

1 A. Lavar Taylor, Bar No. 129512
Email: ltaylor@taylorlaw.com
2 Robert S. Horwitz, Bar No. 119162
Email: rhorwitz@taylorlaw.com
3 LAW OFFICES OF A. LAVAR TAYLOR
4 6 Hutton Centre Drive, Suite 880
Santa Ana, California 92707
5 Telephone: (714) 546-0445
Facsimile: (714) 546-2604
6

7 Mark Bradshaw - Bar No. 192540
8 **SHULMAN HODGES & BASTIAN LLP**
26632 Towne Centre Drive, Suite 300
9 Foothill Ranch, California 92610-2808
Telephone: (949) 340-3400
10 Facsimile: (949) 340-3000

11 Attorneys for Debtor

12
13 **UNITED STATES BANKRUPTCY COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA, SANTA ANA DIVISION**

15
16 **In re**

17 **LLOYD MILES RUCKER,**

18 **Debtor.**

) Case No. 8:06-bk-10195-RK

) Chapter 7

) **DEBTOR'S REQUEST FOR JUDICIAL**
) **NOTICE IN SUPPORT OF HIS MOTION**
) **FOR RECONSIDERATION OF ORDER**
) **GRANTING THE CHAPTER 7**
) **TRUSTEE'S MOTION FOR ORDER (1)**
) **APPROVING COMPROMISE OF**
) **CONTROVERSY, (2) GRANTING**
) **RELIEF FROM STAY, AND (3)**
) **APPROVING ABANDONMENT OF**
) **ESTATE INTEREST IN NON-EXEMPT**
) **ASSETS EFFECTIVE UPON**
) **CONDITION SUBSEQUENT**

) Date: January 25, 2011

) Time: 2:30 P.M.

) Ctrm: 5D

) Ronald Reagan Federal Building
) And United States Courthouse
) 411 West Fourth Street
) Santa Ana, CA 92701

NOTE: When using this form to indicate service of a proposed order, **DO NOT** list any person or entity in Category I. Proposed orders do not generate an NEF because only orders that have been entered are placed on the CM/ECF docket.

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:
26632 Towne Center Drive, Suite 300, Foothill Ranch, CA 92610

A true and correct copy of the foregoing document described as **DEBTOR’S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF HIS MOTION FOR RECONSIDERATION OF ORDER GRANTING THE CHAPTER 7 TRUSTEE’S MOTION FOR ORDER (1) APPROVING COMPROMISE OF CONTROVERSY, (2) GRANTING RELIEF FROM STAY, AND (3) APPROVING ABANDONMENT OF ESTATE INTEREST IN NON-EXEMPT ASSETS EFFECTIVE UPON CONDITION SUBSEQUENT** 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 indicated below:

I. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (“NEF”)** – Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s) (“LBR”), the foregoing document will be served by the court via NEF and hyperlink to the document. On **December 21, 2010**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated below:

- Kyra E Andrassy kandrassy@wglp.com
- Patti H Bass ecf@bass-associates.com
- James C Bastian jbastian@shbllp.com
- Mark Bradshaw mbradshaw@shbllp.com

Service information continued on attached page

II. **SERVED BY U.S. MAIL OR OVERNIGHT MAIL**(indicate method for each person or entity served):
On December 21, 2010, I served the following person(s) and/or entity(ies) at the last known address(es) 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/or with an overnight mail service 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

III. **SERVED BY PERSONAL DELIVERY, FACSIMILE TRANSMISSION OR EMAIL** (indicate method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on December 21, 2010, I served the following person(s) and/or entity(ies) by personal delivery, 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 the judge will be completed no later than 24 hours after the document is filed.

Via Courier
Judge Kwan’s Chambers
Santa Ana Bankruptcy court

Service information continued on attached page

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

<u>December 21, 2010</u>	<u>Steven P. Swartzell</u>	<u>/s/ Steven P. Swartzell</u>
<i>Date</i>	<i>Type Name</i>	<i>Signature</i>

I. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (“NEF”)

- Thomas H Casey (TR) msalustro@tomcaseylaw.com, tcasey@ecf.epiqsystems.com
- Melissa Davis mdavis@shbllp.com
- Hannah L Fabrikant efcacb@piteduncan.com, ssandbeck@mkblaw.com
- Nichole Glowin nglowin@wrightlegal.net, bkgroup@wrightlegal.net
- John H Kim jkim@cookseylaw.com
- Donna L La Porte dlaporte@wrightlegal.net, bkgroup@wrightlegal.net
- Elmer D Martin elmermartin@gmail.com
- Sean OKeefe sokeefe@okeefelc.com
- Evan D Smiley esmiley@wgllp.com
- United States Trustee (SA) ustpreion16.sa.ecf@usdoj.gov
- Darlene C Vigil cdcaecf@bdfgroup.com
- Brent A Whittlesey brent.whittlesey@usdoj.gov

1 The Debtor, Lloyd Myles Rucker (hereafter "the Debtor"), by his undersigned counsel of
2 record, requests the Court to take judicial notice, pursuant to Federal Rules of Evidence, Rule 201,
3 of the Order Granting Motions for Relief From Stay and Approval of Compromise, which was
4 lodged by the Trustee in the above-captioned Chapter 7 case. A copy of the aforementioned Order
5 is attached as Exhibit 1.
6

7 The Debtor further requests the Court to take judicial notice, pursuant to Federal Rules of
8 Evidence, Rule 201, of the following additional documents filed in the above-referenced Chapter 7
9 case for purposes of Debtor's Motion for Reconsideration of Order Granting the Chapter 7
10 Trustee's Motion for Order (1) Approving Compromise of Controversy, (2) Granting Relief From
11 Stay, and (3) Approving Abandonment of Estate Interest in Non-Exempt Assets Effective Upon
12 Condition Subsequent (hereafter "Motion for Reconsideration"). Copies of the documents listed
13 below (or relevant pages of such documents) are attached as Exhibits for the Court's convenience.
14

<u>Exhibit No.</u>	<u>Description</u>
2.	Docket Entry No. 1, Voluntary Petition, p. 1.
3.	Docket Entry No. 4, Notice of Appointment of Interim Trustee
4.	Docket Entry No. 19, Schedule C-Property Claimed as Exempt
5.	Docket Entry No. 41, Objection to Debtor's Claims of Exemption, pp. 1, 4
6.	Docket Entry No. 43, Trustee's Joinder to Objection
7.	Docket Entry No. 119, Trustee's Opposition to Debtor's Emergency Motion
8.	Docket Entry No. 245, Notice of Motion and Motion for Order (1) Approving Compromise, etc., pp. 1-5, 8

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26 The Debtor requests the Court to take judicial notice, pursuant to Federal Rules of
27 Evidence, Rule 201, of the following documents filed in the associated adversary proceeding
28

1 entitled *Cunning v. Rucker*, Adversary No. 8:06-ap-01259-JR, for purposes of Debtor's Motion
2 for Reconsideration. Copies of the documents listed below (or relevant pages of such documents)
3 are attached as Exhibits for the Court's convenience.
4

<u>Exhibit No.</u>	<u>Description</u>
5 9.	Docket Entry No. 1, Complaint to Determine Nondischargeability of 6 Debt
7 10.	Docket Entry No. 16, Request for Judicial Notice in Support of 8 Reply to Defendant's Opposition to Motion for Summary Judgment, 9 pp. 1, 2, 16-18
10 11.	Docket Entry No. 22, Judgment

11 The Debtor requests the Court to take judicial notice, pursuant to Federal Rules of
12 Evidence, Rule 201, of the following documents filed in the associated adversary proceeding
13 entitled *Casey v. Wells Fargo Advisors*, Adv. No. 8:09-ap-01513-RK, for purposes of Debtor's
14 Motion for Reconsideration. Copies of the documents listed below (or relevant pages of such
15 documents) are attached as Exhibits for the Court's convenience.
16

<u>Exhibit No.</u>	<u>Description</u>
17 12.	Docket No. 1, Complaint for Turnover of Custody of Funds
18 13.	Docket No. 3-2, Exhibit Part 3 to Motion for Turnover, pp. 1-7
19 14.	Docket No. 14, Order Approving Oral Stipulation on Trustee's 20 Motion, etc.
21 15.	Docket No. 27, Unilateral Status Report
22 16.	Docket No. 29, Order Directing Clerk of the Court to Close the 23 Case

24 The Debtor requests the Court to take judicial notice, pursuant to Federal Rules of
25 Evidence, Rule 201, of the following documents filed in the associated adversary proceeding
26
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EXHIBIT 1

1 **ELMER DEAN MARTIN III, APC State Bar No. 75517**
22632 Golden Springs Drive, Suite 190
2 P.O. Box 4670
Diamond Bar, California 91765
3 Phone: (909) 861-6700
Facsimile: (909) 860-3801
4 Email: elmer@bankruptcytax.net

5 **SEAN A. OKEEFE - State Bar No. 122417**
OKEEFE & ASSOCIATES LAW CORPORATION, P.C.
660 Newport Center Drive, Ste. 400
6 Newport Beach, CA 92660
7 Telephone: (949) 720-4165
Facsimile: (949) 720-4111
8 Email: sokeefe@okeefeLC.com

9 Counsel to Thomas H. Casey, Movant

10
11 **UNITED STATES BANKRUPTCY COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**
13 **SANTA ANA DIVISION**
14

15
16 In re
17 **LLOYD MYLES RUCKER**
18 Debtor

Case No. 8:06-bk-10195 RK
Chapter 7 Proceeding

19 **ORDER GRANTING MOTIONS**
20 **FOR RELIEF FROM STAY AND**
21 **APPROVAL OF COMPROMISE**

22 **Date:** October 26, 2010
23 **Time:** 2:30 p.m.
Place: Ctrm. 5D

The related Motions of Thomas H. Casey, Chapter 7 Trustee (the "Trustee")
for the bankruptcy estate (the "Estate") of Lloyd Myles Rucker, for Relief from

1 Stay and Approval of Compromise of Controversy with settlement agreement
2 docketed as numbers 242 and 245 in the above captioned case docket (together, the
3 “Motions”), came on for hearing after regular notice before the undersigned
4 bankruptcy judge on October 26, 2010 at 2:30 p.m. Kyra Andrassy appeared for
5 the Cunning Creditors referenced in the pleadings, Elmer Dean Martin III appeared
6 for the Trustee, and Mark Bradshaw appeared for the Debtor.

7 After consideration of the arguments, pleadings and agreements IT IS
8 HEREBY ORDERED: The Motions proposed by the Trustee, as modified on the
9 record, are granted.

10 The Court makes the following findings and conclusions utilizing the terms as
11 defined in the Motions and Settlement Agreement:

- 12 1. The Trustee has not received any distributions from the Trust and
13 will not receive any distributions prior to abandonment;
- 14 2. The Trustee is authorized to abandon all of the Estate’s right, title
15 and interest in the Trust in excess of the Trustee’s retained right
16 to receive \$220,000 under the terms of the Settlement Agreement;
- 17 3. Abandonment shall not constitute a sale, transfer or exchange by
18 the Estate for purposes of Title 26 U.S.C. The Court in making
19 this conclusion is exercising its authority under 11 U.S.C. §505;
- 20 4. The Allowed Claim, and the Liens, are respectively a valid
21 allowed claim and liens against the Trust and its assets;
- 22 5. The Allowed Claim in no way precludes the Cunning Defendants
23 from contending that their claim for punitive damages is
24 enforceable and secured by the Liens;
- 25 6. The Allowed Claim is being waived and released only against the
26 Trustee Parties and remains fully effective against Rucker and all
27 assets of Rucker that are not property of the Estate;
- 28 7. The Liens are valid and duly perfected liens against Rucker’s
interest in the Trust and the assets of the Trust, which the Debtor

1 has conceded is not subject to an enforceable anti-alienation
2 provision and which this Court has determined is not exempt
3 under 11 U.S.C. § 541(a)(2). However, such Liens shall be
4 subordinated as to all property retained or received by the Estate,
5 including the Settlement Payment, for the benefit of
6 administrative and unsecured creditors of the estate in their order
7 of priority;

8 8. The Allowed Claim constitutes a claim for compensable damages
9 owed by Rucker to the Cunning Defendants arising out of the
10 business relationship between Rucker and the Cunning
11 Defendants;

12 9. Pursuant to the authority of this Court under 11 U.S.C. §505 any
13 present or future custodian or trustee of the Trust is restrained and
14 prohibited from issuing or filing with any government agency any
15 documents, including but not limited to any of the variations of
16 an IRS Form 1099 including but not limited to an IRS Form
17 1099-R, attributing any distributions from the Plans and Trust to
18 the Estate or to the Trustee, without prior approval from this
19 Court after motion, notice and hearing to the Trustee;

20 10. The adversary proceeding pending against the Debtor, Vision
21 Capital of OC, Inc., Secure Capital, Inc., and EZ Equity, Inc.,
22 case number 8:06-01340-RK pending in this Court is dismissed
23 effective upon abandonment by the Trustee of the estate's interest
24 in the Plans and Trust;

25 11. The adversary proceeding pending against the Cunning Parties,
26 8:07-ap-01337 RK pending in this Court is dismissed effective
27 upon entry of this Order;

28 12. The Trustee's abandonment shall be deemed effective upon the
delivery by the Trustee of his Notice of Abandonment to the
holder/administrator of the Trust, Wells Fargo Advisors, LLC as
set forth in the Settlement Agreement. The Order of this Court
entered September 25, 2009 as Docket number 14 in Adversary
8:09-ap-01513 RK shall terminate upon delivery of Trustee's
Notice of Abandonment to Wells Fargo Advisors;

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13. The Cunning Creditors are granted modification of the stay under Title 11 U.S.C. §362 to exercise their collection rights against the assets of the Trust as a secured creditor pursuant to the terms of the Settlement Agreement and to take any other action necessary to bar Rucker or any other party from exercising control over, or obtaining recourse to the Trust or the assets therein, and the stay shall be terminated upon delivery of Trustee's Notice of Abandonment to Wells Fargo Advisors. The 14 day stay prescribed by Bankruptcy Rule 4001(a)(3) is waived.

14. The Cunning Creditors shall pursue their collection rights against the Trust with all due diligence and expediency after entry of this Order;

15. The Cunning Creditors shall remit to the Trustee the sum of \$220,000 at the time and in the manner provided in the Settlement Agreement;

16. Payments of allowed fees for professional services rendered to the Estate by Weiland, Golden, Smiley, Wang Ekvall & Strok, LLP in its capacity as special counsel to the Trustee shall not exceed \$75,000;

17. The settlement set forth in the Settlement Agreement is a good faith settlement;

18. The settlement in the Settlement Agreement is in the best interests of the Estate and its Creditors.

#####

November _____, 2010

EXHIBIT 2

05-43170-AM

(Official Form 1) (12/03) West Group, Rochester, NY

FORM B1	United States Bankruptcy Court SOUTHERN District of FLORIDA	Voluntary Petition
Name of Debtor (if individual, enter Last, First, Middle): Rucker, Lloyd, Myles		Name of Joint Debtor (Spouse)(Last, First, Middle):
All Other Names used by the Debtor in the last 6 years (include married, maiden, and trade names): NONE		All Other Names used by the Joint Debtor in the last 6 years (include married, maiden, and trade names):
Last four digits of Soc. Sec. No./Complete EIN or other Tax I.D. No. (if more than one, state all): 1353		Last four digits of Soc. Sec. No./Complete EIN or other Tax I.D. No. (if more than one, state all):
Street Address of Debtor (No. & Street, City, State & Zip Code): 110 Washington Avenue, #1724 Miami Beach FL 33139		Street Address of Joint Debtor (No. & Street, City, State & Zip Code):
County of Residence or of the Principal Place of Business: Miami-Dade		County of Residence or of the Principal Place of Business:
Mailing Address of Debtor (if different from street address): P.O. Box 875 Miami Beach FL 33119		Mailing Address of Joint Debtor (if different from street address):
Location of Principal Assets of Business Debtor (if different from street address above): NOT APPLICABLE		

05-43170

Information Regarding the Debtor (Check the Applicable Boxes)

Venue (Check any applicable box)

- Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District.
- There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District.

Type of Debtor (Check all boxes that apply)

- Individual(s)
- Corporation
- Partnership
- Other _____
- Railroad
- Stockbroker
- Commodity Broker
- Clearing Bank

Chapter or Section of Bankruptcy Code Under Which the Petition is Filed (Check one box)

- Chapter 7
- Chapter 9
- Chapter 11
- Chapter 12
- Chapter 13
- Sec. 304 - Case ancillary to foreign proceeding

Nature of Debts (Check one box)

- Consumer/Non-Business
- Business

Filing Fee (Check one box)

- Full Filing Fee attached
- Filing Fee to be paid in installments (Applicable to individuals only) Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form No. 3.

Chapter 11 Small Business (Check all boxes that apply)

- Debtor is a small business as defined in 11 U.S.C. § 101
- Debtor is and elects to be considered a small business under 11 U.S.C. § 1121(e) (Optional)

Statistical/Administrative Information (Estimates only)

- Debtor estimates that funds will be available for distribution to unsecured creditors.
- Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.

Estimated Number of Creditors

1-15	16-49	50-99	100-199	200-999	1000-over
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

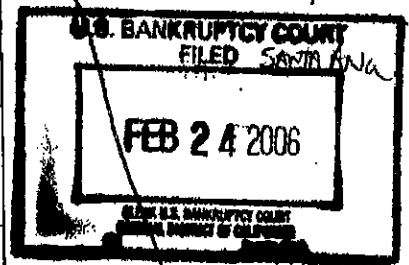
Estimated Assets

\$0 to \$50,000	\$50,001 to \$100,000	\$100,001 to \$500,000	\$500,001 to \$1 million	\$1,000,001 to \$10 million	\$10,000,001 to \$50 million	\$50,000,001 to \$100 million	More than \$100 million
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Estimated Debts

\$0 to \$50,000	\$50,001 to \$100,000	\$100,001 to \$500,000	\$500,001 to \$1 million	\$1,000,001 to \$10 million	\$10,000,001 to \$50 million	\$50,000,001 to \$100 million	More than \$100 million
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

THIS SPACE IS FOR COURT USE ONLY
Original Filed 10/12/05



SA 06-10195 JR

EXHIBIT 3

ORIGINAL

STEVEN J. KATZMAN
UNITED STATES TRUSTEE
OFFICE OF THE UNITED STATES TRUSTEE
RONALD REAGAN FEDERAL BUILDING &
UNITED STATES COURTHOUSE
411 WEST FOURTH STREET, SUITE 9041
SANTA ANA, CALIFORNIA 92701-8000
TELEPHONE: (714) 338-3400 FAX: (714) 338-3421

FILED
FEB 27 2006

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
SANTA ANA DIVISION

IN RE:) CHAPTER 7
) CASE NO. SA 06-10195-JR
LLOYD MYLES RUCKER,) NOTICE OF APPOINTMENT OF
) INTERIM TRUSTEE AND FIXING
) OF BOND; ACCEPTANCE OF
) APPOINTMENT AS INTERIM
Debtor) TRUSTEE

PURSUANT TO 11 U.S.C. 322

THOMAS H. CASEY, ESQ. of RANCHO SANTA MARGARITA, CALIFORNIA,

is appointed Interim Trustee of the case of said debtor(s) and is hereby designated to preside at the meeting of creditors. This case is covered by the Chapter 7 blanket bond on file with the Court on behalf of the trustees listed on Schedule A of the bond and any amendments or modifications thereto.

Unless creditors during the Meeting of Creditors held pursuant to 11 U.S.C. 341(a) elect another trustee, the Interim Trustee appointed herein shall serve as trustee without further appointment or qualification, provided that the trustee is disinterested.

APPOINTMENT DATED: FEBRUARY 24, 2006

STEVEN J. KATZMAN
United States Trustee

I, the undersigned, affirm that to the best of my knowledge and belief, I am disinterested within the meaning of 11 U.S.C. 101(14), and on this basis, I am hereby accept my appointment as Interim Trustee in the above case. I will immediately notify the United States Trustee if I become aware of any facts to the contrary.

DATED: 2/24/06

Thomas H. Casey
THOMAS H. CASEY
Interim Trustee

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EXHIBIT 4

In re Lloyd Myles Rucker	Case No.:
Debtor,	SA06-10195 JR (if known)

SCHEDULE C - PROPERTY CLAIMED AS EXEMPT

Debtor elects the exemption to which debtor is entitled under:

(Check one box)

- 11 U.S.C. § 522(b)(1) Exemptions provided in 11 U.S.C. § 522(d). **Note: These exemptions are available only in certain states.**
- 11 U.S.C. § 522(b)(2) Exemptions available under applicable nonbankruptcy federal laws, state or local law where the debtor's domicile has been located for the 180 days immediately preceding the filing of the petition, or for a longer portion of the 180-day period than in any other place, and the debtor's interest as a tenant by the entirety or joint tenant to the extent the interest is exempt from process under applicable nonbankruptcy law.

DESCRIPTION OF PROPERTY	SPECIFY LAW PROVIDING EACH EXEMPTION	VALUE OF CLAIMED EXEMPTION	CURRENT MARKET VALUE OF PROPERTY, WITHOUT DEDUCTING EXEMPTIONS
14 Vernal Springs, Irvine, Ca. 92603	C.C.P. § 704.730(a)(1)	50,000.00	2,900,000.00
2003 Mercedes ez 500 SL in debtors possession	C.C.P. § 704.010	2,300.00	51,000.00
401(k) Plan through EX Equity, Inc., Paychex, 1175 John Street, West Henrietta, NY 14586	C.C.P. § 704.115(b)	16,554.00	16,554.00
401(k) Plan through EZ Equity, Inc. Smith Barney, Citigroup, 660 Newport Center Dr. #1100, Newport Beach, Ca. 92660	C.C.P. § 704.115(b)	339,566.00	339,566.00
Accrued but not received salary from EZ Equity, Inc.,	C.C.P. § 704.070	160,000.00	160,000.00
AXA Equitable \$1,000,000 (death benefit) policy 151-217-107 AXA Advisors, 12900 Avenue of the Americas, 9th floor, New York, NY 10104-2702	C.C.P. § 704.100(b)	3,600.00	38,000.00
clothing in debtors possession	C.C.P. § 704.020	0.00	unknown
household goods, furniture, in debtors possession	C.C.P. § 704.020	2,500.00	2,500.00
IRA Account, Charles Schwab, 101 Montgomery St., San Francisco, Ca. 94104	C.C.P. § 704.115(b)	498.00	498.00
Lloyd Rucker Defined Benefit Pension Plan placed with various brokers, such as Raymond James and AXA Advisors	C.C.P. § 704.115(b)	823,000.00	823,000.00
Roth IRA, Charles Schwab, 101 Montgomery St., San Francisco, Ca. 94104	C.C.P. § 704.115(b)	232.00	232.00

In re Lloyd Myles Rucker Debtor.	Case No.: SA06-10195 JR (If known)
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SCHEDULE C - PROPERTY CLAIMED AS EXEMPT

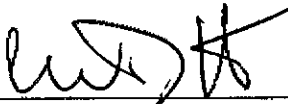
DESCRIPTION OF PROPERTY	SPECIFY LAW PROVIDING EACH EXEMPTION	VALUE OF CLAIMED EXEMPTION	CURRENT MARKET VALUE OF PROPERTY, WITHOUT DEDUCTING EXEMPTIONS
watch in debtors possession	C.C.P. § 704.020	10.00	10.00

PROOF OF SERVICE

I hereby certify that a copy of the Amendment(s) was (were) mailed to the Trustee and that notice was given to the additional creditors listed.

DATED: 3/14/06

Charles W. Daff
Print or Type Name


Signature

(SEE ATTACHED MAILING LIST.)

Label Matrix for local noticing
0973-8
Case 8:06-bk-10195-JR
Central District Of California
Santa Ana
Tue Mar 14 20:11:15 PST 2006

Franchise Tax Board
ATTN: Bankruptcy
P.O. Box 2952
Sacramento, CA 95812-2952

ARC INVESTMENTS
ATTN KEITH CONNING
9597 CENTRAL AVENUE
MONTCLAIR CA 91763

Anthony Lanza
Lanza & Goolsby
3 Park Plaza Ste 1650
Irvine CA 92614

BANK ONE -- CHASE
PO BOX 125298
WILMINGTON DE 19050-5298

CAPITAL ONE VISA
PO BOX 60067
CITY OF INDUSTRY CA 91716-0067

CITICORP MORTGAGE INC
PO BOX 790017
MAIL STATION 367
ST LOUIS MO 63179-0017

EVERHOME MORTGAGE
8100 NATIONS WAY
JACKSONVILLE FL 32256

GREENPOINT MORTGAGE
2300 BROOKSTONE CENTRE PKWY
COLUMBUS GA 31904

INTERNAL REVENUE SERVICE
CENTRALIZED INSOLVENCY OPERATIONS
PO BOX 21126
PHILADELPHIA PA 19114-0326

DAIMLERCHRYSLER FINANCIAL SERVICES AMERICAS

Santa Ana Division
411 West Fourth Street, Suite 2030
Santa Ana, CA 92701-4593

AT&T
PO BOX 78225
PHOENIX AZ 85062-8225

BANK OF AMERICA -- VISA
PO BOX 60073
CITY OF INDUSTRY CA 91716-0073

BLOOMINGDALES VISA
PO BOX 4580
CAROL STREAM IL 60197

CITI ADVANTAGE MASTERCARD
PO BOX 6415
THE LAKES NV 88901-6415

CUNNING FAMILY TRUST
C/O WILLIAM A FLORATOS
18881 VON KARMAN AVENUE 220
IRVINE CA 92612

FIRST EQUITY VISA
PO BOX 84075
COLUMBUS GA 31908

HOAG HOSPITAL
SUITE 180
ONE HOAG DRIVE BLDG 444
NEWPORT BEACH CA 92658

Informa Research Services, Esq
Michael E Adler Esq
26565 Agoura Road Ste 300
Cabalabas CA 91302

Employment Development Dept.
Bankruptcy Group MIC 92R
P.O. Box 826880
Sacramento, CA 94280-0001

AQUA TIME POOLS
PO BOX 80357
RANCHO SANTA MAR CA 92688

AXA EQUITABLE INSURANCE
PO BOX 1047
CHARLOTTE NC 28201-1047

BANK OF AMERICA VISA
PO BOX 60059
PO BOX 60069
CITY OF INDUSTRY CA 91716-0069

BRENT A WHITTLESEY AUSA
SUITE 76516AA FEDERAL BUILDING
300 NORTH LOS ANGELES STREET
LOS ANGELES CA 90012

CITI MASTER CARD PLATINUM
PO BOX 6500
SIOUX FALLS SD 57117

DANN OCONNOR
180 NEWPORT CENTER DRIVE 240
NEWPORT BEACH CA 92660

GMAC MORTGAGE CORP
8360 OLD YORK ROAD
BLKINS PARK PA 19027-1590

INFORMA RESEARCH
LABOWE LABOWE AND HOFFMAN LLP
1631 W BEVERLY BLVD 2ND F1
LOS ANGELES CA 90026-5746

KRUSE MENNILLO LLP
C/O GOLDSMITH AND HULL
16000 VENTURA BLVD 1500
ENCINO CA 91436

LANZA AND GOOLSBY
3 PARK PLAZA 1650
IRVINE CA 92614

LOAN ADVISORS
2 VENTURE 450
IRVINE CA 92618

MACYS
PO BOX 4582
CAROL STREAM IL 60197

MBNA AMERICA - GOLD OPTION
PO BOX 15102
WILMINGTON DE 19886-5102

MBNA AMERICA REWARDS
PO BOX 15102
WILMINGTON DE 19886-5289

MERCEDES BENZ CREDIT
PO BOX 9001921
LOUISVILLE KY 40290-1921

NEIMAN MARCUS
PO BOX 5235
CAROL STREAM IL 60197

NEW CENTURY MORTGAGE
PO BOX 514700
LOS ANGELES CA 90051-4700

OLEN COMMERCIAL REALTY COMPANY
SEVEN CORPORATION PLAZA
NEWPORT BEACH CA 92660

ORANGE COUNTY TAX COLLECTOR
12 CIVIC CENTER PLAZA
SANTA ANA CA 92701

PHILIP LEVY
15 OBSERVATORY
NEWPORT COAST CA 92657

PROVIDIAN VISA
PO BOX 660487
DALLAS TX 75226-0487

REISH LOFTMAN REICHER AND COHEN
11755 WILSHIRE BOULEVARD
LOS ANGELES CA 90025-1516

RONALD CUNNING
C/O WILLIAM A FLORATOS
18881 VON KARMAN AVENUE 220
IRVINE CA 92612

RONALD CUNNING DDS INC
C/O WILLIAM A FLORATOS
188881 VON KARMAN AVENUE 220
IRVINE CA 92612

Rucker, Lloyd Myles
P O Box 875
Miami Beach FL 33119

SHADY CANYON HOMEOWNERS ASSOC
C/O KEYSTONE PACIFIC
16845 VON KARMAN 200
IRVINE CA 92606

SHELDON FRIEDBERG
1500 OCEAN DRIVE 504
MIAMI BEACH FL 33139

SPRINT
555 WASHINGTON AVENUE
MIAMI BEACH FL 33139

STEPHEN FLORMAN
C/O LOUIS MAGUR
11300 WEST OLYMPIC BLVD 770
LOS ANGELES CA 90064

SUN TRUST VISA
PO BOX 15021
WILMINGTON DE 19850

TED MANN
3 PARK PLAZA 1650
IRVINE CA 92614

THE KAGAN COMPANY
14724 VENTURA BOULEVARD 1140
SHERMAN OAKS CA 91403

United States Trustee (SA)
411 W Fourth St., Suite 9041
Santa Ana, CA 92701-4593

WEST BAY
GRIMM AND SCHOLNICK
17422 CHATSWORTH STREET
GRANADA HILLS CA 91344-5717

Welland, Golden, Smiley, Wang Ekvall & Strok
Attn: Evan D Smiley, Esq
650 Town Center Dr, Ste 950
Costa Mesa, CA 92626

Charles W Daff
2122 N Broadway #210
Santa Ana, CA 92706

Lloyd Myles Rucker
110 Washington Ave #1724
Miami Beach, FL 33139

Neil J Berman
2900 Bank of America Tower
100 S E Second St
Miami, FL 33131

Thomas H Casey
22342 Avenida Empresa, Suite 260
Rancho Santa Margarita, CA 92688

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA

Filer's Name: Lloyd Myles Rucker Atty Name (if applicable): Charles W. Daff
Street Address: 110 Washington Ave. #124 CA Bar No. (if applicable): 78178
Miami Beach, FL 33138 Atty Fax No. (if applicable): (714) 569-0515

Filer's Telephone No.: _____

In re: Lloyd Myles Rucker Case No.: SA06-10195 JR
Chapter 7 X 11 13 _____

AMENDED SCHEDULE(S) AND/OR STATEMENT(S)

A filing fee of \$26.00 is required to amend any or all of Schedules "D" through "F." An addendum mailing list is also required as an attachment if creditors are being added to the creditors list. Is/are creditor(s) being added? Yes ___ No X

Indicate below which schedule(s) and/or statement(s) is(are) being amended.

A ___ B ___ C X D ___ E ___ F ___ G ___ H ___ I ___ J ___
Statement of Social Security Number(s) _____ Statement of Financial Affairs _____
Statement of Intentions _____ Other _____

NOTE: IT IS THE RESPONSIBILITY OF THE DEBTOR TO MAIL COPIES OF ALL AMENDMENTS TO THE TRUSTEE AND TO NOTICE ALL CREDITORS LISTED IN THE AMENDED SCHEDULE(S) AND TO COMPLETE AND FILE WITH THE COURT THE PROOF OF SERVICE ON THE BACK OF THIS PAGE.

I, Lloyd Myles Rucker, the person(s) who subscribed to the foregoing Amended Schedule do hereby declare under penalty of perjury that the foregoing is true and correct.

