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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.

**REPLY TO DEFENDANTS' JEFF
AUSTIN AND AUSTIN CAPITAL
SOLUTIONS' RESPONSE TO
PLAINTIFF'S STATUS REPORT AND
OBJECTION TO REQUEST FOR
STATUS CONFERENCE**

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

The Honorable Tena Campbell

The Trustee respectfully submits this reply to Austin’s *Response to Plaintiff’s Status Report and Objection to Request for Status Conference* (the “Response”). In the *Status Report and Request for Status Conference* (the “Status Report”), the Trustee provided a simple, straightforward, and accurate description of the status of the Insider Arbitration and asked the Court to schedule a status conference to discuss how to proceed with the Insider Case and the related Geringer Case and Breach-of-Contract Case in light of the AAA’s termination of the Insider Arbitration. Now Mr. Austin—the party whose motion to compel arbitration put the parties on this now useless two-year merry-go-round—has filed a “Response” to the Status Report that is so misleading and beyond the pale, it must be responded to.

REPLY

A. Mr. Austin Was Required to Pay His Share of the Initial Arbitrator Compensation and Expenses Deposit.

The first false claim that Mr. Austin makes is that he had *no obligation* to “pay any arbitration deposits or fees.” Response, at 3. In support of this claim, Mr. Austin makes several other misrepresentations.

First, Mr. Austin says that the “arbitration provision at issue”—section 15.16 of the CAREIC Operating Agreement—“does not state” that Austin had to pay such fees. *Id.* This is dead wrong. Section 15.16 explicitly states that disputes are to “be submitted to arbitration under the rules of the American Arbitration Association.” The effect of this language is to incorporate the AAA’s *Commercial Arbitration Rules and Mediation Procedures* (the “AAA Rules”)¹ in the parties’ agreement. See [AAA Rule R-1\(a\)](#) (“The parties shall be deemed to have made these rules a part of their arbitration agreement whenever they have provided for

¹ Available at https://www.adr.org/aaa/ShowProperty?nodeId=/UCM/ADRSTG_004103.

arbitration by the American Arbitration Association . . . under its Commercial Arbitration Rules or for arbitration by the AAA of a domestic commercial dispute without specifying particular rules”).

[Rules 54](#) and [56](#) of the AAA Rules specifically govern allocation of arbitration expenses and the AAA’s authority to require advance deposits from the parties. [Rule 54](#) clearly states that the “expenses of the arbitration . . . shall be borne *equally by the parties*, unless they agree otherwise or unless the arbitrator in the award assesses such expenses or any part thereof against any specified party or parties.” (Emphasis added). And, [Rule 56](#) clearly states that “[t]he AAA may require the parties to deposit in advance of any hearings such sums of money as it deems necessary to cover the expense of the arbitration, including the arbitrator’s fee.”

Thus, there can be no real question that Mr. Austin, who asked the Court to compel arbitration, agreed to and was required to pay his share of arbitration expenses.

B. The Arbitration Was Terminated Because Mr. Austin Failed to Pay His Share of Arbitration Expenses.

Mr. Austin’s next attempts to mislead the Court, by suggesting that the arbitration was terminated for failure to pay “filing fees” under [Rule 53](#) of the AAA Rules (which are the Trustee’s responsibility), rather than arbitration expenses (which are allocated equally to the parties). Response, at 3. This is plainly false.

First, it is indisputable that pursuant to [Rule 53](#), the Trustee paid the initial filing fee of \$9,100. See Oct. 29, 2015 Transmittal Letter from V. Thompson and Arbitration Demand, attached hereto as [Exhibit A](#) (noting that a check for \$9,100 is enclosed). (That money is now lost because of Mr. Austin’s conduct.) But more to the point, Mr. Austin cannot assert in good faith that the unpaid fees were “filing fees” governed by [Rule 53](#). The AAA correspondence

makes absolutely clear that the arbitration was terminated for failure to pay “initial arbitrator compensation and expenses deposits,” governed by [Rules 54](#) and [56](#). In its initial correspondence regarding these fees, the AAA said it was assessing each of the parties \$3,787.50 “*for an initial arbitrator compensation and expenses deposit*,” under [Rules 54](#) and [56](#). See Aug. 9, 2016 Letter, attached hereto as [Exhibit B](#) (emphasis added). The AAA sent its first notice requesting an initial deposit for “arbitrator compensation and expenses” on August 9, 2016. The notice stated, in relevant part:

Pursuant to the Rules regarding deposits, the parties have been billed *for an initial arbitrator compensation and expenses deposit*. Payment in the amount of \$3,787.50 per party is due by **August 23, 2016**.

The parties’ invoices are available for viewing printing and making payment . . . at www.adr.org

Id. (emphasis added).

