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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH

In re: **FEDERAL RESOURCES CORPORATION and CAMP BIRD COLORADO, INC.**, Debtors.	Jointly Administered Under Bankruptcy Case No. 14-33427 Chapter 11 Honorable Kevin R. Marker **THIS DOCUMENT RELATES TO:** □ In re Federal Resources Corporation □ In re Camp Bird Colorado, Inc. ■ Both Debtors

THE DEBTORS' RESPONSE TO (A) CALDERA MINERAL RESOURCES, LLC AND CALDERA HOLDINGS, LLC'S EMERGENCY MOTION FOR THE APPOINTMENT OF A CHAPTER 11 TRUSTEE PURSUANT TO 11 U.S.C. § 1104, and (B) THE UNITED STATES' RESPONSE TO THE MOTION

Debtors, Federal Resources Corporation ("**FRC**") and Camp Bird Colorado, Inc. ("**CBCI**") (collectively, "**Debtors**"), through counsel, file this response in opposition to the *Emergency Motion for the Appointment of a Chapter 11 Trustee Pursuant to 11 U.S.C. § 1104* (the "**Motion**"), Dkt. No. 262, filed by Caldera Mineral Resources, LLC ("**Caldera**") and Caldera Holdings, LLC ("**Holdings**") (collectively, "**Movants**"). The United States, at the request of the United States Environmental Protection Agency and the United States Forest

Service (the "**Government**") filed a response to the Motion (the "**Government's Response**"), Dkt. No. 279, on January 8, 2016.

This Response is supported by the accompanying *Declaration of Scott A. Butters* ("**Butters Declaration**") (Dkt. No. 286) and the *Declaration of Bentley J. Blum* ("**Blum Declaration**") (Dkt. No. 285), all the pleadings on file in these bankruptcy proceedings and the following Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Movants have been quick at hearings and in pleadings to accuse the Debtors of committing an alleged "fraud upon the Court." In response to these accusations, the Court informed counsel for the Movants about the seriousness of such allegations that "if there isn't a colorable claim of for fraud and scheme that is established, that's not going to bode well for Caldera going forward . . . ."[1] Despite this warning, the Movants have utterly failed to establish any colorable claim of fraud. Instead, the Motion is replete with name calling, conclusory assertions and speculation. For example, throughout the Motion, instead of using Mr. Ciardo's name, Movants repeatedly disparage him by referring to him as the "drug dealer." [2] They also frequently use the term "gang" in reference to individuals that allegedly accompanied Mr. Ciardo to the Camp Bird Mine. The Movants' refer to agreements as if the documents are effective, when those documents clearly and expressly state that they are subject to prior bankruptcy court approval after appropriate notice. Name calling, speculation and inaccurate assumptions are not evidence, but such techniques are often used to hide a weak or specious claim. The Motion clearly is a smoke screen to hide the Movants' own wrongdoing.

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[1] November 30, 2015, Audio of Hearing, 27:17-27:34.

[2] The Debtors do not dispute that ***over twenty years ago*** Mr. Ciardo was convicted of a federal drug related crime. Nor do the Debtors dispute that many years ago Mr. Ciardo fully repaid his debt to society for this crime – a fact that the Movants' conveniently fail to mention in the Motion.

In truth, no party has done more harm to the Debtors than the Movants. The Movants breached the terms of the lease and option agreement and a stipulation that they signed in connection with an Idaho federal court action. They made representations to a federal court that they either knew were false at the time, or never intended to perform. This breach resulted in damages to the Debtors of no less than $6,500,000.00, and it also directly resulted in the need for the Debtors to seek bankruptcy protection.[3] The Movants are not virtuous creditors trying to correct an injustice, but wrongdoers who are trying to divert the Court's attention away from their own misdeeds.

