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9 ASHER INVESTMENT PROPERTIES, LLC

10
11 **UNITED STATES BANKRUPTCY COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**
13 **LOS ANGELES DIVISION**

14 In re ASHER INVESTMENT PROPERTIES, LLC,) Case No. 2:14-BK-21172-BR
15)
16) CHAPTER 11
17)
18) Debtor’s Corrected Reply to Omnibus
19) Opposition to (1) Debtor’s Application
20) to Employ Michael F. Frank and Peggi
21) A. Gross as Special Litigation Counsel
22) (2) Debtor’s Application to Employ
23) Gershuni & Katz; Supporting
24) Declarations of Yossi Dina, Shlomo
25) Barash, Michael F. Frank and Ira
26) Benjamin Katz
27)
28) Date: August 20, 2014
Time: 10 a.m.
Ctrm: 1668
255 East Temple Street
Los Angeles, CA 90012
Debtor and Debtor-In-Possession)
_____)

22 **TO THE HONORABLE BARRY RUSSELL, UNITED STATES BANKRUPTCY JUDGE,**
23 **THE OFFICE OF THE UNITED STATES TRUSTEE, AND INTERESTED PARTIES:**

24 ASHER INVESTMENT PROPERTIES, LLC, Debtor and Debtor-in-Possession (the
25 “Debtor”) previously filed its reply to the “Omnibus Opposition to and Request for Hearing on: (1)
26 Debtor’s Application to Employ Michael F. Frank and Peggi A. Gross as Special Litigation
27 Counsel (2) Debtor’s Application to Employ Gershuni & Katz filed by Garry Y. Itkin and Anna
28 Charno, Trustees of the Itkin Living Trust (the “Reply,” Docket No. 72). Asher has determined that

1 in scanning the Reply, a portion of paragraphs 10 and 11 on pages 6 and 7 were blurred and the
2 space between line 21 and 22 on page 8 was also blurred although no text was obscured. The
3 Debtor has further determined that the paragraph numbering omitted 11-15 such that the last
4 paragraph number on page 6 is 10 and the first paragraph number on page 7 is 16. No text was
5 deleted. In order to avoid confusion, the Debtor is hereby filing its Corrected Reply to Omnibus
6 Opposition to (1) Debtor's Application to Employ Michael F. Frank and Peggi A. Gross as Special
7 Litigation Counsel (2) Debtor's Application to Employ Gershuni & Katz; Supporting Declarations
8 of Yossi Dina, Shlomo Barash, Michael F. Frank and Ira Benjamin Katz with the blurring removed
9 and the correct paragraph numbering along with the table of contents and authorities previously
10 filed and docketed as Docket No. 73.

11 Dated: August 15, 2014

GERSHUNI & KATZ, A Law Corporation

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13

/s/ Ira Benjamin Katz
Ira Benjamin Katz, Proposed General Bankruptcy
Counsel for the Debtor and Debtor-In-Possession

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1 **TO THE HONORABLE BARRY RUSSELL, UNITED STATES BANKRUPTCY JUDGE,**
2 **THE OFFICE OF THE UNITED STATES TRUSTEE, AND INTERESTED PARTIES:**

3 ASHER INVESTMENT PROPERTIES, LLC, Debtor and Debtor-in-Possession (“Debtor”
4 or “Asher”) hereby submits its reply to the “Omnibus Opposition to and Request for Hearing on;
5 (1) Debtor’s Application to Employ Michael F. Frank and Peggi A. Gross as Special Litigation
6 Counsel (2) Debtor’s Application to Employ Gershuni & Katz filed by Garry Y. Itkin and Anna
7 Charno, Trustees of the Itkin Living Trust (the “Itkin Trust”) and states as follows:

8 **I. INTRODUCTION**

9 Like other lenders over the years, the Itkin Trust crafted a strategy seeking to avoid the
10 public policy against contractual prohibition of its borrower’s right to reorganize under the
11 Bankruptcy Code granted by Congress pursuant to Article 1, Section 8, Clause 4 of the United
12 States Constitution. Its objection to the Debtor’s applications to employ general bankruptcy and
13 special litigation counsel is made in furtherance of that strategy.

14 The Itkin Trust objects to the employment of Gershuni & Katz, A Law Corporation
15 (“G&K”) as general bankruptcy counsel solely on the grounds that Mr. Itkin, as the purported
16 managing member of the Debtor based on the terms of the Debtor’s restated operating agreement
17 (imposed by the Itkin Trust using its leverage as a secured creditor of the Debtor), did not consent
18 to, nor otherwise authorize, the filing of this bankruptcy case (the “Case”). Opposition, page 1,
19 lines 2 - 14 and page 5, lines 2 - 19.

20 The Itkin Trust spends the balance of its 11-page opposition in asserting that the Debtor’s
21 application to employ Michael F. Frank and Peggi A. Gross as Special Litigation Counsel should
22 be denied not only on the general grounds of lack of authority to file this Case, but also on the
23 separate grounds that they have a conflict of interest in that the Debtor is seeking to employ them
24 “to represent the interest of the Debtor’s member, Yossi Dina” to “invalidate the Itkin’s Trusts (sic)
25 50% membership interest through various (alleged) frivolous arguments so that he may gain total
26 control of Debtor’s real property asset” which arguments it asserts are barred by state law and
27 therefore there is no need for special counsel.

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1 It is undisputed that but for the Debtor's filing of its petition for relief herein on June 6,
2 2014, the Itkin Trust intended to foreclose on the Debtor's principal asset, the real property located
3 at 249-251 South Beverly Drive, Beverly Hills, CA (the "Property") on June 9, 2014 and wipe out
4 the Debtor's \$3,000,000 plus equity therein. Indeed, should the Case be dismissed, the Itkin Trust
5 will undoubtedly seek to immediately foreclose on the Property.

6 As will be shown below, the Itkin Trust's opposition to the employment of general and
7 special bankruptcy counsel is without merit in that, among other reasons, (1) it presupposes that the
8 Court will grant its Motion to Dismiss; (2) it is violative of the public policy against pre-petition
9 contractual waivers of the right to file a petition for relief and is an attempt to deprive the Debtor of
10 its right to file a petition for relief conferred by Congress pursuant to Article 1, Section 8, Clause 4
11 of the United States Constitution both by seeking to forbid it from filing or consenting to the entry
12 of a petition for relief and by preventing it from retaining counsel to file a petition and appear on its
13 behalf in its bankruptcy case; and (3) rather than establishing an actual conflict of interest between
14 proposed special litigation counsel and the Debtor, the Itkin Trust's Opposition highlights the
15 conflict of interest between Mr. Itkin/the Itkin Trust on the one hand and the Debtor, its equity
16 security holders and its priority and general unsecured creditors on the other hand. Indeed, the Itkin
17 Trust's efforts to prevent the Debtor from filing a petition for relief and oppose the Itkin Trust's
18 Motion to Dismiss is not only violative of public policy, but is also a breach of Mr. Itkin's fiduciary
19 duty to Mr. Dina and the other creditors of Asher as an asserted manager and member of the Debtor
20 not to prefer his/its interest at the expense of wiping out their interests.

21 **II. STATEMENT OF FACTS**

22 1. On June 6, 2014, the Debtor filed its petition for relief commencing this Chapter 11
23 case (the "Case") and has been operating at all times thereafter as the debtor-in-possession.
24 Declaration of Ira Benjamin Katz ("Katz Declaration") filed herewith at par. 1.

25 2. The Debtor's principal asset as shown on its Schedules filed in this Case is the real
26 property commonly known and referred as 249-251 S. Beverly Drive, Beverly Hills, CA 90212 (the
27 "Property"). The Property is currently encumbered by a first trust deed in favor of Israel Discount
28

1 Bank (“IDB”) securing obligations in the approximate asserted sum of \$5,500,000 and a second
2 trust deed in favor of the Itkin Trust (the “Itkin Second Trust “Deed”) in the approximate asserted
3 sum of \$1,760,000 Id., at par. 2; see a true copy of the Debtor’s filed Schedules A, B and D
4 attached thereto collectively as Exhibit 1.

5 3. In January, 2012, the Debtor and IDB entered into negotiations for IDB to increase
6 its then existing loan to the Debtor which had matured. IDB agreed to do so conditioned upon,
7 among other things, the Itkin Trust’s subordination of the Itkin Second Trust Deed to a new trust
8 deed that IDB wanted to record against the Property in first priority position to secure the new IDB
9 loan. IDB threatened to commence foreclosure under its existing first trust deed on the Property if
10 the Itkin Trust did not sign IDB’s subordination agreement by January 31, 2012. Declaration of
11 Shlomo Barash (“Barash Declaration”) filed herewith at par. 4.

12 4. The Itkin Trust agreed to enter into a subordination agreement with IDB conditioned
13 upon the Debtor providing it with further security for the repayment of the Itkin Loans in the form
14 of a 50% membership interest in the Debtor (the “Purported Membership Interest”) via a
15 Membership Interest Purchase Agreement (the “50% Security Agreement”). As part of the
16 transaction, the Itkin Trust imposed a restated operating agreement on the Debtor which contained
17 certain restrictions upon Mr. Dina’s rights as its manager, including the provisions that (1) Mr.
18 Dina was to resign and Mr. Itkin was to become the Debtor’s manager in the event of the Debtor’s
19 default on the New IDB Loan or the Itkin Loans and (2) the manager could not file a petition for
20 relief without majority consent which, in the case of two 50% members, required the Itkin Trust’s
21 consent. In negotiating the 50% Security Agreement, the Debtor insisted and the Itkin Trust agreed
22 to insert a provision therein providing that the Debtor would have the right to redeem or repurchase
23 the Purported Membership Interest for the sum of \$1 after payoff of the Itkin Loans. This
24 protection for the Debtor was heavily negotiated and ultimately set forth in Section 7 of the
25 Purchase Agreement.