DATED: 3/10/2006
[Signature]
Debtor Signature

"FOR COURT USE ONLY"

FILED

MAR 15 2006

CLERK U.S. BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
BY _____
Deputy Clerk

SEE REVERSE SIDE

EXHIBIT 5

ORIGINAL

**WEILAND, GOLDEN,
SMILEY, WANG EKVALL & STROK, LLP**

Evan D. Smiley, State Bar No. 161812
Kyra E. Andrassy, State Bar No. 207959
650 Town Center Drive Suite 950
Costa Mesa, California 92626
Telephone: (714) 966-0000
Facsimile: (714) 966-002

BIENERT & KRONGOILD

Thomas H. Bienert, Jr., State Bar No. 135311
115 Avenida Miramar
San Clemente, California 92672
Telephone: (949) 369-3700
Facsimile: (949) 369-3701

FLORATOS, LOLL & DEVINE

William A. Floratos, State Bar No. 107820
Robert A. Loll, State Bar No. 117686
18881 Von Karman Avenue, Suite 220
Irvine, California 92612
Telephone: (949) 553-9100
Facsimile: (949) 553-0750

Co-Counsel for Ronald Cuning, D.D.S. and
Ronald Cuning, D.D.S., Inc.

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
SANTA ANA DIVISION**

In re
LLOYD MYLES RUCKER,

Debtor.

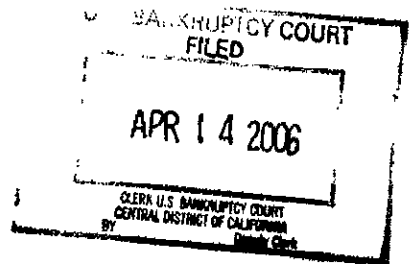
Case No.: 8:06 Bk-10195 JR

Chapter 7 Case

**OBJECTION TO DEBTOR'S CLAIMS OF
EXEMPTION; MEMORANDUM OF
POINTS AND AUTHORITIES; AND
DECLARATION OF KYRA E. ANDRASSY
IN SUPPORT THEREOF**

[Declaration of Harley Bjelland in
Support of Objection Filed Concurrently
Herewith]

**DATE: May 16, 2006
TIME: 2:30 p.m.
CTRM.: 5A
411 West Fourth Street
Santa Ana, CA 92701**



1 TO THE HONORABLE JOHN E. RYAN, UNITED STATES BANKRUPTCY JUDGE,
2 THE OFFICE OF THE UNITED STATES TRUSTEE, THOMAS H. CASEY, THE
3 CHAPTER 7 TRUSTEE, LLOYD MYLES RUCKER, AND ANY OTHER PARTIES IN
4 INTEREST:

5 On May 16, 2006 at 2:30 p.m. in Courtroom 5A of the Ronald Reagan Federal
6 Building and United States Courthouse located at 411 West Fourth Street, Santa Ana,
7 California, the Court will hold a hearing on the objection (the "Objection") of creditors
8 Ronald A. Cunning, D.D.S., and Ronald Cunning D.D.S., Inc. (collectively, "Cunning") to
9 the claims of exemption by Lloyd Myles Rucker (the "Debtor") in (1) a residence located
10 at 14 Vernal Spring, Irvine, California, (2) a 401(k) plan through EZ Equity, Inc. located at
11 Paychex, (3) a 401(k) plan through EZ Equity, Inc. located at Smith Barney, Citigroup, (4)
12 accrued but unreceived salary from EZ Equity, Inc., (5) the Lloyd Rucker Defined Benefit
13 Pension Plan.

14 Any opposition to the Objection must be filed with the Court and served
15 upon counsel for Cunning no later than fourteen (14) days prior to the hearing.
16 Failure to timely file and serve an opposition may be deemed by the Court to be a
17 consent to the granting of the relief sought in the Objection.

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20 DATED: April 14, 2006

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Respectfully submitted,

WEILAND, GOLDEN,
SMILEY, WANG EKVALL & STROK, LLP

By:

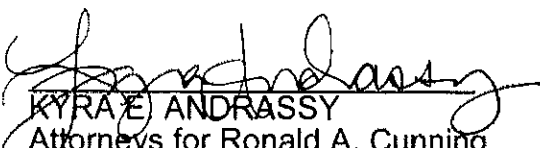
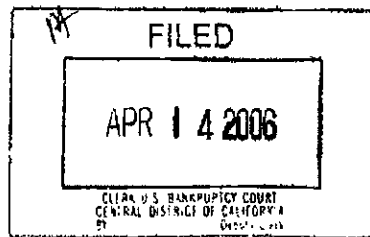

KYRA E. ANDRASSY
Attorneys for Ronald A. Cunning,
D.D.S., and Ronald A. Cunning,
D.D.S., Inc.

EXHIBIT 6

ORIGINAL



1 Thomas H. Casey - Bar No. 138264
2 THE LAW OFFICES OF THOMAS H. CASEY, INC.
3 A PROFESSIONAL CORPORATION
4 22342 Avenida Empresa, Suite 260
5 Rancho Santa Margarita, CA 92688
6 Telephone: (949) 766-8787
7 Facsimile: (949) 766-9896

Chapter 7 Bankruptcy Trustee

8 UNITED STATES BANKRUPTCY COURT
9 CENTRAL DISTRICT OF CALIFORNIA, SANTA ANA DIVISION

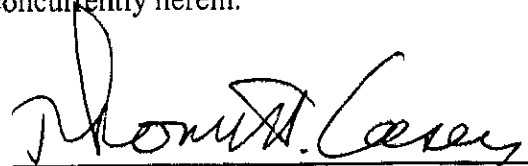
11	In re	)	Case No. SA 06-10195 JR
12		)	Chapter 7
13		)	TRUSTEE'S JOINDER TO
14		)	OBJECTION OF RONALD A.
15	LLOYD MYLES RUCKER,	)	CUNNING, D.D.S. AND RONALD A.
16		)	CUNNING, D.D.S., INC.
17		)	TO DEBTOR'S CLAIMS OF
18		)	EXEMPTIONS
19		)	Date: May 16, 2006
20		)	Time: 2:30 p.m.
21	Debtor(s).	)	Ctrm: 5A

20 TO THE HONORABLE JOHN E. RYAN, UNITED STATES BANKRUPTCY JUDGE, THE
21 OFFICE OF THE UNITED STATES TRUSTEE, THE DEBTOR AND HIS ATTORNEY OF
22 RECORD, AND ALL INTERESTED PARTIES:

23 PLEASE TAKE NOTICE that Chapter 7 Trustee, Thomas H. Casey, joins in the Objection
24 to Debtor's Claims of Exemption filed by Creditors, Ronald A. Cunning, D.D.S. and Ronald A.
25 Cunning, D.D.S., Inc. and objects to the Debtor's amended exemption claims in the residence located
26 at 14 Vernal Spring, Irvine, California; a 401(k) plan through EZ Equity, Inc. located at Paychex;
27 a 401(k) plan located at Smith Barney, Citigroup; accrued but unreceived salary from EZ Equity,
28

1 Inc.; a life insurance policy with AXA Equitable; and the Lloyd Rucker Defined Benefit Pension
2 Plan. The Trustee incorporates by reference the objection of Ronald A. Cunning, D.D.S. and Ronald
3 A. Cunning, D.D.S., Inc. filed separately but concurrently herein.

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5 Dated: 4/12/06


6 Thomas H. Casey, Chapter 7 Trustee

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the City of Rancho Santa Margarita, County of Orange, State of California. I am over the age of 18 years and not a party to the within action. My business address is 22342 Avenida Empresa, Suite 260, Rancho Santa Margarita, California 92688.

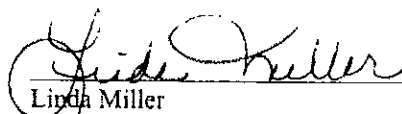
On April 14, 2006, I served the documents named below on the parties in this action as follows:

DOCUMENT(S) SERVED: **JOINDER TO OBJECTION OF RONALD A. CUNNING, D.D.S. AND
RONALD A. CUNNING, D.D.S., INC. TO DEBTOR'S CLAIMS OF
EXEMPTIONS**

SERVED UPON: **SEE ATTACHED LIST**

- (BY MAIL) I caused each such envelope, with postage thereon fully prepaid, to be placed in the United States mail at Rancho Santa Margarita, California. I am readily familiar with the practice of the Law Office of Thomas H. Casey, Inc. for collection and processing of correspondence for mailing, said practice being that in the ordinary course of business, mail is deposited in the United States Postal Service the same day as it is placed for collection.
- (BY FACSIMILE) The above-referenced document was transmitted by facsimile transmission and the transmission was reported as completed and without error. Pursuant to C.R.C. 2009(i), I either caused, or had someone cause, the transmitting machine to properly transmit the attached documents to the facsimile numbers shown on the service list.
- (BY FEDERAL EXPRESS) I am readily familiar with the practice of the Law Office of Thomas H. Casey, Inc. for collection and processing of documents for overnight delivery and know that the document(s) described herein will be deposited in a box or other facility regularly maintained by Federal Express for overnight delivery.
- (BY PERSONAL SERVICE) I delivered to an authorized courier or driver authorized by O.C. Corporate Courier to receive documents to be delivered on the same date. A proof of service signed by the authorized courier will be filed forthwith.
- (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
- (FEDERAL) I declare that I am employed in the office of a member of the bar of this court, at whose direction this service was made.

Executed on April 14, 2006, at Rancho Santa Margarita, California.


Linda Miller

SERVICE LIST

In re Rucker, Lloyd Myles ; Ch. 7 Case No. SA 06-10195 JR

Interested Party

Office of the U.S. Trustee
411 W. Fourth St., #9041
Santa Ana, CA 92701-4593

Donna L. La Porte, Esq.
Wright, Finlay & Zak, LLP
4665 MacArthur Court, #280
Newport Beach, CA 92660

Debtor

Lloyd Myles Rucker
110 Washington Ave., #1724
Miami Beach, FL 33139

Lloyd Myles Rucker
PO Box 875
Miami Beach, FL 33119

Lloyd Myles Rucker
14 Vernal Spring
Irvine, CA 92603

Debtors Counsel

Charles W. Daff
2122 N. Broadway, #210
Santa Ana, CA 92706

Request for Special Notice

Evan D. Smiley, Esq.
Weiland, Golden, Smiley, Wang Ekvall & Strok, LLP
650 Town Center Dr., Suite 950
Costa Mesa, CA 92626

Grisel Alonso
Assistant United States Attorney
United States Attorney's Office
Suite 310
99 NE 4th St.
Miami, FL 33132-2111

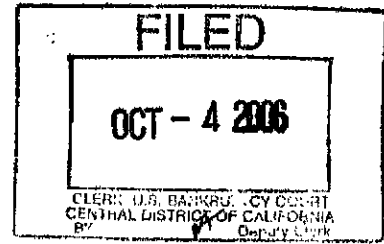
Michael E. Adler, Esq.
Law Office of Michael E. Adler
26565 Agoura Rd., Suite 300
Calabasas, CA 91302

Robert Fehse
Bert Echols
Husch & Eppenberger, LLC
200 Jefferson Ave., Suite 1450
Memphis, TN 38103

Steven G. Powrozek
Shapiro & Fishman LLP
4505 Woodland Corporate Blvd., Suite 100
Tampa, FL 33614

EXHIBIT 7

1 Thomas H. Casey - Bar No. 138264
2 22342 Avenida Empresa, Suite 260
3 Rancho Santa Margarita, CA 92688
4 Telephone: (949) 766-8787
5 Facsimile: (949) 766-9896



6 Chapter 7 Bankruptcy Trustee

7 UNITED STATES BANKRUPTCY COURT
8 CENTRAL DISTRICT OF CALIFORNIA / SANTA ANA DIVISION

9 In re:

) Case No. SA 06-10195 JR

) Chapter 7

10 RUCKER, LLOYD MYLES,

) **TRUSTEE'S OPPOSITION TO
DEBTOR'S EMERGENCY MOTION
FOR ORDER SETTING AMOUNT OF
SUPERSEDEAS BOND IN
CONNECTION WITH DEBTOR'S STAY
PENDING APPEAL OF ORDER
SUSTAINING OBJECTION TO
DEBTOR'S CLAIMS OF EXEMPTION;
DECLARATION OF THOMAS H.
CASEY IN SUPPORT THEREOF**

11 Debtor.

) Date: October 5, 2006

) Time: 1:30 p.m.

) Ctrm: 5A

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19 **TO THE HONORABLE JOHN E. RYAN, UNITED STATES BANKRUPTCY JUDGE:**

20 Thomas H. Casey, the Chapter 7 Trustee (the "Trustee") of the estate of Lloyd Myles Rucker
21 (the "Debtor"), respectfully submits his Opposition to the Debtor's Emergency Motion for Order
22 Setting Amount of Supersedeas Bond In Connection With Debtor's Stay Pending Appeal of Order
23 Sustaining Objection to Debtor's Claims of Exemption ("Motion") as follows:

24 1. No competent evidence has been provided as to why the Debtor's Motion was
25 filed on an emergency basis. The Trustee was served with the Debtor's Motion on October 3,
26 2006 at 10:02 a.m. and the hearing has been set for October 5, 2006. The Trustee will be on an
27 airplane to New York City on October 5th and will be unable to attend the hearing.

28 2. The Trustee also notes that the Debtor makes the allegation that "After the Order

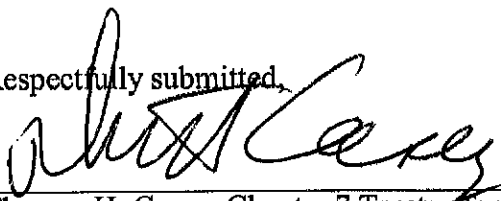
1 was entered, the Debtor was contacted by representatives of the financial institutions where his
2 retirement plan accounts are maintained and was advised that Thomas H. Casey, Chapter 7
3 Trustee ("Trustee") for the Debtor's case had provided them with a copy of the Order." The
4 Trustee has not provided the representatives of the financial institutions with a copy of the order
5 sustaining Cuning's objection to the Debtor's claims of exemption, nor has the Trustee taken
6 any steps to liquidate or affect the retirement plans in any way.

7 **WHEREFORE**, the Trustee respectfully requests that the Debtor's Emergency Motion
8 for Order Setting Amount of Supersedeas Bond In Connection With Debtor's Stay Pending
9 Appeal of Order Sustaining Objection to Debtor's Claims of Exemption be denied.

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Dated: October 3, 2006

By:

Respectfully submitted,

Thomas H. Casey, Chapter 7 Trustee for the
bankruptcy estate of Lloyd Myles Rucker

DECLARATION OF THOMAS H. CASEY

I, Thomas H. Casey, declare as follows:

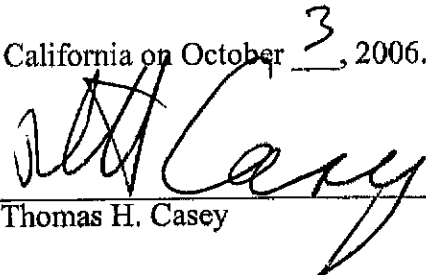
1. I am the duly appointed, qualified and acting Chapter 7 Trustee ("Trustee") for the bankruptcy estate of Lloyd Myles Rucker ("Debtor"). The facts contained herein are based upon information which I have acquired in my capacity as Trustee and upon my review of the pleadings, records and files in this matter, and are true and correct to the best of my knowledge, information and belief. I make this declaration in support of the Trustee's Opposition to the Debtor's Emergency Motion for Order Setting Amount of Supersedeas Bond In Connection With Debtor's Stay Pending Appeal of Order Sustaining Objection to Debtor's Claims of Exemption ("Motion").

2. No competent evidence has been provided as to why the Debtor's Motion was filed on an emergency basis. I was served with the Debtor's Motion on October 3, 2006 at 10:02 a.m. and the hearing has been set for October 5, 2006. I will be on an airplane to New York City on October 5th and will be unable to attend the hearing.

3. I also note that the Debtor makes the allegation that "After the Order was entered, the Debtor was contacted by representatives of the financial institutions where his retirement plan accounts are maintained and was advised that Thomas H. Casey, Chapter 7 Trustee ("Trustee") for the Debtor's case had provided them with a copy of the Order." I have not provided the representatives of the financial institutions with a copy of the order sustaining Cuning's objection to the Debtor's claims of exemption, nor have I taken any steps to liquidate or effect the retirement plans in any way.

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

Executed at Rancho Santa Margarita, California on October 3, 2006.


Thomas H. Casey

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the City of Rancho Santa Margarita, County of Orange, State of California. I am over the age of 18 years and not a party to the within action. My business address is 22342 Avenida Empresa, Suite 260, Rancho Santa Margarita, California 92688.

On October 3, 2006, I served the documents named below on the parties in this action as follows:

DOCUMENT(S) SERVED: **TRUSTEE'S OPPOSITION TO DEBTOR'S EMERGENCY MOTION FOR ORDER SETTING AMOUNT OF SUPERSEDEAS BOND IN CONNECTION WITH DEBTOR'S STAY PENDING APPEAL OF ORDER SUSTAINING OBJECTION TO DEBTOR'S CLAIMS OF EXEMPTION; DECLARATION OF THOMAS H. CASEY IN SUPPORT THEREOF**

SERVED UPON: **SEE ATTACHED LIST**

- (BY MAIL) I caused each such envelope, with postage thereon fully prepaid, to be placed in the United States mail at Rancho Santa Margarita, California. I am readily familiar with the practice of the Law Office of Thomas H. Casey, Inc. for collection and processing of correspondence for mailing, said practice being that in the ordinary course of business, mail is deposited in the United States Postal Service the same day as it is placed for collection.
- (BY FACSIMILE) The above-referenced document was transmitted by facsimile transmission and the transmission was reported as completed and without error. Pursuant to C.R.C. 2009(i), I either caused, or had someone cause, the transmitting machine to properly transmit the attached documents to the facsimile numbers shown on the service list.
- (BY FEDERAL EXPRESS) I am readily familiar with the practice of the Law Office of Thomas H. Casey, Inc. for collection and processing of documents for overnight delivery and know that the document(s) described herein will be deposited in a box or other facility regularly maintained by Federal Express for overnight delivery.
- (BY PERSONAL SERVICE) I delivered to an authorized courier or driver authorized by O.C. Corporate Courier to receive documents to be delivered on the same date. A proof of service signed by the authorized courier will be filed forthwith.
- (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
- (FEDERAL) I declare that I am employed in the office of a member of the bar of this court, at whose direction this service was made.

Executed on October 3, 2006, at Rancho Santa Margarita, California.


Linda Miller

SERVICE LIST

In re Rucker, Lloyd Myles / Ch. 7 Case No. SA 06-10195 JR

Interested Party

Office of the U.S. Trustee
411 W. Fourth St., #9041
Santa Ana, CA 92701-4593
(714) 338-3421

Attorney for Debtor

Mark Bradshaw, Esq.
26632 Towne Centre Dr., #300
Foothill Ranch, CA 92610-2808
(949) 340-3000

Request for Special Notice

Evan D. Smiley, Esq.
Weiland, Golden, Smiley, Wang
Ekvall & Strok, LLP
650 Town Center Dr., Suite 950
Costa Mesa, CA 92626
(714) 966-1002

EXHIBIT 8

1 **ELMER DEAN MARTIN III, APC State Bar No. 75517**
2 22632 Golden Springs Drive, Suite 190
3 P.O. Box 4670
4 Diamond Bar, California 91765
5 Phone: (909) 861-6700
6 Facsimile: (909) 860-3801
7 Email: elmer@bankruptcytax.net

8 SEAN A. OKEEFE - State Bar No. 122417
9 **OKEEFE & ASSOCIATES LAW CORPORATION, P.C.**
10 660 Newport Center Drive, Ste. 400
11 Newport Beach, CA 92660
12 Telephone: (949) 720-4165
13 Facsimile: (949) 720-4111
14 Email: sokeefe@okeefeLC.com

15 Counsel to Thomas H. Casey, Movant

16
17 **UNITED STATES BANKRUPTCY COURT**
18 **CENTRAL DISTRICT OF CALIFORNIA**
19 **SANTA ANA DIVISION**
20

21 In re
22 LLOYD MILES RUCKER
23 Debtor

24 Case No. SA 06-10195 RK
25 Chapter 7 Proceeding

26 **NOTICE OF MOTION AND MOTION FOR**
27 **ORDER (1) APPROVING COMPROMISE**
28 **OF CONTROVERSY (2) GRANTING**
RELIEF FROM STAY AND (3)
APPROVING ABANDONMENT OF
ESTATE INTEREST IN NON-EXEMPT
ASSETS EFFECTIVE UPON CONDITION
SUBSEQUENT

Date: October 26, 2010
Time: 2:30 p.m.
Place: Ctrm. 5D

1 PLEASE TAKE NOTICE that on October 26, 2010, at the hour of 2:30 p.m., Thomas H.
2 Casey, in his capacity as the duly appointed trustee for the above-entitled estate, will appear in
3 Courtroom 5D of the United States Bankruptcy Court, located at 411 West Fourth Street, Santa
4 Ana, California 92701, and will move, and hereby moves, the Court for an order granting the
5 following relief:

6 A) Approving the compromise of controversy set forth in the Settlement
7 Agreement attached to the accompanying declaration of Thomas H. Casey as Exhibit 1 (the
8 "Settlement Agreement");

9 B) Granting the Cunning Parties (as defined herein) relief from the automatic
10 stay on the terms provided for herein;

11 C) Authorizing and approving the abandonment of the estate's interest in the
12 Plans and the Trust (as defined herein) on the terms provided for herein;

13 D) Making the following findings of fact and/or conclusions of law with
14 respect to and in support of the Settlement Agreement and the abandonment:

15 1. The settlement set forth in the Settlement Agreement is a good faith
16 settlement;

17 2. The settlement in the Settlement Agreement is in the best interests of
18 the estate and its creditors;

19 3. The estate's abandonment of any interest in the Trust (as defined
20 herein) shall become effective only upon the delivery by the Trustee to holder/administrator of the
21 Trust, Wells Fargo Advisors, LLC ("Wells Fargo") of a Notice of Abandonment notifying Wells
22 Fargo that the estate has abandoned any interest in the Plans (as defined herein), Trust and assets in
23 the Trust, and that no further Court order shall be required for the abandonment to be deemed
24 effective.

25 4. The Trustee has not received any distributions from the Trust and
26 will not receive any distributions prior to abandonment;

27 5. Abandonment of an interest in the Plans and Trust shall release any
28 interest that the estate holds or at any time held in the Plans and Trust, as of the Petition Date;

1 6. Abandonment shall not constitute a sale, transfer or exchange by the
2 estate for purposes of Title 26 U.S.C.;

3 7. The Allowed Claim (as defined herein), and the Liens (as defined
4 herein), are respectively a valid allowed claim and liens against the Trust and its assets;

5 8. The Allowed Claim in no way precludes the Cunning Creditors (as
6 defined herein) from contending that their claim for punitive damages is enforceable and secured
7 by the Liens;

8 9. The Allowed Claim is being waived and released only against the
9 Trustee Parties (as defined herein) and remains fully effective against Rucker and all assets of
10 Rucker that are not property of the estate;

11 10. The Liens are valid and duly perfected liens against all non-exempt
12 personal property of Rucker including but not limited to his interest in the Trust and the assets of
13 the Trust, which the Debtor has conceded in pleadings filed with the Court in connection with an
14 exemption objection proceeding is not subject to an enforceable anti-alienation provision and
15 which this Court has determined is not exempt under 11 U.S.C. § 541(a) (2). However, such Liens
16 shall be released against all property retained or received by the estate including the Settlement
17 Payment (as defined herein);

18 11. The Allowed Claim constitutes a claim for compensable damages
19 owed by Rucker to the Cunning Creditors arising out of the business relationship between Rucker
20 and the Cunning Defendants (as defined herein).

21 12. Any present or future custodian or trustee of the Trust is barred from
22 issuing or filing with any government agency any documents, including but not limited to any of
23 the variations of an IRS Form 1099 including but not limited to an IRS Form 1099-R, attributing
24 any distributions from the Plans and Trust to the Estate or to the Trustee.


25 E) Such further relief as the Court deems just and proper.

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1 This Motion is made on the basis of the attached Declaration of Thomas H. Casey, the
2 Request for Judicial Notice, the within points and authorities and on such other evidence and
3 authorities as this Court elects to consider prior to or at the hearing on this matter.

4 DATED: September 27, 2010

Elmer Dean Martin III, APC

5
6 By: 
Elmer Dean Martin, III,
7 Special litigation counsel to
8 Chapter 7 Trustee

9 DATED: September 27, 2010

O'Keefe & Associates
Law Corporation, P.C.

10
11 By: /s/Sean A. O'Keefe
12 Sean A. O'Keefe,
13 Special litigation counsel to
14 Chapter 7 Trustee
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I

SUMMARY OF MATERIAL FACTS

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2
3 1. **The Debtor.** Lloyd Myles Rucker (“Rucker”), the debtor in this case, filed a
4 voluntary petition under Chapter 7 of the United States Bankruptcy Code in the United States
5 Bankruptcy Court, Middle District of Florida, on October 12, 2005 (the “Petition Date”). Rucker’s
6 Chapter 7 case was later transferred to the United States Bankruptcy Court Central District of
7 California (the “Bankruptcy Court”) and assigned Case No. SA 06-bk-10195 RK (the “Case”).
8 Thomas H. Casey is the duly appointed and acting trustee (the “Trustee”) in the Case.

9 2. **The Pension Plans.** Prior to the Petition Date, Rucker was the sole shareholder of
10 Vision Capital of OC, Inc. dba Vision Capital, Inc. (“Vision Capital”), Secure Capital, Inc.
11 (“Secure Capital”), and EZ Equity, Inc. (“EZ Equity”) (collectively the “Controlled Corporations”).
12 In 2001, Rucker caused the Lloyd Rucker Defined Benefit Pension Plan (the “Pension Plan”) to be
13 established. Vision Capital was the designated administrator of the Pension Plan and Secure Capital
14 was a participating employer in the plan. As of the Petition Date, the Pension Plan Trust had assets
15 of approximately \$823,000.

16 In or about 2001, Rucker also caused six separate 401k plans to be established. Each of the
17 Controlled Corporations was the sponsor of two of these plans (collectively the “401k Plans”).
18 Three of the 401k Plans were established through Paychex, Inc. (one for each Controlled
19 Corporation) and the remaining three plans were established through Smith Barney. As of the
20 Petition Date (after a series of rollovers), the Debtor had two EZ Equity plans: An account held at
21 Smith Barney, with a balance of approximately \$339,556 as of the Petition Date and an account at
22 Paychex with a balance of approximately \$16,554 as of the Petition Date (the “401k Plans and the
23 “Pension Plan” are collectively referred to as the "Plans" and the trust or trusts established to hold
24 the assets of the Plans are collectively referred to as the “Trust”).

25 Wells Fargo Advisors, LLC (“Wells Fargo”) is now the holder of the assets owned by the
26 Trust and Rucker is the Trustee. As of January 31, 2010, the Trust assets had been converted to
27 cash with the sum on deposit totaling \$1,019,123.62.
28

- 1 e. The Cunning Creditors shall pursue their collection rights against the Trust
with all due diligence and expediency after they obtain relief from stay.
- 2 f. Pursuant to the provisions of this Agreement, the Cunning Creditors shall
3 remit to the Trustee the sum of two hundred and twenty thousand dollars
4 (\$220,000) (the "Settlement Payment").
- 5 g. The Settlement Payment shall be paid to Trustee when the Cunning
6 Creditors, or any of them, become entitled to receipt of assets from the Trust
7 and only from assets of the Trust, provided however if payment in lieu of
8 Trust assets is received by or for any of the Cunning Creditors such payment
9 shall be considered to be a payment which obligates the Cunning Creditors
10 to make the Settlement Payment to the Trustee. The amount paid to the
11 Trustee shall be measured by the Amounts collected by the Cunning
12 Creditors in accordance with the following ratio until the Settlement
13 Payment is paid in full: Twenty-eight percent (28%) to the Trustee, seventy-
14 two percent (72%) to the Cunning Creditors.
- 15 h. Amounts collected by the enforcement of the Liens against Rucker and the
16 Trust and the Plans as set forth in this Agreement shall initially be deposited
17 into the client trust account of Weiland, Golden, Smiley, Wang Ekvall &
18 Strok, LLP and disbursements shall be made by the tenth (10th) day of any
19 month following a month in which funds are collected by the Cunning
20 Creditors from the Trust until the Settlement Payment is paid in full.
- 21 i. The Trustee and his agents, attorneys, employees, successors, and assigns
22 and the Estate (the "Trustee Parties") release all claims against the Cunning
23 Parties except the rights and obligations in the Settlement Agreement.
- 24 j. The Cunning Parties release all claims against the Trustee Parties except the
25 rights and obligations in the Settlement Agreement.

26 In addition, in order to increase the likelihood of a distribution to unsecured creditors and
27 the solvency of the Estate, Weiland, Golden, Smiley, Wang Ekvall & Strok, LLP, which was
28 employed as special counsel to the Trustee with respect to several matters, has agreed to limit the
allowance of its fees as special counsel to \$75,000. A complete recitation of the terms of the
settlement is set forth in the Settlement Agreement. In any conflict between the terms of the
Settlement Agreement and the recitation of terms in this Motion, the Settlement Agreement shall
control.

7. **The Merits of The Settlement**. The facts involved in the Action, although lengthy
and complicated, are not, in the main, in dispute. The areas of factual dispute primarily relate to
whether or not the ORAP Lien was properly served, as alleged by the Cunning Parties' process

EXHIBIT 9

DEBTOR:
Rucker, Lloyd Myles
JUDGE: John E. Ryan A400
TRUSTEE:
CHAPTER: 7 AD

CLERK, U. S. BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIF. ID: E-F
RECEIPT NO: \$ 250.00

Summons Issued 02/27/2006
Answer Date 3/29/2006
Hrg. Date 05/16/2006 at 01:30 PM

1 **WEILAND, GOLDEN,**
2 **SMILEY, WANG EKVALL & STROK, LLP**
3 Evan D. Smiley, State Bar No. 161812
4 Kyra E. Andrassy, State Bar No. 207959
5 650 Town Center Drive, Suite 950
6 Costa Mesa, California 92626
7 Telephone: (714) 966-1000
8 Facsimile: (714) 966-1002

9 **BIENERT & KRONGOLD**
10 Thomas Bienert, State Bar No. 135311
11 115 Avenida Miramar
12 San Clemente, California 92672
13 Telephone: (949) 369-3700

14 **FLORATOS, LOLL & DEVINE**
15 William Floratos, State Bar No. 107820
16 Robert Loll, State Bar No. 117686
17 18881 Von Karman Avenue, Suite 220
18 Irvine, California 92612
19 Telephone: (949) 553-1910

20 Attorneys for Dr. Ronald Cuning, an individual
21 and as trustee for the Ronald Cuning D.D.S.,
22 Inc. Profit Sharing Plan and Trust and the
23 Cuning Family Trust

14
15 **UNITED STATES BANKRUPTCY COURT**
16 **CENTRAL DISTRICT OF CALIFORNIA**
17 **SANTA ANA DIVISION**

18 In re)
19 LLOYD MYLES RUCKER,)
20 Debtor.)

Case No.: SA 06-10195 JR
Chapter 7 Case

21 DR. RONALD CUNNING, an individual and)
22 as trustee for the RONALD CUNNING)
23 D.D.S., INC. PROFIT SHARING PLAN)
24 AND TRUST and the CUNNING FAMILY)
25 TRUST,)
26 Plaintiff,)

**COMPLAINT TO DETERMINE
NONDISCHARGEABILITY OF DEBT**

Status Conference:
DATE: [Not yet set]
TIME: [Not yet set]
CTRM: 5A

26 vs.
27 LLOYD MYLES RUCKER,
28 Defendant.

1 Plaintiff Dr. Ronald Cunning ("Dr. Cunning"), as an individual and as trustee for
2 the Ronald Cunning D.D.S., Inc. Profit Sharing Plan and Trust (the "Profit Sharing
3 Plan") and the Cunning Family Trust (the "Family Trust"), is informed and believes, and
4 based thereon, respectfully alleges as follows:

5
6 **STATEMENT OF JURISDICTION AND VENUE**

7 1. The Bankruptcy Court has jurisdiction over this adversary proceeding
8 pursuant to 28 U.S.C. §§ 157 and 1334 and 11 U.S.C. §§ 523 and 105.