Since seeking bankruptcy protection, the Debtors have progressed in good faith towards confirmation of a plan. The Debtors plan, if confirmed, would replace existing management with an independent liquidating trustee. The plan would voluntarily subordinate insider related debt for the benefit of other third party creditors. This is hardly a proposal that would be made by unscrupulous manager/owners who are trying to further their own self-interests at the expense of their creditors. The Debtors have been open with their creditors and parties in interests (namely, the Government and the United States Trustee) about the various avenues the Debtors are pursuing to attempt to generate revenue for the estates. This includes the Debtors disclosing their efforts to negotiate a lease with Mr. Ciardo to the United States Trustee and the Government, and the disclosure that such a lease would involve a novel, unresolved question under bankruptcy law regarding indirect revenue to a debtor from a cannabis farm that is a legal business under applicable Colorado law. The Government Response does not dispute these prior disclosures, and the UST specifically mentioned them on the record at a prior hearing.

In contrast to the United States Trustee and the Government, the Movants have refused to engage in open, good faith discussions with the Debtors, and they have ignored proposals made

[3] The Debtors reserve all rights to seek the attorney fees and costs incurred in connection with their respective bankruptcy proceeding as damages in the pending adversary proceeding against the Movants and PT Tan.

by the Debtors for resolving disputes. The Movants now assert throughout the Motion that the Debtors are attempting to "hide" information from the Court. If the Movants and their counsel had engaged with the Debtors, the Movants would have been informed about many of the various items that they now accuse the Debtors of "hiding". In short, the Motion demonstrates nothing more than the Movants' ignorance of these cases. It provides no support for the Movants' assertions of fraud or any justification for the appointment of a Chapter 11 trustee. The Government's Response likewise fails to sufficiently establish that such an extraordinary remedy is warranted in these cases, or that there would be any benefit to the estates from appointment of a trustee. In fact, neither the Movants or the Government show how a trustee would do anything different in administering these estates, other than add another layer of expense and further diminish the potential recovery for creditors. The Court accordingly should deny the Motion.

II. RELEVANT FACTUAL BACKGROUND

A. Caldera and Holdings breach their agreement with Debtors, causing the Debtors to file for bankruptcy protection

1. On November 4, 2015, CBCI and Camp Bird Tunnel, Mining and Transportation Company ("**CBTMT**") filed a complaint against Caldera and Holdings, thereby initiating that certain adversary proceeding no. 15-02221 ("**Caldera Adversary Proceeding**"). On November 11, 2015, CBCI and CBTMT filed their first amended complaint ("**FAC**") to, among other things, include Tan Pong Tyea, aka PT Tan ("**PT Tan**"). In the interests of brevity, the Debtors incorporate by references the allegations in the FAC.

2. In the FAC, the Debtors allege, among other things, that the Movants breached the Caldera Agreements and Stipulation (as those terms are defined in the FAC), which directly and proximately damaged, and continues to damage, CBCI in an amount to be proven at trial and in an amount of no less than $6,500,000.00.

B. The Debtors' bankruptcy proceeding

3. The Debtors commenced their respective bankruptcy proceedings on December 29, 2014 ("**Petition Date**"). These cases are being jointly administered under FRC. Dkt. No. 38.

4. Had the Movants fulfilled their obligations under the Caldera Agreements and the Stipulation, the Debtors would not have commenced these bankruptcy proceedings. Butters Dec. ¶ 10.

5. As of the Petition Date, the Government had a disputed, unliquidated claim. After the Petition Date, a judgment was entered by the Idaho Federal Court in favor of the Government for approximately $4.5 million. It is still an open question in these bankruptcy cases, however, whether entry of that judgment was a violation of the automatic stay. Nevertheless, the judgment is still unliquidated because a timely appeal was filed by the Debtors and the matter is now pending before the Ninth Circuit Court of Appeals. In spite of these facts, the Debtors always have treated the Government as if it were a creditor and interested party in these proceedings.

6. FRC owns 100% of the stock of CBCI. CBCI's principal assets consist of patented gold mining claims and related land located in Ouray, Colorado ("**Camp Bird Mine**"), and a 100% ownership interest in CBTMT, which owns approximately 1,500 acre feet per year of deeded water rights ("**Water Rights**").

7. CBCI also owns various items of equipment and inventory (collectively, the "**Equipment**") located at the Camp Bird Mine site. This Equipment appears to have been purchased by Caldera[4] under the terms of a *Mining Lease and Purchase Option Agreement* (the "**Mining Lease**") that was entered into in September 2012, but ownership of the Equipment either reverted to the Debtors upon termination of the Mining Lease, or was abandoned by Caldera when it ceased operations at the Mine Site in May 2013.