On August 25, 2016, the AAA sent another letter to the parties, noting that Mr. Austin and his company (among others), had not yet paid their share of the initial arbitrator compensation and expenses deposit, and enclosing duplicate invoices for each of the parties who had not paid. See Aug. 25, 2016 Letter and Austin Invoice, attached hereto as [Exhibit C](#). The August 25, 2016 letter noted that “[w]hile a status of the court case is due in early September, the deadline for payment of the above-noted deposits has not been tolled *as the Panel has incurred time on this matter*.” (Emphasis added.)

On September 12, 2016, the AAA sent another, nearly identical letter, again noting Austin’s failure to pay “initial deposits for arbitrator compensation and expenses in the amount of \$3,787.50.” See Sept. 12, 2016 Letter, attached hereto as [Exhibit D](#). And, on December 19,

2016, the AAA terminated the arbitration for failure to pay these fees. *See* Dec. 19, 2016 Letter, attached hereto as Exhibit E. To make the matter absolutely clear, the AAA confirmed that,

[a] financial reconciliation has been conducted, and if a party had any unused compensation deposits, we have issued a refund check that should arrive in the mail shortly. *Both Party 2, Jeff Austin and Austin Capital Solutions* and Party 4, Child Van Wagoner & Associates PLLC *have balances outstanding that are due upon receipt of this letter.*

Id. (Emphasis added).

This record admits to no doubt. The fees assessed were for “initial arbitrator compensation and expenses.” Under [Rule 54](#), these fees were to be “borne equally by the parties, unless they agree otherwise or unless the arbitrator in the award assesses such expenses or any part thereof against any specified party or parties.” Mr. Austin failed to pay the share assessed to him, and the arbitration was terminated. [Rule 53](#) of the AAA Rules has no relevance here and Mr. Austin either knows it or has failed to make any reasonable inquiry into the matter before filing his Response.

C. Neither the Trustee, Nor Any Other Party, Was Required to Pay Mr. Austin’s Share of Arbitrator Compensation and Expenses.

Mr. Austin’s final gambit is to suggest that the AAA (or its Rules), required the Trustee to pay “all fees necessary to proceed with the arbitration,” (including those assessed to Mr. Austin) and that the Trustee’s failure to do so—not Mr. Austin’s—resulted in termination. Austin asserts this disingenuous claim numerous times. *See* Response, at 1-2, 3 (“Plaintiff’s failure to pay the arbitration fees, despite advisement from AAA that Plaintiff should and could do so, resulted in the Arbitration being dismissed.”)

As part of its series of correspondence attempting to get Mr. Austin to pay, the AAA sent yet another letter to the parties on October 18, 2016. A copy of the Oct. 18, 2016 Letter is attached hereto as Exhibit F. The letter noted that Mr. Austin and his company still had not paid “requested deposits in the amount of \$3,787.50 for the initial, anticipated arbitrator compensation and expenses,” and warned that “[i]f the outstanding balance is not brought current by **October 25, 2016**, the American Arbitration Association . . . will inform the arbitrators which party(s) has not paid the amounts owed.” *Id.* The then letter explained that the arbitrator’s options upon continued nonpayment of the initial deposit for anticipated arbitrator compensation and expenses included “suspend[ing] or terminat[ing] the case.” *Id.*

Against this backdrop, the letter further stated that:

Alternatively, and in accordance with the Commercial Arbitration Rules, *any party may* make a deposit on behalf of the non-paying parties to avoid any possible interruption of the case. *While we would prefer not to make this request of a party that has met its deposit obligations under the rules, the burden of funding the process falls on the parties* and neither the AAA nor the arbitrators can cover these costs. The paying party(s) then may make the repayment of this deposit part of its claim to the arbitrators.

If any party is willing to cover the unpaid deposits, please confirm this commitment in writing by **October 21, 2016** and forward payment to reach the AAA by **October 25, 2016**.

Id. (Emphasis added).

The AAA sent another letter to the parties on November 21, 2016, notifying them that Austin had still not paid his portion of the Arbitrator compensation and expenses deposit and that the arbitrators were therefore suspending the Insider Arbitration. *See* Nov. 21, 2016 Letter, attached hereto as Exhibit G. On December 9, 2016, the AAA sent one last email to the parties noting that the matter had been suspended on November 11, 2016 “due to nonpayment of the

arbitrators' compensation deposits." Response, Exhibit B. This email also noted, referring to its prior November 21, 2016 Letter, "[a]s a reminder, any party may make a payment on behalf of another party in order to prevent this matter from being terminated." *Id.* at 2.

