

**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

In re:

David A. Barnard,

Debtor(s)

Case No. 15-00762-TOM

Chapter 7

MOTION TO AVOID JUDICIAL LIEN PURSUANT TO 11 U.S.C. § 522(f)(1)(A)

NOW COMES David A. Barnard ("Debtor"), by and through his or her attorney, Gina H. McDonald, pursuant to 11 U.S.C. § 522(f), Federal Rules of Bankruptcy Procedure 4003(d) and 9014, and Local Rule 4003-2 to request that this Court enter an order avoiding the judicial lien recorded in Instrument Number 20150121000021030 Shelby County, Alabama (state) (the "Judicial Lien"), a copy of the recorded certificate of judgment is attached, held by SE Property Holdings, LLC ("Creditor").

In support of this motion, the Debtor states:

1. This Court has jurisdiction in this matter pursuant to 28 U.S.C. § 1334(a). This matter is a core proceeding as provided by 28 U.S.C. § 157(b)(2)(K).
2. The Debtor filed a voluntary petition under chapter 7 of the Bankruptcy Code on 02/27/2015. At the time of the filing, the Debtor owned and claimed an exemption in certain property; specifically, the Debtor claimed an exemption in (describe property): real property located at 614 Oak Glen Drive, Birmingham, AL 35244 (the "Property").
3. The Property is subject to the following mortgages or judicial liens, which do not secure a debt of the kind set forth in 11 U.S.C. § 523(a)(5)(domestic support obligations):
 - a. \$94,550 - Mortgage obtained by Regions Mortgage on 02/01/2002;
 - b. \$130,203 - Mortgage obtained by Compass Bank on 5/1/2005;
 - c. \$9,084,076.14 - Judicial obtained by SE Property Holdings on 12/19/2014;
 - d. \$9,084,076.14 - Judicial obtained by SE Property Holdings on 01/09/2015;
 - e. \$10,800 - Judicial obtained by SE Property Holdings on 1/12/2015.
4. The Debtor is entitled to an exemption in the Property in the amount of \$ 5,000.00 pursuant to §§ 6-10-2, 6-10-3, 6-10-4; Const. Art. X § 205 "Homestead" (insert relevant exemption statute).
5. The Debtor's Property has a fair market value of \$ 185,900.00.
6. 11 U.S.C. § 522(f)(2)(A) of the Bankruptcy Code provides that "a lien shall be considered to impair an exemption to the extent that the sum of -- (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(B) provides that "[i]n the case of a property subject to more than 1 lien, a lien that has been avoided shall not be considered in making the calculation under subparagraph (A) with respect to other liens."

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Shelby Cnty Judge of Probate, AL
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7. Following the formula set forth in 11 U.S.C. § 522(f)(2) for determining whether a lien impairs an exemption, the Debtor:

a. Adds the lien being requested to be avoided of	\$ <u>10,800.00</u> ,
all other liens which total	\$ <u>18,404,295.28</u> ,
and the maximum exemption allowable in the	
absence of liens of	\$ <u>5,000.00</u> ,
to get a sum of	\$ <u>18,420,095.28</u> .

b. From the sum above of	\$ <u>18,420,095.28</u> ,
subtracts the value of the property in the absence of	
liens of	\$ <u>185,900.00</u> ,
and finds that the extent of the impairment is	\$ <u>18,234,195.28</u> .

8. Because the extent of the impairment of the exemption,	\$ <u>18,234,195.28</u> ,
exceeds the entire value of the Creditor's lien,	\$ <u>10,800.00</u> .
the entire lien is avoidable.	

