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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

**SUPPLEMENTAL BRIEF 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).**

Judge Tena Campbell

Defendants Jeff Austin and Austin Capital Solutions submit this Supplemental Brief in further support of their Motion to Compel and/or Dismiss the Claims. This brief is filed in response the Court's request at the April 3, 2015 hearing for further argument on whether it may stay the arbitration of the Trustee's Utah RICO Act claim pending the conclusion of the present litigation.

The law is clear that litigation of the Trustee's Utah RICO Act claim must be stayed in favor of the arbitration of those claims. Indeed, the governing statute specifically states and requires stay of the litigation. The Utah RICO Act claim must be arbitrated under the Utah Arbitration Act. The Utah Arbitration Act requires that on motion of a party (here, Mr. Austin), the Court must stay the litigation of a claim subject to arbitration and any related claims:

(6) If a party makes a motion to the court to order arbitration, the court on just terms *shall* stay any judicial proceeding that *involves* a claim alleged to be subject to the arbitration until the court renders a final decision under this section.

(7) If the court orders arbitration, the court on just terms *shall* stay any judicial proceeding that *involves* a claim subject to the arbitration. If a claim subject to the arbitration is severable, the court may limit the stay to that claim.

Utah Code § 78B-11-108 provides (emphasis added).

The Trustee's Utah RICO Act claim touches on, and "involves" numerous other issues in the litigation, including the alleged fraud on which the Trustee premises his Utah RICO Act claim. Under the plain language of Utah Code § 78B-11-108, all judicial proceedings involving such claims -- including any underlying fraud claims -- must be stayed pending arbitration. *Accord Adair Bus Sales, Inc. v. Blue Bird Corp.*, 25 F.3d 953, 955-56 (10th Cir. 1994) (9 U.S.C. § 3 requires district courts to stay litigation pending arbitration).

If the Court determines that the arbitrable claims predominate in this proceeding or are otherwise dispositive of the non-arbitrable claims, the Court should stay the entire litigation

pending arbitration. *See Riley Mfg. Co. v. Anchor Glass Container Corp.*, 157 F.3d 775, 785 (10th Cir. 1998). If the Court determines that some claims may be arbitrated and some may be litigated, then the Court must proceed with piecemeal litigation and arbitration. *See Coors Brewing Co. v. Molson Breweries*, 51 F.3d 1511, 1517 (“The Supreme Court has held that litigation must proceed in a ‘piecemeal’ fashion if the parties intended that some matters, but not others, be arbitrated.”); *cf. Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 221 (1985) (“[W]e rigorously enforce agreements to arbitrate, even if the result is ‘piecemeal’ litigation, at least absent a countervailing policy manifested in another federal statute.”).

Dated: April 17, 2015

Respectfully submitted,

/s/David F. Olsky

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CERTIFICATE OF SERVICE

I hereby certify that on this 17th, day of April, 2015, I electronically filed the foregoing SUPPLEMENTAL BRIEF 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) with the Clerk of Court using the CM/ECF system which sent notification of such filing to all attorneys on notice in this matter.

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