26 Barash Declaration at par. 5.

27 5. On or about May 20, 2014, the Debtor tendered to the Itkin Trust the amount
28

1 necessary to pay off the Itkin Loans. In fact, the Debtor tendered payment of \$1,700,000, a sum it
2 believed to be greater than the amount owed to the Itkin Trust. Declaration of Michael Frank filed
3 July 8, 2014 and docketed as No. 31-4, at par. 21. See a true and correct copy of the tender in the
4 form of the May 20, 2014 - May 21, 2014 email exchange between Frank, attorney for the Debtor,
5 and Stephen A. Silverman ("Silverman"), one of the attorneys for the Itkin Trust, attached thereto
6 as Exhibit A. The Debtor had the ability to pay the \$1,700,000 to the Itkin Trust had the tender
7 been accepted. See the 3 cashier's checks totaling \$1,700,000 which Mr. Dina had assembled for
8 use by the Debtor to pay the \$1,700,000 if accepted by the Itkin Trust attached as Exhibit A to the
9 Declaration of Yossi Dina ("Dina Declaration") filed herewith.

10 6. The Itkin Trust asserted on May 28, 2014 that it was owed approximately
11 \$1,760,000 secured by the Property. Declaration of Steve K. Wasserman filed July 8, 2014
12 docketed as number 31-3 (the "Wasserman Declaration") at par. 6 and Exhibit C thereto.

13 7. The Debtor believes that the Property is worth in excess of \$11,000,000 and that it
14 has substantially in excess of \$3,000,000 in equity in the Property based on, among other things, an
15 appraisal obtained by IDB in or about January 2013 which valued the Property at \$9,700,000 and
16 his knowledge of the Beverly Drive real estate market. Dina Declaration at par. 3.

17 8. The Itkin Trust rejected the Debtor's tender. Using its leverage to the maximum, the
18 Itkin Trust wrongfully increased its demands and boldly stated why the Debtor and Mr. Dina had to
19 accept them via an email from its lawyer to the Debtor's lawyer sent on June 5, 2014:

20 "Steve, I have just communicated with Mr. Itkin. I have explained carefully Mr. Dina's
21 reasons for each part of the proposal you communicated to me late afternoon/early evening.
22 Mr. Itkin has taken into account (i) the fact that Mr. Dina presently is out of cash, (ii) that he
23 can't currently get financing for more than the proposed private loan and (iii) his desire not
24 to have Mr. Itkin as a partner. Mr. Itkin also believes that not having to file a Chapter 11
will avoid significant disruption to Ben Jewelry's business and Mr. Dina's business and
borrowing relationships. The proposal below takes into account each of these issues in a
manner which I think should be acceptable to Mr. Dina. The proposal is as follows:

25 1. The Debtor will pay the \$1.76 million to pay off the existing Note secured by
the Debtor/Itkin Trust Deed;

26 2. The indebtedness as between Mr. Itkin and Ben Jewelry will be \$0 (neither
27 party will owe the other any money including eliminating all issues with respect to the Green
Diamond and all other transactions between Mr. & Mrs. Itkin on the one hand and Ben Jewelry on
28 the other hand);

1 3. Subject to the Rights of Mr. Dina in item 4 below, the existing Membership
2 Interest of the Itkin Trust will be confirmed;

3 4. At any time on or before May 31, 2015, Mr. Dina shall have the express right
4 to purchase from the Itkin Trust all of the Itkin Trust's Membership in The Debtor for \$1 million;

5 5. Dina shall remain the Managing Member of The Debtor; provided that if Mr.
6 Dina does not obtain institutional financing of the Property within 45 days of the date of the
7 settlement agreement to be entered into by the parties, Mr. Itkin shall thereupon become the
8 Managing Member.

9 6. The parties will enter into binding mutual non-disparagement agreement;

10 7. The parties will enter into to a confidentiality agreement;

11 8. Except for continuing obligations set forth in the settlement agreement, the
12 parties will enter into mutual releases.”

13 Wasserman Declaration at par. 7. See also, the May 29, 2014 10:49 PM email from Silverman to
14 Wasserman attached as part of Exhibit D to the Wasserman Declaration.

15 9. On June 5, 2014, in an effort to avoid the necessity of filing this chapter 11 case, to
16 pay off the Itkin Loans, and to work out a mechanism for resolving all disputes between them, the
17 Debtor offered to, among other things, to do the following:

18 (a) pay the Itkin Trust \$1,760,000, the amount it demanded to pay off the Itkin
19 Loans, even though that amount was in excess of the amount actually due and owing thereunder;

20 (b) affirm that the Itkin Trust had the Purported Membership Interest even though it
21 had been ignored by the Parties and was always intended to be nothing more than security for the
22 payoff of the Itkin Loans; and

23 (c) agree to all but two of the Itkin Trust's other demands as to which it offered a
24 compromise: It offered to agree to a management change if institutional financing was not obtained
25 within 90 days rather than 45 days as demanded by Itkin and to convert the \$1 repurchase right into
26 a \$500,000 repurchase right rather than a \$1,000,000 repurchase right as demanded by the Itkin
27 Trust. Wasserman Declaration at par. 10 and June 5, 2014 email exchange between Wasserman
28 and Silverman, a true and correct copy of which is attached as part of Exhibit D to the Wasserman
Declaration.

10 10. On June 5, 2014, the Itkin Trust rejected the Debtor's offer and stated its intention to

1 proceed with the foreclosure sale on June 9, 2014 even though the Debtor had offered it \$900,000
2 more (including BJI's waiver of its \$400,000 claim against .Mr. Itkin) than the amount which the
3 Itkin Trust was entitled to pay off the Itkin Loans and repurchase the Purported Membership
4 Interest. Wasserman Declaration at par. 11 and June 5, 2014 email exchange between Wasserman
5 and Silverman, a true and correct copy of which is attached as part of Exhibit D to the Wasserman
6 Declaration.

7 11. The Itkin Trust's rejection of The Debtor's repeated tenders, refusal to permit the
8 Debtor to exercise its right to repurchase the Purported Membership Interest for \$1 or even
9 \$500,000 and the Itkin Trust's pending foreclosure sale forced the Debtor to file this Bankruptcy
10 Case on the Petition Date to preserve its equity in the Property. Wasserman Declaration at par. 14.

11 12. The Debtor intends to file a plan of reorganization providing for the payment of the
12 allowed claims of its secured creditors, IDB and the Itkin Trust on the later of the plan's effective date
13 or the date of a final order determining the allowed amount of those claims, the payment in full of
14 allowed priority claims, and the payment of all, or substantially all, of the allowed amount of the claims
15 of its unsecured creditors on the plan's effective date or within a reasonable period thereafter. Dina
16 Declaration, at par. 5.

17 13. On June 18, 2014, the Debtor filed and served the (1) Application of Debtor and Debtor-
18 in-Possession to Employ Gershuni & Katz, a Law Corporation as General Bankruptcy Counsel
19 ("General Bankruptcy Counsel Application") which was docketed as No. 15; (2) Application of
20 Debtor and Debtor-in-Possession to Employ Michael F. Frank and Peggi A. Gross as Special Litigation
21 Counsel ("Special Litigation Counsel Application") which was docketed as No. 16; (3) Notice of
22 Application of Debtor and Debtor-in-Possession to Employ Gershuni & Katz, a Law Corporation as
23 General Bankruptcy Counsel (the "General Bankruptcy Counsel Application Notice") which was
24 docketed as No. 18; and (4) the Notice of Application of Debtor and Debtor-in-Possession to Employ
25 Michael F. Frank and Peggi A. Gross as Special Litigation Counsel (the "Special Litigation Counsel
26 Notice") docketed as No. 19. Both employment applications gave notice that pursuant to Local
27 Bankruptcy Rule ("LBR") 2014-1(b)(3)(e), any response and request for hearing, in the form required
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1 by LBR 9013-1(f)(1), must be filed and served on the Debtor, counsel and the United States trustee not
2 later than fourteen (14) days from the date of service of the Notice.

3 14. July 2, 2014 was the 14th day after service of the two notices. No response or request
4 for hearing was filed by that date. However, prior to proposed general bankruptcy counsel filing a
5 declaration of no response or request for hearing and a proposed order granting the applications, the
6 Itkin Trust filed and served on July 7, 2014 its Omnibus Opposition and Request for Hearing on the
7 applications (Docket No. 30). Out of prudence, proposed general bankruptcy counsel obtained a
8 hearing date and filed and served a separate notice of the hearing on each of the applications (Docket
9 No.s 59 and 60).

