

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Brett G. Evans (Cal. Bar No. 244213)  
EVANS & KOB, PC  
1851 E. First Street, Suite 90  
Santa Ana, CA 92705  
Telephone: (657) 210-2114  
Email: brett@eklawpc.com  
Admitted Pro Hac Vice

*Counsel to Defendants* [REDACTED]

---

**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.

I, Brett G. Evans, declare as follows:

**Civil Action No. 2:14-cv-00788-TC**

**REQUEST FOR JUDICIAL NOTICE  
IN SUPPORT OF DEFENDANTS**

[REDACTED]  
[REDACTED] **MOTION TO  
DISMISS THE COMPLAINT**

Judge Tena Campbell

Defendant [REDACTED] [REDACTED] [REDACTED] hereby request that this Court take judicial notice pursuant to Rule 201 of the Federal Rules of Evidence of certain documents submitted in support of [REDACTED] Motion to Dismiss the Complaint for the reasons set forth below.

On a motion to dismiss, the Court should consider documents incorporated by reference in the Complaint and other publicly-available documents capable of ready and accurate determination, not subject to dispute. Fed. R. Evid. 201(b); *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007); *In re Gold Res. Corp. Sec. Litig.*, 776 F.3d 1103, 1108 (10th Cir. 2015). “Thus, a court may: consider stipulations, concessions of counsel, transcripts, exhibits and other papers...; take judicial notice, whether requested or not...of its own records and files, and facts which are part of its public records. Judicial notice is particularly applicable to the court’s own records of prior litigation closely related to the case before it.... Further, it has been held that federal courts, in appropriate circumstances, may take notice of proceedings in other courts, both within and without the federal judicial system, if those proceedings have a direct relation to matters at issue.” *St. Louis Baptist Temple, Inc. v. Fed. Deposit Ins. Corp.*, 605 F.2d 1169, 1172 (10th Cir. 1979) (summary judgment) (internal citations omitted).<sup>2</sup>

---

<sup>1</sup> [REDACTED] previously maintained a “doing business as” bank account registered in such name.

<sup>2</sup> Further, the Private Securities Litigation Reform Act provides, “On any motion to dismiss based upon subsection (c)(1) of this section, the court shall consider any statement cited in the complaint and any cautionary statement accompanying the forward-looking statement, which are not subject to material dispute, cited by the defendant.” 15 U.S.C.A. § 78u-5.

Accordingly, the Court should take judicial notice of the following documents:<sup>3</sup>

**BANKRUPTCY COURT FILINGS**

1. Declaration of D. Ray Strong, Chapter 11 Trustee for Castle Arch Real Estate Investment Company, LLC, In [sic] Supprt of Motion to Substantively Consolidate CAOP Managers, LLC; Castle Arch Kingman, LLC; Castle Arch Smyrna, LLC; Castle Arch Secured Development Fund, LLC; Castle Arch Star Valley, LLC And Castle Arch Real Estate Investment Company, LLC, Bankruptcy Case, Dkt. 578, Evans Decl. Ex. A.
2. First Amended Disclosure Statement for First Amended Chapter 11 Trustee's Plan of Liquidation Dated February 25, 2013, filed Bankruptcy Case, Dkt. 655, Evans Decl. Ex. B.
3. Notice List for Holders of Allowed Legacy Preferred Interests in Class A5, Bankruptcy Case, Dkt. 676-10, Evans Decl. Ex. C.
4. Complaint filed by Longview filed in the Bankruptcy Case, Dkt. 260-1, Evans Decl. Ex. D.
5. Order on Geringer's Proof of Claim filed in the Bankruptcy Case, Dkt. 655, Evans Decl. Ex. E.
6. Transcript of Hearing held on February 28, 2013 and March 1, 2013 in the Geringer POC Hearing in the Bankruptcy Case, Evans Decl. Ex. F.
7. Transcript of hearing held on April 19, 2012 in the Bankruptcy Case, Evans Decl. Ex. G.

---

<sup>3</sup> True and correct copies of the documents are attached as exhibits to the accompanying Declaration of Brett G. Evans.

8. Transcript of hearing held on April 20, 2012 in the Bankruptcy Case, Evans Decl. Ex. H.

9. Minutes of the Meetings of the Board of Directors of Castle Arch Real Estate Investment Company, LLC held on January 19, 2010 filed in the Bankruptcy Case, Dkt. 176-14, Evans Decl. Ex. I.

