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Attorneys for Trudy A. Nowak, Case Trustee

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA**

In re:  
AL HARRISON CO. DISTRIBUTORS,  
Debtor.

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TRUDY A. NOWAK, CHAPTER 7  
TRUSTEE,  
Plaintiff,  
vs.  
SHELLEY SIMONE HARRISON-  
VALDIVIA and JOHN DOE HARRISON-  
VALDIVIA,  
Defendants.

(Chapter 7 Case)

No. 4:15-bk-07129-BMW

*Adv. No. 4:17-ap-00328-BMW*

**COMPLAINT**

**COUNT ONE: TURNOVER OF  
ACCOUNTS RECEIVABLE**  
[11 U.S.C. §§ 541 and 542]

**COUNT TWO: AVOIDANCE AND  
RECOVERY OF FRAUDULENT  
TRANSFERS**  
[11 U.S.C. §§ 548, 550, and 551]

**COUNT THREE: AVOIDANCE AND  
RECOVERY OF TRANSFERS**  
[11 U.S.C. §§ 544, 550, and 551]

Trudy A. Nowak, Chapter 7 Trustee and Plaintiff, by and through her counsel, Lane & Nach, P.C.,  
for her Complaint against Defendants, respectfully alleges as follows:

**JURISDICTION AND VENUE**

1. This case was commenced by voluntary petition filed by Al Harrison Co. Distributors (“**Debtor**”) under Chapter 7 of Title 11 on June 9, 2015 (“**Petition Date**”).
2. Trudy A. Nowak is the duly appointed and acting Trustee of the Chapter 7 Estate (hereinafter “**Plaintiff**”).
3. Plaintiff consents to the jurisdiction of this Court pursuant to Fed.R.Bankr.P. 7008.

1 4. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2 5. Pursuant to Fed. R. Bankr. P. 7001, a proceeding to recover money or property is governed by  
3 Part VII of the Federal Rules of Bankruptcy Procedure.

4 6. Upon information and belief, Defendant Shelley Simone Harrison-Valdivia (“**Mrs.**  
5 **Harrison**”) and John Doe Harrison-Valdivia are residents of the State of Arizona.

6 7. Upon information and belief, all acts complained of herein were done for the benefit of and on  
7 behalf of Mrs. Harrison’s marital community. When the true identity of John Doe Harrison-Valdivia is  
8 ascertained, Plaintiff will seek leave of the Court to amend his Complaint regarding same.

9 8. All acts complained of herein occurred in the State of Arizona.

10 **GENERAL ALLEGATIONS**

11 9. Upon information and belief, from on or about November 16, 2009 through May 1, 2012,  
12 Debtor made certain loans to Mrs. Harrison totaling \$55,967.76 (“**Transfers**”).

13 10. Upon information and belief, from on or about January 26, 2012 through January 3, 2013, Mrs.  
14 Harrison repaid \$7,271.50 to Debtor through weekly deductions in Mrs. Harrison’s payroll in the amount  
15 of \$145.43. A ledger setting forth the loans from Debtor and repayments from Mrs. Harrison is attached  
16 hereto as “**Exhibit A**.”

17 11. Upon information and belief, the current balance due and owing to Debtor is \$48,696.26  
18 (“**Receivable**”).

19 12. Trustee asserts that the Receivable is property of the Estate that should be turned over to  
20 Trustee pursuant to 11 U.S.C. §§ 541 and 542.

21 13. Alternatively, Trustee asserts that a portion of the transfers made to Mrs. Harrison are  
22 avoidable and recoverable pursuant to 11 U.S.C. §§ 544(b), 548 and 550.

23 14. Despite demand, Mrs. Harrison has failed to remit the funds due to the Chapter 7 Estate.

24  
25 **Count One**  
26 **Turnover of Property – 11 U.S.C. §§ 541 and 542**

27 15. Plaintiff hereby repeats, reiterates and realleges all of the foregoing allegations as if more fully  
28 set forth herein.



1           23. Debtor's voluntary or involuntary transfers of property or an interest in property to Mrs.  
2 Harrison constitute "transfers" as defined in 11 U.S.C. § 101(54).

3           24. Upon information and belief, the 548 Transfers constitute transfers of an interest of the  
4 Debtor pursuant to 11 U.S.C. § 548(a)(1).

