

**UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA  
LOS ANGELES DIVISION**

In re:  
Shelli D. Cross,

Debtor(s)

Case No.: 2:19-bk-19520-NB  
Chapter: 13

**MEMORANDUM DECISION REGARDING  
DEBTOR'S OBJECTION TO PROOF OF  
CLAIM 6-2**

Hearing Date:  
Date: June 25, 2020  
Time: 8:30 AM  
Place: Courtroom 1545  
255 E. Temple Street  
Los Angeles, CA 90012

At the time and place set forth above, this Court held a hearing on Debtor's "Objection to Claim; Motion to Disallow Claim No. 6 of Cut It Up" (dkt. 40, 42 & 43, the "Claim Objection"). Appearances were as noted on the record.

This Court has reviewed all supporting and responsive papers. For the reasons set forth below, the Claim Objection is granted in part and denied in part.

**(1) BACKGROUND**

**(a) Relevant Factual History**

In August 2016, Debtor's residence located at 16953 Roa Drive, Carson, CA 90746 (dkt. 1, p.2, ¶ 5, the "Property") suffered significant water damage, resulting in

1 her submission of a claim to her insurance provider Safeco to provide coverage for the  
2 cost of repairs. Dkt. 43, p.2, ¶¶ 10-11. In October 2016, Safeco approved Debtor’s  
3 claim and authorized up to \$28,000 in coverage. *Id.*, p.2, ¶ 11. In November 2016,  
4 Debtor contacted Marc Steven Leonard dba Cut it Up Enterprise, Inc. dba Cut It Up Ent  
5 (“Claimant”), her cousin’s husband (dkt. 56, Declaration of Nikol Leonard (“Leonard  
6 Decl.”), p.1, ¶1) and a licensed contractor (*Id.*, Declaration of Marc Stevan Leonard  
7 (“Claimant Decl.”), p.1, ¶ 1), for an estimate. Dkt. 43, p.2, ¶ 12. On November 22,  
8 2016, Debtor and Claimant (together, the “Parties”) did a walk-through of the Property  
9 and discussed the scope of work to be performed. Dkt. 43, p.2, ¶ 13 & Dkt. 56,  
10 Claimant Decl., p.1, ¶ 2.

11 On or shortly thereafter, the Parties agreed that Claimant would perform the  
12 necessary repairs to remedy the water damage and provide some additional upgrades  
13 at a total cost of \$30,032, which included the \$28,000 approved insurance claim, plus  
14 an additional \$2,032 for upgraded bathroom fixtures that Debtor agreed to pay for  
15 personally. Dkt. 43, p.2, ¶¶ 16-19 & Dkt. 56, Claimant Decl., p. 2, ¶ 2. Based on that  
16 conversation, Claimant gave Debtor Invoice #2555 (the “Original Invoice”), which details  
17 the scope of work for the water damage restoration and additional upgrades. Dkt. 56,  
18 Claimant Decl., Ex. B.

19 Although the Parties present different versions of what transpired following their  
20 initial meeting, neither party disputes that from about November 2016 through July 2017  
21 Claimant performed various repairs to the Property in accordance with their agreement.  
22 Dkt. 43, p. 3, ¶ 24 & Dkt. 56, Claimant Decl., ¶ 24. Nor does either party dispute that  
23 Claimant received a partial payment of \$14,023.39 for his work from the insurance  
24 company. Dkt. 43, p.3, ¶ 23 & Dkt. 56, Claimant Decl., ¶ 12.

25 Debtor asserts that she was generally unhappy with the pace at which Claimant  
26 performed the repairs because she believed the work would be completed within sixty  
27 days from the project start date based on the Parties’ initial meeting and because the  
28 Original Invoice states “Estimated Completion Date, Sixty (60) Working Days After Start

1 Date.” Dkt. 43, p. 2, ¶ 15, p. 3, ¶¶ 2-30; Dkt. 56, Claimant Decl., Ex. B. Claimant  
2 counters that the delays were caused by Debtor’s failure timely to obtain all materials  
3 and supplies that she was contractually obligated to provide and because of a lack of  
4 access to the Property. Dkt. 56, Claimant Decl., ¶ 6. Claimant further contends that as  
5 a result of Debtor’s delays, Claimant personally paid for certain materials to move the  
6 job along. *Id.* at ¶¶ 6-11.

7 On or about July 3, 2017, the Parties’ dispute came to a head when Debtor fired  
8 Claimant and asked him to remove his equipment and supplies from the Property. Dkt.  
9 43, P. 4, ¶ 32. On or about July 13, 2017, Debtor contends that Claimant sent her a  
10 demand letter with new invoices for the unpaid costs of materials and labor and a notice  
11 of intent to file a mechanics lien. *Id.* at ¶ 33. On August 14, 2017, Claimant recorded a  
12 Claim of Mechanics Lien asserting a lien against the Property in the amount of  
13 \$31,418.78. Amended Claim, pp. 21-24.

14 In a letter dated September 5, 2017, Debtor sent her cousin (Claimant’s wife),  
15 Nikol Leonard, a demand letter for the immediate release of the mechanics lien (the  
16 “Demand Letter”). Amended Claim, pdf. pp. 39-48. Although the record is not clear on  
17 the timing, at some point after Debtor terminated Claimant, Debtor filed a complaint with  
18 California’s Contractors State License Board (“CSLB”), which resulted in Claimant  
19 receiving a citation and \$5,000 civil penalty. Dkt. 43, Ex. C.<sup>1</sup> But Claimant timely  
20 appealed and the CSLB ultimately revised its findings and reduced the amount of the  
21 assessed penalty. Dkt. 56, Claimant Decl., ¶¶ 26-27 & Ex. K.

