

1 GARMAN TURNER GORDON LLP  
 2 GREGORY E. GARMAN  
 Nevada Bar No. 6654  
 E-mail: ggarman@gtg.legal  
 3 WILLIAM M. NOALL  
 Nevada Bar No. 3549  
 4 Email: wnoall@gtg.legal  
 TERESA M. PILATOWICZ  
 Nevada Bar No. 9605  
 5 Email: tpiltowicz@gtg.legal  
 6 7251 Amigo Street, Suite 210  
 Las Vegas, Nevada 89119  
 7 Tel: (725) 777-3000  
 8 Fax: (725) 777-3112  
 Counsel for ACF Finco I LP

9 UNITED STATES BANKRUPTCY COURT  
 10 DISTRICT OF NEVADA

11 In re:

CASE NO. BK-S-20-12814-MKN

12 RED ROSE, INC.,

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

- 13 ☐ Affects Beachhead Roofing and  
 14 Supply, Inc.  
☐ Affects California Equipment Leasing  
 15 Association, Inc.  
☐ Affects Fences 4 America, Inc.  
 16 ☐ Affects James Petersen Industries, Inc.  
☐ Affects PD Solar, Inc.  
 17 ☐ Affects Petersen Roofing and Solar  
 LLC  
☐ Affects Petersen-Dean, Inc.  
 18 ☐ Affects PetersenDean Hawaii LLC  
☐ Affects PetersenDean Roofing and  
 19 Solar Systems, Inc.  
☐ Affects PetersenDean Texas, Inc.  
 20 ☐ Affects Red Rose, Inc.  
☐ Affects Roofs 4 America, Inc.  
 21 ☐ Affects Solar 4 America, Inc.  
☐ Affects Sonoma Roofing Services,  
 22 Inc.  
☐ Affects TD Venture Fund, LLC  
 23 ☐ Affects Tri-Valley Supply, Inc.  
 24 ☒ Affects All Debtors

Chapter 11

Date: August 2, 2023  
 Time: 9:30 a.m.

25  
 26 **ACF FINCO I, LP'S OPPOSITION TO DEBTORS' MOTION TO DISMISS**  
 27 **CHAPTER 11 CASES**

28 ACF Finco I, LP ("ACF"), by and through its counsel, the law firm of Garman Turner  
 Gordon LLP, hereby submits this opposition (the "Opposition") to the *Debtors' Motion to*

1 *Dismiss Chapter 11 Cases* [ECF No. 2676] (“Motion”) filed by the debtors (the “Debtors”) in the  
 2 above-captioned jointly administered cases (the “Chapter 11 Cases”).

3 This Opposition is made and based upon the following Memorandum of Points and  
 4 Authorities, the pleadings, papers and other records on file with the clerk of the Court in this  
 5 case, judicial notice of which is respectfully requested pursuant to Rule 201 of the Federal Rules  
 6 of Evidence, and any argument entertained by the Court at the time of the hearing of the Motion.

## 7 **MEMORANDUM OF POINTS AND AUTHORITIES**

### 8 **I.** 9 **INTRODUCTION**

10 While ACF is aware of the financial challenges faced by the Debtors in these cases, they  
 11 nonetheless bear the burden of showing that dismissal, rather than conversion to chapter 7, is in  
 12 the best interests of their creditors rather than their own. The Debtors fall well short of meeting  
 13 this burden.

14 First, conversion will best ensure equal treatment of the estates’ creditors as required by  
 15 section 1112(b)(1) of the Bankruptcy Code. Under chapter 7, all allowed general unsecured  
 16 claims would be treated equally under Bankruptcy Code section 726(a)(2). By contrast, any  
 17 assets remaining post-dismissal, however limited these might be, would be subject to collection  
 18 on a “first come, first served” basis.

