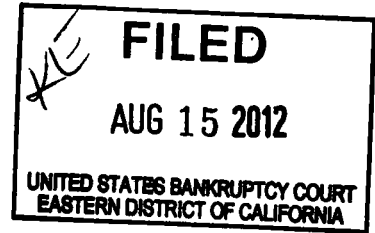


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UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA  
FRESNO DIVISION

In re

Case No. 10-14387-B-7

Marianne Moreno,

DC No. PLF-3

Debtor.

**MEMORANDUM DECISION REGARDING MOTION TO IMPOSE  
SANCTIONS FOR VIOLATION OF THE DISCHARGE INJUNCTION**

Peter L. Fear, Esq., of the Law Offices of Peter L. Fear, appeared on behalf of the debtor, Marianne Moreno.

Erin A. Maloney, Esq., of Fiore, Racobs & Powers, appeared on behalf of secured creditor, Canyon Lake Property Owners Association.

Before the court is a motion to impose sanctions for violation of the discharge injunction (the "Motion"), filed by the debtor Marianne Moreno (the "Debtor"). The Debtor contends that the respondent, Canyon Lake Property Owners Association (the "Association"), violated the discharge injunction by obtaining a post-petition default judgment against the Debtor in state court. The amount of the judgment was based in part on two delinquent post-petition payments, one that the Association had misapplied to the Debtor's account and another that the Association contends was paid late. The

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judgment also included attorney's fees and interest that had accrued on account of both the post-petition debt and pre-petition discharged debt. The Debtor requests monetary sanctions in the form of her attorney's fees pursuant to the court's civil contempt authority under § 105(a).<sup>1</sup> She also requests declaratory and injunctive relief relating to enforcement of the default judgment. Because the default judgment does appear to include attorney's fees and interest relating to the discharged debt, the Motion will be granted.

This memorandum contains the court's findings of fact and conclusions of law required by Federal Rule of Civil Procedure 52(a), made applicable to this contested matter by Federal Rules of Bankruptcy Procedure 7052 and 9014(c). The bankruptcy court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, 11 U.S.C. §§ 105 and 524, and General Order Nos. 182 and 330 of the U.S. District Court for the Eastern District of California. This is a core proceeding as defined in 28 U.S.C. § 157(b)(2)(A).

#### **Background and Findings of Fact.**

Before and during her bankruptcy, the Debtor owned real property located in Canyon Lake, California (the "Property"), which was part of a common interest development. The Property was subject to the Declaration of Covenants, Conditions and Restrictions for Canyon Lake Property Owners Association, a document recorded against the Property (the "CC&Rs"). Under California law, the CC&Rs was subject to the Davis-Stirling Common Interest Development Act, California Civil Code §§ 1350–1378, the body of law that governs the relationship between homeowners and homeowners'

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<sup>1</sup> Unless otherwise indicated, all chapter, section and rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101–1330, and to the Federal Rules of Bankruptcy Procedure, Rules 1001–9036, as enacted and promulgated *after* October 17, 2005, the effective date of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), Pub. L. No. 109-8, 119 Stat. 23 (enacted April 20, 2005).

1 associations and regulates recorded declarations of covenants, conditions, and  
2 restrictions.<sup>2</sup>

3 The CC&Rs imposed upon the Debtor a monthly payment obligation and  
4 provided the Association with corresponding enforcement rights. In 2010, the Debtor  
5 had an obligation to pay the Association a monthly assessment in the amount of \$205  
6 plus an installment charge of \$10 for a total of \$215 (the "Assessment").<sup>3</sup> The Debtor  
7 was personally liable for the monthly Assessments until she no longer held title to the  
8 Property.<sup>4</sup> The Assessments were levied on the first day of each month. Any payment  
9 not received within fifteen days was deemed delinquent on the sixteenth day of the  
10 month.<sup>5</sup>

11 If an Assessment became delinquent, the Association had the right to recover  
12 (1) late charges, at \$20 per delinquent Assessment;<sup>6</sup> (2) reasonable costs incurred in  
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16 <sup>2</sup> The CC&Rs is referred in the Association's demand letter to the Debtor dated February  
17 18, 2009, as the basis for the Debtor's liability to the Association and its enforcement efforts.  
18 However, neither party submitted a copy of the CC&Rs into evidence. The court will therefore  
19 refer to the relevant California statutes and the other evidence, specifically the Association's  
20 accounting referenced below, to discern the pertinent rights and duties of the parties.

21 <sup>3</sup> See Cal. Civ. Code § 1366(a) ("[T]he association shall levy regular and special  
22 assessments sufficient to perform its obligations under the governing documents and this title.").

23 <sup>4</sup> See Cal. Civ. Code § 1466 ("No one, merely by reason of having acquired an estate  
24 subject to a covenant running with the land, is liable for a breach of the covenant before he  
25 acquired the estate, or after he has parted with it or ceased to enjoy its benefits.").

26 <sup>5</sup> See Cal. Civ. Code § 1366(e) ("Regular and special assessments levied pursuant to the  
27 governing documents are delinquent 15 days after they become due, unless the declaration  
28 provides a longer time period.").

<sup>6</sup> See Cal. Civ. Code § 1366(e)(2) ("If an assessment is delinquent the association may  
recover . . . [a] late charge not exceeding 10 percent of the delinquent assessment or ten dollars  
(\$10), whichever is greater, unless the declaration specifies a late charge in a smaller amount.").

collecting the delinquent Assessment, including reasonable attorney's fees;<sup>7</sup> and (3) accrued interest, at a rate of 12% per annum on the outstanding account balance (collectively, the "Additional Charges").<sup>8</sup> The Association calculated and charged the accrued interest on the first day of every month, by taking 1% of the balance in the Debtor's account on the first day of the prior month.<sup>9</sup> Additionally, the Association charged late fees on the sixteenth day of each month and recorded any attorney's fees incurred during a month on the last day of that month.

The Debtor stopped paying the monthly Assessments beginning in August 2008. In February 2009, the Association sent a demand letter to the Debtor informing her that the Association had recorded a lien against the Property to secure the Debtor's unpaid obligation (the "Assessment Lien"). The Association demanded payment in the amount of \$2,552.01. The Assessment Lien was junior in priority to the consensual liens against the Property and was substantially undersecured.<sup>10</sup> A year later, in January 2010, the Association filed a civil action in the Riverside County Superior Court seeking a judicial foreclosure of the Assessment Lien and a money judgment against the Debtor (the "State Court Action"). The Debtor did not file a responsive pleading and her default was entered on April 5, 2010.

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<sup>7</sup> See Cal. Civ. Code § 1366(e)(1) ("If an assessment is delinquent the association may recover . . . [r]easonable costs incurred in collecting the delinquent assessment, including reasonable attorney's fees.").