22 Presumably while the CSLB complaint process was underway, on November 13,  
23 2017, Claimant initiated a lawsuit against Debtor (Case No. TC 028966) by filing a civil  
24 complaint in the Superior Court of California (the “State Court Litigation”) asserting  
25 claims for account stated, open book account, reasonable value, breach of contract and  
26 enforcement of mechanics lien claim (the “Complaint”). *Id.*, pdf pp. 11-18. The record  
27 is not clear what the status of this litigation is as of the date of this Memorandum

28 <sup>1</sup> This Court rules below regarding an evidentiary objection to this document, but whether or not this  
exhibit is admitted in evidence makes no difference to the outcome.

1 Decision, but Debtor represents that the State Court Litigation was still pending as of  
2 the petition date. Dkt. 43, p.5, ¶ 45.

3 Ordinarily this Court would defer to the State Court Litigation as a matter of  
4 mandatory or discretionary abstention, and/or comity and other principles. But the  
5 Parties both requested that this Court take the matter under submission and decide it,  
6 and this Court concludes that the Parties have waived or forfeited any arguments that  
7 this Court should abstain or otherwise defer to any State Court proceedings that might  
8 or might not be pending. In addition, there is good cause to proceed based on the  
9 Parties' strong indications that they both just want this Court to render a decision.  
10 Accordingly, this Court will do so.

11 **(b) Procedural History**

12 **(i) Claimant's Amended Claim**

13 On August 14, 2019, Debtor filed this voluntary chapter 13 bankruptcy case. On  
14 October 8, 2019, Claimant timely filed Proof of Claim 6-1 asserting a secured claim for  
15 \$34,726.49 (the "Claim"). On March 17, 2020, Claimant filed amended Proof of Claim  
16 6-2 asserting a secured claim for \$23,580.32 (the "Amended Claim"). In support of the  
17 Amended Claim, Claimant attached a type-written document itemizing the asserted  
18 claim amount, the State Court Summons and Complaint, and Debtor's Demand Letter  
19 and attachments.

20 **(ii) Debtor's Objection to the Amended Claim**

21 On April 29, 2020, Debtor filed the Claim Objection (dkt. 40, 42, 43) and an  
22 Application for a Hearing on Shortened Time (dkt. 41), which this Court denied. Dkt. 44.  
23 On May 1, 2020, this Court issued a Scheduling Order setting a hearing on the Claim  
24 Objection for June 25, 2020 at 8:30 a.m. and setting opposition and reply briefing  
25 deadlines. Dkt. 46.

26 On May 28, 2020, Claimant filed a timely Opposition (dkt. 56)<sup>2</sup> and Evidentiary  
27 Objections to Debtor's declaration. Dkt. 55. On June 24, 2020 (thirteen days after the

28 <sup>2</sup> Claimant filed what appears to be two identical versions of the Objection. See dkt. 54 & 56. This Court has not done a line-by-line comparison but is instead relying on the later-filed Objection (dkt. 56).

1 June 11, 2020 filing deadline set forth in the Scheduling Order, and one day prior to the  
2 hearing on the Claim Objection), Debtor filed an ex parte Motion to Extend Time to File  
3 Reply (dkt. 63, the "Reply Extension Motion") and a belated reply. Dkt. 64.

4 On June 25, 2020 at 8:30 a.m. the Claim Objection came on for hearing before this  
5 Court. Appearances were as noted on the record. In advance of the hearing this Court  
6 posted (at [www.cacb.uscourts.gov](http://www.cacb.uscourts.gov)) the following tentative ruling:

7  
8 Appearances required.

9 Pursuant to Judge Bason's COVID19 Procedures, **ONLY TELEPHONIC**  
10 **APPEARANCES WILL BE PERMITTED until further notice.** Please contact  
11 CourtCall at (888) 882-6878 to make arrangements for any telephonic  
12 appearance. There is no need to contact the Court for permission. Parties who  
13 are not represented by an attorney will be able to use CourtCall for free through  
14 6/30/20. Attorneys will receive a 25% discount (for more information, see  
15 [www.cacb.uscourts.gov](http://www.cacb.uscourts.gov), "Judges," "Bason, N.," "Telephonic Instructions").

16 For two reasons, the tentative ruling is to order mandatory mediation.

17 (1) Usual reasons for mediation

18 The usual policy of Judge Bason is to order mandatory mediation, absent  
19 compelling arguments to the contrary. Mediation is relatively cheap and can  
20 achieve results that can be better than litigation.

21 For just one example of how mediation can be better, consider the issue  
22 of attorney fees. Debtor seeks attorney fees, and if she has any right to seek  
23 such fees then perhaps the claimant could assert a similar right, but (a) Debtor  
24 cites no *statutory* authority for any award of attorney fees, (b) if Debtor is relying  
25 on a *contractual* basis for attorney fees, that would appear to cut against her  
26 assertion that there is no written contract, (c) the document on which the claimant  
27 appears to rely as a contract does not appear to contain an attorney fee clause,  
28 and (4) even if attorney fees could be awarded to the prevailing party, there is no  
assurance that either party will prevail (their opponent could prevail, or this Court  
might determine that the outcome is mixed and that neither party has prevailed).  
In other words, litigation would involve many hurdles to either party obtaining an  
award of attorney fees, whereas in mediation any attorney fees are invariably far  
less and could be addressed briefly without having to clear all of those hurdles.

(2) Reasons why mediation is particularly appropriate in this contested matter

This Court has thoroughly reviewed the parties' extensive papers. This  
Court notes a number of aspects of this dispute that have the potential to make  
any litigation particularly expensive - both in absolute terms and in comparison to  
the dollar amounts at issue.