10 15. In light of this Court's granting on July 22, 2014 of the Debtor's motion to continue the
11 hearing on the Motion to Dismiss to allow for discovery and its setting of a one-day trial on the motion
12 for October 29, 2014,, the Debtor filed a notice (docket no. 69) that it was amending its Special
13 Litigation Counsel Application "to clarify that the scope of retention includes not only representation
14 of the Debtor in proceedings brought by it against Garry Itkin and Anna Charnow, trustees of the Itkin
15 Living Trust dated March 12, 2008 ("Itkin"), but also with respect to all other litigation and contested
16 matters including, without limitation, the contested matter commenced by Itkin's filing of a motion to
17 dismiss this bankruptcy case."

18 **III.**

19 **DEBTOR'S RIGHT TO FILE ITS PETITION FOR RELIEF IS TO BE DECIDED AT THE**
20 **OCTOBER 29, 2014 TRIAL OF THE ITKIN TRUST'S MOTION TO DISMISS; ITKIN**
21 **TRUST'S ATTEMPT TO HAVE THIS COURT DENY THE DEBTOR ITS RIGHT TO**
22 **EMPLOY COUNSEL TO REPRESENT IT IN THIS CASE AND TO OPPOSE THE MOTION**
23 **TO DISMISS IS BASED ON THE PRESUMPTION THAT THE COURT WILL GRANT THE**
24 **MOTION TO DISMISS OR THE DESIRE THAT THE COURT DETERMINE THE MOTION**
25 **TO DISMISS WITHOUT THE DEBTOR HAVING THE BENEFITS OF DISCOVERY AND**
26 **A FULL EVIDENTIARY HEARING, AND IS IMPROPER.**

27 Pursuant to Local Bankruptcy Rule 9011-2(a), a limited liability company may not file a
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1 petition or otherwise appear without counsel in any case or proceeding. If the Debtor is unable to retain
2 counsel, it will be unable to oppose the Itkin Trust's Motion to Dismiss, effectively prejudging the
3 outcome of the trial of this contested matter which this Court set for a one-day trial on October 29,
4 2014. This would achieve the Itkin Trust's goal by enabling it to foreclose on the Property, wiping out
5 the Debtor's approximately \$3,000,000 equity in it to the detriment of unsecured creditors and Mr.
6 Dina, and providing the Itkin Trust with a potential \$3,000,000 plus windfall. The Debtor should have
7 the right to appear in this Case and prosecute its adversary proceeding.

8 **IV.**

9 **ITKIN TRUST'S ATTEMPT TO EFFECTIVELY PREVENT THE DEBTOR FROM FILING**
10 **A PETITION FOR RELIEF AND TO EMPLOY COUNSEL IS IMPERMISSIBLE AS**
11 **VIOLATIVE OF THE PUBLIC POLICY AGAINST PRE-PETITION CONTRACTUAL**
12 **WAIVERS OF THE RIGHT TO FILE A PETITION FOR RELIEF CONFERRED BY**
13 **CONGRESS PURSUANT TO ARTICLE 1, SECTION 8, CLAUSE 4 OF THE UNITED**
14 **STATES CONSTITUTION**

15 Article 1, section 8, clause 4 of the United States Constitution grants Congress the right to
16 establish "uniform laws on the subject of Bankruptcies throughout the states." Pursuant thereto
17 Congress has enacted the current set of bankruptcy laws embodied by the Title 11 of the United States
18 Code which, among other things, provides a limited liability company with the right to file a petition
19 for relief and employ counsel to represent it in connection with a bankruptcy case. It is well established
20 that the pre-petition waiver of a right to file a bankruptcy case is unenforceable. In re Thorpe
21 Insulation Co. (9th Cir. 2012) 671 F.3d 1011, 1025-26 cert. denied, (U.S. 2012) 133 S.Ct. 119 [184
22 L.Ed.2d 26]; In re Huang (9th Cir. 2002) 275 F.3d 1173, 1177; see also In re Shady Grove Tech Center
23 Associates Ltd. Partnership (Bankr. D. Md. 1998) 216 B.R. 386, 389 supplemented, (Bankr. D. Md.
24 1998) 227 B.R. 422.; Fallick v. Kehr, 369 F.2d 899 (2nd Cir.1966).

25 In Huang, supra, the bankruptcy court had entered a judgment denying the debtor's discharge
26 of its judgment liability to the Bank of China based upon the Settlement Agreement, Security
27 Agreement, and General Release (the "Settlement Agreement") approved by the U. S. District Court
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1 in pre-petition litigation brought by the bank to recover money from the debtor and others. The
2 Settlement Agreement provided, inter alia, that the judgment was not dischargeable in bankruptcy and
3 that the debtor “shall not (i) file any voluntary petition under any Chapter of the Bankruptcy Code, Title
4 11, U.S.C.A. ... or in any manner to seek relief, protection, reorganization, liquidation, dissolution or
5 similar relief for debts under any other local, state, federal or other insolvency laws or laws providing
6 for relief of debtors in equity.” In re Huang (9th Cir. 2002) 275 F.3d 1173, 1176. The 9th Circuit, in
7 affirming the district court’s reversal of the bankruptcy court’s judgment, held:

8 “It is against public policy for a debtor to waive the prepetition protection of the Bankruptcy
9 Code. *Hayhoe v. Cole*, 226 B.R. 647, 651-54 (9th Cir.B.A.P.1998). This prohibition of prepetition
10 waiver has to be the law; otherwise, astute creditors would routinely require their debtors to waive.
11 Accordingly, the district court held that the Settlement Agreement's provisions that the judgment and
12 debt are not dischargeable, and that Huang will not enter bankruptcy, are unenforceable.” Id., at 1177.

13 In Thorpe, supra, Continental Insurance Company sought to enforce a contractual arbitration
14 provision as well as recover damages for breach of certain warranties that Thorpe gave to Continental
15 under the contract. Both the bankruptcy court and the district court denied the motion to compel
16 arbitration and disallowed damages. The 9th Circuit affirmed. Its discussion and holding on the latter
17 issue is instructive:

18 “Continental next challenges the bankruptcy court's merits determination that Thorpe's actions
19 in pursuing a § 524(g) reorganization did not create a claim for damages. Continental contends
20 that Thorpe breached the Assignment Warranty by acquiring the Settling Insurers' claims and
21 assigning them to the § 524(g) trust, and that it breached the Establishment Warranty by
22 collaborating with asbestos claimants to structure and confirm a § 524(g) plan. But even if the
23 covenants in the Settlement Agreement by their terms would have proscribed these actions, we
24 conclude that, to the extent that they did, they were not enforceable, because they then would
25 be purported prepetition waivers of the protections of the Bankruptcy Code, which need not
26 here be permitted.

27 We have held that “[i]t is against public policy for a debtor to waive the prepetition protection
28 of the Bankruptcy Code.” *Bank of China v. Huang* (*In re Huang*), 275 F.3d 1173, 1177 (9th
Cir.2002). “This prohibition of prepetition waiver has to be the law; otherwise, astute creditors
would routinely require their debtors to waive.” *Id.* In *Huang*, a prepetition settlement
agreement provided that the debtor would not file for bankruptcy and that a debt was not
dischargeable in bankruptcy. Though the Settlement Agreement here does not specifically
mention bankruptcy, other courts have said that prepetition waivers of bankruptcy benefits
generally are unenforceable. *See, e.g., Hayhoe v. Cole* (*In re Cole*), 226 B.R. 647, 651–52 &
n. 7 (B.A.P. 9th Cir.1998) (collecting cases); *In re Pease*, 195 B.R. 431, 434–35
(Bankr.D.Neb.1996) (“[A]ny attempt by a creditor in a private pre-bankruptcy agreement to opt

1 out of the collective consequences of a debtor's future bankruptcy filing is generally
2 unenforceable. The Bankruptcy Code preempts the private right to contract around its essential
provisions.”).

3 In re Thorpe Insulation Co. (9th Cir. 2012) 671 F.3d 1011, 1025-26 cert. denied, (U.S. 2012) 133 S.Ct.
4 119 [184 L.Ed.2d 26]

5 In the case at bar, by using its leverage as a secured creditor to provide in a prepetition contract
6 that it had coerced Mr. Dina and the Debtor to enter into, the Itkin Trust sought to deprive the Debtor
7 of its right file a petition for relief or to avail itself of the protections afforded by the Bankruptcy Code
8 by prohibiting Mr. Dina as the Debtor’s manager from authorizing the filing of a petition for relief
9 without Mr. Itkin’s consent and providing for Mr. Itkin to become the managing of the Debtor in the
10 event of a default on its obligations to The Itkin Trust and/or IDB. While in form, the prohibition
11 against the Debtor filing a petition for relief is not absolute in that theoretically Mr. Itkin and/or the
12 Itkin Trust could have authorized the filing of the petition for relief herein, the operative facts overrides
13 the form and makes it absolute. Mr. Itkin and the Itkin Trust admit that they would never have
14 consented to, nor authorized, the filing of, a petition for relief commencing this Case to allow the
15 Debtor to seek to reorganize its financial affairs and pay its creditors pursuant to a confirmed plan.
16 They admit that their goal is to the contrary, to be able to foreclose on the Property. The Itkin Trust
17 would have foreclosed on the Property on June 9, 2014 had the petition for relief not been filed in this
18 Case on June 6, 2014. Indeed, the Itkin Trust intends to foreclose should this court dismiss the Case
19 and reap the potential \$3,000,000 plus windfall to the detriment of the unsecured creditors and Mr.
20 Dina.