<sup>8</sup> See Cal. Civ. Code § 1366(e)(3) ("If an assessment is delinquent the association may recover . . . [i]nterest on all sums imposed in accordance with this section, including the delinquent assessments, reasonable fees and costs of collection, and reasonable attorney's fees, at an annual interest rate not to exceed 12 percent, commencing 30 days after the assessment becomes due, unless the declaration specifies the recovery of interest at a rate of a lesser amount.").

<sup>9</sup> California Civil Code § 1366(e)(3) permits interest to be calculated thirty days after an assessment becomes due.

<sup>10</sup> The Debtor's schedules list two mortgages held by BAC Home Loans totaling \$433,827. The Property is valued at \$220,000.

1 The Debtor then filed a voluntary petition under chapter 7 on April 23, 2010,  
2 which temporarily stayed prosecution of the State Court Action. She had not made any  
3 Assessment payments since July 2008 and the outstanding balance in her account, as of  
4 the petition date, had increased to \$8,025.50. However, for reasons that are explained  
5 below, once the Debtor was in bankruptcy she did resume payment of the post-petition  
6 Assessments. She received her discharge on August 9, 2010, and the case was closed on  
7 September 17. On September 28, 2010, the Debtor's counsel sent a letter to the  
8 Association demanding that all post-petition payments from the Debtor be applied to the  
9 post-petition Assessments. On October 19, the Association's attorney responded with a  
10 letter acknowledging the Debtor's discharge and confirming that the payments received  
11 from the Debtor had been applied only to the post-petition debt.

12 After entry of the Debtor's discharge and termination of the automatic stay, the  
13 Association resumed prosecution of the State Court Action by filing therein a notice of  
14 termination of the automatic stay with a copy of the discharge order. On or about  
15 November 2, 2010, the Association filed a request for entry of a judgment by default  
16 supported by evidence from the Association as to the amount then due. Again, the  
17 Debtor did not respond, and on December 8, the state court entered a default judgment in  
18 favor of the Association (the "Default Judgment").

19 The Default Judgment consisted of two parts. The first part related to the  
20 Association's lien rights, allowing the Association to foreclose its Assessment Lien  
21 against the Property (the "Foreclosure Judgment"). The state court determined the entire  
22 underlying debt secured by the Assessment Lien, including both pre- and post-petition  
23 Assessments and Additional Charges, to be \$10,725.86 as of November 2, 2010. The  
24 Debtor does not dispute the validity of the Foreclosure Judgment or the Association's  
25 right to foreclosure against the Property for the full amount owed on her account. The  
26 following itemization was included in the Default Judgment to show what was due for  
27 purposes of the foreclosure:

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1	Assessments (Aug. 1, 2008 through Nov. 1, 2010)	\$ 5,930.00
2	Less Payments Received	(1,075.00)
3	Late Charges (Aug. 16, 2008 through Oct. 16, 2010)	491.00
4	Interest	1,367.42
5	Attorney's Fees	3,242.44
6	Collection Costs	400.00
7	<u>Court Costs</u>	<u>370.00</u>
8	Total	\$ 10,725.86

9 The second part of the Default Judgment was a money judgment against the  
 10 Debtor, who was adjudged to be liable for unpaid post-petition Assessments and  
 11 Additional Charges (the "Personal Judgment"). The Personal Judgment specifically  
 12 acknowledged the Debtor's chapter 7 discharge and the fact that she had been relieved of  
 13 any liability for that portion of debt (as reflected in the Foreclosure Judgment) that  
 14 accrued prior to April 23, 2010. The amount of the Personal Judgment was determined  
 15 by the state court to be \$2,700.36, based on the following itemization:

16	Assessments (May 1, 2010 through Nov. 1, 2010)	\$ 1,505.00
17	Less Payments Received	(1,075.00)
18	Late Charges (May 16, 2010 through Oct. 16, 2010)	80.00
19	Interest	635.56
20	<u>Attorney's Fees</u>	<u>1,075.00</u>
21	Total	\$ 2,700.36

22 The amount of the Personal Judgment was calculated using the Association's  
 23 accounting record. The Debtor introduced a copy of this accounting into evidence and it  
 24 is attached hereto as Exhibit "A" (the "Accounting"). Based on the Accounting, the  
 25 Association contends that it only requested post-petition Assessments and Additional  
 26 Charges in its calculation of the Personal Judgment. The Association's original  
 27 Accounting also reflects that several of the post-petition Assessments were paid late, a  
 28 fact that the Debtor strenuously disputes, and that two others were missing between  
 April 23 and November 2, 2010. The Debtor contends that all of her post-petition  
 payments were made timely and disputes any liability for late fees and interest relating to  
 the "missing" payments.

After the Debtor filed this Motion, the Association corrected its Accounting to  
 show that the Debtor had actually paid all of her post-petition Assessments during the

1 seven months since the petition was filed, although three of those payments were still  
2 recorded by the Association as being late and with late fees being charged for those  
3 months (the "Modified Accounting"). The Modified Accounting gave the Debtor credit  
4 for the two "missing" post-petition payments and deleted two late charges. One of the  
5 post-petition payments (August 2010) had been mistakenly credited to another  
6 homeowner's account. For reasons that remain in dispute, another payment (November  
7 2010) was not applied to the Debtor's account until after the Association submitted its  
8 application for the Default Judgment. According to the Modified Accounting, the  
9 Debtor was still liable for \$2,250.36. However, even after correcting its Accounting, the  
10 Association did not return to the state court to amend or correct the Personal Judgment.  
11 In addition, the Association did not make any adjustments for the post-petition attorney's  
12 fees and interest it had erroneously charged against the Debtor in the original Accounting  
13 (discussed below).

14 In April 2011, before the Association exercised its rights pursuant to the  
15 Foreclosure Judgment, the senior lienholder foreclosed against the Property, thereby  
16 extinguishing both the Debtor's and the Association's interest in the Property. Then, in  
17 June and July of 2011, the Association began to enforce the Personal Judgment by  
18 recording abstracts of judgment against the Debtor in four counties. The Association has  
19 since withdrawn those four abstracts and ceased any collection efforts pending a ruling  
20 on this Motion.

21 The Debtor's bankruptcy case was reopened in February 2011. In July 2011, after  
22 the abstracts of judgment had been recorded, the Debtor filed this Motion requesting  
23 sanctions against the Association for violating the discharge injunction. While the  
24 Debtor has never contested the Association's right to foreclose against the Property, the  
25 Debtor does object to the Association's efforts to obtain and enforce the Personal  
26 Judgment. She argues that all of her post-petition payments were made timely and that  
27 the Personal Judgment could only have been based on the discharged pre-petition debt.  
28

The Association counters that the Personal Judgment only relates to post-petition debt that was not discharged in the bankruptcy.

### **Discussion and Conclusions of Law.**

The Effect of the Discharge under § 524. To begin, it is important to consider how the chapter 7 discharge applies to the Debtor's obligation to the Association and to the Default Judgment. Section 524 of the Bankruptcy Code recites the effect of a discharge:

(a) A discharge in a case under this title—

(1) voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under [§ 727], whether or not discharge of such debt is waived;

(2) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived[.]

