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

In re:

CASTLE ARCH REAL ESTATE
INVESTMENT COMPANY, LLC; CAOP
MANAGERS, LLC; CASTLE ARCH
KINGMAN, LLC; CASTLE ARCH
SECURED DEVELOPMENT FUND, LLC;
CASTLE ARCH SMYRNA, LLC; CASTLE
ARCH STAR VALLEY, LLC; *and*

CASTLE ARCH OPPORTUNITY
PARTNERS I, LLC; CASTLE ARCH
OPPORTUNITY PARTNERS II, LLC,

Debtors.

Case Nos. 11-35082, 11-35237,
11-35243, 11-35242 and 11-35246
(Substantively Consolidated)

Case Nos. 11-35241 and 11-35240
(Jointly Administered)

(Chapter 11)

The Honorable Joel T. Marker

- Affects All Debtors
- Affects Only the Substantively Consolidated Debtors
- Affects only Castle Arch Opportunity Partners I, LLC
- Affects only Castle Arch Opportunity Partners II, LLC

**STATEMENT REGARDING MOTIONS TO SET ASIDE ORDER APPROVING
SETTLEMENT AGREEMENT**

As required under the *Stipulated Scheduling Order* entered on March 24, 2016 [Docket No. 1234], D. Ray Strong, (the “Trustee”), as the duly appointed Liquidating Trustee of the Consolidated Legacy Debtors Liquidating Trust (the “Legacy Trust”), the Liquidating Trustee of the Castle Arch Opportunity Partners I, LLC Liquidating Trust (the “CAOP I Trust”) (collectively, the “Trusts”) and the post-confirmation estate representative for the consolidated bankruptcy estates of Castle Arch Real Estate Investment Company, LLC, CAOP Manager, LLC, Castle Arch Kingman, LLC, Castle Arch Secured Development Fund, LLC, Castle Arch Smyrna, LLC and Castle Arch Star Valley, LLC, and as the post-confirmation estate representative of the bankruptcy estate of Castle Arch Opportunity Partner I, LLC herein, by and through the Trusts’ respective counsel, submits this *Statement Regarding Motions to Set Aside Order Approving Settlement Agreement*.

This Statement is filed in response to the *Motion to Set Aside Order Approving Settlement Agreement* (the “Saggiani Motion”) [Docket No. 1165] filed by John Saggiani (“Saggiani”) and the *Motion to Set Aside Order Approving Settlement Agreement* [Docket No. 1167] (the “PYG Motion”) filed by Prince Yeates and Geldzahler (“PYG”) (these Motions are collectively referred to herein as the “Set Aside Motions” and Saggiani and PYG are collectively referred to as the “Movants”). Paragraph 2 of the *Stipulated Scheduling Order* states that “[t]he Trustee shall set forth any and all additional defenses to the Set Aside Motions on or before March 29, 2016.” This Statement is filed in response.

At a hearing held on December 17, 2015, after the filing of the Trusts’ *Objection to Motions to Set Aside Order Approving Settlement Agreement* [Docket No. 1185] (the

“Objection”), the Court noted its observations about this matter, and held that certain discovery requests made by PYG in this matter were too broad, and the Movants agreed to and the Court ordered, more limited discovery. The scope of discovery is set forth in a *Status Report* filed by the Trusts on March 21, 2016 [Docket No. 1231] (the “Status Report”). See *Status Report*, Exh. 1 (Transcript). Also attached to the Status Report were the following Declarations, each of which was submitted to the Movants in compliance with the directed discovery: *Declaration of Peggy Hunt* (Status Report, Exh. 2); *Declaration of D. Ray Strong, Liquidating Trustee* (Status Report, Exh. 3); *Declaration of Gregory J. Adams* (Status Report, Exh. 4); and *Declaration of Weston L. Harris* (Status Report, Exh. 5) (the “Conflict Referee Declaration”)(collectively, these Declarations are referred to as the “Declarations”).

