

SCHWARTZ LAW, PLLC
Samuel A. Schwartz, Esq.
Nevada Bar No. 10985
601 East Bridger Avenue
Las Vegas, NV 89101
Telephone: 702.385.5544
Facsimile: 702.385.2741

BROWN RUDNICK LLP
CATHRINE M. CASTALDI, #156089
ccastaldi@brownrudnick.com
2211 Michelson Drive, Seventh Floor
Irvine, California 92612
Telephone: (949) 752-7100
Facsimile: (949) 252-1514

*Counsel for Official Committee of
Unsecured Creditors*

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEVADA**

In re:

RED ROSE, INC.

- ☐ Affects Beachhead Roofing and Supply, Inc.
- ☐ Affects California Equipment Leasing Association, Inc.
- ☐ Affects Beachhead Roofing and Supply, Inc.
- ☐ Affects Fences 4 America, Inc.
- ☐ Affects James Petersen Industries, Inc.
- ☐ Affects PD Solar, Inc.
- ☐ Affects Petersen Roofing and Solar LLC
- ☐ Affects Petersen-Dean, Inc.
- ☐ Affects PetersenDean Hawaii LLC
- ☐ Affects PetersenDean Roofing and Solar Systems, Inc.
- ☐ Affects PetersenDean Texas, Inc.
- ☐ Affects Red Rose, Inc.
- ☐ Affects Roofs 4 America, Inc.
- ☐ Affects Solar 4 America, Inc.
- ☐ Affects Sonoma Roofing Services, Inc.
- ☐ Affects TD Venture Fund, LLC
- ☐ Affects Tri-Valley Supply, Inc.
- ☒ Affects All Debtors

Debtors.

Case No.: 20-12814-mkn

Jointly Administered with

Case No. BK-S-20-12815-mkn
Case No. BK-S-20-12816-mkn
Case No. BK-S-20-12818-mkn
Case No. BK-S-20-12819-mkn
Case No. BK-S-20-12820-mkn
Case No. BK-S-20-12821-mkn
Case No. BK-S-20-12822-mkn
Case No. BK-S-20-12823-mkn
Case No. BK-S-20-12824-mkn
Case No. BK-S-20-12825-mkn
Case No. BK-S-20-12826-mkn
Case No. BK-S-20-12827-mkn
Case No. BK-S-20-12829-mkn
Case No. BK-S-20-12831-mkn
Case No. BK-S-20-12833-mkn

Chapter 11

**OBJECTION OF OFFICIAL
COMMITTEE OF UNSECURED
CREDITORS TO DEBTORS'
MOTION FOR APPROVAL OF
COMPROMISE, PURSUANT TO FED.
R. BANKR. P. 9019, BY AND AMONG
TD VENTURE FUND, LLC, JAMES P.
PETERSEN, TRICIA YEH PETERSEN
AND ACF FINCO I, LP**

Hearing Date: September 17, 2020
Hearing Time: 9:30 a.m.

TO THE HONORABLE MIKE NAKAGAWA, UNITED STATES BANKRUPTCY JUDGE, THE DEBTORS AND THEIR COUNSEL, AND TO THE OFFICE OF THE UNITED STATES TRUSTEE:

The Official Committee of Unsecured Creditors (the “Committee”) of TD Venture Fund, LLC (“TD Venture”) and the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”), respectfully submits this objection (this “Objection”) to the *Debtors’ Motion for Approval of Compromise, Pursuant to Fed. R. Bankr. P. 9019, by and Among TD Venture Fund, LLC, James P. Petersen, Tricia Yeh Petersen and ACF Finco I, LP* [ECF 739] (the “Motion”).¹ In support of the Objection, the Committee submits the *Declaration of Seth Freeman in Support of Objection of Official Committee of Unsecured Creditors to Debtors’ Motion for Approval of Compromise, Pursuant to Fed. R. Bankr. P. 9019, by and Among TD Venture Fund, LLC, James P. Petersen, Tricia Yeh Petersen and ACF Finco I, LP* (the “Freeman Declaration”) filed contemporaneously with this Objection.

In further support of this Objection, the Committee represents as follows:

PRELIMINARY STATEMENT

No party will be heard to argue that these chapter 11 cases have been easy. Since the first day hearing (or more accurately, the hearing before the first day hearing), parties including the Debtors’ prepetition lender, ACF, have gone to great lengths protecting their interests while maintaining a cautious, forward-looking approach in these cases. In some respects, those efforts have paid off.

Despite ongoing operational issues and cash flow disruption, the Debtors and ACF agreed to, and the Court entered an order authorizing, use of cash collateral on a final basis,

¹ Capitalized terms not otherwise defined in this Objection will have the meaning set forth in the Motion.

1
2 the Debtors received approval for a critical vendor program intended to boost receivables,
3 and, when receivables still lagged, entered into a factoring arrangement that provided
4 advances to the Debtors' estates on which the Debtors are currently operating.

5 Now, the Motion suggests that we are back to square one. According to the Debtors,
6 the extreme actions Debtor TD Venture must take, disposing of potentially valuable assets
7 in favor of ACF, is necessary to allow for the consensual use of cash collateral and to resolve
8 expensive pending contested matters and litigation, allowing the Debtors to move toward a
9 reorganization. To be specific, as part of this settlement, the Debtors propose to assign to
10 ACF an estate on the island of Maui, Hawaii, which the Committee estimates, based on a
11 recent appraisal, a value between \$8.4 million and \$9.25 million.
12

13 Notwithstanding the transfer of such a valuable asset to ACF, the Settlement
14 Agreement does not appear to provide any benefit to the Debtors. In fact, the entire rationale
15 posed by the Debtors to approve this settlement is counter factual. The Debtors ignore the
16 existing order allowing the consensual use of cash collateral and the order approving
17 advances under a factoring arrangement that negates the need for future use of cash
18 collateral. As a result, there is no proposed additional use of cash collateral in the settlement
19 or the Motion, nor is there any evidence as to the necessity of same. Similarly, no pending
20 contested matters or other pending litigation between the Debtors and ACF are identified
21 that would be resolved as a result of this agreement. It is unclear, then, what, if anything, is
22 being resolved between ACF and the Debtors.
23
24

25 The Debtors (other than TD Venture) are not parties to the settlement. The
26 Settlement Agreement (as defined herein) clearly states that the parties entered into the
27 agreement "for the purpose of resolving the Guaranteed Obligations and any other alleged
28

1
2 claims or causes of action between [TD Venture], [Mr. and Mrs. Petersen], and [ACF].” By
3 its own terms, the Settlement Agreement does nothing the Debtors contend it accomplishes.
4 There is no discussion of how the assigned property would reduce the balance of the
5 Debtors’ prepetition obligation to ACF. In reality, the Settlement Agreement allows ACF
6 to take control of assets and release claims TD Venture may have against it before any
7 potential causes of action are raised challenging the validity of ACF’s interest in TD
8 Venture’s property.
9

10 As part of its investigation throughout these cases, the Committee has found that
11 ACF’s rights in and to TD Venture’s property are likely subject to avoidance. In the brief
12 time the Committee has been appointed in the TD Venture chapter 11 case,² it has uncovered
13 evidence that the proceeds TD Venture used to acquire its property came from, at least in
14 part, other Debtors, even though TD Venture is wholly owned by James and Tricia Petersen.
15 This discovery could provide an avenue for other Debtors to obtain value from TD
16 Venture’s assets if they are not assigned to ACF as the Debtors intend under the Settlement
17 Agreement. With its broad releases, the Settlement Agreement would foreclose any
18 opportunity for TD Venture to take appropriate action to preserve value for its own estate
19 as well as potentially the estates of other Debtors. Removing one of the few potential
20 sources of unencumbered value from the estate prematurely may have the unintended
21 consequence of harming the Debtors’ ability to reorganize rather than assisting in it as the
22 Debtors claim.
23
24
25
26

27 ² The Committee was appointed in the TD Venture chapter 11 case on August 26, 2020. *See Amended Notice*
28 *of the Official Committee of Unsecured Creditors for the Estates of all Captioned Debtors* [ECF 811].