5           25. To the extent that the funds transferred to Mrs. Harrison do not constitute a loan, upon  
6 information and belief, the Debtor received no value or less than reasonably equivalent value in exchange  
7 for the 548 Transfers. Therefore, the 548 Transfers are avoidable pursuant to 11 U.S.C. § 548(a)(1)(B)(i).

8           26. Upon information and belief, the Debtor was insolvent on the dates that the 548 Transfers  
9 were made or such obligation was incurred, or Debtor became insolvent as a result of the 548 Transfers  
10 pursuant to 11 U.S.C. § 548(a)(1)(B); therefore, the 548 Transfers are avoidable pursuant to 11 U.S.C. §  
11 548(a)(1)(B)(ii)(I).

12           27. Upon information and belief, as a result of the 548 Transfers, the Debtor was left with an  
13 unreasonably small capital; therefore, the 548 Transfers are avoidable pursuant to 11 U.S.C. §  
14 548(a)(1)(B)(ii)(II).

15           28. Upon information and belief, the 548 Transfers were to or for the benefit of an "insider"  
16 pursuant to 11 U.S.C. § 101(31) of the Debtor; therefore, the 548 Transfers are avoidable pursuant to 11  
17 U.S.C. § 548(a)(1)(B)(ii)(IV).

18           29. Plaintiff may recover the equivalent value of the 548 Transfers from Mrs. Harrison as the  
19 initial transferee and beneficiary of the 548 Transfers pursuant to 11 U.S.C. § 550.

20           30. Pursuant to 11 U.S.C. §551, upon avoidance of the 548 Transfers, the 548 Transfers are  
21 preserved for the benefit of the Estate.

22           WHEREFORE, Plaintiff prays for a judgment against Shelley Simone Harrison-Valdivia and  
23 John Doe Harrison-Valdivia, jointly and severally, as follows:

- 24           A.     Avoiding the Transfers pursuant to 11 U.S.C. § 548;
- 25           B.     Directing Defendant to turn over the equivalent value of the 548 Transfers in an  
26                 amount to be determined at trial pursuant to 11 U.S.C. § 550;
- 27           C.     Preserving the 548 Transfers for the benefit of the bankruptcy estate pursuant to  
28

1 11 U.S.C. §551;

- 2 D. For interest on said sum from the earliest date allowed by law and until paid at the  
3 highest rate allowed by law;
- 4 E. For Plaintiff's reasonable costs incurred herein;
- 5 F. For Plaintiff's attorneys' fees incurred herein, in the minimum amount of  
6 \$500.00 in the event a default judgment is obtained;
- 7 G. For such other and further relief as this Court deems just and proper.  
8

9 **County Three**

10 **Avoidance and Recovery of Transfers - 11 U.S.C. §§ 544, 550, 551**

11 31. Plaintiff hereby repeats, reiterates and realleges all of the foregoing allegations as if more  
12 fully set forth herein.

13 32. Alternatively, to the extent that the funds transferred to Mrs. Harrison do not constitute a loan,  
14 Trustee may avoid some of the Transfers as fraudulent transfers pursuant to 11 U.S.C. § 544(b).

15 33. Upon information and belief, between July 13, 2011 and May 1, 2012, the Debtor transferred  
16 not less than the aggregate amount of **\$6,216.25** to Mrs. Harrison ("**544 Transfers**").

17 34. Upon information and belief, during the four (4) years immediately preceding the Petition  
18 Date, Mrs. Harrison may have been the recipient of other transfer(s) from the Debtor. To the extent such  
19 additional transfer(s) are discovered the same are incorporated as if more fully set forth herein.

20 35. Pursuant to 11 U.S.C. § 544(b), the Trustee is authorized to "avoid any transfer of an interest  
21 of the debtor in property or any obligation incurred by the debtor that is voidable under applicable law by  
22 a creditor holding an unsecured claim . . . ."

23 36. Pursuant to Arizona's Uniform Fraudulent Transfer Act, specifically Ariz.Rev.Stat. § 44-  
24 1004(A)(2), a transfer as to present and future creditors is constructively fraudulent if, without receiving a  
25 reasonably equivalent value in exchange for the transfer or obligation, the debtor either:

- 26 (a) Was engaged or about to engage in a business or a transaction for which the  
27 remaining assets of the debtor were unreasonably small in relation to the business or  
28 transaction; or

1 (b) Intended to incur, or believed or reasonably should have believed that he would incur,  
2 debts beyond his ability to pay as they became due.