This is the sum total of the "evidence" Mr. Austin has for his representation to this Court that the arbitration was terminated because *the Trustee* failed to pay fees. It is not a sufficient basis to make the representation in good faith. The AAA did not instruct the Trustee (or any other party) that it was required to or should pay Austin's share of the Arbitrator compensation and expenses deposit—that much is clear from the plain language of the correspondence.

Mr. Austin fares no better relying on the AAA Rules. [Rule 57](#) mirrors the language in the correspondence from the AAA and provides that "[i]f the arbitrator compensation or administrative charges have not been paid in full, the AAA may so inform the parties in order that one of them may advance the required payment." Although [Rule 57](#) *permits* a party to make a payment on behalf of a non-paying party, it does not *require* it to do so. See [Rule 57](#) (a paying party "*may advance* the required payment" (emphasis added)); [Pre-Paid Legal Services, Inc. v. Cahill, 786 F.3d 1287, 1299 n.6 \(10th Cir. 2015\)](#) (quoting the language from [Rule 57](#) and stating that the "AAA rules did not require [the plaintiff] to advance [the defendant's] payment.").

Thus, directly contrary to Austin's representation to this Court, the AAA never instructed that the Trustee "should" pay Austin's share of the Arbitrator Fees or that the Trustee was required to do so. Nor does [Rule 57's](#) statement that a party *may* advance a non-paying party's payment create any obligation for the Trustee to do so.

D. Mr. Austin Failed to Bring to the Court's Attention Directly Controlling Tenth Circuit Authority Holding that Termination of an Arbitration Proceeding Is Grounds for Lifting the Stay Under 9 U.S.C. § 3.

In addition to mischaracterizing the AAA's communications and rules regarding the Arbitrator compensation and expenses deposit, Austin failed to bring to the Court's attention directly controlling Tenth Circuit authority regarding the Court's ability to lift a stay after the termination of an arbitration proceeding due to one party's refusal to pay the required fees.

Under [9 U.S.C. § 3](#), the district court must stay a proceeding, pending arbitration. But the district court need only do so "until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration." [9 U.S.C. § 3](#). In [Pre-Paid Legal Services, Inc. v. Cahill, 786 F.3d 1287 \(10th Cir. 2015\)](#), the Tenth Circuit considered facts nearly identical to the ones in this case and held that where the AAA terminated an arbitration due to one party's failure to pay its share of the arbitration fees, the court should lift the stay and recommence the litigation in the district court.

In *Pre-Paid*, the defendant initially moved to stay the federal court proceedings pending arbitration, which the plaintiff did not oppose. [Id. at 1288](#). Once the defendant initiated arbitration with the AAA, the plaintiff paid its share of AAA fees but the defendant did not. [Id.](#) Just as here, the AAA notified the plaintiff that it could pay the defendant's share of the fees. [See id. at 1288-89 & n.6](#). And, as here, the plaintiff chose not to do so. [Id. at 1289](#). After repeated warnings, the AAA terminated the arbitration due to nonpayment. [Id.](#)

The plaintiff then moved to lift the stay in the district court. [Id.](#) The district court granted the motion and the Tenth Circuit affirmed. [Id.](#) The Tenth Circuit held that under [9 U.S.C. § 3](#), because the arbitration had gone as far as it could due to the defendant's refusal to

pay the arbitrator's fees, the arbitration had been "had in accordance with the terms of the agreement" and the defendant's failure to pay his share of the arbitrator's fees constituted default. The Tenth Circuit also confirmed that the question of whether the defendant was in default for failure to pay his share of the arbitrator's fees was not reserved for a formal finding by the arbitrator, [id. at 1295-97](#),² and that even if it was, the termination of the arbitration was in itself a finding that the defendant was in default, [id. at 1298](#).

Accordingly, under precedent binding on this Court, this Court may lift the stay and recommence the Insider Case.

E. Mr. Austin's Conduct Has Resulted In Two Years of Delay in This Matter and Further Delay Should Not Be Tolerated.

If the Court senses that Mr. Austin's Response has struck a nerve, there is a reason for that. Two years ago, *Mr. Austin* asked this Court to compel arbitration. The parties fully briefed the matter, and the Court made an initial decision [[Docket No. 44](#)], which required the Trustee to submit to discovery to determine if all claims should be sent to arbitration. After discovery, Mr. Austin renewed his motion, but sought to compel only a few additional claims. The Trustee proposed that it made more sense to send all claims to arbitration—as Mr. Austin had originally requested. The Trustee sought, but was not able to secure Mr. Austin's agreement to the relief he had requested in the first place.

