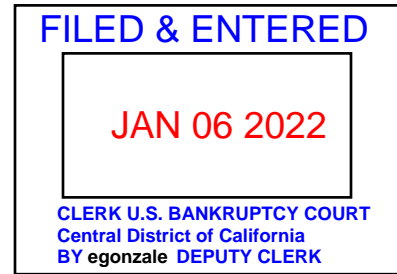


FOR PUBLICATION



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8 **UNITED STATES BANKRUPTCY COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **SAN FERNANDO VALLEY DIVISION**
11

12
13 In re:

14 Claudia Cadena

15
16
17
18 Debtor(s).

Case No.: 1:21-bk-10082-MT

CHAPTER 7

**MEMORANDUM OF DECISION RE:
DEBTOR'S MOTION FOR AN AWARD OF
ATTORNEY'S FEES, COSTS, AND
DAMAGES PURSUANT TO 11 U.S.C. §
303(i) AND DEBTOR'S MOTION FOR
SANCTIONS PURSUANT TO F.R. BANKR.
P. 9011.**

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21
22 Claudia Cadena, her husband Hugo Marquez, and Cadena's children are former
23 occupants of real property located at 5529 Van Alden St, Tarzana, California 91356 (the
24 "Property"). The Property was encumbered with two (2) deeds of trust ("DOT") in favor of "EIJ"
25 dba Beverly Hills Watch Company 401K Profit Sharing Plan ("EIJ"). Vista Land, LLC, with
26 Mark Wong as its principal, acquired the 2nd DOT through a trustee foreclosure sale on or around
27 September 8, 2020.
28

1 Soon thereafter, Vista Land commenced an unlawful detainer proceeding [LASC Case
2 No. 20VEUD00943] to evict Cadena, Marquez, and Cadena’s children. On January 20, 2021,
3 Vista Land was able to successfully evict them from the Property. On that same day, Luigi
4 Interlandi through his attorney Michael Shemtoub, filed an involuntary bankruptcy petition
5 (“Petition”) against Cadena. Docket 1¹. Two weeks later, Cadena filed a motion to dismiss the
6 involuntary bankruptcy case and request for an evidentiary hearing on bad faith and to award
7 attorney’s fees, costs, and damages against Interlandi and Shemtoub. Docket 6. Interlandi and
8 Shemtoub filed responses. Docket 14 & 16. The motion to dismiss was granted and the Court
9 retained jurisdiction to determine sanctions and to award fees and costs. The dismissal order was
10 entered on March 5, 2021. Docket 24.
11

12 An evidentiary hearing was set on the request for damages and sanctions. Parties were
13 directed to submit a list of exhibits and witnesses, pre-hearing briefs, and declarations to serve as
14 direct testimony. At the hearing Cadena, Marquez, Glenn Calsada, and Doug Minor testified on
15 behalf of Cadena. Cadena and her witnesses adopted their declarations as their testimony and
16 were cross-examined. Interlandi and Kevin Moda testified on behalf of Interlandi and were
17 cross-examined. Interlandi submitted a declaration which he adopted as his testimony. Moda did
18 not submit a declaration but was permitted to testify in a limited capacity as a rebuttal witness.
19 Interlandi also submitted declarations of Payman Taheri, Chris Eskijian, Wong and Pamela
20 Mozer. These witnesses never appeared at the hearing and their declarations are not considered
21 because Cadena did not have an opportunity to cross examine them. Shemtoub, representing
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28 ¹ All docket citations are to the number on the CM/ECF docket of the case, 1:21-bk-10082-MT and sometimes followed by the page number in that pleading. All Exhibit numbers are exhibits introduced during the hearing on this matter.

1 himself, filed a declaration and adopted his declaration as his testimony and was cross-
2 examined.²

3 Having considered all pleadings, exhibits and testimony received both through
4 declarations and at the hearing, and all other matters of the record before the Court, the Court
5 makes these findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of
6 Civil Procedure, made applicable here by Rule 7052 of the Federal Rules of Bankruptcy
7 Procedure.
8

9 **Findings of Fact**

10 This involuntary bankruptcy case was commenced for wholly improper purposes. The
11 case did not satisfy even the most basic requirements needed for an involuntary petition, most
12 notably, no one showed there was a debt owed by the putative debtor. Based on the testimony of
13 all the parties, Cadena never owed a debt to Interlandi. Further, based on Interlandi's and
14 Shemtoub's testimony, Eskijian asked Interlandi to collect a debt that Cadena owed Eskijian,
15 thereby assigning Eskijian's claim to Interlandi. Question 12 of Official Form 105, the form used
16 for filing an involuntary bankruptcy petition, asks if there has been a transfer of any claim
17 against the debtor by or to any petitioner, and if yes then all documents evidencing the transfer
18 must be attached. Question 12 was not filled out and no evidence of a debt or a transfer was
19 submitted. Exhibit 1. Interlandi never presented evidence of a transfer of a debt to him from
20 Eskijian, or of Cadena owing a debt to either of them.
21

22 Shemtoub testified that he never saw evidence of any debt owed by Cadena and relied on
23 Eskijian's word that evidence would be produced at a later time. Interlandi testified that he never
24 saw any evidence of a debt owed by Cadena; rather, he was asked by Eskijian to do a favor and
25 file this Petition and to help collect a debt from Cadena. Shemtoub also said that he understood
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27

28 ² The Hearing was conducted on July 29, 2021, August 30, 2021, and September 13, 2021. Because of the COVID-19 pandemic, the first 2 days were conducted by stipulation by video over zoom.gov and the last day was in person with solely Interlandi's counsel appearing over zoom.gov.

1 that Interlandi was an agent of Eskijian. Given the lack of evidence and the testimony of
2 Interlandi and Shemtoub, skipping question 12 in the Petition appears intentional.