3  
4 37. At the time of the 544 Transfers, the Business was experiencing deepening insolvency due to  
5 decreasing business, and the collective value of the Business assets was insufficient to support the  
6 outstanding debt obligations of the Business.

7 38. To the extent that the Court determines that the Transfers were not intended to be loans,  
8 Plaintiff alleges that Debtor received less than equivalent value from Mrs. Harrison in exchange for the  
9 Transfers.

10 39. Therefore, the Transfers are constructively fraudulent pursuant to Ariz.Rev.Stat. § 44-  
11 1004(A)(2), and are avoidable by the Plaintiff pursuant to 11 U.S.C. § 544(b).

12 40. Upon information and belief, the Debtor was insolvent when the 544 Transfers were made  
13 pursuant to A.R.S. § 44-1002.

14 41. Pursuant to 11 U.S.C. §550, the Trustee is entitled to recover the property transferred or the  
15 value of such property.

16 42. Pursuant to 11 U.S.C. §551, upon avoidance of the 544 Transfers, the property or its value is  
17 preserved for the benefit of the bankruptcy estate.

18 WHEREFORE, Plaintiff prays for judgment against Shelley Simone Harrison-Valdivia and John  
19 Doe Harrison-Valdivia, jointly and severally, as follows:

- 20 A. That the transfers in the amount of \$6,216.25 be deemed fraudulent, and that the same be  
21 set aside and avoided, and ordering Mrs. Harrison to turnover not less than **\$6,216.25**;  
22 B. For interest on said sum from the earliest date allowed by law until paid at the highest rate  
23 allowed by law;  
24 C. For Plaintiff's reasonable costs incurred herein;  
25 D. For Plaintiff's attorneys' fees incurred herein and in the minimum amount of \$500.00 in  
26 the event a default judgment is obtained; and  
27 E. For such other and further relief this Court deems just and proper.

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1 RESPECTFULLY SUBMITTED this 26<sup>th</sup> day of May, 2017.

2 **LANE & NACH, P.C.**

3 By: /s/ Adam B. Nach  
4 Adam B. Nach  
5 Paul M. Hilbert  
6 *Attorneys for Plaintiff*

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1 *Adv. Case No.: Adv. No. 4:17-ap-00328-BMW*  
2 *Nowak vs Harrison-Valdiva, et al*

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4 **Exhibit "A"**  
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**AL HARRISON CO DISTRIBUTORS INC**