19 Second, because the estates’ remaining assets almost exclusively consist of avoidance  
 20 actions under chapter 5 of the Bankruptcy Code, dismissal would foreclose any possible recovery  
 21 for the general benefit of the Debtors’ estates. Presently, ACF is prosecuting roughly thirty-five  
 22 preference actions – for its own benefit and that of general unsecured creditors – seeking the  
 23 avoidance and recovery of prepetition transfers in the aggregate amount of more than \$5 million.  
 24 Because preference actions arise solely under the Bankruptcy Code with no equivalent under  
 25 state law, this valuable source of potential recoveries would immediately vanish upon dismissal.

26 Third, ACF, the Debtors’ largest single creditor, objects to dismissal and favors  
 27 conversion. Although the Court must consider the best interests of the entire creditor body, it  
 28 may also consider the preferences of individual creditors especially when such creditors’ claims  
 are substantial as ACF’s is here. Consideration of ACF’s interests is particularly appropriate

1 given the terms of the Global Settlement (as defined herein) under which ACF compromised its  
 2 claims for the benefit of the Debtors and their creditors. Upon dismissal, ACF could lose the  
 3 benefit of its bargain to its own detriment and to the detriment of the estates generally.

4 Finally, the Debtors' ostensible concern over additional administrative costs if these cases  
 5 were to be converted is overstated at best. The remaining estate funds (through recovery of the  
 6 preference and other litigation claims in a converted, rather than dismissed, case) also appear  
 7 sufficient to at least cover a chapter 7 trustee's initial evaluation of these cases upon conversion.

8 Based on the foregoing reasons, and as more fully set forth herein, ACF respectfully  
 9 requests that the Court deny the Debtors' Motion to dismiss and instead, convert the Debtors'  
 10 cases to liquidation proceedings under chapter 7 of the Bankruptcy Code.

## 11 **II.** 12 **BACKGROUND**

### 13 **A. Procedural Background**

14 1. On June 11, 2020, each of the Debtors filed a voluntary petition for relief under  
 15 chapter 11 of the Bankruptcy Code.

16 2. On June 23, 2020, this Court entered its Order directing the joint administration of  
 17 the Debtors' cases.

18 3. Thereafter, the United States Trustee for Region 17 appointed the Official  
 19 Committee of Unsecured Creditors (the "Committee") in the Debtors' cases. ECF Nos. 151 and  
 20 811.

### 21 **B. The Global Settlement Agreement and Chapter 5 Claims**

22 5. On November 11, 2020, the Bankruptcy Court entered its Order [ECF No. 1328]  
 23 approving the *Claims Settlement and 363 Sale Support Agreement* (the "Global Settlement") by  
 24 and among the Debtors, the Committee and ACF. Importantly for the purposes of this Motion,  
 25 the Global Settlement provided, among other things, for the purchase and transfer of all estate  
 26 claims, including claims arising under chapter 5 of the Bankruptcy Code, to ACF which  
 27 included, without limitation, preference actions under section 547(b). Under the Global  
 28 Settlement, ACF and the estates split the net litigation proceeds according to a waterfall of  
 recoveries set forth in the Global Settlement, which currently provides for the recoveries to be

divided equally between ACF and the Debtors' estates. Moreover, the estates are not required to fund the litigation, as they are simply the recipients of a portion of the net proceeds.

6. In May and June of 2022, ACF commenced approximately eighty adversary proceedings primarily seeking the avoidance and recovery of preferential transfers under Bankruptcy Code sections 547(b) and 550(a) (the "Preference Actions"). Roughly half of the Preference Actions, which together seek recovery of approximately \$5.5 million, remain open:

Adv. Pro. No.	Defendant	Complaint Amount
21-01085	Diamante Sheet Metal, LLC	\$44,678.09
21-01086	Eb Roofing LLC	\$188,212.80
21-01087	Emergency Roadside Assistance, Inc.	\$30,199.03
21-01088	Guevara d/b/a Guevara Roofing Services	\$196,563.00
21-01089	Gibbor Construction, Inc.	\$49,544.00
21-01090	JC Custom Roofing, Inc.	\$173,563.95
21-01091	JC Roofing, L.L.C.	\$56,700.00
21-01092	JJ Best Roofing LLC	\$35,718.90
21-01093	Patison d/b/a JP Electrical Power & Controls	\$31,070.00
21-01094	Cruz d/b/a/ Juan Cruz Roofing	\$100,983.40
21-01095	R&R Services Inc.	\$39,701.35
21-01096	Primos Roofing and Construction Inc.	\$37,797.50
21-01098	Almaguer d/b/a/ Sol Sheet Metal Roofing	\$61,342.95
21-01100	Valley Gutter Supply, Inc.	\$121,705.38
21-01146	JA Gutter And Soffit LLC	\$74,108.00
21-01148	Okta Inc.	\$45,074.11
21-01149	Nick Barbieri Trucking, LLC d/b/a Redwood Coast	\$49,673.51
21-01153	Sombrilla Roofing LLC	\$360,085.60
21-01247	Highmore Financing Co., IV, LLC	\$900,088.03
21-01248	Independent Electric Supply, Inc.	\$450,001.65
21-01251	Onesource Distributors, LLC	\$342,508.57
21-01254	Taylor Metal, Inc. d/b/a Taylor Metal Products	\$114,327.07
22-01074	Redwood Fire and Casualty Company d/b/a Berkshire	\$998,964.79
22-01075	California Department of Industrial Relations	\$42,744.90
22-01076	Leo Calixto Arteaga d/b/a Calixto Sheet Metal	\$25,666.00
22-01079	Diversified Products Usa LLC	\$117,767.85
22-01080	Durable Structures Ltd.	\$111,176.20
22-01081	Edgar Mancia	\$42,240.00
22-01084	Ruben Lopez Garza d/b/a Garza Roofing	\$42,875.00

22-01086	Yazmin Ramirez d/b/a JJ Roofing and Sheet Metal	\$145,851.00
22-01087	Juan Jarquin Vazquez d/b/a Juan's Roofing	\$26,434.50
22-01089	Leonardo Hernandez d/b/a Leo Sheet Metal Roofing	\$13,878.00
22-01093	Pedro Antonio Hernandez d/b/a P & R Brothers Roofing	\$43,625.00
22-01096	Service Finance Company, LLC	\$315,128.50
22-01102	Y Espinal Roofing, LLC	\$76,636.28
22-01107	Continental Casualty Company	\$87,711.00
<b><u>Total</u></b>		<b><u>\$5,494,345.91</u></b>

### C. Chapter 11 Professional Fees

7. During these cases, the Debtors and the Committee have retained various professionals including attorneys and financial advisors: Fox Rothschild LLP as Debtors' counsel; Schwartz Law, PLLC and Brown Rudnick LLP as Committee's counsel; and GlassRatner Advisory & Capital Group, LLC as Committee's financial advisors.

8. These professionals have been awarded interim compensation as follows:

<b>Professional</b>	<b>Compensation</b>	<b>ECF No.</b>
Fox Rothschild LLP	\$1,435,513.50	1584
Schwartz Law, PLLC	\$149,217.00	1720
Brown Rudnick LLP	\$402,459.50	1721
GlassRatner Advisory & Capital Group, LLC	\$263,092.50	1722
Schwartz Law, PLLC	\$129,127.50	1777
Brown Rudnick LLP	\$266,413.50	1778
GlassRatner Advisory & Capital Group, LLC	\$91,287.50	1779
<b><u>Total</u></b>	<b><u>\$2,737,111.00</u></b>	

(the "Chapter 11 Professional Fees").<sup>1</sup>

## III. LEGAL ARGUMENT

### A. Applicable Legal Standard

Bankruptcy Code section 1112(b)(1) provides in pertinent part:

<sup>1</sup> The Chapter 11 Professional Fees are exclusive of any amounts paid by the Debtors pursuant to the Court's *Order Authorizing Debtors' Motion Pursuant to 11 U.S.C. §§ 105(A) and 331, and Fed. R. Bankr. P. 2016, Authorizing and Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals* [ECF No. 660] which may have been paid but not yet approved under an interim fee order.

