Jodi Knobel Feuerhelm (Utah Bar #4570)
PERKINS COIE LLP
2901 North Central Avenue, Suite 2000
Phoenix, AZ 85012-2788
PHONE: 602.351.8015
FAX: 602.648.7015
E-MAIL: jfeuerhelm@perkinscoie.com

Schuyler Carroll (*pro hac vice*)
David F. Olsky (*pro hac vice*)
PERKINS COIE LLP
30 Rockefeller Plaza, 22nd Floor
New York, NY 10112
PHONE: 212.262.6905
FAX: 212.977.1636
E-Mail: scarroll@perkinscoie.com, dolsky@perkinscoie.com
Attorneys for Defendants Jeff Austin and Austin Capital Solutions

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, LLC, fka CHILD VAN WAGONER & BRADSHAW, PLLC; ROBERT CLAWSON; HYBRID ADVISOR GROUP; AND JOHN DOES 1-50, Defendants.	CASE NO. 2:14-cv-00788-TC **REPLY IN FURTHER SUPPORT OF 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 & UTAH CODE § 78B-11-108; AND/OR DISMISS THE CLAIMS PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 12(b)(6); AND SUPPORTING MEMORANDUM.** Judge Tena Campbell

Defendants Jeff Austin and Austin Capital Solutions submit this Reply in further support of their Motion to Compel and/or Dismiss the Claims ("Mot."). The Trustee does not deny in his Response ("Resp.") that his Utah RICO claim ***must*** be arbitrated. Mot. at 7-8. In asserting that claim, the Trustee consented to arbitration on behalf of CAREIC *and* the individuals who assigned their claims to the Liquidating Trust. The case must be compelled to arbitration.

I. The Claims Should Be Compelled to Arbitration

First, citing no law, the Trustee asserts that Austin cannot enforce the arbitration clause because he later became a "creditor" of CAREIC after filing a proof of claim in the bankruptcy. Resp. at 1-2. Mr. Austin was a signatory to the Amended Operating Agreement, not a third party creditor at the time it was executed. He may enforce the arbitration clause for any dispute (including the present dispute) that "involves rights that to some degree vested or accrued during the life of the contract and merely ripened after expiration, or relates to events that occurred at least in part while the contract was still in effect," even if the contract itself expired. *Newmont U.S.A. Ltd. v. Ins. Co. of N. Am.*, 615 F.3d 1268, 1275 (10th Cir. 2010).

Further, the plain meaning of this provision is that the third party creditors of CAREIC when the Agreement was executed are not beneficiaries; it does not exclude Mr. Austin, a signatory, from being a beneficiary. *See Glenn v. Reese*, 225 P.3d 185, 188-89 (Utah 2009) ("[T]he parties' intentions are determined from the plain meaning of the contractual language") (citation omitted). This provision must be understood in the context of the other provisions of the Amended Operating Agreement, which establish the rights and responsibilities of the LLC's members (including Mr. Austin) and the manner in which the LLC was to be operated. *Id.* at 189 (courts must consider contract provision "in relation to all of the others, with a view toward giving effect to all and ignoring none") (citation omitted). Each member may at certain times

become a creditor of the LLC, as when it failed to pay Mr. Austin his full salary. That cannot mean as a matter of statute or common sense that such member automatically loses his right to enforce the LLC's Amended Operating Agreement: such a reading would leave the LLC members without the ability to enforce the terms of the contract they signed.

Second, the Trustee asserts that even if CAREIC's claims must be arbitrated, investor claims may not be so compelled because investors did not sign arbitration clauses. Resp. at 2-3. However, "[c]onsent to arbitrate may also be implied from the parties' conduct." *Cal-Circuit ABCO, Inc. v. Solbourne Computer, Inc.*, 848 F. Supp. 1506, 1509 (D. Colo. 1994). The Trustee, on the investors' behalf, provided such consent when he filed his Utah RICO Claim, which requires that "all actions" be arbitrated that arise under this statute premised on fraud. Utah Code § 7-10-1605(3). The Trustee is acting on behalf of the investors, with their consent, and thus, the Trustee's actions bind the investors. Further, CAREIC investors agreed to the Amended Operating Agreement in the first page of their subscription agreements, and the Agreement itself (including the arbitration provision) was included with the offering materials. Austin Decl. Ex. 1 at 1 ("The purchase of Investment Units is subject to the terms and conditions set forth in the Memorandum and in Castle Arch Real Estate Investment Company's Amended Operating Agreement dated February 16, 2007 . . ."). Investors thus "incorporated by reference" the arbitration clause and they too must honor it. *Pay Phone Concepts, Inc. v. MCI Telecomm'ns Corp.*, 904 F. Supp. 1202, 1208 (D. Kan. 1995) (requiring arbitration of "incorporated" clause).