9 2. This adversary proceeding is a core proceeding pursuant to 28 U.S.C.
10 § 157(b)(2)(I).

11 3. Venue properly lies in this judicial district and this civil proceeding arises
12 under title 11 of the United States Code as provided in 28 U.S.C. § 1409.

13
14 **PARTIES TO THE ACTION**

15 4. Plaintiff is a judgment creditor of Lloyd Myles Rucker (the "Debtor") by
16 virtue of (1) a general verdict in favor of Dr. Cunning in the amount of \$391,097 and a
17 special verdict assessing punitive damages in favor of Dr. Cunning in the amount of
18 \$500,000, (2) a general verdict in favor of the Profit Sharing Plan in the amount of
19 \$574,631 and a special verdict assessing punitive damages in favor of the Profit Sharing
20 Plan in the amount of \$500,000, and (3) a general verdict in favor of the Family Trust in
21 the amount of \$583,009 and a special verdict assessing punitive damages in favor of the
22 Family Trust in the amount of \$500,000. These verdicts were rendered by a jury in the
23 Orange County Superior Court, case number 65-35-26, and are final judgments.

24 5. Defendant is the Debtor, who is the debtor in bankruptcy case number SA
25 06-10195 JR, which was originally filed under chapter 7 of title 11 of the United States
26 Code in the United States Bankruptcy Court, Southern District of Florida, Miami Division,
27 and transferred to this Court by order entered on February 9, 2006.

GENERAL ALLEGATIONS

1
2 6. Dr. Cunning was a dentist who also invested in real estate. Dr. Cunning
3 was introduced to the Debtor and the Debtor's former wife, Lori Rucker, by a local real
4 estate broker named Christopher Bennett. The Debtor represented that he was a
5 certified public accountant and a general building contractor licensed by the State of
6 California. The Debtor told Dr. Cunning that he had several successful real estate
7 projects and supplied Dr. Cunning with documentation identifying several projects that
8 the Debtor had allegedly purchased, developed, constructed, and sold for a substantial
9 profit, providing Dr. Cunning with what he said were the specific acquisition costs,
10 construction costs, and return on each of the projects. The Debtor then gave
11 Dr. Cunning tours of these projects in order to induce Dr. Cunning to invest with the
12 Debtor in other development and construction projects.

13 7. Dr. Cunning was induced by the Debtor's representations to enter into two
14 joint venture agreements with the Debtor for the construction of fifteen single-family
15 residences. These projects were located in Newport Heights, with one project consisting
16 of seven single-family residences on 15th Street and another project consisting of eight
17 single-family residences on 16th Street. Dr. Cunning provided the initial capital to
18 purchase the properties and guaranteed the construction loans for the fifteen residences.
19 The Debtor was to receive a six-figure fee for acting as the accountant to the joint
20 venture as well as the licensed general contractor, and was also to share equally in the
21 anticipated profits from the projects.

22 8. After entering into the joint venture agreements with the Debtor and
23 providing the funding and loans required of him, Dr. Cunning began to experience great
24 difficulty in obtaining financial information and information about the status of the projects
25 from the Debtor. The Debtor failed to provide this information despite repeated requests.

26 9. Subsequently, Dr. Cunning was contacted by Christopher Bennett, who
27 claimed that a written agreement existed between he and the Debtor pursuant to which
28 Mr. Bennett was to receive a percentage interest in any project that Dr. Cunning pursued

1 with the Debtor. The Debtor denied that any such agreement existed. Christopher
2 Bennett then contacted Dr. Cunning again and offered to provide Dr. Cunning with a
3 copy of the written agreement. Dr. Cunning also learned from Mr. Bennett that the
4 Debtor had secretly conducted a double escrow in the acquisition of the 15th Street
5 project, making an undisclosed profit of \$100,000 for himself when the property was
6 purchased for the joint venture. The Debtor claimed that the written agreement was
7 forged. Mr. Bennett then brought an action against both the Debtor and Dr. Cunning to
8 enforce his agreement against the Debtor with regard to his ownership interest in the two
9 joint venture projects. During the investigation, Dr. Cunning discovered acts of fraud,
10 conversion, breach of fiduciary duty, and breach of contract by the Debtor as further
11 described in this complaint.

12 10. The Debtor actively obstructed this investigation. He instructed the banks
13 to not permit Dr. Cunning or his agents to review the construction loan records.
14 However, Dr. Cunning's counsel was able to gain access to some of the construction
15 loan records and based on that review, discovered discrepancies including cost over
16 runs on all initial items without any explanation and charges that were clearly improper.
17 Among these improper charges were charges for a subcontractor, R.A. Steel, for
18 purportedly supplying and installing structural steel on the 16th Street project. However,
19 there was no structural steel incorporated into that project. Many other subcontractors
20 were found to have done the same thing at the Debtor's request and instruction. This
21 and other items that were discovered by Dr. Cunning's representatives were raised to the
22 Debtor, who denied any wrongdoing or mistake and claimed that all of the charges were
23 proper. The Debtor continued to refuse to allow the inspection of the records for the
24 projects.

25 11. However, records obtained from third parties disclosed that these were not
26 isolated incidents but were instead a pattern of continued conduct by the Debtor in which
27 he was instructing subcontractors on projects in which Dr. Cunning had no interest to
28 change their billing or invoicing to misrepresent that their projects were provided in

1 connection with either the 15th Street project or the 16th Street project so that their
2 services would be paid from those construction loans. The Debtor refused to honor
3 proper discovery requests and produced altered and falsified documents. These
4 incidents proved to be so numerous and systemic that the Orange County Superior Court
5 referred the matter for an accounting and appointed retired Orange County Superior
6 Court Judge Philip Schwab to act as the Court's referee. In this capacity, Judge Schwab
7 appointed the accounting firm of Leventhal & Company to act as the Court's accountant
8 to analyze the costs incurred in the development and construction of the 15th Street
9 Project and the 16th Street Project and to report back as to which charges were properly
10 allocated to the joint venture and which charges were properly allocated to each joint
11 venture partner. The Debtor continued to refuse to cooperate with either the
12 Court-appointed referee or Levanthal & Company or with a receiver that had been
13 appointed to complete and sell the projects. The Debtor refused to pay for his portion of
14 the costs of the receivership, the estate, the referee, or the Court-appointed accountant.
15 The Debtor's obstructive conduct made the accounting so difficult and expensive that the
16 fees and costs of the Court-appointed referee and accountant exceeded \$200,000.00.

17 12. The investigation by Dr. Cunning and the Court revealed that in addition to
18 diverting construction funds through improper billing by subcontractors, the Debtor
19 employed other equally devious methods for improperly withdrawing and diverting the
20 construction loans funds for the 15th Street and 16th Street projects. These methods
21 included submitting items from the Debtor's personal and business overhead, such as
22 receiving payment of his office rent by representing to the lender that the charges were
23 for temporary sanitary facilities at the construction sites and submitting reimbursement
24 requests for his own employees' expenses for salary and compensation for work
25 unrelated to the 15th Street and 16th Street projects.

26 13. During the trial on the accounting, the Court found that the Debtor had
27 failed to comply with various orders compelling him to produce documents and
28 information with regard to the accounting and that the Debtor had acted in bad faith on a

1 number of occasions, and it issued evidentiary sanctions against the Debtor. The
2 Court-appointed referee and accountants eventually reported to the Orange County
3 Superior Court that the Debtor had diverted in excess of \$1.1 million from the 15th Street
4 and 16th Street projects for his own benefit.

5 14. In addition, during the course of the litigation, Dr. Cunning's representatives
6 began to investigate the claims and representations by the Debtor that were used to
7 induce Dr. Cunning to invest with the Debtor. Dr. Cunning discovered that the Debtor
8 was neither a certified public accountant nor a licensed building contractor and had never
9 been one. Dr. Cunning also learned that the projects that the Debtor had used as
10 evidence of his successful "track record" in order to induce Dr. Cunning to invest were
11 not legitimate projects and were simply more examples of the Debtor's illegal and
12 fraudulent schemes. Most of the projects involved falsified loan applications and phony
13 sales prices to straw buyers recruited by the Debtor.

14 15. The Federal Bureau of Investigation conducted its own investigation and
15 subsequently referred the Debtor to the Office of the United States Attorney for
16 prosecution. A jury convicted the Debtor of several felony counts, some of which directly
17 arose from the 15th Street and 16th Street projects.

18 16. Despite the Debtor's continued obstructive conduct with Dr. Cunning,
19 Dr. Cunning was finally able to bring the matter to trial. By then, the receiver had sold
20 the properties involved in the 15th Street and 16th Street projects, requiring Dr. Cunning
21 to pay for the deficiencies between the construction loans and the sales proceeds. After
22 a jury trial, the jury rendered its verdict with special findings, including fraud, breach of
23 fiduciary duty, fraudulent inducement, and conversion.

24 17. Specifically, the jury rendered the following verdicts: (1) a general verdict in
25 favor of Dr. Cunning individually in the amount of \$391,097 and a special verdict
26 assessing punitive damages in favor of Dr. Cunning individually in the amount of
27 \$500,000; (2) a general verdict in favor of the Profit Sharing Plan in the amount of
28 \$574,631 and a special verdict assessing punitive damages in favor of the Profit Sharing

1 Plan in the amount of \$500,000; and (3) a general verdict in favor of the Family Trust in
2 the amount of \$583,009 and a special verdict assessing punitive damages in favor of the
3 Family Trust in the amount of \$500,000. The jury found that the Debtor's conduct was
4 oppressive, malicious, and fraudulent. The judgments are final.

5
6 **FIRST CLAIM FOR RELIEF**

7 **(To determine nondischargeability of the judgment in favor of**
8 **Dr. Cunning individually pursuant to 11 U.S.C. § 523(a)(2)(A))**

9 18. Plaintiff realleges and incorporates by this reference each and every
10 allegation set forth in paragraphs 1 through 17 of this complaint.

11 19. In awarding Dr. Cunning \$391,097 in general damages, the jury found that
12 the Debtor had made a representation to Dr. Cunning as to a material fact that was false,
13 that the Debtor knew the representation was false and made it with the intention of
14 defrauding Dr. Cunning, that Dr. Cunning justifiably acted in reliance on the truth of the
15 representation, and that the Debtor's misrepresentation caused Dr. Cunning damages of
16 \$391,097. The jury also found that the Debtor concealed or suppressed a material fact
17 with the intent to defraud Dr. Cunning, who was unaware of that fact when he acted, that
18 Dr. Cunning would have acted differently had he known of the concealed or suppressed
19 fact, that the concealment or suppression caused Dr. Cunning damages of \$391,097.00.
20 The jury further found that in committing fraud against Dr. Cunning, the Debtor's conduct
21 was oppressive and malicious and fraudulent, justifying an award of punitive damages of
22 \$500,000.

23 20. This debt is nondischargeable under 11 U.S.C. § 523(a)(2)(A) because it
24 was incurred through false pretenses, a false representation, actual fraud, and/or fraud in
25 the inducement.

26 21. Accordingly, the entire amount of the judgment in favor of Dr. Cunning
27 individually is nondischargeable under 11 U.S.C. § 523(a)(2)(A).

1 § 523(a)(2)(A) because it was incurred through false pretenses, a false representation,
2 actual fraud, and/or fraud in the inducement.

3 32. Accordingly, the entire amount of the judgment in favor of Dr. Cuning on
4 behalf of the Profit Sharing Plan is nondischargeable under 11 U.S.C. § 523(a)(2)(A).

5
6 **FIFTH CLAIM FOR RELIEF**

7 **(To determine nondischargeability of the judgment in favor of Dr. Cuning**
8 **on behalf of the Profit Sharing Plan under 11 U.S.C. § 523(a)(4))**

9 33. Plaintiff realleges and incorporates by this reference each and every
10 allegation set forth in paragraphs 1 through 17 of this complaint.

11 34. In awarding Dr. Cuning on behalf of the Profit Sharing Plan \$574,631 in
12 general damages, the jury found that the Debtor owed a fiduciary duty to the Profit
13 Sharing Plan, that he breached that fiduciary duty, and that the breach caused the Profit
14 Sharing Plan damages of \$574,631. The jury further found that in committing the breach
15 of fiduciary duty against the Profit Sharing Plan, the Debtor's conduct was oppressive
16 and malicious and fraudulent, justifying an award of punitive damages of \$500,000.

17 35. Because the Debtor owed a fiduciary duty to the Profit Sharing Plan and
18 breached this duty, giving rise to the judgment against the Debtor in favor of Dr. Cuning
19 on behalf of the Profit Sharing Plan, the entire amount of the judgment should be
20 determined to be nondischargeable under 11 U.S.C. § 523(a)(4).

21
22 **SIXTH CLAIM FOR RELIEF**

23 **(To determine nondischargeability of the judgment in favor of Dr. Cuning**
24 **on behalf of the Profit Sharing Plan under 11 U.S.C. § 523(a)(6))**

25 36. Plaintiff realleges and incorporates by this reference each and every
26 allegation set forth in paragraphs 1 through 17 of this complaint.

27 37. In awarding Dr. Cuning on behalf of the Profit Sharing Plan \$574,631 in
28 general damages, the jury found that the Debtor wrongfully exerted dominion over

1 Dr. Cunning, in his capacity as trustee of the Profit Sharing Plan, and over the property of
2 the Profit Sharing Plan and that the conversion caused the Profit Sharing Plan damages
3 of \$574,631. The jury further found that in committing the tort of conversion, the Debtor
4 acted oppressively, maliciously, and fraudulently, justifying an award of punitive damages
5 of \$500,000 against the Debtor in favor of Dr. Cunning on behalf of the Profit Sharing
6 Plan.

7 38. Because the entire amount of the judgment against the Debtor and in favor
8 of Dr. Cunning on behalf of the Profit Sharing Plan is the result of a willful and malicious
9 injury to the Profit Sharing Plan or its property, it should be determined to be
10 nondischargeable under 11 U.S.C. § 523(a)(6).

11
12 **SEVENTH CLAIM FOR RELIEF**

13 **(To determine nondischargeability of the judgment in favor of Dr. Cunning**
14 **on behalf of the Family Trust under 11 U.S.C. § 523(a)(2)(A))**

15 39. Plaintiff realleges and incorporates by this reference each and every
16 allegation set forth in paragraphs 1 through 17 of this complaint.

17 40. In awarding Dr. Cunning on behalf of the Family Trust \$583,009 in general
18 damages, the jury found that the Debtor had made a representation to Dr. Cunning as
19 trustee of the Family Trust as to a material fact that was false, that the Debtor knew the
20 representation was false and made it with the intention of defrauding Dr. Cunning and
21 the Family Trust, that Dr. Cunning on behalf of the Family Trust justifiably acted in
22 reliance on the truth of the representation, and that the Debtor's misrepresentation
23 caused the Family Trust damages of \$583,009. The jury also found that the Debtor
24 concealed or suppressed a material fact with the intent to defraud Dr. Cunning, as
25 trustee for the Family Trust, who was unaware of that fact when he acted, that
26 Dr. Cunning would have acted differently on behalf of the Family Trust had he known of
27 the concealed or suppressed fact, and that the concealment or suppression caused the
28 Family Trust damages of \$583,009. The jury further found that in committing fraud

1 against the Family Trust, the Debtor's conduct was oppressive and malicious and
2 fraudulent, justifying an award of punitive damages of \$500,000.

3 41. The entire amount of the judgment owed by the Debtor to Dr. Cuning on
4 behalf of the Family Trust is nondischargeable under 11 U.S.C. § 523(a)(2)(A) because it
5 was incurred through false pretenses, a false representation, actual fraud, and/or fraud in
6 the inducement.

7 42. Accordingly, the entire amount of the judgment in favor of Dr. Cuning on
8 behalf of the Family Trust is nondischargeable under 11 U.S.C. § 523(a)(2)(A).

9
10 **EIGHTH CLAIM FOR RELIEF**

11 **(To determine nondischargeability of the judgment in favor of Dr. Cuning**
12 **on behalf of the Family Trust under 11 U.S.C. § 523(a)(4))**

13 43. Plaintiff realleges and incorporates by this reference each and every
14 allegation set forth in paragraphs 1 through 17 of this complaint.

15 44. In awarding Dr. Cuning on behalf of the Family Trust \$583,009 in general
16 damages, the jury found that the Debtor owed a fiduciary duty to the Family Trust, that
17 he breached that fiduciary duty, and that the breach caused the Family Trust damages of
18 \$583,009. The jury further found that in committing the breach of fiduciary duty against
19 the Family Trust, the Debtor's conduct was oppressive and malicious and fraudulent,
20 justifying an award of punitive damages of \$500,000.

21 45. Because the Debtor owed a fiduciary duty to the Family Trust and breached
22 this duty, giving rise to the judgment against the Debtor in favor of Dr. Cuning on behalf
23 of the Family Trust, the entire amount of the judgment should be determined to be
24 nondischargeable under 11 U.S.C. § 523(a)(4).

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3. Such other and further relief as the Court deems just and proper.

DATED: February 27, 2006

WEILAND, GOLDEN,
SMILEY, WANG EKVALL & STROK, LLP

By: 

KYRA E. ANDRASSY
Attorneys for Dr. Ronald Cuning, an
individual and as trustee for the
Ronald Cuning D.D.S., Inc. Profit
Sharing Plan and Trust and the
Cuning Family Trust

B. 104 (Rev. 8/99)		ADVERSARY PROCEEDING SHEET (Instructions on Reverse)		ADVERSARY PROCEEDING NUMBER (For Court Use Only)	
PLAINTIFFS Ronald Cunning , et al. : : : Address 650 Town Center Drive, Suite 950 Costa Mesa CA 92626			DEFENDANTS Lloyd Myles Rucker : : : Address 110 Washington Avenue, #1724 Miami Beach FL 33139		
ATTORNEYS (Firm Name, Address, and Telephone Number) Evan D Smiley Bar ID: 161812 Albert Weiland & Golden LLP 650 Town Center Drive, Suite 950 Costa Mesa CA 92626 Telephone # 714-966-1000 Fax # 714-966-1002			ATTORNEYS (if known) Charles,,Daff Bar ID: 76178 2122 North Broadway #210 Santa Ana CA 92706 Telephone # 714-541-0301 Fax # 714-569-0515		
PARTY (Check one box only) <input type="checkbox"/> 1 U.S. PLAINTIFF <input type="checkbox"/> 2 U.S. DEFENDANT <input checked="" type="checkbox"/> 3 U.S. NOT A PARTY					
CAUSE OF ACTION (Write a brief statement of cause of action, including all U.S. statutes involved) To determine the dischargeability of a debt 11 U.S.C. § 523.					
NATURE OF SUIT (Check the one most appropriate box only)					
<input type="checkbox"/> 454 To recover money or property		<input type="checkbox"/> 455 To revoke an order of confirmation of a Chapter 11 or Chapter 13 Plan		<input type="checkbox"/> 456 To obtain a declaratory judgment relating to any of the foregoing causes of action	
<input type="checkbox"/> 435 To determine validity, priority, or extent of a lien or other interest in property		<input checked="" type="checkbox"/> 426 To determine the dischargeability of a debt 11 U.S.C. § 523		<input type="checkbox"/> 459 To determine a claim or cause of action removed to a bankruptcy court	
<input type="checkbox"/> 458 To obtain approval for the sale of both the interest of the estate and of a co-owner in property		<input type="checkbox"/> 434 To obtain an Injunction or other equitable relief		<input type="checkbox"/> 498 Other (specify)	
<input type="checkbox"/> 424 To object or to revoke a discharge 11 U.S.C. § 727		<input type="checkbox"/> 457 To subordinate any allowed claim or interest except where such subordination is provided in a Plan			
ORIGIN OF PROCEEDING (Check one box only)			<input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed Proceeding <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from Another Bankruptcy Court		<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMAND	NEAREST THOUSAND \$ 6500	OTHER RELIEF SOUGHT			<input type="checkbox"/> JURY DEMAND
BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES					
NAME OF DEBTOR Rucker, Lloyd Myles			BANKRUPTCY CASE NUMBER SA06-10195JR		
DISTRICT IN WHICH CASE IS PENDING Central District of California		DIVISIONAL OFFICE Santa Ana		NAME OF JUDGE John E. Ryan	
RELATED ADVERSARY PROCEEDING (IF ANY)					
PLAINTIFF		DEFENDANT		ADVERSARY PROCEEDING NUMBER	
DISTRICT		DIVISIONAL OFFICE		NAME OF JUDGE	
FILING FEE (Check one box only) <input checked="" type="checkbox"/> FEE ATTACHED <input type="checkbox"/> FEE NOT REQUIRED <input type="checkbox"/> FEE IS DEFERRED					
DATE 02/27/06	PRINT NAME Evan D Smiley		SIGNATURE OF ATTORNEY (OR PLAINTIFF) /s/		

In re Rucker, Lloyd Myles	CHAPTER 7
Debtor.	CASE NUMBER SA06-10195JR

Other Plaintiff(s) Listed on the Complaint

Attorney for Plaintiff(s) Listed on the Complaint

1. Ronald Cuning, D.D.S. Profit Sharing
:
:
:
650 Town Center Drive, Suite 650
Costa Mesa CA 92626

Bar ID:

Telephone # Fax#

2. Bar ID:

Telephone # Fax#

3. Bar ID:

Telephone # Fax#

4. Bar ID:

Telephone # Fax#

5. Bar ID:

Telephone # Fax#

Other Defendant(s) Listed on the Complaint

Attorney for Defendant(s) Listed on the Complaint

1. Bar ID:

Telephone # Fax#

2. Bar ID:

Telephone # Fax#

3. Bar ID:

Telephone # Fax#

4. Bar ID:

Telephone # Fax#

5. Bar ID:

Telephone # Fax#

B-104
(Rev. 8/99)

ADVERSARY PROCEEDING COVER SHEET (Reverse Side)

This cover sheet must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney) and submitted to the Clerk of the Court upon the filing of a complaint initiating an adversary proceeding.

The cover sheet and the information contained on it **do not** replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. This form is required for the use of the Clerk of the Court to initiate the docket sheet and to prepare necessary indices and statistical records. A separate cover sheet must be submitted to the Clerk of the Court for each complaint filed. The form is largely self-explanatory.

Parties. The names of the parties to the adversary proceeding **exactly** as they appear on the complaint. Give the names and addresses of the attorneys if known. Following the heading "Party," check the appropriate box indicating whether the United States is a party named in the complaint.

Cause of Action. Give a brief description of the cause of action including all federal statutes involved. For example, "Complaint seeking damages for failure to disclose information, Consumer Credit Protection Act, 15 U.S.C. § 1601 et seq.," or "Complaint by trustee to avoid a transfer of property by the debtor, 11 U.S.C. § 544."

Nature of Suit. Place an "X" in the appropriate box. Only one box should be checked. If the cause fits more than one category of suit, select the most definitive.

Origin of Proceedings. Check the appropriate box to indicate the origin of the case:

1. Original Proceeding.
2. Removed from a State or District Court.
4. Reinstated or Reopened.
5. Transferred from Another Bankruptcy Court.

Demand. On the next line, state the dollar amount demanded in the complaint in thousands of dollars. For \$1,000, enter "1," for \$10,000, enter "10," for \$100,000, enter "100," if \$1,000,000, enter "1000." If \$10,000,000 or more, enter "9999." If the amount is less than \$1,000, enter "0001." If no monetary demand is made, enter "XXXX." If the plaintiff is seeking non-monetary relief, state the relief sought, such as injunction or foreclosure of a mortgage.

Bankruptcy Case In Which This Adversary Proceeding Arises. Enter the name of the debtor and the docket number of the bankruptcy case from which the proceeding now being filed arose. Beneath, enter the district and divisional office where the case was filed and the name of the presiding judge.

Related Adversary Proceedings. State the names of the parties and six-digit adversary proceeding number from any adversary proceeding concerning the same two parties or the same property currently pending in any bankruptcy court. On the next line, enter the district where the related case is pending and the name of the presiding judge.

Filing Fee. Check one box. The fee must be paid upon filing unless the plaintiff meets one of the following exceptions. The fee is not required if the plaintiff is the United States government or the debtor. If the plaintiff is the trustee or a debtor in possession and there are no liquid funds in the estate, the filing fee may be deferred until there are funds in the estate. (In the event no funds are ever recovered for the estate, there will be no fee.) There is no fee for adding a party after the adversary proceeding has been commenced.

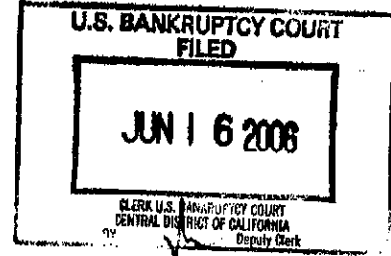
Signature. This cover sheet must be signed by the attorney of record in the box on the right of the last line of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is *pro se*, that is, not represented by an attorney, the plaintiff must sign.

The name of the signatory must be printed in the box to the left of the signature. The date of the signing must be indicated in the box on the far left of the last line.

EXHIBIT 10

ORIGINAL

1 **WEILAND, GOLDEN,**
2 **SMILEY, WANG EKVALL & STROK, LLP**
3 Evan D. Smiley, State Bar No. 161812
4 Kyra E. Andrassy, State Bar No. 207959
5 650 Town Center Drive, Suite 950
6 Costa Mesa, California 92626
7 Telephone: (714) 966-1000
8 Facsimile: (714) 966-1002



9 **BIENERT & KRONGOLD**
10 Thomas Bienert, State Bar No. 135311
11 115 Avenida Miramar
12 San Clemente, California 92672
13 Telephone: (949) 369-3700

14 **FLORATOS, LOLL & DEVINE**
15 William Floratos, State Bar No. 107820
16 Robert Loll, State Bar No. 117686
17 18881 Von Karman Avenue, Suite 220
18 Irvine, California 92612
19 Telephone: (949) 553-1910

20 Attorneys for Dr. Ronald A. Cuning, an
21 individual and as trustee for the Ronald Cuning
22 D.D.S., Inc. Profit Sharing Plan and Trust and
23 the Cuning Family Trust

24 **UNITED STATES BANKRUPTCY COURT**
25 **CENTRAL DISTRICT OF CALIFORNIA**
26 **SANTA ANA DIVISION**

27 In re
28 **LLOYD MYLES RUCKER,**
Debtor.

Case No.: SA 06-10195 JR
Chapter 7 Case
Adv. No. 8:06-ap-01259-JR

DR. RONALD CUNNING, an individual and
as trustee for the RONALD CUNNING
D.D.S., INC. PROFIT SHARING PLAN
AND TRUST and the CUNNING FAMILY
TRUST,

**REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF REPLY TO
DEFENDANT'S OPPOSITION TO
MOTION FOR SUMMARY JUDGMENT**

Hearing Information:
DATE: June 28, 2006
TIME: 1:30 p.m.
CTRM: 5A

Plaintiff,

vs.

LLOYD MYLES RUCKER,

Defendant.

**[Reply to Defendant's Opposition to
Motion for Summary Judgment; and
Declaration of William A. Floratos in
Support Thereof Filed Concurrently
Herewith]**

SA
LC

1 TO THE HONORABLE JOHN E. RYAN, UNITED STATES BANKRUPTCY JUDGE,
2 THE OFFICE OF THE UNITED STATES TRUSTEE, THE DEBTOR AND HIS
3 COUNSEL, AND ANY OTHER PARTIES IN INTEREST:

4 Plaintiffs Ronald A. Cunning, D.D.S., individually and on behalf of the Ronald
5 Cunning D.D.S., Inc., Profit Sharing Plan and Trust and the Cunning Family Trust
6 (collectively, the "Plaintiffs"), hereby request that this Court take judicial notice of the
7 documents listed below pursuant to Federal Rule of Evidence 201 in connection with the
8 Plaintiffs' Reply to the Defendant's Opposition to the Motion for Summary Judgment
9 Pursuant to Federal Rule of Civil Procedure 56:

- 10 1. Accounting Trial Statement of Decision, attached as Exhibit "1."
11 2. Judgment on Verdicts in Open Court, attached as Exhibit "2."

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Respectfully submitted,

DATED: June 16, 2006

WEILAND, GOLDEN,
SMILEY, WANG EKVALL & STROK, LLP

By: 

EVAN D. SMILEY
Attorneys for Dr. Ronald Cunning,
an individual and as trustee for the
Ronald Cunning D.D.S., Inc. Profit
Sharing Plan and Trust and the
Cunning Family Trust

10/10

FILED
ORANGE COUNTY SUPERIOR COURT

OCT 0 1 1996

ALAN SLATER, Executive Officer/Clerk

E. Gamboa
BY E. GAMBOA

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

CHRISTOPHER R. BENNETT, an individual,

Plaintiff,

v.

LLOYD MYLES RUCKER, an individual;
LLOYD MYLES DEVELOPMENT, INC., a Corporation;
RONALD CUNNING, an individual;
RONALD CUNNING, D.D.S., INC. PROFIT SHARING PLAN AND TRUST;
a Corporation; and DOES 1-50, inclusive,

Defendants.

DCM Case No. 65-35-26
Consolidated with: 66 79 28
Consolidated with: 69-93-60

CASE MANAGEMENT SYSTEM
Robert C. Todd
Judge
Department 92

JUDGMENT ON VERDICTS
IN OPEN COURT

DR. RONALD CUNNING, an individual and as trustee for the RONALD CUNNING D.D.S., INC. PROFIT SHARING PLAN AND TRUST and the CUNNING FAMILY TRUST,

Plaintiff,

v.

LLOYD MYLES DEVELOPMENT, INC., a California corporation;
LLOYD MYLES RUCKER, an individual;
LENK/MARTIN, INC., a California corporation;
LARRY MORGAN, an individual;
ISABEL PAMELA RUCKER, an

1 individual; ELIOT RANCY OLSHEN, an)
2 individual; RANDY ELIOT OLSHEN, an)
3 individual; PERSONALLY FIT, form)
of entity unknown; JEAN OLSHEN aka)
4 JEAN GROSS, an individual; STEVE)
5 RANCK, an individual; ROLAND P.)
6 BANDINI aka ROLAND P. BANDI, an)
7 individual; JUDITH WHITEHEAD, an)
8 individual; MIKE E. FICKENGER, an)
9 individual; SCOTT DAVIS, an)
10 individual; SUZANNE DAVIS, an)
11 individual; and ROES 1 through 150,)
12 inclusive,)

13 Defendants.)

14 AND RELATED CROSS-ACTIONS.)

15 Trial of this matter commenced on August 6, 1996, and was
16 completed on September 30, 1996, Plaintiffs being represented
17 by William A. Floratos of Floratos, Loll and Devine, and
18 Defendants being represented by Robert F. Zwierlein of Turner,
19 Cooper and Reynolds. A Jury was sworn to try this matter on
20 August 22, 1996, the jury rendering a verdict on the bifurcated
21 liability and compensatory damage phase of the case on September
22 26, 1996. The jury rendered a verdict on the punitive damage
23 phase of the case on September 30, 1996.

24 Judgment is awarded against the defendant, Lloyd Myles
25 Rucker, and in favor of plaintiffs, Cunning Family Trust, in the
26 amount of \$583,009.00, Dr. Ronald Cunning, D.D.S., Inc., Profit
27 Sharing Plan and Trust in the amount of \$574,631.00, and Dr.
28 Ronald Cunning, an individual in the amount of \$391,097.00, as
compensatory damages.

Judgment is awarded against the defendant, Lloyd Myles
Rucker, and in favor of plaintiffs Cunning Family Trust in the

1 amount of \$500,000.00, Ronald Cuning, D.D.S., Inc., Profit
2 Sharing Plan and Trust in the amount of \$500,000.00, and Dr.
3 Ronald Cuning, an individual, in the amount of \$500,000.00, as
4 exemplary damages.

5
6 Judgment is awarded in favor of Cross-defendants Cuning
7 Family Trust, Ronald Cuning D.D.S., Inc., Profit Sharing Plan
8 and Trust and Dr. Ronald Cuning, an individual, and against
9 Cross-complainant Lloyd Myles Rucker for Cross-complainant's
10 failure to prosecute his cross-complaint.