1 For example, if this matter proceeds to trial, it will be necessary for the  
2 litigants to present a large amount of evidence (over 2,000 photographs and  
3 other pieces of evidence, according to Debtor, plus whatever additional evidence  
4 the claimant may add). It will take considerable time, effort, and expense for the  
5 litigants, their attorneys, and any expert witnesses to discover, review, organize,  
6 and present or object to such evidence in a persuasive manner.

7 The litigants' tasks are made more onerous by the fact that it is difficult to  
8 re-create an accurate picture of the conditions of property at various times in the  
9 past. That is even more difficult when subsequent work (repairs, enhancements,  
10 or other construction) may have obscured prior conditions, and when the  
11 available photographs might not fully convey the conditions. (This Court notes  
12 that the copies of photographs in the record are mostly blurry black and white  
13 photocopies that are impossible to view, although this Court presumes that better  
14 copies could be produced for trial.)

### 15 (3) Conclusion

16 For all of the foregoing reasons, the tentative ruling is to order the parties  
17 to mediation before one of the volunteer mediators (*not* a Bankruptcy Judge) and  
18 set a deadline of July 10, 2020 for the parties to lodge a proposed mediation  
19 order (the parties are directed to use the time between now and that deadline to  
20 find a mutually agreeable mediator whose schedule can accommodate the needs  
21 of this matter; and if the parties cannot even agree on a mediator they may lodge  
22 separate orders and Judge Bason will choose among them, or issue his own  
23 order).

24 Meanwhile, the tentative ruling is to continue this hearing to 8/27/20 at  
25 8:30 a.m., with a deadline of 8/13/20 for the parties, if they have not been able to  
26 resolve their disputes through mediation, to lodge a proposed scheduling order  
27 (or, if they cannot agree on the schedule for this litigation, then they must lodge  
28 separate proposed orders). The scheduling order must set deadlines for:

- \* completion of discovery;
- \* exchange of experts' reports;
- \* completion of discovery from experts (depositions etc.), if the parties propose a different deadline from the general discovery cutoff; and
- \* lodging a proposed pretrial order (or, if they cannot agree on a joint form of pretrial order, then separate proposed orders).

29 If appearances are not required at the start of this tentative ruling but you wish to  
30 dispute the tentative ruling, or for further explanation of "appearances  
31 required/are not required," please see Judge Bason's Procedures (posted at  
32 [www.cacb.uscourts.gov](http://www.cacb.uscourts.gov)) then search for "tentative rulings." If appearances are  
33 required, and you fail to appear telephonically without adequately resolving this  
34 matter by consent, then you may waive your right to be heard on matters that are  
35 appropriate for disposition at this hearing.

36 As stated on the record, this Court orally granted the Reply Extension Motion, but  
37 struck all newly introduced evidence filed in support of the Reply and Debtor's  
38

1 inappropriate reference to the parties' prior settlement negotiations. After consideration  
2 of the parties' arguments, this Court was persuaded not to adopt the tentative ruling and  
3 instead took the matter under submission. Notwithstanding this Court's tentative ruling  
4 raising concerns about the quality of the photographs and the paucity of other evidence  
5 establishing the state and quality of repairs, this Court was persuaded to render a  
6 decision on the present record based in large part on the Parties' apparent desire to  
7 resolve this dispute on the existing record, in view of the relatively small dollar amounts  
8 at stake (relative to the costs of litigation) and how long the Parties have been litigating.

9 **(2) ANALYSIS**

10 Debtor raises several arguments in favor of disallowing the Amended Claim:

11 First, Debtor argues that the Amended Claim is not entitled to *prima facie* validity  
12 because "there is no declaration, no contract, no emails or texts [attached to the  
13 Amended Claim] showing any clear obligation or commitment of any sort on Debtor's  
14 behalf." Dkt. 40, p.4:10-11.

15 Next, Debtor argues that the Amended Claim is unenforceable pursuant to 11  
16 U.S.C. § 502(b)(1)<sup>3</sup> because California Business & Professions Code § 7159 requires  
17 home improvement contracts for projects exceeding \$500 to be in writing and signed by  
18 both parties. Dkt. 40, p.4:14-25 & dkt. 64, p.2:11-4:20.

19 Finally, Debtor argues that even if this Court finds that a contract existed, the  
20 Amended Claim should be disallowed because Claimant breached the parties'  
21 agreement by (i) failing to fully perform and (ii) forcing Debtor to incur damages to make  
22 herself whole. Dkt. 40, p.4:26-5:19.

23 Each of these will be discussed below, after addressing the applicable legal  
24 standards.<sup>4</sup>

25 \_\_\_\_\_  
26 <sup>3</sup> Unless the context suggests otherwise, a "chapter" or "section" ("§") refers to the United States Bankruptcy Code,  
27 11 U.S.C. § 101 et seq. (the "Code"), a "Rule" means the Federal Rules of Bankruptcy Procedure or other federal or  
28 local rule, and other terms have the meanings provided in the Code, Rules, and the parties' filed papers.

<sup>4</sup> Debtor appears to challenge only the *amount* and *enforceability* of Claimant's Amended Claim, and not the *validity*  
of Claimant's mechanics lien (*i.e.*, whether Claimant properly asserts entitlement to a secured claim). Accordingly,  
this Memorandum Decision presumes that any allowed claim must be treated as a secured claim.

1 **(a) Legal Standards**

2 Under the statute, a proof of claim is “deemed allowed” unless an objection is  
3 made, and if such an objection is made then the court “shall” allow such claim “except to  
4 the extent that” it is unenforceable under the agreement itself or applicable law (or  
5 other, inapplicable grounds). 11 U.S.C. § 502(a) & (b). In other words, the burden is on  
6 the objecting party to provide a cognizable ground to disallow the claim.