1
2 As there are currently no pending disputes that require resolution between the
3 Debtors and ACF, and the Debtors continue to operate on the advances from their factoring
4 arrangement, there is no urgency to bless this so-called settlement. The Committee should
5 be permitted to complete its investigation and TD Venture should have time to weigh
6 possible actions to preserve value for its estate and affiliated Debtor estates before the
7 Settlement Agreement can be approved. Accordingly, the Motion to approve the Settlement
8 Agreement should be denied at this time.
9

10 **BACKGROUND**

11 1. On June 11, 2020 (the “Petition Date”), each of the Debtors filed a voluntary
12 petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy
13 Court for the District of Nevada (the “Court”), commencing the Debtors’ chapter 11 cases
14 (the “Chapter 11 Cases”). The Debtors continue to operate their businesses and manage
15 their properties as debtors in possession pursuant to sections 1107 and 1108 of the
16 Bankruptcy Code.
17

18 2. On June 27, 2020, the United States Trustee for the District of Nevada (the
19 “U.S. Trustee”) formed the Committee in the Chapter 11 Cases appointing the following
20 parties as members of the Committee: (i) ABC Supply Company, Inc.; (ii) Beacon Sales
21 Acquisition, Inc.; (iii) DJ Roof and Solar Supply, LLC; (iv) Export Development Canada /
22 Exportation et Développement Canada; (v) Fabian Covarrubias as Class Action
23 Representative; (vi) National Union Fire Insurance Company of Pittsburgh, Pa.; and (vii)
24 Sterling National Bank [ECF 151].
25
26
27
28

1
2 **A. The Prepetition Loan Agreement.**

3 3. On June 29, 2017 Debtor Petersen-Dean, Inc. (“PDI”) and its subsidiary
4 Debtors, California Equipment Leasing Association, Inc.; Fences 4 America, Inc.; PD Solar,
5 Inc.; PetersenDean Roofing and Solar Systems, Inc.; PetersenDean Texas, Inc.; Red Rose,
6 Inc.; Roofs 4 America, Inc.; Solar 4 America, Inc.; Sonoma Roofing Services, Inc.; and Tri-
7 Valley Supply, Inc. (collectively, the “Initial Borrowing Debtors”) and ACF Finco I, LP
8 (“ACF” or the “Lender”) entered into that certain Loan and Security Agreement (the “Loan
9 Agreement”) providing the Initial Borrowing Debtors a revolving credit facility of no
10 greater than \$30 million. TD Ventures was not an Initial Borrowing Debtor.

12 4. The Borrowing Debtors’ obligations under the Loan Agreement was secured
13 by the Initial Borrowing Debtors’ personal property³ and that certain Collection Account
14 Agreement dated June 16, 2017 between ACF and the Initial Borrowing Debtors. As of
15 June 30, 2020, outstanding obligations under the Loan Agreement were approximately
16 \$28.4 million, making ACF the largest secured creditor of the Debtors. *See* Declaration of
17 Jeffrey C. Perea in Support of Debtors’ Motion for Approval of Compromise, Pursuant to
18 Fed. R. Banks. P. 9029, by and Among TD Venture Fund. LLC, James P. Petersen, Tricia
19 Yeh Petersen and ACF Finco I, LP [ECF 740] (the “Perea Declaration”) at ¶ 9.

21 5. On or about June 22, 2018, James Petersen, as a result of a covenant violation
22 on a personal loan and in exchange for a reduction in the interest rate and an extension on
23

24
25
26 ³ While the personal property of the Initial Borrowing Debtors on which ACF asserts a security interest
27 includes commercial tort claims, neither the Loan Agreement nor any supporting documents properly provides
28 a schedule of commercial tort claims to satisfy the particularity requirement to properly attach liens to such
claims. *See* U.C.C. § 9-108(e). If ACF does not agree that its prepetition liens do not extend to commercial
tort claims, the Committee intends to challenge those liens.

1
2 the maturity date under the Loan Agreement⁴ entered into that certain Amended and
3 Restated Continuing Guaranty (the “Petersen Guaranty”). Mr. Petersen is the founder and
4 majority shareholder of PDI. Under the Petersen Guaranty, Mr. Petersen guaranteed the
5 Initial Borrowing Debtors’ obligations under the Loan Agreement. The Petersen Guaranty
6 is secured by certain deeds of trusts for real property owned Mr. Petersen located in Truckee,
7 CA and Aptos, CA.

8
9 6. According to TD Venture’s Statement of Financial Affairs [ECF 351], TD
10 Venture is not a subsidiary of PDI. Rather, TD Venture is affiliated with the Initial
11 Borrowing Debtors through the 50% ownership interest in TD Venture. *See* Statement of
12 Financial Affairs, p. 5 of 6. The Committee is currently investigating the source of funds
13 used by TD Venture to purchase the Hawaii Property. At present, the Committee has found
14 that a significant portion of the funds used to purchase the Hawaii Property may have come
15 from other Debtors. *See* Freeman Declaration at ¶ 10. The Committee’s investigation is
16 ongoing.

17
18 7. On November 15, 2018, TD Venture executed that certain Continuing
19 Guaranty (the “TD Venture Guaranty”) whereby TD Venture agreed to guarantee and
20 become jointly and severally liable for all outstanding obligations under the Loan
21 Agreement. The TD Venture Guaranty is secured by that certain Mortgage Assignment of
22 Rents, Security Agreement and Fixture Filing, dated November 15, 2018, granted by TD
23 Venture in favor of ACF (the “Hawaii Mortgage”) encumbering a five-acre residential estate
24 in Hawaii owned by TD Venture (the “Hawaii Property”).⁵ The Committee received a
25

26
27 ⁴ Modifications to the Loan Agreement were memorialized in that certain Amendment Number One to the
Loan and Security Agreement dated June 21, 2018.

28 ⁵ TD Venture also owns a membership interest in the Calistoga Ranch Club (the “Membership Interest”). TD

1
2 recent appraisal, which valued the Hawaii Property in excess of \$9 million. *See* Freeman
3 Declaration at ¶ 12. In addition to the purported lien on the Hawaii Property as a result of
4 the Hawaii Mortgage, there are further, senior priority encumbrances on the Hawaii
5 Property of approximately \$3.5 million. *See id.* at ¶ 10. At the time TD Venture executed
6 the TD Venture Guaranty, outstanding obligations under the Loan Agreement exceeded the
7 value of the Hawaii Property and the other assets of TD Venture. *See id.*

8
9 8. TD Venture executed the TD Venture Guaranty in conjunction with the
10 Initial Borrowing Debtors and the Lender entering into that certain Amendment Number
11 Two to Loan and Security Agreement dated November 22, 2018 (the “Second
12 Amendment”). The Second Amendment increased the maximum commitments of the
13 revolving credit facility from \$30 million to \$35 million. The Second Amendment also
14 added Debtor PetersenDean Hawaii, LLC (the “New Borrowing Debtor” and together with
15 the Initial Borrowing Debtors, the “Borrowing Debtors”), though a Joinder to Loan
16 Documents (the “Joinder”), as a new borrower under the Loan Agreement. Through the
17 Joinder, the New Borrowing Debtor provided the Lender a security interest in all its personal
18 property. TD Venture was still not included as a Borrowing Debtor and remains the only
19 Debtor that is not a borrower under the Loan Agreement but provides a guaranty to ACF.
20

21 **B. Cash Collateral and DIP Factoring.**

22 9. On June 16, 2018, the Court entered an interim order [ECF 55] authorizing
23 the Borrowing Debtors use of the Lenders’ cash collateral. In exchange for the use of cash
24 collateral, ACF received a generous adequate protection package, including liens on
25
26

27 _____
28 Venture holds no other material assets.

