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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.

JEFF AUSTIN; AUSTIN CAPITAL
SOLUTIONS; WILLIAM H. DAVIDSON;
ROBERT D. GERINGER; ROBERT D.
GERINGER, P.C.; FINE ARTS
ENTERTAINMENT; ROBERT
CLAWSON; HYBRID ADVISOR
GROUP; and JOHN DOES 1-50,

Defendants.

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

**DEFENDANT [REDACTED]
RESPONSE TO PLAINTIFF'S
SUPPLEMENTAL BRIEF
REGARDING SECTION 108(A)**

Judge Tena Campbell

Magistrate Judge Evelyn J. Furse

Defendants ██████████ (collectively, “████████”) respectfully submit this response brief in response to the Court’s Order for Additional Briefing, Docket 317.¹

INTRODUCTION

Plaintiff’s Brief² is filled with legal authority, but absolutely none of the voluminous citations, expand the established limitations of Section 108(a), extensively briefed and factually supported in ██████████’s initial Brief (Dkt. 325), which does not apply claims brought by a post-confirmation liquidating trust purporting to act on behalf of only some of the creditors (assigning investors), not that of the Consolidated CAREIC Debtors. Section 108(a)’s “clear purpose is to afford bankruptcy trustees extra time to assess and pursue potential assets of the debtor’s estate.” *Stanley ex rel. Estate of Hale v. Trinchard*, 579 F.3d 515, 519 (5th Cir. 2009); *see also Estate of Carr ex rel. Carr v. United States*, 482 F. Supp. 2d 842, 850 (W.D. Tex. 2007) (“The legislative history to section 108(a) indicates that it was intended to permit the Trustee, **when he steps into the debtor's shoes**, an extension of time to take action that is required to preserve the debtor's rights.”) (emphasis added) (citing H.R. REP. 95-595, 318, 1978 U.S.C.C.A.N. 5963, 6275).

Plaintiff’s securities fraud claims are investor claims, not those of the debtor or the bankruptcy estate, and Plaintiff cannot manipulate the plain language of Section 108(a) to “resurrect a corpse” that is clearly not “a viable claim for the benefit of the estate.” *In re Lawler*, 53 B.R. 166, 171 (Bankr. N.D. Tex. 1985). Analyzing the various cases dealing with assignments of investor claims to bankruptcy trustees repeatedly clarifies there were not claims of the debtor or the bankruptcy estate. *See, e.g. Hirsch v. Arthur Andersen & Co.*, 72 F.3d 1085, 1093–94 (2d

¹ Pursuant to DUCivR 7-1(a)(4), ██████████ incorporates the arguments of the other defendants.

² Dkt. 323 (hereinafter, “P. Brief”).

Cir. 1995) (“when creditors, such as the investors in the Colonial limited partnerships, have a claim for injury that is particularized as to them, they are exclusively entitled to pursue that claim, and the bankruptcy trustee is precluded from doing so...It follows that claims predicated upon the distribution of misleading PPMs to investors in Colonial limited partnerships are the property of those investors, and may be asserted only by them and to the exclusion of Hirsch..”); *Grede v. Bank of New York Mellon*, 598 F.3d 899, 900 (7th Cir. 2010) (“Investors’ claims against the Bank did not belong to Sentinel and were not part of the bankruptcy estate...[and although] the terms of the Bankruptcy Code govern the permissible duties of a trustee *in* bankruptcy, the terms of the plan of reorganization (and of the trust instrument) govern the permissible duties of a trustee *after* bankruptcy. **A liquidation trust is no different in this respect from a reorganized debtor.**”) (emphasis added).

PLAINTIFF’S FACTUAL CONTENTIONS ARE FALSE OR CONTRACTED

1. Claims are neither “highly intertwined” nor an “integral part of the Plan.” P. Brief at 8. Rather, **Plaintiff admitted that that the “Individual Claims were not property of the Estates.”** See CAREIC BK Case, Opposition to Motion to Convert, Dkt. 1413 at 10. Further, Plaintiff took these claims through default assignment as he viewed it as “most efficient, economical and equitable[.]” *Id.*
2. **Plaintiff’s (and his counsel) reckless false contention** that ██████████ was served with the Plan, Disclosure Statement and deadline to object is not only knowingly false, but irrelevant. P.Brief at 6 n. 2. However, the bankruptcy docket cited to, see Exhibit A,³

³ The citation to the notice of the deadline to object certifies services to a **commercial address in Beverly Hills**, a different county and more than an hour away from ██████████ residence. See Exhibit B.

certifies service on an address that was determined to be “undeliverable” at the commencement of bankruptcy, *see Exhibit C* at 6, and that Plaintiff previously declared, in this very action, that [REDACTED] no longer resides at that address and, in fact, the Sea Terrace Residence was recently sold pursuant to a bankruptcy sale.” *See Exhibit D* (Dkt. 24).