7 **(i) There must be some factual or legal basis to disallow the claim, not just**  
8 **an alleged non-compliance with Rule 3001**

9 It is true that under Rule 3001(f) a proof of claim must be “executed and filed in  
10 accordance with these rules” in order to automatically “constitute *prima facie* evidence  
11 of the validity and amount of the claim.” But a rule cannot supersede a statute, and an  
12 objecting party must do more than simply point to a lack of compliance with Rule 3001  
13 in order to obtain an order disallowing a claim: the objecting party must establish an  
14 actual basis to contest the liability or amount of the claim. *See In re Campbell*, 336 B.R.  
15 430 (9th Cir. BAP 2005); *In re Heath*, 331 B.R. 424 (9th Cir. BAP 2005). *See also*  
16 *Travelers Cas. & Sur. Co. of Am. v. Pac. Gas & Elec. Co.*, 549 U.S. 443, 449 (2007)  
17 (“the court ‘shall allow’ the claim ‘except to the extent that’ the claim implicates any of  
18 the nine exceptions enumerated in § 502(b)”).

19 **(ii) Non-compliance with Rule 3001 only means that “the usual burdens of**  
20 **proof” apply**

21 If a proof of claim is inadequate to “constitute *prima facie* evidence” automatically  
22 under Rule 3001(f), all that means is that “the usual burdens of proof associated with  
23 claims litigation apply.” *Campbell*, 336 B.R. 430, 436 (emphasis added). Two  
24 hypothetical examples will illustrate.

25 If “standing” were at issue (which it is not, in this case), the claimant typically  
26 would have the burden of proof. *See In re Veal*, 450 B.R. 897, 918-922 (including  
27 extensive discussion of *Campbell* and *Heath* as applied to issues of standing to assert  
28 claim). In contrast, if Debtor were asserting a defense such as the statute of limitations



1 (which she is not, in this case), she would have the burden of proof. *See generally* Rule  
2 8(c) (Fed. R. Civ. P.) (noting that statute of limitations is an affirmative defense).

3 **(iii) Shifting burdens of proof**

4 The burdens of proof shift back and forth. Initially, if the proof of claim does not  
5 comply with Rule 3001(f) then it does not automatically constitute *prima facie* evidence  
6 of the “validity and amount” of the claim. But the proof of claim can still be *prima facie*  
7 evidence of the claim’s validity and amount if the evidence attached to the proof of claim  
8 is “sufficient to support the claim” (just like the evidence attached to a verified  
9 complaint). In that situation the debtor “must produce evidence tending to defeat the  
10 claim that is of a probative force equal to that of the creditors’ proof of claim.” *In re*  
11 *Consolidated Pioneer Mortgage*, 178 B.R. 222, 226 (9<sup>th</sup> Cir. BAP 1995) (citations and  
12 internal quotation marks omitted). More precisely, the objecting party would have to  
13 refute at least one of “the allegations that is essential to the claim’s legal sufficiency”  
14 and if the objector produces “sufficient evidence to negate one or more of the sworn  
15 facts in the proof of claim, the burden reverts to the claimant to prove the validity of the  
16 claim by a preponderance of the evidence.” *Id.* (citation and internal quotation marks  
17 omitted).

18 If the objecting party provides sufficient evidence to meet that burden then the  
19 claimant must rebut that evidence. The burden can go back and forth multiple times.

20 **(b) The Amended Claim is entitled to *prima facie* validity under Rule 3001(f)**

21 The Amended Claim includes the following supporting documentation (i) an  
22 itemized calculation of how Claimant arrived at the claim amount (Claim 6-2, pdf p.4),  
23 (ii) a copy of a Claimant’s State Court Summons, Complaint, and cover sheet (*Id.*, pdf  
24 pp.5-18 & 33-38), which includes copies of (A) Claimant’s recorded Claim of Mechanics  
25 Lien (*Id.*, pdf pp.19-24), (B) Claimant’s invoices (*Id.*, pdf pp.26-32), (C) Debtor’s  
26 Demand Letter, which attaches the Original Invoice (*Id.*, pdf pp. 39-48), and  
27 (D) Debtor’s responses to form interrogatories (*Id.*, pdf pp.49-64). These documents  
28 appear on their face to satisfy the requirements of Rule 3001(c)(1) (requiring a copy of

1 the writing to be attached to the claim) & (d) (requiring evidence of perfection of a  
2 security interest).

3 Debtor argues that the Amended Claim fails to attach evidence “showing any  
4 clear obligation or commitment of any sort on Debtor’s behalf” (dkt. 40, p.4:10), but that  
5 argument is more properly reserved for whether Debtor has rebutted the presumption of  
6 validity (i.e. whether the claim is *enforceable*), not whether the Amended Claim satisfies  
7 the procedural requirements of Rule 3001. In other words, Debtor has failed to show  
8 any noncompliance with Rule 3001, so under Rule 3001(f) the proof of claim is  
9 automatically *prima facie* evidence of the “validity and amount” of the claim.

10 **(c) Debtor has sufficiently rebutted that presumption and shifted the burden**  
11 **to Claimant to prove the validity of the claim**

12 In view of the foregoing, Debtor has the burden to identify a legal basis under  
13 § 502(b) to disallow the Amended Claim. On this issue, Debtor has sufficiently carried  
14 her initial burden.