-OR-

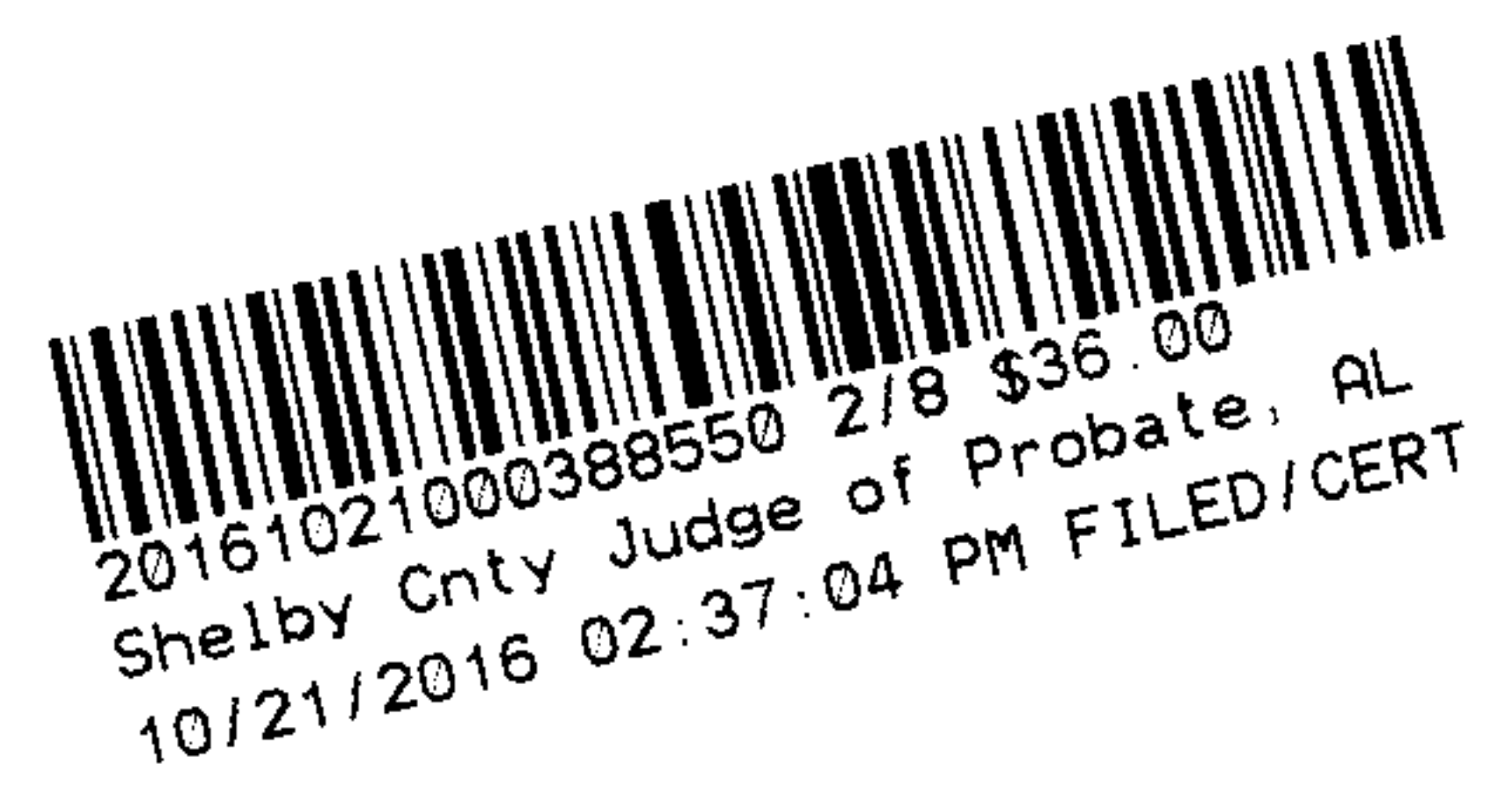
Because the extent of impairment,	\$ _____,
is less than the entire value of the lien,	\$ _____,
the Creditor's lien can be avoided only to the extent of	
the impairment of the exemption,	\$ _____,
and the rest remains as a lien in the amount of	\$ _____.

9. A declaration, consistent with Local Rule 4003-2 and the lien avoidance forms found on the Court's website at www.alnb.uscourts.gov/localforms.cfm, or other admissible evidence is attached and submitted in support of this motion.

WHEREFORE, the Debtor respectfully requests that this Court enter an order that avoids the Judicial Lien held by Creditor.

DATED: June 1, 2015

By: /s/ Gina H. McDonald
Gina H. McDonald



IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA

SE PROPERTY HOLDINGS, LLC,

Plaintiff,

v.

WATER'S EDGE, LLC, et al.,

Defendants.

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CIVIL ACTION NO. 2010-901862

CERTIFICATE OF JUDGMENT

I, Jody Wise Campbell, Clerk of Baldwin County Circuit Court, do hereby certify that on December 17, 2014, a final judgment was entered in the above style cause as to Loan 98817, in favor of **Plaintiff, SE Property Holdings, LLC**, against **Defendant, David Barnard**, individually, in the amount of Ten Thousand Eight Hundred and 00/100 Dollars (\$10,800.00).