3. Plaintiff attempts to elevate his status here by highlighting that he is also the “estate representative” of the debtor, *see* P. Brief 2-3, 8, but Plaintiff’s role here is that of a post-confirmation liquidating (litigation) trustee, with his role as post-confirmation estate representative primarily limited to payment of management fees and “[a]s soon as feasible...[he] shall wind down administration of the Legacy Consolidated Estate[.]” *See* CAREIC BK Case, Plan of Liquidation, ECF 701 at 41-42, § 6.6.

Argument

I. SECTION 108(A) DOES NOT APPLY TO PLAINTIFF LITIGATING THIRD-PARTY INVESTOR CLAIMS AS LIQUIDATING TRUSTEE OF LITIGATION TRUST

Plaintiff’s entire argument relies completely on *Quilling* that deals with the statutory rights provided to SIPC Trustee to recover customer “net equity” claims paid out the SIPC fund, rather than a post-confirmation litigation trustee (like Plaintiff) prosecuting assigned non-debtor third-party fraud claims against third-parties under the bankruptcy code or unrelated to the bankruptcy trustee’s recovery for the bankruptcy estate. Plaintiff argues that Section 108(a) applies “to claims that do not belong to the debtor, but were later assigned by third parties to a bankruptcy estate.” P. Brief at 8-10 (relying on *Quilling v. Compass Bank*, No. 3:03-CV-2180-R, 2004 WL 2093117 (N.D. Tex. Sept. 17, 2004) (hereinafter, “*Quilling*”).

A. Statutory Framework of SIPA is Fundamentally Distinct

The Securities Investor Protection Act of 1970 (“SIPA”) “creates a new form of liquidation proceeding, applicable only to member firms, designed to accomplish the completion of open transactions and the speedy return of most customer property.” *Sec. Inv’r Prot. Corp. v. Barbour*, 421 U.S. 412, 16 (1975). “Although a SIPA liquidation proceeding can be viewed essentially as a bankruptcy proceeding since it will be carried out in accordance with many of the provisions found in a liquidation proceeding under Title 11 of the Code, these two types of proceedings are **fundamentally distinct**.”⁴ Similar to “the Federal Deposit Insurance Corporation (FDIC), SIPC insures investors who deposit cash or securities with a broker against the risk of broker insolvency.” *In re Primeline Sec. Corp.*, 295 F.3d 1100, 1106 (10th Cir. 2002). These differences are satisfied by:

...SIPA created special procedures for the liquidation of failed broker-dealers. SIPA trustees administer what is in effect a “bankruptcy within a bankruptcy” for investors who had property on account with the broker-dealer. The trustee amasses “customer property” and “[e]ach customer shares ratably in this fund of assets to the extent of the customer's net equity at the time of filing.” If this fund of customer property is insufficient to make investors whole, the trustee may dip into a special trust fund bankrolled by fees assessed on the community of broker-dealers. This fund is administered by the Securities Investor Protection Corporation (“SIPC”)—one of the appellees in this case—which is a private nonprofit membership organization created by SIPA.

In re Lehman Bros., Inc., 791 F.3d 277, 281 (2d Cir. 2015) (internal citations omitted); *see also In re Primeline*, 295 F.3d 1100 at 1106 (“the SIPC fund is available if the debtor's general estate

⁴ Daniel J. Morse, When A Securities Brokerage Firm Goes Broke A Primer on the Securities Investment Protection Act of 1970, *Am. Bankr. Inst. J.*, February 2006, at 34, 34. “Under SIPA, the trustee will seek to preserve an investor’s portfolio as it stood on the filing date and investors will receive securities whenever possible in satisfaction of their claims, whereas a trustee in a stockbroker liquidation proceeding under the [Bankruptcy] Code is charged with converting certain securities to cash as quickly as possible and making cash distributions to investors in satisfaction of their claims.” *Id.*

is insufficient to pay customer claims.”). If a SIPC Trustee satisfies net equity claims of an investor from the SIPC fund (in excess of debtor’s estate or recovery), SIPA provides two statutory mechanisms for a SIPC to recover—subrogation and assignment.

To the extent moneys are advanced by SIPC to the trustee to pay or otherwise satisfy the claims of customers, in addition to all other rights it may have at law or in equity, SIPC shall be subrogated to the claims of such customers with the rights and priorities provided in this chapter, except that SIPC as subrogee may assert no claim against customer property until after the allocation thereof to customers as provided in section 78fff-2(c) of this title.
15 U.S.C.A. § 78fff-3(a).