On March 22, 2016, the Court held a status conference in this matter. Counsel for the Trusts and each of the Movants were present. At the status conference, PYG admitted that the Trusts had complied with the discovery required by the Court. PYG stated, however, that given the Court’s observations at the December 14th hearing, it was entitled to know if the Trusts intended to raise additional defenses to the Set Aside Motions. If so, PYG maintained that it, and presumably Saggiani, may be entitled to additional discovery.

The Trusts submit that the Trusts’ defenses in opposition to the Set Aside Motions are set forth in the their Objection to the Set Aside Motions, including all exhibits thereto, and in the Declarations that were produced in response to the limited discovery agreed to by the Movants and ordered by the Court as follows--

1. Any claims bar date or statute of limitations periods were complied with, were waived, or were otherwise rendered irrelevant as to the intercompany claims or avoidance actions because--
 - a. Long before the expiration of any claims bar date or any statute of limitations, the Consolidated Legacy Debtors and CAOP I each publicly made, asserted and acknowledged in Court filings, intercompany claims against each other, including but not limited to claims for cash transfers, avoidance claims, breach of contract claims, and breach of duty claims;
 - b. To contain litigation expense, the Consolidated Legacy Debtors and CAOP I each agreed to, proposed, gave notice of intent, and implemented an alternative dispute mechanism known as the “Conflict Resolution Procedures” (set forth in the *Liquidating Trust Agreements* for the Legacy Trust and the CAOP I Trust) prior to the expiration of any such periods.
 - c. On June 7, 2013, the alternative dispute mechanism set forth in the Conflict Resolution Procedures was approved by the Court after notice to all parties in interest including the Movants.
 - d. The Conflict Resolution Procedures were implemented and commenced no later than the date of the Court’s *Order* confirming the Trustee’s *Plan of Liquidation*, the Trusts, the Trustee and the Conflict Referee. At that time all parties were bound by the approved Conflict Resolution Procedures. Thus, the Trusts, through their respective counsel, agreed to resolve all prepetition intercompany claims against each other using the Conflict Resolution

Procedures long before the expiration of any bar date or statute of limitations, and they presented the settlement to the Conflicts Referee.

- e. The Conflict Referee ultimately determined that he would recommend the Settlement Agreement that is the subject of the Order at issue in the Set Aside Motions. The Conflict Resolution Procedures were adhered to in every way and, therefore, the Order approving the Settlement Agreement that is the subject of the Set Aside Motions may not be set aside.

Objection, pp. 3-43; Declarations.

2. The Conflicts Referee has now stated, after review of all of the pleadings in this matter, that had he been presented with a bar date or statute of limitations argument, his decision to recommend the Settlement Agreement in question would not have changed. Objection, p. 43; Conflict Referee Declaration.
3. The Saggiari Motion is untimely and does not establish excusable neglect required under Federal Rule of Civil Procedure 60(b)(1), made applicable in this case by Federal Rule of Bankruptcy Procedure 9024. Objection, pp. 27, 37-43; Declarations.
4. The extraordinary relief requested by both Movants under Federal Rule of Civil Procedure 60(b)(6), made applicable in this case by Federal Rule of Bankruptcy Procedure 9024, is not appropriate. Objection, pp. 27--37; Declarations.
5. PYG lacks standing to bring the PYG Motion based on its own admissions that its actions are against its interest as a beneficiary of the Legacy Trust. *See* PYG Motion.

All evidence that the Trusts intend to use to defend against the Set Aside Motions have been disclosed, the Trusts maintain that there is no basis for further discovery, other than an examination of the Trustee that PYG stated at the status conference that it intended to take. The

CERTIFICATE OF SERVICE – BY NOTICE OF ELECTRONIC FILING (CM/ECF)

I hereby certify that on March 29, 2016, I electronically filed the foregoing **STATEMENT REGARDING MOTIONS TO SET ASIDE ORDER APPROVING SETTLEMENT AGREEMENT** with the United States Bankruptcy Court for the District of Utah by using the CM/ECF system. I further certify that the parties of record in this case, as identified below, are registered CM/ECF users and will be served through the CM/ECF system.

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