The Plaintiff was represented by Allen E. Graham and Ashley S. Fincher, whose address is as follows:

Plaintiff's Counsel:

Allen E. Graham
Ashley S. Fincher
Phelps Dunbar, LLP
Post Office Box 2727
Mobile, Alabama 36652

Defendant David Barnard was represented by D. Robert Stankoski Jr. and Joshua P. Myrick, and the addresses of the Defendant and his counsel as shown in the court proceeding is as follows:

Address of Defendant:

David Barnard
614 Oak Glen Drive
Birmingham, Alabama 35244

Defendant's Counsel:

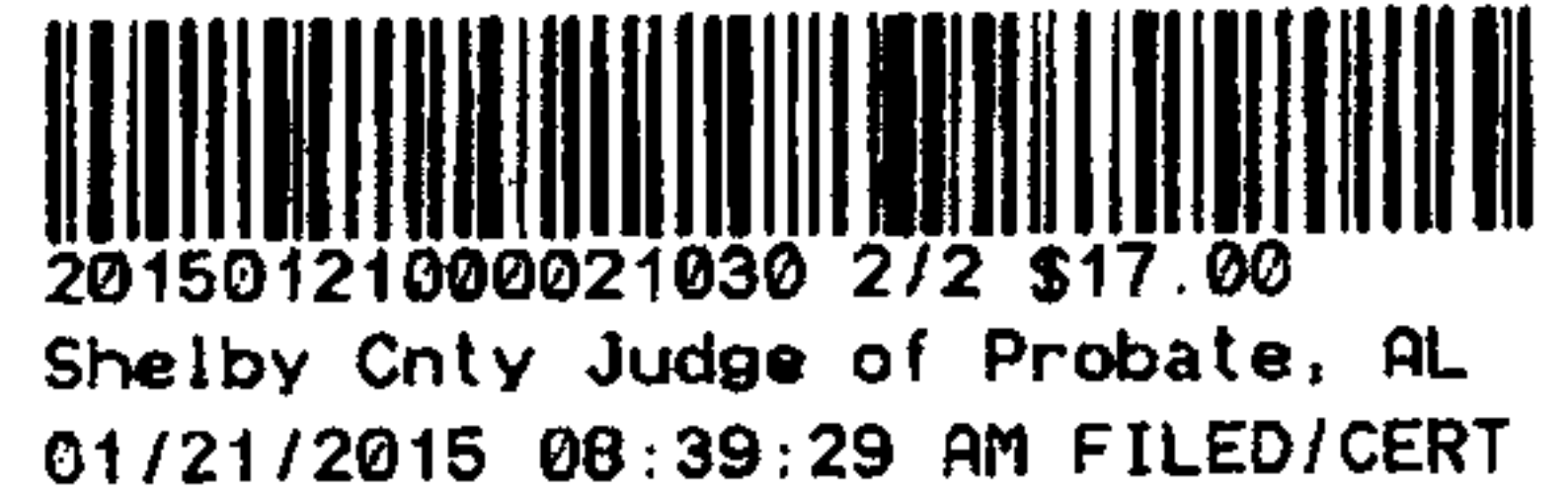
D. Robert Stankoski, Jr.

Joshua P. Myrick

Stankoski, LLP

Post Office Box 529

Fairhope, Alabama 36533



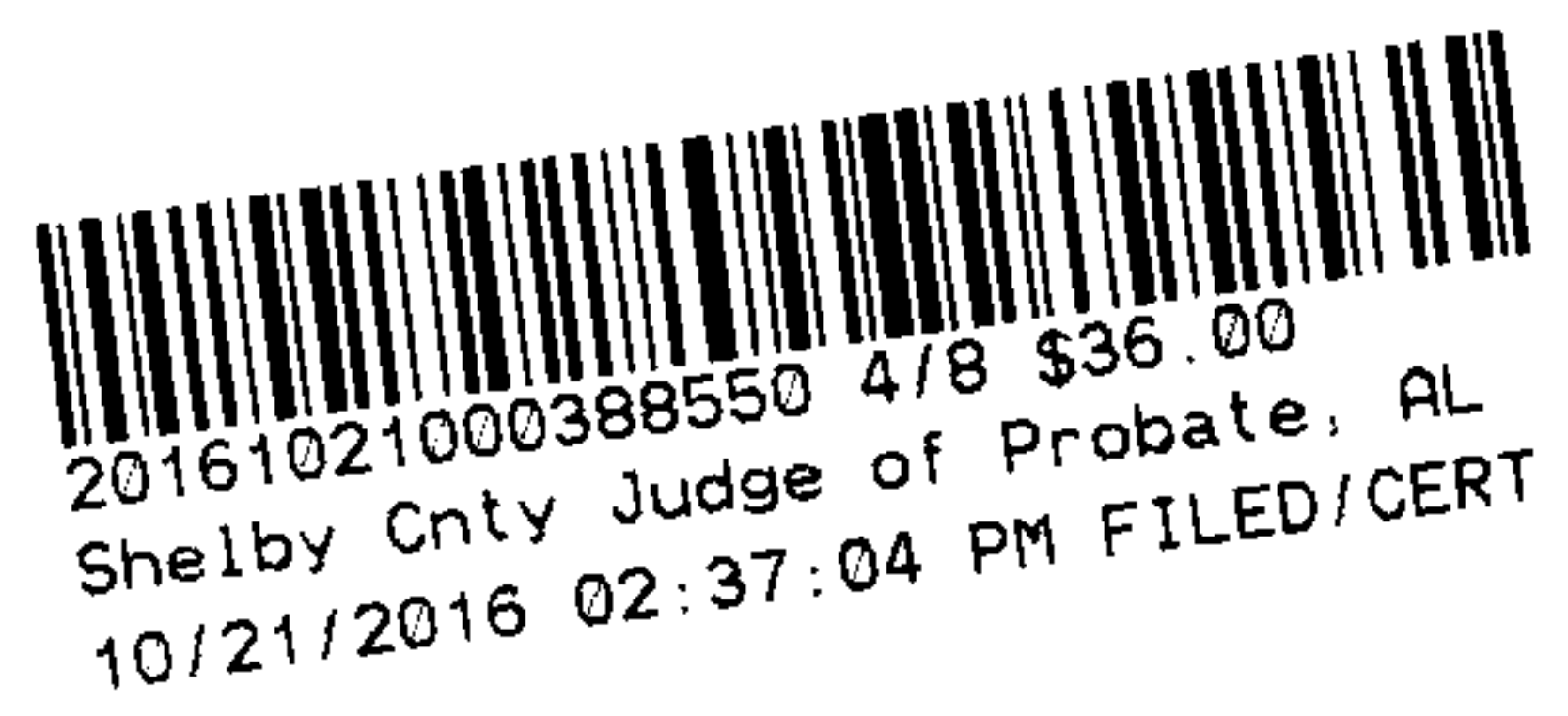
I further certify that no part of said judgment has been paid into this Court by the defendant.