3 Determining the exact reason the petition was filed is not necessary where no legal basis
4 for the petition has been shown, however, some exploration is required to determine the nature of
5 the sanctions to be awarded. The main justification Interlandi and Shemtoub gave for the filing
6 of the Petition is that they wanted to assist Cadena and Marquez efforts in avoiding eviction.
7 This would not be a valid reason to file an involuntary bankruptcy petition. The true reason
8 seems to be a scheme to protect the property interests of AWBCO, LLC (“AWBCO”), although
9 exactly how they thought it would work is unclear. Eskijian is the principle of EIJ, which had at
10 one point owned two DOTs against the Property. Exhibit 2. Vista Land acquired the 2nd DOT
11 (Exhibit 14) and the 1st DOT was assigned to AWBCO (Exhibit 13). It is unclear who the
12 principal of AWBCO is; however, the allegations made in the complaint in Vista Land, LLC v.
13 EIJ, Inc. et al. LASC Case No. 20 STCV47123 (“State Court Case”) (Exhibit 2: 28- 44)
14 concerning the assignment of the 1st DOT to AWBCO and the fact that Eskijian had such a
15 prominent role in organizing and filing the Petition suggest that the principal of AWBCO whose
16 interest was trying to be protected had close ties to Eskijian – if not Eskijian himself. Eskijian,
17 Interlandi and Moda seem to be acquainted and involved in business dealings each other. Even
18 though Interlandi is the only listed petitioner, all three of these individuals were instrumental in
19 the filing of the Petition.

20 This Court is not making any determinations about the litigation in the State Court Case,
21 but pleadings from that case admitted here provide context to what was occurring prior to the
22 Petition being filed. In the State Court Case, Cadena, Eskijian, EIJ, and AWBCO are named
23 defendants and the case relates to the Property. According to the undisputed allegations made by
24 the plaintiffs and based on some of the state court’s rulings, after Vista Land purchased the 2nd
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1 DOT, it approached the 1st DOT holder, which was EIJ at the time, to see if it could purchase the
2 1st DOT. Exhibit 2: 28-44. Subsequently, EIJ transferred the 1st DOT to AWBCO. Exhibit 2:28-
3 44; Exhibit 13. The asking price after that transfer allegedly sky rocketed. Exhibit 2: 28-44. Vista
4 Land then filed suit against EIJ, Eskijian, AWBCO, and Cadena, asserting that the 1st DOT
5 holder, amongst other things, were involved in a scheme to artificially drive up the price of the
6 1st DOT. Exhibit 2:28-44. Cadena credibly testified that AWBCO and Vista Land feared what
7 each might do next. Vista Land feared that AWBCO would foreclose on the Property thereby
8 wiping out Vista Land's interest in the Property. On the other hand, AWBCO feared that Vista
9 Land would take possession of the Property and put in low paying long term tenants, making the
10 Property undesirable to future buyers.
11

12 According to the state court's ruling on a preliminary injunction application, AWBCO
13 had set a foreclosure date for the first DOT for December 15, 2020. Exhibit 2:61. The court
14 granted Vista Land's application for a temporary restraining order to prevent AWBCO from
15 foreclosing on the Property and later granted a preliminary injunction staying the foreclosure
16 until the case was adjudicated. The injunction did not impede Vista Land's right to evict the
17 tenants of the Property. Exhibit 2:60-68. The state court's ruling on the preliminary injunction
18 occurred on January 7, 2021, thirteen (13) days before the Petition was filed. Exhibit 2:60. In the
19 early stages of litigation in the State Court Case, Shemtoub represented EIJ and Marquez and
20 filed a declaration opposing the preliminary injunction, Exhibit 2, Page 23, which was referred to
21 a number of times in the state court's ruling. While the State Court Case is still in the early stages
22 of litigation, Shemtoub appeared in it and was involved in it.
23

24 When Eskijian, Interlandi, and Moda became aware that Vista Land was in the process
25 of evicting Cadena on January 20, 2021, they filed the Petition against Cadena to obtain an
26 automatic stay and stop the eviction. Exhibit 1. Cadena did not enjoy the benefit of the automatic
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1 stay. She credibly testified that by the time the Petition was filed at 11:02 am, the eviction was
2 already complete.

3 Interlandi, Moda, and Shemtoub all testified that Marquez was the reason for why the
4 Petition was filed at all. According to Interlandi, Moda, and Shemtoub, Marquez sought to file an
5 involuntary bankruptcy case to stop the eviction of his family. This narrative is not credible for
6 several reasons. First, the eviction occurred. If Marquez were involved with the filing of the
7 Petition to stop his family from being evicted, then he would have relayed this information to
8 Cadena as she was being evicted from the Property in hopes of stopping the eviction. Instead,
9 Cadena credibly testified that she was unaware of the Petition at the time it was filed. She
10 testified that she spent time at a park considering where to go after her family was evicted and
11 that she first learned of the involuntary bankruptcy case being filed against her when her credit
12 card was denied when she attempted to purchase cupcakes weeks later.

13
14
15 Marquez's testimony was too short to adequately judge his credibility. It appears he had
16 been working with Moda to obtain a hard money loan to buy out one of the trust deeds, but it
17 was not credible that he authorized a bankruptcy filing of any kind. That Vista Land was able to
18 evict Cadena and Marquez supports Marquez's position that he was not involved with the filing
19 of the Petition. Overall, Marquez's testimony did not favor either party and did nothing to clear
20 up the confusion over what Interlandi, Moda and Eskijian's roles were in this scheme.

21
22 The defense advanced by Interlandi, Moda, and Shemtoub does not make sense because
23 if the true purpose were to stop the eviction to benefit Cadena then why did she not simply file a
24 voluntary bankruptcy case? Cadena did not have any prior bankruptcy petitions that could have
25 affected an automatic stay, and a putative debtor in an involuntary bankruptcy case does not have
26 any greater rights or protections than a debtor in a voluntary bankruptcy case. There was no need
27 to file an involuntary bankruptcy petition to stop the eviction here.
28

1 Moda is the only witness who addressed why Cadena did not file a voluntary petition.
2 According to Moda, Marquez approached him for help in December 2020 to stop an imminent
3 eviction. Moda told Marquez that a voluntary bankruptcy petition was not going to stop an
4 eviction and that the Property was lost. Moda's testimony was not credible on this issue. Moda is
5 not an attorney and his knowledge of bankruptcy law is limited. Also, the timeline given by
6 Moda does not support this testimony. If Marquez sought Moda's help in December 2020, it is
7 puzzling why it took until after the eviction commenced to file the Petition. If this were an
8 emergency filing and Moda's timeline is to be believed, then the Petition would have
9 conceivably been filed earlier – sometime in late December or early January 2021.
10