21 The Itkin Trust’s imposition of a requirement that its consent be obtained to the filing of a
22 petition for relief as part of a pre-petition agreement to provide it with further security for the
23 repayment of its loans to the Debtor and its opposition to the Debtor’s applications to employ counsel
24 constitute nothing more than another attempt by a secured creditor to circumvent the rights afforded
25 to the Debtor by Congress pursuant to Article 1, Section 8, Clause 4 of the United States Constitution,
26 is against public policy, and should not be countenanced by this Court. The Debtor should be allowed
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1 to retain general bankruptcy and special litigation counsel¹.

2 V.

3 **THE ITKIN TRUST'S OBJECTION TO THE EMPLOYMENT OF SPECIAL LITIGATION**
4 **COUNSEL ON THE SEPARATE GROUNDS OF AN ALLEGED CONFLICT OF INTEREST**
5 **IS WITHOUT MERIT; AN ACTUAL CONFLICT OF INTEREST EXISTS BETWEEN THE**
6 **ITKIN TRUST AND THE DEBTOR'S OTHER CREDITORS AND ITS EQUITY SECURITY**
7 **HOLDER**

8 Rather than establishing an actual conflict of interest between proposed special litigation
9 counsel and the Debtor, the Itkin Trust's opposition highlights the actual conflict of interest that exists
10 between Mr. Itkin/the Itkin Trust on the one hand and the Debtor, its equity security holder and its
11 priority and general unsecured creditors on the other hand. Indeed, the Itkin Trust's efforts to prevent
12 the Debtor from filing a petition for relief and from employing counsel to oppose the Itkin Trust's
13 Motion to Dismiss and prosecute the Debtor's claims against it is not only violative of the public policy
14 against a secured creditor imposing a contractual prohibition of its borrower's right to file bankruptcy,
15 but is also a breach of Mr. Itkin's fiduciary duty to Mr. Dina and the Debtor's other creditors as an
16 asserted manager and member of the Debtor not to prefer his/its interest at the expense of wiping out
17 their interests.

18 "Courts usually employ a three-part test to determine if special counsel should be employed:
19 (1) whether appointment is in the best interest of the estate; (2) whether counsel holds an adverse
20 interest to the estate with respect to the matter for which he or she should be employed; and (3) whether
21 the special purpose may rise to the level of conducting the bankruptcy case for the trustee or debtor-
22 in-possession." 42 Norton Bankr. L. & Prac. 3d § 30:7

23 Proposed Special Litigation counsel is an experienced litigator who has already acquired
24

25 1 The Debtor is only asking the Court to determine at this time whether it may
26 employ general and special litigation counsel at the expense of the Estate for the purposes
27 set forth in the respective employment applications. It only addresses the authorization to
28 file issue in this reply brief as the Itkin Trust raised the issue in its opposition. The
Debtor anticipates that the Court will determine whether it filed the petition for relief
herein with the requisite authority at the one-day trial scheduled for October 29, 2014.

1 knowledge of the facts and law on which the Adversary Proceeding is based. Proposed Special
2 Litigation Counsel has agreed to undertake representation of the Debtor in the Adversary Proceeding
3 as well as to perform certain discrete work to assist proposed general bankruptcy counsel in connection
4 with the contested matter commenced by the Motion to Dismiss at the expense of the Estate and the
5 payment of a \$5,000 post-petition retainer. See Special Litigation Counsel Application Employment
6 of Mr. Frank (and Ms. Gross) is in the best interest of the estate.

7 Mr. Frank does not hold an adverse interest to the estate with respect to the matter for which
8 he is to be employed as his only claim against the Debtor is for less than \$20,000 in legal fees. Mr.
9 Frank and the Debtor's interest are aligned in seeking to prevent the Itkin Trust from foreclosing on
10 the Property as such foreclosure would not only wipe out the Debtor's \$3,000,000 plus equity in the
11 Property, but would also wipe out the source of payment of unsecured claims such as Mr. Frank's.
12 Similarly, Mr. Frank's representation of Ben Jewelry, Inc., the Debtor's tenant and the holder of a
13 \$3,000,000 plus general unsecured claim and of Mr. Dina, who is either the only or a 50% member of
14 the Debtor is not adverse to the Debtor given that for the same reason his interests as a creditor are
15 aligned with the Debtor in the Itkin Litigation so are the interests of Ben Jewelry, Inc. and Mr. Dina
16 as a creditor and member, respectively. See Frank Declaration at pars 6 - 10.

17 Further, the Debtor seeks to employ Special Litigation Counsel for a proper and limited
18 purposes - pertaining to the litigation with the Itkin Trust. It does not seek to retain Special Litigation
19 Counsel to perform any of the functions normally performed by general bankruptcy counsel. See
20 paragraph 4 of both the Special Litigation Counsel Application and the General Bankruptcy Counsel
21 Application.

22 The Itkin Trust cites In re Big Mac Marine, 326 B.r.150, 154 (B.A.P. 8th Cir. 2005) for the
23 proposition that the "Debtor has the burden to show that the proposed employment of special counsel
24 under section 327 of the Bankruptcy Code is proper." Opposition, page 5, lines 23-25. In re Big Mac
25 Marine is inapposite as it did not involve an application to employ special counsel under 11 U.S.C.
26 Section 327(e), but rather an application to employ a general bankruptcy counsel under Section 327(a)
27 subject to the requirement of Section 327(c) that the court disapprove employment in the case of an
28

1 actual conflict of interest upon objection by a creditor or the UST. In that case, the debtor sought to
2 employ counsel under Section 327(a) who was also representing the debtor's principals in their
3 individual bankruptcy case, the principals who had filed proof of claim in debtor's Chapter 11 case and
4 were debtor's largest creditors. Accordingly, the Court held that their attorney was disqualified from
5 employment as the debtor's general bankruptcy counsel under Section 327(a).

6 The Itkin Trust cites in In re Argus Group 1700, 199 B.R. 525 (Bankr. E.D. Pa. 1996) to
7 support its assertion that the Section 327(a) standard should be applied to retention of Special
8 Litigation Counsel in this Case. However, Argus is easily distinguishable. In Argus, the debtors sought
9 to employ Rosen as special counsel to continue representing the debtors in two lawsuits that had been
10 filed and intensively litigated pre-petition and were pending at the time fo the filing of the petition. The
11 debtors claimed that they were driven into bankruptcy by the "mounting litigation costs resulting from
12 disputes with Steinman being waged in both state and federal court (the "Steinman Litigation"). Id.,
13 at 526. However, given the debtors' intention to continue the litigation during the pendency of the
14 case, the litigation fees would continue unabated. The debtors had less than \$120,000 of general
15 unsecured debt of which \$112,000 was to Rosen. Inasmuch as the debtors were current with payments
16 to its secured creditors, had substantial equity in their property and presumably could pay the less than
17 \$7,000 in other unsecured debt from rental income, there were no creditors around which to build a
18 reorganization plan. The court questioned the purpose of the filing and suggested that the Section
19 327(a) standard should be applied to Rosen's employment application:

20 "If there is any point to this bankruptcy proceeding, we fail to discern what it is. To the extent
21 there is any bankruptcy purpose for this case, which we intend to question at the status hearing
22 scheduled in our accompanying Order, it seems, by Debtors' counsel's own statement to revolve
23 around the Steinman Litigation. Given that the role of litigation is preeminent in these cases,
24 litigation counsel, not bankruptcy counsel, is the primary legal adviser. Indeed we see a very
25 little role for bankruptcy counsel if the Rosen Firm is employed. Accordingly, we believe that
26 the more rigorous standards of § 327(a) should be applied. Under § 327(a), the Rosen Firm, a
27 creditor, is not disinterested and may not be employed."

28 Id., at 531.

The Court went on to state that even under the less stringent standard of Section 327(e), it would deny
Rosen's employment because Rosen also represented third parties in the litigation who had interests

1 that were adverse to the interest of the debtors. Id., at 531.

2 In the case at bar, the Debtor is in default under its loan obligations to both of its secured
3 creditors and would have lost its sole material asset through a foreclosure sale had it not filed the
4 petition for relief herein on the last court day prior to the scheduled sale day. Proposed special litigation
5 counsel, Michael Frank, holds the smallest of the 2 general non-insider unsecured claims. There is also
6 at least one filed priority tax claim. The Debtor intends to file a plan of reorganization providing for
7 the payment of the allowed claims of its secured creditors, IDB and the Itkin Trust on the later of the
8 plan's effective date or the date of a final order determining the allowed amount of those claims, the
9 payment in full of allowed priority claims, and the payment of all, or substantially all, of the allowed
10 amount of the claims of its unsecured creditors on the plan's effective date or within a reasonable
11 period thereafter. Dina Declaration at par. 5. This case has a legitimate bankruptcy purpose and
12 substantial work for general bankruptcy counsel to perform. As stated at paragraph 4 of the General

13 Bankruptcy Counsel Application:

14
15 "Debtor requires the services of general bankruptcy counsel to carry out its duties in this Case.
The type of professional services to be rendered by general bankruptcy counsel include, but are not
limited to, the following:

16 a. To advise Debtor regarding its rights and responsibilities as chapter 11 debtor
17 and debtor-in-possession, specifically including the requirements of the Bankruptcy Code, the
18 Bankruptcy Rules, the Local Bankruptcy Rules, the UST's Notice of Requirements for Chapter 11
Debtors-In-Possession and other UST requirements, and how the application of such provisions relate
to the administration of Debtor's estate;

19 b. To advise and assist Debtor in connection with the preparation of certain
documents to be filed with the Bankruptcy Court and/or the UST, including, without limitation, the
Schedules of Assets and Liabilities, Statement of Financial Affairs, and other such documents;

20 c. To represent Debtor with respect to bankruptcy issues in the context of its
pending chapter 11 Case;

21 d. To advise, assist and represent Debtor in the negotiation, formulation and
confirmation of a plan of reorganization; and

22 e. To perform such additional legal services as may be necessary or appropriate
in this chapter 11 Case.