WITNESS my hand and the seal of the said Court, in Bay Minette, Alabama, this the

8th day of January, 2015.

JODY WISE CAMPBELL

By: Jody Wise Campbell
Clerk



**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

In re:	}	Case No. 15-00762-TOM
	}	
David A. Barnard,	}	Chapter 7
	}	
	}	
Debtor(s)	}	

NOTICE OF MOTION TO AVOID LIEN AND OPPORTUNITY FOR HEARING

NOTICE IS HEREBY GIVEN that, pursuant to 11 U.S.C. § 522, Federal Rule of Bankruptcy Procedure 4003, and Local Rule 4003-2, David A. Barnard ("Movant") filed a Motion to Avoid Lien ("Motion") (Doc. #) of SE Property Holdings, LLC ("Creditor" or "Lienholder") in this case. A copy of the Motion accompanies this notice.

YOU ARE FURTHER NOTIFIED that any opposition or other response to said Motion must be filed with the clerk's office within 30 days of the date of this notice, and a copy must be served on the debtor, the trustee, any other affected creditors, any committee appointed in the case, and any other entity as the Court may direct. If an objection or response to said Motion is filed and served within the time specified, the Court will schedule a hearing to consider the Motion and the response thereto. If a timely response is filed, you will be notified of the time, date, and place of the hearing. At the hearing, the party opposing or otherwise responding to the Motion must appear in person or through an attorney and be prepared to advocate their position by testimony from witnesses and other evidence.

IF NO RESPONSE IS FILED WITHIN THE TIME SPECIFIED, THE COURT MAY ENTER AN ORDER GRANTING THE RELIEF SOUGHT IN THE MOTION WITHOUT A HEARING.

DATED: June 1, 2015

By: /s/ Gina H. McDonald
Gina H. McDonald

CERTIFICATE OF SERVICE

The undersigned certifies that on the 1st day of June 20 15, the above Notice of Motion to Avoid Lien and Opportunity for Hearing, Debtor's Declaration to Avoid Lien Pursuant to 11 U.S.C. § 522(f)(2), and Motion to Avoid Lien Pursuant to 11 U.S.C. § 522(f)(2) were served on the following:

Lienholder and Lienholder's address:

Phelps Dunbar, LLP
PO Box 2727
Mobile AL 36652

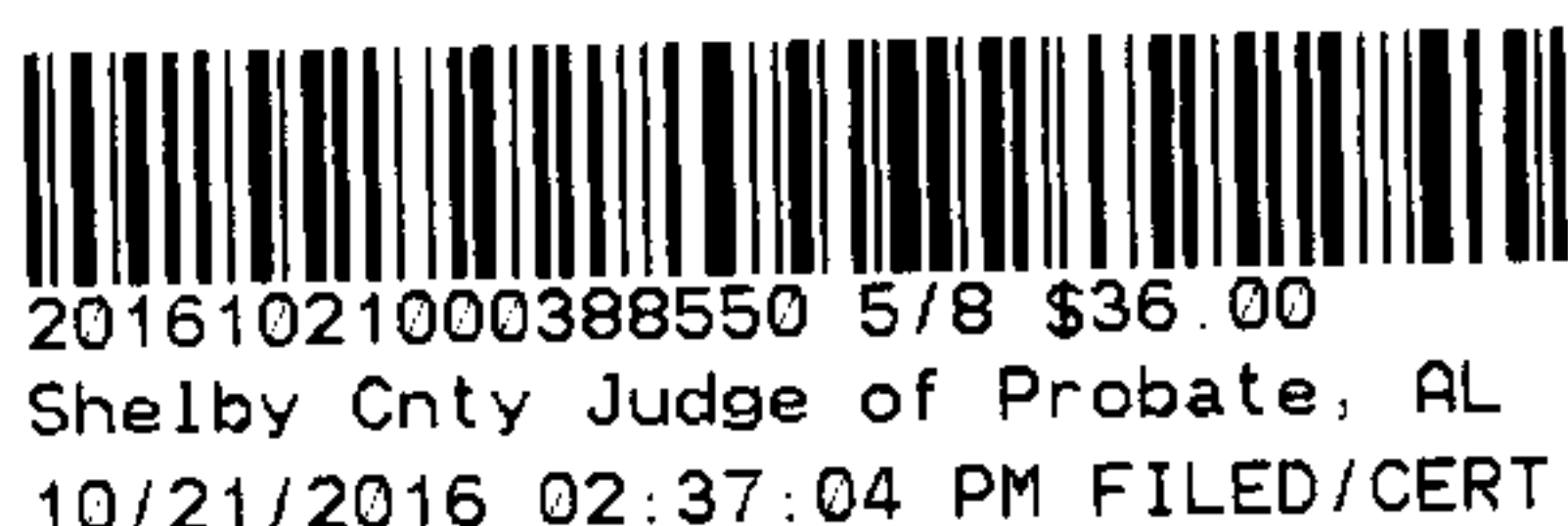
Trustee name and Trustee's address:

Mr. James G. Henderson
505 North 20th Street, Suite 1210
Birmingham, Alabama 35203

All other parties listed in response to paragraph 3 of the motion and addresses:

***See attached list of additional parties
noticed.***

/s/ Gina H. McDonald
Gina H. McDonald



Adam and Shelley Milam
2206 Main Street
Daphne, AL 36526

Barbara Merryman
228 Mint Hill Drive
Cary, NC 27519

Benton & Centeno, LLP
2019 Third Ave North
Birmingham, AL 35203

Bradley, Arant, Boulton & Cummings
200 Clinton Ave West Ste 900
Huntsville, AL 35802

Brian C Johnson
4208 Antigua Court
Orange Beach, AL 36561

Chason & Chason, PC
PO Box 100
Bay Minette, AL 36507

Clark R Hammond
PO Box 530910
Birmingham, AL 35253

David Grover Cleveland
1239 Forest Brook Circle
Birmingham, AL 35226

David Harrell
PO Box 217
Hayneville, AL 36040

David Thomas
15 Eastbrooke Circle
Madison, MS 39110

Dewey Miller
114 Lineage Lane
Flowood, MS 39232

Earl George
4925 Sussex Road
Birmingham, AL 35242

Vision Bank
3000 25th Street South
Fargo, ND 58103

Gerald Lawhorn
4255 Eagle Landing Pkwy
Orange Park, FL 32065

Gulf Shores Yacht Club
1577 State Hwy 180
Gulf Shores, AL 36542

Harrell, Whetstone & Monaghan
PO Box 4850
Gulf Shores, AL 36542

Heidelberg, Steinberger, Colmer
PO Box 1407
Pascagoula, MS 39568

Irma Cook
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New Market, AL 35761

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124 West Capital Ste 1900
Little Rock, AR 72201

James S Boyd
3793 Illinois Street
Orange Beach, AL 36561

Jeffrey Boyd
3811 Illinois Street
Orange Beach, AL 36561

Jerry Gaddy
PO Drawer 480369
Linden, AL 36748

John Cazayoux
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Fordoche, LA 70732

Kent Rector
8 Sellette Court
Little Rock, AR 72223

Marcus McDowell
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Bay Minette, AL 36507

Terry Mullins
1403 Toney Drive
Huntsville, AL 35802

Mark Hoffman
2229 First Avenue North
Birmingham, AL 35203

McDowell, Knight, Roedder
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Patricia Oh
1073 Oak Tree Road
Birmingham, AL 35244