1
2 substantially all assets of the Debtors, superpriority claims, and adequate protection
3 payments of \$35,000 per business day. On July 31, 2020, the court entered a final order
4 [ECF 601] authorizing the Borrowing Debtors use of ACF's cash collateral.

5 10. Not long into these Chapter 11 Cases, it became apparent that the Debtors
6 would not be able to rely solely on cash collateral for operations. On the same date the
7 Court authorized the use of cash collateral on a final basis, the Court entered an interim
8 order [ECF 600] authorizing a postpetition factoring arrangement between certain Debtors
9 (excluding TD Venture) and LS DE LLC and LSQ Funding Group, L.C. (together, "LSQ").
10 Under the Factoring Arrangement, LSQ advances funds to the applicable Debtors against
11 qualifying receivables it purchases from the Debtors. It is the Committee's understanding
12 that the Debtors are operating solely off the advanced proceeds provided by LSQ under the
13 factoring arrangement and no longer utilizes ACF's cash collateral. On September 3, 2020,
14 the Court entered a final order [ECF 914] (the "Final DIP Factoring Order") approving the
15 factoring arrangement. Upon entry of the Final DIP Factoring Order, the adequate
16 protection payments to ACF ceased. *See* Final DIP Factoring Order at ¶ 12(d).

17
18
19 11. As a condition precedent to entering into the factoring arrangement, ACF
20 required that the Debtors and LSQ agree to enter into a plan support agreement with LSQ.
21 *Id.* at ¶ J. As of the filing of this Objection, the Debtors have not made any plan support
22 agreement public or taken any affirmative steps toward reorganization.⁶
23

24
25

⁶ The Committee has reviewed the terms of the plan support agreement on a confidential basis. It is clear to
26 the Committee that the plan support agreement, in its current form, has little hope of achieving a
27 reorganization, which is likely why it has not been made public nor have the Debtors have taken affirmative
28 steps toward implementing a reorganization on its terms. The Committee is in ongoing negotiations with the
Debtors and ACF to reach a global resolution that, if successful, will likely result in a successful reorganization
or alternative transaction. The relief sought in this Motion only serves to cripple such negotiations.

1
2 **C. The Settlement Agreement.**

3 12. On August 19, 2020, the Debtors filed the Motion. The Motion seeks
4 approval of a settlement agreement (the “Settlement Agreement”) by and among TD
5 Venture, Mr. Petersen, and ACF. The Settlement Agreement seeks to resolve obligations
6 under the Petersen Guaranty and TD Venture Guaranty. The Settlement Agreement requires
7 TD Venture to take the following actions:

- 8
- 9 • Provide a deed in lieu of foreclosure of the Hawaii Property to ACF;
 - 10 • Transfer the Membership Interest to ACF;
 - 11 • Provide a note for \$2.5 million payable should Mr. Petersen and/or his
12 spouse, Patricia Petersen, directly or indirectly own a roofing or solar
13 business with gross revenue exceeding \$50 million on or before December
14 31, 2024; and
 - Enter a mutual release of claims with ACF and Mr. and Mrs. Petersen.

15 While the mutual release of claims is not included in the Settlement Agreement filed with
16 the Court, the Settlement Agreement states that the parties are entering into the agreement
17 “for the purpose of resolving the Guaranteed Obligation and any other alleged claims or
18 causes of action between [TD Venture], [Mr. and Mrs. Petersen], and [ACF].” Settlement
19 Agreement at § 4.

20
21 13. The Debtors stated justifications to enter into the Settlement Agreement are
22 as follows:

- 23
- 24 • the Lender will permit the consensual use of cash collateral to “allow [the
Debtors] to proceed towards a plan of reorganization;”
 - 25 • divesting the Hawaii Property and Membership Interest will reduce the
outstanding obligations under the Loan Agreement; and
 - 26 • the Settlement Agreement will resolve pending contested matters between
27 the Debtors and ACF, preventing the expenditure of considerable litigation
28 costs, destroying the Debtors’ ability to reorganize.

1
2 See Perea Declaration at ¶¶ 19-20. It is not evident from the Motion that any of these
3 justifications can withstand scrutiny.

4 **OBJECTION**

5 14. Upon motion and after a hearing on notice to creditors, “the court may
6 approve a compromise or settlement.” Fed. R. Bankr. P. 9019. According to the Supreme
7 Court, a bankruptcy court considering whether to approve a settlement in a bankruptcy case
8 should:
9

10 apprise [itself] of all facts necessary for an intelligent and objective
11 opinion of the probabilities of ultimate success should the claim be
12 litigated. Further, the judge should form an educated estimate of the
13 complexity, expense, and likely duration of such litigation, the
14 possible difficulties in collecting on any judgment which might be
15 obtained, and all other factors relevant to a full and fair assessment
16 of the wisdom of the proposed compromise.

17 *Protective Comm. For Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S.
18 414, 424 (1968). Under Bankruptcy Rule 9019, a court should only approve a settlement if
19 it is “in the best interest of the Estate . . . and is fair and equitable for the creditors.” *Schmitt*
20 *v. Ulrich (In re Schmitt)*, 215 B.R. 417, 424 (9th Cir. BAP 1997); *see also In re Mickey*
21 *Thompson Entm't Grp., Inc.*, 292 B.R. 415, 420 (B.A.P. 9th Cir. 2003) (“Although the
22 bankruptcy court has great latitude in authorizing a compromise, it may only approve a
23 proposal that is fair and equitable to the creditors.”) (internal quotations omitted).

24 15. Here, the Settlement Agreement is neither in the best interests of the Debtors’
25 Estates nor is it fair and equitable to creditors. Rather, the Settlement Agreement only serves
26 to benefit ACF, and arguably, Mr. And Mrs. Petersen, without providing any value or case
27 resolution for any other creditors in these Chapter 11 Cases. Accordingly, for the reasoning
28

1
2 set forth below, the Settlement Agreement should not be approved, and the Motion should
3 be denied.

4 **I. The Settlement Agreement Is Not In The Best Interests Of The Debtors’**
5 **Estates.**

6 16. When determining what is in the best interests of a debtor’s estate, parties in
7 interest, where possible, should aim towards reorganization of the debtor. *See In re Exide*
8 *Techs.*, 607 F.3d 957, 962 (3d Cir. 2010) (“The policy behind Chapter 11 of the Bankruptcy
9 Code is the ‘ultimate rehabilitation of the debtor.’”) (quoting *Nicholas v. U.S.*, 384 U.S. 678,
10 687 (1966)); *see also In re Liberate Techs.*, 314 B.R. 206, 212 (Bankr. N.D. Cal. 2004)
11 (“‘The key aim of Chapter 11 of the Code . . . is avoidance of liquidation.’”) (quoting *In re*
12 *Johns-Manville Corp.*, 36 B.R. 727, 736 (Bankr. S.D.N.Y. 1984)).
13

14 17. Despite the Debtors’ overtures to the contrary, the Settlement Agreement
15 does not provide the Debtors with a greater ability to reorganize. The Debtors are already
16 supposed to have entered into a plan support agreement with LSQ, but the Debtors have not
17 taken any noticeable steps toward a reorganization. There is nothing in the Settlement
18 Agreement that places any obligations on ACF, TD Venture, or any of the Debtors in
19 achieving a successful reorganization. That is not the stated purpose of the Settlement. In
20 fact, like the prospect of a reorganization, each of the Debtors’ justifications for entering
21 into the Settlement Agreement, as set forth in the Perea Declaration, are completely
22 illusory.
23

24 18. *First*, the Debtors assert that entering into the Settlement Agreement will
25 allow for ACF to agree to the consensual use of cash collateral. The Debtors conveniently
26 ignore that a final order for use of cash collateral has already been entered by the Court.
27
28

1
2 Moreover, the Debtors no longer use cash collateral, operating on advances from LSQ under
3 the factoring arrangement.