² Instead of citing this directly controlling authority, Austin again attempts to mislead the Court by citing [Howsam v. Dean Witter Reynolds, 537 U.S. 79 \(2002\)](#), and [Lifescan, Inc. v. Premier Diabetic Services, Inc., 363 F.3d 1010 \(9th Cir. 2004\)](#). In *Pre-Paid*, the Tenth Circuit discussed and distinguished both of these cases. The Tenth Circuit distinguished *Howsam* on the basis that it dealt with the arbitration panel's authority to interpret one of its own rules rather than a federal statute. [Pre-Paid, 786 F.3d at 1295](#). And it distinguished *Lifescan* on the basis that it dealt with the authority to allocate fees rather than determine default. [Id. at 1296-98](#). As such, neither *Howsam* nor *Lifescan* is applicable here.

The Trustee filed his demand in arbitration. He then sought Mr. Austin's agreement to a single arbitrator, rather than a panel of three, in order to avoid cost to the parties. Again, the Trustee was not able to secure Mr. Austin's definitive agreement to this common sense proposal, or even to get Mr. Austin to seriously engage on the subject. As a result, a panel of three arbitrators was appointed. Now, after over two years, the arbitration has been dismissed because Mr. Austin did not pay his share of the fees and expenses of the arbitrators he demanded.

In this context, it is more than a little galling to have Mr. Austin accuse the Trustee "scheming by failing to pay fees to achieve a dismissal," Response at 3, and to assert that the Trustee's "true intent" was "to avoid the required, contracted, Court-ordered Arbitration of this matter," Response at 5. Mr. Austin could have easily thwarted that "scheme" at any time by simply paying the share of fees that the AAA apportioned to him.

It is true that the Trustee never wanted to arbitrate this matter. But once the Court issued the order compelling arbitration, the Trustee fully complied. He filed an arbitration demand, paid the hefty \$9,100 initial filing fee, and paid his share of the Arbitrator compensation and expenses deposit as required by the AAA Rules.

In truth, Mr. Austin is the only party here who is scheming. And he has been very successful. We are two years down the line with nothing to show for it. Mr. Austin now asks the Court for further delay, saying that his counsel is not available to attend a status conference on January 17th. Mr. Austin is represented by the law firm of Parsons Behle & Latimer, a firm of over 100 lawyers. Two of them are listed on Mr. Austin's response. Surely, at long last Mr. Austin can be troubled to show up on the Court's schedule.

DATED this 12th day of January, 2017.

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 12th day of January, 2017, I caused a true and correct copy of the foregoing **REPLY TO DEFENDANTS' JEFF AUSTIN AND AUSTIN CAPITAL SOLUTIONS' RESPONSE TO PLAINTIFF'S STATUS REPORT AND OBJECTION TO REQUEST FOR STATUS CONFERENCE** 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

Exhibit A



VANESSA THOMPSON
(801) 933-8934
thompson.vanessa@dorsey.com

October 29, 2015

VIA FEDERAL EXPRESS

American Arbitration Association
Case Filing Services
1101 Laurel Oak Road, Suite 100
Voorhees, NJ 08043

Re: Request to Commence Arbitration

Dear Sir/Madam:

On behalf of Claimant D. Ray Strong, Liquidating Trustee of the Consolidated Debtors Liquidating Trust, et al., please find enclosed a Demand for Arbitration as well as a check payable to the American Arbitration Association in the amount of \$9,100.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink that reads "Vanessa Thompson". The signature is fluid and cursive, written over a light blue horizontal line.

Vanessa Thompson
Legal Assistant




AMERICAN
ARBITRATION
ASSOCIATION®

INTERNATIONAL CENTRE
FOR DISPUTE RESOLUTION®

**COMMERCIAL ARBITRATION RULES
DEMAND FOR ARBITRATION**

For Consumer or Employment cases, please visit www.adr.org for appropriate forms.