Any payment or delivery of property pursuant to this subsection may be conditioned upon the trustee requiring claimants to execute, in a form to be determined by the trustee, appropriate receipts, supporting affidavits, releases, and assignments, but shall be without prejudice to any right of a claimant to file formal proof of claim within the period specified in subsection (a)(3) for any balance of securities or cash to which such claimant considers himself entitled.
15 U.S.C.A. § 78fff-2(b)⁵

SIPC shall promptly satisfy all obligations of the member to each of its customers relating to, or net equity claims based upon, securities or cash by the delivery of securities or the effecting of payments to such customer (subject to the provisions of section 78fff-2(d) of this title and section 78fff-3(a) of this title) insofar as such obligations are ascertainable from the books and records of the member or are otherwise established to the satisfaction of SIPC. For purposes of distributing securities to customers, all securities shall be valued as of the close of business on the date of publication under subsection (b) of this section. Any payment or delivery of securities pursuant to this section may be conditioned upon the execution and delivery, in a form to be determined by SIPC, of appropriate receipts, supporting affidavits, releases, and assignments. To the extent moneys of SIPC are used to satisfy the claims of customers, in addition to all other rights it may have at law or in equity, SIPC shall be subrogated to the claims of such customers against the member.
15 U.S.C. § 78fff-4(c)

⁵ This “subsection of SIPA authorizing assignments, 15 U.S.C. § 78fff–2(b), is titled “Payments to customers” and concerns SIPC payments for net equity claims to customers.” *Mishkin v. Peat, Marwick, Mitchell & Co.*, 744 F. Supp. 531, 554 (S.D.N.Y. 1990).

Thus, in limited circumstances, SIPC may bring suit against third parties on behalf of the customers of the insolvent brokerage firm. *See Sec. Inv'r Prot. Corp. v. BDO Seidman, LLP*, 222 F.3d 63, 68 (2d Cir. 2000) (bailee of the fund of customer property and as subrogee of the customers whose net equity claims it has paid).⁶ These statutory provisions are distinct from a bankruptcy trustee (or any trustee like Plaintiff of a post-confirmation litigation trust) because:

[M]oney held by a broker on behalf of its customers is not the broker's property under state law, it would not be recoverable by a trustee in an ordinary bankruptcy. SIPA circumvents this problem through a statutorily created legal fiction that confers standing on a SIPA trustee by treating customer property as though it were "property of the debtor" in an ordinary liquidation.

Picard v. Fairfield Greenwich Ltd., 762 F.3d 199, 213 (2d Cir. 2014) (internal citations omitted).

B. *Quilling* Involves a SIPC Trustee Suing to Recover Customer Funds under SIPA Statutory Framework

The *Quilling* decision must be understood in the context of this unique statutory framework as SIPC trustee cases are wholly irrelevant to Plaintiff's position. In *Quilling*, "the SIPA liquidation trustee for the Northstar estate,"⁷ utilized these unique statutory subrogation and assignment provisions to "to bring this action (i) as the representative of the Northstar estate, (ii) as bailee of customer property, and (iii) as subrogee to the claims of Northstar customers whose net equity claims, as defined in 15 U.S.C. § 7811(1), have been paid out of funds advanced by SIPC. 15 U.S.C. § 78fff-4(c). *See Exhibit E*. After the discovery of Hill's duplicitous acts, the SIPC fund was required to satisfy Northstar and Hill's customer net equity

⁶ However, most of the cases allowing actions against third parties is based off the holding not reversed in *Redington*. *Redington v. Touche Ross & Co.*, 592 F.2d 617 (2d Cir. 1978), rev'd, 442 U.S. 560 (1979). However, the Second Circuit has recently stated that "*Redington* should be put to rest; it has no precedential effect." *In re Bernard L. Madoff Inv. Sec. LLC.*, 721 F.3d 54, 69 (2d Cir. 2013)

⁷ *Quilling*, at *5.

claims because “Hill...used the money received for means not approved by his clients, which resulted in total losses of the funds entrusted to him.” *Quilling*, at *1. As Hill misappropriated the funds, the debtor estate was not sufficient to satisfy the customer claims. The assignments, pursuant to 15 U.S.C. § 78fff-4(c), were from “customers” protected under SIPA and occurred upon the SIPC Trustee satisfying such customer’s net equity claims from the SIPC fund:

Subject Customers filed claims in the SIPA case based on Hill's deposits. The Trustee allowed and paid some of these claims and denied others. Using funds advanced from SIPC, Trustee was able to pay Subject Customers for part of the losses suffered. Between July 2002 and August 2003, Subject Customers assigned their claims to the Trustee.

Quilling, at *2. Thus, the SIPC Trustee and other plaintiffs filed the case to “recover funds” of the customers “lost due to the described transactions that resulted from Hill’s deposits to the account at Compass Bank.” *Id.* Effectively, the assigned claims and debtor claims were one and the same, by assignment, the debtor is attempting to recover funds paid out by the SIPC fund that were lost based on the alleged malfeasance of the defendant (*i.e.*, but for defendant’s negligent conduct, the funds would have been available to the debtor estate).

Here, Plaintiff is not: a SIPC trustee, attempting to recover funds for the debtor’s estate, funds that would have been included debtor’s estate to satisfy the assigning investor’s claims but for their conduct (it was principally invested in real estate) or otherwise a subrogee. Further, recent Madoff-related cases in Second Circuit would significantly limit, if not completely curtail, even SIPC or a SIPC trustee’s third parties under these theories. *See, e.g., In re Bernard L. Madoff Inv. Sec. LLC.*, 721 F.3d 54, 71-77 (2d Cir. 2013) (SIPA did not confer power to sue third parties on claims that belonged to debtor’s defrauded customers; neither bailment or subrogation theory applied as trustee did not act as the bailee of customer property; SIPA

extended subrogation no further than subrogating SIPC to customers' net equity claims to the extent of the advances they received).