11 Finally, there is no credible evidence or testimony to support Moda's testimony. Moda
12 presented a check that he says Marquez paid him. Exhibit 19. There is no evidentiary value to
13 this check. The check appears to have come from a business account and not Marquez's personal
14 account. Nowhere on the check is Marquez's name or personal information. There were no
15 experts or witnesses familiar with Marquez's signature present to verify that the signature at the
16 bottom of the check was indeed Marquez's. No one questioned Marquez about the check when
17 he testified. There is nothing in the memo line which indicates why this check was written.
18 Finally, there is no date stamp which is usually placed on a deposited check. This check really
19 could have been for anything, made by anyone at any given time. After he listened to other
20 witnesses' testimony, Moda's explanation for why a voluntary petition was not filed was an odd
21 attempt to address a hole in Interlandi's story of why an involuntary bankruptcy petition had to
22 be filed over a voluntary bankruptcy case.
23

24 Finally, this defense is not believable because of who the petitioner is. Why did Interlandi
25 file this Petition? If this Petition were truly Marquez's idea and was intended to benefit Cadena,
26 then why would have it mattered that Interlandi was the petitioner? Interlandi claims that
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1 Eskijian transferred a debt to him so that he could collect from Cadena. If the purpose of this
2 Petition was to merely stop an eviction at Marquez's request, then why was Interlandi asked to
3 do a favor to file this Petition when Eskijian could have done so himself? Based on both
4 Shemtoub's and Interlandi's testimony, Eskijian was instrumental in organizing and filing the
5 Petition. He then distanced himself and the property interest that he sought to protect by using
6 Interlandi to file the Petition. Despite being a critical witness to Interlandi's position, he never
7 showed up to testify even though he filed a declaration. Instead, Eskijian asked Interlandi, a man
8 who does not appear to have any connections with the Property or Cadena, to file this Petition in
9 his place. If Interlandi and Moda's narrative is to be believed, there would have been no need to
10 have transferred a nonexistent debt to Interlandi so he could file an involuntary bankruptcy
11 petition. Marquez sought assistance with the foreclosure from Moda to obtain another hard
12 money loan but his authorization to file an involuntary Petition against his wife is not credible.
13 More significantly, at no point did Interlandi, Moda, or Shemtoub ever reach out to Cadena about
14 filing an involuntary bankruptcy case against her, and Cadena never authorized anyone to file a
15 bankruptcy petition on her behalf.

16
17
18 Cadena credibly testified that she incurred damages because of the Petition. After the
19 Petition was filed, credit cards were closed, and further credit was denied; she had to incur hefty
20 attorney's fees and costs. Cadena seeks damages of approximately \$25,000.00 based on loss of
21 credit. At the time of the Petition, she had a credit limit of \$21,500.00 in credit cards.

22
23 Minor testified as to damages to Cadena's credit score because of the Petition.
24 Interlandi's objection to Minor as an expert witness is overruled. Minor was qualified as an
25 expert witness; the objections as to his qualifications go to the weight of his testimony, not its
26 admissibility. Minor credibly testified as to what goes into a credit score and what would
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28

1 adversely affect a score. The methodology he used appeared to be in line with industry norms.
2 He testified that certain things may not show up on credit scores – such as hard money loans.

3 The one area where Minor was not persuasive was his analysis of Cadena’s credit score.
4 Minor relied on a credit report provided by Cadena. Both Cadena and Minor testified that she
5 had a pre-Petition credit score of 790. This score is not credible. A letter from Chase Bank
6 denying Cadena a credit card suggests there were more problems with Cadena’s credit score than
7 the involuntary bankruptcy case. Further, the eviction from the Property suggests a 790-credit
8 score is too high. Finally, the credit report relied on by Cadena and Minor came from Credit
9 Karma and not one of the major credit rating agencies that measures credit scores. Regardless of
10 the accuracy of the credit score he relied on, Minor credibly testified that an involuntary
11 bankruptcy petition would negatively affect a person’s credit score significantly – a hundred-
12 point deduction or more. He also did not seem aware of other events in her life that likely would
13 have affected her credit score.
14

15 Minor testified that Cadena had an outstanding balance of \$6,037 that she owed on credit
16 cards at the time of filing. These credit cards were directly closed due to the bankruptcy. Cadena
17 also seeks damages because Chase Bank later denied her a credit card. Minor testified that it
18 would have been a credit line of \$4,000.00 that Cadena was denied. Based on the letter Chase
19 Bank sent Cadena, which was submitted in support of Minor’s testimony, the basis of the denial
20 of a credit card was because there were “[t]oo many recent requests for credit or reviews of your
21 credit.” Towards the end of the letter, it lists the key factors that adversely affected Cadena’s
22 credit. These factors were: the number of requests for new credit in the past 3 months; number of
23 requests for new credit in the past 12 months; total available credit on credit cards; and
24 insufficient installment loan information. While Minor credibly testified that a bankruptcy case
25 would negatively impact a credit score and it appears Chase Bank considered Cadena’s Credit
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1 Score, the basis for the denial of a credit card appeared to be the number of requests for a new
2 credit card by Cadena.

3 Interlandi was not a credible witness. He frequently avoided answering questions by
4 saying “I don’t know” or that he could not remember. Interlandi appears to be an intelligent
5 individual capable of remembering key events. Testifying that he does not know or could not
6 remember as to basic questions on recent events suggests that Interlandi was wanting to avoid
7 answering the questions. He could not confirm that Shemtoub represented him in the filing of the
8 Petition and insisted that he signed the Petition in person when the signature appears to be an
9 electronic signature. It also appears Interlandi either was not very involved in the drafting of his
10 declaration which he adopted as his testimony or was not familiar with it to the extent he should
11 have been. Interlandi’s story seemed scripted, and he avoided answering selective questions to
12 prevent deviating from the script or to avoid implicating others. Interlandi frequently would look
13 at Moda when he answered questions.
14
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16 Shemtoub is an experienced bankruptcy attorney, testifying that he has thirteen years of
17 experience filing hundreds of bankruptcy cases. Shemtoub claims to have forgotten critical
18 details leading up to the filing of the Petition – such as who paid him and whether he performed
19 research before filing the Petition. Shemtoub testified that he received a panicked call from a
20 group of individuals seeking to immediately file the Petition to stop an eviction; therefore, he did
21 not have sufficient time to investigate the details. Shemtoub’s testimony made it seem like he
22 had no knowledge whatsoever of what was occurring prior to this panicked phone call. This was
23 not persuasive because Shemtoub represented EIJ in the State Court Case well before filing the
24 Petition. His sworn declaration in opposition to Vista Land’s preliminary injunction shows that
25 he had detailed knowledge regarding the history of the Property. Exhibit 2: 23-26. Further, EIJ’s
26 principal, Eskijian, was involved in conversations planning this involuntary bankruptcy case.
27
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1 While representing EIJ, Shemtoub must have known some of the concerns that Eskijian had
2 about Vista Land and the Property. These facts indicate Shemtoub was much more
3 knowledgeable about the facts leading up to the filing of the Petition than he testified to.
4 Shemtoub's recollection of who was on the call seemed to vary as his testimony went on.
5 Shemtoub at times testified that Eskijian, Marquez and Interlandi were on the phone call, and
6 then at times suggested Moda was there either in addition to these three individuals or Moda was
7 there in place of one of these three individuals.
8

