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Attorneys for Plaintiff D. Ray Strong, Liquidating Trustee

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

D. RAY STRONG, as Liquidating Trustee of the Consolidated Legacy Debtors Liquidating Trust, the Castle Arch Opportunity Partners I, LLC Liquidating Trust and the Castle Arch Opportunity Partners II, LLC Liquidating Trust,

Plaintiff,

v.

KIRBY D. COCHRAN; JEFF AUSTIN; AUSTIN CAPITAL SOLUTIONS; WILLIAM H. DAVIDSON; DOUGLAS W. CHILD; CHILD, VAN WAGONER & ASSOCIATES, PLLC, fka CHILD, SULLIVAN & ASSOCIATES, fka CHILD, VAN WAGONER & ASSOCIATES, LLC, fka CHILD VAN WAGONER & BRADSHAW, PLLC; ROBERT CLAWSON; HYBRID ADVISOR CROUP; and JOHN DOES 1-50,

Defendants.

**PLAINTIFF D. RAY STRONG'S
RESPONSE TO THE RENEWED
MOTION OF DEFENDANTS JEFF
AUSTIN AND AUSTIN CAPITAL
SOLUTIONS TO COMPEL
ARBITRATION PURSUANT TO 9
U.S.C. § 4 & UTAH CODE § 78B-11-108;
AND/OR STAY THE CASE PURSUANT
TO 9 USC § 3 AND UTAH CODE § 78B-
11-108; AND SUPPORTING
MEMORANDUM**

Case No. 2:14-cv-00788-TC

Judge Tena Campbell

Plaintiff D. Ray Strong, as the Liquidating Trustee of the Consolidated Legacy Debtors Liquidating Trust, the Castle Arch Opportunity Partners I, LLC Liquidating Trust, and the Castle

Arch Opportunity Partners II, LLC Liquidating Trust (the “Trustee”), by and through his counsel of record, provides the following response to the *Renewed Motion of Defendants Jeff Austin and Austin Capital Solutions to Compel Arbitration Pursuant to 9 U.S.C. § 4 and Utah Code § 78B-11-108; and/or Stay the Case Pursuant to 9 U.S.C. § 3 & Utah Code § 78B-11-108; and Supporting Memorandum [Docket No. 45]* (the “Renewed Motion”).

BACKGROUND

On January 16, 2015, Defendants Jeff Austin and Austin Capital Solutions (collectively “Austin”), filed the *Motion of Defendants Jeff Austin and Austin Capital Solutions to Compel Arbitration Pursuant to 9 U.S.C. § 4 & Utah Code § 78B-11-108; Stay the Case Pursuant to 9 U.S.C. § 3 and Utah Code § 78B-11-108; and/or Dismiss the Claims Pursuant to Federal Rule of Civil Procedure 12(b)(6); and Supporting Memorandum [Docket No. 12]* (the “Motion to Compel Arbitration”). The Court held a hearing on the Motion to Compel Arbitration on April 3, 2015 and issued an *Order [Docket No. 44]* on May 5, 2015. In the Order, the Court granted the Motion to Compel Arbitration as to the Trustee’s First and Eighth Causes of Action and took the Motion to Compel Arbitration under advisement as to the remaining claims. The Court instructed the parties to conduct discovery as to the issue of whether investors had agreed to arbitration and invited Austin to file a renewed motion to compel on or before July 17, 2015. Austin filed the Renewed Motion on July 17, 2015.

RESPONSE

In the Renewed Motion, Austin limits his argument to compelling arbitration to only the claims related to the CAREIC Series E Offering (and not the Castle Arch Smyrna or Castle Arch Secured Development Fund Offerings).

The Trustee has determined that, in the interest of reducing costs and maximizing the value of the Trusts, he does not oppose arbitration of any of the claims in the Complaint. To this end, he has been attempting to work with Austin and the other Defendants to seek a resolution that would allow the parties to litigate the issues in the Complaint in a single forum. The parties have not yet reached an agreement on this issue but discussions are ongoing. The Trustee is hopeful that the parties will be able to reach an agreement to arbitrate all claims.

Accordingly, the Trustee does not oppose the Renewed Motion, and hopes to reach an agreement with all of the Defendants that will moot this issue.

DATED this 14th day of August, 2015.

DORSEY & WHITNEY LLP

/s/ Milo Steven Marsden
Milo Steven Marsden
Peggy Hunt
Sarah Goldberg
Attorneys for D. Ray Strong, Liquidating Trustee

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of August, 2015, I caused a true and correct copy of the foregoing **PLAINTIFF D. RAY STRONG'S RESPONSE TO THE RENEWED MOTION OF DEFENDANTS JEFF AUSTIN AND AUSTIN CAPITAL SOLUTIONS TO COMPEL ARBITRATION PURSUANT TO 9 U.S.C. § 4 & UTAH CODE § 78B-11-108; AND/OR STAY THE CASE PURSUANT TO 9 USC § 3 AND UTAH CODE § 78B-11-108; AND SUPPORTING MEMORANDUM** to be filed with the United States District Court for the District of Utah by using the CM/ECF system, which will automatically send email notifications of such filing to all counsel who have entered an appearance in this action.

/s/ Sarah Goldberg