23
24 Proposed bankruptcy counsel has already provided substantial services to the Debtor including, without
25 limitation, (1) advising it regarding its responsibilities as a debtor-in-possession including compliance
26 with the requirements of the United States Trustee ("UST") and preparation of monthly operating
27 reports, (2) representing the Debtor at the initial debtor interview with the UST and at the first meeting

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1 of creditors., (3) filing a motion to fix a claims filing bar date in anticipation of filing of reorganization,
2 (4) preparation of an outline of a potential plan of reorganization, (5) advising the Debtor regarding
3 potential plan of reorganization options, (6) negotiating with secured creditors concerning cash
4 collateral issues and (7) unfortunately had to expend substantial time and effort in opposing the Itkin
5 Trust's Motion to Dismiss and in connection with related matters. Katz Declaration at par. 3.

6 The Debtor in this case has need of special litigation counsel as stated in paragraph 4 of the
7 Special Litigation Counsel Application:

8 Debtor requires the services of special litigation counsel to represent it in connection with the
9 prosecution of a lawsuit the Debtor intends to file against Garry Itkin, Trustee of the Itkin
10 Living Trust dated March 12, 2008 ("Itkin") seeking, among other things, (1) a determination
11 of the amount of Itkin's secured claim against the Estate, (2) a declaration that Itkin is not a
12 member of the Debtor, (3) alternatively, a determination of the nature and extent of Itkin's
13 membership interest in the Debtor; and (4) damages for breach of contract (the "Itkin
14 Litigation").

15 Consistent therewith, on July 1, 2014, Mr. Frank as proposed Special Litigation Counsel filed on behalf
16 of the Debtor its Complaint for (1) Declaratory Relief; (2) Determine Extent and Validity of Lien; (3)
17 Breach of Contract - Specific Performance Remedy; (4) Breach of Fiduciary Duty; and (5) Declaratory
18 Relief against Garry and Anna as trustees of the Itkin Trust which was assigned Adv. Case No. 2:14-
19 ap-01443-BR (the "Adversary Proceeding").

20 As noted above, in light of this Court's granting on July 22, 2014 of the Debtor's motion to
21 continue the hearing on the Motion to Dismiss to allow for discovery and its setting of a one-day trial
22 on the motion for October 29, 2014, the Debtor filed a notice (docket no. 69) that it was amending its
23 Special Litigation Counsel Application "to clarify that the scope of retention includes not only
24 representation of the Debtor in proceedings brought by it against Garry Itkin and Anna Charnow,
25 trustees of the Itkin Living Trust dated March 12, 2008 ("Itkin"), but also with respect to all other
26 litigation and contested matters including, without limitation, the contested matter commenced by
27 Itkin's filing of a motion to dismiss this bankruptcy case."

28 Contrary to the proposed special counsel in Argus, Mr. Frank has no interest adverse to the
Debtor as to the matters for which he is being retained to represent the Debtor. Indeed other than being
an unsecured creditor of Asher for legal services rendered pre-petition in connection with short-lived

1 litigation against the Itkin Trust (the “Itkin State Court Litigation”), Mr. Frank holds no interest
2 adverse to Asher. Moreover, he is not an officer, director, owner or otherwise an insider of Asher.
3 Declaration of Michael Frank filed herewith at paragraph 6.

4 Contrary to the facts in Argus, the action where Mr. Frank is to represent the Debtor is not the
5 continuation of pre-petition litigation, but rather a new action commenced post-petition. Although Mr.
6 Frank represented the Debtor in the Itkin State Court Litigation which was dismissed with prejudice
7 in exchange for a short reprieve from the Itkin Trust’s intention to foreclose on the Property, the
8 Adversary Proceeding against the Itkin Trust is based on claims not determined in the Itkin State Court
9 Litigation. Indeed, some of the events on which the breach of fiduciary duty and declaratory relief
10 claims for relief are based did not occur until after the Debtor filed its request to dismiss the state court
11 action. *Id.*, at pars. 7, 12-21.

12 Mr. Frank has disclosed that he also represents Ben Jewelry, Inc., the holder of the largest
13 unsecured claim against the Debtor and its sole tenant as well as Mr. Dina, an equity security holder
14 and manager of the Debtor. However, as noted above, both Ben Jewelry, Inc. and Mr. Dina’s interest
15 are aligned with the Debtors. See Frank Declaration at pars 8-11.

16 Although the Adversary Proceeding will certainly have a substantial bearing on the outcome
17 of this case, the Debtor can and will propose a good-faith plan of reorganization not only providing for
18 the payment in full of the allowed Itkin Trust claim once it has been determined by this Court, but for
19 the payment in full of the allowed claim of secured creditor IDB, the payment in full of allowed priority
20 claims and for the payment of all or substantially of the allowed claims of general unsecured creditors.
21 But for the filing of the petition for relief herein, none of the Debtor’s unsecured creditors who hold
22 claims in excess of \$3,000,000 would receive any portion of the Debtor’s \$3,000,000 plus equity in
23 the Property as it would be lost through foreclosure to the Itkin Trust. In fact, it is the Itkin Trust as
24 a purported 50% member and manager of the Debtor that has a conflict of interest and is breaching its
25 fiduciary duty to Mr. Dina as an equity security holder and to the priority and general unsecured
26 creditors by seeking to have the Case dismissed so that it can foreclose on the Debtor’s Property and
27 deprive the other creditors and equity security holder of any chance to realize such equity.

28

1 The Itkin Trust's assertion that Mr. Frank should not be employed because the claims set forth
2 in the Adversary Proceeding are barred as a matter of state law is an attempt to determine the merits
3 of the Adversary Proceeding without a trial and should not be countenanced by this Court. Moreover,
4 the same arguments have been made by the Itkin Trust and rebutted by the Debtor in connection with
5 the Motion To Dismiss.

6 **VI.**

7 **CONCLUSION**

8 The Itkin Trust's opposition to the employment of general and special bankruptcy counsel is
9 without merit in that, among other reasons, (1) it presupposes that the Court will grant its Motion to
10 Dismiss; (2) it is violative of the public policy against pre-petition contractual waivers of the right to
11 file a petition for relief and is an attempt to deprive the Debtor of its right to file a petition for relief
12 conferred by Congress pursuant to Article 1, Section 8, Clause 4 of the United States Constitution both
13 by seeking to forbid it from filing or consenting to the entry of a petition for relief and by preventing
14 it from retaining counsel to file a petition and appear on its behalf in its bankruptcy case; and (3) rather
15 than establishing an actual conflict of interest between proposed special litigation counsel and the
16 Debtor, the Itkin Trust's Opposition highlights the conflict of interest between Mr. Itkin/the Itkin Trust
17 on the one hand and the Debtor, its equity security holders and its priority and general unsecured
18 creditors on the other hand. Indeed, the Itkin Trust's efforts to prevent the Debtor from filing a petition
19 for relief and oppose the Itkin Trust's Motion to Dismiss is not only violative of the public policy, but
20 is also a breach of Mr. Itkin's fiduciary duty to Mr. Dina and the other creditors of Asher as an asserted
21 manager and member of the Debtor not to prefer his/its interest at the expense of wiping out their
22 interests. Good cause exists for approval of both the General Bankruptcy Counsel Application and the
23 Special Litigation Counsel Application.

24 Dated: August 15, 2014

24 GERSHUNI & KATZ, A Law Corporation

26 /S/ Ira Benjamin Katz
27 Ira Benjamin Katz, Proposed General Bankruptcy
28 Counsel for the Debtor and Debtor-In-Possession

DECLARATION OF YOSSI DINA

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DECLARATION OF YOSHI DINA

I, YOSHI DINA, declare as follows:

1. I have personal knowledge of the facts set forth herein. If called upon to testify thereto under oath, I could and would do so competently.

2. I am a member and the manager of Asher Investment Properties, LLC ("Asher" or the "Debtor"), debtor and debtor-in-possession in the above-captioned case. At all times relevant, I have been Asher's sole manager and took the actions described below in that capacity.

3. In or about December, 2007, Asher purchased the property located at 249-251 S. Beverly Drive, Beverly Hills, CA 90212 (the "Property"). Based upon the fact that in or about January, 2013 the Property was appraised by an independent appraiser as having a fair market value of \$9,700,000, my knowledge of the commercial real estate market in Beverly Hills, and the fact that commercial properties are currently selling for substantially more today than they were in January 2013, I believe that the Property is worth in excess of \$11,000,000 today and that Asher's equity in the Property exceeds \$3,000,000.

4. In May, 2014, I obtained 3 cashier's checks totaling \$1,700,000 to pay off the amount owed by Asher to the Itkin Trust and remove the Itkin Trust from Asher's financial affairs. A true and correct copy of the 3 cashier's checks are attached hereto as Exhibit A.

