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*Attorneys for D. Ray Strong, Chapter 11 Trustee for Castle Arch Real Estate Investment Company, LLC*

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

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In re:

CASTLE ARCH REAL ESTATE INVESTMENT COMPANY, LLC; CAOP MANAGERS, LLC; CASTLE ARCH OPPORTUNITY PARTNERS I, LLC; CASTLE ARCH OPPORTUNITY PARTNERS II, LLC; CASTLE ARCH KINGMAN, LLC; CASTLE ARCH SECURED DEVELOPMENT FUND, LLC; and CASTLE ARCH SMYRNA, LLC,

Debtors.

Bankruptcy Case No. 11-35082  
Bankruptcy Case No. 11-35237  
Bankruptcy Case No. 11-35240  
Bankruptcy Case No. 11-35242  
Bankruptcy Case No. 11-35243  
Bankruptcy Case No. 11-35246  
Bankruptcy Case No. 11-35241  
(Jointly Administered)

(Chapter 11)

The Honorable Joel T. Marker

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**OBJECTION TO PROOF OF CLAIM NO. 26 (DAVID DEMEREST) FILED AGAINST  
CASTLE ARCH REAL ESTATE INVESTMENT COMPANY, LLC**

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Pursuant to 11 U.S.C. §§ 501 and 502, Federal Rules of Bankruptcy Procedure 3001 and 3007, and Local Rule 3007-1, D. Ray Strong, the duly appointed Chapter 11 Trustee (the “Trustee”) for Castle Arch Real Estate Investment Company, LLC (“CAREIC”), by and through

counsel, hereby objects to Proof of Claim No. 26, filed by David Demerest (“Demerest”) in the CAREIC bankruptcy case, Case No. 11-35082. In support hereof, the Trustee states as follows:

**JURISDICTION AND VENUE**

1. The Court has jurisdiction over this Objection pursuant to 28 U.S.C. § 1334.
2. This is a core proceeding pursuant to 28 U.S.C. § 157(b).
3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

**BACKGROUND**

4. On October 17, 2011, CAREIC filed a petition for relief under Chapter 11 of the United States Bankruptcy Code, and CAREIC operated its business as a debtor-in-possession.

5. On May 3, 2012, the Trustee was appointed as the Chapter 11 trustee of CAREIC [Docket No. 215].

6. On February 16, 2012, Demerest filed a Proof of Claim designated as Claim No. 26 on CAREIC’s claim docket (the “POC”), asserting an unsecured claim against CAREIC in the amount of \$5,000.00 for “written agreement of salary owed.” No written agreement or other evidence is attached to the POC supporting Demerest’s claim against the Debtors, and Demerest does not provide any explanation regarding the unavailability of such supporting documents.

**OBJECTION**

As stated in more detail below, the Court should disallow the POC in its entirety for failure to attach sufficient documentation evidencing the validity and amount of Demerest’s claim against the Debtors.

## I. APPLICABLE LAW

Section 501(a) of the Bankruptcy Code states that a “creditor . . . may file a proof of claim.”<sup>1</sup> Federal Rule of Bankruptcy Procedure 3001 states that a proof of claim “shall conform substantially to the appropriate Official Form”<sup>2</sup> and that a “proof of claim shall be executed by the creditor or the creditor’s authorized agent. . . .”<sup>3</sup> A proof of claim executed and filed in accordance with the Federal Rules constitutes “prima facie evidence of the validity and amount of the claim.”<sup>4</sup>

The Bankruptcy Code provides that a “claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest . . . objects.”<sup>5</sup> The Bankruptcy Code further states that except for certain exceptions not relevant here, once an objection to a claim is made, “the court, after notice and a hearing, shall determine the amount of the claim . . . as of the date of the filing of the petition, and shall allow such claim in such amount, except to the extent that—(1) such claim is unenforceable against the debtor and property of the debtor. . . .”<sup>6</sup> Generally, procedures related to objections to claims are governed by Federal Rule of Bankruptcy Procedure 3007.