4 19. *Second*, the Debtors assert that divesting the Hawaii Property and
5 Membership Interest will reduce the prepetition obligations under the Loan Agreement.
6 While this is true, the Settlement Agreement provides no value on the Hawaii Property and
7 TD Venture's other assets, leaving the amount of the reduction of the loan obligations
8 uncertain and misleading. There is also no obligation on ACF to take all necessary steps to
9 maximize the value of the Hawaii Property, which, according to the Committee's appraisal
10 and after senior encumbrances are satisfied, could result in a net value of more than \$5.5
11 million. *See* Freeman Declaration at ¶ 12.

12
13 20. More importantly, even if ACF realizes the maximum value of the Hawaii
14 Property, use of such proceeds to reduce the prepetition obligations under the Loan
15 Agreement currently provides no benefit to the Debtors' estates. There are no fees or
16 interest payments made to ACF under section 506(b) of the Bankruptcy Code, all adequate
17 protection payments have ceased, and ACF would still remain the largest secured creditor
18 in these Chapter 11 Cases. Instead of unnecessarily disposing assets piecemeal throughout
19 these cases solely for the benefit of ACF, the Debtors' estates and their other creditors would
20 be better served by realizing value from the Hawaii Property and dealing with their
21 prepetition debt through a plan.

22
23 21. *Third*, the Debtors allege that the Settlement Agreement will result in
24 significant cost savings by resolving pending contested matters and litigation between the
25 Debtors and ACF. The Debtors rely on *Martin v. Kane (In re A&C Props.)*, 784 F.2d 1377
26 (9th Cir. 1986) to establish that the Settlement Agreement is fair and equitable. *See* Motion
27
28

1
2 at pp. 14-15. Of the four factors provided in *A&C*, the Debtors primarily rely on the third
3 factor, complexity of the litigation, in seeking approval of the Motion. *See In re A&C*
4 *Props.*, 784 F.2d at 1381. Vexingly, there are no pending contested matters, adversary
5 proceedings, or other litigation between the Debtors and ACF. Because there is no pending
6 litigation between ACF and the Debtors, any reliance on *A&C*, especially the cost and
7 complexity of any pending litigation, is in error and unwarranted.

8
9 22. Moreover, the Settlement Agreement does nothing to resolve any pending
10 litigation or disputes between the Borrowing Debtors and ACF. The mutual releases in the
11 Settlement Agreement are only between Mr. and Mrs. Petersen, ACF, and TD Venture. The
12 Borrowing Debtors are not party to any releases and may be subject to any current or future
13 disputes involving the Loan Agreement or the use of cash collateral.

14
15 23. Any benefit in this settlement arrangement belong only to ACF and Mr. and
16 Mrs. Petersen. Indeed, the “mutual” releases under the Settlement Agreement are not fully
17 mutual. Upon approval of the Settlement Agreement, TD Venture will have to provide a
18 \$2.5 million note to ACF as protection for Mr. and Mrs. Petersen’s non-compete clause. In
19 other words, the Settlement Agreement requires TD Venture to provide a new guaranty to
20 protect ACF against the actions of Mr. and Mrs. Petersen, over which TD Venture has no
21 control.

22
23 24. TD Venture will also be required to provide a full release of all causes of
24 action against ACF, including all chapter 5 causes of action. As set forth in greater detail
25 below, the Committee believes the TD Venture Guaranty and the Hawaii Mortgage are
26 suspect and may be subject to avoidance. Entry of the Settlement Agreement will, therefore,
27
28

1
2 preclude TD Venture from pursuing those causes of action to the detriment of TD Venture's
3 estate and, quite possibly, the estates of other Debtors as well.

4 25. Ultimately, the Settlement Agreement does nothing to aid in the Debtors
5 ability to achieve a reorganization. Rather, the Settlement Agreement unnecessarily
6 disposes of assets without receiving any attributable value that will benefit any creditors
7 other than ACF. Moreover, the Settlement Agreement does nothing to resolve any pending
8 litigation with ACF as no such pending litigation exists. Further, the Settlement Agreement
9 does not prevent any future disputes between ACF and the Borrowing Debtors. Finally,
10 despite the releases, TD Venture will still need to provide a \$2.5 million guaranty to ACF
11 subject to the actions of Mr. and Mrs. Petersen completely outside TD Venture's control.
12 Accordingly, the Settlement Agreement provides no benefit to the Debtors' estates nor is it
13 fair and equitable. The Motion should be denied.
14

15
16 **II. The Lender's Rights In The Hawaii Property Is Suspect And Subject To**
17 **Challenge.**

18 26. Underlying ACF's ability to recover the Hawaii Property, and to a lesser
19 extent the Membership Interest, is the TD Venture Guaranty and Hawaii Mortgage, both
20 executed for the benefit of ACF. However, as part of its investigation during these Chapter
21 11 Cases, the Committee determined that the TD Venture Guaranty and Hawaii Mortgage
22 are likely fraudulent transfers subject to avoidance.

23 27. Pursuant to section 548 of the Bankruptcy Code, the trustee may avoid
24 transfer made within two years of the bankruptcy filing as a constructive fraud if the debtor
25 "received less than a reasonably equivalent value in exchange for such transfer or
26 obligation" and was either insolvent or made insolvent at the time of the transfer. 11 U.S.C.
27 § 548(a)(1)(B)(i), (ii).
28

1
2 28. At the time TD Venture entered the TD Venture Guaranty and the Hawaii
3 Mortgage, TD Venture was insolvent or made insolvent as a result of those transfers. *See*
4 Freeman Declaration at ¶ 10. The TD Venture Guaranty makes TD Venture jointly and
5 severally liable for all outstanding obligations under the Loan Agreement. At the time TD
6 Venture entered into the TD Venture Guaranty, the obligations under the Loan Agreement
7 far exceeded the value of TD Venture’s assets, specifically the Hawaii Property and the
8 Membership Interest.
9

10 29. TD Venture also did not receive reasonably equivalent value in exchange for
11 providing the TD Venture Guaranty and Hawaii Mortgage. *See Senior Transeastern*
12 *Lenders v. Official Committee of Unsecured Creditors (In re TOUSA, Inc.)*, 680 F.3d 1298,
13 1311 (11th Cir. 2012) (voiding transfers of liens on their assets granted by subsidiaries to
14 secure the debt of a parent corporation where the “costs of the transaction far outweighed
15 any perceived benefits” and “the potential benefits were nowhere close to its expected
16 costs”); *In re Aeta Resources, Inc.*, 2018 WL 101050993, at *12 (Bankr. D. Colo. Dec. 14,
17 2018) (recognizing that “the use of one debtor’s funds to pay the debts of another debtor
18 may be the proper subject of constructive fraudulent transfer claims”). Because TD Venture
19 was solely a guarantor and not a borrower, the value received in exchange for the sizable
20 obligations it guaranteed could not be reasonably equivalent.
21

22 30. The Eleventh Circuit’s decision in *TOUSA* is instructive here. In *TOUSA*,
23 the parent debtor, TOUSA, paid a settlement to its lenders with loan proceeds primarily
24 secured by the assets of several of the debtor’s subsidiaries who were not borrowers but
25 only guarantors of the underlying debt. The settlement payment helped TOUSA avoid a
26 default and possible bankruptcy filing. Six months after making the settlement payment,
27
28