15 Debtor argues that the Amended Claim is unenforceable pursuant to § 502(b)(1)  
16 (dkt. 40, p.4:14-25), which provides that “such claim is unenforceable against the debtor  
17 and property of the debtor, under any agreement or applicable law for a reason other  
18 than because such claim is contingent or unmatured.” § 502(b)(1). Specifically, Debtor  
19 argues that the Original Invoice is void as a matter of law under California Business and  
20 Professions Code section 7159, which requires home improvement contracts and any  
21 subsequent amendments to be “evidenced by a writing and ... signed by all parties ....”  
22 Dkt. 40, p.4:14-25 & dkt. 64, p.2:11-4:20 (emphasis added).

23 Neither side disputes that Cal. Bus & Prof. Code § 7159 applies or that the copy  
24 of Original Invoice in the record is unsigned. Therefore, Debtor has sufficiently rebutted  
25 the presumption that Claimant has an enforceable claim against the estate and shifted  
26 the burden back to Claimant to establish a basis to allow the Amended Claim. See  
27 *Asdourian v. Araj*, 38 Cal.3d 276, 291 (1985) (generally speaking, “a contract made in  
28 violation of regulatory statute is void”).

1 **(d) Claimant’s evidence establishes entitlement to a secured claim of**  
2 **\$19,104.08 plus interest**

3 In response, Claimant counters that although the signed Original Invoice has  
4 been lost, “there is overwhelming credible evidence that there was a written contract for  
5 \$30,032.00” (dkt. 56, p.2:24-26) and that Claimant is entitled to additional amounts to  
6 recover his out-of-pocket expenses for building materials used to complete the repairs.  
7 *Id.*, pdf. p.13:13-24 & p.25:14-26. In other words, Claimant argues that it would be  
8 unfair to allow Debtor to retain the benefit of Claimant’s labor and advancement of  
9 material costs without having to pay for those things. This Court construes this as a  
10 request to enforce the Original Invoice because otherwise Debtor will be unjustly  
11 enriched.

12 This issue was not specifically briefed by Claimant in his opposition papers. But  
13 Debtor’s untimely reply first cited Cal. Bus & Prof. Code § 7159 as a basis to render the  
14 Original Invoice void and raised the issue of unjust enrichment (dkt. 64, p.4:28-5:3), so  
15 Claimant has not had an adequate opportunity to respond to these arguments.  
16 Moreover, given the Parties’ request to forego further briefing, this Court finds it  
17 appropriate to analyze whether the Original Invoice should be enforceable under the  
18 theory of unjust enrichment.

19 **(i) The Original Invoice is enforceable**

20 The general rule is that “a contract made in violation of a regulatory statute is  
21 void” and “courts will not ‘lend their aid to the enforcement of an illegal agreement or  
22 one against public policy.’” *Asdourian*, 38 Cal.3d 276, 291 (1985). But “the rule is not  
23 an inflexible one to be applied in its fullest rigor under any and all circumstances. A  
24 wide range of exceptions has been recognized.” *Id.*

25 In *Asdourian*, the California Supreme Court determined that oral contracts for  
26 home improvements between homeowners and their contractor were enforceable,  
27 notwithstanding Cal. Bus. & Prof. Code § 7159’s requirement that such agreement be in  
28 writing and signed by all parties. 38 Cal. 3d 276, 291. While the court concluded that

1 the Legislature did not intend the express penalty provisions of section 7159 to be  
2 exclusive, it found “no indication that the Legislature intended that *all* contracts made in  
3 violation of section 7159 are void.” *Id.* at 292. The court also concluded that a contract  
4 made in violation of section 7159 does not immediately render a contract void, but  
5 rather makes it “voidable depending on the factual context and the public policies  
6 involved.” *Id.* at 293.

7 The *Asdourian* court found the contracts enforceable because the court did not  
8 believe the homeowners fell within the class of unsophisticated consumers the statute  
9 was designed to protect and found that the misdemeanor penalties provided in the  
10 statute were sufficient to foster the policy reasons underlying the statute. 38 Cal.3d 2d  
11 276, 292. The court also noted that the failure to observe strict statutory formalities was  
12 understandable because the contractor and owners were friends and had prior business  
13 dealings and the contractor fully performed according to the oral agreements. *Id.* at 293.

14 Courts applying *Asdourian* in determining whether to enforce agreements that do  
15 not comply with Cal. Bus & Prof. Code § 7159 have cited additional factors for  
16 consideration, such as the complexity of the project (*Hinerfeld-Ward, Inc. v. Lipian*, 188  
17 Cal. App. 4th 86, 94 (2010)), whether the homeowner had any qualified  
18 representative(s) acting on his/her behalf (*id.*, at 95), the homeowner’s level of  
19 education, work experience, ability to request changes to the work being performed and  
20 responsibility for any alleged problems. *Good v. Van Rheenen*, Cal. Super. LEXIS  
21 1246, at \*62-63 (2010).

22 On this record, this Court is not persuaded that sufficient grounds exist to void  
23 the Original Invoice. First, this Court does not find Debtor’s assertion that she is  
24 unsophisticated or incapable of understanding the legal significance of a “contract” to be  
25 credible in view of Claimant’s evidence that Debtor was a licensed real estate broker at  
26 the time of the Parties’ dispute (dkt. 56, Ex. L, pdf p. 118-119). Second, similar to the  
27 facts in *Asdourian*, this Court finds the familial relationship between the Parties makes it  
28 understandable that they did not strictly observe statutory formalities. Third, “Debtor

1 does not dispute that she entered into an arrangement with [Claimant]” (dkt. 64, p.4:23-  
2 24), which supports a finding that the parties had, at the very least, an oral agreement.  
3 It is also undisputed that Claimant provided labor, services and materials. Amended  
4 Claim, pdf pp. 39-48. Finally, Debtor has not refuted Claimant’s testimony that she  
5 contributed to the completion date delays by failing to timely order materials and  
6 requesting various changes while work was in progress. Dkt. 56, pdf p. 23:15-25:2.