Third, the Trustee asserts that his Ninth through Nineteenth Claims are not subject to the arbitration clause because some (though not all) are based on the strong arm provisions of the Bankruptcy Code. Resp. at 3-4. The cases referenced by the Trustee involve instances in which the creditors on whose behalf the Trustee is bringing the claim did not themselves adopt the

arbitration clause. Resp. at 4 (citing *Allegaert v. Perot*, 548 F.2d 432 (2d Cir. 1977)). Here, the creditors/investors agreed to arbitration by asserting claims under the Utah Rico Act and by signing agreements incorporating the arbitration clause. And the cases cited by the Trustee predate the Supreme Court cases confirming the breadth of the "liberal federal policy" favoring arbitration. *E.g., Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 625 (1985). Recent cases hold that all claims must be arbitrated if an arbitration clause exists. *See In re Mintze*, 434 F.3d 222, 229 (3d Cir. 2006) (applying arbitration to "core" proceedings).

II. The Complaint Fails To State A Claim

The Trustee urges the Court to ignore the materials attached to the Motion, all of which were repeatedly referenced in the Complaint or were adopted by the Bankruptcy Court on the Trustee's motion. The Trustee ignores the case law that *requires* the Court to consider such materials. Mot. at 2. "If the rule were otherwise, a plaintiff with a deficient claim could survive a motion to dismiss simply by not attaching a dispositive document upon which the plaintiff relied." *GFF Corp. v. Assoc. Wholesale Grocers, Inc.* 130 F.3d 1381, 1384 (10th Cir. 1997).

A. The Trustee Fails To State A Claim Against Mr. Austin For Breach Of A Fiduciary Duty (Claim 1).

First, the Trustee contends that Mr. Austin had fiduciary duties before November 2010 under the prior California LLC Act (the Beverly-Killea Act). He did not. The Beverly-Killea Act, like its successor, permitted LLCs to have a "manager." Cal. Corp. Code § 17151 (repealed) (Ex. A.) That manager has the same fiduciary duties as a partner to a partnership. Cal. Corp. Code § 17153 (repealed) (Ex. B). Those duties are the same as those in the new LLC Act: (1) the duty of loyalty and (2) the duty of care "limited to refraining from engaging in grossly negligent or reckless conduct, or a knowing violation of law". *Compare* Cal. Corp. Code § 17704.09(c) (new LLC Act) with Cal. Corp. Code § 16404 (partnership fiduciary duties).

Mr. Austin, however, was not a "manager" until he became CEO. Although the Trustee asserts that Mr. Austin had fiduciary duties by virtue of his responsibilities at the company, none of the cases he cites suggest that a member who is not a named "manager" in the operating agreement has such duties, and no portion of the Beverly-Killea Act supports this argument. Indeed, *ULQ, LLC v. Meder*, 666 S.E.2d 713 (Ga. App. 2008), cited by the Trustee, supports the opposite conclusion. In *ULQ*, as here, an LLC brought a breach of fiduciary duty claim against a minority member and former "officer", who was not a named "manager" in the operating agreement. *Id.* at 716. The court of appeals affirmed the dismissal of that claim: he had no fiduciary duty under the operating agreement, notwithstanding his "officer" title. *Id.* at 720-21. Mr. Austin, like the *ULQ* "vice president", was not a named "manager" in the operating agreement and California's LLC law did not impose on him fiduciary duties.

Second, the Trustee asserts he alleged that Mr. Austin breached a fiduciary duty prior to November 2010. Resp. at 9. But the Trustee does not deny that Rule 9(b) applies to this claim, and his allegations refer to "CARIEC management", not specifically Mr. Austin. They "lump[] all of the Individual Defendants together as 'Officers and Directors' . . . without supplying specific facts as to each defendant's wrongdoing." *In re Conex Holdings, LLC*, 514 B.R. 405, 414 (D.Del. Bankr. 2014) (dismissing claims). None of which satisfy Rule 9(b) as to Mr. Austin.