11 The Plaintiffs, and each of them, are the prevailing
12 parties and each is entitled to recover his or its costs and
13 attorneys fees.

14 The Court reserves jurisdiction to amend this judgment when
15 the matter of costs and attorneys fees have been ascertained.

16 IT IS HEREBY ORDERED THAT judgment be entered as set forth
17 hereinabove.

18 DATED: October 1, 1996

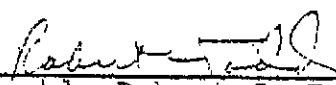
19 
20 Honorable Robert C. Todd
21 Judge of the Superior Court
22 ROBERT C. TODD
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EXHIBIT 11

FILED
JUL 17 2006
CLERK U.S. BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
Deputy Clerk

FILED
JUL 19 2006
CLERK U.S. BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
Deputy Clerk

1 **WEILAND, GOLDEN,**
2 **SMILEY, WANG EKVALL & STROK, LLP**
3 Evan D. Smiley, State Bar No. 161812
4 Kyra E. Andrassy, State Bar No. 207959
5 650 Town Center Drive, Suite 950
6 Costa Mesa, California 92626
7 Telephone: (714) 966-1000
8 Facsimile: (714) 966-1002

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10 Thomas Bienert, State Bar No. 135311
11 115 Avenida Miramar
12 San Clemente, California 92672
13 Telephone: (949) 369-3700

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17 18881 Von Karman Avenue, Suite 220
18 Irvine, California 92612
19 Telephone: (949) 553-1910

20 Attorneys for Dr. Ronald A. Cunning, an
21 individual and as trustee for the Ronald Cunning
22 D.D.S., Inc. Profit Sharing Plan and Trust and
23 the Cunning Family Trust

LOGGED
JUL 12 2006
CLERK U.S. BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
SANTA ANA DIVISION

24 In re
25 LLOYD MYLES RUCKER,
26 Debtor.

Case No.: SA 06-10195 JR
Chapter 7 Case
Adv. No. 8:06-ap-01259-JR

JUDGMENT

27 DR. RONALD CUNNING, an individual and
28 as trustee for the RONALD CUNNING
D.D.S., INC. PROFIT SHARING PLAN
AND TRUST and the CUNNING FAMILY
TRUST,

Hearing Information:
DATE: June 28, 2006
TIME: 1:30 p.m.
CTRM: 5A

Plaintiff,

vs.

LLOYD MYLES RUCKER,
Defendant.

[Handwritten signature]
[Handwritten mark]

1 Pursuant to the Order Granting Motion for Summary Judgment entered
2 concurrently with this Judgment,

3 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that judgment in this
4 matter is entered in favor of Ronald A. Cunning, individually and on behalf of the Ronald
5 Cunning D.D.S., Inc. Profit Sharing Plan and Trust and the Cunning Family Trust
6 (collectively, the "Plaintiffs"), and the debt owed pursuant to the Amended Judgment on
7 Verdicts that was entered by the Orange County Superior Court on April 23, 1997 is
8 nondischargeable pursuant to 11 U.S.C. §§ 523(a)(2)(A), (a)(4), and (a)(6).

9
10 DATED:

JUL 17 2006



THE HONORABLE JOHN B. RYAN,
United States Bankruptcy Judge

11
12 Approved as to form:

13 SHULMAN, HODGES & BASTIAN, LLP
14

15 See attached
16 MARK BRADSHAW,
Attorneys for Lloyd Myles Rucker

17
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Pursuant to the Order Granting Motion for Summary Judgment entered
concurrently with this Judgment,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that judgment in this
matter is entered in favor of Ronald A. Cuning, Individually and on behalf of the Ronald
Cuning D.D.S., Inc. Profit Sharing Plan and Trust and the Cuning Family Trust
(collectively, the "Plaintiffs"), and the debt owed pursuant to the Amended Judgment on
Verdicts that was entered by the Orange County Superior Court on April 23, 1997 is
nondischargeable pursuant to 11 U.S.C. §§ 523(a)(2)(A), (a)(4), and (a)(6).

DATED:

THE HONORABLE JOHN E. RYAN,
United States Bankruptcy Judge

Approved as to form:

SHULMAN, HODGES & BASTIAN, LLP



MARK BRADSHAW,
Attorneys for Lloyd Myles Rucker

PROOF OF SERVICE

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STATE OF CALIFORNIA,
COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 650 Town Center Drive, Suite 950, Costa Mesa, California 92626.

On July 11, 2006, I served the foregoing document described as **JUDGMENT** on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED LIST

BY MAIL

I deposited such envelope in the mail at Costa Mesa, California. The envelope was mailed with postage thereon fully prepaid.

I deposited such envelope with the firm for collection and processing. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. postal service on that same day with postage thereon fully prepaid at Costa Mesa, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on July 11, 2006, at Costa Mesa, California.

(State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

(Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made. I declare under the penalty of perjury under the laws of the United States of America that the above is true and correct.

Margaret Sciesinski
Type or print name


Signature

Dr. Ronald Cunning (Family Trust) v. Lloyd Myles Rucker
Adv. No. 8:06-ap-01259 JR
523 Complaint List

SERVICE LIST:

United States Trustee
411 W. 4th Street
Suite 9041
Santa Ana, CA 92701

Mark Bradshaw, Esq.
Shulman Hodges & Bastian, LLP
Towne Centre Plaza
26632 Towne Center Dr., Suite 300
Foothill Ranch, CA 92610-2808
Attorneys for Debtor/Defendant

NOTE TO THE USERS OF THIS FORM:
Physically attach this form as the last page of the proposed Order or Judgment
Do not file this form as a separate document.

In re	(Short Title)	Chapter <u>7</u> Case No:
LLOYD MYLES RUCKER		SA 06-10195 JR

Debtors.

**NOTICE OF ENTRY OF JUDGMENT OR ORDER
AND CERTIFICATE OF MAILING**

TO ALL PARTIES IN INTEREST ON THE ATTACHED SERVICE LIST:

You are hereby notified, pursuant to Local Bankruptcy Rule 9021-1,
that a judgment or order entitled (specify):

JUDGMENT

was entered on (specify date): JUL 19 2006

I hereby certify that I mailed a copy of this notice and a true
copy of the order or judgment to the persons and entities on the attached
service list on (specify date):

JUL 19 2006

DATED:

JUL 19 2006

JON D. CERETTO
Clerk of the Bankruptcy Court

By: U. HANAVAN
Deputy Clerk

Dr. Ronald Cunning (Family Trust) v. Lloyd Myles Rucker
Adv. No. 8:06-ap-01259 JR
523 Complaint List

SERVICE LIST:

United States Trustee
411 W. 4th Street
Suite 9041
Santa Ana, CA 92701

Mark Bradshaw, Esq.
Shulman Hodges & Bastian, LLP
Towne Centre Plaza
26632 Towne Center Dr., Suite 300
Foothill Ranch, CA 92610-2808
Attorneys for Debtor/Defendant

Thomas H. Casey
22342 Avenida Empresa, Suite 260
Rancho Santa Margarita, CA 92688
Chapter 7 Trustee

KEA
WEILAND, GOLDEN,
SMILEY, WANG EKVALL & STROK, LLP
650 TOWN CENTER DR., SUITE 950
COSTA MESA, CA 92626

EXHIBIT 12

1 **WEILAND, GOLDEN**
2 **SMILEY, WANG EKVALL & STROK, LLP**
3 Evan D. Smiley, State Bar No. 161812
4 esmiley@wgllp.com
5 Kyra E. Andrassy, State Bar No. 207959
6 kandrassy@wgllp.com
7 650 Town Center Drive, Suite 950
8 Costa Mesa, CA 92626
9 Telephone: 714-966-1000
10 Facsimile: 714-966-1002

11 Special Counsel for
12 Thomas H. Casey, Chapter 7 Trustee

13 **UNITED STATES BANKRUPTCY COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**
15 **SANTA ANA DIVISION**

16 In re
17 **LLOYD MYLES RUCKER,**
18
19 Debtor.

Case No. 08:06-bk-10195-RK
Chapter 7

20 **THOMAS H. CASEY, Chapter 7 Trustee,**
21
22 Plaintiff,

Adv. No. _____

23 vs.
24 **WELLS FARGO ADVISORS, LLC, and**
25 **LLOYD MYLES RUCKER, solely in his**
26 **capacity as the trustee of the Lloyd Rucker**
27 **Defined Benefit Pension Plan Trust, the**
28 **Secure Capital Inc. 401(k) Profit Sharing**
Plan and Trust, the EZ Equity Inc. 401(k)
Profit Sharing Plan and Trust, the Vision
Capital 401(k) Profit Sharing Plan and
Trust, and the IQ Capital, Inc. 401(k) Profit
Sharing Plan and Trust,
Defendants.

COMPLAINT FOR TURNOVER OF
CUSTODY OF FUNDS PURSUANT TO 11
U.S.C. § 542(a) AND AN ACCOUNTING

Plaintiff Thomas H. Casey (the "Plaintiff"), the chapter 7 trustee of the bankruptcy estate of Lloyd Myles Rucker (the "Debtor"), is informed and believes and, based thereon, respectfully alleges as follows:

Weiland, Golden,
Smiley, Wang Ekvall & Strok, LLP
650 Town Center Drive, Suite 950
Costa Mesa, CA 92626
Tel 714-966-1000 Fax 714-966-1002

1 **STATEMENT OF JURISDICTION AND VENUE**

2 1. This Court has jurisdiction over this adversary proceeding pursuant to 28
3 U.S.C. §§ 157(b)(1) and 1334.

4 2. This proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A),
5 (E) and (O).

6 3. Venue properly lies in this judicial district and this civil proceeding arises
7 under title 11 of the United States Code as provided in 28 U.S.C. §1409.

8
9 **PARTIES**

10 4. Plaintiff is the duly appointed chapter 7 trustee of the Debtor's bankruptcy
11 estate, case number 08:06-bk-10195-RK, currently pending before the United States
12 Bankruptcy Court, Central District of California, Santa Ana Division.

13 5. Defendant Wells Fargo Advisors, LLC ("Wells Fargo"), is a limited liability
14 company organized under the laws of Delaware and authorized to conduct business in
15 Florida and California, among other states. It is the successor to Wachovia Securities.

16 6. Lloyd Myles Rucker is the debtor in this case and is named in his capacity
17 as the trustee of the Lloyd Rucker Defined Benefit Pension Plan Trust, the Secure Capital
18 Inc. 401(k) Pension Plan and Trust, the EZ Equity Inc. 401(k) Profit Sharing Plan and
19 Trust, the Vision Capital 401(k) Profit Sharing Plan and Trust, and the IQ Capital Inc.
20 401(k) Profit Sharing Plan and Trust.

21
22 **GENERAL ALLEGATIONS**

23 7. When the Debtor filed his bankruptcy schedules, he disclosed his interest in
24 the Lloyd Rucker Defined Benefit Pension Plan, the Secure Capital Inc. 401k Profit
25 Sharing Plan, the EZ Equity Inc. 401k Profit Sharing Plan, and the Vision Capital 401k
26 Profit Sharing Plan (together, the "Retirement Plans") and declared his beneficial interest
27 in them exempt under California Civil Procedure Code § 704.115(b) as private retirement
28 plans.

Welland, Golden,
Smiley, Wang, Ekvall & Strook, LLP
650 Town Center Drive, Suite 950
Costa Mesa, CA 92626
Tel 714-966-1000 Fax 714-966-1002

1 8. In April 2006, Ronald A. Cuning, D.D.S., a creditor of the Debtor's, objected
2 to the Debtor's claim of exemption in the Retirement Plans, contending that his interests
3 were not exempt under the applicable law because the Retirement Plans had not been
4 primarily designed and used for retirement purposes. A trial ensued. Eventually, the
5 Bankruptcy Court issued its Memorandum Decision sustaining Cuning's objection and
6 finding that because the Debtor's primary purpose in establishing and funding the
7 Retirement Accounts was to shield his assets from Cuning, his beneficial interests in
8 them were not exempt.

9 9. The Debtor appealed to the United States District Court, Central District of
10 California (the "District Court"). Pending the outcome of that appeal, the Debtor and
11 Cuning stipulated to a stay pending appeal, contingent upon the Debtor's posting of a
12 bond in the amount of \$250,000, which he eventually posted.

13 10. In March 2008, the District Court entered its order reversing the Bankruptcy
14 Court's ruling and finding that the Debtor's beneficial interests in the Retirement Plans
15 were exempt. Cuning appealed that decision to the Ninth Circuit Court of Appeals (the
16 "Ninth Circuit") and, concerned that the Debtor would dissipate the funds, sought a stay of
17 the District Court's decision pending appeal. The Debtor requested a partial stay,
18 contending that he wanted to transfer the accounts owned by or in the name of the
19 Retirement Plans (the "Retirement Accounts") and consolidate them with Wachovia
20 Securities. The District Court ultimately entered an order granting a partial stay (the "Stay
21 Order") that prohibited the Debtor from accessing or dissipating the funds on deposit in
22 the Retirement Accounts during the pendency of the appeal to the Ninth Circuit, but
23 allowing him to consolidate the funds with a single fund manager and to reallocate the
24 funds among different investment products offered by that fund manager to preserve their
25 value.

26 11. The Trustee is informed that the Debtor transferred the Retirement Accounts
27 to Wachovia Securities. The Trustee is informed that the account holders of the
28 Retirement Accounts are the Lloyd Rucker Defined Benefit Pension Plan and the IQ

1 Capital Inc. 401k Plan. The IQ Capital Inc. 401k Plan is the successor to the 401(k)
2 Plans. The Trustee is informed and believes that Wells Fargo now owns Wachovia
3 Securities. The Retirement Account numbers known to the Trustee as of February 2009
4 are 3082, 5808, and 8601. The former are for the Lloyd Rucker Defined Benefit Pension
5 Plan and the latter is for the IQ Capital, Inc., 401(k) Plan.

6 12. In June 2009, the Ninth Circuit issued its opinion reversing the District Court
7 and affirming the Bankruptcy Court. Although the Debtor filed a petition for rehearing, the
8 Ninth Circuit issued its order denying that petition on August 19, 2009. The Ninth Circuit
9 issued its mandate on August 27, 2009, so jurisdiction has transferred back to this Court
10 for implementation of the ruling.

11

12 **CAUSE OF ACTION FOR TURNOVER**

13 (Against both Defendants)

14 (11 U.S.C. § 542(a))

15 13. Plaintiff incorporates paragraphs 1 through 12 above as though fully set forth
16 herein.

17 14. Pursuant to the Ninth Circuit's ruling, the Debtor's beneficial interest in the
18 Retirement Plans and the Retirement Accounts is property of the Debtor's bankruptcy
19 estate that may be administered by the Trustee.

20 15. Wells Fargo is in possession of the Retirement Accounts.

21 16. Because the Debtor's beneficial interest in the Retirement Accounts is
22 property of the Debtor's bankruptcy estate and this interest is not of inconsequential value
23 and benefit to the estate, Wells Fargo may be compelled to liquidate any investments of
24 the Retirement Accounts and to turnover custody of the funds on deposit and the
25 proceeds of the investments to the Trustee to hold in trust pending a determination of
26 relevant tax issues.

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28

CAUSE OF ACTION FOR AN ACCOUNTING

17. Plaintiff incorporates paragraphs 1 through 12 above as though fully set forth herein.

18. Plaintiff has made multiple requests of the Debtor for detailed statements and an accounting of the funds belonging to the Retirement Accounts that are on deposit with Wells Fargo to verify that the Debtor has not dissipated any of the funds.

19. Plaintiff has not received any response from the Debtor.

20. Because the Debtor's beneficial interest in the Retirement Accounts is property of the Debtor's bankruptcy estate, the Plaintiff is entitled to an accounting of the Retirement Accounts, the Plaintiff seeks an accounting from Wells Fargo for the Retirement Accounts located at Wells Fargo from the time that the Retirement Accounts were opened at Wells Fargo (then known as Wachovia Securities) to the present.

21. In addition, the Trustee seeks an accounting from the Debtor of the Retirement Accounts from 2006 through the present, including all account statements and documents filed with the United States Department of Labor and the Internal Revenue Service relating to the Retirement Plans.

RELIEF REQUESTED

1. For an order or judgment directing Wells Fargo and the Debtor to liquidate any investments held by the Retirement Accounts located at Wells Fargo and to turnover custody of the proceeds of those investments and the funds on deposit with Wells Fargo to the Trustee.

2. For an order or judgment authorizing the Trustee to execute any documents reasonably required by Wells Fargo in order to comply with the Court's order or judgment.

3. For an order requiring Wells Fargo to produce to the Trustee detailed statements for the Retirement Accounts located at Wells Fargo from the time that the Retirement Accounts were opened at Wells Fargo or its predecessor in interest, Wachovia Securities, to the present.

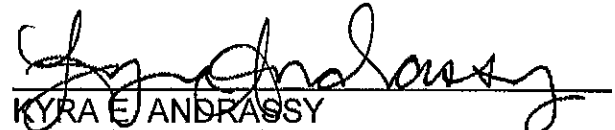
1 4. For an order requiring the Debtor to produce to the Trustee all account
2 statements for the Retirement Accounts and all filings with the United States Department
3 of Labor or the Internal Revenue Service from January 1, 2006, through the present.

4 5. For such other and further relief as the Court may deem just and
5 appropriate.

6 Dated: August 31, 2009

WEILAND, GOLDEN
SMILEY, WANG EKVALL & STROK, LLP

7
8
9 By:


KYRA E. ANDRASSY
Special Counsel for Thomas H. Casey,
Chapter 7 Trustee

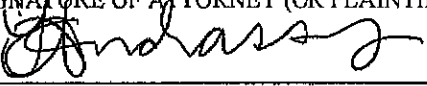
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Weiland, Golden,
Smiley, Wang Ekvall & Strok, LLP
650 Town Center Drive, Suite 950
Costa Mesa, CA 92626
Tel 714-966-1000 Fax 714-966-1002

B104 (FORM 104) (08/07)

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)		ADVERSARY PROCEEDING NUMBER (Court Use Only)
PLAINTIFFS THOMAS H. CASEY, Chapter 7 Trustee	DEFENDANTS WELLS FARGO ADVISORS, LLLC, and LLOYD MYLES RUCKER	
ATTORNEYS (Firm Name, Address, and Telephone No.) Kyra Andrassy WEILAND, GOLDEN, SMILEY, WANG EKVALL & STROK 650 Town Center Drive Costa Mesa, CA 92626 714/966-1000	ATTORNEYS (If Known)	
PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input type="checkbox"/> Other <input checked="" type="checkbox"/> Trustee	PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input checked="" type="checkbox"/> Other <input type="checkbox"/> Trustee	
CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED) COMPLAINT FOR TURNOVER OF CUSTODY OF FUNDS PURSUANT TO 11 U.S.C. SECTION 542 (a) AND AN ACCOUNTING		
NATURE OF SUIT (Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)		
FRBP 7001(1) – Recovery of Money/Property <input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property <input type="checkbox"/> 12-Recovery of money/property - §547 preference <input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input type="checkbox"/> 14-Recovery of money/property - other FRBP 7001(2) – Validity, Priority or Extent of Lien <input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property FRBP 7001(3) – Approval of Sale of Property <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h) FRBP 7001(4) – Objection/Revocation of Discharge <input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e) FRBP 7001(5) – Revocation of Confirmation <input type="checkbox"/> 51-Revocation of confirmation FRBP 7001(6) – Dischargeability <input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims <input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny (continued next column)	FRBP 7001(6) – Dischargeability (continued) <input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support <input type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury <input type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan <input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support) <input type="checkbox"/> 65-Dischargeability - other FRBP 7001(7) – Injunctive Relief <input type="checkbox"/> 71-Injunctive relief – imposition of stay <input type="checkbox"/> 72-Injunctive relief – other FRBP 7001(8) Subordination of Claim or Interest <input type="checkbox"/> 81-Subordination of claim or interest FRBP 7001(9) Declaratory Judgment <input type="checkbox"/> 91-Declaratory judgment FRBP 7001(10) Determination of Removed Action <input type="checkbox"/> 01-Determination of removed claim or cause Other <input type="checkbox"/> SS-SIPA Case – 15 U.S.C. §§78aaa <i>et seq.</i> <input type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)	
<input type="checkbox"/> Check if this case involves a substantive issue of state law	<input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23	
<input type="checkbox"/> Check if a jury trial is demanded in complaint	Demand \$ 500K - \$1,000,000	
Other Relief Sought turnover of custody of funds and an accounting		

B104 (FORM 104) (08/07), Page 2

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR LLOYD MYLES RUCKER		BANKRUPTCY CASE NO. 05-43170-BCK-RAM
DISTRICT IN WHICH CASE IS PENDING CENTRAL	DIVISION OFFICE SANTA ANA	NAME OF JUDGE HON. ROBERT KWAN
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF THOMAS H. CASEY	DEFENDANT LLOYD MYLES RUCKER	ADVERSARY PROCEEDING NO. 8:06-ap-01340-RK
DISTRICT IN WHICH ADVERSARY IS PENDING CENTRAL	DIVISION OFFICE SANTA ANA	NAME OF JUDGE HON. ROBERT KWAN
SIGNATURE OF ATTORNEY (OR PLAINTIFF) 		
DATE 8/31/09	PRINT NAME OF ATTORNEY (OR PLAINTIFF) Kyra Andrassy	

INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also complete and file Form 104, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court's Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 104 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and Defendants. Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

Attorney or Party Name, Address, Telephone & FAX Numbers, and California State Bar Number Evan D. Smiley #161812/Kyra Andrassy#207959 WEILAND, GOLDEN, SMILEY, WANG EKVALL & STROK, LLP 650 Town Center Drive Suite 950 Costa Mesa, CA 92626 714/966-1000 714/966-1002 Attorney for Plaintiff Thomas H. Casey, Chapter 7 Trustee	FOR COURT USE ONLY
UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA	
In re: LLOYD MYLES RUCKER, <div style="text-align: right;">Debtor.</div>	CHAPTER <u>7</u> CASE NUMBER 8:06-bk-10195 RK ADVERSARY NUMBER
THOMAS H. CASEY, Chapter 7 Trustee, <div style="text-align: center;">vs.</div> Plaintiff(s), WELLS FARGO ADVISORS, LLC, and LLOYD MYLES RUCKER, ** <div style="text-align: right;">Defendant(s).</div>	(The Boxes and Blank Lines below are for the Court's Use Only) (Do Not Fill Them In) <div style="text-align: center; font-weight: bold; font-size: 1.2em;"> SUMMONS AND NOTICE OF STATUS CONFERENCE </div>

TO THE DEFENDANT: A Complaint has been filed by the Plaintiff against you. If you wish to defend yourself, you must file with the Court a written pleading, in duplicate, in response to the Complaint. You must also send a copy of your written response to the party shown in the upper left-hand corner of this page. Unless you have filed in duplicate and served a responsive pleading by _____, the Court may enter a judgment by default against you for the relief demanded in the Complaint.

A Status Conference on the proceeding commenced by the Complaint has been set for:

Hearing Date:	Time:	Courtroom:	Floor:
<input type="checkbox"/> 255 East Temple Street, Los Angeles		<input type="checkbox"/> 411 West Fourth Street, Santa Ana	
<input type="checkbox"/> 21041 Burbank Boulevard, Woodland Hills		<input type="checkbox"/> 1415 State Street, Santa Barbara	
<input type="checkbox"/> 3420 Twelfth Street, Riverside			

PLEASE TAKE NOTICE that if the trial of the proceeding is anticipated to take less than two (2) hours, the parties may stipulate to conduct the trial of the case on the date specified, instead of holding a Status Conference. Such a stipulation must be lodged with the Court at least two (2) Court days before the date set forth above and is subject to Court approval. The Court may continue the trial to another date if necessary to accommodate the anticipated length of the trial.

JON D. CERETTO
Clerk of the Bankruptcy Court

Date of Issuance: _____

By: _____
Deputy Clerk

** solely in his capacity as the trustee of the Lloyd Rucker Defined Benefit Pension Plan Trust, the Secure Capital Inc. 401(k) Profit Sharing Plan and Trust, the EZ Equity Inc. 401(k) Profit Sharing Plan and Trust, the Vision Capital 401(k) Profit Sharing Plan and Trust, and the IQ Capital, Inc. 401(k) Profit Sharing Plan and Trust,

EXHIBIT 13

EXHIBIT 5



WACHOVIA SECURITIES

SNAPSHOT

LLOYD RUCKER DBP
 LLOYD RUCKER TTEE
 U/A DTD 10-12-2001
 FBO LLOYD RUCKER
 FEBRUARY 1 - FEBRUARY 28, 2009
 ACCOUNT NUMBER: 3082

Progress summary

	THIS PERIOD	THIS YEAR
Opening value	\$346,890.35	\$372,909.58
Income earned	491.97	1,003.09
Change in value	-15,294.61	-41,824.96
Closing value	\$332,087.71	\$332,087.71

Portfolio summary

ASSETS	ASSET TYPE	VALUE ON FEB 28	CURRENT %	ESTIMATED ANN. INCOME
Cash and sweep balances		115,141.11	34.67	145
Stocks and options		173,488.93	52.24	5,271
Fixed income securities		43,457.67	13.09	2,194
Mutual funds		0.00	0.00	0
Asset value		\$332,087.71	100%	\$7,610



WACHOVIA SECURITIES

SNAPSHOT

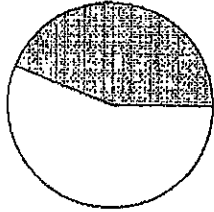
LLOYD RUCKER DBP
 LLOYD RUCKER TTEE
 U/A DTD 10-12-2001
 FBO LLOYD RUCKER
 FEBRUARY 1 - FEBRUARY 28, 2009
 ACCOUNT NUMBER: 5808

Progress summary

	THIS PERIOD	THIS YEAR
Opening value	\$91,403.20	\$98,592.48
Cash	105,000.00	105,000.00
Securities deposited	0.00	0.00
Cash withdrawn	0.00	0.00
Securities withdrawn	0.00	0.00
Income earned	62.40	193.91
Change in value	-8,428.47	-15,749.26
Closing value	\$188,037.13	\$188,037.13

Portfolio summary

CURRENT



ASSET TYPE	ASSETS	VALUE ON FEB 28	CURRENT %	ESTIMATED ANN. INCOME
Cash and sweep balances		105,215.63	55.95%	4
Stocks and options		0.00	0.00%	0
Fixed income securities		0.00	0.00%	0
Mutual funds		82,821.50	44.05%	1,863
Asset value		\$188,037.13	100%	\$1,867



WACHOVIA SECURITIES

SNAPSHOT

IO CAPITAL, INC. 401 K PL
 LLOYD RUCKER TTEE
 U/A DTD 10-12-2001
 FBO LLOYD RUCKER
 FEBRUARY 1 - FEBRUARY 28, 2009
 ACCOUNT NUMBER: 8601

Progress summary

	THIS PERIOD	THIS YEAR
Opening value	\$238,436.45	\$311,298.38
Income earned	287.26	797.60
Change in value	-22,313.47	-45,685.74
Closing value	\$266,410.24	\$266,410.24

Portfolio summary

ASSET TYPE	ASSETS	VALUE ON FEB 28	%	ESTIMATED ANN. INCOME
Cash and sweep balances		7,504.88	2.85	82
Stocks and options		258,805.36	97.15	8,868
Fixed income securities		0.00	0.00	0
Mutual funds		0.00	0.00	0
Asset value		\$266,410.24	100%	\$8,950

WACHOVIA COMPASS ADVETF - MODERATE GROWTH/OTHER

SNAPSHOT
 001 PFNA F00R



WACHOVIA SECURITIES

SNAPSHOT

LLOYD RUCKER DEP
 LLOYD RUCKER TTEE
 U/A DTD 10-12-2001
 FBO LLOYD RUCKER
 FEBRUARY 1 - FEBRUARY 28, 2009
 ACCOUNT NUMBER: 3082

Progress summary

	THIS PERIOD	THIS YEAR
Opening value	\$346,590.35	\$372,989.58
Income earned	491.97	1,003.09
Change in value	-15,294.61	-41,824.96
Closing value	\$332,087.71	\$332,087.71

Portfolio summary

ASSETS	ASSET TYPE	VALUE ON FEB 28	CURRENT VALUE ON FEB 28	%	ESTIMATED ANN. INCOME
Cash and sweep balances		115,141.11	115,141.11	34.67	1.45
Stocks and options		173,488.93	173,488.93	52.24	5.271
Fixed income securities		43,457.67	43,457.67	13.09	2.194
Mutual funds		0.00	0.00	0.00	0
Asset value		\$332,087.71	\$332,087.71	100%	\$7.910

WACHOVIA COMPASS ADVISOR/AGENT/GRANTH/OTHER

SNAPSHOT
 001 PRTM PAGE



WACHOVIA SECURITIES

SNAPSHOT

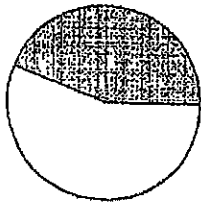
LLOYD RUCKER DEP
 LLOYD RUCKER TTEE
 U/A DTD 10-12-2001
 FBO LLOYD RUCKER
 FEBRUARY 1 - FEBRUARY 28, 2009
 ACCOUNT NUMBER: 5808

Progress summary

	THIS PERIOD	THIS YEAR
Opening value	\$91,403.20	\$98,592.48
Cash	105,000.00	105,000.00
Securities deposited	0.00	0.00
Cash withdrawn	0.00	0.00
Securities withdrawn	0.00	0.00
Income earned	52.40	193.91
Change in value	-8,428.47	-15,749.25
Closing value	\$188,037.13	\$188,037.13

Portfolio summary

CURRENT



ASSETS	ASSET TYPE	VALUE ON FEB 28	CURRENT %	ESTIMATED ANNUAL INCOME
Cash and sweep balances		105,215.83	55.95%	4
Stocks and options		0.00	0.00%	0
Fixed income securities		82,821.50	44.05%	0
Mutual funds				1,863
Asset value		\$188,037.13	100%	\$1,867



WACHOVIA SECURITIES

SNAPSHOT

WACHOVIA CAPITAL, INC. 401 K PL
 LLOYD RUCKER TTEE
 U/A DTD 10-12-2001
 FBO LLOYD RUCKER
 FEBRUARY 1 - FEBRUARY 28, 2009
 ACCOUNT NUMBER: 8807

Progress summary

	THIS PERIOD	THIS YEAR
Opening value	\$288,436.45	\$311,298.38
Income earned	287.26	797.89
Change in value	-22,313.47	-45,685.74
Closing value	\$266,410.24	\$266,410.24

Portfolio summary

ASSETS	ASSET TYPE	VALUE ON FEB 28	CURRENT	%	ESTIMATED ANNU. INCOME
Cash and sweep balances		7,604.88	2.85		82
Stocks and options		258,805.36	97.15		9,868
Fixed Income securities		0.00	0.00		0
Mutual funds		0.00	0.00		0
Asset value		\$266,410.24	100%		\$8,950

WACHOVIA COMPASS ADVEETF - MODERATE GROWTH OTHER

SNAPSHOT
 001 PRMNA F30GR

EXHIBIT 14

FILED & ENTERED
SEP 25 2009
CLERK U.S. BANKRUPTCY COURT
Central District of California
BY kent DEPUTY CLERK

**WEILAND, GOLDEN
SMILEY, WANG EKVALL & STROK, LLP**
Evan D. Smiley, State Bar No. 161812
esmiley@wgllp.com
Kyra E. Andrassy, State Bar No. 207959
kandrassy@wgllp.com
650 Town Center Drive, Suite 950
Costa Mesa, CA 92626
Telephone: (714) 966-1000
Facsimile: (714) 966-1002

CHANGES MADE BY COURT

Special Counsel for Chapter 7 Trustee
Thomas H. Casey

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
SANTA ANA DIVISION**

In re
LLOYD MYLES RUCKER,
Debtor.

Case No. 8:06-bk-10195-RK
Chapter 7

THOMAS H. CASEY, Chapter 7 Trustee,
Plaintiff,
v.