5. It is my intention that Asher's general bankruptcy counsel prepare and file on Asher's behalf a plan of reorganization providing for the payment of the allowed claims of its secured creditors, Israel Discount Bank and the Itkin Trust on the later of the plan's effective date or the date of a final order determining the allowed amount of those claims, the payment in full of allowed priority claims, and the payment of all, or substantially all, of the allowed amount of the claims of its unsecured creditors on the plan's effective date or within a reasonable period thereafter.

6. On August 13, 2014, SHELA BARLAS translated this entire declaration for me from English into Hebrew. I read and understood the translated declaration before signing this declaration.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on August 13, 2014 at Beverly Hills, California.

X 
YOSHI DINA

EXHIBIT A
TO THE DECLARATION OF YOSSI DINA

Jul07 14 11:59a

The Dina Collection

13108886705

p.1

Bank of America

CASHIER'S CHECK

DATE: MAY 27, 2014

01-1707231

Banking Center

BEVERLY WILSHIRE

0000213 00001 0004441678

TOBBI DINA

Remittee/Purchaser Ref:

1000000.00

***ONE MILLION DOLLARS AND 00 CENTS**

Pay

To

The

Order

Of

ITKEN TRUST

Authorized Signature

Bank of America, N.A.
Phoenix, AZ

VOID AFTER 90 DAYS

⑆004441678⑆ ⑆122101706⑆ 457022259767⑆

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CASHIER'S CHECK

No. 7224504036

2014
123

DATE: MAY 27, 2014

PAY

THREE HUNDRED THOUSAND DOLLARS AND 00 CENTS

\$ 300,000.00

TO THE

ORDER OF: ITKEN TRUST

PURPOSE/REMITTER: BEN JEWELRY

Location: 7224 Beverly Hills

U.S. Bank National Association
Attyneville, MN 55400

AUTHORIZED SIGNATURE

⑆7224504036⑆ ⑆122235821⑆ 153410023953⑆

Bank of America

Cashier's Check

No. 004441679

DATE: MAY 27, 2014

01-1707231

Banking Center

BEVERLY WILSHIRE

0000213 00001 0004441679

BEN JEWELRY, INC.

Remittee/Purchaser Ref:

400000.00

***FOUR HUNDRED THOUSAND DOLLARS AND 00 CENTS**

Pay

To

The

Order

Of

ITKEN TRUST

Authorized Signature

Bank of America, N.A.
Phoenix, AZ

VOID AFTER 90 DAYS

⑆004441679⑆ ⑆122101706⑆ 457022259767⑆

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DECLARATION OF SHLOMO BARASH

DECLARATION OF SHLOMO BARASH

I, SHLOMO BARASH, declare as follows:

1. I have personal knowledge of the facts set forth herein. If called upon to testify thereto under oath, I could and would do so competently.

2. I am a certified public account and a principal of Bareket, Barash CPAs, a certified public accounting firm in Beverly Hills, California.

3. I have provided outside accounting and other services to Asher Investment Properties, LLC ("Asher" or the "Debtor") since in or about 2009.

4. In January, 2014, I assisted Asher in negotiating with Israel Discount Bank ("IDB"), then holder of a promissory note secured by a first trust deed on property owned by Asher located at 249-251 S. Beverly Drive, Beverly Hills, CA 90212 (the "Property") that had matured. IDB agreed to extend a new loan to Asher in an increased amount (the "New IDB Loan") conditioned upon, among other things, the Itkin Family Trust dated March 12, 2008 (the "Itkin Trust") agreeing to subordinate its existing second trust deed on the Property (the "Itkin Second Trust Deed") to a new trust deed in favor of IDB to secure the New IDB Loan. IDB threatened to commence foreclosure under its existing first trust deed on the Property if the Itkin Trust did not sign IDB's subordination agreement by January 31, 2014.

5. On January 31, 2012 and February 1, 2012, I negotiated on behalf of the Debtor with Sheridan West, attorney for the Itkin Trust, regarding IDB's subordination requirement. Ultimately, Ms. West and I reached an agreement providing for the Itkin Trust to enter into a subordination agreement with IDB and the Debtor. The Itkin Trust's agreement to subordinate was conditioned upon the Debtor providing it with further security for the repayment of the Itkin Loans in the form of a 50% membership interest in the Debtor (the "Purported Membership Interest") via a Membership Interest Purchase Agreement (the "50% Security Agreement"). As part of the transaction, the Itkin Trust imposed via a restated operating agreement certain restrictions upon Mr. Dina's rights as manager of the Debtor, including the provisions that (1) Mr. Itkin would automatically become the Debtor's manager in the event of the Debtor's default on the New IDB Loan or the Itkin Loans and (2) the manager could not file a petition for relief without majority consent which, in the case of two 50% members, required the Itkin Trust's consent. In negotiating the 50% Security Agreement, the Debtor

1 insisted and the Itkin Trust agreed to insert a provision therein providing that the Debtor would have
2 the right to redeem or repurchase the Purported Membership Interest for the sum of \$1 after payoff of
3 the Itkin Loans. This protection for the Debtor was heavily negotiated and ultimately set forth in
4 Section 7 of the Purchase Agreement

5 I declare under penalty of perjury under the laws of the United States that the foregoing is true
6 and correct. Executed on August 13, 2014 at Beverly Hills, California.

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8 SHLOMO BARASH

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DECLARATION OF MICHAEL F. FRANK

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DECLARATION OF MICHAEL F. FRANK

I, MICHAEL F. FRANK, declare as follows:

1. I am the attorney of record as special litigation counsel for plaintiff and debtor Asher Investment Properties, LLC (“Asher”) in the adversary proceeding *Asher vs. Itkin Living Trust through trustees Gary Itkin and Anna Charno, et al.* case number 2:14-ap-01443-BR (the “Adversary Proceeding”) and assisting in the litigation portion of the main case *In re Asher* case number 2:14-bk-21172-BR (the “Bankruptcy Petition”). I have personal knowledge of the facts set forth herein. I am competent to testify, and if called upon to testify, could and would testify as set forth herein. I am admitted to practice in the Central District of California.

2. I have drafted the within declaration in reply to the opposition to the application for employment filed by the Itkin living Trust through trustees Gary Itkin and Anna Charno (the “Trust”).

3. First of all, I am requesting employment as special litigation counsel for the already filed adversary proceeding, not generally nor as debtor’s counsel in the Bankruptcy Petition case. On certain common areas of law, fact, and issues in the Adversary Proceeding as in the Bankruptcy Petition case for which Mr. Ira Katz deems appropriate, Mr. Katz may direct me to perform some limited task, such as this declaration.

1 4. The Trust lacks standing to raise alleged conflicts of interest or
2 disinterestedness. The Trust has caused Asher to file the Bankruptcy Petition to stop the
3 Trust was foreclosure.

4
5 5. The Trust, claiming to be a 50% membership interest holder of Asher, is
6 completely in conflict with Asher. The Bankruptcy Petition was filed to prevent the conflict
7 of and windfall to the Trust by foreclosing on its junior lien against Asher's sole asset, the
8 improved commercial property store located at 249-251 S. Beverly Drive, Beverly Hills,
9 California 90212 (the "Building") for which there are millions in equity not contested by the
10 Trust.
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14 6. I have no interest adverse to Asher. All attorneys bill their clients. I had the
15 prior state court action representing Asher. The matter was billed. And there will be billing
16 for any employment on the Adversary Proceeding. So, aside from billing Asher for legal
17 work performed, I have no interest adverse to Asher. I am not an insider of Asher. I hold no
18 positions as officer, director, nor owner of Asher.
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21 7. I have already represented Asher in the state court proceeding.
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1 8. I have represented the lessee of Asher, Ben Jewelry, Inc. who does hold a
2 claim as to Asher, on other matters.. And I have represented Yossi Dina, a membership
3 interest owner of Asher, on other matters. However, both Dina and Ben Jewelry do not have
4 interests adverse to Asher. They are aligned with Asher and have no conflict. They want the
5 Building to remain owned by Asher and not foreclosed. The plan proposal is to pay 100% of
6 the allowed claims. Ben Jewelry continues to pay rent to Asher. Dina has managed Asher
7 from inception to the present. The only adverse interest to Asher is the Trust which seeks to
8 foreclose upon the sole asset of Asher – the Building and yet asserts that it is an owner of
9 Asher.
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13 9. The Trust just asserts a conflict of interest or disinterestedness without
14 specifying what it would be as clearly Asher, Ben Jewelry, and Dina are aligned here. I can
15 represent aligned parties in a specific matter – herein the Adversary Proceeding. Clearly, the
16 Trust is merely opposing the retention because its does not want representation of Asher and
17 wants to deprive Asher of same so that it can obtain a windfall and proceed in conflict.
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20 10. I have not been paid any money by Asher to date at any time. I have not taken
21 a retainer. I am not holding any money in a client trust account for Asher.
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24 11. The Trust is being a little disingenuous when through its counsel they ask for
25 the dismissal with prejudice of the state court proceeding in order to continue negotiations
26 and reset the foreclose date and then attempt to raise it now.
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1 12. The declaratory relief action in state court involved the defects in the notice of
2 trust sale and default, and the other causes had to do with offsets from usury and other debts.