Third, the Trustee asserts that the failure to renew the Policy was a breach, but he ignores Mr. Austin's analysis of that document and does not address the Complaint's failure to plead a plausible case for damages. *See* Mot. at 13-14. The Trustee only asserts that Mr. Austin breached his duty by failing to provide notice of circumstances to AXIS within the Policy period. Such "notice", however, must be specific, requiring names of claimants and nature and extent of damages, among others. *See* Policy VI.B; *LaForge v. Am. Cas. Co. of Reading, Pa.*, 37 F.3d

580, 585 (10th Cir. 1994) (rejecting notice). The Trustee has not plead with the specificity required by Rule 9(b) that Mr. Austin knew of such facts but did not report them to AXIS.

B. The Trustee Fails To State A Claim For Fraud and Negligent Misrepresentation (Claims 2 through 8)

First, citing a 38-year old Second Circuit case, the Trustee asserts that the PPMs by themselves satisfy Rule 9(b). Resp. at 12-13. They do not: the Trustee must allege who reviewed the PPMs, the circumstances surrounding that review, and how it caused damage to the reviewer. *See Farlow v. Peat, Marwick, Mitchell & Co.*, 956 F.2d 982, 986 (10th Cir. 1992) (fraud claims fail when they do not provide "any detail what misrepresentations were made by the defendant, to whom these misrepresentations were made, when these misrepresentations were made, or how these misrepresentations furthered the alleged fraudulent scheme.") (citation omitted); *Higginson v. Wood*, 24 F. Supp.2d 1217, 1219-20 (D. Kan. 1998) (PPM and letter signed by CEO not sufficient by themselves to satisfy Rule 9(b) criteria). The Trustee has not identified a single person who reviewed the PPMs, much less their reliance or damages. Further, the alleged "misrepresentations" and "omissions" cited by the Trustee are simply a rehash of his breach of fiduciary duty claim, and not actionable. *Melnyk v. Consonus, Inc.*, No. 2:03–CV–00528, 2005 WL 2263950, at *5 (D. Utah Sept. 12, 2005) (fraud claims must be dismissed that involve "breach of fiduciary duty and corporate mismanagement at their heart") (unpublished).

Second, the Trustee contends the *Janus* doctrine does not apply because Mr. Austin was an "insider" of CAREIC. Resp. at 13-14. But he alleges no facts suggesting Mr. Austin had a role in drafting the PPMs, or that he knew of any misstatements or omissions in them, grouping him with other "officer" defendants. Such "group" pleading is not permissible, regardless of whether the claim is under state or federal law. *Robbins v. Oklahoma*, 519 F.3d 1242, 1250 (10th Cir. 2008) (complaint must "make clear exactly who is alleged to have done what to

whom, to provide each individual with fair notice as to the basis of the claims against him or her, as distinguished from collective allegations"); *Southland Secs. Corp. v. INSpire Ins. Solutions, Inc.*, 365 F.3d 353, 364-65 (5th Cir. 2004) (no group pleading for federal securities law claims).

Third, the Trustee asserts that he need not plead reliance with specificity because he pleads an "omissions" claim. Resp. at 15. An "omissions" claim however requires a duty to disclose, and the Trustee has not alleged that Mr. Austin had such a duty. *See Stoneridge Inv. Partners, LLC v. Scientific-Atlanta*, 552 U.S. 148, 159 (2008). The Trustee also mischaracterizes his claim: he asserts that the PPMs contained false or incomplete statements, not that they failed to disclose information that Mr. Austin had a duty to disclose. As in *Joseph v. Wiles*, 223 F.3d 1155, 1163 (10th Cir. 2000) (cited by the Trustee), the claims "are pled in such a manner as to intertwine affirmative acts with omissions in a strained attempt to recharacterize the alleged wrongdoing." And the Trustee has not plead reliance by any investor with specificity.