II. SECTION 108(A) IS NOT APPLICABLE TO PLAINTIFF AND PLAINTIFF FAILS TO PROVIDE ONE CASE PROVIDING OTHERWISE

As ██████ previously stated, Section 108(a)'s application is strictly limited to: (i) claims owned by the debtor, (ii) that were owned and existed by the debtor prior to filing the bankruptcy petition and (iii) brought by a bankruptcy trustee (or similar fiduciaries to the bankruptcy estate) on behalf of the estate (not a creditor). *See* Dkt. 325 at 4-8. The voluminous cases cited by in Plaintiff's brief support ██████'s position and fail to support his position. For example:

- *In re Greater Southeast Community Hospital Corp.*, 333 B.R. 506, 534-35 (Bankr. D.D.C. 2005) (involved claims on behalf of the estate, breach of fiduciary duty and legal malpractice)
- *Coliseum Cartage Co., Inc. v. Rubbermaid Statesville, Inc.*, 975 F.2d 1022, 1025 (4th Cir. 1992) (undercharge claims were assets of the estate of debtor-in-possession and allowing collection agent was furtherance of "interest of the Bankruptcy Code by preserving and increasing the assets of the estate.").
- *Official Comm. of Unsecured Creditors of Corell Steel on Behalf of Corell Steel v. Fishbein & Co., P.C.*, No. CIV. A. 91-4919, 1992 WL 196768, at *10 n. 6 (E.D. Pa. Aug. 10, 1992) (committee is "not an assignee, as defendants contend. Rather, the Committee is acting on behalf of Correll, the debtor-in-possession.").

- *In re Olympia & York Maiden Lane Co., LLC*, 233 B.R. 662, 666 (Bankr. S.D.N.Y. 1999) (receiver, “acting on behalf of the debtors, can commence a Tax Action” that “[a]s of the Filing Date, the debtors had the right to file[.]”).
- *In re McConnell*, 390 B.R. 170, 179 (Bankr. W.D. Pa. 2008) (Section 108(a) may apply to a “Chapter 13 debtors-in-possession prosecuting estate property”).
- *In re Gaskins*, 98 B.R. 328, 330–331 (Bankr. E.D. Tenn. 1989) (“ultimate question of whether this suit is for the benefit of the bankruptcy estate.”).
- *U.S. for Use of American Bank v. C.I.T. Const. Inc. of Texas*, 944 F.2d 253, 260 (5th Cir. 1991) (“section 108(A) dictates the conclusion that its rights extend only to trustees and debtors-in-possession, and not creditors” as recoveries “become part of the estate for the benefit of the creditors.”); *Id.* n. 10 (“Only when the bankruptcy court allows a creditor to sue for the benefit of the estate can it claim the benefit of § 108(a).”).
- *Skorheim v. Flanders*, No. SACV10789AGMLGX, 2010 WL 11596145, at *1 (C.D. Cal. Aug. 12, 2010) (litigation trustee acquired debtor’s bankruptcy estate causes of action, not third-party creditor/investor claims – “the **Debtors in the Bankruptcy Action** transferred causes of action to Plaintiff” which were “all claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action, and liabilities **of the Estates** against the D&O Defendants that arose under applicable law prior to the Petition Date”) (emphasis added).

Even under Plaintiff’s view of Section 108(a), it does not apply: “[t]he language can just as naturally be read to require only that the subject claim be (i) timely at the petition date, and (ii) **be or become property of the estate.**” P. Brief at 8. However, as previously provided, the investor claims are not bankruptcy estate claims, assigned to the Liquidating Trust not the

Bankruptcy Estate, separate and distinct from the debtor estate, and the assigned investor claims are solely for the benefit of the assigning investors (not the bankruptcy estate or creditors of the estate). *See* Dkt. 325, Facts at 2-6.

CONCLUSION

WHEREFORE, for the foregoing reasons and those in his initial brief (Dkt. 325), [REDACTED] respectfully requests that the Court find that Section 108(a) does not apply to the securities claims.

EVANS & KOB, PC

DATED: March 26, 2019



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CERTIFICATE OF SERVICE

I hereby certify that on March 26, 2019, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which sent notification of such filing to the following:

[REDACTED] [REDACTED]
[REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]
[REDACTED]

[REDACTED] [REDACTED]
[REDACTED]

[REDACTED] [REDACTED]
[REDACTED]

[REDACTED] [REDACTED]
[REDACTED]

[REDACTED] [REDACTED]
[REDACTED]

[REDACTED] [REDACTED]

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[REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]
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and I hereby certify that I have mailed the document by United States Mail, first-class postage prepaid, to the following non-CM/ECF participants:

(No manual recipients)

/s/ Brett G. Evans

Exhibit A

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Exhibit C

UNITED STATES BANKRUPTCY COURT
District of Utah

Notice of Chapter 11 Bankruptcy Case, Meeting of Creditors, & Deadlines

A chapter 11 bankruptcy case concerning the debtor Corporation listed below was filed on 10/17/11.