1 ...on request of a party in interest, and after notice and a hearing, the court shall  
 2 convert a case under this chapter to a case under chapter 7 or dismiss a case  
 under this chapter, whichever is in the best interests of creditors and the estate...

3 11 U.S.C. § 1112(b)(1).

4 “[T]he decision whether to convert or dismiss [a] case falls within the sound discretion of  
 5 the court.” Sullivan v. Harnisch (In re Sullivan), 522 B.R. 604 (B.A.P. 9th Cir. 2014) (citing  
 6 Mitan v. Duval (In re Mitan), 573 F.3d 237, 247 (6th Cir. 2009)); Nelson v. Meyer (In re  
 7 Nelson), 343 B.R. 671, 675 (9th Cir. BAP 2006)). Though the Bankruptcy Code does not define  
 8 the phrase “best interests,” courts have considered several factors in determining whether to  
 9 convert or dismiss. See 7 Collier on Bankruptcy P 1112.04 (16th 2020) (identifying certain  
 10 factors commonly considered by various bankruptcy courts in determining best interests). The  
 11 Debtors’ formulaic presentation of these various factors and suggestion that each should be  
 12 considered and given equal weight in all cases, however, is unsupported. Rather, the most  
 13 important factor is the equal treatment of creditors. In re Sullivan at 604 (“When determining the  
 14 best interest of the creditors under § 1112(b), the Code’s fundamental policy of achieving  
 15 equality among creditors **must** [emphasis added] be a factor considered”); Shulkin Hutton, Inc.,  
 16 P.S. v. Treiger (In re Owens), 552 F.3d 958, 961 (9th Cir. 2009) (“when deciding between  
 17 dismissal and conversion under 11 U.S.C. § 1112(b), ‘the court must consider the interest of all  
 18 of the creditors.’”) (quoting Rollex Corp. v. Assoc. Materials (In re Superior Siding & Window,  
 19 Inc.), 14 F.3d 240, 243 (4th Cir. 1994)). The interests of the Debtors themselves should not be  
 20 considered. In re Staff Inv. Co., 146 B.R. 256, 261 (Bankr. E.D. Cal. 1992). Thus, if a movant  
 21 specifically seeks dismissal rather than conversion, it bears the burden of showing that dismissal  
 22 is in the best interest of its creditors and estate. In re Rosenblum, 609 B.R. 854, 863 (Bankr. D.  
 23 Nev. 2019) (citations omitted).

24 Relatedly, the Court must also consider the financial impact of conversion versus  
 25 dismissal. In re Staff at 261 (“The element of the best interest of the estate focuses upon whether  
 26 the economic value of the estate is greater inside or outside of bankruptcy”). This includes any  
 27 loss of creditors’ legal rights upon dismissal. In re Mech. Maint., Inc., 128 B.R. 382 (E.D. Pa.  
 28 1991) (reversing and remanding bankruptcy court order for failure to consider creditor’s loss of

1 superpriority status upon dismissal).

2        Provided that there is equality of treatment among creditors, the preferences and interests  
3 of specific creditors may be considered especially where, as is the case with ACF, a specific  
4 creditor holds a substantial claim. See Baroni v. Seror (In re Baroni), 36 F.4th 958, 970 (9th Cir.  
5 2022) (giving weight to secured creditors' preference for conversion over dismissal); *In re Staff*  
6 at 261) ("There is no specific numerosity requirement inherent in section 1129(b)'s best interest  
7 test. The interest of a single creditor with a large enough claim will suffice"). Similarly, the  
8 presence or absence of objections may also be considered. *Id.* (weighing absence of objections in  
9 favor of secured creditor's motion to conversion) (citing Renewable Energy, Inc. v. U.S. Tr. (In re  
10 Renewable Energy, Inc.), No. BAP WW-15-1089-KuJuTa, 2016 Bankr. LEXIS 4256, 2016 WL  
11 7188656, at \*5 (B.A.P. 9th Cir. Dec. 9, 2016)).

