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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'S MOTION TO TRANSFER
RELATED CASE PURSUANT TO
DUCivR 83-2(g), AND TO COMPEL
ARBITRATION**

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

Judge Tena Campbell

Pursuant to DUCivR 83-2(g), Plaintiff D. Ray Strong, as the Liquidating Trustee (the "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 (collectively, the "Trusts"), by and through his counsel of record, moves this Court for

entry of an Order, in the form attached hereto as Exhibit A, transferring *D. Ray Strong v. Robert D. Geringer, Robert D. Geringer, P.C., and Fine Arts Entertainment, Inc.*, Case No. 2:15-cv-837-BSJ (the “Geringer Action”) to the Honorable Judge Campbell, and then compelling the case to arbitration. The grounds for this motion are that the Geringer Action (a) arises from the same set of events that gave rise to the above-captioned action (the “Insider Action”), (b) involves the same parties and property as the Insider Action, (c) calls for determinations of the same or substantially related questions of law and fact, (d) would entail substantial duplication of labor and unnecessary court costs if heard by different judges, and (e) would present a risk of inconsistent verdicts or outcomes if assigned to a different judge.

BACKGROUND

The Geringer and Insider Actions

1. On October 30, 2014, the Trustee commenced the Insider Action against several former officers and directors of Castle Arch Real Estate Investment Company, LLC (“CAREIC”). The Insider Action asserts claims against the named defendants arising from their management of, and affiliations with CAREIC and affiliated entities, including the following: breach of fiduciary duty, common law fraud and negligent misrepresentation, violations of federal and state securities laws, state RICO violations, civil conspiracy, and fraudulent transfer.

2. Robert Geringer (“Geringer”) is also a former officer and director of CAREIC. The Trustee did not name Geringer as a defendant in the Insider Action, however, because at the time the Trustee filed the Insider Action, the Trustee was in active settlement discussions with Geringer.

3. On November 24, 2015, after several failed mediation sessions between Geringer and the Trustee, the Trustee filed the Geringer Action, making essentially the same factual allegations as made in the Insider Action, and asserting essentially the same claims for relief against Geringer as he asserted against the other defendants in the Insider Action.

4. On August 25, 2015, Judge Campbell entered an Order in the Insider Action, compelling arbitration of the Insider Action and all its claims.¹

5. The arbitration remains in its infant stages. The Trustee has filed an arbitration demand, but only some of the defendants have responded. The arbitrators have not been chosen and, in fact, the parties have yet to decide on the number of arbitrators to hear the matter.

ARGUMENT

DUCivR 83-2(g) states: “Whenever two or more related cases are pending before different judges of this court, any party to the later-filed case may file a motion and proposed order to transfer the case to the judge with the lower-numbered case.” In determining whether a case should be transferred, the Court may consider a number of factors, including:

- (1) Whether the cases arise from the same or a closely related transaction or event;
- (2) Whether the cases involve substantially the same parties or property;
- (3) Whether the cases involve the same patent, trademark, or copyright;
- (4) Whether the cases call for a determination of the same or substantially related questions of law and fact;
- (5) Whether the cases would entail substantial duplication of labor or unnecessary court costs or delay if heard by different judges;
- (6) Whether there is risk of inconsistent verdicts or outcomes; and

¹ Insider Action Docket No. 55.

(7) Whether the motion has been brought for an improper purpose.

Here, the relevant factors weigh in favor of transferring the Geringer Action to Judge Campbell. As indicated above, the Geringer Action and the Insider Action involve the same parties, the same facts, the same claims, and the same evidence. Having the Geringer Action transferred to Judge Campbell will substantially reduce duplication of labor and unnecessary waste of resources, both for the Court and the parties. It will also reduce the risk of inconsistent outcomes.

For these same reasons, once the Geringer Action is transferred to Judge Campbell, the Court should enter an order compelling it to join the Insider Action in arbitration. Given that the Geringer Action and the Insider Action share the same allegations, events, facts, and documents, it makes sense, both from a judicial economy and judicial consistency standpoint, to have the same judge supervise the Geringer Action. Given that this Court has already determined that the claims in the Insider Action should be sent to arbitration, it makes sense to send the Geringer Action to arbitration as well. Therefore, the Trustee believes, in good faith, that transferring the Geringer Action to Judge Campbell and then compelling it to arbitration is in the best interests of the Court and the parties.

CONCLUSION

For the reasons set forth above, the Trustee respectfully requests that Case No. 2:15-cv-837-BSJ be transferred to the Honorable Judge Campbell, and that Judge Campbell order it to join the Insider Action in arbitration.

DATED this 7th day of January, 2016.

DORSEY & WHITNEY LLP

/s/ Milo Steven Marsden

Milo Steven Marsden

Peggy Hunt

Nathan S. Seim

Attorneys for D. Ray Strong, Liquidating Trustee

CERTIFICATE OF SERVICE

I certify that on January 7, 2016, the foregoing **PLAINTIFF'S MOTION TO TRANSFER RELATED CASE PURSUANT TO DUCivR 83-2(g), AND TO COMPEL ARBITRATION** (the "Motion") was filed with the Court and served via the Court's CM/ECF system upon the below parties that receive electronic notice in the above-captioned case:

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I further certify that on January 7, 2016, the Motion was emailed to the following:

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/s/ Nathan S. Seim

EXHIBIT A

Milo Steven Marsden (Utah State Bar No. 4879)

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Plaintiff,

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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.

**ORDER GRANTING PLAINTIFF'S
MOTION TO TRANSFER RELATED
CASE PURSUANT TO DUCivR 83-2(g),
AND TO COMPEL ARBITRATION**

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

Judge Tena Campbell

The matter before the Court is *Plaintiff's Motion to Transfer Related Case Pursuant to DUCivR. 83-2(g), and to Compel Arbitration* (the "Motion"). The Court has considered the

Motion, the complaints in the two cases at issue, and has conferred with the Honorable Judge Jenkins. Based thereon, the Court **ORDERS** that:

- (1) The Motion is **GRANTED**;
- (2) Case No. 2:15-cv-837-BSJ (the "Geringer Action") is transferred to the Honorable Judge Campbell; and
- (3) The Geringer Action is compelled to join the above-captioned action in arbitration.

Dated this ___ day of _____, 2016.

BY THE COURT:

HONORABLE JUDGE TENA CAMPBELL
District Court Judge