7 In sum, this Court is persuaded to find the Original Invoice is enforceable under a  
8 theory of *quantum meruit*. Therefore, Claimant has sufficiently rebutted Debtor’s  
9 argument that Cal. Bus & Prof. Code § 7159 renders the Original Invoice void and  
10 shifted the burden back to Debtor to establish grounds to disallow the claim or some  
11 portions thereof.

12 **(ii) Amounts remaining to be paid under the Original Invoice**

13 In support of the Amended Claim, Claimant submitted a copy of the Original  
14 Invoice showing a contract price of \$30,032. Amended Claim, pdf pp.47-48. Although  
15 not specifically delineated in the Amended Claim, the parties do not dispute that  
16 Claimant received interim payments totaling \$14,023.39<sup>5</sup>, leaving an unpaid balance of  
17 \$16,008.61 owing under the Original Invoice.

18 In addition to arguing that the Original Invoice is void, Debtor argues that she  
19 never agreed to be personally liable for any more than the \$2,032 in additional repairs  
20 she requested above the \$28,000 figure approved by Safeco (dkt. 40, p. 5:6-12, dkt. 43,  
21 ¶¶8-9 & 18-19). But Debtor fails to cite a specific provision in the Original Invoice that  
22 limits her personal liability to \$2,032 or point to any admissible evidence in support of  
23 this argument.

24 Debtor also argues that even if this Court finds that a contract existed, the  
25 Amended Claim should be disallowed because Claimant breached the parties’  
26 agreement (i) by failing to perform fully and (ii) by forcing Debtor to incur expenses to  
27 make herself whole. Dkt. 40, p.4:26-5:19. Specifically, Debtor argues that when she  
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<sup>5</sup> Dkt. 56, p.12, ¶ 13.

1 terminated Claimant “more than half the work was unfinished and what was done was  
 2 done poorly,” which required Debtor to incur additional costs to complete outstanding  
 3 projects. Dkt. 43, ¶ 32. In support of these arguments, Debtor attaches the CSLB’s  
 4 initial citation imposing \$5,000 in civil penalties (dkt. 43, Ex.C) and a bid from Triplett  
 5 Homes for \$16,594.15 in estimated costs to “correct the outstanding items not  
 6 completed or completed incorrectly.” *Id.*, Ex.D.<sup>6</sup>

7 In response, Claimant submitted a copy of the expert’s summary produced in  
 8 response to Claimant’s appeal of the CLSB citation, which contains detailed  
 9 descriptions and indiscernible photographs about the expert’s findings for each of  
 10 Debtor’s 46 complaint items (dkt. 56, Ex.O, the “Expert Summary”) and a settlement  
 11 letter from the CSLB dated June 28, 2019, which dismissed several citations previously  
 12 assessed against Claimant and reduced the civil penalty to \$2,800. *Id.*, Ex.N (the  
 13 “CSLB Settlement”).

14 In this Court’s view, Claimant’s Expert Summary is the best evidence to establish  
 15 the state of any unfinished or shoddy work that likely existed at the time of Claimant’s  
 16 termination. Although Debtor’s evidence provides some support for her contention that  
 17 Claimant failed to fully perform under the Original Invoice, this Court agrees with  
 18 Claimant that the initial findings made by the CSLB were not final determinations. The  
 19 better evidence is the Expert Summary produced following Claimant’s appeal.  
 20 Additionally, Debtor has not presented any evidence demonstrating that she timely  
 21 objected to the Expert Summary or appealed those findings.

22 The Expert Summary includes the following findings:

Item of complaint	Complaint item meets accepted trade standards	Cost to complete the project
Family/Dining Rm #1: Crown molding cracked, patched and shoddily installed through family room and dining room	Yes	N/A

28 <sup>6</sup> This Court rules below on an evidentiary objection to this evidence, but whether or not this exhibit is accepted in evidence makes no difference to the outcome.

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Family/Dining Rm #2: Shoddy painting over top of china cabinet in dining room area	No	\$42.93
Family/Dining Rm #3: Painted over insect on dining room wall	Yes	N/A
Kitchen #4: Semi-gloss paint used to partially paint the kitchen and dining room ceiling	Yes	N/A
Kitchen #5: Paint on the kitchen cabinet near the sink	No	\$9.48
Hallway #6: Installed damaged framing on hallway entry	Yes	N/A
Hallway #7: Plastic flex pipe installed under hallway bathroom vanity	Yes	N/A
Hallway #8: Tile in hallway bath has damaged floor tile	No	\$516.91
Hallway #9: Hallway outlet installed shoddily	No	\$17.34
Hallway #10: (a) Furnace closet door and molding around door painted shoddily, (b) Molding has been repaired with putty	(a) No (b) Yes	\$43.76
Hallway #11: (a) installed damaged furnace vent cover, (b) screw is missing	(a) Cannot determine (b) No	\$11.31
Hallway #12: Linen closet shoddily painted	Yes	N/A
Guest Bedroom #13: Removed the entire closet (Shelves and pole) and doors and did not replace	Cannot determine	N/A
Office #14: Nails are protruding into closet wall (from the other side) where drywall was installed	Cannot determine	N/A
Attic #15: New electrical for the master bathroom was not tied down/secured in the attic	Yes	N/A
Master Bathroom #16: (a) Door not installed correctly – The homeowner complains there is a large gap at the top; (b) The door is difficult to close and lock	(a) Yes (b) Cannot determine	N/A
Master Bedroom #17: West wall crooked and wavy	Yes	N/A
Master Bedroom #18: Ceiling beam installed and transition not smooth	No	\$465.99