[4] Discovery on the ownership and abandonment questions is ongoing and, to date, information provided by Caldera has been evasive and incomplete.

C. The Debtors quickly file their Plan and Disclosure Statement

8. Within three months of the Petition Date, on March 27, 2015, the Debtors filed their joint plan of liquidation ("**Plan**") and accompanying disclosure statement ("**Disclosure Statement**"). Dkt. Nos. 95 and 96.

9. The Debtors' Plan contemplates the establishment of a liquidating trust and the appointment of an independent liquidating agent to sell the Debtors' assets. Dkt. No. 96 §§ 1.33, 1.34.

10. The Debtors' Disclosure Statement adequately describes the *Lease and Option to Purchase* ("**Water Lease**") with Richard Ciardo and the amendment to the Water Lease ("**Water Lease Amendment**"), as follows:

> On December 28, 2014, FRC, Camp Bird and CBMT entered into that certain *Lease and Option to Purchase* ("Water Lease") with Richard Ciardo under which Mr. Ciardo was granted, among other things, exclusive right to use the water related to the Camp Bird Mine until February 28, 2015 in exchange for $100. The Debtors and CBMT are in the process of finalizing an amendment to the Water Lease ***that is expressly subject to the Bankruptcy Court's approval.*** The terms of the amendment to the Water Lease are, among other things, (i) the term of the Water Lease is extended to December 28, 2017, (ii) the monthly payments under the Water Lease will be $5,000 per month beginning on March 1, 2015 and continuing through October 1, 2015 and then increase to $20,000 for each of month commencing on November 1, 2015 an continuing through December 1, 2015, (iii) Mr. Ciardo has a one (1) year exclusive option to purchase certain of the water rights related to the Camp Bird Mine for the purchase price of $5,000,000, and (iv) if prior to closing, the Debtors enter into a contract with a third party to purchase some or all of the Camp Bird Mine then the Debtors may terminate the option to be effective within fourteen (14) days of written notice, provided however, that if such notice is received within the option period, Mr. Ciardo can elect to continue to use the leased property for one (1) year provided that he timely makes the monthly payments. The Debtors anticipate seeking approval of the Water Lease shortly after the filing of the Disclosure Statement. (emphasis added)

11. The Debtors ultimately never sought approval of the Amended Water Lease because Mr. Ciardo failed to make payments under the Amended Water Lease as required by its terms. Butters Dec. ¶ 18.

12. Additionally, Counsel for the Debtors did not seek Court approval of the Amended Water Lease because it was, and continues to be, examining the novel and unresolved legal question of whether a bankruptcy court can approve such a lease if an indirect source of income for the Debtors from the transaction involves an agricultural cannabis operation that is legal and permitted under applicable State law, but prohibited under applicable Federal law.

13. On April 1, 2015, then counsel for the Movants requested a word version of the Disclosure Statement so that the Movants could include their comments in lieu of an objection. On the same day, counsel for the Debtors provided then counsel for the Movants with a word version of the Disclosure Statement. A copy of the April 1, 2015 email chain without attachments is attached hereto as **Exhibit 1.**

14. Counsel for the Movants never provided any comments or proposed revisions to the Disclosure Statement.

D. The Debtors delay pursuing the Plan and Disclosure Statement at the Government's request to negotiate with the Movants, who then failed to negotiate in good faith

15. Following a status conference, on July 30, 2015, counsel for the Government requested that the Debtors not proceed with seeking approval of an amended Disclosure Statement until counsel for the Government could discuss his concerns with Debtors' counsel.

16. Counsel for the Government then encouraged counsel for the Debtors to negotiate with Caldera instead of seeking approval of their Disclosure Statement and Plan.

17. In response to this request, counsel for the Debtors commenced negotiations with Caldera.

18. At the request of Caldera's counsel, the Debtors prepared a proposed term sheet, and on August 18, 2015, the Debtors submitted that term sheet to Caldera.

19. After several weeks without a response, and because of Richard Ciardo's interest in purchasing the Equipment before the Camp Bird Mine site became inaccessible due to weather,[5] on September 2, 2015, the Debtors' counsel sent an email to then counsel for Caldera requesting a response to the term sheet no later than September 14, 2015.

