/06/2021	PREPARATION OF	findings and conclusions	jpf	1.3	786.5	605		786.5

		after trial						
04/07/2021	PREPARATION OF	findings of fact and conclusions of law after trial	jpf	1.5	907.5	605		907.5
04/08/2021	PREPARATION OF	findings and conclusions after trial	jpf	1.8	1089	605		1089
04/10/2021	PREPARATION OF	findings of facts and conclusions of law after trial	jpf	1.4	847	605		847
04/10/2021	PREPARATION OF	findings of facts and conclusions of law after trial	jpf	2.2	1331	605		1331
04/11/2021	PREPARATION OF	findings of fact and conclusions of law after trial	jpf	1.2	726	605		726
04/12/2021	PREPARATION OF	findings of fact and conclusions of law after	jpf	2.1	1270.5	605		1270.5

		trial						
04/12/2021	PREPARATION OF	findings of fact and conclusions of law after trial	jpf	1.5	907.5	605		907.5
04/12/2021	PREPARATION OF	findings of fact and conclusions of law after trial	jpf	0.6	363	605		363
04/15/2021	PREPARATION OF	findings of fact and conclusions of law after trial	jpf	2.4	1452	605		1452
04/15/2021	PREPARATION OF	findings of fact and conclusions of law after trial	jpf	1.7	1028.5	605		1028.5
04/18/2021	PREPARATION OF	findings of fact and conclusions of law after trial	jpf	0.9	544.5	605		544.5
04/18/2021	PREPARATION OF	findings of fact and	jpf	2.3	1391.5	605		1391.5

		conclusions of law after trial						
04/18/2021	PREPARATION OF	request for judicial notice in support of findings of fact and conclusions of law after trial	jpf	0.3	181.5	605		181.5
04/18/2021	PREPARATION OF	notice of trial hearing transcripts in support of findings of fact and conclusions of law after trial	jpf	0.2	121	605		121
04/19/2021	PREPARATION OF	findings of fact and conclusions of law after trial	jpf	0.7	423.5	605		423.5
TOTAL								\$87,365.50

Remainder of page left intentionally blank. See next page.

Exhibit 1 to Findings and Conclusions

Part "C" - April 21 2021 to January 12 2022

CHARGE DATE	WORK CODE DESCRIPTION	DESCRIPTION	LAWYER'S INITIALS	HOURS WORKED	AMOUNT CHARGED	LAWYER'S RATE	Court Ruling	AMOUNT ALLOWED
04/21/2021	PREPARATION OF	motion for attorneys' fees award	jpf	0.5	302.5	605		302.5
04/21/2021	PREPARATION OF	motion for award of attorneys' fees	jpf	1.2	726	605		726
04/21/2021	PREPARATION OF	motion for attorneys' fees and costs	jpf	1.7	1028.5	605		1028.5
04/22/2021	PREPARATION OF	motion for award of attorneys' fees	jpf	1.4	847	605		847
04/22/2021	PREPARATION OF	motion for award of attorneys' fees	jpf	0.5	302.5	605		302.5
04/27/2021	PREPARATION OF	motion on attorneys' fees after trial	jpf	2	1210	605		1210

04/28/2021	PREPARATION OF	motion for attorneys' fees and costs	jpf	1.9	1149.5	605		1149.5
04/28/2021	PREPARATION OF	motion for attorneys' fees and costs	jpf	1.8	1089	605		1089
04/28/2021	PREPARATION OF	McArn declaration in support of motion for attorneys' fees	jpf	0.3	181.5	605		181.5
04/28/2021	PREPARATION OF	motion for attorneys' fees with exhibits	jpf	0.7	423.5	605		423.5
04/30/2021	ANALYSIS OF CORRESPONDENCE	from Curtis re: extending deadline to respond to attorneys' fees motion	jpf	0.1	60.5	605		60.5
04/30/2021	ANALYSIS OF	Curtis' ex parte motion for extending deadline on attorneys'	jpf	0.2	121	605		121

		fees motion						
04/30/2021	PREPARATION OF CORRESPONDENCE	to Curtis re: extending deadline to respond to attorneys' fees motion	jpf	0.2	121	605		121
05/14/2021	EMAIL EXCHANGE WITH	client re: Curtis request for extension of time related to deaths in family	jpf	0.4	242	605		242
05/14/2021	ANALYSIS OF CORRESPONDENCE	from Greta Curtis re: request for briefing continuance	jpf	0.1	60.5	605		60.5
05/14/2021	PREPARATION OF CORRESPONDENCE	to Greta Curtis re: request for briefing continuance	jpf	0.1	60.5	605		60.5
05/14/2021	ANALYSIS OF CORRESPONDENCE	Curtis' email re: continued hearing dates	jpf	0.3	181.5	605		181.5
05/14/2021	PREPARATION OF CORRESPONDENCE	to Curtis re:	jpf	0.7	423.5	605		423.5

		problems and issues and suggested fixes on Curtis' request for continued briefing and hearing dates						
05/18/2021	ANALYSIS OF	Curtis' application for a continued hearing and extended briefing schedule	jpf	0.2	121	605		121
05/18/2021	PREPARATION OF	response to Curtis' application for a continued hearing and extended briefing schedule	jpf	0.2	121	605		121
06/08/2021	PREPARATION OF	Greta Curtis re: attorneys'	jpf	0.4	242	605		242