This Code section is quite expansive. The discharge injunction under § 524(a)(2) applies to *all entities* and encompasses *all acts* to collect or recover a discharged debt as a personal liability of the debtor. *Lone Star Sec. & Video, Inc. v. Gurrola (In re Gurrola)*, 328 B.R. 158, 170 (9th Cir. BAP 2005). Pursuant to § 524(a)(1), all judgments purporting to establish a debtor's personal liability on a discharged debt are not voidable but void ab initio.<sup>11</sup> *In re Pavelich*, 229 B.R. 777, 782 (9th Cir. BAP 1999).

Due to the anti-waiver language within § 524(a), the "defense of discharge in bankruptcy is . . . an absolute, nonwaivable defense," rather than a waivable, affirmative defense. *Gurrola*, 328 B.R. at 170 (citation omitted). Given the absolute nature of this defense, a discharged debtor is relieved from a duty to raise the defense in a post-discharge state court proceeding. *See Pavelich*, 229 B.R. at 781–82 (citing legislative history). Thus, even if a debtor fails to assert the discharge defense in state court, the

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<sup>11</sup> The term "void ab initio" means "null from the beginning." Black's Law Dictionary 1709 (9th ed. 2009).



debtor may nevertheless bring a creditor's violation of the discharge injunction to the attention of the bankruptcy court.

However, the chapter 7 discharge is not without a number of exceptions. One of those exceptions relates to post-petition debts owed to a homeowners' association. It is found in § 523(a)(16), which provides:

(a) A discharge under [§ 727] does not discharge an individual debtor from any debt—

(16) for a fee or assessment that becomes due and payable after the order for relief to a membership association with respect to the debtor's interest in a unit that has condominium ownership, in a share of a cooperative corporation, or a lot in a homeowners association, for as long as the debtor or the trustee has a legal, equitable, or possessory ownership interest in such unit, such corporation, or such lot, but nothing in this paragraph shall except from discharge the debt of a debtor for a membership association fee or assessment for a period arising before entry of the order for relief in a pending or subsequent bankruptcy case[.]

Here, the Debtor had not paid any Assessments since July 2008. It is undisputed that her obligation to the Association for Assessments and Additional Charges accruing prior to April 23, 2010, the petition date, was discharged in the bankruptcy. However, in an effort to avoid the effect of § 523(a)(16), the Debtor did resume paying her post-petition Assessments beginning in May 2010, the first month after the petition was filed.

The Association obtained a Personal Judgment against the Debtor for \$2,700.36. The Debtor contends that the Association applied some of her post-petition payments to pre-petition debt in violation of the discharge injunction and that the Personal Judgment was based on post-petition Assessments that she had already paid. She therefore argues that the Default Judgment is void under § 524(a)(1).<sup>12</sup> In conjunction, she contends that

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<sup>12</sup> Under the Rules, a proceeding to determine the nondischargeability of a particular debt requires an adversary proceeding. *See* Fed. R. Bankr. P. 7001(6). The current proceeding is a contested matter initiated by motion under Rule 9014, rather than an adversary proceeding. Normally, any determination made by the court as to the nondischargeability of the debt in a motion would have been reversible error. *See In re Boni*, 240 B.R. 381, 385–86 (9th Cir. BAP 1999). Nevertheless, it is proper to address the nondischargeability issue here for two reasons. First, the § 523(a)(16) issue was raised by the Association in its supplemental brief,

the Association's conduct relating to the entry and enforcement of the Personal Judgment violated the discharge injunction under § 524(a)(2).

For purposes of this discussion, there are three basic components to the Personal Judgment: Unpaid Assessments and late charges, interest, and attorney's fees. To determine whether the Association has violated the discharge injunction, the court must examine the evidence and the Association's Accounting and determine what debts were actually included in the Personal Judgment.

Pre-Petition vs. Post-Petition Debts. A chapter 7 discharge relieves the debtor of personal liability for all claims or debts that arose before the filing of the petition, except for those specified under § 523. § 727(b). In a chapter 7 case, the question of whether a particular debt falls within the discharge will depend on *when* that claim *arose*. *Siegel v. Fed. Home Loan Mortg. Corp.*, 143 F.3d 525, 532 (9th Cir. 1998) (citations omitted). The answer to that question is controlled by federal law.<sup>13</sup> *Id.* (citations omitted).

"A claim arises, for purposes of discharge in bankruptcy, at the time of the events giving rise to the claim." *In re Ybarra*, 424 F.3d 1018, 1022–23 (9th Cir. 2005) (internal quotation marks omitted) (citing *O'Loghlin v. Cnty. of Orange*, 229 F.3d 871, 874 (9th Cir. 2000)); *see also Cal. Dep't of Health Servs. v. Jensen (In re Jensen)*, 995 F.2d 925, 930–31 (9th Cir. 1993). If the claim arises out of a contract, the claim ordinarily arises at

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effectively waiving its procedural right to have the issue decided in an adversary proceeding. Second, the Debtor has requested relief in the form of civil contempt sanctions against the Association for its discharge violations. As the Ninth Circuit has recently opined, "[C]ontempt proceedings for a violation of § 524 must be initiated by motion in the bankruptcy case under Rule 9014 and not by adversary proceeding." *Barrientos v. Wells Fargo Bank*, 633 F.3d 1186, 1191 (9th Cir. 2011); *see also* Fed. R. Bankr. P. 9020 ("Rule 9014 governs a motion for an order of contempt made by the United States trustee or a party in interest."). Resolution of the dischargeability issue is a necessary predicate to the civil contempt issue.

<sup>13</sup> A "debt" is defined as a "liability on a claim," § 101(12), and a "claim" is defined as a "right to payment," § 101(5)(A). The Code views these two terms as being "coextensive, flip sides to the same coin." *In re Egebjerg*, 574 F.3d 1045, 1049 (9th Cir. 2009) (citations omitted) (internal quotation marks omitted).

1 the time the parties execute the contract, not when a subsequent contingency triggering  
 2 the claim occurs. *See Emps. ' Ret. Sys. of Haw. v. Osborne (In re THC Fin. Corp.)*, 686  
 3 F.2d 799, 803–04 (9th Cir. 1982) (determining when indemnification claim arose).  
 4 Therefore, even if a claim arising out of a pre-petition contract does not accrue or mature  
 5 until after the petition date, that claim still constitutes a debt arising pre-petition and is  
 6 subject to the discharge. *See Siegel*, 143 F.3d at 532–33.

7 Here, the Debtor's obligation to pay Assessments and Additional Charges did not  
 8 arise pursuant to a pre-petition contract. Rather, it arose pursuant to the CC&Rs which  
 9 governed the relevant rights and duties of the parties. *See Cal. Civ. Code* §§ 1353, 1366.  
 10 Under California law, the CC&Rs is not viewed as a contract but instead considered a  
 11 covenant running with the land. *See Cal. Civ. Code* §§ 1461–1463 (providing that a  
 12 covenant for the payment of assessments upon land is a covenant that runs with the  
 13 land); *see also Cal. Civ. Code* § 1354 (providing that a covenant in a declaration of  
 14 covenants, conditions, and restrictions may be enforced as an equitable servitude).