You are hereby notified that a copy of our arbitration agreement and this demand are being filed with the American Arbitration Association with a request that it commence administration of the arbitration. The AAA will provide notice of your opportunity to file an answering statement.					
Name of Respondent: See Exhibit A			Name of Representative (if known): See Exhibit A		
Address:			Name of Firm (if applicable):		
			Representative's Address:		
City:	State:	Zip Code:	City:	State:	Zip Code:
Phone No.:	Fax No.:		Phone No.:	Fax No.:	
Email Address:			Email Address:		
The named claimant, a party to an arbitration agreement which provides for arbitration under the Commercial Arbitration Rules of the American Arbitration Association, hereby demands arbitration.					
Brief Description of the Dispute: See Exhibit B					
Dollar Amount of Claim: \$ Undetermined Monetary Claim			Other Relief Sought: <input checked="" type="checkbox"/> Attorneys Fees <input checked="" type="checkbox"/> Interest <input checked="" type="checkbox"/> Arbitration Costs <input checked="" type="checkbox"/> Punitive/ Exemplary <input checked="" type="checkbox"/> Other		
Amount enclosed: \$ 9,100			In accordance with Fee Schedule: <input type="checkbox"/> Flexible Fee Schedule <input checked="" type="checkbox"/> Standard Fee Schedule		
Please describe the qualifications you seek for arbitrator(s) to be appointed to hear this dispute: familiarity with officer and director fiduciary duties, civil fraud, and securities fraud					
Hearing locale: Salt Lake County, Utah			(check one) <input type="checkbox"/> Requested by Claimant <input checked="" type="checkbox"/> Locale provision included in the contract		
Estimated time needed for hearings overall: hours or 10 days			Type of Business: Claimant: Trustee Respondent: Real Estate Investment		
Are any parties to this arbitration, or their controlling shareholder or parent company, from different countries than each other? No					
Signature (may be signed by a representative): 			Date: October 29, 2015		
Name of Claimant: See Exhibit A			Name of Representative: See Exhibit A		
Address (to be used in connection with this case):			Name of Firm (if applicable):		
			Representative's Address:		
City:	State:	Zip Code:	City:	State:	Zip Code:
Phone No.:	Fax No.:		Phone No.:	Fax No.:	
Email Address:			Email Address:		
To begin proceedings, please send a copy of this Demand and the Arbitration Agreement, along with the filing fee as provided for in the Rules, to: American Arbitration Association, Case Filing Services, 1101 Laurel Oak Road, Suite 100 Voorhees, NJ 08043. At the same time, send the original Demand to the Respondent.					

Please visit our website at www.adr.org if you would like to file this case online. AAA Case Filing Services can be reached at 877-495-4185.

Exhibit B



AMERICAN
ARBITRATION
ASSOCIATION®

INTERNATIONAL CENTRE
FOR DISPUTE RESOLUTION®

Lance Tanaka
Vice President
2415 E. Camelback, Suite 700
Phoenix, AZ 85016
Telephone: (602) 734-9333
Fax: (855) 433-3046

August 9, 2016

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Brett Evans, Esq.
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Case Number: 01-15-0005-5087

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

-vs-

Jeff Austin and Austin Capital Solutions

-vs-

William H. Davidson

-vs-

Douglas W. Child

and Child Van Wagoner & Associate, PLLC

fka Child, Sullivan & Associates, fka Child,

Van Wagoner & Associates, LLC fka Child Van

Wagoner & Bradshaw, PLLC

-vs-

Robert Clawson and Hybrid Advisor Group

Dear Parties:

Pursuant to the Rules regarding deposits, the parties have been billed for an initial arbitrator compensation and expenses deposit. Payment in the amount of \$3,787.50 per party is due by **August 23, 2016**.

The parties' invoices are available for viewing, printing and making payment via credit card by logging in to AAA WebFile at www.adr.org and selecting File and Manage a Case. Please note registration is required to use AAA WebFile. Alternatively, you may mail checks, made payable to American Arbitration Association, to:

American Arbitration Association
Attn: Finance Department
45 E. River Park Place West, Suite 308
Fresno, CA 93720

Thank you for your attention, and please do not hesitate to contact us should you have any questions regarding the financials for this matter.

Sincerely,

/s/

Linda Griffiths
Finance Department
WFinance@adr.org

cc:

Peggy Hunt, Esq.

Jeff Austin

Nathan S. Seim, Esq.

Sarah Goldberg, Esq.

Oliver K. Myers, Esq.

Jennifer R. Korb, Esq.

Exhibit C



AMERICAN
ARBITRATION
ASSOCIATION®

INTERNATIONAL CENTRE
FOR DISPUTE RESOLUTION®

Lance Tanaka
Vice President
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Phoenix, AZ 85016
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Fax: (855) 433-3046

August 25, 2016

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Brett Evans, Esq.
Evans & Kob, PC
180 East Main Street
Suite 104
Tustin, CA 92780
Via Email to: brett@eklawpc.com

Case Number: 01-15-0005-5087

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

-vs-

Jeff Austin and Austin Capital Solutions

-vs-

William H. Davidson

-vs-

Douglas W. Child

and Child Van Wagoner & Associate, PLLC

fka Child, Sullivan & Associates, fka Child,

Van Wagoner & Associates, LLC fka Child Van

Wagoner & Bradshaw, PLLC

-vs-

Robert Clawson and Hybrid Advisor Group

Dear Parties:

The American Arbitration Association has not received Respondents' deposits for arbitrator compensation and expenses in the amount of \$3,787.50 owing from Jeff Austin and Austin Capital Solutions, William H. Davidson and Douglas W. Child and Child Van Wagoner & Associate, PLLC fka Child, Sullivan & Associates, fka Child, Van Wagoner & Associates, LLC fka Child Van Wagoner & Bradshaw, PLLC, which were due by August 23, 2016. We have reviewed our records carefully, but if you believe we are in error, please email proof of payment to WFinance@adr.org. If you have not paid, **payment is due upon receipt of this letter**. Claimant's payment has been received.