		fees motion						
06/21/2021	ANALYSIS OF CORRESPONDENCE	from Greta Curtis re: third request to continue briefing and hearing deadlines	jpf	0.1	60.5	605		60.5
06/24/2021	PREPARATION OF	response to Curtis' third ex parte motion for continuance trial	jpf	1.7	1028.5	605		1028.5
06/25/2021	ANALYSIS OF	Court's order on Curtis' ex parte application to extend briefing schedule and continue hearings	jpf	0.2	121	605		121
06/25/2021	PREPARATION OF CORRESPONDENCE	to client re: Court's order on Curtis' ex parte application to extend	jpf	0.5	302.5	605		302.5

		briefing schedule and continue hearings						
07/07/2021	ANALYSIS OF	tentative ruling for ex parte hearing on continued hearing dates	jpf	0.1	60.5	605		60.5
07/07/2021	APPEARANCE AT HEARING	on Curtis' ex parte application for continued hearing dates	jpf	0.5	302.5	605		302.5
07/08/2021	ANALYSIS OF	court order rescheduling deadlines and hearing dates on Curtis' ex parte application	jpf	0.1	60.5	605		60.5
08/02/2021	ANALYSIS OF	tentative ruling to status conference	jpf	0.1	60.5	605		60.5
08/03/2021	APPEARANCE AT HEARING	status conference for	jpf	0.3	181.5	605		181.5

		scheduling						
08/04/2021	ANALYSIS OF	scheduling order continuing hearing dates and deadlines for Curtis' medical condition	jpf	0.1	60.5	605		60.5
08/04/2021	PREPARATION OF CORRESPONDENCE	to client re: results from hearing and court's scheduling order continuing hearing dates and deadlines for Curtis' medical condition	jpf	0.1	60.5	605		60.5
09/14/2021	APPEARANCE AT HEARING	on scheduling conference for Curtis lien and slander of title	jpf	0.7	423.5	605		423.5

		matter						
10/20/2021	APPEARANCE AT	status conference on Curtis litigation	jpf	0.4	242	605		242
10/27/2021	APPEARANCE AT HEARING	on trial status conference	jpf	0.5	302.5	605		302.5
11/17/2021	PREPARATION FOR HEARING	on Ammec's ex parte application to extend deadlines again	jpf	0.7	423.5	605		423.5
11/17/2021	APPEARANCE AT HEARING	on Ammec's ex parte application to extend deadlines again	jpf	0.5	302.5	605		302.5
12/29/2021	PREPARATION OF	reply to Curtis' proposed findings	jpf	0.4	242	605		242
12/29/2021	PREPARATION OF	reply to Curtis' proposed findings	jpf	2	1210	605		1210

12/30/2021	PREPARATION OF	reply to Curtis' findings and conclusions	jpf	1.7	1028.5	605		1028.5
12/30/2021	ANALYSIS OF	case law re: litigation privilege and mechanics liens	jpf	0.8	484	605		484
12/30/2021	ANALYSIS OF	case law re: application of litigation privilege on mechanics lien	jpf	1.1	665.5	605		665.5
12/31/2021	ANALYSIS OF	plaintiff's findings and conclusions in preparation of reply to defendants' findings and conclusions	jpf	1.4	847	605		847
01/01/2022	PREPARATION OF	reply to defendants' proposed findings and conclusions	jpf	1.4	868	620		868

01/02/2022	PREPARATION OF	reply on findings and conclusions	jpf	1.2	744	620		744
01/05/2022	ANALYSIS OF	56-page Curtis opposition to attorneys' fees motion	jpf	2.6	1612	620		1612
01/05/2022	PREPARATION OF	reply on findings and conclusions	jpf	0.3	186	620		186
01/06/2022	PREPARATION OF	reply to attorneys' fees opposition by Curtis and Ammec	jpf	0.8	496	620		496
01/06/2022	PREPARATION OF	reply on attorneys' fees motion	jpf	2.6	1612	620		1612
01/07/2022	PREPARATION OF	reply on attorneys' fees	jpf	4.6	2852	620		2852
01/08/2022	PREPARATION OF	reply on attorneys' fees to Curtis' opposition	jpf	0.2	124	620		124

01/08/2022	PREPARATION OF	reply on findings and conclusions	jpf	1.4	868	620		868
01/08/2022	PREPARATION OF	reply on findings and conclusions	jpf	1.9	1178	620		1178
01/09/2022	PREPARATION OF	reply on Defendants' findings and conclusions	jpf	2.4	1488	620		1488
01/10/2022	PREPARATION OF	reply to Defendants' opposition to findings and conclusions	jpf	2.6	1612	620		1612
01/10/2022	PREPARATION OF	reply to Defendants' opposition to findings and conclusions	jpf	1.9	1178	620		1178
01/11/2022	PREPARATION OF	reply on attorneys' fees motion	jpf	1.9	1178	620		1178
01/11/2022	PREPARATION OF	reply on findings and conclusions	jpf	0.4	248	620		248
01/11/2022	PREPARATION OF	reply on findings and	jpf	1.5	930	620		930

		conclusions						
01/12/2022	PREPARATION OF	reply on attorneys' fees motion	jpf	1.4	868	620		868
01/12/2022	PREPARATION OF	reply on findings and conclusions after trial	jpf	0.3	186	620		186
TOTAL								\$35,712.50

Part A								\$147,629.25
Part B								\$87,365.50
Part C								\$35,712.50
TOTAL								\$270,707.25