3
4 13. The current declaratory relief action in the Adversary Proceeding has to do
5 with the membership purchase agreement – as a disguised security interest, lack of
6 consideration, and the like. The alleged membership interest was not raised in the state court
7 proceeding and no membership purchase agreement was ever attached to Asher’s paperwork.
8

9
10 14. The validity and enforceability of a contract is never waived nor terminated
11 from a prior proceeding since that is an element required to be proved by the party moving to
12 enforce an agreement – which herein is the Trust – and the Adversary Proceeding merely
13 isolates that element of the Trust’s assertion and claim of membership interest owner of
14 Asher. Again, the Trust would have to prove a valid and enforceable contract. Asher would
15 have to admit validity and enforceability of a contract to eliminate the issue.
16
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19 15. Also, in the Adversary Proceeding, Asher requested the court to determine
20 extent and validity of the Trust junior lien which is a bankruptcy proceeding claim for relief
21 and could not be brought in the state court.
22

23
24 16. The breach of fiduciary duty continued with additional conduct beyond the
25 dismissal of the state court action as the Trust then reset foreclosure and moved to foreclose
26 again while alleging that it owned a 50% share of Asher.

27 ///
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1 17. I was instructed to dismiss the state court proceeding with prejudice in order
2 to obtain about a week to continue negotiations between Asher and the Trust. The Trust had
3 demanded that the state court proceeding be dismissed with prejudice or they would
4 foreclose and cease negotiations. The dismissal with prejudice was lodged with the
5 department, as required, on May 28, 2014 (true and correct copy of the received dismissal
6 attached hereto as Exhibit 1). Again, the Trust was requiring the dismissal with prejudice to
7 continue negotiating.
8

9
10 18. And on May 29, 2014, the Trust demanded \$1,000,000.00 as a pay off to
11 redeem the alleged 50% membership interest in Asher. This occurred after the dismissal was
12 lodged in the state court proceeding and could not have therefore been brought up in the state
13 court proceeding. Therefore, the declaratory relief and breach of fiduciary duty certainly can
14 be had on such post-state court proceeding as such event and breach had not occurred yet.
15 The May 29th demand showed that indeed the Trust could accept funds and not have to hold
16 them for the first lienholder, Israel Discount Bank ("IDB"), based upon the subordination
17 agreement and then this was just a ploy to effect foreclosure and obtain leverage for
18 redemption as the Trust apparently has the resources to purchase and overbid at the sale.
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1 19. A dismissal with prejudice only bars the same causes of action on the same
2 issues. *Palmquist v. Palmquist*, 212 Cal. App. 2d 340, 343-344, stated: "As plaintiff admitted
3 that the other quiet title action was identical with this [action] and [due to] the filing of the
4 dismissal with prejudice there could be no triable issues of fact . . . ". [¶] A dismissal with
5 prejudice of an action is a bar to the bringing of the same cause of action thereafter, and
6 precludes the plaintiff from litigating that issue again. (*Ghiringhelli v. Riboni* (1950) 95 Cal.
7 App. 2d 503, 506 [213 P.2d 17]; *Datta v. Staab* (1959) 173 Cal. App. 2d 613, 621 [343 P.2d
8 977]; *Sears v. DeMota* (1958) 157 Cal. App. 2d 216, 220 [320 P.2d 579].)

9
10 20. In *Datta v. Staab*, 173 Cal. App. 2d 613, 620-621 [343 P.2d 977], it is stated:
11 "Appellant asserts that a voluntary dismissal has only the effect of a withdrawal of the
12 plaintiff's claim; that it leaves the defendant as though he had never been a party. This is
13 undoubtedly true where plaintiff has received nothing in return for the dismissal. (*Cook v.*
14 *Stewart McKee & Co.*, 68 Cal. App. 2d 758 [157 P.2d 868]; *McDougald v. Hulet*, 132 Cal.
15 154 [64 P. 278]; *Collins v. Ramish*, 182 Cal. 360 [188 P. 550].) The effect of a dismissal with
16 prejudice is quite different, however, when it is executed and filed in return for a
17 consideration moving from the defendant. Such a dismissal operates as a complete bar to any
18 future action on the same cause for the same issue (*Markwell v. Swift & Co.*, 126 Cal. App.
19 2d 245 [272 P.2d 47]), and has the same legal effect as a common law retraxit. (*Ghiringhelli*
20 *v. Riboni*, 95 Cal. App. 2d 503, 506 [213 P.2d 17]; *Goddard v. Security Title Ins. & Guar.*
21 *Co.*, 14 Cal. 2d 47 [92 P.2d 804].) A retraxit is equivalent to a verdict and judgment on the
22 merits of the case and is deemed to be a bar to another suit for the same cause between the
23 same parties on the same issue. Where the parties to an action settle their dispute and agree
24 to a dismissal, it is a *retraxit* and amounts to a decision on the merits and as such is a bar to
25 further litigation on the same subject matter between the parties. (17 *Am.Jur.* 162, 163; see
26 also 16 *Cal.Jur.*2d 146.)

27
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1 21. A dismissal of an action "with prejudice," has a *retraxit* effect when it was made
2 and entered for a consideration. (See *Palmquist v. Palmquist*, 212 Cal. App. 2d 340, 343;
3 *Datta v. Staab*, 173 Cal. App. 2d 613, 620-621; *Rico v. Nasser Bros. Realty Co.*, 58 Cal.
4 App. 2d 878, 882.) However, such *retraxit* would only be as to the same causes for the same
5 issues since there is no paper release. Herein, the causes are for different issues, one is a
6 bankruptcy issue, and different documents are involved – the membership purchase
7 agreement and subordination agreement. And for events that occurred after the dismissal
8 was lodged – namely the \$1,000,000.00 redemption demand which clearly shows that the
9 Trust can accept money *albeit* a subordination agreement with IDB. And showing that the
10 subordination agreement did not prevent acceptance of the money and the foreclosure sale
11 could not have proceeded and the Bankruptcy Proceeding need not have been filed but for
12 the breach of fiduciary duty of the Trust and a declaratory relief action is required to find
13 same.

14
15 I declare under penalty of perjury under the laws of the United States of America and
16 State of California that the foregoing is true and correct and that this Declaration was
17 executed on the 12th day of August 2014, at Beverly Hills, California.
18

19
20 
21 /s/ Michael F. Frank
22 Michael F. Frank
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EXHIBIT 1
DECLARATION OF MICHAEL F. FRANK

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar Number, and address):
 Michael F. Frank, Esq. SBN 125149
 9901 Durant Drive, #H, Beverly Hills, CA 90212
 TELEPHONE NO.: (310) 277-2559 FAX NO. (Optional): (866) 279-2860
 E-MAIL ADDRESS (Optional): mfrankatty@aol.com
 ATTORNEY FOR (Name): Asher Investment Properties, LLC

FOR COURT USE ONLY

REC'D
 MAY 26 2014
 DEPT. 49

CASE NUMBER: BC545970

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles
 STREET ADDRESS: 111 N. Hill Street
 MAILING ADDRESS: 111 N. Hill Street
 CITY AND ZIP CODE: Los Angeles, CA 90012
 BRANCH NAME: Central District

PLAINTIFF/PETITIONER: Asher Investment Properties, LLC
 DEFENDANT/RESPONDENT: Gary Y. Itkin, et al.

REQUEST FOR DISMISSAL

A conformed copy will not be returned by the clerk unless a method of return is provided with the document.
 This form may not be used for dismissal of a derivative action or a class action or of any party or cause of action in a class action. (Cal. Rules of Court, rules 3.760 and 3.770.)

1. TO THE CLERK: Please dismiss this action as follows:
- a. (1) With prejudice (2) Without prejudice
 - b. (1) Complaint (2) Petition
 - (3) Cross-complaint filed by (name):
 - (4) Cross-complaint filed by (name):
 - (5) Entire action of all parties and all causes of action
 - (6) Other (specify):*

on (date):
 on (date):

2. (Complete in all cases except family law cases.)
 The court did did not waive court fees and costs for a party in this case. (This information may be obtained from the clerk. If court fees and costs were waived, the declaration on the back of this form must be completed.)
 Date: May 30, 2014

Michael F. Frank
 (TYPE OR PRINT NAME OF ATTORNEY PARTY WITHOUT ATTORNEY)

(SIGNATURE)

*If dismissal requested is of specified parties only of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

Attorney or party without attorney for:
 Plaintiff/Petitioner Defendant/Respondent
 Cross-Complainant

3. TO THE CLERK: Consent to the above dismissal is hereby given.**
 Date:

(TYPE OR PRINT NAME OF ATTORNEY PARTY WITHOUT ATTORNEY)

(SIGNATURE)

** If a cross-complaint - or Response (Family Law) seeking affirmative relief - is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581 (i) or (j).

Attorney or party without attorney for:
 Plaintiff/Petitioner Defendant/Respondent
 Cross-Complainant

(To be completed by clerk)

- 4. Dismissal entered as requested on (date):
- 5. Dismissal entered on (date): as to only (name):
- 6. Dismissal not entered as requested for the following reasons (specify):
- 7. a. Attorney or party without attorney notified on (date):
 b. Attorney or party without attorney not notified. Filing party failed to provide a copy to be conformed means to return conformed copy

Date: Clerk, by _____, Deputy

DECLARATION OF IRA BENJAMIN KATZ

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DECLARATION OF IRA BENJAMIN KATZ

I, Ira Benjamin Katz, declare and state as follows:

The matters stated herein are true and correct and within my personal knowledge. If called as a witness, I would competently testify thereto. I am a member of the bar of the State of California, all United States district courts for the Central District of California, the Ninth Circuit Court of Appeal and the United States Supreme Court and am a shareholder of Gershuni & Katz, A Law Corporation proposed bankruptcy counsel for Asher Investment Properties, LLC, Debtor and Debtor-In-Possession (“Asher” or the “Debtor”).