9 Interlandi attempted to call Deputy Sheriff Lutz as a witness who handled the eviction.
10 Interlandi tried to have Lutz testify to a phone call he received from an attorney, but no evidence
11 was presented that the attorney represented Cadena. To the contrary, it appeared the attorney
12 may have been hired by Moda. The hearsay testimony was not permitted and there was no
13 purpose served by having Lutz testify as there was no dispute that Cadena and her family were
14 evicted.
15

16 Moda testified last. Without anyone notifying the Court that Moda was going to testify,
17 Moda sat in the back of the courtroom and watched the entirety of Interlandi's testimony. He was
18 not listed on Interlandi's witness list and Interlandi's counsel did not inform the Court that he
19 had the intention of calling Moda until he called him to testify. There were several witnesses
20 testifying to specific events and there were concerns about corroboration of events. Based on
21 everyone's testimony, Moda was instrumental in the filing of this involuntary bankruptcy
22 petition – Moda's own testimony supports this as well. Since both Moda and Interlandi were
23 instrumental in the filing of this bankruptcy petition it would have been important to hear
24 Moda's unfiltered testimony before he listened to the other witnesses and to hear Interlandi's
25 testimony without Moda watching him.³ As found previously, Interlandi's version of events was
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³ It is possible that Moda viewed other witnesses testify remotely as well. During the remote testimony there were multiple Zoom tiles listed as "Interlandi" and other parties connected to Interlandi in some way that claimed to be

1 a scripted story that is questionable at best. Moda was not a credible witness and his answers
2 seemed scripted.

3 **Section 303(i)**

4 A bankruptcy court may award fees, costs, or damages to an involuntary debtor under 11
5 U.S.C. § 303(i). Under § 303(i)(1), there are "...only two prerequisites for an award of fees,
6 costs, or damages...(1) the court must have dismissed the petition on some ground other than
7 consent by the parties; and (2) the debtor must not have waived its right to recovery under the
8 statute." Higgins v. Vortex Fishing Sys., Inc. 379 F. 3d 701, 705-6 (9th Cir. 2004). Once the
9 prerequisites are satisfied, bankruptcy courts must exercise "some form of discretion in awarding
10 fees and costs." Id.

11
12 There is a rebuttable presumption that reasonable fees and costs are authorized. Higgins,
13 379 F. 3d at 707. An award of attorney's fees and costs should be for necessary work performed
14 in defending against the involuntary petition and the work and the fee must be reasonable. See In
15 re Wavelength, Inc., 61 B.R. 614, 621(B.A.P. 9th Cir.1986). An award should be based on
16 detailed accounts of services rendered. Id. In deciding whether to award fees, a court considers
17 the "totality of the circumstances," including "1) 'the merits of the involuntary petition,' 2) 'the
18 role of any improper conduct on the part of the alleged debtor,' 3) 'the reasonableness of the
19 actions taken by the petitioning creditors,' and 4) 'the motivation and objectives behind filing the
20 petition.'" Higgins, 379 F. 3d at 707; *see also* Orange Blossom Ltd. P'ship v. S. Cal. Sunbelt
21 Developers, Inc. (In re S. Cal. Sunbelt Developers, Inc.) 608 F.3d 456, 462 (9th Cir. 2010).

22
23
24 Interlandi is the only petitioner. Even though Moda and Eskijian were instrumental in
25 orchestrating the filing of the Petition, they never filed anything claiming Cadena owed them a
26 debt; therefore, they cannot be considered petitioners. Further, Cadena is not seeking an award of
27

28

observers. Interlandi and those parties did not appear on camera and there was no way of knowing if these tiles
adequately reflected who was viewing the Hearing.

1 attorney's fees, costs, and damages from Moda or Eskijian. Cadena is seeking attorney's fees,
2 costs, and damages from Interlandi and Shemtoub. Shemtoub is the petitioning creditor's
3 counsel, not a petitioner himself. It is unclear whether Shemtoub can be found liable under 303(i)
4 as well. There is mixed authority on this issue. *Compare In re Exchange Network Corp.*, 92 B.R.
5 479, fn. 1 (Dist. Colo. 1988) (petitioning creditor's counsel can be found liable under section
6 303(i)); *In re Walden*, 787 F.2d 174 (5th Cir. 1986) (no basis under 303(i) to hold a petitioning
7 creditor's counsel liable.) The Ninth Circuit has not ruled on this specific issue, but the plain
8 language of §303(i) seems to limit holding counsel for the petitioners responsible under that
9 section. *See Nw. Forest Res. Council v. Glickman*, 82 F.3d 825, 830 (9th Cir. 1996) (Courts will
10 "look first to the plain language of the statute, construing the provisions of the entire law,
11 including its object and policy, to ascertain the intent of Congress"). Accordingly, any award
12 under § 303(i) will only apply against Interlandi.

15 Interlandi filed two responses to Cadena's motion to dismiss.⁴ These responses are styled
16 as objections to Cadena's motion to dismiss but, towards the end, the responses divert from the
17 positions taken earlier and state that Interlandi consents to dismissal. Because of the confusion, a
18 hearing was required. At the hearing, Interlandi agreed to dismissal of the case. He now argues
19 that this constituted consent to dismissing the case, negating grounds to pursue attorney fees and
20 costs.