You may be a creditor of the debtor. **This notice lists important deadlines.** You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below.

NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.

See Reverse Side For Important Explanations

Debtor(s) (name(s) used by the debtor(s) in the last 8 years, including married, maiden, trade, and address):

Castle Arch Real Estate Investment Company, LLC
8 East Broadway #510
Salt Lake City, UT 84111

Case Number:
11-35082 JTM

Taxpayer ID/Employer ID/Other Nos.:
20-1077312

Attorney for Debtor(s) (name and address):

Michael L. Labertew
Labertew & Associates, LLC
4764 South 900 East
Suite 3
Salt Lake City, UT 84117
Telephone number: 801-424-3555

Meeting of Creditors

Date: **November 21, 2011**

Time: **10:00 AM**

Location: **405 South Main Street, Suite 250, Salt Lake City, UT 84111**

Deadlines to File a Proof of Claim

Proof of claim must be *received* by the bankruptcy clerk's office by the following deadline:

For all creditors (except a governmental unit): **2/21/12**

For a governmental unit (except as otherwise provided
in Fed. R. Bankr. P. 3002 (c)(1): **4/16/12**

Creditor with a Foreign Address

A creditor to whom this notice is sent at a foreign address should read the information under "Claims" on the reverse side.

Deadline to File a Complaint to Determine Dischargeability of Certain Debts:

Creditors May Not Take Certain Actions:

In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

Address of the Bankruptcy Clerk's Office:

350 South Main #301
Salt Lake City, UT 84101
Telephone number: (801) 524-6687

For the Court:

Clerk of the Bankruptcy Court:
David A. Sime

Hours Open: 8:00 AM – 4:30 PM; Telephone 8:00 AM – 4:30 PM

Date: 10/28/11

Online Information

Case information is available at no charge on our Voice Case Information System (VCIS). Call 1-800-733-6740 or (801) 524-3107 with your touch-tone telephone. Case information is also available on the Internet using our PACER service for a \$.08/page fee. An account is required. Visit our homepage at www.utb.uscourts.gov for details.

EXPLANATIONS

FORM RAB9F (12/10)

<p>Filing of Chapter 11 Bankruptcy Case</p>	<p>A bankruptcy case under Chapter 11 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered. Chapter 11 allows a debtor to reorganize or liquidate pursuant to a plan. A plan is not effective unless confirmed by the court. You may be sent a copy of the plan and a disclosure statement telling you about the plan, and you might have the opportunity to vote on the plan. You will be sent notice of the date of the confirmation hearing, and you may object to confirmation of the plan and attend the confirmation hearing. Unless a trustee is serving, the debtor will remain in possession of the debtor's property and may continue to operate any business.</p>
<p>Legal Advice/Note</p>	<p>The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case. Important notice to individual debtor(s): All individual debtor(s) must provide picture identification and proof of social security number to the trustee at the meeting of creditors. Failure to do so may result in your case being dismissed.</p>
<p>Creditors Generally May Not Take Certain Actions</p>	<p>Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; and starting or continuing lawsuits or foreclosures. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay.</p>
<p>Meeting of Creditors</p>	<p>A meeting of creditors is scheduled for the date, time and location listed on the front side. <i>The debtor's representative must be present at the meeting to be questioned under oath by the trustee and by creditors.</i> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice. The court, after notice and a hearing, may order that the United States trustee not convene the meeting if the debtor has filed a plan for which the debtor solicited acceptances before filing the case.</p>
<p>Claims</p>	<p>A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. You may look at the schedules that have been or will be filed at the bankruptcy clerk's office. If your claim is scheduled and is not listed as disputed, contingent, or unliquidated, it will be allowed in the amount scheduled unless you filed a Proof of Claim or you are sent further notice about the claim. Whether or not your claim is scheduled, you are permitted to file a Proof of Claim. If your claim is not listed at all <i>or</i> if your claim is listed as disputed, contingent, or unliquidated, then you must file a Proof of Claim by the "Deadline to File Proof of Claim" listed on the front side, or you might not be paid any money on your claim and may be unable to vote on the plan. A secured creditor retains rights in its collateral regardless of whether that creditor files a Proof of Claim. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a Proof of Claim may surrender important nonmonetary rights, including the right to a jury trial. Filing Deadline for a Foreign Creditor: The deadlines for filing claims set forth on the front of this notice apply to all creditors. If this notice has been mailed to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline.</p>
<p>Discharge of Debts</p>	<p>Confirmation of a chapter 11 plan may result in a discharge of debts, which may include all or part of your debt. See Bankruptcy Code § 1141(d). A discharge means that you may never try to collect the debt from the debtor, except as provided in the plan. If you believe that a debt owed to you is not dischargeable under Bankruptcy Code § 1141(d)(6)(A), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and any required filing fee by that Deadline.</p>
<p>Dismissal</p>	<p>This case may be dismissed unless a written objection to dismissal is filed by the debtor, a creditor or party in interest within 21 days after a creditors meeting, if the debtor(s) or debtor's counsel fail to attend the creditors meeting or fail to timely file required documents pursuant to Local Rules 2003-1, 1007-1. A hearing on the objection to dismissal must be set at the time the objection is filed and notice of the hearing must be sent to the trustee, all creditors and parties of interest or the case shall be dismissed.</p>
<p>Bankruptcy Clerk's Office</p>	<p>Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.</p>
<p>Creditor with a Foreign Address</p>	<p>Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.</p>
<p>— Refer to Other Side for Important Deadlines and Notices —</p>	