Paul Spina
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Birmingham, AL 35243

Pipes, Hudson & Watts
PO Box 989
Mobile, AL 36601

Randall Bozeman
PO Box 337
Hayneville, AL 36040

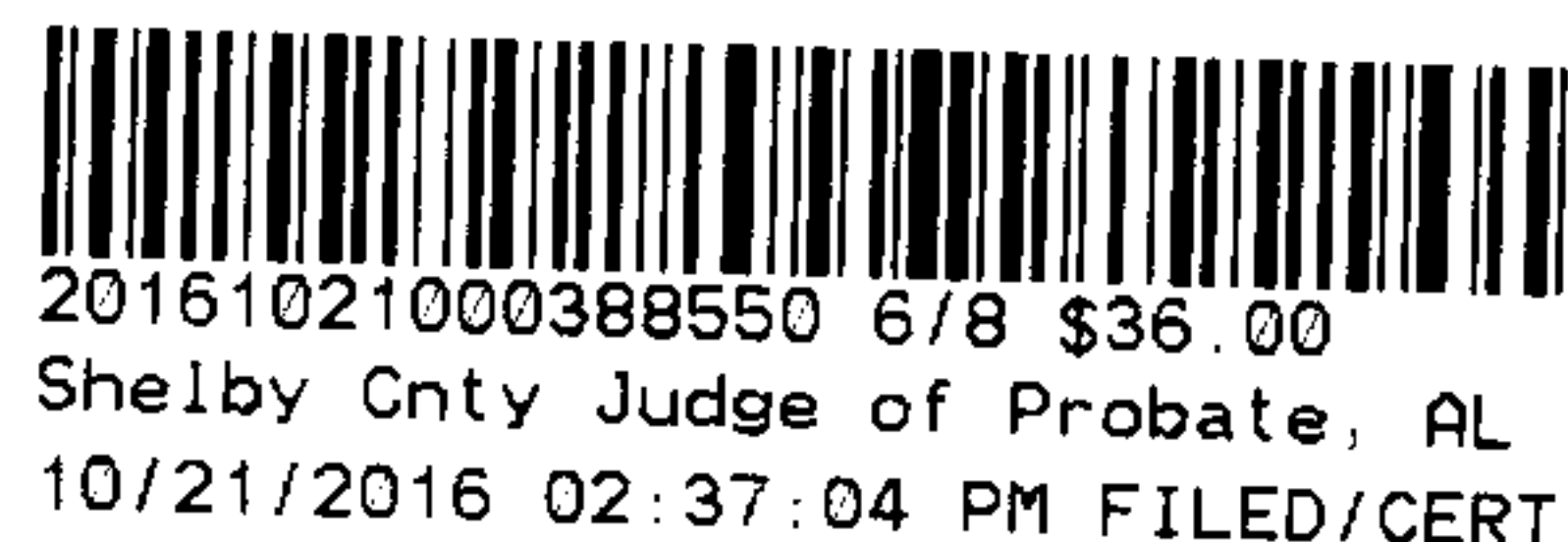
Richard Harrell
191 Commerce St No
Hayneville, AL 36040

Stankoski, LLP
PO Box 529
Fairhope, AL 36533

Stewart Harrell
60 Tuskeena Street
Hayneville, AL 36040

Stone, Granade & Crosby
7823 Hwy 59 South
Foley, AL 36535

Tanner & Guin, LLC
PO Box 3206
Tuscaloosa, AL 35403



UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

In re:

David A. Barnard,

Debtor(s)

Case No. 15-00762-TOM

Chapter 7

DEBTOR'S DECLARATION TO AVOID LIEN PURSUANT TO 11 U.S.C. § 522(f)(2)

My name is David A. Barnard. I do hereby certify that I am over the age of nineteen and that, based on my personal knowledge as the owner of real property located at 614 Oak Glen Drive, Birmingham AL (the "Property"), and I incurred a debt or obligation with SE Property Holdings, LLC ("Respondent") on or about the 1st day of January, 2010. This debt or obligation is secured by judicial lien (e.g., judicial lien, security interest or other applicable interest) against the Property which was perfected or recorded on 01/21/2015 (date) in Instrument Number 20150121000021030 Shelby County, Alabama (state). [If applicable, insert: Although the Property was pledged to Respondent as collateral, I did not use the proceeds of the loan to acquire the Property.]

As of the petition date, the Property has a fair market value of \$ 185,900.00 based on tax assessment (e.g., appraisal, tax assessment, opinion of dealer, recent purchase price). I have claimed an exemption in the Property in the amount of \$ 5,000.00 under Alabama Code § §§ 6-10-2. The value of the Respondent's lien is \$ 10,800.00. The other liens against the Property are Regions Mortgage for \$ 94,550.00, and Compass Bank for \$ 130,793.00, \$9,084,076.14 of SE Property Holdings, \$9,084,076.14 of SE Property Holdings, \$10,800.00 of SE Property Holdings which total \$18,404,295.28.