1
2 TOUSA and its subsidiaries ultimately filed for bankruptcy. Thereafter, the committee of
3 unsecured creditors sought to avoid the settlement payment on the grounds that the
4 subsidiaries did not receive reasonably equivalent value for the settlement payment. *Id.* at
5 1301. The bankruptcy court agreed with the committee and avoided the transfer, finding
6 that the subsidiaries did not receive reasonably equivalent value for the settlement payment
7 in protecting its corporate parent. *Id.* On appeal, the district court reversed, finding that
8 even the potential benefit of avoiding bankruptcy constituted reasonably equivalent value.
9
10 *Id.*

11 31. On appeal to the Eleventh Circuit, the court reversed the decision again,
12 finding that the bankruptcy court did not err in determining that the subsidiaries did not
13 receive reasonably equivalent value for the transfer. Specifically, the court determined that
14 the bankruptcy court did not err in its finding that the costs of the settlement payment to the
15 subsidiaries far outweighed any perceived benefits, including the prevention of its parent
16 from going into default and preventing bankruptcy. *Id.* at 1311.

18 32. Here, under TOUSA's rationale, there can be no doubt that TD Venture did
19 not receive reasonably equivalent value executing the TD Venture Guaranty and the Hawaii
20 Mortgage. TD Venture has an even more tangential relationship to the Borrowing Debtors
21 than the subsidiaries in *TOUSA* to its borrowing parent. While TD Venture is affiliated to
22 PDI and the other Borrowing Debtors, it is not a subsidiary of PDI or any other Borrowing
23 Debtor. In that sense, there is no benefit, direct or indirect, for TD Venture to guaranty the
24 Borrowing Debtors' debt. In fact, the issue may not be that TD Venture did not receive
25 reasonably equivalent value, but that it received no value at all. *See Nisselson v. Emptyrean*
26 *Inv. Fund, L.P. (In re MarketXT Holdings Corp.)*, 376 B.R. 390, 421 (Bankr. S.D.N.Y.
27
28

1
2 2007) (“[s]ince no value was received, the Debtor could not have received reasonably
3 equivalent value”).

4 33. Should the TD Venture Guaranty and Hawaii Mortgage successfully be
5 avoided and recovered by ACF, the net value of the Hawaii Property, potentially in excess
6 of \$5.5 million, may benefit more than the TD Venture estate. As noted above, the
7 Committee has reason to believe that at least part of the funding for the purchase of the
8 Hawaii Property came directly from other Debtors. Without ACF’s encumbrance on the
9 Hawaii Property, the estates of those Debtors’ who may have provided funds and their
10 unsecured creditors may ultimately benefit should they recover those funds or take other
11 action. Allowing the Settlement Agreement to go forward at this time will forever foreclose
12 the ability of TD Venture to avoid the TD Venture Guaranty and the Hawaii Mortgage, and
13 other Debtors will forever lose the ability to seek to recover any value from the Hawaii
14 Property, potentially harming general unsecured creditors irreparably.
15
16

17 34. There also does not appear to be any exigency in having to approve the
18 Settlement Agreement. As explained in greater detail above, there are no pending contested
19 matters, adversary proceedings, or other proceedings that need resolution, nor do the
20 Debtors currently require the need for cash collateral. As a result, there does not appear to
21 be any harm to the Debtors or ACF in denying approval of the Motion and the Settlement
22 Agreement at this time. By contrast, approval of the Settlement Agreement now could
23 irreparably harm TD Venture and other Debtors from realizing value from the Hawaii
24 Property. The Committee should be allowed necessary time to finish its investigation and
25 allow TD Venture to take any necessary actions to preserve the value in its estate before
26
27
28

1
2 being precluded by releases in the Settlement Agreement. Accordingly, the Motion to
3 approve the Settlement Agreement should be denied.

4 **RESERVATION OF RIGHTS**

5 35. The Committee reserves all their rights, objections, claims, defenses, and
6 remedies, including, without limitation, the right to amend, modify, or supplement this
7 Objection, to seek discovery, and to raise additional objections during any hearing on the
8 Motion.
9

10 *[Remainder of page intentionally left blank.]*
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CONCLUSION

WHEREFORE, for all of the reasons set forth above, the Committee respectfully requests its Objection be granted and the Court (i) deny the Motion approving the Settlement Agreement and (ii) grant any other relief the Court deems just and proper.

Dated September 9, 2020.

Respectfully Submitted,

/s/ Samuel A. Schwartz
Samuel A. Schwartz, Esq.
Nevada Bar No. 10985
saschwartz@nvfirm.com
SCHWARTZ LAW, PLLC

BROWN RUDNICK LLP
Cathrine M. Castaldi, Esq.
California Bar No. 156089
ccastaldi@brownrudnick.com
2211 Michelson Drive, Seventh Floor
Irvine, California 92612

-and-

Max Schlan, Esq. (admitted *pro hac vice*)
mschlan@brownrudnick.com
7 Times Square
New York, New York 10036

*Attorneys for The Official Committee of
Unsecured Creditors*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent electronically via the Court's CM/ECF system on September 9, 2020, to the following:

RYAN A. ANDERSEN on behalf of Creditors 5050 TIMBERCREEK, LLC, RSI INVESTORS LLC, and WILLIAM T. PARTRIDGE,
ryan@vegaslawfirm.legal, tatiana@vegaslawfirm.legal; charlai@vegaslawfirm.legal; ecf-df8b00a4597e@ecf.pacerpro.com; notices@nextchapterbk.com

BRETT A. AXELROD on behalf of Debtors and Jnt Admin Debtors
baxelrod@foxrothschild.com, pchlum@foxrothschild.com; mwilson@foxrothschild.com

MICHAEL R. BROOKS on behalf of Creditors BEACON ROOFING and BEACON SALES ACQUISITION, Inc., mbrooks@hutchlegal.com, jversoza@hutchlegal.com

OGONNA M. BROWN on behalf of Interested Party THOMPSON THRIFT
OBrown@lrrc.com, KPimentel@lrrc.com, ogonna-brown-4984@ecf.pacerpro.com

PETER C BROWN on behalf of Debtor RED ROSE, INC.
cholt@bremerwhyte.com; holtcr76188@notify.bestcase.com; areynolds@bremerwhyte.com

STEVEN L BRYSON on behalf of Creditor LENORE KING
SLBLAW1@aol.com, ecf.slb@gmail.com

AARON T. CAPPS on behalf of Creditors RAMPART CONSTRUCTION COMPANY, LLC and RAMPART MULTIFAMILY, LLC acapps@griffithdavison.com

CATHRINE M. CASTALDI on behalf of Cred. Comm. Chair THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS ccastaldi@brownrudnick.com

JEFFREY D. CAWDREY on behalf of Creditor BROWN CONSTRUCTION, INC.
jcawdrey@grsm.com, sdurazo@grsm.com; madeyemo@grsm.com

VIKRAMA S. CHANDRASHEKAR on behalf of Creditor MIG REAL ESTATE and Interested Party DRY CREEK BUSINESS PARK, LLC
vika.chandrashekar@moyewhite.com, pamela.thede@moyewhite.com

ROBERT M. CHARLES, JR. on behalf of Creditor LAGUNA COUNTRY MART, LTD.
rcharles@lrrc.com, BankruptcyNotices@LRRLaw.com, robert-charles-1072@ecf.pacerpro.com

SHAWN CHRISTIANSON on behalf of Creditor ORACLE AMERICA, INC.
schristianson@buchalter.com, cmcintire@buchalter.com