B10 (Official Form 10) (04/10)

UNITED STATES BANKRUPTCY COURT District of Utah		PROOF OF CLAIM
Name of Debtor: Castle Arch Real Estate Investment Company, LLC		Case Number: 11-35082
<i>NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.</i>		
Name of Creditor (the person or other entity to whom the debtor owes money or property):		<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim.
Name and address where notices should be sent:	Strike any pre-printed text if incorrect AND type or print correct information	Court Claim Number: _____ <i>(If known)</i>
	Telephone number:	Filed on: _____ <input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check this box if you are the debtor or trustee in this case
Name and address where payment should be sent (if different from above):		5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount. Specify the priority of the claim. <input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B). <input type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. §507(a)(4). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. §507(a)(5). <input type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. §507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. §507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. §507(a)(____). Amount entitled to priority: \$ _____ <i>*Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</i>
Telephone number:		
1. Amount of Claim as of Date Case Filed: \$ _____ If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4. If all or part of your claim is entitled to priority, complete item 5. <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.		
2. Basis for Claim: _____ (See instruction #2 on reverse side.)		
3. Last four digits of any number by which creditor identifies debtor: _____ 3a. Debtor may have scheduled account as: _____ (See instruction #3a on reverse side.)		
4. Secured Claim (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information. Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: Value of Property: \$ _____ Annual Interest Rate ____ % Amount of arrearage and other charges as of time case filed included in secured claim, if any: \$ _____ Basis for perfection: _____ Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____		
6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim. 7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. <i>(See instruction 7 and definition of "redacted" on reverse side.)</i> DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING. If the documents are not available, please explain:		FOR COURT USE ONLY Please mail this claim form to: U.S. Bankruptcy Court 350 South Main St., Rm. 301 Salt Lake City, Utah 84101
Date:	Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.	

B10 (Official Form 10) (04/10) - Cont.

INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, there may be exceptions to these general rules.

Items to be completed in Proof of Claim form

Court, Name of Debtor, and Case Number:

Fill in the federal judicial district where the bankruptcy case was filed (for example, Central District of California), the bankruptcy debtor's name, and the bankruptcy case number. If the creditor received a notice of the case from the bankruptcy court, all of this information is located at the top of the notice.

Creditor's Name and Address:

Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

1. Amount of Claim as of Date Case Filed:

State the total amount owed to the creditor on the date of the Bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

2. Basis for Claim:

State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on the delivery of health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if the trustee or another party in interest files an objection to your claim.

3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:

State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.

3a. Debtor May Have Scheduled Account As:

Use this space to report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.

4. Secured Claim:

Check the appropriate box and provide the requested information if the claim is fully or partially secured. Skip this section if the claim is entirely unsecured. (See DEFINITIONS, below.) State the type and the value of property that secures the claim, attach copies of lien documentation, and state annual interest rate and the amount past due on the claim as of the date of the bankruptcy filing.

5. Amount of Claim Entitled to Priority Under 11 U.S.C. §507(a).

If any portion of your claim falls in one or more of the listed categories, check the appropriate box(es) and state the amount entitled to priority. (See DEFINITIONS, below.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

6. Credits:

An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

7. Documents:

Attach to this proof of claim form redacted copies documenting the existence of the debt and of any lien securing the debt. You may also attach a summary. You must also attach copies of documents that evidence perfection of any security interest. You may also attach a summary. FRBP 3001(c) and (d). If the claim is based on the delivery of health care goods or services, see instruction 2. Do not send original documents, as attachments may be destroyed after scanning.

Date and Signature:

The person filing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2), authorizes courts to establish local rules specifying what constitutes a signature. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. Attach a complete copy of any power of attorney. Criminal penalties apply for making a false statement on a proof of claim.

DEFINITIONS

INFORMATION

Debtor

A debtor is the person, corporation, or other entity that has filed a bankruptcy case.

Creditor

A creditor is the person, corporation, or other entity owed a debt by the debtor on the date of the bankruptcy filing. See 11 U.S.C. §101 (10)

Claim

A claim is the creditor's right to receive payment on a debt that was owed by the debtor that arose on the date of the bankruptcy filing. See 11 U.S.C. §101 (5). A claim may be secured or unsecured.