1. On June 6, 2014, the Debtor filed its petition for relief commencing this Chapter 11 case (the “Case”) and has been operating at all times thereafter as the debtor-in-possession.

2. A true and correct copy of the Debtor’s Schedules A and B, I caused to be filed in this Case are attached hereto collectively as Exhibit 1.

3. As proposed general bankruptcy counsel for the Debtor, I have already provided substantial services to the Debtor including, without limitation, (1) advising it regarding its responsibilities as a debtor-in-possession including compliance with the requirements of the United States Trustee (“UST”) and preparation of monthly operating reports, (2) representing the Debtor at the initial debtor interview with the UST and at the first meeting of creditors., (3) filing a motion to fix a claims filing bar date in anticipation of filing of reorganization, (4) preparation of an outline of a potential plan of reorganization, (5) advising the Debtor regarding potential plan of reorganization options, (6) negotiating with secured creditors concerning cash collateral issues and (7) unfortunately had to expend substantial time and effort in opposing the Itkin Trust’s Motion to Dismiss and in connection with related matters.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on August 13, 2014 at Los Angeles, California.

/S/ Ira Benjamin Katz
Ira Benjamin Katz

EXHIBIT 1
TO THE DECLARATION OF IRA BENJAMIN KATZ

FORM 986A (Official Form 986A) (12/07)

In re Asber Investment Properties, LLC
Debtor(s)

Case No. _____
(if known)

SCHEDULE A-REAL PROPERTY

Except as directed below, list all real property in which the debtor has any legal, equitable, or future interest, including all property owned as a cotenant community property, or in which the debtor has a life estate. Include any property in which the debtor holds rights and powers exercisable for the debtor's own benefit. If the debtor is married, state whether the husband, wife, both, or the marital community own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor holds no interest in real property, write "None" under "Description and Location of Property."

Do not include interests in executory contracts and unexpired leases on this schedule. List them in Schedule G-Executory Contracts and Unexpired Leases.

If an entity claims to have a lien or hold a secured interest in any property, state the amount of the secured claim. See Schedule D. If no entity claims to hold a secured interest in the property, write "None" in the column labeled "Amount of Secured Claim."

If the debtor is an individual or if a joint petition is filed, state the amount of any exemption claimed in the property only in Schedule C - Property Claimed as Exempt.

Description and Location of Property	Nature of Debtor's Interest in Property	Current Value of Debtor's Interest in Property Without Deducting any Secured Claim or Exemption	Amount of Secured Claim
249-251 S Beverly Drive, Beverly Hills, CA 90212	Fee Simple	\$10,700,000.00	\$7,260,000.00

No continuation sheets attached

TOTAL \$ 10,700,000.00
(Report also on Summary of Schedules.)

Exhibit 1

YD

889 (Official Form 98) (12/07)

In re Ashar Investment Properties, LLC
Debtor(s)

Case No. _____
(if known)

SCHEDULE B-PERSONAL PROPERTY

Except as directed below, list all personal property of the debtor of whatever kind. If the debtor has no property in one or more of the categories, place an "X" in the appropriate position in the column labeled "None." If additional space is needed in any category, attach a separate sheet properly identified with the case name, case number, and the number of the category. If the debtor is married, state whether the husband, wife, both, or the marital community own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor is an individual or a joint petitioner is filed, state the amount of any exemptions claimed only in Schedule C - Property Claimed as Exempt.

Do not list interests in executory contracts and unexpired leases on this schedule. List them in Schedule G-Executory Contracts and Unexpired Leases.

If the property is being held for the debtor by someone else, state that person's name and address under "Description and Location of Property." If the property is being held for a minor child, simply state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

Type of Property	None	Description and Location of Property	Current Value of Debtor's Interest in Property Without Deducting any Secured Claim or Exemption	
			Husband-H Wife-W Joint-J Community-C	
1. Cash on hand.	X			
2. Checking, savings or other financial accounts, certificates of deposit, or shares in banks, savings and loans, thrift, building and loan, and homestead associations, or credit unions, brokerage houses, or cooperatives.		Israel Discount Bank Account Beverly Hills Branch Location: 9401 Wilshire Blvd, Beverly Hills, CA 90212		\$100.00
3. Security deposits with public utilities, telephone companies, landlords, and others.	X			
4. Household goods and furnishings, including audio, video, and computer equipment.	X			
5. Books, pictures and other art objects, antiques, stamps, coins, records, tape, compact discs, and other collectors or collectibles.	X			
6. Wearing apparel.	X			
7. Furs and jewelry.	X			
8. Firearms and sports, photographic, and other hobby equipment.	X			
9. Interests in insurance policies. Name insurance company of each policy and provide surrender or refund value of each.	X			
10. Annuities. Describe and name each issuer.	X			
11. Interest in an education IRA as defined by 26 U.S.C. (529)(1) or under a qualified state tuition plan as defined in 26 U.S.C. (529)(1). Give partitioning (file separately the amount) of any such interest(s). 11 U.S.C. 541(c)(2).	X			
12. Interests in IRA, RIRA, ROTH, Keogh, or other pension or profit sharing plans. Give partitioning.	X			

YD

563 (Official Form 68) (12/87)

In re Ashar Investment Properties, LLC
Debtor(s)

Case No. _____
(If known)

SCHEDULE B-PERSONAL PROPERTY

(Continuation Sheet)

Type of Property	None	Description and Location of Property	Husband-H Wife-W Joint-J Community-C	Current Value of Debtor's Interest in Property Without Deducting any Secured Claim or Exemption
13. Stock and interests in incorporated and unincorporated businesses. Include:	X			
14. Interests in partnerships or joint ventures. Include:	X			
15. Government and corporate bonds and other negotiable and non-negotiable instruments.	X			
16. Accounts receivable.	X	Base Payments Due Under Lease for Balance of Lease Term		\$770,000.00
17. Allowance, maintenance, support, and property settlements to which the debtor is or may be entitled. Give particulars.	X			
18. Other liquidated debts owed to debtor including tax refunds. Give particulars.	X			
19. Equitable or future interests, life estates, and rights or powers enforceable for the benefit of the debtor other than those listed in Schedule of Real Property.	X			
20. Contingent and non-contingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust.	X			
21. Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to other claims. Give estimated value of each.	X			
22. Patents, copyrights, and other intellectual property. Give particulars.	X			
23. Licenses, franchises, and other general intangibles. Give particulars.	X			
24. Customer lists or other compilations containing personally identifiable information (as described in 11 U.S.C. 101(12A)) provided to the debtor by individuals in connection with obtaining a product or service from the debtor primarily for personal, family, or household purposes.	X			
25. Automobiles, trucks, trailers and other vehicles and accessories.	X			
26. Boats, motors, and accessories.	X			
27. Aircraft and accessories.	X			
28. Office equipment, furnishings, and supplies.	X			
29. Machinery, fixtures, equipment and supplies used in business.	X			
30. Inventory.	X			

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608 (Official Form 608) (12/07)

In re Asher Investment Properties, LLC
Debtor(s)

Case No. _____
(If known)

SCHEDULE B-PERSONAL PROPERTY

(Continuation Sheet)

Type of Property	None	Description and Location of Property	Current Value of Debtor's Interest in Property Without Deducting any Secured Claim or Exemption		
			Husband-H	Wife-W	Joint-J Community-C
31. Assets.	X				
32. Crops - growing or harvested. Give particulars.	X				
33. Farming equipment and implements.	X				
34. Farm supplies, chemicals, and feed.	X				
35. Other personal property of any kind not already listed. Examples.	X				

Total → **\$770,200.00**

(Report total also on Summary of Schedules.)
Include amounts from any continuation sheets attached.

10

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

1901 Avenue of the Stars, Suite 300, Los Angeles, CA 90067

A true and correct copy of the foregoing document entitled (*specify*): **DEBTOR'S CORRECTED REPLY TO OMNIBUS OPPOSITION TO (1) DEBTOR'S APPLICATION TO EMPLOY MICHAEL F. FRANK AND PEGGI A. GROSS AS SPECIAL LITIGATION COUNSEL (2) DEBTOR'S APPLICATION TO EMPLOY GERSHUNI & KATZ, A LAW CORPORATION AS GENERAL BANKRUPTCY COUNSEL** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On 8/18/2014, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Michael F Frank mfrankatty@aol.com
Andrew Haley ahaley@gpfm.com, kbarone@gpfm.com
Ira Benjamin Katz IKatz@GershuniKatz.com
Seth H Lieberman slieberman@pryorcashman.com
Ron Maroko ron.maroko@usdoj.gov
Andrew S Pauly apauly@gpfm.com, lburns@gpfm.com
United States Trustee (LA) ustpreregion16.la.ecf@usdoj.gov

Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On 8/18/14, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on 8/18/2014, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Honorable Barry Russell (via personal delivery to chambers)
United States Bankruptcy Court
Central District of California
Edward R. Roybal Federal Building and Courthouse
255 E. Temple Street, Suite 1660 / Courtroom 1668
Los Angeles, CA 90012

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

8/18/14 Ashleigh B. Acker
Date Printed Name

/s/ Ashleigh B. Acker
Signature