20. On September 14, 2015, Caldera's then counsel sent an email to Debtors' counsel indicating that it objected to any proposed sale of the Equipment. Caldera has never responded to the term sheet. A copy of the email chain between Debtors' counsel and then counsel for the Movants is attached hereto as **Exhibit 2.**

E. The Debtors file the Sale Motion to generate revenue for the estates

21. On November 4, 2015, the Debtors filed their *Debtors' Motion for Order (A) Approving Bid Procedures for Sale of Camp Bird Colorado, Inc.'s Mining Equipment and Inventory; (B) Authorizing the Sale of Camp Bird Colorado, Inc.'s Mining Equipment and Inventory Free And Clear of Liens; and (C) Abandoning the Motion Flow Equipment to Motion Flow* (the "**Sale Motion**") [Dkt. No. 202].

22. The Sale Motion requests, among other things, an order a) approving Bid Procedures for the sale of CBCI's Equipment; b) authorizing the sale of the Equipment free and clear of liens; and c) abandoning the Motion Flow Equipment to Motion Flow Control Products, Inc.

23. The stalking horse bidder for the Equipment is Mr. Ciardo with an initial bid of $87,000.00, which is subject to higher and better offers. The original Term Sheet dated October 20, 2015, attached as Exhibit 2 to the Sale Motion (Dkt. No. 202), provided that Mr. Ciardo's

[5] The term sheet submitted to Caldera included the Equipment, so the Debtors needed a response from Caldera on the terms sheet before it could finalize an agreement with Mr. Ciardo.

earnest money of $10,000 would be returned if the "Effective Date" of the sale went beyond December 15, 2015.

24. No party filed any timely objections to the Sale Motion. On November 24, 2015, however, after the Debtors voluntarily granted a brief extension of the objection deadline to Caldera's new counsel, the Movants filed the only opposition ("**Caldera Opposition**") [Dkt. No. 225] to the Sale Motion, and the Debtors replied in support of the Sale Motion. Dkt. No. 228.

25. On November 30, 2015, the Court approved the form of the Bid Procedures (which contemplated an Auction occurring on December 14, 2015 ("**December 14th Auction**")), authorized the proposed abandonment of the Motion Flow Equipment, and set an evidentiary hearing for December 15, 2015 ("**December 15th Sale Hearing**") to consider the remainder of the relief requested in the Sale Motion. Dkt. No. 243.

26. The Debtors provided notice of the December 14th Auction as follows:

a. On December 2, 2015, the Debtors mailed a letter notifying parties of the December 14th Auction, the approved Bid Procedures, a notice of the December 15th Sale Hearing, the Equipment List, and the Term Sheet to, among other things, to the parties identified on Dkt. No. 236 (attached), including to: (i) approximately 31 different mining companies and equipment dealers, (ii) all parties on the master mailing matrix, and (iii) all parties that have entered an appearance in this matter. Dkt. No. 236.

b. The Debtors advertised the December 14th Auction in the Montrose Daily Press on December 4-6, 2015. Dkt. No. 271.

c. The Debtors created an advertisement that was listed on the website for inforuptcy.com (a website that provides listings of bankruptcy auctions). Dkt. No. 272.

F. The Debtors again attempt to engage in good faith negotiations with the Movants, who again failed to respond.

27. In the Caldera Opposition, the Movants claimed, among other things, that they "intend to serve as bidders for the Camp Bird Mine . . . ." Dkt. No. 225 ¶ 30.

28. To attempt to avoid the costs associated with an evidentiary hearing, on November 30, 2015, counsel for Debtors contacted counsel for the Movants, renewed its prior term sheet and requested a response to the term sheet on or before December 4, 2015 "to provide time for the parties to potentially come to a mutual resolution before additional resources are spent in connection with the sale hearing." A true and correct copy of the November 30, 2015 email is attached hereto as **Exhibit 3**.

29. Caldera still has never responded to the term sheet.

G. The Debtors continue the December 15th Auction at the request of the Movants and the Government

30. Thereafter, at the request of the Movants and the Government, the Debtors agreed to reschedule the sale hearing to February 3, 2016 ("**February 3rd Sale Hearing**"). The Debtors also agreed to reschedule the December 14th Auction to February 2, 2016 ("**February 2nd Auction**").