Proof of Claim

A proof of claim is a form used by the creditor to indicate the amount of the debt owed by the debtor on the date of the bankruptcy filing. The creditor must file the form with the clerk of the same bankruptcy court in which the bankruptcy case was filed.

Secured Claim Under 11 U.S.C. §506(a)

A secured claim is one backed by a lien on property of the debtor. The claim is secured so long as the creditor has the right to be paid from the property prior to other creditors. The amount of the secured claim cannot exceed the value of the property. Any amount owed to the creditor in excess of the value of the property is an unsecured claim. Examples of liens on property include a mortgage on real estate or a security interest in a car.

A lien may be voluntarily granted by a debtor or may be obtained through a court proceeding. In some states, a court judgment is a lien. A claim also may be secured if the creditor owes the debtor money (has a right to setoff).

Unsecured Claim

An unsecured claim is one that does not meet the requirements of a secured claim. A claim may be partly unsecured if the amount of the claim exceeds the value of the property on which the creditor has a lien.

Claim Entitled to Priority Under 11 U.S.C. §507(a)

Priority claims are certain categories of unsecured claims that are paid from the available money or property in a bankruptcy case before other unsecured claims.

Redacted

A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. A creditor should redact and use only the last four digits of any social-security, individual's tax-identification, or financial-account number, all but the initials of a minor's name and only the year of any person's date of birth.

Evidence of Perfection

Evidence of perfection may include a mortgage, lien, certificate of title, financing statement, or other document showing that the lien has been filed or recorded.

Acknowledgment of Filing of Claim

To receive acknowledgment of your filing, you may either enclose a stamped self-addressed envelope and a copy of this proof of claim or you may access the court's PACER system (www.pacer.psc.uscourts.gov) for a small fee to view your filed proof of claim.

Offers to Purchase a Claim

Certain entities are in the business of purchasing claims for an amount less than the face value of the claims. One or more of these entities may contact the creditor and offer to purchase the claim. Some of the written communications from these entities may easily be confused with official court documentation or communications from the debtor. These entities do not represent the bankruptcy court or the debtor. The creditor has no obligation to sell its claim. However, if the creditor decides to sell its claim, any transfer of such claim is subject to FRBP 3001(e), any applicable provisions of the Bankruptcy Code (11 U.S.C. § 101 *et seq.*), and any applicable orders of the bankruptcy court.

Certificate of Service Page 5 of 6
United States Bankruptcy Court
District of Utah

In re:
Castle Arch Real Estate Investment Compa
Debtor

Case No. 11-35082-JTM
Chapter 11

CERTIFICATE OF NOTICE

District/off: 1088-2 User: dlj Page 1 of 2 Date Rcvd: Oct 28, 2011
Form ID: rab9f Total Noticed: 38

Notice by first class mail was sent to the following persons/entities by the Bankruptcy Noticing Center on Oct 30, 2011.