15 When state law construes an obligation to pay such assessments as a covenant  
 16 running with the land, rather than a pre-petition contractual obligation, the corresponding  
 17 right to recover *post-petition* assessments is “based on a property interest not subject to  
 18 the discharge.” *Foster v. Double R Ranch Ass'n (In re Foster)*, 435 B.R. 650, 661 (9th  
 19 Cir. BAP 2010) (considering the issue of post-petition assessments in chapter 13 case).  
 20 The “debtor's liability is not rooted in the pre-bankruptcy past, but rather is rooted in the  
 21 estate in property itself.” *Id.* at 660–61 (citation omitted) (internal quotation marks  
 22 omitted). Since a payment obligation under a declaration of covenants, conditions, and  
 23 restrictions is not considered a contractual obligation under California law, “an  
 24 association's claim for post-petition dues does not arise until the dues are assessed.” *In*  
 25 *re Rosenfeld*, 23 F.3d 833, 837 (4th Cir. 1994), *cited with approval*, *Foster*, 435 B.R.  
 26 650.

27 During the time that the Debtor held title to the Property, the Association's right  
 28 to levy Assessments arose on the first day of every month. *See Cal. Civ. Code* § 1366(a);

1 *see also* Cal. Civ. Code § 1367.1(a) (“A regular or special assessment and any late  
2 charges, reasonable fees and costs of collection, reasonable attorney’s fees, if any, and  
3 interest, if any, as determined in accordance with [California Civil Code § 1366], shall  
4 be a debt of the owner of the separate interest *at the time the assessment or other sums*  
5 *are levied.*” (emphasis added)).

6 The Association’s right to impose and recover Additional Charges was contingent  
7 on whether an Assessment payment was delinquent. *See* Cal. Civ. Code § 1366(e) (“If  
8 an assessment is delinquent the association may recover [Additional Charges].”); *see*  
9 *also* Cal. Civ. Code § 1367.1(a). As a result, the Association did not have the right to  
10 recover attorney’s fees and interest until an Assessment became delinquent, and a  
11 monthly Assessment was not delinquent until its status remained unpaid on the sixteenth  
12 day of that month. *See* Cal. Civ. Code § 1366(e) (“Regular and special assessments . . .  
13 are delinquent 15 days after they become due.”). Therefore, all Assessments that became  
14 due to the Association after the petition date, and any related Additional Charges  
15 resulting from these delinquent Assessments, constituted post-petition debt. This is  
16 consistent with § 523(a)(16), which clarifies that the post-petition Assessments and  
17 Additional Charges are nondischargeable in bankruptcy.

18 The Association contends that all of the charges incorporated into the Personal  
19 Judgment are post-petition homeowners’ association fees and assessments falling within  
20 § 523(a)(16). Arguably, since the subject attorney’s fees and interest accrued post-  
21 petition or were recorded in post-petition accounting entries, they may be considered  
22 “fee[s] or assessment[s] that become[ ] *due and payable after* the order for relief,” which  
23 are excepted from discharge. § 523(a)(16) (emphasis added). However, that argument  
24 conflicts with the last clause of this subsection, which provides that “nothing in this  
25 paragraph shall except from discharge the *debt* of a debtor for a membership association  
26 fee or assessment *for a period arising before entry of the order for relief* in a pending or  
27 subsequent bankruptcy case.” *Id.* (emphasis added). This is essentially an exception to  
28 the exception. While the attorney’s fees and interest at issue here—specifically, those

1 relating to the pre-petition debt—arguably may have become due and payable post-  
 2 petition, they are nevertheless debts “for a period arising before entry of the order for the  
 3 relief,” falling outside the scope of § 523(a)(16).

4 The “Missing” Post-Petition Assessments. The first component of the Personal  
 5 Judgment is a charge for the Assessments from May 1, 2010 to November 1, 2010 in the  
 6 amount of \$1,505.00 less “payments received” in the amount of \$1,075.00. In other  
 7 words, the Personal Judgment on its face shows that seven post-petition Assessments  
 8 came due before the Default Judgment was entered ( $\$1,505 \div \$215$ ) and that credit was  
 9 given to the Debtor for having made five of those payments ( $\$1,075 \div \$215$ ). The  
 10 Personal Judgment therefore only includes two post-petition delinquent Assessments,  
 11 one of which (August 2010) the Association later acknowledged had been “misapplied,”  
 12 and the other “missing” payment (November 2010) the Association contends was  
 13 received too late to count in its application for entry of the Default Judgment. In the  
 14 Modified Accounting, the Association gave the Debtor credit for all Assessments levied  
 15 from May through November 2010, prior to entry of the Default Judgment.

16 The Debtor contends that all of her post-petition payments were made timely and  
 17 that the Association erred by failing to apply some of her payments before they accrued  
 18 late fees and interest.<sup>14</sup> The Debtor argues in her Motion that misapplication of the post-  
 19 petition payments necessarily translates into an inappropriate effort to collect a pre-  
 20 petition debt, but the Debtor’s logic here is lost on the court. There is no evidence to  
 21 support a finding that the Association applied any of the post-petition payments to the  
 22 Assessments that came due before April 23, 2010, the petition date. Indeed, the  
 23 Association’s counsel acknowledged in her letter to the Debtor dated October 19, 2010,  
 24 that pre-petition Assessments could not be collected. The Association’s Accounting  
 25 does not show any such inappropriate application of payments. The Association admits

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26  
 27 <sup>14</sup> The Debtor also disputes the Association’s contention that some of the “late” payments  
 28 were mailed to the wrong place. However, this is not an issue that the court needs to address in  
 the context of this Motion.

1 that at least one of the post-petition payments was “misapplied” to a different  
 2 homeowner’s account and that this “misapplied” payment was later adjusted in the  
 3 Modified Accounting.