31. When, at the request of the Movants and the Government, the Debtors agreed to reschedule the sale hearing to a date beyond December 15, 2015, Mr. Ciardo requested a refund of his earnest money, which has now been returned to him.

32. The Debtors, however, were able to restructure the sale terms with Mr. Ciardo to preserve this sale opportunity for the Debtors, and the *Agreement* dated December 14, 2015 ("**Amended Agreement**") reflects those new terms. Dkt. No. 256, Ex. A.[6] Notably, the sale price has not changed and now constitutes Mr. Ciardo's opening auction bid for the Equipment.

[6] The Lease and Option to Purchase Agreement dated November 27, 2015 ("**Ciardo Lease**") is attached as Schedule 2 to the Amended Agreement.

33. The Debtors provided notice of the February 2nd Auction as follows:

a. On December 29, 2015, the Debtors mailed a letter notifying parties of the February 2nd Auction, the amended approved Bid Procedures, a notice of the February 3rd Sale Hearing, the Equipment List, and the Amended Agreement to the parties identified on Dkt. No. 236 (attached), including to (i) approximately 31 different mining companies and equipment dealers, (ii) all parties on the master mailing matrix, and (iii) all parties that have entered an appearance in this matter. Dkt. No. 273.

b. On January 6, 2016, the Debtors mailed out a revised letter correcting the dates in connection with the February 2nd Auction. Dkt. No. 278.

c. The Debtors have begun the process to place an advertisement in the February 2nd Auction in the Montrose Daily Press twice per week until February 2, 2016, and the first advertisement was published on Saturday, January 2, 2016.

d. The Debtors created an advertisement that was listed on the website for inforuptcy.com (a website that provides listings of bankruptcy auctions) that will run until February 2, 2016.

H. <u>The Debtors engage in open discussions with creditors and parties in interest regarding the status of this proceeding</u>

34. Counsel for the Debtors has engaged in numerous discussions with counsel for the creditors and parties in interest throughout this case. The Debtors have only had, and continue to only have, one objective in this case – sell their assets for the highest prices reasonably available,

resolve claim disputes, and use to the proceeds from sales and claim prosecutions to pay valid claims. All of management's actions have been directed toward these goals.

1. Theft of Equipment

35. After Caldera's then counsel advised the Debtors' counsel that they believed there had been a theft of some items of equipment from the CBCI Mine site, Mr. Butters spoke at length with the Sherriff's office and informed the Sherriff's office that no one should be removing property from the Camp Bird Mine. Butters Dec. ¶ 19.

36. The Sherriff's office said it would try to have someone go to the mine on a periodic basis to check on things. Butters Dec. ¶ 20.

37. On April 1, 2015, counsel for the Debtors provided an excerpt of an email from Mr. Butters regarding his conversation with the Sherriff's office to then counsel for the Movants. A true and correct copy of the April 1, 2015 email is attached hereto as **Exhibit 4.**

38. Counsel for the Debtors also informed counsel for the Government of the alleged theft during one of their conference calls regarding the status of the case.

39. For several reasons, it was not possible for the Debtors to actually verify whether a theft had even occurred. At the time, the Debtors did not have an inventory of the equipment located at the site. Caldera, who claims to have purchased the equipment and now claims to own it, never provided any such inventory to the Debtors. The alleged theft occurred during the Winter when access to the property is very difficult. No theft report was every filed by Caldera with the local police. And, finally, to the best of the Debtors' knowledge, Caldera never insured the equipment, and an insurance claim was never filed by Caldera seeking recovery for any alleged loss. Nevertheless, the Debtors promptly and reasonable acted on the theft allegation as indicated above.

40. As soon as weather permitted, in May 2015, the Debtors, the Government and the Movants scheduled an inspection of the Camp Bird Mine. The Debtors wanted to conduct this

inspection to ensure that the Camp Bird Mine site was secure and to prepare an inventory of the Equipment. Butters Dec. ¶ 21.

41. No evidence has been found or provided by the Sherriff's office concerning the individual(s) responsible for the alleged theft of the equipment. Several individuals, including Caldera's former employees, knew about the equipment and its remote location. Butters Dec. ¶ 22.