- db +Castle Arch Real Estate Investment Compa, 8 East Broadway #510, Salt Lake City, UT 84111-2291
aty +Adelaide Maudsley, Chapman and Cutler LLP, 201 South Main Street, Suite 2000, Salt Lake City, UT 84111-2298
aty +Michael L. Labertew, Labertew & Associates, LLC, 4764 South 900 East, Suite 3, Salt Lake City, UT 84117-4990
7961777 +Andrew Benis, 26685 El Mar Drive, Mission Viejo, CA 92691-6105
7961778 +Andrew Feola, c/o Steven B. Kotulak, Esq., 660 South Figueroa St. #1990, Los Angeles, CA 90017-3429
7961780 +Bank of Star Valley, PO Box 928, Thayne, WY 83127-0928
7961781 +Bill Davidson, 2 Strauss Terrace, Rancho Mirage, CA 92270-4075
7961782 +Bill Grundy, 65 Covered Bridge Rd, Barrington, IL 60010-9524
7961783 +Bill Warwick, 1063 Ocean Ridge Dr, Wilmington, NC 28405-5287
7961784 +Chisholm, Bierwolf, Nilson & Morrill, 12 South Main #208, Layton, UT 84041-3710
7961785 +Cohne Rappaport & Segal, 257 East 200 South #700, Salt Lake City, UT 84111-2071
7961787 +Daily Brand, LLC, 10215 Santa Monica Blvd, Los Angeles, CA 90067-6403
7961788 +Doug Child, 1284 W. Flint Meadow Dr #D, Kaysville, UT 84037-9590
7961789 +Dr. Nolan and Kimberley Higa, c/o Steven B. Kotulak, Esq., 660 S. Figueroa St. #1990, Los Angeles, CA 90017-3429
7961790 +Entrust Arizona, LLC, 20860 N Tatum Blvd # 240, Phoenix, AZ 85050-4280
7961791 +Fact Finders Information Services, LLC, PO Box 367, Layton, UT 84041-0367
7961792 +Fortius Financial Advisors, 136 East South Temple #1025, Salt Lake City, UT 84111-1113
7961793 +Illinois Department of Employment Securi, Central Region Revenue, 850 E Madison St 2nd Floor, Springfield, IL 62702-5520
7961794 +Jeff Austin, 16246 Santa Barbara Lane, Huntington Beach, CA 92649-2177
7961796 +Jerry Sharko's Co., Inc., c/o DiTommaso-Lubin, P.C., 17W 220 22nd Street, Suite 200, Villa Park, IL 60181-4477
7961797 +Kirby Cochran, 692 E Cherapple Circle, Orem, UT 84097-7339
7961798 +Les Olsen Company, 3244 South 300 West, Salt Lake City, UT 84115-3411
7961799 +Lincoln County Treasurer, 925 Sage Ave, Kemmerer, WY 83101-3129
7961800 +Longview Financial Group, Inc., Schrader & Schoenberg, LLP, 711 Third Avenue #1803, New York, NY 10017-4050
7961801 +Mohave County Treasurer, PO Box 7000, Kingman, AZ 86402-7000
7961803 +Net Chemistry, 4600 Campus Drive #201A, Newport Beach, CA 92660-1885
7961804 Olson Communications, 1811 N Tatum Bvd #2050, Phoenix, AZ 85028
7961806 +RFC Properties, LLC, 1284 W Flint Meadow Dr #D, Kaysville, UT 84037-9590
7961809 Ryan, Inc., 131555 Noel Road #100, Dallas, TX 75240
7961810 +Snell and Wilmer, One Arizona Center, Phoenix, AZ 85004-2281
7961811 +Southwest Traffic Engineering, 3838 North Central Ave #1810, Phoenix, AZ 85012-3531
7961812 +The Dot Printer, 2424 McGaw Ave, Irvine, CA 92614-5834
7961813 +The Hunt Law Corporation, P.C., 66 Exchange Place, Salt Lake City, UT 84111-2713
7961814 +Tooele County Treasurer, 47 South Main, Tooele, UT 84074-2148
7961815 +Valley Gardens, c/o Dick Wilbur, 18430 Brookhurst St #202K, Fountain Valley, CA 92708-6768

- Notice by electronic transmission was sent to the following persons/entities by the Bankruptcy Noticing Center.
7961779 +EDI: CINGMIDLAND.COM Oct 29 2011 01:28:00 AT&T, PO Box 30218, Los Angeles, CA 90030-0218
7961786 +E-mail/Text: tammie.bennett@wolterskluwer.com Oct 29 2011 01:36:15 CT Corporation, PO Box 4349, Carol Stream, IL 60197-4349
7961805 +Fax: 801-536-6111 Oct 29 2011 02:14:13 Parsons, Behle & Latimer, 201 South Main St #1800, Salt Lake City, UT 84111-2218

TOTAL: 3

***** BYPASSED RECIPIENTS (undeliverable, * duplicate) *****

- 7961795 ##+Jeffrey Greene, PC, One Burton Hills Blvd 330, Nashville, TN 37215-6289
7961802 ##+Mohave Engineering Associates, 2202 Stockton Hill Road #A, Kingman, AZ 86401-4622
7961807 ##+Robert Clawson, 55 Sea Terrace, Newport Coast, CA 92657-1022
7961808 ##+Robert Geringer, 9595 Wilshire Blvd Suite 1000, Beverly Hills, CA 90212-2510

TOTALS: 0, * 0, ## 4

Addresses marked '+' were corrected by inserting the ZIP or replacing an incorrect ZIP. USPS regulations require that automation-compatible mail display the correct ZIP.

Addresses marked '##' were identified by the USPS National Change of Address system as undeliverable. Notices will no longer be delivered by the USPS to these addresses; therefore, they have been bypassed. The debtor's attorney or pro se debtor was advised that the specified notice was undeliverable.

District/off: 1088-2

User: dlg
Form ID: rab9f

Page 2 of 2
Total Noticed: 38

Date Rcvd: Oct 28, 2011

***** BYPASSED RECIPIENTS (continued) *****

I, Joseph Speetjens, declare under the penalty of perjury that I have sent the attached document to the above listed entities in the manner shown, and prepared the Certificate of Notice and that it is true and correct to the best of my information and belief.

Meeting of Creditor Notices only (Official Form 9): Pursuant to Fed. R. Bank. P. 2002(a)(1), a notice containing the complete Social Security Number (SSN) of the debtor(s) was furnished to all parties listed. This official court copy contains the redacted SSN as required by the bankruptcy rules and the Judiciary's privacy policies.

Date: Oct 30, 2011

Signature:

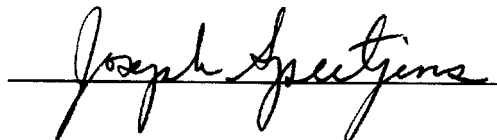
A handwritten signature in black ink, reading "Joseph Speetjens", written over a horizontal line.

Exhibit D