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Master Bedroom #19: (a) Newly installed French door installation incomplete; (b) The French doors sealed inside and outside	(a) No (b) Yes	\$84.09
Master Bedroom #20: No shelves or poles installed in Master bedroom walk-in closet	Cannot determine	N/A
Master Bedroom #21: Barn door not installed on walk-in closet (door on site)	Cannot determine	N/A
Master Bedroom #22: No sound proofing provided and installed. The homeowner complains there is excessive noise in the master bedroom, when the water is running in the hallway bathroom; the pipes were not wrapped with insulation	Cannot determine	N/A
Master Bedroom #23: Painting of crown molding is wavy	Cannot determine	N/A
Master Bedroom #24: Contractor failed to install television and wires that were previously located on the inside of the wall	Yes	N/A
Master Bathroom #25: Ceiling paint done shoddily	Yes	N/A
Master Bathroom #26: Removed a 32" door; replaced with shoddy build 30" inch door frame and did not replace the door	Cannot determine	N/A
Master Bathroom #27: Tub is not sealed on one side; the side near fixtures	No	\$11.31
Master Bathroom #28: Finish work over tub, around shower and toilet done shoddily	No	\$147.17
Master Bathroom #29: Faucet not far enough over the tub; water hits the side of the tub and floods over tiles, underneath the tub and onto the floor	No	\$1,182.63
Master Bathroom #30: Hydro massage access door sealed/there is not access to bathtub plumbing	Yes	N/A
Master Bathroom #31: Poor finish work and hole on inside of window	No	\$11.31
Master Bathroom #32: Wall and floor tiles are not sealed	Cannot determine	N/A



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Master Bathroom #33: Shower door not installed	Cannot determine	N/A
Master Bathroom #34: Shower floor is uneven	Yes	N/A
Master Bathroom #35: Shower niche is not level	Yes	N/A
Master Bathroom #36: Medicine cabinet/mirror not centered over the sinks and faucets	No	\$412.58
Master Bathroom #37: Electrical outlets inside medicine cabinet are not GFCI	No	\$68.12
Master Bathroom #38: Small holes under the medicine cabinets	Yes	N/A
Master Bathroom #39: Shoddy painting under medicine cabinet	No	Cost included in estimate for #28
Master Bathroom #40: (a) Caulking applied unevenly on top and left-hand side of vanity; (b) The vanity has a small cut on the left side	(a) No (b) No	\$138.87
Exterior #41: Outside light fixture installed; stucco not painted to match outside of French door on the exterior side of the master bedroom	No	\$468.28
Exterior #42: New stucco outside of the house was not painted	Cannot determine	N/A
Exterior #43: Electrical housing for outside light fixture is too far back into the outside wall; unable to install the light fixture	Cannot determine	N/A
Exterior #44: Exterior access door (Southwest of residence) not secured after plumbing re-located for master bath by walkway	No	\$11.31
Exterior #45: Large area of concrete protruding from foundation (southwest of residence) by walkway	No	\$90.44
Exterior #46: Electrical panel not upgraded; no additional circuit breaker installed for new master bedroom tub and new outlets	Cannot determine	N/A
Overhead & Profit for a General B Contractor #47		\$373.37

	<b>Total Costs to Repair:</b>	<b>\$4,107.20<sup>7</sup></b>
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Accordingly, it is appropriate to credit Debtor with \$4,107.20 as an offset against the \$16,008.61 outstanding balance owing under the Original Invoice, and allow Claimant's Amended Claim in the amount of **\$11,901.41**.<sup>8</sup>

**(iii) Reimbursement of out-of-pocket costs for materials**

Claimant also seeks reimbursement for \$7,202.67 for his out-of-pocket expenses for materials that Debtor was responsible for purchasing under the terms of the Original Invoice. In support of this request, Claimant attached a supplement identifying the following line item expenses: \$1,775.37 (Home Depot), \$2,843.18 (HD Supply); \$544.45 (Dunn Edwards), and \$2,039.67 (Fe[r]guson Enterprises) and various invoices (the "Supplemental Invoice") purporting to establish some or all of these figures. Amended Claim, pdf pp. 4 & 26-32; see also Dkt. 56, pdf p.25:2-6,16-26, & Ex. J.

Debtor objects to Claimant's request for reimbursement of these expenses on the grounds that (a) Claimant has fabricated the Supplemental Invoices (dkt. 43, p.4:5-10) or, alternatively, (b) Claimant is not entitled to recover for such amounts because he cannot satisfy Cal. Bus. & Prof. Code § 7159 by presenting invoices with her signatures (dkt. 64, p.5:10-19), or, alternatively, (c) Claimant signed a lien waiver on April 12, 2017 acknowledging that the remaining balance owed was only \$16,008.61. Dkt. 43, pdf p. 9. But, for the same reasons this Court finds it appropriate to enforce the Original Invoice, this Court is persuaded to also allow these out-of-pocket costs. In addition, and alternatively, Debtor has not presented evidence of equally probative value to establish that Claimant is not entitled to recover his out-of-pocket expenses.

<sup>7</sup> Claimant asserts that the sum total of the Expert's estimated repair costs is \$3,733.83 (dkt. 56, p.18:2-4), but does not provide any breakdown of how he arrived at this figure.

<sup>8</sup> Claimant also argues that he has already credited the alleged \$3,733.83 figure from the Expert's estimated repair costs, but again does not provide a breakdown establishing this, and that sum does not appear to be accurate based on this Court's own calculations (*i.e.*, \$30,032 [original invoice amount] - \$14,023.39 [interim payments] = \$16,008.61 + \$7,202.67 [out-of-pocket material costs] = \$23,211.28 + interest = \$23,580.32 figure asserted in Amended Claim).