**Due from Shelley Harrison**

11/16/2009	Shelly S. Harrison-Valdivia	300.00	300.00
11/23/2009	Shelly S. Harrison-Valdivia	3,000.00	3,300.00
12/17/2009	Shelly S. Harrison-Valdivia	100.00	3,400.00
12/31/2009	Shelly S. Harrison-Valdivia, property taxes	3,191.44	6,591.44
2/11/2010	Shelly S. Harrison-Valdivia	150.00	6,741.44
3/22/2010	Shelly S. Harrison-Valdivia	1,000.00	7,741.44
6/8/2010	Shelly S. Harrison-Valdivia, painting of house	5,850.00	13,591.44
8/16/2010	Shelly S. Harrison-Valdivia	3,000.00	<b>16,591.44</b>
10/1/2010	AGE Contracting	10,000.00	26,591.44
10/1/2010	AGE Contracting	14,469.85	41,061.29
10/15/2010	SHELLEY S. HARRISON - VALDIVIA	1,200.00	42,261.29
11/20/2010	SHELLEY S. HARRISON - VALDIVIA	200.00	42,461.29
12/21/2010	Standard Funding Corp	2,156.29	44,617.58
3/23/2011	San Cayetano Veterinary Hospital	1,551.10	46,168.68
4/15/2011	SHELLEY S. HARRISON - VALDIVIA	1,060.00	47,228.68
5/2/2011	SHELLEY S. HARRISON - VALDIVIA	300.00	47,528.68
5/11/2011	Select Portfolio Servicing, Inc.	1,068.75	48,597.43
6/1/2011	SHELLEY S. HARRISON - VALDIVIA	1,154.08	49,751.51
7/13/2011	Select Portfolio Servicing, Inc.	3,186.25	52,937.76
12/31/2011	Select Portfolio Servicing, Inc.	2,060.00	54,997.76
5/1/2012	SHELLEY S. HARRISON - VALDIVIA	970.00	55,967.76
01/26/2012	Repayment thru Payroll	(145.43)	55,822.33
02/02/2012	Repayment thru Payroll	(145.43)	55,676.90
02/09/2012	Repayment thru Payroll	(145.43)	55,531.47
02/16/2012	Repayment thru Payroll	(145.43)	55,386.04
02/23/2012	Repayment thru Payroll	(145.43)	55,240.61
03/01/2012	Repayment thru Payroll	(145.43)	55,095.18
03/08/2012	Repayment thru Payroll	(145.43)	54,949.75
03/15/2012	Repayment thru Payroll	(145.43)	54,804.32
03/22/2012	Repayment thru Payroll	(145.43)	54,658.89
03/29/2012	Repayment thru Payroll	(145.43)	54,513.46
04/05/2012	Repayment thru Payroll	(145.43)	54,368.03
04/12/2012	Repayment thru Payroll	(145.43)	54,222.60
04/19/2012	Repayment thru Payroll	(145.43)	54,077.17
04/26/2012	Repayment thru Payroll	(145.43)	53,931.74
05/03/2012	Repayment thru Payroll	(145.43)	53,786.31
05/10/2012	Repayment thru Payroll	(145.43)	53,640.88
05/17/2012	Repayment thru Payroll	(145.43)	53,495.45
05/24/2012	Repayment thru Payroll	(145.43)	53,350.02
05/31/2012	Repayment thru Payroll	(145.43)	53,204.59
06/07/2012	Repayment thru Payroll	(145.43)	53,059.16
06/14/2012	Repayment thru Payroll	(145.43)	52,913.73
06/21/2012	Repayment thru Payroll	(145.43)	52,768.30
06/28/2012	Repayment thru Payroll	(145.43)	52,622.87
07/06/2012	Repayment thru Payroll	(145.43)	52,477.44
07/12/2012	Repayment thru Payroll	(145.43)	52,332.01
07/19/2012	Repayment thru Payroll	(145.43)	52,186.58
07/26/2012	Repayment thru Payroll	(145.43)	52,041.15
08/02/2012	Repayment thru Payroll	(145.43)	51,895.72
08/09/2012	Repayment thru Payroll	(145.43)	51,750.29
08/16/2012	Repayment thru Payroll	(145.43)	51,604.86
08/23/2012	Repayment thru Payroll	(145.43)	51,459.43
08/30/2012	Repayment thru Payroll	(145.43)	51,314.00

**Balance confirmed by  
Jack Roberts CPA at 08/16/10**

09/06/2012	Repayment thru Payroll	(145.43)	51,168.57
09/13/2012	Repayment thru Payroll	(145.43)	51,023.14
09/20/2012	Repayment thru Payroll	(145.43)	50,877.71
09/27/2012	Repayment thru Payroll	(145.43)	50,732.28
10/04/2012	Repayment thru Payroll	(145.43)	50,586.85
10/11/2012	Repayment thru Payroll	(145.43)	50,441.42
10/18/2012	Repayment thru Payroll	(145.43)	50,295.99
10/25/2012	Repayment thru Payroll	(145.43)	50,150.56
11/01/2012	Repayment thru Payroll	(145.43)	50,005.13
11/08/2012	Repayment thru Payroll	(145.43)	49,859.70
11/15/2012	Repayment thru Payroll	(145.43)	49,714.27
11/21/2012	Repayment thru Payroll	(145.43)	49,568.84
11/29/2012	Repayment thru Payroll	(145.43)	49,423.41
12/06/2012	Repayment thru Payroll	(145.43)	49,277.98
12/13/2012	Repayment thru Payroll	(145.43)	49,132.55
12/20/2012	Repayment thru Payroll	(145.43)	48,987.12
12/27/2012	Repayment thru Payroll	(145.43)	48,841.69
1/3/2013	Repayment thru Payroll	(145.43)	48,696.26