C. The Trustee Fails to State A Claim for Fraudulent Transfer (Claims 9-15)

1. The Trustee Fails to State A Claim For Actual Fraudulent Transfer (Claims 9, 11, 15).

The Trustee asserts that he met his burden of alleging with particularity under Rule 9(b) that the ***transferor*** (CAREIC) made a transfer to the transferee (Mr. Austin) with the fraudulent intent through allegations of "badges of fraud." Resp. at 17 & n. 17. He did not: The Trustee does not allege that CAREIC retained possession or control of the salary it paid Mr. Austin; Mr. Austin's salary was "concealed"; CAREIC was sued or threatened with suit shortly before paying Mr. Austin's salary; Mr. Austin's salary was all or substantially all of CAREIC's assets; CAREIC "absconded" following the transfer; CAREIC "remove[d] or conceal[ed]" Mr. Austin's salary; CAREIC paid Mr. Austin's salary "shortly before or shortly after a substantial debt was incurred"; or that CAREIC transferred its essential assets to a lienor who then transferred the

assets to a CAREIC insider. To the contrary, Mr. Austin's salary and the payments to him were disclosed in SEC filings and PPMs and none of the Trustee's allegations remotely suggest that CAREIC's intent in paying Mr. Austin his salary was to hide assets from its creditors.

The Trustee's allegations instead concern generalized wrongdoing by CAREIC, such as mismanagement of its cash and overspending on fundraising. Resp. at 17-18. Such generalized allegations may pertain to other claims (and to other defendants), but they are not relevant to a claim of ***fraudulent transfer***. They only relate to how CAREIC "obtained new funding," not an attempt to delay creditors through payments to Mr. Austin and Austin Capital Solutions. *In re Sharp Int'l Corp.*, 403 F.3d 43, 56 (2d Cir. 2005) (upholding dismissal of complaint that did not plead sufficient facts in connection with alleged fraudulent transfer). "The fact that the debtor's enterprise as a totality is operated at a loss, or in a manner that is fraudulent, does not render actually or constructively fraudulent a particular transaction which in and of itself is not fraudulent in any respect." *In re Churchill Mortg. Inv. Corp.*, 256 B.R. 664, 68 (S.D.N.Y. Bankr. 2000), *aff'd sub nom Balaber-Strauss v. Lawrence*, 264 B.R. 303 (S.D.N.Y. 2001).

2. The Trustee Fails to State A Claim For Constructive Fraudulent Transfer (Claims 10, 12, 13, and 15).

The Trustee does not deny that salary payments are presumptively for reasonably equivalent value, but contends that he has stated a claim. Citing *Miller v. Taber*, No. 12-cv-74, 2014 WL 317938 (D. Utah Jan. 29, 2014) (unpublished), the Trustee asserts that Mr. Austin's salary is *per se* voidable. Resp. at 19-20. The Trustee, however, has only alleged that CAREIC was insolvent at the time of the transfers "on information and belief" (Compl. ¶ 405) which is not sufficient to plead a constructive fraudulent transfer. *See In re Trinsum Grp*, 460 B.R. 379, 392-93 (S.D.N.Y. Bankr. 2011) (dismissing insufficient allegations of insolvency). Further, the Trustee does not identify a single investor Mr. Austin solicited in a manner that violated the law.

Regardless, this vastly overstates *Miller*, an unpublished order. There, the defendant broker for a Ponzi scheme did not contest the plaintiff's summary judgment motion and invoked the Fifth Amendment during his deposition. *Miller*, 2014 WL 317938, at *1. Under those circumstances -- not present here -- the broker could not retain any payments made to him by the Ponzi scheme. *Id.* at *2-*3. The court did not state whether the basis for the avoidance was a constructive or intentional fraudulent transfer, and did not suggest a *per se* rule allowing avoidance of all such salary payments, without allegations concerning solvency or an underlying Ponzi scheme. *Id. Compare with In re Univ. Clearing House Co.*, 60 B.R. 985, 999 (D. Utah 1986) (refusing to avoid salary payments to employees of Ponzi scheme).

The Trustee also asserts that "reasonably equivalent value" is an issue of fact. Resp. at 20. But the *Twombly/Iqbal* standard requires that the Court determine whether a claim is "plausible", which is "a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Burnett v. Mortg. Elec, Reg. Sys., Inc.*, 706 F.3d 1231, 1236 (10th Cir. 2013) (citation omitted). "This contextual approach means comparing the pleading with the elements of the cause(s) of action." *Id.* The Trustee's "general assertions" of Mr. Austin's wrongdoing without "any details whatsoever" are not sufficient to pass the *Twombly/Iqbal* pleading standard. *Khalik v. United Air Lines*, 671 F.3d 1188, 1193 (10th Cir. 2012). Mr. Austin had an employment contract with CAREIC, and the Trustee has not alleged facts making "plausible" the assertion that Mr. Austin did not earn that salary. *Id.* at 194.