2. Purchaser or Lessee of Camp Bird Mine

42. In addition to the reported theft of the Equipment, the Debtors also have informed the Government and the United States Trustee of the Debtors various ongoing efforts to find a purchaser or lessee the Camp Bird Mine.

43. This includes discussions regarding the Debtors' negotiations with Mr. Ciardo. As recently as October 26, 2015, counsel for the United States Trustee stated at a hearing before the Court that:

> [T]here was another angle, I don't know if it was Mr. Ciardo, but I believe earlier on there was interest in using the water for agricultural purpose, which would be problematic with some of the rulings out of Colorado on marijuana because that's his direction. That would likely meet some significant concern from our office and objections . . . involving the Debtor in that kind of operation."[7]

44. Counsel for Debtor reported to the Court that, as of October 26, 2015: "[I]n connection with Mr. Ciardo, there were discussions with Mr. Ciardo for the lease of the water rights. Those discussions have stalled and right now the more recent negotiations with Mr. Ciardo have been in connection with the Equipment."[8]

45. The United States Trustee and the Government therefore have been aware of the Debtors' negotiations with Mr. Ciardo and that proposed use of the Water Rights would require

[7] October 26, 2015, Audio of Hearing at 17:10-17:25.
[8] October 26, 2015, Audio of Hearing at 18:23-18:34.

the Court to address the overlay between federal bankruptcy law and the Controlled Substance Act. In the Governments Response the United States does not dispute its awareness of these negotiations. It also is true that neither the Government nor the UST ever agreed that such a use of the property would be permissible under federal bankruptcy law. It is for this precise reason that every agreement with Mr. Ciardo was subject to prior bankruptcy court approval after appropriate notice. The Equipment, however, is generic and can be used for operations unrelated to the growing of cannabis. Moreover, it is highly unlikely that this Equipment would be used to grow cannabis on the property because the agreement between the Debtors and Mr. Ciardo (or any auction buyer) requires that the buyer ***remove the Equipment from the Mine Site,*** at the buyer's expense, after the purchase.

I. The Debtors have dealt with Mr. Ciardo and Mr. Goldberg at arms-length.

46. In late 2014, Mr. Blum began negotiating with Mr. Ciardo for a loan of $250,000. However, these negotiations went nowhere. Blum Dec. ¶ 6.

47. Thereafter, Mr. Ronald Goldberg, whose company Alliance Capital (collectively, "**Alliance**") had acted as broker for the Debtors in connection with the Mining Lease with Caldera, stepped in. Blum Dec. ¶ 7.

48. On or about March 2, 2015, Mr. Blum reached an agreement with Mr. Ciardo for a small loan of $25,000, of which $15,000 was sent to Mr. Blum and $10,000 was sent to a company called Hyperion, which was owned by Mr. Goldberg. Blum Dec. ¶ 8.

49. This $25,000 loan was not documented when it was made, but there was an understanding that it would be repaid from the proceeds of the sale of Mr. Blum's condominium in Florida or through the sale of assets of the Blum Technology Trust. Blum Dec. ¶ 9.

50. This $25,000 loan has no connection with the Debtors or with Mr. Ciardo's proposal to purchase the Equipment, and Mr. Ciardo has no control over Mr. Blum's decisions in connection with the Debtors. Blum Dec. ¶ 10

51. Mr. Blum has no agreement with Mr. Ciardo related to the purchase of the Equipment, or to any proceeds from any subsequent disposition of the Equipment should Mr. Ciardo successfully purchase the same from the Debtors. Blum Dec. ¶ 11.

52. Alliance claims to have a prepetition brokerage or finder's agreement with the Debtors that allegedly entitles them to receive a commission or fee upon the sale of the CBCI mine and related property. In this regard, Alliance filed Proof of Claim No. 7 ("**Alliance Claim**") against the Estates. As indicated in the Alliance Claim, Mr. Goldberg also alleges that he holds a personal claim against Mr. Blum for the same alleged debt.

53. The Debtors have never sought bankruptcy court approval of any such arrangement, dispute the validity of the arrangement, and dispute the validity of the claim. Blum Dec. ¶ 14.