22 The dismissal of the involuntary bankruptcy case was because the Court granted
23 Cadena's motion to dismiss. After submitting two responses attacking Cadena and Marquez's
24 character, blame shifting, and threatening sanctions for filing a motion to dismiss, Interlandi
25 ended his responses by consenting to the dismissal of this case. Consenting to dismiss an
26 involuntary bankruptcy case in an opposition to a motion to dismiss is not sufficient consent
27

28 ⁴ See Response and Position of the Creditor to Motion to Dismiss Involuntary Bankruptcy (Docket 14) and Response
[Reflecting an Errata to the Originally filed Response] and Position of the Creditor to Motion to Dismiss (Docket
16).

1 under section 303(i). *See In re R. Eric Peterson Construction*, 951 F.2d 1175, 1180 (10th Cir.
2 1992) (holding that "[a] more passive statement of nonopposition to the creditors' motion to
3 dismiss the petition should not indicate consent, at least where . . . the debtor simultaneously
4 manifests its intention to seek damages under section 303(i)"); *In re Jett*, 206 B.R. 407, 409
5 (Bankr. E.D. Va. 1997) (concluding that creditors' "nonopposition to dismissal is not consent"
6 under § 303(i)).
7

8 Involuntary bankruptcy petitions are heavily discouraged unless they have merit. Section
9 303 is designed to safeguard against abuses of fraudulent and improper filings by acting as a fee
10 shifting statute. Adopting Interlandi's position would allow most petitioning creditors in
11 involuntary bankruptcy cases to avoid liability by merely agreeing when a purported debtor files
12 a motion to dismiss. There was no consent between the parties at the time Cadena moved to
13 dismiss the involuntary bankruptcy, and the motion to dismiss indicated that Cadena was going
14 to be pursuing attorney fees and costs against Interlandi and was not waiving her right to pursue
15 them.
16

17 Since the requirements for an award for attorney fees and costs have been met, there is a
18 presumption that these fees and costs are reasonable. The totality of circumstances is considered
19 when deciding whether to award fees. Interlandi attacks an award of attorney fees and costs on
20 the grounds that Marquez sought Interlandi, Eskijian, and Moda's help in filing the involuntary
21 bankruptcy against his wife order to stop the eviction. As previously found, this narrative is not
22 credible. Cadena did not authorize Interlandi to file this Petition and neither Cadena or Marquez
23 had the authority to waive the requirements of the Bankruptcy Code. Accordingly, the
24 presumption of reasonableness has not been overcome.
25

26 Cadena's attorney fees and costs listed in Exhibit 15, which was updated on Docket 106,
27 of \$48,902.50 are reasonable considering the scope of litigation and the degree of skill that was
28

1 required under the circumstances. Interlandi engaged in a pattern of unnecessary litigation and
2 delay tactics that unnecessarily ran up the costs. After it became clear that he was likely facing
3 an award for attorney's fees, costs, and damages against him for filing an improper bankruptcy
4 case, he did everything he could to try to delay this matter. As previously mentioned, after
5 Cadena filed a motion to dismiss and request for sanctions, Interlandi filed two responses thereto.
6 The responses do not defend the basis for commencing this case; rather, the responses personally
7 attacked Cadena and Marquez and threatened sanctions against her and her attorney for filing a
8 motion that they were entitled to file. It was clear even at that early stage that the Petition was
9 meritless – Interlandi's responses to the motion to dismiss do not even defend the filing of the
10 involuntary bankruptcy case. This baseless request for sanctions was nothing more than an
11 attempt to intimidate Cadena into dropping her pursuit of an attorney's fee and costs award.
12

13
14 After the Court dismissed the case, Cadena submitted a proposed order dismissing the
15 case. Interlandi objected to the form of order requesting the order contain language that
16 Interlandi consented to the dismissal of the involuntary bankruptcy case. This was inconsistent
17 with the ruling the Court made and an improper objection to the form of order. Shemtoub
18 withdrew as Interlandi's counsel following this objection.
19

20 Interlandi hired a second attorney to represent him. Shortly thereafter, he filed a meritless
21 motion to dismiss himself from the involuntary bankruptcy on the grounds that he was an agent
22 of Eskijian. Docket 41. Section 303(i) is a fee shifting provision as to the petitioner and
23 Interlandi was the only petitioner here. Interlandi's second counsel provided no legal authority to
24 have Interlandi avoid liability based on agency as it applied to section 303(i).
25

26 Interlandi then attempted to delay the hearing. He filed late and inappropriate discovery
27 motions, did not timely file his declaration, his witness and exhibit list, and his witnesses'
28 declarations. Interlandi's second attorney then moved to withdraw as counsel before the second

1 day of the hearing. This motion was granted because Interlandi hired a third attorney a few
2 minutes prior to the second day of the hearing. That third attorney then knew little about the
3 proceedings so far in the case.

4 Interlandi also attempted to introduce inadmissible testimony. Several declarations of
5 individuals were submitted that were not listed in Interlandi's witness list and never showed up
6 to the hearing to be cross examined. Similarly, Interlandi sought to introduce improper evidence
7 from Deputy Lutz. Cadena was required to incur additional fees responding to each of these
8 situations. For these reasons, Calsada's fees and costs were reasonable. As discussed later, the
9 fees Interlandi must pay are reduced by \$8,600 as they are awarded separately as sanctions under
10 F.R. Bankr. P. 9011. Thus, the total attorney fees and costs payable by Interlandi to Cadena are
11 \$40,302.50.
12

13
14 *Bad Faith:*

15 Any damages proximately caused by the filing of the involuntary bankruptcy petition
16 may be awarded if there is a finding of bad faith. 11 U.S.C § 303(i)(2)(A). Similarly, "[p]unitive
17 damages are awardable 'against any petitioner that filed the petition in bad faith.'" Wechsler v.
18 Macke Int'l Trade, Inc. (In re Macke Int'l Trade, Inc.), 370 B.R. 236, 256 (B.A.P. 9th Cir. 2007).
19 "The Bankruptcy Code does not define 'bad faith' for purposes of awarding punitive damages
20 under § 303(i)." Jaffe v. Wavelength, Inc. (In re Wavelength, Inc.), 61 B.R. 614, 619 (B.A.P. 9th
21 Cir. 1986). "Bad faith [is] measured by an 'objective test' that asks 'what a reasonable person
22 would have believed.'" Id. at 20. "In the Ninth Circuit, the bankruptcy court can allow punitive
23 damages without having to award compensatory or actual damages, or in addition to those
24 damages." Macke Int'l, 370 B.R. at 256. There is no statutory requirement that the bad faith must
25 be directed toward anyone in particular. Wavelength, 61 B.R. 620. Courts have employed a more
26
27
28

1 expansive definition of bad faith to include ill will or malice toward the debtor or its owners. Id.
2 There are a few examples of bad faith present here.