3. The Trustee Fails to State A Claim of Preferential Transfer (Claim 14)

"Regular payroll typically enjoys immunity from preference attack . . . ." *In re Buffalo Auto Glass*, 187 B.R. 451, 453 (W.D.N.Y. Bankr. 1995). The Trustee attempts to evade this presumption by asserting Mr. Austin's regular salary payments were on account of an antecedent

debt. Resp. at 22-23. The Trustee, however, has not alleged any "debt" owed by CAREIC to Mr. Austin that these payments were intended to pay off, and the transfers identified in the Complaint exhibits are consistent with regular salary payments to Mr. Austin.

Citing to *West v. Seiffert (In re Houston Drywall, Inc.,)*, No. 06-3415, 2008 WL 2754526, at *14 (Bankr. S.D. Tex. July 10, 2008) (unpublished), the Trustee asserts "unpaid salary constitutes an antecedent debt". Resp. at 23. But the Trustee does not allege that the payments, as in *West*, reflect a ***payment of a debt*** to Mr. Austin for salary that CAREIC had not previously paid him. Rather, they reflect ***ongoing*** payments as Mr. Austin continued to work at CAREIC up through the Petition Date. And Mr. Austin's proof of claim is for the amounts that were not paid to him. These were not preference payments.

D. The Trustee Fails To State A Basis To Disallow or Subordinate Mr. Austin's Claim (Claims 16 and 17).

The Trustee contends that his legal objection is sufficient to defeat the immediate allowance of Mr. Austin's claims, and an evidentiary hearing is required. Resp. at 23-25. The cases he cites only suggest that a *properly formulated* legal objection will trigger an evidentiary hearing on Mr. Austin's claim. The Trustee does not address *In re Cluff* which holds that an objection by itself is insufficient to disallow a properly filed claim with documentary support. Mot. at 23-24 (citing *Cluff*). The only "legal objection" formulated by the Trustee for disallowing the claim refers to the other counts in his complaint. Compl. ¶ 421 (objecting to claim "for the reasons set forth herein"). The Complaint is deficient and having failed to identify any other basis for disallowance, Mr. Austin's claims should be allowed.

For his equitable subordination claim, the Trustee similarly relies on his other allegations of purported wrongdoing. Resp. at 25-26. As set forth herein, those allegations fail to state a

claim. And the Trustee has not plead a required element -- that Mr. Austin inequitably put himself ahead of other creditors in seeking his unpaid salary. Mot. at 23-24.

E. The Trustee Fails To State A Claim For Equitable Relief.

The Trustee does not deny that he may not seek an equitable remedy (such as unjust enrichment or constructive trust) when a contract exists on the same subject. *See* Mot. at 24-25; *see also Cardon v. Jean Brown Res.*, 327 P.3d 22, 25-26 (Utah Ct. App. 2014) (no unjust enrichment claim given employment contract). The Trustee asserts that he can still plead his equitable claims "in the alternative". Resp. at 26-27. The Trustee does not cite a case holding that a plaintiff can maintain equitable claims when a written contract is not disputed, and courts squarely hold the opposite. *E.g.*, *Gallo v. PHH Mortg. Corp.*, 916 F. Supp. 2d 537, 553 (D.N.J. 2012) (dismissing unjust enrichment claim given existence of contract); *Crockett & Myers Ltd. v. Napier, Fitzgerald & Kirby LLP*, 440 F. Supp. 2d 1184, 1197 (D. Nev. 2006) (same).

With respect to the *in pari delicto* doctrine -- a separate basis to dismiss the claims -- the Trustee contends that it does not apply because Mr. Austin was an "insider." Resp. at 27-28. The "insider" exception to *in pari delicto*, however, is to be read "narrowly to allow only for suits by a bankruptcy trustee against a ***fiduciary*** of the debtor corporation . . . ." *Secs. Investor Protection Corp. v. Bernard L. Madoff Inv. Secs. LLC*, 987 F.Supp.2d 311, 321 (S.D.N.Y. 2013) (emphasis added). The purpose of the "insider" exception is to ensure that "***fiduciaries*** [are] responsible for their conduct as ***control persons . . . .***" *Id.* at 322 (emphasis added). Except for the brief period in which he was a CEO, Mr. Austin did not have a fiduciary duty to the company. The *in pari delicto* doctrine bars the equitable claims. *Id.* at 321.