4 Still contending that all of her post-petition payments were made timely, the  
 5 Debtor asks the court to find that she could not be held liable for late fees, interest, and  
 6 attorney’s fees relating to the timely payments. However, timeliness of the payments is  
 7 not the issue here. In the absence of any evidence to show that the post-petition  
 8 payments were actually applied to pre-petition debt, the untimely or erroneous  
 9 application of those payments, for any reason, is not a discharge problem. If the  
 10 Association was suing to recover delinquent post-petition payments that had actually  
 11 been made on time, then the Debtor should have responded to the complaint and asserted  
 12 “payment” as an affirmative defense in the State Court Action. *See Sunlight Elec.*  
 13 *Supply Co. v. Grossmont Shopping Ctr. Co.*, 226 Cal. App. 2d 110, 117 (1964) (“[T]he  
 14 burden is on the defendant to prove payment[, and] [t]he defense of payment is  
 15 affirmative.” (citation omitted) (internal quotation marks omitted)); *cf.* Fed. R. Civ.  
 16 P. 8(c) (listing “payment” as affirmative defense for cases in federal court). Having  
 17 failed to timely assert her affirmative defense in the State Court Action, the Debtor is  
 18 barred from raising it here. *See Alpha Mech., Heating & Air Conditioning, Inc. v.*  
 19 *Travelers Cas. & Sur. Co. of Am.*, 133 Cal. App. 4th 1319, 1331–32 (2005) (discussing  
 20 application of res judicata to affirmative defenses); *Torrey Pines Bank v. Superior Court*,  
 21 216 Cal. App. 3d 813, 821–22 (1989); *cf. Four Star Elec., Inc. v. F & H Constr.*, 7 Cal.  
 22 App. 4th 1375, 1380 (1992) (“[The] default judgment conclusively establishes . . . the  
 23 truth of all material allegations contained in the complaint in the first action, and every  
 24 fact necessary to uphold the default judgment; but such judgment is not conclusive as to  
 25 any defense or issue which was not raised and is not necessary to uphold the judgment.”  
 26 (citations omitted) (internal quotation marks omitted)). On that issue, this court is bound  
 27 by the Default Judgment and has no authority to disturb that portion of the judgment  
 28 which simply relates to the erroneous application of post-petition payments. *See*

1 *Federated Dep't Stores, Inc. v. Moitie*, 452 U.S. 394, 398 (1981) ("Nor are the res  
2 judicata consequences of a final, unappealed judgment on the merits altered by the fact  
3 that the *judgment may have been wrong* or rested on a legal principle subsequently  
4 overruled in another case." (emphasis added)); *see also* 28 U.S.C. § 1738 (full faith and  
5 credit statute).

6 "Post-Petition" Interest. The second component of the Personal Judgment is a  
7 claim for "post-petition" interest in the amount of \$635.56, and the Debtor contends that  
8 this interest charge was based in part on the pre-petition debt. Based on a review of the  
9 Accounting, the court agrees. Here, the Association made two types of errors in its  
10 calculation of interest, both of which resulted in the inclusion of pre-petition, discharged  
11 interest within the Personal Judgment.

12 First, as discussed above, the Association's right to accrue and recover post-  
13 petition interest did not arise until one of the Debtor's post-petition Assessments became  
14 delinquent. *See* Cal. Civ. Code § 1366(e). Since no post-petition delinquency occurred  
15 until July 16, 2010 (the Association posted the July payment as "late" on July 26), the  
16 Association's three entries for "post-petition" interest posted on May 1, June 1, and  
17 July 1, 2010, totaling \$256.74,<sup>15</sup> can only have been based on discharged *pre-petition*  
18 debt. Thus, this amount in the Personal Judgment is void.

19 The second error pertains to the calculation of interest after there had been a post-  
20 petition delinquency. The CC&Rs provided the Association with the right to charge  
21 12% annual interest on the outstanding balance. *See* Cal. Civ. Code § 1366(e)(3). The  
22 accrued interest was calculated on a monthly basis on the first day of each month, taking  
23 1% of the entire outstanding balance from the first day of the prior month. For example,  
24 the interest charged on April 1, 2010 was \$76.46, which represented 1% of the unpaid  
25 balance of \$7,646.04 due on March 1, 2010.

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26  
27 <sup>15</sup> In its Accounting, the Association charged interest of \$80.06 on May 1, \$87.01 on  
28 June 1, and \$89.67 on July 1, 2010.

1       The court appreciates the fact that the Association had to keep an accounting of  
2 the entire debt for purposes of the Foreclosure Judgment. However, once the Debtor  
3 filed for bankruptcy protection, the Association should have started a new and separate  
4 accounting to properly track the post-petition debt that would be covered by  
5 § 523(a)(16). It is clear from the Accounting that the Association attempted to divide the  
6 “discharged” portion of the Debtor’s account from the post-petition portion of her  
7 account by simply drawing a line across the Accounting on April 30, 2010, to represent  
8 the filing of the bankruptcy. However, once the bankruptcy was filed, the Association  
9 could no longer calculate the accruing interest based on the *entire* outstanding balance.  
10 Post-discharge, the Debtor was no longer personally liable for the \$8,025.50 balance  
11 outstanding on the petition date so she should not be held liable for the interest on that  
12 balance either. The Association may recover post-petition interest only for the Debtor’s  
13 unpaid *post-petition* debt. Interest that may accrue post-petition, but that has been  
14 calculated based on an unpaid pre-petition balance, constitutes pre-petition interest.

15       Since the July 2010 Assessment was deemed delinquent, August 1, 2010 became  
16 the first date on which the Association could begin charging any post-petition interest.  
17 On that date, the Association made an interest charge to the Debtor’s account in the  
18 amount of \$90.96 representing 1% of the \$9,096.16 balance shown for July 1, 2010.  
19 However, that balance included the discharged pre-petition debt of \$8,025.50. Although  
20 delinquencies were reported in the subsequent months, arguably providing the  
21 Association with the right to accrue additional interest, the Association committed the  
22 same errors when it calculated interest for those months. Therefore, a substantial portion  
23 of the Association’s “post-petition” interest charges were actually “for a period arising  
24 before entry of the order for relief” and were subject to the discharge. § 523(a)(16).

25       It is undisputed that the Debtor endeavored to pay her post-petition Assessments  
26 in an effort to keep her account current, and did in fact do so, although the timeliness of  
27 those payments remains in dispute. However, due to the manner in which the  
28 Association calculated and charged the post-petition interest, the “balance due” on the



Debtor's post-petition account could never drop to zero unless the Debtor paid off the entire outstanding balance, including the pre-petition debt. Even if all of the post-petition Assessments had been paid and properly applied on time, her account would continue to accrue interest because the "balance due" in the Association's Accounting included the pre-petition discharged debt, a debt that she was no longer required to pay. Thus, the Association's attempt to recover interest that accrued post-petition, but that was based in part on the Debtor's pre-petition balance, was an attempt to recover a pre-petition debt and violated the discharge injunction. And to the extent the Personal Judgment included such improper interest charges, that portion of the judgment is void.

"Post-Petition" Attorney's Fees. The third component of the Personal Judgment is a charge for attorney's fees in the amount of \$1,075. As with the interest charges, the Debtor contends that some of these charges related to discharged debt. For the same reasons discussed above, the court agrees. With the discharge injunction in place, the Association was prohibited from recovering any attorney's fees relating to the collection of pre-petition debt.

Notwithstanding the discharge, the Association was still entitled to recover post-petition attorney's fees, but the CC&Rs must be read in light of the Debtor's discharge to provide that once a *post-petition* Assessment becomes delinquent, the Association acquires the right to recover reasonable attorney's fees incurred in collecting that *post-petition* Assessment. A delinquency on account of an unpaid, *pre-petition* Assessment cannot form the basis for the collection of *post-petition* attorney's fees.