Adv. No. 8:09-ap-01513-RK

WELLS FARGO ADVISORS, LLC, and
LLOYD MYLES RUCKER, solely in his
capacity as the trustee of the Lloyd Rucker
Defined Benefit Pension Plan Trust, the
Secure Capital Inc. 401(k) Profit Sharing
Plan and Trust, the EZ Equity Inc. 401(k)
Profit Sharing Plan and Trust, the Vision
Capital 401(k) Profit Sharing Plan and
Trust, and the IQ Capital, Inc. 401(k) Profit
Sharing Plan and Trust,
Defendant.

**ORDER APPROVING ORAL
STIPULATION ON TRUSTEE'S MOTION
FOR (1) TURNOVER OF CUSTODY OF
FUNDS ON DEPOSIT AT WELLS FARGO
ADVISORS, LLC, PURSUANT TO 11
U.S.C. § 542(a) AND (2) AN ACCOUNTING**

**DATE: September 8, 2009
TIME: 3:00 p.m.
CTRM: 5D**

At the above date and time, a hearing was held on shortened time on the motion
(the "Motion") of Thomas H. Casey, the chapter 7 trustee (the "Trustee") for the
bankruptcy estate of Lloyd Myles Rucker (the "Debtor"), for an order directing Wells Fargo
Advisors, LLC ("Wells Fargo"), and the Debtor to turnover custody of all funds on deposit
at Wells Fargo owned by or held on behalf of the Lloyd Rucker Defined Benefit Pension

Weiland, Golden,
Smiley, Wang Ekvall & Strook, LLP
650 Town Center Drive, Suite 950
Costa Mesa, California 92626
Tel 714 - 966 -1000 Fax 714 - 966 -1002

1 Plan, the Secure Capital 401(k) Plan, the EZ Equity 401(k) Plan, the Vision Capital 401(k)
2 Plan, and the IQ Capital Inc. 401(k) Plan (the "Retirement Plans") and for an accounting.
3 Appearances were as noted on the record. For the reasons urged in the Motion as
4 modified on the record and for the reasons set forth on the record, and the Court having
5 found that notice of the Motion was proper,

6 **IT IS HEREBY ORDERED** as follows:

7 (1) The oral stipulation between the parties is approved;

8 (2) Wells Fargo is authorized and directed to change the holder of record of all
9 accounts in its possession that belong to the Retirement Plans, including but not limited to
10 Wachovia Securities account numbers 3082, 5808, or 8601 (the "Retirement Accounts"),
11 to "Thomas H. Casey, Chapter 7 Trustee for the bankruptcy estate of Lloyd Myles Rucker,
12 as custodian" and the Debtor is restricted from accessing the Retirement Accounts,
13 pending further Court order;

14 (3) Wells Fargo is authorized and directed to produce to the Trustee detailed
15 Retirement Account statements and any other documents related to the Retirement
16 Accounts as may be requested by the Trustee from the time that the Retirement Accounts
17 were opened at Wachovia Securities to the present, without the necessity of a subpoena,
18 within thirty (30) days of entry of this Order;

19 (4) The Trustee is authorized to execute any documents required by Wells
20 Fargo in order for Wells Fargo to comply with this Order;

21 (5) Within thirty days of entry of this Order, the Debtor is directed to produce to
22 the Trustee all account statements for the Retirement Accounts from January 1, 2006,
23 through the present, all documents related to the disposition of any funds on deposit in the
24 Retirement Accounts from the time that the Retirement Accounts were transferred to
25 Wachovia Securities to the present, and all filings with the United States Department of
26 Labor or the Internal Revenue Service by or on behalf of the Retirement Plans from
27 January 1, 2006, through the present; and
28

1 (6) Any change in the investment of the assets of the Retirement Accounts shall
2 be made either by stipulation between the Debtor and the Trustee or by order of the Court
3 after notice and hearing by either the Trustee or by the Debtor. The designation of the
4 Trustee as custodian of the Retirement Accounts is solely for the purpose of preventing
5 any change of control of the assets of the Retirement Accounts and shall not in any
6 manner effect a distribution or change of ownership of the Retirement Accounts or their
7 assets. After reviewing the records which the Debtor and Wells Fargo produce pursuant
8 to this Order, the Trustee may file a motion for an order authorizing any such investment
9 action as he believes warranted and in the best interest of the Debtor's bankruptcy estate
10 and creditors in connection with the Retirement Accounts.

11 **IT IS SO ORDERED.**

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Weiland, Golden,
Smiley, Wang Ekvall & Strok, LLP
650 Town Center Drive, Suite 950
Costa Mesa, California 92626
Tel 714 966-1100 Fax 714 966-1002

DATED: September 25, 2009



United States Bankruptcy Judge

In re: LLOYD MYLES RUCKER Debtor(s).	CHAPTER 7 CASE NUMBER 8:06-bk-10195-RK
--	---

NOTE: When using this form to indicate service of a proposed order, **DO NOT** list any person or entity in Category I. Proposed orders do not generate an NEF because only orders that have been entered are placed on the CM/ECF docket.

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:
650 Town Center Drive, Suite 950, Costa Mesa, CA 92626

A true and correct copy of the foregoing document described **ORDER FOR (1) TURNOVER OF CUSTODY OF FUNDS ON DEPOSIT AT WELLS FARGO ADVISORS, LLC, PURSUANT TO 11 U.S.C. § 542(a) AND (2) AN ACCOUNTING** 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 indicated below:

I. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF")** – Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s) ("LBR"), the foregoing document will be served by the court via NEF and hyperlink to the document. On _____ I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated below:

Service information continued on attached page

II. **SERVED BY U.S. MAIL OR OVERNIGHT MAIL**(indicate method for each person or entity served):

On September 23, 2009 I served the following person(s) and/or entity(ies) at the last known address(es) 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/or with an overnight mail service 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.

United States Trustee
411 W. 4th Street
Suite 9041
Santa Ana, CA 92701

Mark Bradshaw, Esq.
Shulman Hodges & Bastian, LLP
Towne Centre Plaza
26632 Towne Center Dr., Suite 300
Foothill Ranch, CA 92610-2808

III. **SERVED BY PERSONAL DELIVERY, FACSIMILE TRANSMISSION OR EMAIL** (indicate method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on September 23, 2009 I served the following person(s) and/or entity(ies) by personal delivery, 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 the judge will be completed no later than 24 hours after the document is filed.

The Hon. Robert Kwan, Ctrm. 5D – Suite 5165
United States Bankruptcy Court
Ronald Reagan Federal Building
411 West Fourth Street
Santa Ana, CA 92701-4593

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

<u>September 23, 2009</u>	<u>MARGARET SCIESINSKI</u>	<u>/s/ Margaret Sciesinski</u>
Date	Type Name	Signature

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

In re: LLOYD MYLES RUCKER Debtor(s).	CHAPTER: 7 CASE NUMBER: 8:06-bk-10195-RK
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NOTICE OF ENTERED ORDER AND SERVICE LIST

Notice is given by the court that a judgment or order entitled (*specify*) **ORDER APPROVING ORAL STIPULATION ON TRUSTEE'S MOTION FOR (1) TURNOVER OF CUSTODY OF FUNDS ON DEPOSIT AT WELLS FARGO ADVISORS, LLC, PURSUANT TO 11 U.S.C. § 542(a) AND (2) AN ACCOUNTING** was entered on the date indicated as "Entered" on the first page of this judgment or order and will be served in the manner indicated below:

I. SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF") – Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s), the foregoing document was served on the following person(s) by the court via NEF and hyperlink to the judgment or order. As of **September 25, 2009**, the following person(s) are currently on the Electronic Mail Notice List for this bankruptcy case or adversary proceeding to receive NEF transmission at the email address(es) indicated below.

Kyra E Andrassy kandrassy@wglip.com
Thomas H Casey msalustro@tomcaseylaw.com, tcasey@ecf.epiqsystems.com
United States Trustee (SA) ustpreion16.sa.ecf@usdoj.gov

Service information continued on attached page

II. SERVED BY THE COURT VIA U.S. MAIL: A copy of this notice and a true copy of this judgment or order was sent by United States Mail, first class, postage prepaid, to the following person(s) and/or entity(ies) at the address(es) indicated below:

Lloyd Myles Rucker
110 Washington Avenue, #1724
Miami Beach, FL 33139
Debtor

Service information continued on attached page

III. TO BE SERVED BY THE LODGING PARTY: Within 72 hours after receipt of a copy of this judgment or order which bears an "Entered" stamp, the party lodging the judgment or order will serve a complete copy bearing an "Entered" stamp by U.S. Mail, overnight mail, facsimile transmission or email and file a proof of service of the entered order on the following person(s) and/or entity(ies) at the address(es), facsimile transmission number(s), and/or email address(es) indicated below:

Mark Bradshaw, Esq.
Shulman Hodges & Bastian, LLP
Towne Centre Plaza
26632 Towne Center Dr., Suite 300
Foothill Ranch, CA 92610-2808

Service information continued on attached page

EXHIBIT 15

WEILAND, GOLDEN, SMILEY, WANG EKVALL & STROK, LLP Evan D. Smiley, State Bar No. 161812 Kyra E. Andrassy, State Bar No. 207959 Hutchison B. Meltzer, State Bar No. 217166 650 Town Center Drive, Suite 950 Costa Mesa, California 92626 Telephone: (714) 966-1000 Facsimile: (714) 966-1002 Special Counsel for Plaintiff	FOR COURT USE ONLY
UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA	
In re: LLOYD MYLES RUCKER,	Debtor.
THOMAS H. CASEY, Chapter 7 Trustee, vs. WELLS FARGO ADVISORS, LLC, and LLOYD MYLES RUCKER,	Plaintiff, Defendants. CHAPTER 7 CASE NUMBER 8:06 bk-10195 RK ADVERSARY NUMBER 8:09-ap-01513-RK DATE: May 25, 2010 TIME: 1:30 p.m. PLACE: Courtroom 5D

**UNILATERAL STATUS REPORT
LOCAL BANKRUPTCY RULE 7016-1(a)(2)**

TO THE HONORABLE ROBERT N. KWAN, UNITED STATES BANKRUPTCY JUDGE:

The Plaintiff submits the following UNILATERAL STATUS REPORT in accordance with Local Bankruptcy Rule 7016-1(a)(2):

A. PLEADINGS/SERVICE:

1. Have all parties been served? Yes No
2. Have all parties filed and served answers to the complaint/counter-complaints/etc? Yes No
3. Have all motions addressed to the pleadings been resolved? Yes No
4. Have counsel met and conferred in compliance with Local Bankruptcy Rule 7026-1? Yes No
5. If your answer to any of the four preceding questions is anything other than an unqualified "YES," then please explain below (or on attached page): See Section F

In re Lloyd Myles Rucker	Debtor.	CHAPTER 7 CASE NUMBER 8:09-ap-0513 RK
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B. READINESS FOR TRIAL:

1. When will you be ready for trial in this case?

Plaintiff

See Section F

2. If your answer to the above is more than four (4) months after the summons issued in this case, give reasons for further delay.

Plaintiff

3. When do you expect to complete your discovery efforts?

Plaintiff

See Section F

4. What additional discovery do you require to prepare for trial?

Plaintiff

See Section F

C. TRIAL TIME:

1. What is your estimate of the time required to present your side of the case at trial (including rebuttal stage if applicable)?

Plaintiff

See Section F

2. How many witnesses do you intend to call at trial (including opposing parties)?

Plaintiff

See Section F

3. How many exhibits do you anticipate using at trial?

Plaintiff

See Section F

In re Lloyd Myles Rucker	Debtor. CHAPTER 7 CASE NUMBER 8:09-ap-0513 RK
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D. PRE-TRIAL CONFERENCE:

A pre-trial conference is usually conducted between a week to a month before trial, at which time a pre-trial order will be signed by the court. [See Local Rule 7016-1.] If you believe that a pre-trial conference is not necessary or appropriate in this case, please so note below, stating your reasons:

Plaintiff

Pre-trial conference is/is not requested.

Plaintiff

Pre-trial conference should be set after:

(date):

E. SETTLEMENT:

1. What is the status of settlement efforts? See Section F

2. Has this dispute been formally mediated?
If so, when?

Yes No

3. Do you want this matter sent to mediation at this time?

Plaintiff

Yes No

In re Lloyd Myles Rucker	Debtor. CHAPTER 7 CASE NUMBER 8:09-ap-0513 RK
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F. ADDITIONAL COMMENTS/RECOMMENDATIONS RE TRIAL: *(Use additional page if necessary)*

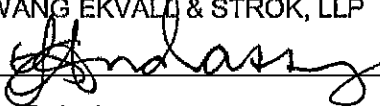
On September 25, 2009, the Court entered its *Order Approving Stipulation on Trustee's Motion for (1) Turnover of Custody of Funds on Deposit at Wells Fargo Advisors, LLC, Pursuant to 11 U.S.C. § 542(a) and (2) an Accounting* (the "Turnover Order"); a copy of the order is attached for the Court's reference. Wells Fargo Advisors, LLC, has fully complied with that order and produced account statements to the Trustee. That order also required the Debtor to produce documentation within thirty days. The Debtor failed to comply with the order, so the Trustee has been in the process of obtaining the information that should have been produced by the Debtor from third-party financial institutions. The purpose for obtaining this information is to verify that the Debtor has not wrongfully dissipated any of the funds on deposit in the name of his retirement plans in violation of various orders and to ensure that the funds are accounted for. In late April, the Trustee received documents from Raymond James, where several of the accounts belonging to the Lloyd Rucker Defined Benefit Pension Plan were located before the Debtor was permitted by the U.S. District Court to consolidate all of the retirement accounts with one fund manager. Unfortunately, statements for several accounts were missing so the Trustee is in the process of obtaining these missing statements. Without the complete set of statements, it is not possible to verify that all of the funds are accounted for.

Once all of the documents are produced, no further action will be necessary in this case and all relief requested will have been granted. However, the Trustee needs to ensure that the Turnover Order remains enforceable so that the provision that restricts the Debtor's access to the funds pending further Court order remains enforceable. Therefore, the Trustee is reluctant to dismiss the case because of his concern that the Debtor might construe that as affecting the enforceability of the Turnover Order. Because the Turnover Order will be the practical equivalent of a final judgment in this case once the documents are produced and the accounting is completed, perhaps the Court could, once the documents are produced, instruct the Clerk of the Court to close the case or sign an order to be prepared by the Trustee that clarifies that because the adversary proceeding was resolved via the Turnover Order, the case may be closed.

In light of the documents remaining to be produced by Raymond James, the Trustee requests a further continuance of this status conference for approximately 45 to 60 days.

DATED: May 18, 2010

WEILAND, GOLDEN,
SMILEY, WANG EKVAL & STROK, LLP

By:  _____

Name: Kyra E. Andrassy

Special Counsel for Plaintiff

FILED & ENTERED
SEP 25 2009
CLERK U.S. BANKRUPTCY COURT
Central District of California
BY kent DEPUTY CLERK

1 **WEILAND, GOLDEN**
2 **SMILEY, WANG EKVALL & STROK, LLP**
3 Evan D. Smiley, State Bar No. 161812
4 esmiley@wgllp.com
5 Kyra E. Andrassy, State Bar No. 207959
6 kandrassy@wgllp.com
7 650 Town Center Drive, Suite 950
8 Costa Mesa, CA 92626
9 Telephone: (714) 966-1000
10 Facsimile: (714) 966-1002

CHANGES MADE BY COURT

11 Special Counsel for Chapter 7 Trustee
12 Thomas H. Casey

13 **UNITED STATES BANKRUPTCY COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**
15 **SANTA ANA DIVISION**

16 In re

Case No. 8:06-bk-10195-RK

17 LLOYD MYLES RUCKER,

Chapter 7

18 Debtor.

19 THOMAS H. CASEY, Chapter 7 Trustee,

Adv. No. 8:09-ap-01513-RK

20 Plaintiff,

21 v.

**ORDER APPROVING ORAL
STIPULATION ON TRUSTEE'S MOTION
FOR (1) TURNOVER OF CUSTODY OF
FUNDS ON DEPOSIT AT WELLS FARGO
ADVISORS, LLC, PURSUANT TO 11
U.S.C. § 542(a) AND (2) AN ACCOUNTING**

22 WELLS FARGO ADVISORS, LLC, and
23 LLOYD MYLES RUCKER, solely in his
24 capacity as the trustee of the Lloyd Rucker
25 Defined Benefit Pension Plan Trust, the
26 Secure Capital Inc. 401(k) Profit Sharing
27 Plan and Trust, the EZ Equity Inc. 401(k)
28 Profit Sharing Plan and Trust, the Vision
Capital 401(k) Profit Sharing Plan and
Trust, and the IQ Capital, Inc. 401(k) Profit
Sharing Plan and Trust,

**DATE: September 8, 2009
TIME: 3:00 p.m.
CTRM: 5D**

Defendant.

24 At the above date and time, a hearing was held on shortened time on the motion
25 (the "Motion") of Thomas H. Casey, the chapter 7 trustee (the "Trustee") for the
26 bankruptcy estate of Lloyd Myles Rucker (the "Debtor"), for an order directing Wells Fargo
27 Advisors, LLC ("Wells Fargo"), and the Debtor to turnover custody of all funds on deposit
28 at Wells Fargo owned by or held on behalf of the Lloyd Rucker Defined Benefit Pension

Weiland, Golden,
Smiley, Wang Ekvall & Strook, LLP
650 Town Center Drive, Suite 950
Costa Mesa, California 92626
Tel 714-966-1000 Fax 714-966-1002

1 Plan, the Secure Capital 401(k) Plan, the EZ Equity 401(k) Plan, the Vision Capital 401(k)
2 Plan, and the IQ Capital Inc. 401(k) Plan (the "Retirement Plans") and for an accounting.
3 Appearances were as noted on the record. For the reasons urged in the Motion as
4 modified on the record and for the reasons set forth on the record, and the Court having
5 found that notice of the Motion was proper,

6 **IT IS HEREBY ORDERED** as follows:

7 (1) The oral stipulation between the parties is approved;

8 (2) Wells Fargo is authorized and directed to change the holder of record of all
9 accounts in its possession that belong to the Retirement Plans, including but not limited to
10 Wachovia Securities account numbers 3082, 5808, or 8601 (the "Retirement Accounts"),
11 to "Thomas H. Casey, Chapter 7 Trustee for the bankruptcy estate of Lloyd Myles Rucker,
12 as custodian" and the Debtor is restricted from accessing the Retirement Accounts,
13 pending further Court order;

14 (3) Wells Fargo is authorized and directed to produce to the Trustee detailed
15 Retirement Account statements and any other documents related to the Retirement
16 Accounts as may be requested by the Trustee from the time that the Retirement Accounts
17 were opened at Wachovia Securities to the present, without the necessity of a subpoena,
18 within thirty (30) days of entry of this Order;

19 (4) The Trustee is authorized to execute any documents required by Wells
20 Fargo in order for Wells Fargo to comply with this Order;

21 (5) Within thirty days of entry of this Order, the Debtor is directed to produce to
22 the Trustee all account statements for the Retirement Accounts from January 1, 2006,
23 through the present, all documents related to the disposition of any funds on deposit in the
24 Retirement Accounts from the time that the Retirement Accounts were transferred to
25 Wachovia Securities to the present, and all filings with the United States Department of
26 Labor or the Internal Revenue Service by or on behalf of the Retirement Plans from
27 January 1, 2006, through the present; and

28

1 (6) Any change in the investment of the assets of the Retirement Accounts shall
2 be made either by stipulation between the Debtor and the Trustee or by order of the Court
3 after notice and hearing by either the Trustee or by the Debtor. The designation of the
4 Trustee as custodian of the Retirement Accounts is solely for the purpose of preventing
5 any change of control of the assets of the Retirement Accounts and shall not in any
6 manner effect a distribution or change of ownership of the Retirement Accounts or their
7 assets. After reviewing the records which the Debtor and Wells Fargo produce pursuant
8 to this Order, the Trustee may file a motion for an order authorizing any such investment
9 action as he believes warranted and in the best interest of the Debtor's bankruptcy estate
10 and creditors in connection with the Retirement Accounts.

11 **IT IS SO ORDERED.**

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Weiland, Golden,
Smiley, Wang Ekvall & Strok, LLP
650 Third Street, Suite 350
Covina, California 91724
Tel 714 -966-1800 Fax 714 -966-1002

DATED: September 25, 2009


United States Bankruptcy Judge

In re: LLOYD MYLES RUCKER <div style="text-align: right;">Debtor(s).</div>	CHAPTER 7 CASE NUMBER 8:06-bk-10195-RK
--	---

NOTE: When using this form to indicate service of a proposed order, **DO NOT** list any person or entity in Category I. Proposed orders do not generate an NEF because only orders that have been entered are placed on the CM/ECF docket.

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:
650 Town Center Drive, Suite 950, Costa Mesa, CA 92626

A true and correct copy of the foregoing document described **ORDER FOR (1) TURNOVER OF CUSTODY OF FUNDS ON DEPOSIT AT WELLS FARGO ADVISORS, LLC, PURSUANT TO 11 U.S.C. § 542(a) AND (2) AN ACCOUNTING** 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 indicated below:

I. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF") – Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s) ("LBR"), the foregoing document will be served by the court via NEF and hyperlink to the document. On _____ I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated below:

Service information continued on attached page

II. SERVED BY U.S. MAIL OR OVERNIGHT MAIL(indicate method for each person or entity served):

On September 23, 2009 I served the following person(s) and/or entity(ies) at the last known address(es) 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/or with an overnight mail service 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.

United States Trustee
411 W. 4th Street
Suite 9041
Santa Ana, CA 92701

Mark Bradshaw, Esq.
Shulman Hodges & Bastian, LLP
Towne Centre Plaza
26632 Towne Center Dr., Suite 300
Foothill Ranch, CA 92610-2808

III. SERVED BY PERSONAL DELIVERY, FACSIMILE TRANSMISSION OR EMAIL (indicate method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on September 23, 2009 I served the following person(s) and/or entity(ies) by personal delivery, 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 the judge will be completed no later than 24 hours after the document is filed.

The Hon. Robert Kwan, Ctrm. 5D – Suite 5165
United States Bankruptcy Court
Ronald Reagan Federal Building
411 West Fourth Street
Santa Ana, CA 92701-4593

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

<u>September 23, 2009</u> Date	<u>MARGARET SCIESINSKI</u> Type Name	<u>/s/ Margaret Sciesinski</u> Signature
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This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

In re: LLOYD MYLES RUCKER	Debtor(s).	CHAPTER: 7	CASE NUMBER: 8:06-bk-10195-RK
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NOTICE OF ENTERED ORDER AND SERVICE LIST

Notice is given by the court that a judgment or order entitled (*specify*) **ORDER APPROVING ORAL STIPULATION ON TRUSTEE'S MOTION FOR (1) TURNOVER OF CUSTODY OF FUNDS ON DEPOSIT AT WELLS FARGO ADVISORS, LLC, PURSUANT TO 11 U.S.C. § 542(a) AND (2) AN ACCOUNTING** was entered on the date indicated as "Entered" on the first page of this judgment or order and will be served in the manner indicated below:

I. SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF") - Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s), the foregoing document was served on the following person(s) by the court via NEF and hyperlink to the judgment or order. As of **September 25, 2009**, the following person(s) are currently on the Electronic Mail Notice List for this bankruptcy case or adversary proceeding to receive NEF transmission at the email address(es) indicated below.

Kyra E Andrassy kandrassy@wglp.com
Thomas H Casey msalustro@tomcaseylaw.com, tcasey@ecf.epiqsystems.com
United States Trustee (SA) ustpregion16.sa.ecf@usdoj.gov

Service information continued on attached page

II. SERVED BY THE COURT VIA U.S. MAIL: A copy of this notice and a true copy of this judgment or order was sent by United States Mail, first class, postage prepaid, to the following person(s) and/or entity(ies) at the address(es) indicated below:

Lloyd Myles Rucker
110 Washington Avenue, #1724
Miami Beach, FL 33139
Debtor

Service information continued on attached page

III. TO BE SERVED BY THE LODGING PARTY: Within 72 hours after receipt of a copy of this judgment or order which bears an "Entered" stamp, the party lodging the judgment or order will serve a complete copy bearing an "Entered" stamp by U.S. Mail, overnight mail, facsimile transmission or email and file a proof of service of the entered order on the following person(s) and/or entity(ies) at the address(es), facsimile transmission number(s), and/or email address(es) indicated below:

Mark Bradshaw, Esq.
Shulman Hodges & Bastian, LLP
Towne Centre Plaza
26632 Towne Center Dr., Suite 300
Foothill Ranch, CA 92610-2808

Service information continued on attached page

In re: Debtor(s). <p style="text-align: center;">LLOYD MYLES RUCKER,</p>	CHAPTER: 7 CASE NUMBER: 8:06-bk-10195-RK
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NOTE: When using this form to indicate service of a proposed order, **DO NOT** list any person or entity in Category I. Proposed orders do not generate an NEF because only orders that have been entered are placed on the CM/ECF docket.

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:

650 Town Center Drive, Suite 950, Costa Mesa, California 92626

A true and correct copy of the foregoing document described **UNILATERAL STATUS REPORT LOCAL BANKRUPTCY RULE 7016-1(a)(2)** 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 indicated below:

I. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF") - Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s) ("LBR"), the foregoing document will be served by the court via NEF and hyperlink to the document. On **May 18, 2010** I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated below:

Kyra E Andrassy kandrassy@wgllp.com
Thomas H Casey msalustro@tomcaseylaw.com, tcasey@ecf.epiqsystems.com
United States Trustee (SA) ustpreion16.sa.ecf@usdoj.gov

Service information continued on attached page

II. SERVED BY U.S. MAIL OR OVERNIGHT MAIL (indicate method for each person or entity served):
On **May 18, 2010** I served the following person(s) and/or entity(ies) at the last known address(es) 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/or with an overnight mail service 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

III. SERVED BY PERSONAL DELIVERY, FACSIMILE TRANSMISSION OR EMAIL (indicate method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on **May 18, 2010** I served the following person(s) and/or entity(ies) by personal delivery, 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 the judge will be completed no later than 24 hours after the document is filed.

The Hon. Robert Kwan
United States Bankruptcy Court
411 W. 4th Street
Santa Ana, CA 92677

Service information continued on attached page

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

5/18/2010	Margaret Sciesinski	/s/ Margaret Sciesinski
Date	Type Name	Signature

In re: LLOYD MYLES RUCKER, Debtor(s).	CHAPTER: 7 CASE NUMBER: 8:06-bk-10195-RK8:
---	---

SERVED BY U.S. MAIL

United States Trustee
411 W. 4th Street
Suite 9041
Santa Ana, CA 92701

Robin Goheen
Wells Fargo Advisors
MAC H0004-103
One North Jefferson
St. Louis, MO 63103

Trish Unterberg
Wells Fargo Advisors
H0004-103
One North Jefferson
St. Louis, MO 63103

Gary I. Blackman, Esq.
Levenfeld Pearlstein, LLC
2 N. LaSalle St., Suite 1300
Chicago, IL 60602
Counsel for Wells Fargo

~~Lloyd Myles Rucker~~
~~110 Washington Avenue, #1724~~
~~Miami Beach, FL 33139~~
~~Debtor~~
Mail Ret. 4/30/10

Mark Bradshaw, Esq.
Shulman Hodges & Bastian, LLP
Towne Centre Plaza
26632 Towne Center Dr., Suite 300
Foothill Ranch, CA 92610-280

EXHIBIT 16

FILED & ENTERED
JUL 16 2010
CLERK U.S. BANKRUPTCY COURT
Central District of California
BY steinber DEPUTY CLERK

1 **WEILAND, GOLDEN**
2 **SMILEY, WANG EKVALL & STROK, LLP**
3 Evan D. Smiley, State Bar No. 161812
4 esmiley@wgllp.com
5 Kyra E. Andrassy, State Bar No. 207959
6 kandrassy@wgllp.com
7 650 Town Center Drive, Suite 950
8 Costa Mesa, CA 92626
9 Telephone: (714) 966-1000
10 Facsimile: (714) 966-1002

11 Special Counsel for Chapter 7 Trustee
12 Thomas H. Casey

13 **UNITED STATES BANKRUPTCY COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**
15 **SANTA ANA DIVISION**

16 In re
17 LLOYD MYLES RUCKER,
18 Debtor.

19 Case No. 8:06-bk-10195-RK
20 Chapter 7 Case

21 THOMAS H. CASEY, Chapter 7 Trustee,
22 Plaintiff,

23 Adv. No. 8:09-ap-01513-RK

24 v.

25 **ORDER DIRECTING CLERK OF THE**
26 **COURT TO CLOSE THE CASE**

27 WELLS FARGO ADVISORS, LLC, and
28 LLOYD MYLES RUCKER, solely in his
capacity as the trustee of the Lloyd Rucker
Defined Benefit Pension Plan Trust, the
Secure Capital Inc. 401(k) Profit Sharing
Plan and Trust, the EZ Equity Inc. 401(k)
Profit Sharing Plan and Trust, the Vision
Capital 401(k) Profit Sharing Plan and
Trust, and the IQ Capital, Inc. 401(k) Profit
Sharing Plan and Trust,
Defendant.

On August 31, 2009, the plaintiff filed a *Complaint for Turnover of Custody of Funds Pursuant to 11 U.S.C. § 542(a) and an Accounting* (the "Complaint"). On September 25, 2009, the Court entered the *Order Approving Oral Stipulation on Trustee's Motion for (1) Turnover of Custody of Funds on Deposit at Wells Fargo Advisors, LLC,*

Weiland, Golden,
Smiley, Wang Ekvall & Strok, LLP
650 Town Center Drive, Suite 950
Costa Mesa, California 92626
Tel 714-966-1000 Fax 714-966-1002

1 Pursuant to 11 U.S.C. § 542(a) and (2) an Accounting (the "Order"). Because the Order
2 resolved all causes of action in the Complaint and all relief sought has now been obtained,
3 **IT IS HEREBY ORDERED** that the Clerk of the Court is authorized and directed to
4 take the necessary action to close this case.

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Weiland, Golden,
Smiley, Wang Ekvall & Strok, LLP
650 Town Center Drive, Suite 950
Cincinnati, Ohio 45226-9966
Tel 714-966-1000 Fax 714-966-1002

DATED: July 16, 2010


United States Bankruptcy Judge

In re: LLOYD MYLES RUCKER Debtor(s).	CHAPTER: 7 Case CASE NUMBER: 8:06-bk-10195-RK
--	--

NOTE: When using this form to indicate service of a proposed order, **DO NOT** list any person or entity in Category I. Proposed orders do not generate an NEF because only orders that have been entered are placed on the CM/ECF docket.

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:

650 Town Center Drive, Suite 950, Costa Mesa, California 92626

A true and correct copy of the foregoing document described **ORDER DIRECTING CLERK OF THE COURT TO CLOSE THE CASE** 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 indicated below:

I. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING("NEF") - Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s) ("LBR"), the foregoing document will be served by the court via NEF and hyperlink to the document. On _____ I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated below:

Service information continued on attached page

II. SERVED BY U.S. MAIL OR OVERNIGHT MAIL (indicate method for each person or entity served):

On **July 14, 2010** I served the following person(s) and/or entity(ies) at the last known address(es) 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/or with an overnight mail service 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

III. SERVED BY PERSONAL DELIVERY, FACSIMILE TRANSMISSION OR EMAIL (indicate method for each person or entity served):

Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on **July 14, 2010** I served the following person(s) and/or entity(ies) by personal delivery, 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 the judge will be completed no later than 24 hours after the document is filed.