While a status of the court case is due in early September, the deadline for payment of the above-noted deposits has not been tolled as the Panel has incurred time on this matter.

The above-noted parties' invoices are enclosed. To view your invoices and make a payment online, please login to AAA WebFile at www.adr.org and select File and Manage a Case. Please note registration is required to use AAA WebFile. Alternatively, you may express mail checks, made payable to American Arbitration Association, to:

American Arbitration Association
Attn: Finance Department
45 E. River Park Place West, Suite 308
Fresno, CA 93720

Thank you for your attention, and please do not hesitate to contact us should you have any questions regarding this matter.

Sincerely,

/s/

Rick Zieglowsky

Director

Direct Dial: (602) 734-9333

Email: RickZieglowsky@adr.org

Fax: (855) 433-3046

Enclosures

cc:

Peggy Hunt, Esq.

Jeff Austin

Nathan S. Seim, Esq.

Sarah Goldberg, Esq.

Oliver K. Myers, Esq.

Jennifer R. Korb, Esq.

RZ/ldg



AMERICAN
ARBITRATION
ASSOCIATION*

INTERNATIONAL CENTRE
FOR DISPUTE RESOLUTION*

45 E River Park Place West
Suite 308
Fresno, CA 93720
Telephone: (877)528-0880
Fax: (855)433-3046

Statement Date	Amount Currently Due
25-Aug-2016	\$3,787.50
Case #	
01-15-0005-5087-2-RZ	

Payment is due upon Receipt

Invoice

Erik A. Christiansen, Esq.
Parsons Behle & Latimer, PC
201 South Main Street
Suite 1800
Salt Lake City, UT 84111-2218

Representing: Jeff Austin and Austin Capital Solutions
Re: 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
Vs.
Jeff Austin and Austin Capital Solutions
Vs.
William H. Davidson
Vs.
Douglas W. Child
and Child Van Wagoner & Associate, PLLC fka Child, Sullivan & Associates, fka Child, Van Wagoner & Associates, LLC fka Child Van Wagoner & Bradshaw, PLLC
Vs.
Robert Clawson and Hybrid Advisor Group

Please detach and return with Payment to Above Address

Please Indicate Case No. on Check



AMERICAN
ARBITRATION
ASSOCIATION*

INTERNATIONAL CENTRE
FOR DISPUTE RESOLUTION*

45 E River Park Place West
Suite 308
Fresno, CA 93720
Telephone: (877)528-0880
Fax: (855)433-3046

Erik A. Christiansen, Esq.
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201 South Main Street
Suite 1800
Salt Lake City, UT 84111-2218

Representing: Jeff Austin and Austin Capital Solutions
Re: 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
Vs.
Jeff Austin and Austin Capital Solutions
Vs.
William H. Davidson
Vs.
Douglas W. Child
and Child Van Wagoner & Associate, PLLC fka Child, Sullivan & Associates, fka Child, Van Wagoner & Associates, LLC fka Child Van Wagoner & Bradshaw, PLLC
Vs.
Robert Clawson and Hybrid Advisor Group

Invoice Date	Invoice No	Description	Amount
09-Aug-2016	11823575	Your Share of Initial Arbitrator Compensation Deposit	\$3,750.00
09-Aug-2016	11823583	Your Share of Initial Arbitrator Expenses Deposit	\$37.50



AMERICAN
ARBITRATION
ASSOCIATION*

INTERNATIONAL CENTRE
FOR DISPUTE RESOLUTION*

45 E River Park Place West
Suite 308
Fresno, CA 93720
Telephone: (877)528-0880
Fax: (855)433-3046

Statement Date	Amount Currently Due
25-Aug-2016	\$3,787.50
Case #	
01-15-0005-5087-2-RZ	

Payment is due upon Receipt

Net Amount Due

\$3,787.50

Remarks For any inquiries please call: (602)734-9333

Please mail check to 45 E River Park Place West
Suite 308
Fresno, CA 93720
Telephone: (877)528-0880
Fax: (855)433-3046

Exhibit D



AMERICAN
ARBITRATION
ASSOCIATION®

INTERNATIONAL CENTRE
FOR DISPUTE RESOLUTION®

Lance Tanaka
Vice President
2415 E. Camelback, Suite 700
Phoenix, AZ 85016
Telephone: (602) 734-9333
Fax: (855) 433-3046

September 12, 2016

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Mark T. Hiraide, Esq.
Petillon Hiraide, LLP
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Case Number: 01-15-0005-5087