1 Accordingly, Claimant has carried his burden of proof to show that he is entitled  
2 to an additional claim in the amount of \$7,202.67.

3 **(iv) Interest**

4 Pursuant to the Original Invoice, Claimant also seeks an additional \$2,354.26,  
5 representing 10% interest per year on the outstanding amounts (\$32,032 - \$16,008.61 =  
6 \$14,023.39 + \$7,202.67 = \$21,226.06 x 10% interest from August 14, 2017 through  
7 March 16, 2020 = \$2,354.26), plus 10% daily interest from March 17, 2020 until the  
8 claim is satisfied in full. Because this Court has determined that the Original Invoice is  
9 enforceable, this Court is also persuaded that Claimant is entitled to recover interest on  
10 his claim, in an amount to be determined by separate order based on the reduced  
11 allowable claim amount. Based on Debtor's bankruptcy schedules and the filed claims,  
12 Claimant's mechanics lien is oversecured, so interest is allowable. *Compare*  
13 § 502(b)(2) with § 506(b).

14 **(e) Debtor's request for attorney's fees is denied**

15 Debtor seeks an award of attorney fees in the amount of \$13,325 and reasonable  
16 expenses incurred preparing, filing and litigating the Claim Objection. Dkt. 64, p.6:16-  
17 17. First, Debtor has not established a basis for an award of attorney fees, as stated in  
18 this Court's Tentative Ruling (Section 1(b)(ii), above). Second, even if there were a  
19 basis to award attorney fees, this Court finds and concludes that Debtor is not the  
20 prevailing party – the claim is being allowed in part and denied in part, so neither party  
21 has prevailed – and on this alternative ground Debtor is not entitled to attorney fees.

22 **(f) Evidentiary Objections**

23 Claimant asserts the following evidentiary objections (dkt. 55), and this Court  
24 makes the following rulings, with the proviso that none of the rulings would make a  
25 difference to the outcome of this matter and these rulings are included solely for  
26 completeness:  
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Objection	Legal basis	Ruling
<p>1. "In February (after completion deadline), Kinecta (my mortgage company) sent an inspector who[] determined that less than 50% of the work was complete." Dkt. 43, p.3, ¶22, lines 3-5.</p>	<p>FRE 801 – Hearsay</p>	<p>Sustained</p>
<p>2. "During this I was receiving calls from the insurance company asking what was taking so long and trying to reach Mark." Dkt. 43, p.3, ¶25, lines 10-11.</p>	<p>FRE 801 – Hearsay</p>	<p>Sustained in part, strike "asking what was taking so long."</p>
<p>3. "On July 27, 2017 I received an estimate from Triplett Homes to fix CIU's gross errors and to complete the remaining work for \$16,594.15 (Attached). You can see it is for the same work Mark is trying to get paid for." Dkt. 43, p.4, ¶34, lines 11-14.</p>	<p>FRE 702 – Inappropriate Expert Testimony;  FRE 801 - Hearsay</p>	<p>Sustained in part, strike "You can see it is for the same work Mark is trying to get paid for." The remaining statements are admissible because an owner of property can opine as to its value, and on that basis Debtor can render an opinion and can base that opinion in part on a third party's estimate, so the lack of third party expert testimony goes to weight not admissibility.</p>
<p>4. "In January 2018 I was surprised to get a call from CSLB to confirm that I was dropping my claim. Rosemary informed me that Attorney Kovalsky notified them that I was dropping my claim. That was a lie and I did not such thing." Dkt. 43, p.5, ¶41, lines 8-11.</p>	<p>FRE 801 – Hearsay</p>	<p>Sustained in part, strike "Rosemary informed me that Attorney Kovalsky notified them that I was dropping my claim." The remainder of this statement is an alleged verbal act, so it is admissible.</p>
<p>5. "CSLB determined that not only had Mark previously abandoned the project, but that he committed several other violations and he was assess[ed] fin[e]s and penalties (see attached)." Dkt. 43, p.5, ¶43, lines 15-18.</p>	<p>Misrepresents the facts. The CSLB decision was not final, was appealed and substantially modified.</p>	<p>Overruled in part, on same grounds as item "3" above.</p>

Objection	Legal basis	Ruling
1 Objection to Triplett estimate. Dkt. 43, 2 PDF pp. 21-22, Exhibit D. 3 4	FRE 801 – Hearsay;  Lack of authentication	Overruled in part, on same grounds as item “3” above, and because Debtor’s testimony at dkt. 43, para. 24, authenticates the document.
5 Objection to CSLB determination. Dkt. 6 43, PDF pp. 10 – 20, Exhibit C. 7 8 9 10 11 12 13	Not final ruling, res judicata applies to final ruling;  Collateral estoppel applies to final ruling after appeal;  Ruling superseded	Overruled in part, on same grounds as item “3” above.

14 **(3) Conclusion**


15 For the reasons set forth above, Debtor’s Claim Objection is granted in part and  
 16 denied in part. Claimant is entitled to an allowed secured claim in the reduced amount  
 17 of **\$19,104.08** (i.e., \$11,901.41 amounts remaining under Original Invoice + \$7,202.67  
 18 out of pocket expense reimbursement = \$19,104.08), plus interest at 10% from August  
 19 14, 2017.

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1 Claimant is directed to lodge a proposed order granting in part and denying in  
2 part the Claim Objection, for the reasons stated in this Memorandum Decision. That  
3 order should include a calculation of applicable interest through the date of submission,  
4 and a per diem rate thereafter.

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24 Date: September 30, 2020

  
Neil W. Bason  
United States Bankruptcy Judge