The Hon. Robert Kwan
United States Bankruptcy Court
411 W. 4th Street
Santa Ana, CA 92677

Service information continued on attached page

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

<u>7/14/2010</u> Date	<u>Margaret Sciesinski</u> Type Name	<u>Is/ Margaret Sciesinski</u> Signature
--------------------------	---	---

In re: LLOYD MYLES RUCKER Debtor(s).	CHAPTER: 7 Case CASE NUMBER: 8:06-bk-10195-RK
---	--

BY U.S. MAIL

United States Trustee
411 W. 4th Street
Suite 9041
Santa Ana, CA 92701

Robin Goheen
Wells Fargo Advisors
MAC H0004-103
One North Jefferson
St. Louis, MO 63103

Trish Unterberg
Wells Fargo Advisors
H0004-103
One North Jefferson
St. Louis, MO 63103

Gary I. Blackman, Esq.
Levenfeld Pearlstein, LLC
2 N. LaSalle St., Suite 1300
Chicago, IL 60602
Counsel for Wells Fargo

Mark Bradshaw, Esq.
Shulman Hodges & Bastian, LLP
Towne Centre Plaza
26632 Towne Center Dr., Suite 300
Foothill Ranch, CA 92610-2808

In re: LLOYD MYLES RUCKER Debtor(s).	CHAPTER: 7 Case CASE NUMBER: 8:06-bk-10195-RK
---	--

NOTICE OF ENTERED ORDER AND SERVICE LIST

Notice is given by the court that a judgment or order entitled (*specify*) **ORDER DIRECTING CLERK OF THE COURT TO CLOSE THE CASE** was entered on the date indicated as "Entered" on the first page of this judgment or order and will be served in the manner indicated below:

I. SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF") - Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s), the foregoing document was served on the following person(s) by the court via NEF and hyperlink to the judgment or order. As of **July 14, 2010**, the following person(s) are currently on the Electronic Mail Notice List for this bankruptcy case or adversary proceeding to receive NEF transmission at the email address(es) indicated below:

Kyra E Andrassy kandrassy@wglp.com
Thomas H Casey msalustro@tomcaseylaw.com, tcasey@ecf.epiqsystems.com
United States Trustee (SA) ustpreion16.sa.ecf@usdoj.gov

Service information continued on attached page

II. SERVED BY THE COURT VIA U.S. MAIL: A copy of this notice and a true copy of this judgment or order was sent by United States Mail, first class, postage prepaid, to the following person(s) and/or entity(ies) at the address(es) indicated below: **Lloyd Myles Rucker, 110 Washington Ave, #1724, Miami Beach, FL 33139**

Service information continued on attached page

III. TO BE SERVED BY THE LODGING PARTY: Within 72 hours after receipt of a copy of this judgment or order which bears an "Entered" stamp, the party lodging the judgment or order will serve a complete copy bearing an "Entered" stamp by U.S. Mail, overnight mail, facsimile transmission or email and file a proof of service of the entered order on the following person(s) and/or entity(ies) at the address(es), facsimile transmission number(s) and/or email address(es) indicated below:

Service information continued on attached page

Robin Goheen
Wells Fargo Advisors
MAC H0004-103
One North Jefferson
St. Louis, MO 63103

Trish Unterberg
Wells Fargo Advisors
H0004-103
One North Jefferson
St. Louis, MO 63103

Mark Bradshaw, Esq.
Shulman Hodges & Bastian, LLP
Towne Centre Plaza
26632 Towne Center Dr., # 300
Foothill Ranch, CA 92610-2808
Counsel for Debtor

Gary I. Blackman, Esq.
Levenfeld Pearlstein, LLC
2 N. LaSalle St., Suite 1300
Chicago, IL 60602
Counsel for Wells Fargo

EXHIBIT 17

1 **WEILAND, GOLDEN,**
2 **SMILEY, WANG EKVALL & STROK, LLP**
3 Evan D. Smiley, State Bar No. 161812
4 Kyra E. Andrassy, State Bar No. 207959
5 650 Town Center Drive, Suite 950
6 Costa Mesa, California 92626
7 Telephone: (714) 966-1000
8 Facsimile: (714) 966-1002
9
10 Proposed Special Counsel for Thomas H.
11 Casey, Chapter 7 Trustee

DEBTOR:
Rucker, Lloyd Myles
JUDGE: John E. Ryan A400
TRUSTEE:
CHAPTER: 7 AD

CLERK, U. S. BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIF. ID: E-F
REFEREN NO: CHG EST

Summons Issued 03/23/2006
Answer Date 4/24/2006
Hrg. Date 06/20/2006 at 01:30 PM

8 **UNITED STATES BANKRUPTCY COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA, SANTA ANA DIVISION**

11 In re)
12 LLOYD MYLES RUCKER,)
13 Debtor.)
14 _____)
15 THOMAS H. CASEY, Chapter 7 Trustee,)
16 Plaintiff,)
17 vs.)
18 CLIFF SINGER, an individual,)
19 Defendant.)

Case No.: SA 06-10195 JR
Adv. No.: _____
Chapter 7 Case

**COMPLAINT TO AVOID AND RECOVER
FRAUDULENT TRANSFER OF
PROPERTY OF THE ESTATE
PURSUANT TO 11 U.S.C. § 544 AND
CALIFORNIA CIVIL CODE 3439.04**

DATE: [Not yet set]
TIME: [Not yet set]
CTRM.: 5A

20 Plaintiff Thomas H. Casey, the chapter 7 trustee (the "Trustee") for the bankruptcy
21 estate of Lloyd Myles Rucker (the "Debtor"), is informed and believes and, based
22 thereon, respectfully alleges as follows:
23

24 **STATEMENT OF JURISDICTION AND VENUE**

25 1. This Court has jurisdiction over this adversary proceeding pursuant to 28
26 U.S.C. §§ 157(b)(1) and 1334.
27
28

1 8. The Pension Plan is not ERISA-qualified, is not a valid spendthrift trust, and
2 is not a private retirement plan within the meaning of California Civil Procedure Code
3 § 704.115(b). The Pension Plan is property of the Debtor's bankruptcy estate under 11
4 U.S.C. § 541 and is not exempt. The objections to the Debtor's amended claims of
5 exemption are the subject of a separate contested matter.

6 9. In July 2003, the Pension Plan purchased a condominium located at 21
7 Saraceno, Newport Beach, California (the "Property") for approximately \$780,000.00.
8 Ron and Marcia Beard loaned the Pension Plan \$500,000.00 and took a first priority
9 deed of trust against the Property as security for repayment of this note. Secure Capital,
10 the Debtor's company, allegedly loaned the Pension Plan \$170,000.00 and took a
11 second priority deed of trust against the Property as security for repayment of this note.
12 The Pension Plan provided the \$110,000.00 down payment for the Property.

13 10. In or about September 2003, the Debtor moved into the Property and
14 resided there until approximately August 2004. The Debtor did not pay the Pension Plan
15 any rent for the value of his occupancy of the Property.

16 11. In January 2004, the Pension Plan transferred the Property to the
17 Defendant for the under-market purchase price of \$900,000.00 and the Defendant is now
18 the record owner of the Property. The Debtor met the Defendant while they were both
19 incarcerated in federal prison.

20 12. The Defendant's \$90,000.00 down payment for the purchase of the
21 Property was loaned to the Defendant by the Pension Plan. However, there is no signed
22 written agreement between Defendant and the Pension Plan as to the terms of this
23 transaction, nor was any security interest in favor of the Pension Plan recorded.
24 Defendant has made no payments to the Pension Plan since the loan was made.
25 Greenpoint Mortgage loaned the Defendant \$650,000.00 and secured that obligation
26 with a first priority deed of trust against the Property. The balance of \$160,000.00 was
27 loaned by Greenpoint Mortgage, which secured that obligation with a second priority
28 deed of trust against the Property. The loans against the Property were apparently

1 refinanced, and Mortgage Electronic Registration Systems, Inc., solely as the nominee
2 for American Home Mortgage Acceptance, Inc. and its successor and assigns, now holds
3 a first priority deed of trust against the Property recorded in November 2005 to secure
4 repayment of an \$825,000.00 note. Secure Escrow acted as the escrow company during
5 the Defendant's acquisition of the Property, and is owned by the Debtor. Secure Escrow
6 is a dba of EZ Equity. Bridge Capital, Inc. brokered the loans with Greenpoint and the
7 Defendant and the Debtor is believed to have a previously existing relationship with this
8 entity as a loan broker/marketing agent. On information and belief, the Trustee alleges
9 that the Debtor entered into this transaction to shield his assets from creditors and to
10 hinder, delay, or defraud a creditor of the Debtor's, and that the transaction with the
11 Defendant is a sham.

12 13. Since approximately August 2004, the Property has been occupied by Dr.
13 Marshall Grossman. Through June 2005, Dr. Grossman paid the Debtor the rent
14 payments on the Property. In June 2005, the Debtor's assets were frozen by a
15 temporary restraining order of the California Superior Court. Shortly thereafter, the
16 Debtor instructed Dr. Grossman to make all future rent payments to the Defendant.

17
18 **FIRST CAUSE OF ACTION**

19 (For avoidance of a fraudulent transfer pursuant to
20 11 U.S.C. § 544 and California Civil Code § 3439.04(a)(1))

21 14. The Trustee realleges and incorporates by this reference each and every
22 allegation contained in paragraphs 1 through 13 as though fully set forth herein.

23 15. The Trustee is informed and believes and based thereon alleges that the
24 transfer of the Property to the Defendant was a transfer of an interest of the Debtor in
25 property that was made within four years of the Petition Date.

26 16. The Trustee is informed and believes and based thereon alleges that the
27 transfer of the Property to the Defendant was made with the actual intent to hinder,
28 delay, or defraud the Debtor's creditors.

1 17. The Trustee is informed and believes and based thereon alleges that there
2 was at least one unsecured creditor of the Debtor who was owed money both on the
3 date that the transfer of the Property to the Defendant occurred and on the Petition Date.

4 18. Based on the above, the Trustee alleges that the transfer of the Property to
5 the Defendant is avoidable and that the Trustee is entitled to avoid and recover the
6 transfer pursuant to 11 U.S.C. §§ 544 and 550 and California Civil Code ("CCC") §
7 3439.04(a)(1), to obtain appropriate remedies pursuant to CCC § 3439.07, or to obtain a
8 judgment for value pursuant to 11 U.S.C. § 550.

9
10 **WHEREFORE**, the Trustee prays that the Court enter a judgment against Cliff Singer:

11 **ON THE FIRST CAUSE OF ACTION**

12 1. Avoiding and recovering the transfer of the Property to the Defendant
13 pursuant to 11 U.S.C. §§ 544 and 550 and CCC § 3439.04(a)(1), awarding appropriate
14 remedies pursuant to CCC § 3439.07, or awarding a judgment for value pursuant to 11
15 U.S.C. § 550.


16 2. For costs of suit incurred in this action; and

17 3. For such other and further relief as the Court deems just and proper.

18 Respectfully submitted,

19 DATED: March 23, 2006

20 WEILAND, GOLDEN,
SMILEY, WANG EKVALL & STROK, LLP

21
22 By: 
23 EVAN D. SMILEY
24 Proposed Special Counsel for Thomas
25 H. Casey, Chapter 7 Trustee
26
27
28

B. 104 (Rev. 8/99)	<h2 style="margin: 0;">ADVERSARY PROCEEDING SHEET</h2> <p style="margin: 0;">(Instructions on Reverse)</p>	ADVERSARY PROCEEDING NUMBER (For Court Use Only)												
PLAINTIFFS Thomas H. Casey, Chapter 7 Trustee : : : Address 23342 Avenida Empresa, Sulte 260 Santa Margarita CA 92626	DEFENDANTS Cliff Singer : : : Address 4235 Saddlecrest Lane Westlake Villace CA 91361													
ATTORNEYS (Firm Name, Address, and Telephone Number) Evan D Smiley Bar ID: 161812 Albert Weiland & Golden LLP 650 Town Center Drive, Suite 950 Costa Mesa CA 92626 Telephone # 714-966-1000 Fax # 714-966-1002	ATTORNEYS (If known) Bar ID: Telephone # Fax #													
PARTY (Check one box only) <input type="checkbox"/> 1 U.S. PLAINTIFF <input type="checkbox"/> 2 U.S. DEFENDANT <input checked="" type="checkbox"/> 3 U.S. NOT A PARTY														
CAUSE OF ACTION (Write a brief statement of cause of action, including all U.S. statutes involved) To recover money or property. Complaint To Avoid and Recover Fraudulent Transfer of Property of the Estate Pursuant to 11 U.S.C. Sections 544 and 550 and California Civil Code Section														
NATURE OF SUIT (Check the one most appropriate box only)														
<table style="width:100%; border: none;"> <tr> <td style="width:33%;"><input checked="" type="checkbox"/> 454 To recover money or property</td> <td style="width:33%;"><input type="checkbox"/> 455 To revoke an order of confirmation of a Chapter 11 or Chapter 13 Plan</td> <td style="width:33%;"><input type="checkbox"/> 456 To obtain a declaratory judgment relating to any of the foregoing causes of action</td> </tr> <tr> <td><input type="checkbox"/> 435 To determine validity, priority, or extent of a lien or other interest in property</td> <td><input type="checkbox"/> 426 To determine the dischargeability of a debt 11 U.S.C. § 523</td> <td><input type="checkbox"/> 459 To determine a claim or cause of action removed to a bankruptcy court</td> </tr> <tr> <td><input type="checkbox"/> 458 To obtain approval for the sale of both the interest of the estate and of a co-owner in property</td> <td><input type="checkbox"/> 434 To obtain an injunction or other equitable relief</td> <td><input type="checkbox"/> 498 Other (specify)</td> </tr> <tr> <td><input type="checkbox"/> 424 To object or to revoke a discharge 11 U.S.C. § 727</td> <td><input type="checkbox"/> 457 To subordinate any allowed claim or interest except where such subordination is provided in a Plan</td> <td></td> </tr> </table>			<input checked="" type="checkbox"/> 454 To recover money or property	<input type="checkbox"/> 455 To revoke an order of confirmation of a Chapter 11 or Chapter 13 Plan	<input type="checkbox"/> 456 To obtain a declaratory judgment relating to any of the foregoing causes of action	<input type="checkbox"/> 435 To determine validity, priority, or extent of a lien or other interest in property	<input type="checkbox"/> 426 To determine the dischargeability of a debt 11 U.S.C. § 523	<input type="checkbox"/> 459 To determine a claim or cause of action removed to a bankruptcy court	<input type="checkbox"/> 458 To obtain approval for the sale of both the interest of the estate and of a co-owner in property	<input type="checkbox"/> 434 To obtain an injunction or other equitable relief	<input type="checkbox"/> 498 Other (specify)	<input type="checkbox"/> 424 To object or to revoke a discharge 11 U.S.C. § 727	<input type="checkbox"/> 457 To subordinate any allowed claim or interest except where such subordination is provided in a Plan	
<input checked="" type="checkbox"/> 454 To recover money or property	<input type="checkbox"/> 455 To revoke an order of confirmation of a Chapter 11 or Chapter 13 Plan	<input type="checkbox"/> 456 To obtain a declaratory judgment relating to any of the foregoing causes of action												
<input type="checkbox"/> 435 To determine validity, priority, or extent of a lien or other interest in property	<input type="checkbox"/> 426 To determine the dischargeability of a debt 11 U.S.C. § 523	<input type="checkbox"/> 459 To determine a claim or cause of action removed to a bankruptcy court												
<input type="checkbox"/> 458 To obtain approval for the sale of both the interest of the estate and of a co-owner in property	<input type="checkbox"/> 434 To obtain an injunction or other equitable relief	<input type="checkbox"/> 498 Other (specify)												
<input type="checkbox"/> 424 To object or to revoke a discharge 11 U.S.C. § 727	<input type="checkbox"/> 457 To subordinate any allowed claim or interest except where such subordination is provided in a Plan													
ORIGIN OF PROCEEDING (Check one box only) <input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed Proceeding <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from Another Bankruptcy Court		<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23												
DEMAND	NEAREST THOUSAND \$ 1000	OTHER RELIEF SOUGHT <input type="checkbox"/> JURY DEMAND												
BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES														
NAME OF DEBTOR Rucker, Lloyd Myles		BANKRUPTCY CASE NUMBER SA06-10195JR												
DISTRICT IN WHICH CASE IS PENDING Central District of California	DIVISIONAL OFFICE Santa Ana	NAME OF JUDGE John E. Ryan												
RELATED ADVERSARY PROCEEDING (IF ANY)														
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NUMBER												
DISTRICT	DIVISIONAL OFFICE	NAME OF JUDGE												
FILING FEE (Check one box only) <input type="checkbox"/> FEE ATTACHED <input type="checkbox"/> FEE NOT REQUIRED <input checked="" type="checkbox"/> FEE IS DEFERRED														
DATE 03/23/06	PRINT NAME Evan D Smiley	SIGNATURE OF ATTORNEY (OR PLAINTIFF) /s/												

B-104
(Rev. 8/99)

ADVERSARY PROCEEDING COVER SHEET (Reverse Side)

This cover sheet must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney) and submitted to the Clerk of the Court upon the filing of a complaint initiating an adversary proceeding.

The cover sheet and the information contained on it **do not** replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. This form is required for the use of the Clerk of the Court to initiate the docket sheet and to prepare necessary indices and statistical records. A separate cover sheet must be submitted to the Clerk of the Court for each complaint filed. The form is largely self-explanatory.

Parties. The names of the parties to the adversary proceeding **exactly** as they appear on the complaint. Give the names and addresses of the attorneys if known. Following the heading "Party," check the appropriate box indicating whether the United States is a party named in the complaint.

Cause of Action. Give a brief description of the cause of action including all federal statutes involved. For example, "Complaint seeking damages for failure to disclose information, Consumer Credit Protection Act, 15 U.S.C. § 1601 et seq.," or "Complaint by trustee to avoid a transfer of property by the debtor, 11 U.S.C. § 544."

Nature of Suit. Place an "X" in the appropriate box. Only one box should be checked. If the cause fits more than one category of suit, select the most definitive.

Origin of Proceedings. Check the appropriate box to indicate the origin of the case:

1. Original Proceeding.
2. Removed from a State or District Court.
4. Reinstated or Reopened.
5. Transferred from Another Bankruptcy Court.

Demand. On the next line, state the dollar amount demanded in the complaint in thousands of dollars. For \$1,000, enter "1," for \$10,000, enter "10," for \$100,000, enter "100," if \$1,000,000, enter "1000." If \$10,000,000 or more, enter "9999." If the amount is less than \$1,000, enter "0001." If no monetary demand is made, enter "XXXX." If the plaintiff is seeking non-monetary relief, state the relief sought, such as injunction or foreclosure of a mortgage.

Bankruptcy Case In Which This Adversary Proceeding Arises. Enter the name of the debtor and the docket number of the bankruptcy case from which the proceeding now being filed arose. Beneath, enter the district and divisional office where the case was filed and the name of the presiding judge.

Related Adversary Proceedings. State the names of the parties and six-digit adversary proceeding number from any adversary proceeding concerning the same two parties or the same property currently pending in any bankruptcy court. On the next line, enter the district where the related case is pending and the name of the presiding judge.

Filing Fee. Check one box. The fee must be paid upon filing unless the plaintiff meets one of the following exceptions. The fee is not required if the plaintiff is the United States government or the debtor. If the plaintiff is the trustee or a debtor in possession and there are no liquid funds in the estate, the filing fee may be deferred until there are funds in the estate. (In the event no funds are ever recovered for the estate, there will be no fee.) There is no fee for adding a party after the adversary proceeding has been commenced.

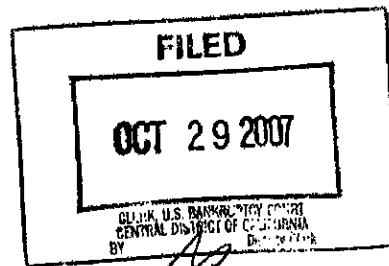
Signature. This cover sheet must be signed by the attorney of record in the box on the right of the last line of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is *pro se*, that is, not represented by an attorney, the plaintiff must sign.

The name of the signatory must be printed in the box to the left of the signature. The date of the signing must be indicated in the box on the far left of the last line.

EXHIBIT 18

ORIGINAL

1 Anthony L. Lanza, Bar No. 156703
2 Jeffrey Nielsen, Bar No. 202862
3 LANZA & GOOLSBY
4 A Professional Law Corporation
5 3 Park Plaza, Suite 1650
6 Irvine, California 92614-8540
7 Telephone (949) 221-0490
8 Facsimile (949) 221-0027



9 Attorneys for Defendant Cliff Singer

10 UNITED STATES BANKRUPTCY COURT

11 CENTRAL DISTRICT OF CALIFORNIA, SANTA ANA DIVISION

12 In re

13 LLOYD MYLES RUCKER,

14 Debtor.

15 THOMAS H. CASEY, Chapter 7
16 Trustee,

17 Plaintiff,

18 vs.

19 CLIFF SINGER, an individual,

20 Defendant.

21 Case No.: SA 06-11095 RK
22 Adversary Case No. SA 06-01305 RK

23 **DEFENDANT'S NOTICE OF
24 MOTION AND MOTION TO
25 ENFORCE SETTLEMENT AND
26 DISMISS ADVERSARY
27 PROCEEDING**

28 Date: November 27, 2007
Time: 2:30 p.m.
Courtroom: 5A

29 TO PLAINTIFF AND THEIR ATTORNEYS OF RECORD:

30 Notice is hereby given that on November 27, 2007, at 2:30 p.m., or as soon
31 thereafter as counsel may be heard in the above referenced court, located at 411

1 West 4th St., Courtroom 5A, Santa Ana, CA 92701, defendant Cliff Singer will and
2 hereby does move the Court to enforce the terms of the settlement entered by the
3 Court on May 15, 2007, and thereupon dismiss this adversary proceeding pursuant
4 to the terms of the settlement agreement entered into by the parties to this
5 adversary proceeding, and entered by this Court on May 15, 2007.

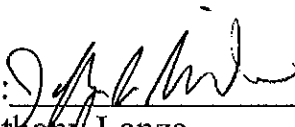
6 This motion will be based upon the grounds that defendant has performed all
7 terms required under the aforementioned settlement, but refuses to perform its
8 terms, which are contingent upon defendant's performance.

9 Pursuant to U.S. Bankruptcy Court for the Central District of California
10 Local Rule 9013-1(a)(6)(C), plaintiff is hereby notified that U.S. Bankruptcy Court
11 for the Central District of California Local Rule 9013-1(a)(7) requires a formal
12 response to this motion at least 14 days before the hearing on said motion.

13 This motion is based upon this notice of motion, the attached memorandum
14 of points and authorities, the declarations of Monica Hanohov and Anthony Lanza,
15 all pleadings and papers on file in this action, and upon all other matters as may be
16 presented to the Court at or before the time of the hearing.

17
18 LANZA & GOOLSBY,
19 A Professional Law Corporation

20 Dated: October 26, 2007

21 By: 
22 Anthony Lanza
23 Jeffrey Nielsen
24 Attorneys for Defendant Cliff Singer
25
26
27
28

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am a citizen of the United States, over the age of 18 years, employed in the County of Orange in the office of a member of the State Bar at whose direction service was made. I am not a party to the within action. My business address is 3 Park Plaza, Suite 1650, Irvine, CA, 92614.

On October 26, 2007, I served the following documents: **DEFENDANT'S NOTICE OF MOTION AND MOTION TO ENFORCE SETTLEMENT AND DISMISS ADVERSARY PROCEEDING** on the interested parties in this action by placing true copies thereof enclosed in a sealed envelope addressed as follows:

Evan Smiley
Smiley, Wang, Ekvall & Strok, LLP
650 Town Center Drive, Ste. 950
Costa Mesa, CA 92626
Fax: (714) 966-1002

xx **BY MAIL:** I caused such envelopes (with postage thereon fully prepaid) to be placed in the United States mail at Irvine, California. I am readily familiar with this firm's practice of collection and processing correspondence for mailing. It is deposited with the United States Postal Service on that same day in the ordinary course of business. I am aware that on motion of parties served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposition for mailing specified in the affidavit.

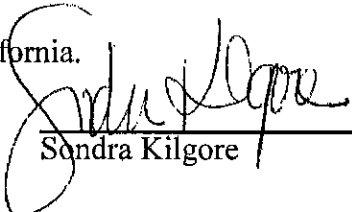
 BY FACSIMILE: A copy was transmitted via facsimile, followed by a copy via US Mail.

 BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the offices of the addressee(s).

 BY OVERNIGHT DELIVERY: As follows: I am "readily familiar" with the Firm's practice of collection and processing correspondence for overnight deliver. Such correspondence will be deposited with a facility regularly maintained by an overnight delivery service for receipt on the same day in the ordinary course of business.

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

Executed **October 26, 2007**, at Irvine, California.



Sondra Kilgore

ORIGINAL

1 Anthony L. Lanza, Bar No. 156703
2 Jeffrey Nielsen, Bar No. 202862
3 LANZA & GOOLSBY
4 A Professional Law Corporation
5 3 Park Plaza, Suite 1650
6 Irvine, California 92614-8540
7 Telephone (949) 221-0490
8 Facsimile (949) 221-0027

FILED
OCT 29 2007
W

9 Attorneys for Defendant Cliff Singer

10 **UNITED STATES BANKRUPTCY COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA, SANTA ANA DIVISION**

12 In re

13 **LLOYD MYLES RUCKER,**

14 Debtor.

15 THOMAS H. CASEY, Chapter 7
16 Trustee,

17 Plaintiff,

18 vs.

19 **CLIFF SINGER, an individual,**

20 Defendant.
21
22
23

) Case No.: SA 06-11095 RK
) Adversary Case No. SA 06-01305 RK

**DEFENDANT'S MEMORANDUM
OF POINTS AND AUTHORITIES
IN SUPPORT OF MOTION TO
ENFORCE SETTLEMENT AND
DISMISS ADVERSARY
PROCEEDING**

Date: November 27, 2007
Time: 2:30 p.m.
Courtroom: 5A

24
25 / / /
26 / / /
27 / / /

1 In support of his Motion to Enforce Settlement and Dismiss Adversary
2 Proceeding, defendant Cliff Singer (“Singer”) submits this memorandum of points
3 and authorities pursuant to U.S. Bankruptcy Court for the Central District of
4 California Local Rule 9013-1(a)(4)(C)(ii):

5
6 **I. INTRODUCTION**

7 Singer brings this motion because Thomas H. Case, the Chapter 7 Trustee
8 (the “Trustee”) is playing “Monday morning quarterback” on the details of a real
9 estate transaction resulting from a settlement agreement the Trustee entered into
10 with Singer in order to resolve this adversary proceeding. This second guessing by
11 the Trustee has unreasonably delayed resolution of this case; thus, Singer now asks
12 this Court to enforce the Trustee to comply with the terms of the settlement
13 agreement and dismiss this case.

14 **II. FACTS**

15 **A. The Underlying Adversary Proceeding And It’s Settlement.**

16 Lloyd Myles Rucker (the “Debtor”) filed a voluntary Chapter 7 bankruptcy
17 petition on October 12, 2005, in the United States Bankruptcy Court, Southern
18 District of Florida, Miami Division. On February 7, 2006, venue was transferred to
19 this Court, and, Thomas H. Casey was appointed the Chapter 7 Trustee (the
20 “Trustee”).

21 In April 2006, the Trustee filed a fraudulent transfer adversary proceeding
22 against Singer, seeking to avoid and recover an alleged fraudulent transfer of the
23 Debtor’s interest in real property located at 21 Saracento, Newport Coast, California
24 (the “Property”) to Singer.

25 On January 4, 2007, Singer filed a motion for summary judgment, or in the
26 alternative, partial summary judgment (the “Summary Judgment”), which was set
27 originally for hearing on February 14, 2007. On January 26, 2007, the Trustee and
28 Singer entered into a letter agreement to settle the adversary proceeding

1 (Declaration of Anthony Lanza (“Lanza Decl.”) ¶ 2, Exh. 1.), which was
2 memorialized in a settlement agreement (the “Agreement”) that was approved by
3 this Court on May 15, 2007. (Lanza Decl.) ¶ 3, Exh. 2.) In light of the Agreement’s
4 approval, the parties stipulated, and the Court approved, that the hearing on the
5 Summary Judgment Motion would be continued to October 30, 2007, and the
6 Motion currently is pending for hearing on that date.

7 The Agreement’s seminal term provided that the Singer would “(1) sell the
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2 **A. Singer Has Complied With The Terms Of The Agreement, And As**
3 **Such The Trustee Now Should Be Compelled To Comply With His**
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5 Paragraph 4.1(b) of the Agreement provides that a default of the Agreement
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24 Given that Singer has performed pursuant to the terms of the Agreement,
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26 of the Agreement requires the Trustee to seek dismissal of the adversary proceeding
27 *with prejudice* once the Settlement Payment has been made. (Lanza Decl. ¶ 3, Exh.
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1 pursuant to the formula set forth in paragraphs 2.2 and 2.3 of the Agreement.
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3 Thus, Singer respectfully requests that this Court (1) order all remaining
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6 under paragraph 2.4 of the Agreement, or alternatively dismiss the adversary
7 proceeding with prejudice pursuant to this motion.

8 **B. Singer Is Entitled To Attorney Fees For Being Forced To Bring**
9 **This Motion.**

10 Paragraph 6.10 of the Agreement entitles the prevailing party to costs,
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18 than reasonable, waiting more than four months since the sale of the Property for
19 the Trustee to perform. Enough is enough. Singer is entitled to attorney fees in the
20 amount of \$4,485. (Lanza Decl. ¶ 6.)

21 **IV. CONCLUSION**

22 As set forth above, Singer respectfully requests that this Court order
23 distribution from escrow of all remaining sums to Singer, in the sum of \$51,619.18.
24 (See Hanohov Decl., ¶ 6, Exh. 2 at line 303.) Singer further requests that this Court
25 order the Trustee to specifically perform its obligation to seek dismissal with
26 prejudice of this adversary proceeding under paragraph 2.4 of the Agreement, or
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1 alternatively dismiss the adversary proceeding with prejudice pursuant to this
2 motion.

3 In addition, Singer requests that this Court order the Trustee to pay \$4,485 in
4 attorney fees to Singer.

5
6 LANZA & GOOLSBY,
A Professional Law Corporation

7
8 Dated: October 24, 2007


9 By:  _____
10 Anthony Lanza
11 Jeffrey Nielsen
12 Attorneys for Defendant Cliff Singer
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EXHIBIT 19

ORIGINAL

1 Anthony L. Lanza, Bar No. 156703
2 Jeffrey Nielsen, Bar No. 202862
3 LANZA & GOOLSBY
4 A Professional Law Corporation
5 3 Park Plaza, Suite 1650
6 Irvine, California 92614-8540
7 Telephone (949) 221-0490
8 Facsimile (949) 221-0027

FILED
OCT 29 2007
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9 Attorneys for Defendant Cliff Singer

10 **UNITED STATES BANKRUPTCY COURT**

11 **CENTRAL DISTRICT OF CALIFORNIA, SANTA ANA DIVISION**

12 In re

13 LLOYD MYLES RUCKER,

14 Debtor.

15 THOMAS H. CASEY, Chapter 7
16 Trustee,

17 Plaintiff,

18 vs.

19 CLIFF SINGER, an individual,

20 Defendant.
21
22
23

} Case No.: SA 06-11095 RK
} Adversary Case No. SA 06-01305 RK

**DEFENDANT'S MEMORANDUM
OF POINTS AND AUTHORITIES
IN SUPPORT OF MOTION TO
ENFORCE SETTLEMENT AND
DISMISS ADVERSARY
PROCEEDING**

Date: November 27, 2007
Time: 2:30 p.m.
Courtroom: 5A

24
25 ///
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27 ///

1 In support of his Motion to Enforce Settlement and Dismiss Adversary
2 Proceeding, defendant Cliff Singer (“Singer”) submits this memorandum of points
3 and authorities pursuant to U.S. Bankruptcy Court for the Central District of
4 California Local Rule 9013-1(a)(4)(C)(ii):

5
6 **I. INTRODUCTION**

7 Singer brings this motion because Thomas H. Case, the Chapter 7 Trustee
8 (the “Trustee”) is playing “Monday morning quarterback” on the details of a real
9 estate transaction resulting from a settlement agreement the Trustee entered into
10 with Singer in order to resolve this adversary proceeding. This second guessing by
11 the Trustee has unreasonably delayed resolution of this case; thus, Singer now asks
12 this Court to enforce the Trustee to comply with the terms of the settlement
13 agreement and dismiss this case.