Debtor(s)

June 1, 2015

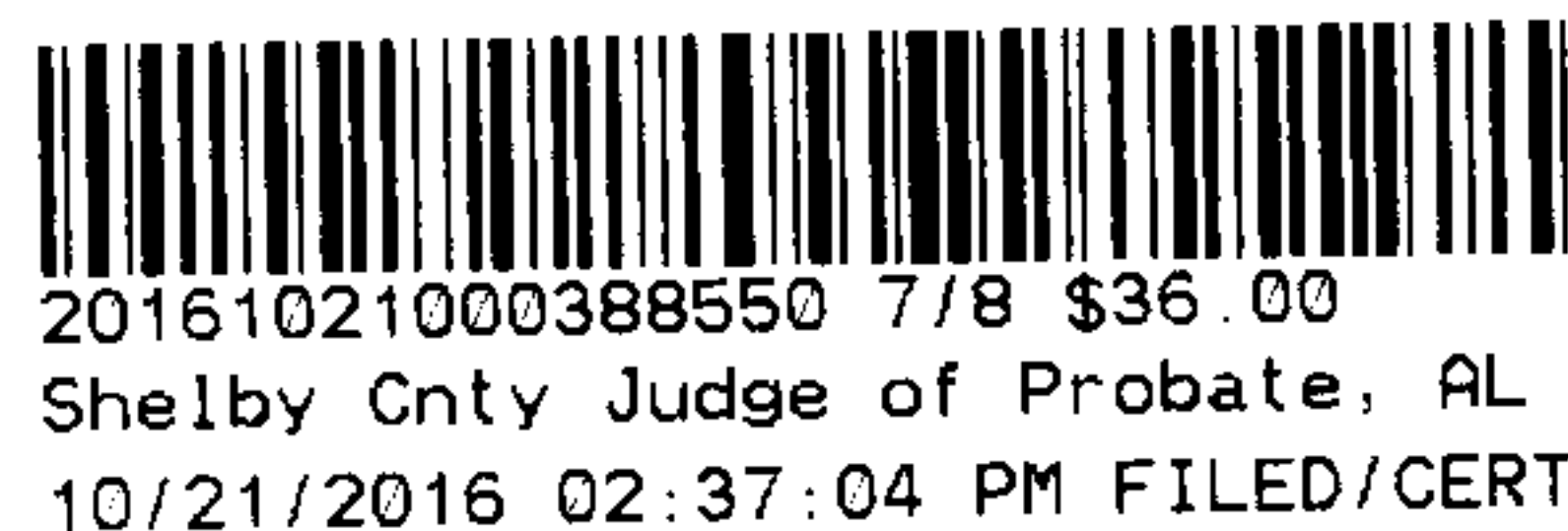
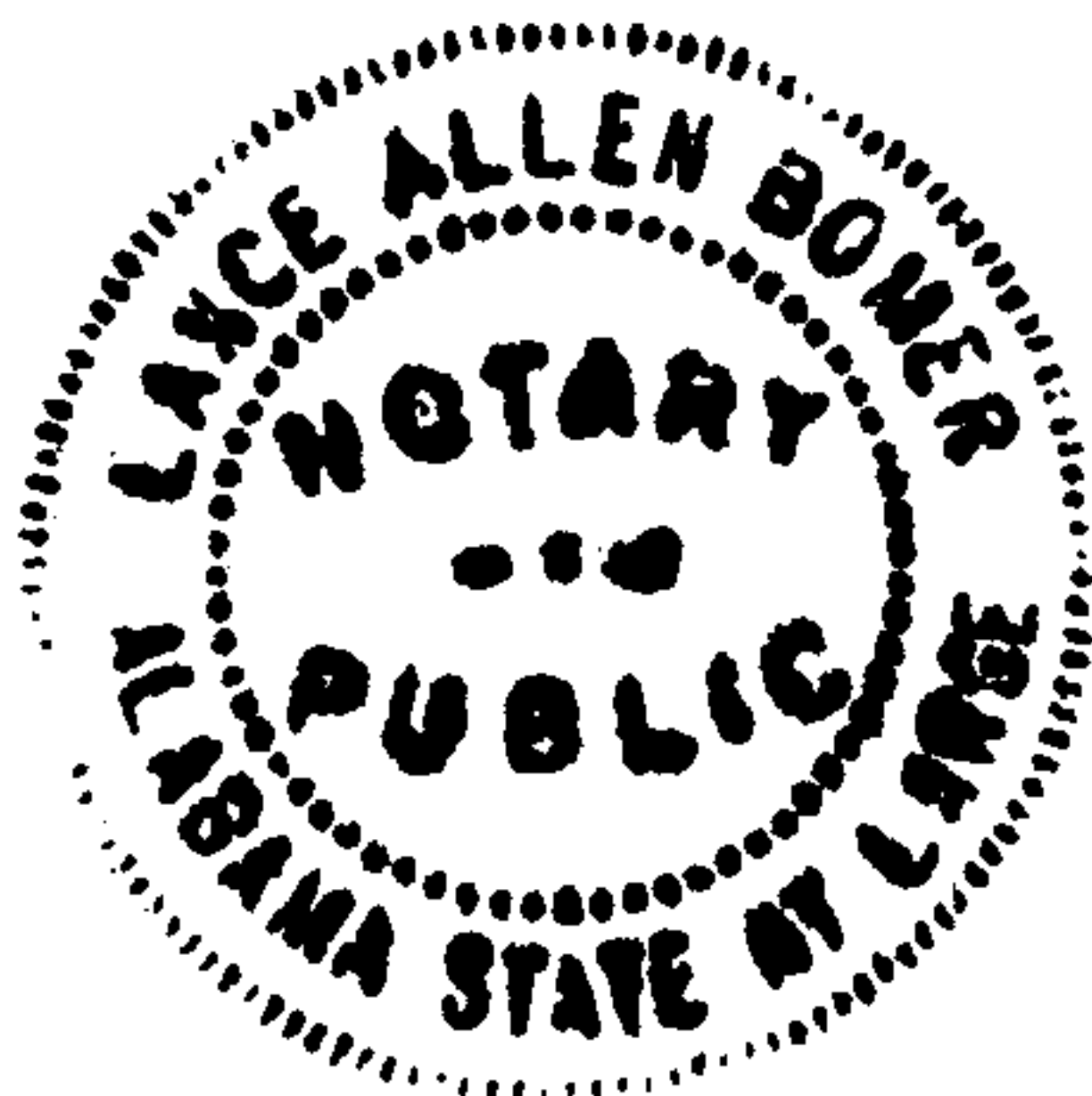
STATE OF ALABAMA)
COUNTY OF Shelby)