12        As further discussed below, due consideration of each of the most relevant factors weighs  
13 heavily in favor of conversion, rather than dismissal, as being in the best interests of the Debtors'  
14 creditors and their estates. First, under chapter 7, all claims would be treated equally in  
15 accordance with the Bankruptcy Code's priority scheme under section 726. See 11 U.S.C. § 726.  
16 Second, conversion is the only means by which the general creditor body might hope to receive  
17 any distribution on account of their claims. Third, ACF, the Debtors' largest single creditor,  
18 strongly favors conversion.

19        **B. The Bankruptcy Code's Priority Scheme under Chapter 7 Would Ensure Equal**  
20 **Treatment of Creditors upon Conversion**

21        Upon conversion, allowed general unsecured claims would be treated equally under the  
22 chapter 7 priority scheme set forth in section 726(a)(2)(B). 11 U.S.C. § 726(a)(2)(B) (providing  
23 for equal treatment of all allowed, timely filed general unsecured claims). In the event of  
24 dismissal, by contrast, any remaining estate assets would revert in the Debtors. 11 U.S.C. §  
25 349(b)(3) (dismissal "revests the property of the estate in the entity in which such property was  
26 vested immediately before the commencement of the case"). According to the Debtors, there are  
27 "Remaining Assets" of approximately \$124,000.00. Mot. at ¶ 20.<sup>2</sup> Upon dismissal, creditors

28        <sup>2</sup> With respect to the Remaining Assets", "The Debtors intend to distribute the Estates' share from the liquidation of



1 with any hopes of recovery would resume the prepetition race to the courthouse with some  
 2 creditors perhaps being successful and others surely not. *In re Shea & Gould*, 214 B.R. 739,  
 3 *aff'd*, 229 B.R. 88 (S.D.N.Y. 1997) (denying dismissal when doing so would result in race to the  
 4 courthouse by debtor's creditors). Given the paramount importance of equal treatment in  
 5 determining "the best interests of creditors and the estate" under section 1112(b)(1), these cases  
 6 should be converted.

7 **C. The Existence of the Chapter 5 Claims All but Mandate Conversion Rather**  
 8 **Than Dismissal**

9 Section 547(b) provides that a trustee may avoid certain transfers made to creditors in the  
 10 ninety-day period preceding a debtor's bankruptcy filing. 11 U.S.C. § 547(b). Unlike the  
 11 Bankruptcy Code's federal fraudulent transfer statute under section 548, preference actions have  
 12 no analog under state law. As noted, ACF is presently prosecuting preference claims with a face  
 13 value of some \$5.5 million. Upon dismissal, those claims would vanish. Thus, the Debtors'  
 14 eagerness to extinguish a substantial source of recovery unavailable to their creditors outside of  
 15 bankruptcy belies their contention that dismissal is in the best interests of their estates rather than  
 16 themselves alone. *In re Fleetstar LLC*, 614 B.R. 767 (Bankr. E.D. La. 2020) (conversion rather  
 17 than dismissal in best interest of creditors where appointment of chapter 7 would provide an  
 18 independent fiduciary to pursue avoidance actions). On this basis alone, dismissal should be  
 19 denied; *Rollex* at 243, superseded by statute on other grounds, Bankruptcy Abuse Prevention and  
 20 Consumer Protection Act of 2005 (best interests of creditors mandates comparison of creditors'  
 21 rights under the Bankruptcy Code with their rights under state law).

22 **D. ACF, the Debtors' Largest Single Creditor, Favors Conversion**

23 It is undisputed that ACF is the Debtors' largest single creditor. *See, e.g., Debtors'*  
 24 *Motion for Approval of Compromise, Pursuant to Fed. R. Bankr. P. 9019, by and Among*  
 25 *Debtors, ACF Finco I, LP and The Official Committee of Unsecured Creditors*, ECF No. 1229 at

\_\_\_\_\_ (continued)