As to the Association's first three post-petition entries for attorney's fees, it is clear that the Association incurred these fees for the sole purpose of collecting the *pre-petition* debt. The first entry for attorney's fees was recorded in the amount of \$380.42 on April 30, 2010, seven days after the petition date and one day before the first post-petition Assessment even became due. The next two entries for attorney's fees were recorded May 30 and June 30 in the amounts of \$179.50 and \$39.00, respectively. However, the Debtor timely made the two Assessment payments for these months.

1        There was no post-petition delinquency in the Accounting until July 2010, when  
 2        the Association posted a late Assessment payment. The Association had no reason or  
 3        right to incur any attorney's fees on account of a post-petition debt until July 16, the date  
 4        that the July 2010 Assessment was considered delinquent. The only explanation for  
 5        these three attorney's fees entries, totaling \$598.92, is that the Association incurred the  
 6        fees in attempting to collect the Debtor's pre-petition, delinquent balance. These  
 7        attorney's fees therefore constitute a pre-petition debt covered by the discharge, and to  
 8        the extent the Personal Judgment incorporated these fees, that portion of the judgment is  
 9        void.

10       In the next five post-petition months, several delinquencies were posted, including  
 11       the "late" payment for July 2010, the "misapplied" payment for August, and the "late"  
 12       payments for September, October, and November. Because of these five post-petition  
 13       defaults, the Association may have had the right to recover Additional Charges,  
 14       including attorney's fees, and its Accounting did reflect five entries for attorney's fees,  
 15       which totaled \$955.88.<sup>16</sup>

16       However, the court cannot determine whether any of these fees were incurred in  
 17       collecting pre- or post-petition delinquent Assessments. The Association, in its  
 18       Accounting, did not differentiate between or attempt to apportion (1) the attorney's fees  
 19       incurred in collecting the entire underlying debt for purposes of determining the  
 20       Foreclosure Judgment amount, and (2) the fees incurred in collecting only post-petition  
 21       debt to determine the amount for the Personal Judgment. Without more detailed exhibits  
 22       or documents from the Association showing how its counsel allocated her time, the court  
 23       is unable to determine whether these attorney's fees were incurred in collecting pre- or  
 24       post-petition debts and, as a result, whether these fees themselves constitute pre- or post-  
 25       petition debt. The court is therefore not persuaded that the charge for attorney's fees

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27       <sup>16</sup> The five remaining attorney's fees entries included \$21 recorded on July 30, \$113.88  
 28       on August 31, \$102 on September 30, \$419 on October 31, and \$300 on November 2.

1 totaling \$955.88 was proper, and the court notes that this appears to be a substantial sum  
 2 of attorney's fees for the calculation and inclusion of a minimal post-petition debt in the  
 3 Default Judgment.

4 Civil Contempt Authority under § 105(a). A party injured by a violation of the  
 5 discharge injunction has no private cause of action for damages under § 524 or § 105.  
 6 *Walls v. Wells Fargo Bank*, 276 F.3d 502, 504 (9th Cir. 2002). Rather, a violation under  
 7 § 524(a) is enforced through the bankruptcy court's contempt authority under § 105(a).  
 8 *Renwick v. Bennett (In re Bennett)*, 298 F.3d 1059, 1069 (9th Cir. 2002); *Walls*, 276 F.3d  
 9 at 507.

10 The court's contempt authority under § 105(a) is only a *civil* contempt authority  
 11 and allows only for *civil* sanctions as the appropriate remedy. *Knupfer v. Lindblade (In*  
 12 *re Dyer)*, 322 F.3d 1178, 1192 (9th Cir. 2003) (considering contempt sanctions in  
 13 context of stay violation). Civil sanctions must either be compensatory or designed to  
 14 coerce compliance. *Id.* (citation omitted). For a discharge violation, "compensatory civil  
 15 contempt allows an aggrieved debtor to obtain compensatory damages, attorneys fees,  
 16 and the offending creditor's compliance with the discharge injunction." *Walls*, 276 F.3d  
 17 at 507.

18 "[T]he [aggrieved debtor] seeking contempt sanctions has the burden of proving,  
 19 by clear and convincing evidence, that the sanctions are justified." *ZiLOG, Inc. v.*  
 20 *Corning (In re ZiLOG, Inc.)*, 450 F.3d 996, 1007 (9th Cir. 2006). And to justify  
 21 sanctions, the debtor must prove (1) that the offending creditor knew the discharge  
 22 injunction was applicable and (2) that the creditor intended the actions which violated  
 23 the injunction. *Bennett*, 298 F.3d at 1069 (citation omitted). After the debtor meets her  
 24 burden, the burden then shifts to the creditor to demonstrate why it was unable to comply  
 25 with the discharge injunction. *See id.* (citation omitted).

26 As to the first element of knowledge, a party cannot be held in contempt for  
 27 violating an injunction absent actual knowledge of that injunction, and whether a party  
 28 had such knowledge is a question of fact. *ZiLOG*, 450 F.3d at 1008 (citations omitted).

1 Here, the Association knew that the Debtor's discharge injunction applied to all further  
 2 proceedings in the State Court Action. The Association filed a copy of the discharge  
 3 order in the State Court Action in order to continue prosecuting its suit against the  
 4 Debtor. The second element requiring an intentional act has also been met because the  
 5 Association intended to apply for and obtain the Default Judgment.

6 The Association could argue that it had a good faith belief that it was seeking a  
 7 money judgment of only post-petition debts. However, the focus of the court's inquiry in  
 8 contempt proceedings under § 105(a) is not on the subjective belief or intent of the  
 9 offending creditor in complying with the injunction but on whether, in fact, the creditor's  
 10 conduct complied with the injunction at issue. *Dyer*, 322 F.3d at 1191 (citation omitted).  
 11 It does not matter that the Association honestly believed that its actions were proper and  
 12 that it only intended to pursue the Debtor for post-petition debts. All that matters is that  
 13 the Association, in fact, violated the discharge injunction, meaning that it intended the  
 14 actions that resulted in a violation of the injunction, that it knew of the injunction, and  
 15 that the injunction applied to its actions.

16 Sanctions. Since the Debtor has met her burden, she has established that  
 17 sanctions are justified in this case, and she has requested an award of attorney's fees. As  
 18 stated by the Ninth Circuit, an award of attorney's fees to the aggrieved debtor is an  
 19 appropriate sanction for violating the discharge injunction. *See Walls*, 276 F.3d at 507.  
 20 But when the court awards reasonable attorney's fees as a sanction, the court must  
 21 consider two factors: "(1) what expenses or costs resulted from the violation and (2)  
 22 what portion of those costs was reasonable, as opposed to costs that could have been  
 23 mitigated." *In re Roman*, 283 B.R. 1, 12 (9th Cir. BAP 2002) (citation omitted) (internal  
 24 quotation marks omitted).