14 **II. FACTS**

15 **A. The Underlying Adversary Proceeding And It’s Settlement.**

16 Lloyd Myles Rucker (the “Debtor”) filed a voluntary Chapter 7 bankruptcy
17 petition on October 12, 2005, in the United States Bankruptcy Court, Southern
18 District of Florida, Miami Division. On February 7, 2006, venue was transferred to
19 this Court, and, Thomas H. Casey was appointed the Chapter 7 Trustee (the
20 “Trustee”).

21 In April 2006, the Trustee filed a fraudulent transfer adversary proceeding
22 against Singer, seeking to avoid and recover an alleged fraudulent transfer of the
23 Debtor’s interest in real property located at 21 Saracento, Newport Coast, California
24 (the “Property”) to Singer.

25 On January 4, 2007, Singer filed a motion for summary judgment, or in the
26 alternative, partial summary judgment (the “Summary Judgment”), which was set
27 originally for hearing on February 14, 2007. On January 26, 2007, the Trustee and
28 Singer entered into a letter agreement to settle the adversary proceeding

1 (Declaration of Anthony Lanza (“Lanza Decl.”) ¶ 2, Exh. 1.), which was
2 memorialized in a settlement agreement (the “Agreement”) that was approved by
3 this Court on May 15, 2007. (Lanza Decl.) ¶ 3, Exh. 2.) In light of the Agreement’s
4 approval, the parties stipulated, and the Court approved, that the hearing on the
5 Summary Judgment Motion would be continued to October 30, 2007, and the
6 Motion currently is pending for hearing on that date.

7 The Agreement’s seminal term provided that the Singer would “(1) sell the
8 Property for an amount equal to or greater than \$1,350,000 or (2) market the
9 Property and attempt to sell the Property at the highest and best price possible given
10 the ongoing expenses and delay and present market conditions.” (Lanza Decl. ¶ 2,
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6 LANZA & GOOLSBY,
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8 Dated: October 24, 2007

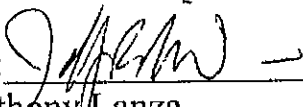
9 By:  _____
10 Anthony Lanza
11 Jeffrey Nielsen
12 Attorneys for Defendant Cliff Singer
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EXHIBIT 20

1 **ELMER DEAN MARTIN III**
2 **A Professional Corporation**
3 Elmer Dean Martin, III, State Bar No. 75517
4 22632 Golden Springs Drive, Suite 190
5 P.O. Box 4670
6 Diamond Bar, California 91765
7 Telephone: (909) 861-6700
8 Facsimile: (909) 860-3801
9 elmer@bankruptcytax.net

6 **WEILAND, GOLDEN,**
7 **SMILEY, WANG EKVALL & STROK, LLP**
8 Evan D. Smiley, State Bar No. 161812
9 Kyra E. Andrassy, State Bar No. 207959
10 650 Town Center Drive, Suite 950
11 Costa Mesa, California 92626
12 Telephone: (714) 966-1000
13 Facsimile: (714) 966-1002
14 kandrassy@wglp.com

11 Special Counsel for the Trustee

12 **UNITED STATES BANKRUPTCY COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**
14 **SANTA ANA DIVISION**

15 In re) Case No.: 08:06-10195-RK
16 LLOYD MYLES RUCKER,) Adv. Case.: 08:06-01305-RK
17 Debtor.) Chapter 7 Case

18 THOMAS H. CASEY, Chapter 7) **OPPOSITION TO MOTION TO ENFORCE**
19 Trustee,) **SETTLEMENT AND DISMISS**
20 Plaintiff,) **ADVERSARY PROCEEDING;**
21 v.) **DECLARATIONS OF KYRA E.**
22) **ANDRASSY AND KEVIN KUBIAK IN**
23) **SUPPORT THEREOF**

22 CLIFF SINGER, an individual,) **DATE: November 27, 2007**
23 Defendant.) **TIME: 2:30 p.m.**
24) **CTRM: 5D**

25 Thomas H. Casey, the chapter 7 trustee (the "Trustee") of the bankruptcy estate
26 of Lloyd Myles Rucker (the "Debtor"), opposes the motion of Cliff Singer ("Singer") to
27 enforce a settlement agreement and dismiss the above captioned adversary proceeding
28 because the Trustee is investigating the circumstances surrounding the sale of the real

OPPOSITION

1 property at issue to determine the legitimacy of certain of the closing costs and the
2 substantial credits given to the buyer, and the resolution of this issue will have a direct
3 effect on the calculation of the settlement payment. Moreover, the Trustee is concerned
4 that reaching an agreement on the amount of the settlement payment may appear to
5 condone the questionable conduct by the parties involved in this transaction that the
6 Trustee is investigating. Accordingly, the Trustee requests that the Court continue the
7 hearing on the motion or deny the motion without prejudice in order to give the Trustee
8 sufficient time to complete his investigation. Alternatively, and if the Court deems it
9 appropriate, the Trustee requests that the Court enter an order determining the amount
10 of the settlement payment due under the Agreement to be \$11,060.41, plus the
11 Trustee's attorney's fees incurred responding to the Motion, with this sum to be paid from
12 the escrow referenced in the motion. The amount in the escrow is approximately
13 \$52,000.

14 At first appearance, the range of the dispute is between the \$11,060.41
15 referenced in the Motion at Exhibit 4 page 26, as computed by the Trustee's counsel,
16 and negative \$5,580 (resulting in no payment to the pension plan), as referenced in the
17 Motion at Exhibit 5 page 29 and as computed by Singer's counsel. Another computation
18 by Singer's counsel was submitted on June 7, 2007, which computed the negative
19 amount to be \$10,011.39 and which is a clearer presentation of some of the important
20 computational amounts. A copy of this letter is attached as Exhibit "1."

21 From a computational perspective, the controversy revolves around two issues
22 regarding the reasonableness of the costs of sale and of two credits toward nonrecurring
23 closing costs: first, the escrow fees appear high and Singer took the somewhat unusual
24 step of paying all of the title and escrow fees, even though these costs are customarily
25 split between the buyer and the seller; second, the \$36,500 in credits towards
26 nonrecurring closing costs is excessive and unreasonable given the circumstances
27 discussed below. Both of these items appear on the HUD Settlement Statement
28 attached to the Declaration of Monica Hanohov, which was submitted in connection with

1 the Motion. However, that HUD Settlement Statement is not the final settlement
2 statement for the transaction. The final version, which is the version that should be used
3 to resolve the issue regarding the settlement payment, is attached hereto as Exhibit "2"
4 and was forwarded to the Trustee's counsel by Singer's counsel.

5 With respect to the reasonableness of the costs of sale, the Trustee has the
6 following specific concerns: (1) the fees paid to First Secure Escrow, which is owned by
7 Dawn O'Connor, appear unreasonably high and were paid entirely by Singer rather than
8 being split between Singer and the buyer;¹ and (2) Singer paid all of the title insurance
9 fees, including the portion of the fees related to the requirements of the buyer's lender.
10 See Declaration of Kevin Kubiak. In addition, with respect to the 6% broker's fees, these
11 appear unreasonably high given that the property was never listed on the multiple listing
12 service and does not appear to have been marketed at all, as explained in greater detail
13 below. Id. With respect to the \$36,500 credit towards nonrecurring closing costs, Singer
14 maintains those credits were necessary to sell the property and the Trustee maintains
15 that they are not properly substantiated and, in any event, resulted in the property being
16 sold for less than the agreed amount of \$1,350,000 so that the \$36,500 deficiency
17 should be charged to Singer. Moreover, the amount of these nonrecurring credits
18 towards closing costs is excessive, even under current market conditions. Id.

19 It is expected that Singer will argue that the \$36,500 credit towards nonrecurring
20 closing costs was necessitated by delays caused by the Trustee, which was the position
21 of Singer's counsel in his e-mail dated June 12, 2007, a copy of which is attached as
22 Exhibit "3" hereto. The Trustee, however, not only did not delay the sale of the Property
23 but had to intervene to cause the sale to close because the Debtor, as trustee of the
24 referenced pension plan, refused to sign a reconveyance of a deed of trust in favor of

25 _____
26 ¹ Specifically, these items include (1) \$4,775 at line 1101 of the Settlement Statement for a
27 settlement or closing fee; (2) \$295 at line 1105 for document preparation; (3) wire fee of \$30 at line 1111;
28 (4) expedited delivery fee of \$60 at line 1112; (4) \$390.00 at line 1113 for a compliance fee; (5) \$395.00
for an escrow fee at line 1114 and Exhibit C to the Settlement Statement; (6) \$1,500 at line 1114 and
Exhibit C for additional payoff services; and (7) \$25 for legal document preparation at line 1114 and Exhibit
C. First Secure Escrow received a total of \$7,470 for escrow services related to this transaction.

1 the pension plan or to prepare a payoff demand for the underlying note. Once the
2 Trustee obtained approval of the settlement, the Trustee signed the reconveyance under
3 the authority of paragraph 3 of the order attached to the Motion as Exhibit 2, page 7.

4 See Declaration of Kyra Andrassy.

5 In addition to the concern about the reasonableness of the closing costs, there is
6 a larger issue that the Trustee is obligated to investigate, which is that this sale does not
7 appear to have been an arm's length transaction and it raises questions about the
8 involvement of the Debtor and parties with whom he regularly does business. This issue
9 affects not only how the settlement payment should be calculated, but also larger issues
10 in this case. When the Trustee agreed to the settlement with Singer, he agreed that the
11 property was to be listed and marketed and could be sold for any price at or above
12 \$1,350,000. Based on the understanding that it would be marketed and listed, the
13 Trustee agreed that Dawn O'Connor could be the broker at a 6% commission. The
14 Trustee also knew that Singer and the Debtor are friends who met while serving time in
15 the federal penitentiary and that the Debtor and Dawn O'Connor are friends and used to
16 be engaged to be married. What the Trustee did not know was that the original buyer's
17 broker, Michael Wippler, has a relationship with Vision One Mortgage, where Dawn
18 O'Connor is apparently a vice president and the broker of record and the Debtor is the
19 marketing manager. A copy of one of the pages from Vision One's website, which lists
20 the officers and employees, is attached as Exhibit "4." When the original buyer opted
21 not to proceed and Dawn O'Connor was retained as Singer's real estate agent, she did
22 not look far for a buyer and instead looked to someone in her office: Leon Satero, the
23 president of Vision One Mortgage. In addition, although not reflected on the settlement
24 statement attached to the Motion, a review of the actual final HUD Settlement Statement,
25 which is attached as Exhibit "2," reflects that Vision One Mortgage was paid a
26 substantial sum of money from the transaction, which is likely why the credits toward
27 nonrecurring closing costs are so high. Specifically, Vision One was paid a 2% loan
28 origination fee totaling \$20,000, a processing fee of \$695, an administration fee of \$695,

EXHIBIT 21

1 **WEILAND, GOLDEN,**
2 **SMILEY, WANG EKVALL & STROK, LLP**
3 Evan D. Smiley, State Bar No. 161812
4 Kyra E. Andrassy, State Bar No. 207959
5 650 Town Center Drive, Suite 950
6 Costa Mesa, California 92626
7 Telephone: (714) 966-1000
8 Facsimile: (714) 966-1002
9
10 Special Counsel for Thomas H. Casey,
11 Chapter 7 Trustee

12
13
14 **UNITED STATES BANKRUPTCY COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA, SANTA ANA DIVISION**
16

17 In re)
18 LLOYD MYLES RUCKER,)
19 Debtor.)
20
21 THOMAS H. CASEY, Chapter 7 Trustee,)
22 Plaintiff,)
23 vs.)
24 CLIFF SINGER,)
25 Defendant.)

Case No.: 08:06-bk-11095 RK
Adv. No.: 08:06-ap-01305 RK
Chapter 7 Case
**STIPULATION (1) TO WITHDRAW
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT OR IN THE
ALTERNATIVE PARTIAL SUMMARY
JUDGMENT, (2) TO WITHDRAW
MOTION TO ENFORCE SETTLEMENT
AND DISMISS ADVERSARY
PROCEEDING, AND (3) TO DISMISS
ADVERSARY PROCEEDING PURSUANT
TO FEDERAL RULE OF BANKRUPTCY
PROCEDURE 7041**
DATE: May 27, 2008
TIME: 1:30 p.m.
CTRM.: 5D

26 This stipulation is entered into between Thomas H. Casey, the chapter 7 trustee
27 (the "Trustee") for the bankruptcy estate of Lloyd Myles Rucker, and Cliff Singer
28 (together, the Trustee and Mr. Singer are referred to as the "Parties"), by and through
their respective counsel of record, pursuant to the following recitals:

RECITALS

1
2 1. On March 23, 2006, the Trustee commenced this adversary proceeding
3 seeking to avoid an alleged transfer of the Debtor's interest in real property located at 21
4 Saraceno, Newport Coast, California (the "Property") as a fraudulent transfer. Mr. Singer
5 timely answered the complaint.

6 2. On January 4, 2007, Mr. Singer filed his Motion for Summary Judgment or
7 in the Alternative Partial Summary Judgment (the "Summary Judgment Motion"), setting
8 it for a hearing on February 14, 2007. The Summary Judgment Motion is currently set
9 for a hearing on May 27, 2008, at 1:30 p.m. The Parties engaged in settlement
10 discussions which resulted in a settlement agreement that was approved by the Court by
11 order entered on May 15, 2007 (the "Settlement Order"). Pursuant to the settlement
12 agreement, Mr. Singer was authorized to sell the Property and the Parties outlined an
13 agreement regarding the disposition of the net proceeds after payment of consensual
14 liens and certain other items enumerated in the settlement agreement. In the
15 agreement, the Trustee also agreed to release a lis pendens that he caused to be filed
16 against the Property.

17 3. The Settlement Order became final on May 25, 2007. After it became final,
18 a dispute ensued about the calculation of the amount of the settlement payment. Mr.
19 Singer filed a Motion to Enforce Settlement and Dismiss Adversary Proceeding (the
20 "Settlement Enforcement Motion") that is currently set for a continued hearing on May 27,
21 2008, at 1:30 p.m.

22 4. The dispute between the Parties regarding the calculation of the settlement
23 payment has now been resolved pursuant to the Order Granting Motion to Approve
24 Compromise of Controversy with Cliff Singer Regarding Calculation of Settlement
25 Payment Pursuant to Federal Rule of Bankruptcy Procedure 9019(a) and Approving
26 Stipulation Resolving Motion to Enforce Settlement that was entered on April 28, 2008.

27 4. The settlement now having been consummated, the Parties stipulate to the
28 withdrawal of the Summary Judgment Motion and the Settlement Enforcement Motion

1 and to the dismissal of this adversary proceeding with prejudice pursuant to Federal Rule
2 of Bankruptcy Procedure 7041.

3 Based on the foregoing recitals, which are incorporated into the Stipulation by this
4 reference, the Parties agree as follows:


5
6 **STIPULATION**

7 The Summary Judgment Motion and the Settlement Enforcement Motion are
8 hereby withdrawn and this adversary proceeding should be dismissed with prejudice
9 pursuant to Federal Rule of Bankruptcy Procedure 7041.

10 **IT IS SO STIPULATED.**

11 DATED: May 21, 2008

WEILAND, GOLDEN,
SMILEY, WANG EKVALL & STROK, LLP

12
13
14 By: 
15 KYRA E. ANDRASSY
Special Counsel for Thomas H. Casey,
Chapter 7 Trustee

16 DATED: May ____, 2008

LANZA & GOOLSBY

17
18 By: See attached
19 ANTHONY L. LANZA
Attorneys for Cliff Singer

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and to the dismissal of this adversary proceeding with prejudice pursuant to Federal Rule of Bankruptcy Procedure 7041.

Based on the foregoing recitals, which are incorporated into the Stipulation by this reference, the Parties agree as follows:

STIPULATION

The Summary Judgment Motion and the Settlement Enforcement Motion are hereby withdrawn and this adversary proceeding should be dismissed with prejudice pursuant to Federal Rule of Bankruptcy Procedure 7041.

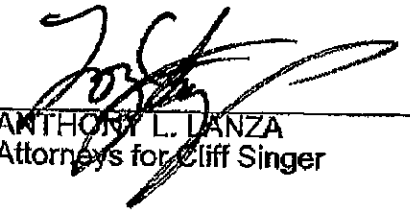
IT IS SO STIPULATED.

DATED: May ____, 2008

WEILAND, GOLDEN,
SMILEY, WANG EKVALL & STROK, LLP

By: _____
KYRA E. ANDRASSY
Special Counsel for Thomas H. Casey,
Chapter 7 Trustee

DATED: May 21, 2008

LANZA & GOOLSBY
By: 
ANTHONY L. LANZA
Attorneys for Cliff Singer

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA,

3 COUNTY OF ORANGE

4 I am employed in the County of Orange, State of California. I am over the age of
5 18 and not a party to the within action; my business address is 650 Town Center Drive,
Suite 950, Costa Mesa, California 92626.

6 On May 21, 2008, I served the foregoing document described as **STIPULATION**
7 **(1) TO WITHDRAW DEFENDANT'S MOTION FOR SUMMARY JUDGMENT OR IN THE**
8 **ALTERNATIVE PARTIAL SUMMARY JUDGMENT, (2) TO WITHDRAW MOTION TO**
9 **ENFORCE SETTLEMENT AND DISMISS ADVERSARY PROCEEDING, AND (3) TO**
10 **DISMISS ADVERSARY PROCEEDING PURSUANT TO FEDERAL RULE OF**
11 **BANKRUPTCY PROCEDURE 7041** on the interested parties in this action by placing
12 true copies thereof enclosed in sealed envelopes addressed as follows:

13 see attached list

14 BY MAIL

15 I deposited such envelope in the mail at Costa Mesa, California. The
16 envelope was mailed with postage thereon fully prepaid.

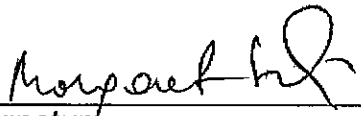
17 I deposited such envelope with the firm for collection and processing. I am
18 "readily familiar" with the firm's practice of collection and processing
19 correspondence for mailing. It is deposited with U.S. postal service on that
20 same day with postage thereon fully prepaid at Costa Mesa, California in
21 the ordinary course of business. I am aware that on motion of the party
22 served, service is presumed invalid if postal cancellation date or postage
23 meter date is more than one day after date of deposit for mailing in
24 affidavit.

25 Executed on May 21, 2008, at Costa Mesa, California.

26 (State) I declare under penalty of perjury under the laws of the State of California
27 that the above is true and correct.

28 (Federal) I declare that I am employed in the office of a member of the bar of this
court at whose direction the service was made. I declare under the penalty of
perjury under the laws of the United States of America that the above is true and
correct.

29 Margaret Sciesinski
30 Type or print name


31 Signature

SERVICE LIST

Office of the U.S. Trustee
411 W. Fourth Street
Suite 9041
Santa Ana, CA 92701

Anthony Lanza, Esq.
Lanza & Goolsby
3 Park Plaza, Suite 1650
Irvine, CA 92614-8540
Attorney for Cliff Singer

Thomas H. Casey
22342 Avenida Empresa, Suite 260
Rancho Santa Margarita, CA 92688
Chapter 7 Trustee

EXHIBIT 22

ORIGINAL

FILED
MAY 28 2008
U.S. BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
Deputy Clerk

ENTERED
MAY 29 2008
CLERK, U.S. BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
Deputy Clerk

1 WEILAND, GOLDEN,
SMILEY, WANG EKVALL & STROK, LLP
2 Evan D. Smiley, State Bar No. 161812
Kyra E. Andrassy, State Bar No. 207959
3 650 Town Center Drive, Suite 950
Costa Mesa, California 92626
4 Telephone: (714) 966-1000
Facsimile: (714) 966-1002

5 Special Counsel for Thomas H. Casey,
6 Chapter 7 Trustee

7
8 UNITED STATES BANKRUPTCY COURT
9 CENTRAL DISTRICT OF CALIFORNIA, SANTA ANA DIVISION

10
11 In re
12 LLOYD MYLES RUCKER,
13 Debtor.

Case No.: 08:06-bk-11095 RK
Adv. No.: 08:06-ap-01305 RK
Chapter 7 Case

14 THOMAS H. CASEY, Chapter 7 Trustee,
15 Plaintiff,

16 vs.

17 CLIFF SINGER,
18 Defendant.
19

ORDER APPROVING STIPULATION (1)
TO WITHDRAW DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT OR IN THE
ALTERNATIVE PARTIAL SUMMARY
JUDGMENT, (2) TO WITHDRAW
MOTION TO ENFORCE SETTLEMENT
AND DISMISS ADVERSARY
PROCEEDING, AND (3) TO DISMISS
ADVERSARY PROCEEDING PURSUANT
TO FEDERAL RULE OF BANKRUPTCY
PROCEDURE 7041

DATE: May 27, 2008
TIME: 1:30 p.m.
CTRM.: 5D

LODGED
MAY 22 2008
CLERK, U.S. BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
Deputy Clerk

20
21
22
23 The Court having reviewed the stipulation (the "Stipulation") between Thomas H.
24 Casey, the chapter 7 trustee for the bankruptcy estate of Lloyd Myles Rucker, and Cliff
25 Singer, by and through their respective counsel of record, to withdraw the Motion for
26 Summary Judgment or in the Alternative Partial Summary Judgment, (2) to withdraw
27
28

1 Motion to Enforce Settlement and Dismiss Adversary Proceeding, and (3) to dismiss this
2 adversary proceeding with prejudice, and having found that good cause exists therefore,

3 **IT IS HEREBY ORDERED** as follows the Stipulation is approved and this case is
4 dismissed with prejudice pursuant to Federal Rule of Bankruptcy Procedure 7041.

5
6 DATED: **MAY 28 2008**


7 THE HONORABLE ROBERT N. KWAN
8 United States Bankruptcy Judge 

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1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA,

3 COUNTY OF ORANGE

4 I am employed in the County of Orange, State of California. I am over the age of
5 18 and not a party to the within action; my business address is 650 Town Center Drive,
Suite 950, Costa Mesa, California 92626.

6 On May 21, 2008, I served the foregoing document described as **ORDER**
7 **APPROVING STIPULATION (1) TO WITHDRAW DEFENDANT'S MOTION FOR**
8 **SUMMARY JUDGMENT OR IN THE ALTERNATIVE PARTIAL SUMMARY**
9 **JUDGMENT, (2) TO WITHDRAW MOTION TO ENFORCE SETTLEMENT AND**
10 **DISMISS ADVERSARY PROCEEDING, AND (3) TO DISMISS ADVERSARY**
11 **PROCEEDING PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE**
12 **7041** on the interested parties in this action by placing true copies thereof enclosed in
sealed envelopes addressed as follows:

13 see attached list

14 BY MAIL

15 I deposited such envelope in the mail at Costa Mesa, California. The
16 envelope was mailed with postage thereon fully prepaid.

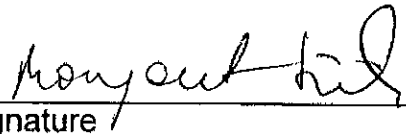
17 I deposited such envelope with the firm for collection and processing. I am
18 "readily familiar" with the firm's practice of collection and processing
19 correspondence for mailing. It is deposited with U.S. postal service on that
20 same day with postage thereon fully prepaid at Costa Mesa, California in
the ordinary course of business. I am aware that on motion of the party
served, service is presumed invalid if postal cancellation date or postage
meter date is more than one day after date of deposit for mailing in
affidavit.

21 Executed on May 21, 2008, at Costa Mesa, California.

22 (State) I declare under penalty of perjury under the laws of the State of California
23 that the above is true and correct.

24 (Federal) I declare that I am employed in the office of a member of the bar of this
25 court at whose direction the service was made. I declare under the penalty of
26 perjury under the laws of the United States of America that the above is true and
27 correct.

28 Margaret Sciesinski
Type or print name


Signature

SERVICE LIST

Office of the U.S. Trustee

411 W. Fourth Street
Suite 9041
Santa Ana, CA 92701

Anthony Lanza, Esq.
Lanza & Goolsby
3 Park Plaza, Suite 1650
Irvine, CA 92614-8540
Attorney for Cliff Singer

Thomas H. Casey
22342 Avenida Empresa, Suite 260
Rancho Santa Margarita, CA 92688
Chapter 7 Trustee

NOTE TO THE USERS OF THIS FORM:

Physically attach this form as the last page of the proposed Order or Judgment
Do not file this form as a separate document.

In re	(Short Title)	Chapter 7 Case No:
LLOYD MYLES RUCKER		08:06-BK-11095 RK
THOMAS H. CASEY V. CLIFF SINGER		08:06-ap-01305 RK

Debtors.

NOTICE OF ENTRY OF JUDGMENT OR ORDER
AND CERTIFICATE OF MAILING

TO ALL PARTIES IN INTEREST ON THE ATTACHED SERVICE LIST:

You are hereby notified, pursuant to Local Bankruptcy Rule 9021-1,
that a judgment or order entitled (specify):

ORDER APPROVING STIPULATION (1) TO WITHDRAW DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT OR IN THE ALTERNATIVE PARTIAL SUMMARY JUDGMENT, (2) TO WITHDRAW
MOTION TO ENFORCE SETTLEMENT AND DISMISS ADVERSARY PROCEEDING, AND (3) TO
DISMISS ADVERSARY PROCEEDING PURSUANT TO FEDERAL RULE OF BANKRUPTCY
PROCEDURE 7041

was entered on (specify date): **MAY 29 2008**

I hereby certify that I mailed a copy of this notice and a true
copy of the order or judgment to the persons and entities on the attached
service list on (specify date):

MAY 29 2008

DATED: **MAY 29 2008**

JON D. CERETTO
Clerk of the Bankruptcy Court

By: *A. McCall*
Deputy Clerk

SERVICE LIST

Office of the U.S. Trustee
411 W. Fourth Street
Suite 9041
Santa Ana, CA 92701

Anthony Lanza, Esq.
Lanza & Goolsby
3 Park Plaza, Suite 1650
Irvine, CA 92614-8540
Attorney for Cliff Singer

Thomas H. Casey
22342 Avenida Empresa, Suite 260
Rancho Santa Margarita, CA 92688
Chapter 7 Trustee


**WEILAND, GOLDEN,
SMILEY, WANG EKVALL & STROK, LLP
650 TOWN CENTER DR., SUITE 950
COSTA MESA, CA 92626**

EXHIBIT 23

4/24/2006 **FILED** 13:25
SA06-10195JR

DEBTOR:

Rucker, Lloyd Myles
JUDGE: John E. Ryan A400
TRUSTEE:

1 **WEBER AND GOLDEN,**
2 **SMILEY, WANG, EKVALL & STROK, LLP**
3 Evan D. Smiley, State Bar No. 161812
4 Kyra D. Smiley, State Bar No. 207959
5 650 Town Center Drive, Suite 950
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UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
SANTA ANA DIVISION

12 In re
13 LLOYD MYLES RUCKER,
14 Debtor
15
16 THOMAS H. CASEY, Chapter 7 Trustee
17 Plaintiff,
18 vs.
19 LLOYD MYLES RUCKER, VISION
20 CAPITAL OF OC, INC., a Nevada
21 corporation, SECURE CAPITAL, INC., a
22 California corporation and EZ EQUITY,
23 INC., a California corporation,
24 Defendants.

Case No.: 8:06 Bk-10195 JR

Adv. No.: _____

**COMPLAINT FOR:
DECLARATORY RELIEF**

23 Plaintiff Thomas H. Casey, the chapter 7 trustee of the bankruptcy estate of Lloyd
24 Myles Rucker, Case No. 8:06 Bk-10195 JR, is informed and believes and, based
25 thereon, respectfully alleges as follows:
26
27
28

1 9. The Debtor was at all relevant times was, an employee, director and sole
2 shareholder of Vision, Secure Capital and EZ Equity and/or agents of each other and
3 acting within the purpose and scope of such employment and/or agency, with respect to
4 the acts and/or omissions alleged herein.

5 10. Plaintiff is informed, believes and alleges that the Debtor was the sole
6 employee of the Corporate Defendants.

7 11. The Corporate Defendants were all engaged in materially the same
8 business.

9 12. Plaintiff is informed, believes and alleges that there is a unity of interests
10 and ownership between Defendants such that their separate personalities no longer
11 exist, and it would be inequitable to recognize the separate existence of Defendants.

12
13 **GENERAL ALLEGATIONS**

14 13. The Debtor is a convicted felon who served approximately 44 months in
15 federal prison for bank fraud, mail fraud, and other charges arising out of an investment
16 scam that he perpetrated in California and that included Ronald Cunning ("Cunning") as
17 one of his victims. In 1996, a jury awarded Cunning a judgment in excess of \$3.2 million
18 for fraud, breach of fiduciary duty, and conversion. The judgment now exceeds \$6.5
19 million, and Cunning remained unpaid on the petition date. The United States of
20 America is also one of the Debtor's creditors as a result of a restitution order that was
21 issued as part of Debtor's criminal conviction. The Debtor is in violation of the criminal
22 restitution order by failing to pay a mere \$500 per month to his victims and they remained
23 unpaid on the petition date.

24 14. Debtor was released from federal prison in or about 2000.

25 15. Plaintiff is informed, believes and alleges that at all relevant times, Debtor
26 exercised complete control over the Corporate Defendants.

27 16. Plaintiff is informed, believes and alleges that at all relevant times, Debtor
28 used Corporate Defendants' assets for his own for personal use in order to hinder, thwart

1 and delay the collection efforts of his creditors. Specifically, the Debtor used the
2 Corporate Defendants' funds to pay for Debtor's personal expenses including: meals,
3 vehicle loan/lease and DMV registration payments, rent on an apartment located at 67
4 Park Crest, Newport Beach, medical expenses, personal credit card bills, spending
5 cash, homeowner's dues on his personal residence located at 14 Vernal Spring, Irvine,
6 California ("Personal Residence"), mortgage payments on his Personal Residence,
7 property taxes on his Personal Residence, utility expenses on his Personal Residence,
8 religious dues to Chabad Jewish Center, the purchase of jewelry, payments for summer
9 camp for his girlfriend's children, obligations to Neiman Marcus, and mortgage payments
10 on real property owned by Debtor located at 21 Saraceno, Newport Beach, California.

11 17. Plaintiff is informed and believes that Debtor encumbered his Personal
12 Residence with a deed of trust in favor of Secure Capital on or about August 3, 2004 in
13 the approximate amount of \$375,000 where Secure Capital failed to make a
14 corresponding loan to the Debtor. In addition, Debtor encumbered the same Personal
15 Residence in or about April, 2005 with a deed of trust in favor of EZ Equity in the
16 approximate amount of \$500,000 where EZ Equity failed to make a corresponding loan
17 to the Debtor. Plaintiff is informed, believes and alleges that at all relevant times, Debtor
18 placed these encumbrances against his personal residence in order to hinder, thwart and
19 delay the collection efforts of his creditors.

20 18. Plaintiff received hundreds of thousands of dollars from the Defendant
21 Corporations where the memo on the checks state "Repayment of Loans" to the Debtor.
22 Plaintiff is informed, believes and alleges that there is no corresponding loan from the
23 Debtor to the Defendant Corporations to justify the repayment of the "loans."

24 19. Plaintiff is informed and believes that the Defendant Corporations exist, in
25 part, to protect the assets of Rucker and are benefitted by Rucker's acts to keep his
26 assets and income in the Corporate Defendants, which acts as both a shield to Rucker's
27 creditors and a benefit to the Corporate Defendants and their creditors such that it is
28 inequitable and unjust to maintain each of their separateness with Rucker.

1 **FIRST CAUSE OF ACTION**

2 **(Declaratory Relief Against All Defendants)**

3 20. Plaintiff incorporates each and every allegation contained in paragraphs 1
4 through 19, inclusive, as though fully set forth herein.

5 21. An actual controversy has arisen and now exists between the Plaintiff, on
6 one hand, and the Defendants concerning the parties' respective rights, duties and
7 obligations.

8 22. A judicial determination and declaration is necessary and appropriate at
9 this time under the circumstances.

10 23. Plaintiff is informed, believes and alleges that there was a unity of interests
11 and ownership between Defendants such that their separate personalities no longer
12 existed.

13 24. Plaintiff is informed, believes and alleges that recognizing the separate
14 corporate existence of the Corporate Defendants from the Debtor would sanction a fraud
15 and an injustice.