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

-vs-

Jeff Austin and Austin Capital Solutions

-vs-

William H. Davidson

-vs-

Douglas W. Child

and Child Van Wagoner & Associate, PLLC
fka Child, Sullivan & Associates, fka Child,
Van Wagoner & Associates, LLC fka Child Van
Wagoner & Bradshaw, PLLC

-vs-

Robert Clawson and Hybrid Advisor Group

Dear Parties:

The American Arbitration Association has not received Jeff Austin and Austin Capital Solutions', William H. Davidson's or Douglas W. Child and Child Van Wagoner & Associate, PLLC fka Child, Sullivan & Associates, fka Child, Van Wagoner & Associates, LLC fka Child Van Wagoner & Bradshaw, PLLC's initial deposits for arbitrator compensation and expenses in the amount of \$3,787.50 per party, which were due by August 23, 2016. Claimant's payment has been received. Payment is **due upon receipt of this letter** and the **minimum due at this time to pay the Arbitrators for their time and expenses billed to date, is \$689.31 per each of the above-noted, three parties.**

The Panel will be notified of payment status on September 19, 2016.

To view your invoice(s) and make a payment online, please login to AAA WebFile at www.adr.org and select File and Manage a Case. Please note registration is required to use AAA WebFile. Alternatively, you may *express mail* checks, made payable to American Arbitration Association, to:

American Arbitration Association
Attn: Finance Department
45 E. River Park Place West, Suite 308
Fresno, CA 93720

Thank you for your attention, and please do not hesitate to contact us should you have any questions regarding this matter.

Sincerely,

/s/

Rick Zieglowsky
Director
Direct Dial: (602) 734-9333
Email: RickZieglowsky@adr.org
Fax: (855) 433-3046

cc:

Peggy Hunt, Esq.

Jeff Austin

Nathan S. Seim, Esq.

Sarah Goldberg, Esq.

Oliver K. Myers, Esq.

Jennifer R. Korb, Esq.

RZ/ldg

Exhibit E



AMERICAN
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FOR DISPUTE RESOLUTION®

Michael Powell
Vice President
2415 E. Camelback, Suite 700
Phoenix, AZ 85016
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December 19, 2016

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Douglas W. Child
Child Van Wagoner & Associates, PLLC
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Brett Evans, Esq.
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George Hofmann, Esq.
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11th Floor
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Case Number: 01-15-0005-5087

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

-vs-

Jeff Austin and Austin Capital Solutions

-vs-

William H. Davidson

-vs-

Child Van Wagoner & Associate,
PLLC fka Child, Sullivan &
Associates, fka Child, Van Wagoner
& Associates, LLC fka Child Van
Wagoner & Bradshaw, PLLC

-vs-

Robert Clawson and Hybrid Advisor Group

-vs-

Robert Geringer

Dear Parties:

This will confirm that the above matter has been dismissed due to non-payment of fees, and therefore we are closing our file. In the normal course of our administration, the AAA may maintain certain documents in our electronic records system. Such electronic records are not routinely destroyed and do not constitute a complete case file.

A financial reconciliation has been conducted, and if a party had any unused compensation deposits, we have issued a refund check that should arrive in the mail shortly. Both Party 2, Jeff Austin and Austin Capital Solutions and Party 4, Child Van Wagoner & Associates PLLC have balances outstanding that are due upon receipt of this letter. Each party will receive an invoice/statement each month until the balance is paid. Invoice/statements will only reflect credits made as of the date of mailing. You may register, view your balance and make payments on our website at www.adr.org.

As always, please let me know if there are questions.

Sincerely,

Rick Zieglowsky
Director
Direct Dial: (602) 734-9333
Email: RickZieglowsky@adr.org
Fax: (855) 433-3046

cc:

Peggy Hunt, Esq.
Jeff Austin
Nathan S. Seim, Esq.
Sarah Goldberg, Esq.
Oliver K. Myers, Esq.

Kerry C. Fowler, Esq.

Giovanni M. Ruscitti, Esq.
James R. Holbrook, Esq.
Hon. Michael D. Zimmerman

Exhibit F



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October 18, 2016

Milo S. Marsden, Esq.
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Evans & Kob, PC
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Tustin, CA 92780
Via Email to: brett@eklawpc.com

Case Number: 01-15-0005-5087

D. Ray Strong, as Liquidating Trustee of the
Consolidated Legacy Debtors Liquidating Trust
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Liquidating Trust and the Castle Arch
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-vs-
Jeff Austin and Austin Capital Solutions
-vs-

William H. Davidson

-vs-

Child Van Wagoner & Associate,
PLLC fka Child, Sullivan &
Associates, fka Child, Van Wagoner
& Associates, LLC fka Child Van
Wagoner & Bradshaw, PLLC

-vs-

Robert Clawson and Hybrid Advisor Group

Dear Parties:

We previously requested deposits in the amount of \$3,787.50 for the initial, anticipated arbitrator compensation and expenses. In addition to our correspondence, monthly invoices are also provided.