10. Minutes of the Meetings of the Board of Directors of Castle Arch Real Estate Investment Company, LLC held on August 5, 2010 filed in the Bankruptcy Case, Dkt. 176-10, Evans Decl. Ex. J.

11. Minutes of the Meetings of the Board of Directors of Castle Arch Real Estate Investment Company, LLC held on September 27, 2010 filed in the Bankruptcy Case, Dkt. 176-11, Evans Decl. Ex. K.

12. Minutes of the Meetings of the Board of Directors of Castle Arch Real Estate Investment Company, LLC held on October 25, 2010 filed in the Bankruptcy Case, Dkt. 176-12, Evans Decl. Ex. L.

13. Minutes of the Meetings of the Board of Directors of Castle Arch Real Estate Investment Company, LLC held on December 7, 2010 filed in the Bankruptcy Case, Dkt. 176-15, Evans Decl. Ex. M.

14. Letter from Cochran to Geringer dated May 1, 2004 that delegated and vested Geringer with authority to bind CAREIC filed in the Bankruptcy Case, Dkt. 604-1, Evans Decl. Ex. N.

15. Resolution of Cochran as the Chief Executive Officer of CAREIC dated December 6, 2007 providing a car allowance to Austin, filed in the Bankruptcy Case, Dkt. 176-16, Evans Decl. Ex. O.

16. Draft complaint that Plaintiff sent to proposed defendants on or around October 2013, filed in the related bankruptcy case for the approval of settlement with William Warwick (Case No. 2:14-cv-00244-DAK), Dkt. 152-1, Evans Decl. Ex. P.

**FILINGS IN THE CURRENT CASE, CONSOLIDATED GERINGER CASE AND  
REFERENCED MATERIAL IN COMPLANT**

17. Complaint filed against Geringer in Case No. 2:15-cv-00837-BSJ, which was subsequently consolidated with the instant action (exhibits redacted), Evans Decl. Ex. Q.

18. Amended Operating Agreement of Castle Arch Real Estate Company, LLC filed as Dkt. 13-1, Evans Decl. Ex. R.

19. CAREIC Series E PPM dated May 21, 2008, previously filed as Dkt. 13-1, Evans Decl. Ex. S.

20. Castle Arch Secured Development Fund, LLC PPM dated February 1, 2008, previously filed as Dkt. 13-2, Evans Decl. Ex. T.

21. Castle Arch Smyrna, LLC PPM dated June 25, 2007, previously filed as Dkt. 13-3, Evans Decl. Ex. U.

22. Deposition of Plaintiff filed in Case No. 2:15-cv-00837-BSJ, Dkt. 47-1, subsequently consolidated with the instant case, Evans Decl. Ex. AA.

**PUBLIC FILINGS WITH THE SECURITIES AND EXCHANGE COMMISSION**

23. Form 10-KSB of Castle Arch Real Estate Investment Company, L.L.C. for Fiscal Year Ended December 31, 2006, Evans Decl. Ex. V.

24. Form 10-KSB/A No. 1 of Castle Arch Real Estate Investment Company, L.L.C. for Fiscal Year Ended December 31, 2006 (Amended Financial Statements), Evans Decl. Ex. W.

25. Form 10-KSB of Castle Arch Real Estate Investment Company, L.L.C. for Fiscal Year Ended December 31, 2008, Evans Decl. Ex. X.

26. Form 10-KSB of Castle Arch Real Estate Investment Company, L.L.C. for Fiscal Year Ended December 31, 2007, Evans Decl. Ex. Y.

27. Signed certifications of the CEO and CFO in all 10-Q and 10-K filings of CAREIC beginning on May 21, 2008, Evans Decl. Ex. Z.

**DOCUMENTS REFERENCED OR**

**RELATED TO THE ALLEGATIONS IN THE COMPLAINT**

28. On information and belief, Ragan-Smith Engineering presentation acquired by counsel that was submitted to the Town of Smyrna for entitlement and annexation purposes, Evans Decl. Ex. BB.

WHEREFORE, [REDACTED] hereby request that the Court take judicial notice of the above-referenced documents in connection with [REDACTED] motion to dismiss the complaint.

**EVANS & KOB, PC**

DATED: March 31, 2017



---

Brett G. Evans (Cal. Bar No. 244213)  
brett@eklawpc.com  
1851 E. First Street, Suite 900  
Santa Ana, CA 92705  
Telephone: (657) 210-2114  
Facsimile: (888) 956-7890  
Email: brett@eklawpc.com  
Admitted Pro Hac Vice

*Counsel to Defendants* [REDACTED]  
[REDACTED]

-and-

[REDACTED]