1
2 DAWN M. CICA on behalf of Interested Parties JIM PETERSEN and TRICIA
3 PETERSEN dcica@carlyoncica.com,
4 nrodriguez@carlyoncica.com; crobertson@carlyoncica.com; dmcica@gmail.com; dcica@carlyoncica.com; tosteen@carlyoncica.com; 3342887420@filings.docketbird.com

5 JAMIE COMBS on behalf of Creditor FIRST REPUBLIC BANK
6 jamie.combs@akerman.com, akermanlas@akerman.com; elizabeth.streible@akerman.com

7 THOMAS E. CROWE on behalf of Creditor CURRENT POWER ELECTRIC, INC.
8 tcrowe@thomascrowelaw.com, tcrowe@lvcoxmail.com; appstcl@yahoo.com

9 MARGUERITE LEE DEVOLL on behalf of Creditor ARGONAUT INSURANCE
10 COMPANY mdevoll@watttieder.com

11 THERESA A DRISCOLL on behalf of Creditor STERLING NATIONAL BANK
12 tdriscoll@moritthock.com

13 THOMAS H. FELL on behalf of Creditors LS DE, LLC and LSQ FUNDING GROUP
14 L.C. tfell@fclaw.com, clandis@fclaw.com

15 STEPHEN D. FINESTONE on behalf of Creditor PELL DEVELOPMENT COMPANY,
16 INC. sfinestone@fhlawllp.com

17 SCOTT D. FLEMING on behalf of Interested Party NRP CONTRACTORS II, LLC
18 scott@fleminglawlv.com

19 MICHAEL GERARD FLETCHER on behalf of Interested Party ZIONS
20 BANCORPORATION, N.A., DBA CALIFORNIA BANK & TRUST
21 mfletcher@frandzel.com, sking@frandzel.com

22 GREGORY E GARMAN on behalf of Creditor ACF FINCO I LP and Interested Party
23 ACF FINCO I LP ggarman@gtg.legal, bknotices@gtg.legal

24 CHARLES E. GIANELLONI on behalf of Creditor TAYLOR MORRISON
25 COMMUNITIES, INC. cgianelloni@swlaw.com,
26 jmath@swlaw.com; mfull@swlaw.com; jstevenson@swlaw.com; docket_las@swlaw.com

27 REW R. GOODENOW on behalf of Creditor CALIFORNIA SELF INSURERS
28 SECURITY FUND ecf@parsonsbehle.com, rgoodenow@parsonsbehle.com

MICHAEL I GOTTFRIED on behalf of Creditor ENTERPRISE FLEET
MANAGEMENT, INC.
MGottfried@elkinskalt.com, AAburto@elkinskalt.com; MYuen@elkinskalt.com

1
2 JAMES D. GREENE on behalf of Creditors JOHN MOURIER CONSTRUCTION and
JOHN MOURIER CONSTRUCTION, INC.

3 jgreene@greeneinfusolaw.com,
4 fritchie@greeneinfusolaw.com; kfarney@greeneinfusolaw.com; cwalton@greeneinfusolaw.com

5 BLAKELEY E. GRIFFITH on behalf of Creditor TAYLOR MORRISON
6 COMMUNITIES, INC. bgriffith@swlaw.com,
7 docket_las@swlaw.com; gkim@swlaw.com; jmath@swlaw.com; jstevenson@swlaw.com;
8 mfull@swlaw.com

9 STANLEY M HAMMERMAN on behalf of Creditor HAMMERMAN & HULTGREN,
P.C. minute_entry@hammerman-hultgren.com
10 JUSTIN J. HENDERSON on behalf of Creditor LAGUNA COUNTRY MART, LTD.
jhenderson@lrrc.com, cscruggs@lrrc.com, justin-henderson-8499@ecf.pacerpro.com

11 RAMIR M. HERNANDEZ on behalf of Creditor AFS/IBEX, A DIVISION OF
12 METABANK rhernandez@wrightlegal.net,
jcraig@wrightlegal.net; nvbkfiling@wrightlegal.net

13 JAMES P. HILL on behalf of Creditors 220 LALO PLACE LLC, HALAWA HOUSE OF
14 THE SUN LLC, HALEAKALA SOLAR, INC. and JAMES WHITCOMB
hill@shlaw.com, hill@sullivanhill.com

15 RICHARD F. HOLLEY on behalf of Interested Party ZIONS BANCORPORATION,
16 N.A., DBA CALIFORNIA BANK & TRUST rholley@nevadafirm.com,
17 apestonit@nevadafirm.com; oswibies@nevadafirm.com; agandara@nevadafirm.com; mlan
gsner@nevadafirm.com

18 BRIAN E HOLTHUS on behalf of Creditor MIG REAL ESTATE and Interested Party
19 DRY CREEK BUSINESS PARK, LLC
20 bankruptcy@juww.com, bankruptcy@juwlaw.com; mm@juwlaw.com; kom@juwlaw.com

21 L. EDWARD HUMPHREY on behalf of Interested Party SOMERSET CHASE
HOMEOWNERS ASSOCIATION, INC. ed@hlawnv.com, caroline@hlawnv.com

22 BRIAN R. IRVINE on behalf of Creditor ARIZONA SOLAR SOLUTIONS, LLC, DBA
23 PREMIER SOLAR SOLUTIONS birvine@dickinsonwright.com,
24 mreel@dickinsonwright.com; cgrinstead@dickinsonwright.com; RN_litdocket@dickinsonwright.com

25 MONIQUE D JEWETT-BREWSTER on behalf of Creditors INDEPENDENT
26 ELECTRIC SUPPLY and ONE SOURCE DISTRIBUTORS, LLC
27 mjb@hopkinscarley.com, eamaro@hopkinscarley.com
28

1
2 DAVID R. JOHNSON on behalf of Creditor ARGONAUT INSURANCE COMPANY
3 david@drjohnsonpllc-law.com, jkneeland@watttieder.com; mdevoll@watttieder.com

4 ROBERT R. KINAS on behalf of Creditors J.F. SHEA CO., INC., J.F. SHEA CO., INC.
5 DBA SHEA HOMES, TAYLOR MORRISON COMMUNITIES, INC., TAYLOR
6 MORRISON OF CALIFORNIA, LLC, TAYLOR MORRISON SERVICES, INC.,
7 TAYLOR MORRISON/ARIZONA, INC., TM HOMES OF ARIZONA, INC. and
WASHINGTON TOWNSHIP HEALTH CARE DISTRICT rkinas@swlaw.com,
jmath@swlaw.com; mfull@swlaw.com; docket_las@swlaw.com; nkanute@swlaw.com; jstevenson@swlaw.com

8 JENNIFER L. KNEELAND on behalf of Creditor ARGONAUT INSURANCE
9 COMPANY jkneeland@watttieder.com

10 MATTHEW I KRAMER on behalf of Interested Party FREESE JOHNSON, LLC
11 mkramer@wwhgd.com

12 STEVEN N. KURTZ on behalf of Creditors LS DE, LLC and LSQ FUNDING GROUP
13 L.C. skurtz@laklawyers.com

14 BART K. LARSEN on behalf of Creditors DURABLE STRUCTURES, LTD., SILFAB
15 SOLAR USA INC. and SOLARWORLD AMERICAS, INC.
BLARSEN@SHEA.LAW, 3542839420@filings.docketbird.com; support@shea.law

16 ROBERT S. LARSEN on behalf of Interested Party SERVICE FINANCE COMPANY,
17 LLC rlarsen@grsm.com,
gangulo@grsm.com; wwong@grsm.com; WL_LVSupport@grsm.com; sowens@grsm.com;
jzhao@grsm.com; kkao@grsm.com