As of this date, we have not received Jeff Austin and Austin Capital Solutions' or Child Van Wagoner & Associate, PLLC fka Child, Sullivan & Associates, fka Child, Van Wagoner & Associates, LLC fka Child Van Wagoner & Bradshaw, PLLC's deposits of \$3,787.50 per party to cover the above-noted deposit requested. If you believe that this is an error, please contact the undersigned as soon as possible.

If the outstanding balance is not brought current by **October 25, 2016**, the American Arbitration Association (the AAA) will inform the arbitrators which party(s) has not paid and the amounts owed. The arbitrators will have a number of options including:

- *The arbitrators may proceed with work on this matter, without full deposits. As arbitrator compensation and expenses are incurred, the AAA will distribute the share of payment owed from the deposits received and will continue our efforts to collect any outstanding balance.
- *The arbitrators may choose to resign, in which case the AAA will fill the vacancy(s).
- *The arbitrators may suspend or terminate the case.

Alternatively, and in accordance with the Commercial Arbitration Rules, any party may make a deposit on behalf of the non-paying parties to avoid any possible interruption of the case. While we would prefer not to make this request of a party that has met its deposit obligations under the rules, the burden of funding the process falls on the parties and neither the AAA nor the arbitrators can cover these costs. The paying party(s) then may make the repayment of this deposit part of its claim to the arbitrators.

If any party is willing to cover the unpaid deposits, please confirm this commitment in writing by **October 21, 2016** and forward payment to reach the AAA by **October 25, 2016**.

Once a party confirms their agreement to advance funds for a non-paying party, you may view your invoice(s) and make a payment online by logging in to AAA WebFile at www.adr.org and selecting File and Manage a Case. Please note registration is required to use AAA WebFile. Alternatively, you may *express mail* checks, made payable to American Arbitration Association, to:

American Arbitration Association
Attn: Finance Department
45 E. River Park Place West, Suite 308
Fresno, CA 93720

Thank you for your attention, and please do not hesitate to contact us should you have any questions regarding this matter.

Thank you,

/s/

Rick Zieglowsky
Director
Direct Dial: (602) 734-9333
Email: RickZieglowsky@adr.org
Fax: (855) 433-3046

cc:

Peggy Hunt, Esq.
Jeff Austin
Nathan S. Seim, Esq.
Sarah Goldberg, Esq.
Oliver K. Myers, Esq.
Jennifer R. Korb, Esq.

RZ/ldg

Exhibit G



AMERICAN
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November 21, 2016

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Case Number: 01-15-0005-5087

D. Ray Strong, as Liquidating Trustee of the
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Child Van Wagoner & Associate,
PLLC fka Child, Sullivan &
Associates, fka Child, Van Wagoner
& Associates, LLC fka Child Van
Wagoner & Bradshaw, PLLC

-vs-

Robert Clawson and Hybrid Advisor Group

-vs-

Robert Geringer

Dear Parties:

Please be advised the Arbitrators are suspending administration of this matter as the full deposits have not been paid pursuant to the Commercial Arbitration Rules. The following parties have outstanding deposits in the amount of \$3,800.00:

Jeff Austin and Austin Capital Solutions
and
Child Van Wagoner & Associate,
PLLC fka Child, Sullivan &
Associates, fka Child, Van Wagoner
& Associates, LLC fka Child Van
Wagoner & Bradshaw, PLLC

These outstanding deposits are due December 7, 2016. The Arbitrators are being copied on this letter

Upon receipt, we will advise the Arbitrators that the parties have paid all necessary deposits. Upon determination by the Arbitrators to proceed, we will advise the parties accordingly.

In the event the deposits have not been received by the above referenced due date the Arbitrators will be advised and determine how to proceed, which may include termination of this matter.

To make a payment, please login to AAA WebFile at www.adr.org and select File and Manage a Case. Please note registration is required to use AAA WebFile.

If payment has been made and our records may be incorrect, please contact the undersigned as soon as possible.

Sincerely,

/s/

Rick Zieglowsky

Director

Direct Dial: (602) 734-9333

Email: RickZieglowsky@adr.org

Fax: (855) 433-3046

RZ/glo

cc: Peggy Hunt, Esq.

Jeff Austin

Nathan S. Seim, Esq.

Sarah Goldberg, Esq.

Oliver K. Myers, Esq.

Kerry C. Fowler, Esq.

Jennifer R. Korb, Esq.

Giovanni M. Ruscitti, Esq.

James R. Holbrook, Esq.

Hon. Michael D. Zimmerman