3 False Claim - Interlandi never was owed a debt from Cadena – either directly or through
4 a transfer or assignment. This was not a defensible dispute over the amount or bona fides of a
5 debt but an outright false claim.

6
7 Summons Never Served - Interlandi never served Cadena with a copy of the summons,
8 notifying Cadena that an involuntary bankruptcy case was commenced against her. This shows
9 that Interlandi had no intention of proceeding with this case in an effort to collect a debt. See In
10 re Stern, 268 B.R. 390, 394 (Bankr. S.D.N.Y. 2001) (The failure to serve the summons and
11 properly prosecute the case gives “rise to a powerful inference of bad faith”).

12
13 Previous Abuse of the Bankruptcy Code - Interlandi is no stranger to involuntary
14 bankruptcy petitions. See In re Mahvash Mazgani 2:19-bk-21655-BR; Exhibit 11. In Mazgani,
15 Interlandi attempted to join an involuntary petition involving Moda’s aunt. Interlandi previously
16 claimed he advanced funds for Moda’s benefit and attempted to collect from the aunt. Exhibit
17 11. Mazgani objected to Interlandi’s claim. The basis for the debtor’s objection to the claim was
18 that she never owed Interlandi anything. See In re Mahvash Mazgani 2:19-bk-21655-BR (Docket
19 539). Interlandi failed to oppose the debtor’s objection to claim, and his claim was disallowed.
20 See In re Mahvash Mazgani 2:19-bk-21655-BR (Docket 596). Mazgani shows that this Petition
21 was not a one-time mistake. Interlandi is a repeat offender in asserting claims that do not exist
22 and improperly using the Bankruptcy Courts to the detriment of others.

23
24 For all these reasons, the Petition was filed in bad faith

25 Damages:

26
27 Cadena seeks actual damages due to her loss of credit, hiring Minor to testify as a credit
28 expert, and damages for emotional distress. Since Cadena’s alleged credit score of 790 is not

1 credible, Cadena's request for damages based solely on her diminished credit score are not
2 awarded. Only those damages that can be directly attributed to the filing of the Petition will be
3 allowed. Similarly, there was no evidence that Cadena suffered any emotional damage from this
4 ordeal distinct from the foreclosure and eviction, so no damages will be awarded for emotional
5 distress.
6

7 Cadena seeks damages of approximately \$25,000 based on loss of credit. At the time of
8 the Petition, Cadena had several credit cards with a total credit limit of \$21,500. The cards were
9 closed when the Petition was filed, and there was an outstanding balance of \$6,037 at the time
10 they were closed. Cadena will be awarded the available credit she had available on those cards at
11 the time the Petition was filed, \$15,463.00. This figure represents actual damage she suffered.
12

13 Cadena also seeks damages because Chase Bank denied her a credit card. As previously
14 found, the Chase Bank letter considered multiple factors, and the denial of a new line of credit is
15 not directly a result of the involuntary bankruptcy.
16

17 Cadena also seeks compensation for her expert witness fee. Minor's invoice is for
18 \$5,862.50 and is attached to Calsada's supplemental declaration regarding his billing statement.
19 Docket 106. These fees are reasonable and were necessary; however, they appear to be already
20 accounted for in the attorney's fees and costs previously awarded. Therefore, an additional
21 \$5,862.50 will not be awarded.
22

23 Cadena also seeks punitive damages. This request is denied because even though the
24 Petition was meritless and an abuse of the Bankruptcy Code, the attorney fee, costs, and actual
25 damages award makes Cadena whole and is substantial enough to deter Interlandi from similar
26 behavior in the future. Her choice to get involved with Moda to solve the foreclosure issue was
27 an extremely poor one, and much of the harm to her is as a result of that rather than the
28

1 involuntary bankruptcy. The costs directly associated with the bankruptcy and the sealing of the
2 bankruptcy file address that harm.

3 For all of these reasons, Cadena will be awarded \$15,463 in actual damages against
4 Interlandi in addition to the attorney fees and costs detailed earlier.

5
6 **Rule 9011 Sanctions:**

7 Bankruptcy courts can award sanctions under the authority of Federal Rule of Civil
8 Procedure 11 made applicable through Federal Rule of Bankruptcy Practice 9011. DeVille v.
9 Cardinale (In re Deville), 280 B.R. 483, 493 (B.A.P. 9th Cir. 2002). The purpose of Rule 9011 is
10 designed to encourage counsel to avoid a groundless filing or pleadings filed for improper
11 purposes, primarily through the imposition of sanctions. Id. In relevant part, Rule 9011 provides:

12
13 (b) REPRESENTATIONS TO THE COURT. By presenting to the court (whether by signing,
14 filing, submitting, or later advocating) a petition, pleading, written motion, or other paper,
15 an attorney or unrepresented party is certifying that to the best of the person's knowledge,
16 information, and belief, formed after an inquiry reasonable under the circumstances,

17 (1) it is not being presented for any improper purpose, such as to harass or to
18 cause unnecessary delay or needless increase in the cost of litigation;

19 ...

20 (3) the allegations and other factual contentions have evidentiary support or, if
21 specifically so identified, are likely to have evidentiary support after a reasonable
22 opportunity for further investigation or discovery; ...