The Court of Appeals for the Tenth Circuit has stated that creditors have the burden of proof regarding the allowance of their claims, and to meet this burden, the claim must be

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<sup>1</sup> 11 U.S.C. § 501(a).

<sup>2</sup> Fed. R. Bankr. P. 3001(a).

<sup>3</sup> Fed. R. Bankr. P. 3001(b).

<sup>4</sup> Fed. R. Bankr. P. 3001(f).

<sup>5</sup> 11 U.S.C. § 502(a).

<sup>6</sup> 11 U.S.C. § 502(b).

sufficiently substantiated.<sup>7</sup> Accordingly, claimants are required, to the extent applicable, to “attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements.”<sup>8</sup> If such supporting documentation is not available, the claimant must explain the reason for the unavailability of the documents.<sup>9</sup> Only when a proof of claim is executed and filed in accordance with the above requirements is the claim considered *prima facie* evidence of a valid claim against the debtor under § 502(a) and Bankruptcy Rule 3001(f).<sup>10</sup>

**II. THE POC SHOULD BE DISALLOWED IN ITS ENTIRETY FOR FAILURE TO ATTACH SUFFICIENT DOCUMENTATION TO SUBSTANTIATE THE VALIDITY AND AMOUNT OF THE CLAIM**

As stated above, Demerest provides no agreement or other supporting documentation evidencing the validity or amount of his wage claim against the Debtors, and Demerest provides no explanation concerning the unavailability of such supporting documents. Accordingly, Demerest’s claim does not constitute *prima facie* evidence of a valid claim against the Debtor pursuant to Bankruptcy Rule 3001(f).<sup>11</sup>

Furthermore, the books and records of the Debtors do not indicate that Demerest has a claim against the Debtors. Accordingly, unless Demerest provides further information about his alleged claim, it should be disallowed in its entirety.

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<sup>7</sup> See *Caplan v. B-Line, LLC (In re Kirkland)*, 572 F.3d 838, 840 (10th Cir. 2009).

<sup>8</sup> *Id.* (quoting Official Form 10).

<sup>9</sup> *Id.* (citing Official Form 10).

<sup>10</sup> See *id.*

<sup>11</sup> See *Kirkland*, 572 F.3d at 840–41 (holding that claimant “failed to present *prima facie* evidence of the validity and amount of the claim” because claimant “failed to produce a single document to support its proof of claim [and] . . . also failed to explain its failure to provide supporting documentation”).

**CONCLUSION**

For the reasons set forth above, the Trustee requests the Court to disallow the POC in its entirety. The Trustee reserves all rights, claims and defenses, including the right to (i) modify, amend, or supplement this Objection as more evidence becomes available or as Demerest amends or supplements the POC; (ii) file an adversary proceeding against Demerest relating to the facts set forth in this Objection or otherwise; (iii) offset any amounts allowed relating to the POC with claims that the Debtors may have against Demerest; and (iv) seek subordination of any amounts allowed relating to the POC.

DATED this 10th day of September, 2012.

**DORSEY & WHITNEY LLP**

/s/ Nathan S. Seim  
Peggy Hunt  
Scott A. Cummings  
Nathan S. Seim  
*Attorneys for D. Ray Strong, Chapter 11  
Trustee of Castle Arch Real Estate  
Investment Company, LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that on September 10, 2012, the foregoing OBJECTION TO PROOF OF CLAIM NO. 26 (DAVID DEMEREST) FILED AGAINST CASTLE ARCH REAL ESTATE INVESTMENT COMPANY, LLC (the "Objection") was filed with the Court and served via the Court's CM/ECF system upon all parties that receive electronic notice in the above-captioned bankruptcy case.

I further certify that on September 10, 2012, the Objection was served via U.S. First Class Mail, postage prepaid, to the following:

David Demerest  
10367 E. Rosemary Ln.  
Scottsdale AZ 85255

/s/ Nathan S. Seim