18 DAVID S. LEE on behalf of Creditors WDS GP INC., WOODSIDE 05N, LP and
19 WOODSIDE VISTAS, INC. dlee@lee-lawfirm.com

20 EDWARD M. MCDONALD on behalf of U.S. Trustee U.S. TRUSTEE - LV - 11
21 edward.m.mcdonald@usdoj.gov

22 JEANETTE E. MCPHERSON on behalf of Creditors ARROYO / LIVERMORE
23 BUSINESS PARK, LP and PELL DEVELOPMENT COMPANY, INC. bkfilings@sm-law.com

24 STEPHEN ARI METZ on behalf of Creditor BEACON SALES ACQUISITION, Inc.
25 smetz@offitkurman.com

26 WILLIAM M. NOALL on behalf of Creditor ACF FINCO I LP and Interested Party ACF
27 FINCO I LP bknotices@gtg.legal, wnoall@gtg.legal

1
2 ALLYSON R. NOTO on behalf of Creditor ICON RENO PROPERTY OWNER POOL 3
NEVADA, LLC allyson@sylvesterpolednak.com, kellye@sylvesterpolednak.com

3
4 SARAH J. ODIA on behalf of Creditor City Ventures Homebuilding, LLC
sjo@paynefears.com, lvefile@paynefears.com

5 J. NATHAN OWENS on behalf of Creditor BLUE WATER - DUPONT, LLC
6 Nathan.Owens@ndlf.com,
Yolanda.Nance@ndlf.com; Benita.Fortenberry@ndlf.com; Sue.Peterson@ndlf.com

7
8 AMANDA M. PERACH on behalf of Creditor LEAF CAPITAL FUNDING, LLC
aperach@mcdonaldcarano.com, kkirn@mcdonaldcarano.com

9 TERESA M. PILATOWICZ on behalf of Interested Party ACF FINCO I LP
10 tpilatowicz@gtg.legal, bknotices@gtg.legal

11 MARK F. ROACH on behalf of Creditor D.R. HORTON, INC.
12 mark.roach@knchlaw.com

13 PETER J ROBERTS on behalf of Debtors and Jnt Admin Debtors
proberts@cozen.com

14 PAMELA J. SCHOLEFIELD on behalf of Creditors INDEPENDENT ELECTRIC
15 SUPPLY and ONE SOURCE DISTRIBUTORS, LLC pam@construction-laws.com

16 SAMUEL A. SCHWARTZ on behalf of Cred. Comm. Chair THE OFFICIAL
17 COMMITTEE OF UNSECURED CREDITORS saschwartz@nvfirm.com,
ecf@nvfirm.com; schwartzsr45599@notify.bestcase.com; eanderson@nvfirm.com; samid@nvfirm.com

18
19 BRIAN D. SHAPIRO on behalf of Creditors RAMPART CONSTRUCTION
20 COMPANY, LLC and RAMPART MULTIFAMILY, LLC brian@brianshapirolaw.com,
kristin@brianshapirolaw.com; 6855036420@filings.docketbird.com

21 CONNOR H. SHEA on behalf of Creditor STERLING NATIONAL BANK
22 cshea@bhfs.com, wcosby@bhfs.com

23 JAMES PATRICK SHEA on behalf of Creditor DURABLE STRUCTURES, LTD.
24 jshea@shea.law, blarsen@shea.law; support@shea.law

25 ZACHARY S. SHEA on behalf of Creditor CALIFORNIA SELF INSURERS
26 SECURITY FUND zshea@parsonsbehle.com, rshaffer@parsonsbehle.com

27 BRADLEY G SIMS on behalf of Creditor LEISURE TOWN HOME ASSOCIATION
bsims@houmandlaw.com, jhoumand@houmandlaw.com

PATRICK M SNEED on behalf of Creditor SRS DISTRIBUTION INC. DBA
ROOFLINE SUPPLY & DELIVERY psneed@dpsslegal.com, snagel@dpsslegal.com

ELIZABETH E. STEPHENS on behalf of Creditors 220 LALO PLACE LLC, HALAWA
HOUSE OF THE SUN LLC, HALEAKALA SOLAR, INC. and JAMES WHITCOMB
stephens@sullivanhill.com,
rudolph@sullivanhill.com; hill@sullivanhill.com; dabbieri@sullivanhill.com; bkstaff@sullivanhill.com; stephens@ecf.courtdrive.com; Hawkins@sullivanhill.com

TIMOTHY M. SWANSON on behalf of Creditor MIG REAL ESTATE and Interested
Party DRY CREEK BUSINESS PARK, LLC tim.swanson@moyewwhite.com,
Melissa.dymerski@moyewwhite.com

DAVID J. THEISING on behalf of Creditor THOMPSON THRIFT CONSTRUCTION,
INC. dtheising@harrisonmoberly.com

AMY N. TIRRE on behalf of Creditors MANUEL MELO and MARIA MELO
amy@amytirrelaw.com, admin@amytirrelaw.com

U.S. TRUSTEE - LV - 11
USTPRegion17.lv.ecf@usdoj.gov

BRYAN M VIELLION on behalf of Creditor H.G. FENTON PROPERTY COMPANY
bviellion@kcnvlaw.com,
mmarsh@kcnvlaw.com; cbyrne@kcnvlaw.com; lbubala@kcnvlaw.com

MARK M. WEISENMILLER on behalf of Creditor ACF FINCO I LP and Interested
Party ACF FINCO I LP mweisenmiller@gtg.legal, bknotices@gtg.legal

PATRICK F. WELCH on behalf of Creditor HANOVER INSURANCE COMPANY
pwelch@jsslaw.com

NATALIE L. WINSLOW on behalf of Creditor FIRST REPUBLIC BANK
natalie.winslow@akerman.com,
ariel.stern@akerman.com; darren.brenner@akerman.com; akermanlas@akerman.com; erin.abugow@akerman.com

BRENOCH R WIRTHLIN on behalf of Creditor BEAZER HOMES HOLDING, LLC and
Interested Parties BEAZER HOMES HOLDINGS, LLC and BEAZER HOMES TEXAS,
L.P. bwirthlin@hutchlegal.com,
dkelley@hutchlegal.com; dmaul@hutchlegal.com; jlinder@hutchlegal.com

DOROTEYA WOZNIAK on behalf of Interested Parties BEAZER HOMES HOLDINGS,
LLC and BEAZER HOMES TEXAS, L.P. dwozniak@jamesbatesllp.com

MATTHEW C. ZIRZOW on behalf of Creditors AMERICAN BUILDERS &
CONTRACTORS SUPPLY CO., INC. and AMERICAN BUILDERS &
CONTRACTORS SUPPLY CO., INC., DBA ABC SUPPLY CO., INC.
mzirzow@lzlawnv.com,
carey@lzlawnv.com; trish@lzlawnv.com; sara@lzlawnv.com; [zirzow.matthewc.r99681@n
otify.bestcase.com](mailto:zirzow.matthewc.r99681@notify.bestcase.com)

MATTHEW C. ZIRZOW on behalf of Debtor RED ROSE, INC.
mzirzow@lzlawnv.com,
carey@lzlawnv.com; trish@lzlawnv.com; sara@lzlawnv.com; [zirzow.matthewc.r99681@n
otify.bestcase.com](mailto:zirzow.matthewc.r99681@notify.bestcase.com)

MATTHEW C. ZIRZOW on behalf of Jnt Admin Debtors PD SOLAR, INC.,
PETERSEN ROOFING AND SOLAR LLC, PETERSEN-DEAN, INC.,
PETERSENDEAN ROOFING AND SOLAR SYSTEMS, INC. and PETERSENDEAN
TEXAS, INC. mzirzow@lzlawnv.com,
carey@lzlawnv.com; trish@lzlawnv.com; sara@lzlawnv.com; [zirzow.matthewc.r99681@n
otify.bestcase.com](mailto:zirzow.matthewc.r99681@notify.bestcase.com)