26 the Remaining Assets as follows: (a) pay all outstanding fees owed to the US Trustee under 28 U.S.C. § 1930; (b)  
 27 hold back \$25,000 to effectuate the Debtors' corporate dissolutions; and (c) distribute the balance in pro rata  
 28 payment of allowed estate professional fees." Mot. at ¶ 20. It is unclear on what basis Debtors would be allowed to  
 retain a holdback of \$25,000.00. Moreover, if the Debtors are concerned about chapter 7 administrative fees, all or  
 part of the Remaining Assets could be used to fund a chapter 7 trustee's initial assessment of these cases upon  
 conversion.



p. 24 (noting that “the Committee and the Debtors’ largest creditor” approved the terms of the Global Settlement). Therefore, the impact of dismissal on ACF compared with the effect of conversion should be strongly considered. As with general unsecured creditors, ACF’s potential recoveries are tied to its ongoing prosecution of the preference claims. To reiterate, upon dismissal, those claims would disappear leaving ACF, like unsecured creditors, without a significant source of recovery, if any. Moreover, under the Global Settlement, ACF agreed to compromise certain rights. As consideration for that compromise, ACF accepted the transfer of the estates’ preference claims for its own benefit and that of the general creditor body. In seeking dismissal, the Debtors are essentially breaching the Global Settlement for their own benefit. Because dismissal would be detrimental to both the interests of all general unsecured creditors and the Debtors’ largest creditor, ACF, dismissal should be denied.

**E. In the Event the Court Orders Dismissal, the Court Should Grant Relief from Section 349 for Cause.**

If the Court is not convinced that conversion, rather than dismissal, is in the best interests of the Debtors’ estates, then in any dismissal order, the Court should confirm that this Court’s orders, including approval of the Global Settlement, in these jointly administered cases remain binding upon all parties, notwithstanding any provisions of Section 349 which might alter such result. Specifically, Section 349 permits the Court to enter orders, for cause, which may modify the effect of any dismissal. As summarized in In re Magallanes, 96 B.R. 253, 256 (Bankr. 9th Cir.,1988), “normal rules of *res judicata* apply equally to decisions and final orders of bankruptcy courts as to all matters that were or could have been litigated. Katchen v. Landy, 382 U.S. 323, 334, 86 S.Ct. 467, 475, 15 L.Ed.2d 391 (1966) [remaining cites omitted],” accord, U.S. v. Standard State Bank, 91 B.R. 874 (W.D. Mo. 1988) (post-dismissal binding effect of bankruptcy court lien priority determination).

This case has been pending for over three years with all parties engaged in a significant amount of work and compromise which, if undone, would create chaos. All parties have benefitted from the litigation, settlements, sales, and other orders entered in, and related to, these Chapter 11 Cases, including as a result of the Global Settlement. The rulings, settlements, and sales each contain terms, determinations of rights regarding claims, and releases which have

1 been relied upon by the parties since approval by the Court. ACF always intended that this  
2 Court's orders would be final and binding. It is also believed that Debtors never intended that  
3 any of this Court's orders would be capable of being undermined by a dismissal of the cases.  
4 Therefore, in the interests of ensuring that the substantial progress made in these cases is not  
5 challenged if the cases are dismissed, good cause exists to modify Section 349(b), to the extent it  
6 is implicated, to permit all rulings and the settlements, expressly including the Global Settlement  
7 as well as all actions taken in reliance thereon, to remain intact in the event of a dismissal.

8 **IV.**  
9 **CONCLUSION**

10 For the reasons stated above, ACF requests that the Court deny the Motion and instead  
11 convert the Debtors' chapter 11 cases to liquidation proceedings under chapter 7, and grant such  
12 other and further relief that is just and proper under the circumstances.

13 Dated this 19th day of July, 2023

14 GARMAN TURNER GORDON LLP

15  
16 /s/ Teresa M. Pilatowicz  
17 GREGORY E. GARMAN  
18 WILLIAM M. NOALL  
19 TERESA M. PILATOWICZ  
20 7251 Amigo Street, Suite 210  
21 Las Vegas, Nevada 89119  
22 *Counsel for ACF Finco I, LP*  
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