23 Imposing sanctions under Rule 9011 requires an inquiry into the pleadings where the
24 court considers whether the attorney signing the document made a reasonable inquiry to
25 determine the factual and legal basis of a particular document, and whether the attorney
26 interposed the document for any improper purpose. F. R. Bankr. P. 9011(b); see also Kyle v. Dye
27 (In re Kyle), 2006 Bankr. Lexis 4850 *10 (B.A.P. 9th Cir. 2006). The 21-day safe harbor in the
28 requirement does not apply where the conduct alleged is the filing of a bankruptcy petition. In re
Peters & Freedman, 2021 Bankr. LEXIS 2208, *14-15 (Bankr. S.D. Cal. 2021); In re BCB
Contr. Servs., LLC, 2021 Bankr. LEXIS 2552, fn. 40 (Bankr. Ariz. 2021); In re Crystal

1 Cathedral Ministries, 2020 Bankr. LEXIS 851, * 82 (Bankr. C.D. Cal. 2020); Goldberg v.
2 Goodman (In re Goodman), 2013 Bankr. LEXIS 4680, *46 (9th Cir. BAP 2013). To impose
3 sanctions under Rule 9011, the moving party must only make a showing of “objectively
4 unreasonable conduct.” See Miller v. Cardinale (In re Deville), 361 F.3d 539, 548 (9th Cir.
5 2004). “[A] finding of bad faith is not required. Davis v. Alexander (In re High Speed Music,
6 Inc.), 2007 Bankr. LEXIS 4545 (Bankr. C.D. Cal. 2007).⁵ “A sanction imposed for violation of
7 this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable
8 conduct by others similarly situated.” F.R.B.P. 9011 (c)(2).

9
10 To file an involuntary bankruptcy petition, a creditor must have some claim that a debt is
11 owed to them and the debt is not contingent or subject to a bona fide dispute. 11 U.S.C. §
12 303(b)(1). Any attorney who practices in bankruptcy should be aware of the threshold
13 requirement needed by creditors to file a proper involuntary bankruptcy petition. Similarly,
14 bankruptcy attorneys should be aware that the consequences for filing an improper involuntary
15 bankruptcy petition can be severe.

16
17 Shemtoub was the attorney who filed this Petition on behalf of Interlandi and thereby
18 certified under Rule 9011 to the best of his knowledge “formed after an inquiry reasonable under
19 the circumstances” that the information provided in the Petition had “evidentiary support, or, if
20 specifically so identified, are likely to have evidentiary support after a reasonable opportunity for
21 further investigation or discovery.” Shemtoub defends the filing of this involuntary petition first
22 by arguing that this was an emergency filing, and he did not have time to accurately ascertain the
23 facts.
24

25
26
27 ⁵ Initially Cadena sought these sanctions against Shemtoub in the same motion for an award for attorney fees and
28 costs against Interlandi. A motion for sanctions pursuant to FRBP 9011 is required to be brought by a motion
independent of any other motion. FRBP 9011(c)(1). This concern was raised at an earlier hearing. Cadena
subsequently brought a separate motion.

1 Shemtoub never saw evidence of the claim; he claimed that Eskijian would provide it at a
2 later time, but he did not. Given the severe consequences for filing an improper involuntary
3 bankruptcy petition, any attorney should have made more of an inquiry and even required that
4 some proof be turned over before the petition could be filed. Despite practicing in bankruptcy for
5 over a decade, Shemtoub filed this Petition without even checking if there were a real debt – let
6 alone confirming whether it was noncontingent and not subject to a bona fide dispute. This is an
7 elementary, but important part of filing a proper involuntary bankruptcy petition. An emergency
8 does not alleviate an attorney from doing some due diligence.
9

10 Shemtoub’s rationale treats an involuntary petition as though it were no more than a
11 placeholder permitted to interfere in other lawful court proceedings simply because someone
12 requested it, even calling it a “noble deed.” Docket 117: 1. There is no recognition that an
13 involuntary bankruptcy petition is a lawsuit against someone, alleging that they are not paying
14 their debts when they become due. It can have significant consequences for the putative debtor
15 and should not be treated so casually.
16

17 Secondly, even if an emergency did justify the lack of any diligence, the circumstances
18 indicate Shemtoub was on actual notice of red flags requiring further investigation. Shemtoub’s
19 representation of EIJ in the State Court Case prior to the filing of the Petition gave him more
20 extensive knowledge about what occurred prepetition and greater reason and ability to verify the
21 information listed in the Petition. Given the nature of the allegations there, Shemtoub was aware
22 of the issues pertaining to the Property and Eskijian’s concerns about Vista Land well before
23 filing the Petition. Despite knowing the facts and circumstances surrounding the Property before
24 filing the Petition, Shemtoub either filed the Petition knowing that it was meritless at the outset
25 or failed to do any due diligence despite serious red flags of, at best, an abusive filing, and, at
26 worst, fraud.
27
28

1 Leaving question 12 in the Petition blank is another indication that Shemtoub had no
2 reasonable factual basis to believe the Petition was legally valid. Shemtoub argued that “Mr.
3 Eskijian appointed Mr. Interlandi as his agent to collect a debt owed to Mr. Eskijian’s company,
4 EIJ.” Docket 93 at 2. Question 12 asks “Has there been a transfer of any claim against the debtor
5 by or to any petitioner?” The involuntary petition form is short – only 13 questions. If Shemtoub
6 believed Eskijian transferred the claim to Interlandi, then he should have checked question 12
7 indicating that Interlandi’s claim had actually been transferred to him. If he believed Interlandi
8 was simply acting as a collection agent, he knew there was no basis for Interlandi to be the
9 petitioner. The nature of the debt is a threshold issue for the filing of an involuntary petition. It is
10 not simply a convenient method to obtain an automatic stay for whatever purposes a party
11 wishes.
12

13
14 Shemtoub also argued in the response to the motion to dismiss (Docket 16) that he and
15 his client were completely justified in filing the bankruptcy because Marquez had asked for his
16 help in avoiding eviction. He argued that he was helping them reclaim their home, and was doing
17 them a favor by filing an involuntary case against Cadena, and, once the involuntary bankruptcy
18 was filed, they turned on him. His response to the motion to dismiss refers to the “irony of
19 events” in the filing of the involuntary case and argues that “[t]he service brilliantly blinds itself
20 to the brotherly love given to the Debtor and her family by the Creditor and his master.”⁶
21 Although he stated the “Petition is readily admitted as being insufficiently drafted to sustain an
22 Order for relief... ” (Docket 16:7-8) , he also argues that had Interlandi known they would turn
23
24

25 ⁶ The court has already addressed the tone of the brief at the hearing and will not sanction further based on it. The
26 brief refers to Cadena’s alleged reversal of position and calls her “a Jezebel unworthy of any credence.” Docket 16
27 at 13. Counsel are free to advocate forcefully for their positions, but this phrase is considered a sexist and racist slur
28 and should never be used in a pleading. *See, e.g. McKinley v. Salvation Army*, 192 F. Supp. 3d 678, 682 (W.D. Va
2016) aff’d 685 Fed Appx 227 (4th Cir. 2017) (citing the use of such phrase and other actions as forming a hostile
work environment.) C.1 of the Civility and Professionalism Guidelines | Central District of California | United
States District Court (uscourts.gov) provide that “We will speak and write civilly and respectfully in all
communications with the court.”