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via REGULAR
MAIL on September 9, 2020, to the following:

ADR SERVICES
225 BROADWAY, SUITE 1400
SAN DIEGO, CA 92101

CASE ANYWHERE
21860 BURBANK BLVD., SUITE 125
WOODLAND HILLS, CA 91367

CASTLE DEKKER & BELLAGAMBA
30 OAK CT.
DANVILLE, CA 94526

JEFFREY D CAWDREY on behalf of Creditor BROWN CONSTRUCTION, INC.
GORDON REES SCULLY MANSUKHANI LLP
101 WEST BROADWAY SUITE 2000
SAN DIEGO, CA 92101

IKA S. CHANDRASHEKAR on behalf of Creditor MIG REAL ESTATE, LLC, A
DELAWARE LIMITED LIABILITY COMPANY
16 MARKET SQUARE, 6TH FL
1400 16TH STREET
DENVER, CO 80202-1486

1
2 LOUIS J. CISZ, III on behalf of Creditor CALIFORNIA SELF INSURERS SECURITY
3 FUND

4 ONE EMBARCADERO CTR., 32ND FL
5 SAN FRANCISCO, CA 94111

6 COLE, SCOTT, KISSANE
7 222 LAKEVIEW AVE., SUITE 120
8 W. PALM BEACH, FL 33401

9 CONWAY MACKENZIE MANAGEMENT SERVICES, LLC
10 401 SOUTH OLD WOODWARD AVE., STE 340
11 BIRMINGHAM, MI 48009

12 MARC D COOPERSMITH on behalf of Creditor GOLDEN STATE LUMBER, INC.
13 GOLDEN STATE LUMBER, INC.
14 855 LAKEVILLE ST., STE. 200
15 PETALUMA, CA 94952

16 COURTCALL
17 6383 ARIZONA CIRCLE
18 LOS ANGELES, CA 90045

19 EDGEWOOD PARTNERS INSURANCE CENTER, INC. D/B/A EPIC INSURANCE
20 BROKERS AND CONSULTANTS
21 3000 EXECUTIVE PARKWAY, SUITE 325
22 SAN RAMON, CA 94583

23 EPIQ CORPORATE RESTRUCTURING, LLC
24 777 THIRD AVENUE, 12TH FLR
25 NEW YORK, NY 10017

26 LORI E. EROPKIN on behalf of Creditor LS DE, LLC and
27 LSQ FUNDING GROUP L.C.
28 15303 VENTURA BLVD., STE 1650
SHERMAN OAKS, CA 91403

FILE & SERVE XPRESS, LLC
500 E. JOHN CARPENTER FRWY, SUITE 250
IRVING, TX 75062

EUGENE J. GEEKIE, JR. on behalf of Creditor SOLARWORLD AMERICAS, INC.
161 NORTH CLARK ST., STE 4200
CHICAGO, IL 60601

MICHAEL L GESAS on behalf of Creditor SOLARWORLD AMERICAS, INC.
161 NORTH CLARK ST, SUITE 4200
CHICAGO, IL 60601

GLASSRATNER ADVISORY & CAPITAL GROUP, LLC
3445 PEACHTREE RD., STE 1225
ATLANTA, GA 30326

1
2 MARTIN B GREENBAUM on behalf of Creditor ELITE ROOFING SUPPLY-NC, LLC
3 GREENBAUM LAW GROUP, LLC
160 NEWPORT CENTER DRIVE, SUITE 110
NEWPORT BEACH, CA 92660

4 BRIAN P HEDSTROM on behalf of Creditor GOLDEN STATE LUMBER, INC.
5 GOLDEN STATE LUMBER, INC.
855 LAKEVILLE ST., STE. 200
6 PETALUMA, CA 94952

7 JAMS
P.O. BOX 845402
8 LOS ANGELES, CA 90084

9 JHS CPAS, LLP
135 TOWN & COUNTRY DRIVE
10 P.O. BOX 9500
DANVILLE, CA 94526

11 NICHOLAS KOZACHENKO on behalf of Creditor WASHINGTON TOWNSHIP
12 HEALTH CARE DISTRICT
GONSALVES & KOZACHENKO
13 2201 WALNUT AVE., STE. 220
FREMONT, CA 94538

14 PAUL KOZACHENKO on behalf of Creditor WASHINGTON TOWNSHIP HEALTH
15 CARE DISTRICT
GONSALVES & KOZACHENKO
16 2201 WALNUT AVE., STE. 220
FREMONT, CA 94538

17 LAW FIRM OF ERIN ECKERT
18 P.O. BOX 631494
HOUSTON, TX 77263

19 LAW OFFICE OF MATTHEW HODROFF
20 113 W. G STREET, SUITE 615
SAN DIEGO, CA 92101

21 LAW OFFICE OF SAM KARIMZADEH
22 1592 TREVOR DR.
SAN JOSE, CA 95118

23 LEGAL DOCUMENT SERVER
24 7162 BEVERLY BLVD., SUITE 508
LOS ANGELES, CA 90036

25 LEWIS BRISBOIS BISGAARD & SMITH
26 633 WEST 5TH ST., STE. 4000
LOS ANGELES, CA 90071

1
2 DAVID W. LIVELY on behalf of Creditors INDEPENDENT ELECTRIC SUPPLY and
3 ONE SOURCE DISTRIBUTORS, LLC
70 S. 1ST ST.
SAN JOSE, CA 95113

4 LUH & ASSOCIATES
5 8987 W. FLAMINGO RD., SUITE 100
LAS VEGAS, NV 89147

6 STEPHEN METZ on behalf of Creditor BEACON SALES ACQUISITION, Inc.
7 4800 MONTGOMERY LN, 9TH FL
BETHESDA, MD 20814

8 JOHANNES MOEHNLE
9 1082 NIELSEN LANE
LIVERMORE, CA 94550

10 MORGAN, LEWIS & BOCKIUS LLP
11 1400 PAGE HILL RD.
PALO ALTO, CA 94304

12 HOWARD S. NEVINS on behalf of Creditor INNOVA FUND I, LLC
13 2150 RIVER PLAZA DR., #450
SACRAMENTO, CA 95833

14 OGLE TREE DEAKINS
15 50 INTERNATIONAL DRIVE
PATEWOOD IV, SUITE 200
16 GREENVILLE, SC 29615

17 ONELEGAL, LLC
1400 N MCDOWELL BLVD., SUITE 300
18 PETALUMA, CA 94954

19 RICHARD PEDONE on behalf of Creditor CALIFORNIA SELF INSURERS
SECURITY FUND
20 53 STATE STREET
BOSTON, MA 02109

21 JOEL L. PERRELL, JR on behalf of Creditor AFS/IBEX, A DIVISION OF METABANK
22 MILES & STOCKBRIDGE, P.C.
100 LIGHT ST
23 BALTIMORE, MD 21202

24 HILDA RAMOS
C/O KAEMPFER CROWELL
25 50 W. Liberty Street, Suite 700
Reno, NV 89501

26 GERRICK M. WARRINGTON on behalf of Interested Party ZIONS
27 BANCORPORATION, N.A., DBA CALIFORNIA BANK & TRUST
1000 WILSHIRE BLVD, 19TH FLOOR
28 LOS ANGELES, CA 90017

1
2 WHEELS OF JUSTICE
3 52 SECOND ST., 3RD FLOOR
4 SAN FRANCISCO, CA 94105

5 WOODRUFF DISPUTE RESOLUTION CENTER
6 3000 F. DANVILLE BLVD., SUITE #111
7 ALAMO, CA 94507

8 By: /s/ Susan Roman
9 Susan Roman, employee for
10 Schwartz Law, PLLC
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28