For the reasons stated herein and in the Motion, the Complaint should be compelled to arbitration, dismissed, and/or stayed.

Dated: March 16, 2015

Respectfully submitted,

_/s/David F. Olsky_____
Jodi Knobel Feuerhelm (Utah Bar #4570)
PERKINS COIE LLP
2901 North Central Avenue, Suite 2000
Phoenix, AZ 85012-2788
PHONE: 602.351.8015
FAX: 602.648.7015
E-MAIL: jfeuerhelm@perkinscoie.com

Schuyler Carroll (*pro hac vice*)
David F. Olsky (*pro hac vice*)
PERKINS COIE LLP
30 Rockefeller Plaza, 22nd Floor
New York, NY 10112
PHONE: 212.262.6905
FAX: 212.977.1636
E-Mail: scarroll@perkinscoie.com, dolsky@perkinscoie.com

Attorneys for Defendants Jeff Austin and Austin Capital Solutions

CERTIFICATE OF SERVICE

I hereby certify that on this 16th, day of March, 2015, I electronically filed the foregoing REPLY IN FURTHER SUPPORT OF 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 & UTAH CODE § 78B-11-108; AND/OR DISMISS THE CLAIMS PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 12(b)(6); AND SUPPORTING MEMORANDUM with the Clerk of Court using the CM/ECF system which sent notification of such filing to all attorneys on notice in this matter.

Attorneys for Plaintiff D. Ray Strong
Milo Steven Marsden
marsden.steve@dorsey.com
Nathan S. Seim
seim.nathan@dorsey.com
Peggy Hunt
hunt.peggy@dorsey.com

/s/David F. Olsky

EXHIBIT A

West's Annotated California Codes
Corporations Code (Refs & Annos)
Title 2.5. Limited Liability Companies (Refs & Annos)
Chapter 4. Management (Refs & Annos)

This section has been updated. Click here for the updated version.

West's Ann.Cal.Corp.Code § 17151

§ 17151. Management by one or more managers; nonmembers; number and qualifications

Effective: [See Text Amendments] to December 31, 2013

(a) The articles of organization may provide that the business and affairs of the limited liability company shall be managed by or under the authority of one or more managers who may, but need not, be members.

(b) If the limited liability company is to be managed by one or more managers and not by all its members, the articles of organization shall contain a statement to that effect. Neither the names of the managers nor the number of managers need be specified in the articles of organization, but if management is vested in only one manager, the articles of organization shall so state.

(c) The articles of organization or operating agreement may prescribe the number and qualifications of managers who may, but need not, be natural persons.

Credits

(Added by Stats.1994, c. 1200 (S.B.469), § 27, eff. Sept. 30, 1994.)

Editors' Notes

REPEAL

<For repeal of Title 2.5, see Corporations Code § 17657.>

West's Ann. Cal. Corp. Code § 17151, CA CORP § 17151
Current with all 2014 Reg.Sess. laws, Res. Ch. 1 of 2013-2014 2nd Ex.Sess., and all propositions on 2014 ballots

End of Document

EXHIBIT B

West's Annotated California Codes
Corporations Code (Refs & Annos)
Title 2.5. Limited Liability Companies (Refs & Annos)
Chapter 4. Management (Refs & Annos)

This section has been updated. Click here for the updated version.

West's Ann.Cal.Corp.Code § 17153

§ 17153. Fiduciary duties

Effective: [See Text Amendments] to December 31, 2013

The fiduciary duties a manager owes to the limited liability company and to its members are those of a partner to a partnership and to the partners of the partnership.

Credits

(Added by Stats.1994, c. 1200 (S.B.469), § 27, eff. Sept. 30, 1994.)

Editors' Notes

REPEAL

<For repeal of Title 2.5, see Corporations Code § 17657.>

West's Ann. Cal. Corp. Code § 17153, CA CORP § 17153
Current with all 2014 Reg.Sess. laws, Res. Ch. 1 of 2013-2014 2nd Ex.Sess., and all propositions on 2014 ballots

End of Document