1 on them he “would not have entertained taking one step in any effort to appease a client who
2 concerned himself with the welfare of a false friend and Judas.” While this response is somewhat
3 nonsensical, it essentially complains that Shemtoub understood the involuntary petition to be a
4 ruse and that he believed he was colluding with the putative debtor simply to stop an eviction
5 and not because noncontingent undisputed debts were owed by Cadena to Interlandi. Putting
6 aside whether or not these claims are true, the defense is simply (1) the petitioner and his
7 attorney believed Cadena was in agreement with the ruse and (2) Cadena’s husband told them
8 they should file it against his wife.
9

10 To defend an otherwise meritless involuntary petition on the basis that it was collusive
11 simply admits to the improper use of the bankruptcy laws. In re Mi La Sul, 380 B.R. 546, 556
12 (Bankr. C.D. Cal. 2007) (collusive bankruptcies with no intent to collect an unsecured debt are
13 improper use of Bankruptcy Code.) *See also* In re Forever Green Athletic Fields, Inc., 804 F.3d
14 328, 336-37 (3d Cir. 2015) (“Courts routinely find it improper for creditors to use the bankruptcy
15 courts to gain a personal advantage in other pending actions or as a debt-collection device.”); In
16 re Dami, 172 B.R. 6, 10 (Bankr. E.D. Pa. 1994) (where “the purpose of the bankruptcy filing is
17 to defeat state court litigation...bad faith exists.”); In re St. Marie Dev. Corp. of Montana, Inc.,
18 334 B.R. 663, 671 (Bankr. D. Mont. 2005) (finding bad faith where there was pending state court
19 litigation between the parties); In re WLB-RSK Venture, 296 B.R. 509, 515 (Bankr.C.D. Cal.
20 2003) (involuntary petition dismissed that was filed as a litigation tactic), aff’d, 320 B.R. 221
21 (B.A.P. 9th Cir. 2004), aff’d, 223 F. App’x 555 (9th Cir. 2007).
22
23

24 Judges have considerable discretion in the choice of what sanctions are appropriate under
25 Rule 11. *See* Business Guides v. Chromatic Communications Enters., 892 F.2d 802, 808 (9th
26 Cir. 1989). Rule 11 does not enumerate a specific set of factors courts must consider in deciding
27 what sanctions are appropriate but some of the factors used to consider what the appropriate
28

1 sanctions should be are: deterrence, harassment of the opposing party, and reasonableness of
2 attorney's fees. Filippini v. Austin, 106 F.R.D. 425, 433 (C.D. Cal. 1985).

3 Cadena seeks to have Shemtoub joint and severally liable for the attorney fee award
4 against Interlandi. A few courts have held attorneys jointly and severally liable for the damages
5 for filing improper involuntary petitions. *See e.g.* Landon v. Hunt, 977 F.2d 829 (3rd Cir. 1992)
6 (affirming joint and several liability under FRBP 9011 for filing an involuntary where petitioning
7 creditor has no claim against the debtor); Keiter v. Stracka, 192 B.R. 150 (S.D. Tex. 1996)
8 (affirming joint and several liability under FRBP 9011 for filing an involuntary petition without
9 adequately researching and investigating the basis for the filing). The Ninth Circuit takes a more
10 nuanced approach. In In re Southern California Sunbelt Developers, Inc., 608 F.3d 456 (9th Cir.
11 2010), the bankruptcy court held individuals who exercised control over the petitioning creditors
12 jointly and severally liable for damages that it awarded after it dismissed the involuntary
13 bankruptcy case. Id. at 460. The Ninth Circuit affirmed in part and reversed in part the
14 bankruptcy court's decision to grant joint and several liability under FRBP 9011. Id. at 467. The
15 Ninth Circuit found that joint and several liability was appropriate up until the involuntary case
16 was dismissed. Liability for fees and costs incurred in post-dismissal litigation are not
17 appropriate for a non-petitioner. Id.

18 Holding Shemtoub liable for a portion of the attorney fee award leading solely to
19 dismissal of the case is appropriate as a sanction under Rule 9011 and reasonable as Shemtoub
20 stopped representing Interlandi shortly after the case was dismissed. Based on Calsada's
21 supplemental declaration, the fees and costs incurred seeking dismissal of the case were \$17,200.
22 Docket 106. Shemtoub is sanctioned one half that amount, \$8600, for facilitating his client's
23 abuse of the bankruptcy laws in this way. That amount has been deducted from the amount
24 Interlandi owes Cadena and should be payable directly to her attorney.
25
26
27
28

1 **Sealing Involuntary Bankruptcy Petition:**

2 The final relief sought by Cadena is to seal any and all records relating to the Petition.

3 According to 11 USC § 303(k)(1):

4 If—

5 (A) the petition under this section is false or contains any materially false,
6 fictitious, or fraudulent statement;

7 (B) the debtor is an individual; and

8 (C) the court dismisses such petition, the court, upon the motion of the
9 debtor, shall seal all the records of the court relating to such petition, and
10 all references to such petition.

11 The Petition included materially false information regarding the alleged debt the Petition
12 stated Cadena owed. Cadena is an individual and sought relief under section 303(k) by way of
13 motion. All of the elements for sealing all the records relating to the Petition have been satisfied.
14 Accordingly, the Petition and all the records relating thereto are sealed. Any reference to this
15 bankruptcy petition in any credit report must be deleted.

16 **Conclusion:**

17 For all the reasons stated above, Cadena is awarded \$55,765.50 in attorney's fees, costs,
18 and damages against Interlandi. Cadena is also awarded \$8,600.00 in sanctions against
19 Shemtoub, payable directly to her attorney. Finally, all records relating to the Petition shall be
20 sealed pursuant to section 303(k). Cadena shall submit an order consistent with this ruling within
21 fifteen (15) days of the issuance of this memorandum.

22 ###

23
24
25 Date: January 6, 2022

26 
27 Maureen A. Tighe
28 United States Bankruptcy Judge