25 Here, the Debtor would be entitled to attorney's fees in seeking the Association's  
 26 compliance with the discharge injunction, including the fees incurred in litigating this  
 27 Motion. *But cf. Sternberg v. Johnston*, 595 F.3d 937, 948–49 (9th Cir. 2009)  
 28 (disallowing as "actual damages" the attorney's fees incurred in prosecuting § 362(k)

claim). However, absent from the Motion is any evidence to show what attorney's fees have been incurred thus far, so the court is unable, at this time, to award attorney's fees or to make a determination as to the reasonableness of those fees. Further, since the Default Judgment is still in the state court's records and represents a cloud on the Debtor's "fresh start," it is clear that the Debtor's counsel still has more work to do.

Based on the events that have transpired since the entry of the Debtor's discharge, the court is inclined to award the entirety of the attorney's fees incurred. The Debtor's counsel made repeated attempts to inform the Association's counsel that the Association might be in violation of the discharge injunction. In response to these attempts, the Association's counsel continued to insist that her client's actions were in conformity with the law.

Injunctive Relief. Under § 105(a), the court has the authority to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." Although the Debtor requests that the court grant injunctive relief to force the Association to return to state court to amend the Personal Judgment, the court believes that such relief is unnecessary. By itself, the Personal Judgment as an unrecorded, civil money judgment has no legal effect against any of the Debtor's property. *See Tassone v. Tovar*, 28 Cal. App. 4th 765, 769 (1994). The Association has already withdrawn its abstracts of judgment, and the Association has not attempted to execute the judgment in other ways, such as by attachment or garnishment.

Since the court has found that only a portion of the Personal Judgment violates the discharge rather than the entire judgment, the Personal Judgment is only void to the extent that it violates the discharge. *See* § 524(a)(1) ("void[ing] any judgment at any time obtained, *to the extent that such judgment* is a determination of the personal liability of the debtor" (emphasis added)). In other words, the court finds that only that portion of the Personal Judgment that was based on interest and attorney's fees for pre-petition debt violates the discharge injunction and is void.

1 The Association may wish to enforce the valid portion of the Personal Judgment,  
 2 but, in order to do so, the Association will have to return to state court to amend the  
 3 Default Judgment. If the Association attempts to execute on the Personal Judgment in its  
 4 current, partially void form, then it will have again violated the discharge injunction. As  
 5 the Bankruptcy Appellate Panel (“BAP”) has provided, “[A] creditor has a *duty* to obey  
 6 the discharge injunction, which duty is a modern corollary of the venerable rule that ‘all  
 7 persons concerned in executing void judgments . . . are considered in law as  
 8 trespassers.’” *Gurrola*, 328 B.R. at 174 (emphasis in original) (quoting *Elliott v.*  
 9 *Peirsol’s Lessee*, 26 U.S. 328, 340 (1828)). The discharge injunction still remains in  
 10 place, and it is inappropriate to enjoin a violation of the discharge injunction.  
 11 *Barrientos*, 633 F.3d at 1190. The Association must conform its conduct within the  
 12 bounds of § 524. Otherwise, the Association could again commit a discharge violation,  
 13 be found in civil contempt, and then be subject to additional sanctions.

14 Applicability of the *Rooker-Feldman* Doctrine. Before concluding, the court will  
 15 address the Association’s argument that the bankruptcy court is precluded from  
 16 reviewing the Default Judgment under the *Rooker-Feldman* doctrine. The *Rooker-*  
 17 *Feldman* doctrine is considered a doctrine of jurisdiction. *Olson Farms, Inc. v. Barbosa*,  
 18 134 F.3d 933, 937 (9th Cir. 1998). The doctrine limits a federal court’s ability to directly  
 19 review a state court judgment on the merits. *See generally D.C. Court of Appeals v.*  
 20 *Feldman*, 460 U.S. 462 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923). It has  
 21 been applied in the bankruptcy context. *Pavelich*, 229 B.R. at 782 (citation omitted).  
 22 But its applicability has been limited to “cases brought by state-court losers complaining  
 23 of injuries caused by state-court judgments rendered before [federal] court proceedings  
 24 commenced and inviting [federal] court review and rejection of those judgments.”  
 25 *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005). Here, since  
 26 the relief requested in the Debtor’s Motion necessarily requires this court to review and  
 27 evaluate the calculations behind the Default Judgment, it would appear that his matter  
 28 may fall within the scope of the doctrine.

1 Exceptions to the *Rooker-Feldman* doctrine, however, do exist, thereby permitting  
 2 a federal court's review of a state court judgment. One such exception is when the state  
 3 court lacks subject matter jurisdiction over the proceeding before it, otherwise described  
 4 as "when the state [court] proceeding is a legal nullity and void ab initio." *Pavelich*, 229  
 5 B.R. at 783 (citing *Kalb v. Feuerstein*, 308 U.S. 433, 438–40 (1940)). It follows that a  
 6 judgment entered in a void proceeding is also void, and any such judgment from the state  
 7 court lacking jurisdiction may be collaterally attacked in federal court.<sup>17</sup> *Id.* at 782  
 8 (citing *Fernandez-Lopez v. Fernandez-Lopez (In re Fernandez-Lopez)*, 37 B.R. 664, 669  
 9 (9th Cir. BAP 1984)).

10 The *Rooker-Feldman* doctrine is not applicable when the bankruptcy court is  
 11 presented with matters relating to the enforcement of the discharge injunction. *Id.* at  
 12 783. As the BAP has stated, "Regardless of what a state court may do with respect to the  
 13 personal liability of a discharged debtor, the bankruptcy court has jurisdiction to enforce  
 14 the statutory discharge injunction." *Id.* "The bankruptcy court, of necessity, must be  
 15 able to ascertain the extent to which [a state court judgment] is void under § 524(a)(1) as  
 16 an essential element of determining whether the § 524(a)(2) discharge injunction has  
 17 been violated." *Id.* "The statutory voidness and statutory injunction created by § 524(a)  
 18 operate to strip a state court of the subject matter jurisdiction to require a debtor to pay a  
 19 discharged debt." *Id.* The Motion before this court represents precisely one of those  
 20 matters over which the bankruptcy court has jurisdiction. Thus, the *Rooker-Feldman*  
 21 doctrine does not bar this court's review of the Default Judgment.

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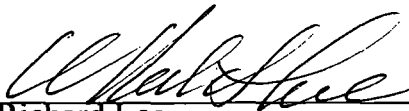
25  
 26 <sup>17</sup> A "collateral attack" is "[a]n attack on a judgment in a proceeding other than a direct  
 27 appeal; [especially], an attempt to undermine a judgment through a judicial proceeding in which  
 28 the ground of the proceeding . . . is that the judgment is ineffective." *Black's Law Dictionary*  
 298 (9th ed. 2009).

1 **Conclusion.**

2 Based on the foregoing, the court finds and concludes that the Default Judgment  
3 entered on December 8, 2010, against the Debtor in the Riverside County Superior Court  
4 is void and unenforceable to the extent it includes interest and attorney's fees for that  
5 portion of the Debtor's account that was discharged in this bankruptcy case. The  
6 Debtor's counsel may take such action as is necessary in the state court to have the  
7 Default Judgment expunged from the Debtor's record. The Association may not take  
8 any further action to enforce its claim against the Debtor unless it obtains from the state  
9 court a new judgment properly calculated in compliance with this ruling.