Before me, the undersigned Notary Public, in and for said county and state, did personally appear David A. Barnard (Debtor), who is known to me, and after, by me being first duly sworn, and under oath, did depose and declare the foregoing.

SWORN TO and SUBSCRIBED before me this the 1st day of June, 20 15.

Notary Public

My commission expires on: 11/15/2017



**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ALABAMA - SOUTHERN DIVISION**

In the Matter of:

David A Barnard
SSN: XXX-XX-6060
DEBTOR(S).

}
}
}
}
}

Case No: 15-00762-TOM7**ORDER**

This matter came before the Court on Thursday, September 17, 2015 09:30 AM, for a hearing on the following:

- 1) RE: Doc #18; Debtor's Motion to Avoid Judicial Lien of SE Property Holdings, LLC I
- 2) RE: Doc #19; Debtor's Motion to Avoid Judicial Lien of SE Property Holdings, LLC II
- 3) RE: Doc #20; Debtor's Motion to Avoid Judicial Lien of SE Property Holdings, LLC III
- 4) RE: Doc #21; Debtor's Motion to Avoid Judicial Lien of SE Property Holdings, LLC IV
- 5) RE: Doc #22; Debtor's Motion to Avoid Judicial Lien of SE Property Holdings, LLC V
- 6) RE: Doc #23; Debtor's Motion to Avoid Judicial Lien of SE Property Holdings, LLC VI
- 7) RE: Doc #29; Omnibus Objection to Debtor's Motion to Avoid Judicial Liens filed by Richard Gaal, Attorney for SE Property Holdings LLC

Proper notice of the hearing was given and appearances were made by the following:

David A Barnard
Heather Bellew, attorney for David A Barnard (Debtor)
Richard Gaal, attorney for SE Property Holdings - by phone

It is therefore ORDERED, ADJUDGED and DECREED that:

1 - 6) Based on arguments of counsel and the pleadings, the Motions are Granted and all liens wherever they are recorded are avoided to the extent it impairs the Debtor's exemptions.

7) Based on arguments of counsel and the pleadings, the Omnibus Objection is Overruled.

Further, SE Property Holdings, LLC has 30 days from entry of this Order to request any different relief as noted on the record.

Dated: 09/22/2015

/s/ TAMARA O. MITCHELL

TAMARA O. MITCHELL

United States Bankruptcy Judge