16 25. Plaintiff is informed, believes and alleges that Corporate Defendants are
17 the alter ego of Debtor.

18 26. Plaintiff is informed, believes and alleges that, because the Corporate
19 Defendants are the alter egos of Debtor, the Corporate Defendants' assets are property
20 of the bankruptcy estate.

21 **WHEREFORE**, Plaintiff requests that this Court enter a judgment in favor of
22 Plaintiff and against Defendants as follows:

23
24 **ON THE FIRST CAUSE OF ACTION**

25 1. Determining and declaring that the Corporate Defendants are the alter ego
26 of Debtor;

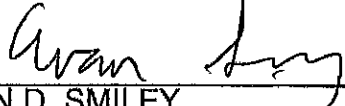
27 2. Determining and declaring that the Corporate Defendants are liable for the
28 debts of Debtor;

- 1 3. For attorneys' fees and costs; and
- 2 4. For any other such relief as this Court deems just and proper.

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DATED: April 24, 2006

WEILAND, GOLDEN,
SMILEY, WANG EKVALL & STROK, LLP

By: 
EVAN D. SMILEY
Special Counsel for Plaintiff
THOMAS H. CASEY,
Chapter 7 Trustee

B. 104 (Rev. 8/99)	<h2 style="margin: 0;">ADVERSARY PROCEEDING SHEET</h2> <p style="margin: 0;">(Instructions on Reverse)</p>	ADVERSARY PROCEEDING NUMBER (For Court Use Only)												
PLAINTIFFS Thomas H. Casey, Chapter 7 Trustee : : : Address 22342 Avenedia Empressa, Suite 260 Rancho Santa Margarita CA 92688	DEFENDANTS Lloyd Myles Rucker , et al. : : : Address 110 Washington Avenue, Apt. 1724 Miami Beach FL 33139													
ATTORNEYS (Firm Name, Address, and Telephone Number) Evan D Smiley Bar ID: 161812 Albert Weiland & Golden LLP 650 Town Center Drive, Suite 950 Costa Mesa CA 92626 Telephone # 714-966-1000 Fax # 714-966-1002	ATTORNEYS (If known) Bar ID: Telephone # Fax #													
PARTY (Check one box only) <input type="checkbox"/> 1 U.S. PLAINTIFF <input type="checkbox"/> 2 U.S. DEFENDANT <input checked="" type="checkbox"/> 3 U.S. NOT A PARTY														
CAUSE OF ACTION (Write a brief statement of cause of action, including all U.S. statutes involved) To obtain a declaratory judgment relating to any of the foregoing causes of action.														
NATURE OF SUIT (Check the one most appropriate box only)														
<table style="width:100%; border: none;"> <tr> <td style="width:33%; border: none;"><input type="checkbox"/> 454 To recover money or property</td> <td style="width:33%; border: none;"><input type="checkbox"/> 455 To revoke an order of confirmation of a Chapter 11 or Chapter 13 Plan</td> <td style="width:33%; border: none;"><input checked="" type="checkbox"/> 456 To obtain a declaratory judgment relating to any of the foregoing causes of action</td> </tr> <tr> <td style="border: none;"><input type="checkbox"/> 435 To determine validity, priority, or extent of a lien or other interest in property</td> <td style="border: none;"><input type="checkbox"/> 426 To determine the dischargeability of a debt 11 U.S.C. § 523</td> <td style="border: none;"><input type="checkbox"/> 459 To determine a claim or cause of action removed to a bankruptcy court</td> </tr> <tr> <td style="border: none;"><input type="checkbox"/> 458 To obtain approval for the sale of both the interest of the estate and of a co-owner in property</td> <td style="border: none;"><input type="checkbox"/> 434 To obtain an injunction or other equitable relief</td> <td style="border: none;"><input type="checkbox"/> 498 Other (specify)</td> </tr> <tr> <td style="border: none;"><input type="checkbox"/> 424 To object or to revoke a discharge 11 U.S.C. § 727</td> <td style="border: none;"><input type="checkbox"/> 457 To subordinate any allowed claim or interest except where such subordination is provided in a Plan</td> <td style="border: none;"></td> </tr> </table>			<input type="checkbox"/> 454 To recover money or property	<input type="checkbox"/> 455 To revoke an order of confirmation of a Chapter 11 or Chapter 13 Plan	<input checked="" type="checkbox"/> 456 To obtain a declaratory judgment relating to any of the foregoing causes of action	<input type="checkbox"/> 435 To determine validity, priority, or extent of a lien or other interest in property	<input type="checkbox"/> 426 To determine the dischargeability of a debt 11 U.S.C. § 523	<input type="checkbox"/> 459 To determine a claim or cause of action removed to a bankruptcy court	<input type="checkbox"/> 458 To obtain approval for the sale of both the interest of the estate and of a co-owner in property	<input type="checkbox"/> 434 To obtain an injunction or other equitable relief	<input type="checkbox"/> 498 Other (specify)	<input type="checkbox"/> 424 To object or to revoke a discharge 11 U.S.C. § 727	<input type="checkbox"/> 457 To subordinate any allowed claim or interest except where such subordination is provided in a Plan	
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<input type="checkbox"/> 435 To determine validity, priority, or extent of a lien or other interest in property	<input type="checkbox"/> 426 To determine the dischargeability of a debt 11 U.S.C. § 523	<input type="checkbox"/> 459 To determine a claim or cause of action removed to a bankruptcy court												
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<input type="checkbox"/> 424 To object or to revoke a discharge 11 U.S.C. § 727	<input type="checkbox"/> 457 To subordinate any allowed claim or interest except where such subordination is provided in a Plan													
ORIGIN OF PROCEEDING (Check one box only) <input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed Proceeding <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from Another Bankruptcy Court		<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23												
DEMAND \$	NEAREST THOUSAND	OTHER RELIEF SOUGHT Declaratory Relief <input type="checkbox"/> JURY DEMAND												
BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES														
NAME OF DEBTOR Rucker, Lloyd Myles		BANKRUPTCY CASE NUMBER SA06-10195JR												
DISTRICT IN WHICH CASE IS PENDING Central District of California	DIVISIONAL OFFICE Santa Ana	NAME OF JUDGE John E. Ryan												
RELATED ADVERSARY PROCEEDING (IF ANY)														
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NUMBER												
DISTRICT	DIVISIONAL OFFICE	NAME OF JUDGE												
FILING FEE (Check one box only) <input type="checkbox"/> FEE ATTACHED <input type="checkbox"/> FEE NOT REQUIRED <input checked="" type="checkbox"/> FEE IS DEFERRED														
DATE 04/24/06	PRINT NAME Evan D Smiley	SIGNATURE OF ATTORNEY (OR PLAINTIFF) /s/												

In re Rucker, Lloyd Myles	CHAPTER 7
Debtor.	CASE NUMBER SA06-10195JR

	Other Plaintiff(s) Listed on the Complaint	Attorney for Plaintiff(s) Listed on the Complaint	
1.			Bar ID:
		Telephone #	Fax#
2.			Bar ID:
		Telephone #	Fax#
3.			Bar ID:
		Telephone #	Fax#
4.			Bar ID:
		Telephone #	Fax#
5.			Bar ID:
		Telephone #	Fax#

	Other Defendant(s) Listed on the Complaint	Attorney for Defendant(s) Listed on the Complaint	
1.	Vision Capital of OC, Inc.		Bar ID:
	: : : 711 South Carson Street Carson City NV 89701	Telephone #	Fax#
2.	Secure Capital, Inc., c/o Anthony Lanza		Bar ID:
	: : : 3 Park Place #1650 Irvine CA 92614	Telephone #	Fax#
3.	EZ Equity, Inc., c/o Anthony Lanza		Bar ID:
	: : : 3 Park Place #1650 Irvine CA 92614	Telephone #	Fax#
4.			Bar ID:
		Telephone #	Fax#
5.			Bar ID:
		Telephone #	Fax#

B-104
(Rev. 8/99)

ADVERSARY PROCEEDING COVER SHEET (Reverse Side)

This cover sheet must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney) and submitted to the Clerk of the Court upon the filing of a complaint initiating an adversary proceeding.

The cover sheet and the information contained on it **do not** replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. This form is required for the use of the Clerk of the Court to initiate the docket sheet and to prepare necessary indices and statistical records. A separate cover sheet must be submitted to the Clerk of the Court for each complaint filed. The form is largely self-explanatory.

Parties. The names of the parties to the adversary proceeding **exactly** as they appear on the complaint. Give the names and addresses of the attorneys if known. Following the heading "Party," check the appropriate box indicating whether the United States is a party named in the complaint.

Cause of Action. Give a brief description of the cause of action including all federal statutes involved. For example, "Complaint seeking damages for failure to disclose information, Consumer Credit Protection Act, 15 U.S.C. § 1601 et seq.," or "Complaint by trustee to avoid a transfer of property by the debtor, 11 U.S.C. § 544."

Nature of Suit. Place an "X" in the appropriate box. Only one box should be checked. If the cause fits more than one category of suit, select the most definitive.

Origin of Proceedings. Check the appropriate box to indicate the origin of the case:

1. Original Proceeding.
2. Removed from a State or District Court.
4. Reinstated or Reopened.
5. Transferred from Another Bankruptcy Court.

Demand. On the next line, state the dollar amount demanded in the complaint in thousands of dollars. For \$1,000, enter "1," for \$10,000, enter "10," for \$100,000, enter "100," if \$1,000,000, enter "1000." If \$10,000,000 or more, enter "9999." If the amount is less than \$1,000, enter "0001." If no monetary demand is made, enter "XXXX." If the plaintiff is seeking non-monetary relief, state the relief sought, such as injunction or foreclosure of a mortgage.

Bankruptcy Case In Which This Adversary Proceeding Arises. Enter the name of the debtor and the docket number of the bankruptcy case from which the proceeding now being filed arose. Beneath, enter the district and divisional office where the case was filed and the name of the presiding judge.

Related Adversary Proceedings. State the names of the parties and six-digit adversary proceeding number from any adversary proceeding concerning the same two parties or the same property currently pending in any bankruptcy court. On the next line, enter the district where the related case is pending and the name of the presiding judge.

Filing Fee. Check one box. The fee must be paid upon filing unless the plaintiff meets one of the following exceptions. The fee is not required if the plaintiff is the United States government or the debtor. If the plaintiff is the trustee or a debtor in possession and there are no liquid funds in the estate, the filing fee may be deferred until there are funds in the estate. (In the event no funds are ever recovered for the estate, there will be no fee.) There is no fee for adding a party after the adversary proceeding has been commenced.

Signature. This cover sheet must be signed by the attorney of record in the box on the right of the last line of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is *pro se*, that is, not represented by an attorney, the plaintiff must sign.

The name of the signatory must be printed in the box to the left of the signature. The date of the signing must be indicated in the box on the far left of the last line.

EXHIBIT 24

1 **ELMER DEAN MARTIN III, APC State Bar No. 75517**
2 22632 Golden Springs Drive, Suite 190
3 P.O. Box 4670
4 Diamond Bar, California 91765
5 Phone: (909) 861-6700
6 Facsimile: (909) 860-3801
7 Email: elmer@bankruptcytax.net

8 SEAN A. OKEEFE - State Bar No. 122417
9 **OKEEFE & ASSOCIATES LAW CORPORATION, P.C.**
10 660 Newport Center Drive, Ste. 400
11 Newport Beach, CA 92660
12 Telephone: (949) 720-4165
13 Facsimile: (949) 720-4111
14 Email: sokeefe@okeefeLC.com

15 Counsel to Thomas H. Casey, Chapter 7 Trustee, Plaintiff

16
17 **UNITED STATES BANKRUPTCY COURT**
18 **CENTRAL DISTRICT OF CALIFORNIA**
19 **SANTA ANA DIVISION**

20 In re

21 LLOYD MILES RUCKER

22 Debtor

23
24 _____
25 THOMAS H. CASEY, Chapter 7 Trustee,
26 Plaintiff,

27 v.

28 DR. RONALD CUNNING, an individual and as
Trustee for the RONALD CUNNING D.D.S, INC.
PROFIT SHARING PLAN AND TRUST AND
CUNNING FAMILY TRUST

Defendant.

Case No. SA 06-10195 RK

Chapter 7 Proceeding

Adv. No. SA

**COMPLAINT AVOIDING
PREFERENTIAL TRANSFERS;
AVOIDING LIENS; DISALLOWING
CLAIM; SUBORDINATING CLAIM;
DECLARATORY RELIEF;
SURCHARGE OF COLLATERAL**

1 Thomas H. Casey, in his capacity as the duly appointed trustee for the above entitled
2 estate, submits the following *Complaint Avoiding Preferential Transfers; Avoiding Liens;*
3 *Disallowing Claim; Subordinating Claim; And For Declaratory Relief* (the "Complaint"), and
4 based upon information and belief, respectfully alleges as follows:

5 **JURISDICTION AND VENUE**

6 1. The jurisdiction of this Court is founded on 28 U.S.C. §§ 157 and 1334, in that this
7 adversary proceeding is a civil proceeding arising in and related to a case under Chapter 11 of
8 Title 11 of the United States Code.

9 2. This adversary proceeding is a core proceeding under 28 U.S.C. § 157(b). If this
10 adversary proceeding is determined to be a non-core proceeding, Plaintiff consent to entry of final
11 orders and judgment by the bankruptcy judge. Defendants are hereby notified that
12 Fed. R. Bankr. P. 7012(b) requires that they admit or deny whether this adversary proceeding is a
13 core or non-core proceeding and, if non-core, to state whether they do or do not consent to entry of
14 final orders or judgment by the bankruptcy judge.

15 3. The Bankruptcy Court has jurisdiction over this adversary proceeding pursuant to
16 28 U.S.C. §§ 157 and 1334 and 11 U.S.C. §§ 105, 323, 362, 542, 544, 548, 550, 551, and 1107.
17 The instant adversary proceeding is a core proceeding brought pursuant to 28 U.S.C.
18 §§ 157(b)(2)(A), (B), (C), (F), (K) and (O).

19 4. Venue in this Court is proper under 28 U.S.C. § 1409(a), in that this adversary
20 proceeding is a civil proceeding arising in and related to a case under Chapter 11 of Title 11 of the
21 United States Code pending in the Santa Ana Division of the United States Bankruptcy Court for
22 the Central District of California – the Chapter 11 Cases.

23 **PARTIES**

24 5. Lloyd Myles Rucker, the debtor in the above-captioned bankruptcy case (the
25 "Debtor"), filed a voluntary Chapter 7 petition in the State of Florida, on October 12, 2005 (the
26 "Petition Date"). The Debtor's case was later transferred to this Court.

27 6. The Plaintiff is the duly appointed and acting trustee for the Chapter 7 estate of the
28 Debtor.

- 1 C) A compensatory damage award in favor of the Cunning Pension Trust in
2 the amount of \$574,631;
- 3 D) A punitive damage award in favor of the Cunning Pension Trust in the
4 amount of \$500,000;
- 5 E) A compensatory damage award in favor of the Family Trust in the amount
6 of \$583,009; and
- 7 F) A punitive damage award in favor of the Family Trust in the amount of
8 \$500,000.

9 16. Cunning DDS did not receive an award under the Judgments.

10 17. On March 17, 2006, attorney Evan Smiley purported to file a claim on behalf of Dr.
11 Cunning and Cunning DDS (the "Claim"). The Cunning Pension Trust and the Family Trust were
12 not named as "creditors" on the face of Claim, although they were referenced in the "Addendum"
13 thereto.

14 18. In the Claim, Dr. Cunning and Cunning DDS allege that they hold a "secured"
15 claim against the estate in the amount of \$6.5 million (the "Cunning Claim"). However, Cunning
16 DDS did not receive an award under the Judgments and Dr. Cunning's award, was \$891,097, and
17 \$500,000 of this sum, being attributable to punitive damages, is subordinated to the claims of all
18 other creditors by virtue of Bankruptcy Code § 724(a) and 726. Accordingly, the allowed amount
19 of the Cunning Claim should be limited to \$391,097, and this sum should also be subordinated for
20 the reasons alleged herein.

21 19. In support of their status as "secured" creditors as alleged in the defective Cunning
22 Claim, the Cunning Defendants allege that they served a notice of a judgment debtor examination
23 (the "Examination Notice") on the Debtor on June 9, 2007, thereby conveying upon the Cunning
24 Defendants a lien pursuant to Section 708.110(d) of the California Code of Civil Procedure.

25 20. The order authorizing the Examination Notice was later modified by a judge whose
26 orders in the case were retroactively vacated on the grounds the judge lacked jurisdiction.

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1 21. In fact, the Cunning Defendants did not serve the Examination Notice on the date
2 alleged. To the contrary, the first date on which proper service of the Examination Notice occurred,
3 if it occurred at all, was within ninety days of the Petition Date.

4 22. The Cunning Defendants filed a UCC-1 with the California Secretary of State in
5 August of 2007, or within ninety days of the Petition Date (the "UCC-1").

6 23. Unsecured creditors have filed claims against the estate that are allowable under 11
7 U.S.C. § 502 and these claims remain unpaid.

8 24. During the one year period prior to the Petition Date, the Debtor's liabilities
9 exceeded his assets and he was otherwise insolvent.

10 25. The claims against the estate's asset exceed the value of these assets.

11 **FIRST CLAIM FOR RELIEF**

12 **(Avoidance of Transfers Pursuant to 11 U.S.C. § 547)**

13 26. The Plaintiff realleges and restates the allegations in paragraphs 5 through 25 above
14 in support of this claim as if alleged here in their entirety.

15 27. The Cunning Defendants were general partners of the Debtor in the Partnerships.

16 28. The Cunning Defendants were "insiders" of the Debtor as that term is defined in 11
17 U.S.C. § 101(31) at all relevant times and throughout 2007.

18 29. Any lien obtained by the Cunning Defendants on the basis of the UCC-1 filing was
19 obtained within one year of the Petition Date.

20 30. Any lien obtained by the Cunning Defendants through the filing of the UCC-1 was a
21 "transfer" of an interest in property of the Debtor, made within one year of the Petition Date.

22 31. The alleged "transfer" was made on account of an antecedent debt.

23 32. The Debtor was insolvent when the alleged "transfer" occurred.

24 33. Any lien obtained by the Cunning Defendants through the filing of the UCC-1 will
25 result in the Cunning Defendants receiving more than they would receive in this proceeding upon
26 liquidation, but for the transfer of the lien to the Cunning Defendants.

27 34. Any lien obtained by the Cunning Defendants through the filing of the UCC-1
28 constitutes an avoidable preferential transfer pursuant to 11 U.S.C. § 547.

SECOND CLAIM FOR RELIEF

(Avoidance of Transfers Pursuant to 11 U.S.C. § 547)

35. The Plaintiff realleges and restates the allegations in paragraphs 5 through 34 above in support of this claim as if alleged here in their entirety.

36. The Cunning Defendants were general partners of the Debtor in the Partnerships.

37. The Cunning Defendants were “insiders” of the Debtor as that term is defined in 11 U.S.C. § 101(31) at all relevant times and throughout 2007.

38. Any lien obtained by the Cunning Defendants on the basis of service of the Examination Notice was the obtained within one year of the Petition Date.

39. Any lien obtained by the Cunning Defendants through the service of the Examination Notice was a “transfer” of an interest in property of the Debtor, made within one year of the Petition Date.

40. The alleged “transfer” was made on account of an antecedent debt.

41. The Debtor was insolvent when the alleged “transfer” occurred.

42. Any lien obtained by the Cunning Defendants through the service of the Examination Notice will result in the Cunning Defendants receiving more than they would receive in this proceeding upon liquidation, but for the transfer of the lien to the Cunning Defendants.

43. Any lien obtained by the Cunning Defendants through the service of the Examination Notice constitutes an avoidable preferential transfer pursuant to 11 U.S.C. § 547.

THIRD CLAIM FOR RELIEF

(Avoidance of Transfers Pursuant to 11 U.S.C. § 547)

44. The Plaintiff realleges and restates the allegations in paragraphs 5 through 43 above in support of this claim as if alleged here in their entirety.

45. The Cunning Defendants were the general partners of the Debtor in the Partnerships.

46. Any lien obtained by the Cunning Defendants through the filing of the UCC-1 was obtained, if at all, within ninety days of the Petition Date.

1 47. Any lien obtained by the Cunning Defendants through the filing of the UCC-1 was
2 obtained through the "transfer" of an interest in property of the Debtor, within ninety days of the
3 Petition Date.

4 48. The alleged "transfer" was made on account of an antecedent debt.

5 49. The Debtor was insolvent when the alleged "transfer" occurred.

6 50. Any lien obtained by the Cunning Defendants through the filing of the UCC-1 will
7 result in the Cunning Defendants receiving more than they would receive in this proceeding upon
8 liquidation, but for the transfer.

9 51. Any lien obtained by the Cunning Defendants through the filing of the UCC-1
10 constitutes an avoidable preferential transfer pursuant to 11 U.S.C. § 547.

11 **FOURTH CLAIM FOR RELIEF**

12 **(Avoidance of Transfers Pursuant to 11 U.S.C. § 547)**

13 52. The Plaintiff realleges and restates the allegations in paragraphs 5 through 51 above
14 in support of this claim as if alleged here in their entirety.

15 53. The Cunning Defendants were the general partners of the Debtor in the
16 Partnerships.

17 54. Any lien obtained by the Cunning Defendants through the service of the
18 Examination Notice was obtained, if at all, within ninety days of the Petition Date.

19 55. Any lien obtained by the Cunning Defendants through the service of the
20 Examination Notice was obtained through the "transfer" of an interest in property of the Debtor,
21 within ninety days of the Petition Date.

22 56. The alleged "transfer" was made on account of an antecedent debt.

23 57. The Debtor was insolvent when the alleged "transfer" occurred.

24 58. Any lien obtained by the Cunning Defendants through the service of the
25 Examination Notice will result in the Cunning Defendants receiving more than they would receive
26 in this proceeding upon liquidation, but for the transfer.

27 59. Any lien obtained by the Cunning Defendants through the service of the
28 Examination Notice constitutes an avoidable preferential transfer pursuant to 11 U.S.C. § 547.

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FIFTH CLAIM FOR RELIEF

(Avoidance of Transfers Pursuant to 11 U.S.C. § 544)

60. The Plaintiff realleges and restates the allegations in paragraphs 5 through 59 above in support of this claim as if alleged here in their entirety.

61. Pursuant to 11 U.S.C. § 544(b)(1), the Trustee may avoid any transfer of an interest of the Debtor in property, or any obligation incurred by the Debtor, that is voidable under applicable law by a creditor holding any unsecured creditor that is allowable under 11 U.S.C. § 502.

62. Any lien rights obtained by the Cunning Defendants through the service of the Examination Notice are subordinate to the rights conveyed upon the Trustee pursuant to 11 U.S.C. § 544 and 724(a) and should be avoided, or deemed not to have ever arisen as to the effect of §544 under state law on this basis.

SIXTH CLAIM FOR RELIEF

(Disallowance of Claim)

63. The Plaintiff realleges and restates the allegations in paragraphs 5 through 62 above in support of this claim as if alleged here in their entirety.

64. The Cunning Claim was filed by Dr. Cunning and Cunning DDS.

65. Cunning DDS does not have a claim against the estate.

66. The Judgments awarded Dr. Cunning a claim against the Debtor in the amount of \$891,097, of which \$500,000 constitute punitive damages.

67. The Cunning Claim should be disallowed in its entirety as a secured claim.

68. The Cunning Claim should be limited in amount to \$391,097 and then subordinated as provided for in the Seventh and Eighth Claims For Relief.

SEVENTH CLAIM FOR RELIEF

(Subordination Of Claim Pursuant To 11 U.S.C. § 510(B))

69. The Plaintiff realleges and restates the allegations in paragraphs 5 through 68 above in support of this claim as if alleged here in their entirety.

70. The Cunning Defendants were equity investors in the Partnerships.

1 71. The Judgments obtained by the Cunning Defendants and the Cunning Claim are
2 based upon their equity investments in the Partnerships.

3 72. The Cunning Claims should be subordinated to the claims of all other creditors
4 pursuant to 11 U.S.C. § 510(b).

5 **SEVENTH CLAIM FOR RELIEF**

6 **(Subordination Of Claim Pursuant To 11 U.S.C. § 724)**

7 73. The Plaintiff realleges and restates the allegations in paragraphs 5 through 72 above
8 in support of this claim as if alleged here in their entirety.

9 74. The Cunning Claim includes an award of punitive damages.

10 75. To the extent the Cunning Claim includes an award of punitive damages it should
11 be subordinated.

12 **EIGHTH CLAIM FOR RELIEF**

13 **(Subordination Of Claim Pursuant To 11 U.S.C. § 510(B))**

14 76. The Plaintiff realleges and restates the allegations in paragraphs 5 through 75 above
15 in support of this claim as if alleged here in their entirety.

16 77. Dr. Cunning's claim against the Debtor is a claim for reimbursement or contribution
17 arising under 11 U.S.C. §502, on account of the equity interest in the Partnerships held by the
18 Cunning Family Trust and the Cunning Pension Trust.

19 78. Dr. Cunning's claims are subordinated to the claims of all other creditors pursuant
20 to 11 U.S.C. § 510(b).

21 **NINTH CLAIM FOR RELIEF**

22 **(Declaratory Relief)**

23 79. The Plaintiff realleges and restates the allegations in paragraphs 5 through 78 above
24 in support of this claim as if alleged here in their entirety.

25 80. A material and justiciable dispute has arisen between the Plaintiff and the Cunning
26 Defendants regarding the status of the Cunning Claim. The Cunning Defendants contend that the
27 Cunning Claim is secured by a first priority lien on all of the assets of the estate, including the
28

1 Pension Trust. In contrast, the Plaintiff contends that the Cunning Claim is unsecured and should
2 be subordinated to the claims of all other creditors.

3 81. To resolve this dispute, the Plaintiff seeks a judgment declaring and stating the fact
4 and the law to be the following:

- 5 A. The trust that holds the assets of the Rucker Pension Plan remains a
6 separate legal entity from the Debtor and his estate (the "Pension Trust");
- 7 B. This Court's ruling denying the Debtor's claim of exemption for his
8 interest in the Pension Trust did not modify or affect the continued
9 separate existence of the Pension Trust;
- 10 C. The Court's order holding that Rucker's interest in the Pension Trust was
11 not exempt was entered post-petition. Accordingly, this interest in
12 property came into existence as a non-exempt asset post-petition and
13 consequently was not subject to the Cunning Defendants' lien claim.
- 14 D. The Plaintiff is now the entitled to control the disposition of the assets in
15 the Pension Trust in accordance with the plan document establishing this
16 trust;
- 17 E. The Examination Notice was not served on the Debtor June 9, 2007 as
18 alleged;
- 19 F. Service of the Examination Notice was effectuated, if at all, within ninety
20 days of the Petition Date;
- 21 G. Any lien obtained by the Cunning Defendants through the service of the
22 Examination Notice never attached to the property in the Pension Trust;
- 23 H. Any lien the Cunning Defendants obtained against the Debtor's beneficial
24 interest in the Pension Trust is unperfected under California law and is
25 subordinate to the Trustee's rights under 11 U.S.C. § 544;
- 26 I. The Plaintiff has the right to distribute the assets in the Pension Trust to
27 the creditors of the Debtor's estate pursuant to 11 U.S.C. § 726, since the
28 Cunning Defendants do not have a lien on any of the assets therein;

- 1 J. The Cunning Defendants were general partners in the Partnerships along
2 with the Debtor;
- 3 K. As partners of the Debtor, the Cunning Defendants are deemed to be
4 “insiders” of the Debtor pursuant to 11 U.S.C. § 101(31);
- 5 L. The Cunning Claim is based upon the Cunning Defendants’ interest in the
6 Partnerships;
- 7 M. The Cunning Claim is derived from an equity interest, not a debt;
- 8 N. The Cunning Claim is disallowed as a “secured” claim and allowed as a
9 general unsecured claim that is subordinated;
- 10 O. The Cunning Claim is subordinated to the claims of all other creditors.
- 11 P. The Examination Notice even if it was served, did not, under California
12 law, impose a lien on the interest of the Estate in the Pension Trust by
13 virtue of California Code of Civil Procedure §§ 699.720(a)(8) and
14 709.010(a) and
- 15 Q. The Examination Notice was void, because it was modified by a judge that
16 lacked jurisdiction.

17 **TENTH CLAIM FOR RELIEF**

18 **(Surcharge To Collateral)**

19 82. The Plaintiff realleges and restates the allegations in paragraphs 5 through 81 above
20 in support of this claim as if alleged here in their entirety.

21 83. The Trustee has expended estate funds identifying, assembling and preserving the
22 assets in the Pension Trust, preventing Rucker from looting the same and otherwise taking all
23 actions necessary to preserve and retain this Chapter 7 estate.

24 84. All of the fees and costs incurred by the Trustee in contesting Rucker’s claim of
25 exemption and preserving the assets in the Pension Trust should be charged against all assets of the
26 estate, including the Pension Trust, notwithstanding the Cunning Defendants’ alleged lien against
27 the same.

28

ELEVENTH CLAIM FOR RELIEF

(Avoidance Of Lien Pursuant To State Law)

1
2
3 85. The Plaintiff realleges and restates the allegations in paragraphs 5 through 84 above
4 in support of this claim as if alleged here in their entirety.

5 86. Any lien in favor of the Cunning Defendants based upon the service of the
6 Examination Notice arose within ninety days of the Petition Date.

7 87. Pursuant to California Code of Civil Procedure § 493.030(b) such lien was
8 automatically avoided on the Petition Date.

9 88. The Cunning Defendants failed to check the box on the Examination Notice
10 indicating that they were seeking to attach a lien to property in the hands of a third party.
11 Accordingly, any lien obtained by the Cunning Defendants did not attach to the Pension Trust
12 under California law.

13 89. Pursuant to California law a lien cannot be obtained on an interest in a Trust without
14 a charging order and the Cunning Defendants failed to obtain such an order prepetition.

15 WHEREFORE, the Plaintiff prays that the Court enter a judgment as follows:

16 **On The First Claim For Relief**

17 Avoiding any lien claimed by the Cunning Defendants against property of the estate
18 obtained within one year of the Petition Date.

19 **On The Second Claim For Relief**

20 Avoiding any lien claimed by the Cunning Defendants against property of the estate
21 obtained within one year of the Petition Date .

22 **On The Third Claim For Relief**

23 Avoiding any lien claimed by the Cunning Defendants against property of the estate
24 obtained within ninety days of the Petition Date.

25 **On The Third Fourth For Relief**

26 Avoiding any lien claimed by the Cunning Defendants against property of the estate
27 obtained within ninety days of the Petition Date.
28

1 On The Fifth Claim For Relief

2 Avoiding any lien rights obtained by the Cunning Defendants pursuant to California Code
3 of Civil Procedure 708.110(d) on the grounds that the lien rights accorded the Plaintiff under 11
4 U.S.C. § 544 are superior.

5 On The Sixth Claim For Relief

6 Disallowing the Cunning Claim as a secured claim and allowing such claim as a
7 subordinated unsecured claim in the amount of \$391,097.

8 On The Seventh and Eighth Claims For Relief

9 Subordinating the Cunning Claim to all other claims in the estate.

10 On The Ninth Claim For Relief

11 Declaring and stating that:

- 12 1. The trust that holds the assets of the Rucker Pension Plan remains a
13 separate legal entity from the Debtor and his estate (the "Pension Trust");
- 14 2. This Court's ruling denying the Debtor's claim of exemption for his
15 interest in the Pension Trust did not modify or affect the continued
16 separate existence of the Pension Trust;
- 17 3. The Court's order holding that Rucker's interest in the Pension Trust was
18 not exempt was entered post-petition. Accordingly, this interest in
19 property came into existence as a non-exempt asset post-petition and
20 consequently was not subject to the Cunning Defendants lien claim.
- 21 4. The Plaintiff is now entitled to control the disposition of the assets in the
22 Pension Trust in accordance with the plan document establishing this
23 trust;
- 24 5. The Examination Notice was not served on the Debtor June 9, 2007 as
25 alleged and even if it was served on the Debtor under California law
26 service of the Examination Notice did not impose a lien on an interest in a
27 trust;

28