10 The Debtor will be awarded the full amount of her attorney's fees and costs  
11 incurred in the prosecution of this Motion and the further proceedings in the state court,  
12 if necessary. The Debtor's counsel shall, within 60 days, file and serve a statement of his  
13 fees, and a bill of costs, if appropriate, on the Association and its counsel. Thereafter,  
14 the Association will have 14 days to either pay the attorney's fees and costs or file, serve,  
15 and set for hearing a detailed objection to the fees and costs which sets forth specifically  
16 the basis for its objection to each disputed fee and cost entry.

17  
18 Dated: August 15, 2012

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21 W. Richard Lee  
22 United States Bankruptcy Judge  
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**FIORE, RACOBS & POWERS**  
**CANYON LAKE POA v. MORENO**  
 File No. 62873-495  
 30351 Bear River Drive (3716-186)

Date	Assessments	Installment Charges	Attorney's Fees	Collection Costs	Late Charges	Payments	Interest	Balance
1-Aug-08	195.00	10.00						205.00
16-Aug-08					19.00			224.00
1-Sep-08	195.00	10.00					2.05	431.05
16-Sep-08					19.00			450.05
17-Sep-08				100.00				550.05
1-Oct-08	195.00	10.00					4.31	759.36
16-Oct-08					19.00			778.36
17-Oct-08				300.00				1,078.36
1-Nov-08	195.00	10.00					7.59	1,290.95
16-Nov-08					19.00			1,309.95
1-Dec-08	195.00	10.00					12.91	1,527.86
16-Dec-08					19.00			1,546.86
31-Dec-09			400.00					1,946.86
1-Jan-09	195.00	10.00					15.28	2,167.14
16-Jan-09					19.00			2,186.14
1-Feb-09	195.00	10.00					21.67	2,412.81
16-Feb-09					19.00			2,431.81
28-Feb-09			4.42					2,436.23
1-Mar-09	195.00	10.00					24.13	2,665.36
16-Mar-09					19.00			2,684.36
1-Apr-09	195.00	10.00					26.65	2,916.02
16-Apr-09					19.00			2,935.02
1-May-09	205.00	10.00					29.16	3,179.18
16-May-09					20.00			3,199.18
1-Jun-09	205.00	10.00					31.79	3,445.97
16-Jun-09					20.00			3,465.97
30-Jun-09			145.00					3,610.97
1-Jul-09	205.00	10.00					34.46	3,860.43
16-Jul-09					20.00			3,880.43
31-Jul-09			375.25					4,255.68
1-Aug-09	205.00	10.00					38.60	4,509.28
16-Aug-09					20.00			4,529.28
30-Aug-09			217.41					4,746.69
1-Sep-09	205.00	10.00					45.09	5,006.78
16-Sep-09					20.00			5,026.78
30-Sep-09			84.00					5,110.78
1-Oct-09	205.00	10.00					50.07	5,375.85
16-Oct-09					20.00			5,395.85
30-Oct-09			155.45					5,551.30
1-Nov-09	205.00	10.00					53.76	5,820.06
16-Nov-09					20.00			5,840.06
1-Dec-09	205.00	10.00					58.20	6,113.26
16-Dec-09					20.00			6,133.26
30-Dec-09			200.50					6,333.76
1-Jan-10	205.00	10.00					61.13	6,609.89
16-Jan-10					20.00			6,629.89
30-Jan-10			332.92					6,962.81
1-Feb-10	205.00	10.00					66.10	7,243.91
16-Feb-10					20.00			7,263.91

**EXHIBIT "A"**

**FIORE, RACOBS & POWERS**  
**CANYON LAKE POA v. MORENO**  
**File No. 62873-495**  
**30351 Bear River Drive (3716-186)**

Date	Assessments	Installment Charges	Attorney's Fees	Collection Costs	Late Charges	Payments	Interest	Balance
28-Feb-10			94.69					7,358.60
1-Mar-10	205.00	10.00					72.44	7,646.04
16-Mar-10					20.00			7,666.04
30-Mar-10			48.00					7,714.04
1-Apr-10	205.00	10.00					76.46	8,005.50
16-Apr-10					20.00			8,025.50
30-Apr-10			380.42					8,405.92
1-May-10	205.00	10.00					80.06	8,700.98
14-May-10						(215.00)		8,485.98
16-May-10								8,485.98
30-May-10			179.50					8,665.48
1-Jun-10	205.00	10.00					87.01	8,967.49
7-Jun-10						(215.00)		8,752.49
16-Jun-10								8,752.49
30-Jun-10			39.00					8,791.49
1-Jul-10	205.00	10.00					89.67	9,096.16
16-Jul-10					20.00			9,116.16
26-Jul-10						(215.00)		8,901.16
30-Jul-10			21.00					8,922.16
1-Aug-10	205.00	10.00					90.96	9,228.12
16-Aug-10					20.00			9,248.12
31-Aug-10			113.88					9,362.00
1-Sep-10	205.00	10.00					92.28	9,669.28
16-Sep-10					20.00			9,689.28
28-Sep-10						(215.00)		9,474.28
30-Sep-10			102.00					9,576.28
1-Oct-10	205.00	10.00					96.69	9,887.98
15-Oct-10						(215.00)		9,672.98
16-Oct-10					20.00			9,692.98
31-Oct-10			419.00					10,111.98
1-Nov-10	205.00	10.00					98.88	10,425.86
2-Nov-10			300.00					10,725.86
Judgment (Lien)	5,650.00	280.00	3,612.44	400.00	491.00	(1,075.00)	1,367.42	10,725.86
Post-Pet Cost Bill	1,435.00	70.00	1,554.80	-	80.00	(1,075.00)	635.56	2,700.36
			1,076.68				62.90	3,839.94
Total Pers. Judgment	1,435.00	70.00	2,631.48	-	80.00	(1,075.00)	698.46	3,839.94
POST-JUDGMENT DEBT								
1-Dec-10	205.00	10.00						215.00
14-Dec-10						(215.00)		-
1-Jan-11	205.00	10.00						215.00
12-Jan-11						(215.00)		-

BK 4/23/10

**FIORE, RACOBS & POWERS**  
**CANYON LAKE POA v. MORENO**  
**File No. 62873-495**  
**30351 Bear River Drive (3716-186)**

Date	Assessments	Instalment Charges	Attorney's Fees	Collection Costs	Late Charges	Payments	Interest	Balance
1-Feb-11	205.00	10.00						215.00
16-Feb-11					20.00			235.00
22-Feb-11						(215.00)		20.00
1-Mar-11	205.00	10.00					2.15	237.15
	820.00	40.00	-	-	20.00	(645.00)	2.15	237.15