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ENTERED **MAR 10 2009**
FILED
MAR 10 2009
CLERK, U.S. BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY *gib* DEPUTY

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA**

In re:

**JERRY L. ICENHOWER dba
Seaview Properties, and DONNA L.
ICENHOWER,**

Debtors.

**KISMET ACQUISITION, LLC, a
Delaware limited liability company,**

**Successor-in-Interest to Gerald H.
Davis, Chapter 7 Trustee,**

Plaintiff,

v.

**JERRY L. ICENHOWER, an
individual; et al.**

Defendants.

Case No. 03-11155-A7

**Adv. No. 04-90392-A7
Adv. No. 06-90369-A7**

**ORDER ON EXPANDED
ORDER TO SHOW RE:
CONTEMPT**

The matter of the Court's Expanded Order to Show Cause Re: Contempt ("Expanded OSC") came on for hearing on January 6, 13 and 27, 2009, before the Honorable Louise DeCarl Adler, Bankruptcy Judge. Present were Respondents Stephen Morris, Esq. ("Mr. Morris"), Anthony Gaston, Esq. ("Mr. Gaston"), Geraldine Valdez, Esq. ("Ms. Valdez"), Enrique Hernandez Pulido, Esq. ("Mr. Hernandez"), and Patrick Martin, Esq. ("Mr. Martin");

1 along with their counsel, William Caldarelli, Esq., who appeared on behalf of Mr. Gaston,
2 and David Noon, Esq. and Lauren Butz, Esq., who appeared on behalf of Mr. Valdez,
3 Mr. Hernandez and Mr. Martin (collectively the "Procopio Attorneys").

4 The Court having carefully considered the testimony of Mr. Gaston and the Procopio
5 Attorneys who were sworn and examined, and the declarations and other documentary
6 evidence which was presented in connection with this matter, and the written and oral
7 arguments of their counsel, and the Court having entered a separate Memorandum Decision
8 concurrently herewith, and for other good cause:

9 **IT IS HEREBY ORDERED** that:

10 1. Mr. Morris is dismissed as a Respondent to the Expanded OSC prior to
11 commencement of the evidentiary hearing due to lack of evidence to support a finding that
12 he had any active role in the conduct serving the basis for the Expanded OSC;

13 2. Mr. Gaston is dismissed as a Respondent to the Expanded OSC after the conclusion
14 of his testimony due to a lack of clear and convincing evidence of willful misconduct or bad
15 faith;

16 3. For the reasons more fully set forth in its Memorandum Decision entered
17 concurrently herewith, the Court makes the following order with respect to the Procopio
18 Attorneys:

19 (A) Mr. Martin shall not be sanctioned because there is no clear and
20 convincing evidence that he personally engaged in any willful misconduct or acted in bad
21 faith.

22 (B) Mr. Hernandez is ordered to attend at least 20 hours of Continuing Legal
23 Education in "ethics" as a sanction for his clear and convincing bad faith conduct in this case.
24 Within two weeks following entry of the Memorandum Decision, Mr. Hernandez must file
25 a plan with this Court listing the dates, course names and hours of credit for each of the
26 courses he intends to take to meet this obligation. Further, upon completion of his obligation,
27 Mr. Hernandez is to provide certification of his hours spent in this endeavor to this Court by
28 declaration under penalty of perjury.

1 (C) Ms. Valdez's clear and convincing bad faith conduct merits imposing a
2 sanction of joint and several liability with her client to pay to Kismet Acquisitions, LLC
3 ("Kismet") the following contempt sanctions ordered at the hearing on November 13, 2008
4 [D.E. # 710 of Adv. Proc. 04-90392; D.E. # 420 of Adv. Proc. 06-90369]:

5 (i) Loss of use of daily rental value in the amount of \$4,158.00 U.S. per
6 day, retroactive to September 9, 2008 through and including November 13, 2008;

7 (ii) Loss of use of property at the rate of \$205.48 per day, retroactive to
8 September 9, 2008 through and including November 13, 2008; and

9 (iii) All of the attorney's fees and costs awarded to Kismet in the order
10 granting fees and expenses pursuant to the hearing on the Order to Show Cause Re:
11 Violation of ACJ through and including November 13, 2008 [D.E. # 752 of Adv.
12 Proc. 04-90392; D.E. # 502 of Adv. Proc. 06-90369].

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15 Dated: 10 Mar 2009


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LOUISE DE CARL ADLER, Judge