54. Alliance claims that it was the party responsible for introducing the Debtors to Caldera and Holdings. Blum Dec. ¶ 15.

55. In connection with the proposed sale of the Equipment to Mr. Ciardo, Alliance demanded that the Debtors pay it a commission of approximately $3,100 as a precondition of such a sale. The Debtors refused. Alliance also demanded that the Debtors have no communication with Mr. Ciardo except through Alliance. Again, the Debtors refused. Alliance tried to prevent the Debtors from entering into a transaction with Mr. Ciardo unless the Debtors first paid a fee to Alliance. Again, the Debtors refused absent prior bankruptcy court approval for such an arrangement. This bickering resulted in substantial delays in completing the sale negotiations with Ciardo, which at one point reached an impasse. To break the log jam, Mr. Ciardo agreed to pay Alliance a fee of $3,150, but he accordingly reduced his purchase offer price for the Equipment from $90,000 to $87,000 to compensate for this loss. Alliance then released the Debtors from any alleged claims associated with the proposed sale of the Equipment. Blum Dec. at ¶ 16.

56. The Debtors believe that the Alliance Proof of Claim is invalid because Mr. Blum granted Alliance a mortgage against his personal residence in Florida and, upon sale of the residence, agreed to pay Alliance $152,000, in full satisfaction of any and all claims that Alliance has against Mr. Blum and the Debtors.

J. The Debtors solicit and attempt to address concerns of the United States Trustee and the Government as it relates to the Plan and Disclosure Statement

57. Counsel for the Debtors has engaged in discussions with the United States Trustee and the Government in connection with the proposed amended Plan and Disclosure Statement. Specifically, after obtaining a further extension of their exclusive periods, the Debtors advised the Government and the UST that they intended to amend the Plan and Disclosure Statement to reflect events in the case that occurred since the filing of the original Plan and Disclosure Statement on March 27 2015, as well as to provide greater flexibility to the administrative agent in liquidating assets, and that they would solicit comments from the Government and the UST about the new proposed amended Plan and Disclosure Statement before filing the same with the Court. By email dated December 18, 2015, counsel for the Debtors submitted the proposed amended Plan and Disclosure Statement to the Government and the UST for review and comment.

58. Counsel for the Debtors received detailed comments from David Dain of the Department of Justice on January 5, 2016 and from Peter Kuhn, on behalf of the United States Trustee, on January 6, 2015.

59. The United States Trustee and the Government therefore have been aware of and have participated in Debtors' attempts to amend its Plan and Disclosure Statement, and efforts to arrive at a consensual Plan and Disclosure Statement are ongoing.

III. ARGUMENT

Section 1104(a) governs the appointment of a Chapter 11 trustee and provides, in pertinent part, as follows:

> **(a)** At any time after the commencement of the case but before confirmation of a plan, on request of a party in interest or the United States trustee, and after notice and a hearing, the court shall order the appointment of a trustee—
>
> > **(1)** for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor by current management, either before or after the commencement of the case, or similar cause, but not including the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor; or
> >
> > **(2)** if such appointment is in the interests of creditors, any equity security holders, and other interests of the estate, without regard to the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor.

11 U.S.C.A. § 1104. If "cause" is found under subsection (a)(1), appointment is mandatory. *In re Plaza de Retiro, Inc.*, 417 B.R. 632, 640 (Bankr. D.N.M. 2009). Subsection (a)(2) is more flexible, but the court should consider among other things "that the appointment of a trustee 'may impose a substantial financial burden on a hard pressed debtor seeking relief under the Bankruptcy Code,' by incurring the expenditure of 'substantial administrative expenses' caused by further delay in the bankruptcy proceedings." *In re Plaza de Retiro, Inc.*, 417 B.R. 632, 640 (Bankr. D.N.M. 2009) (quoting *In re Bayou Grp., LLC*, 564 F.3d 541, 546 (2d Cir. 2009)).

Additionally, "[t]here is a strong presumption that a debtor should normally remain in possession and that appointment of a trustee is an 'extraordinary' remedy." *In re Plaza de Retiro, Inc.*, 417 B.R. 632, 640 (Bankr. D.N.M. 2009). "[C]ourts usually state that to overcome the presumption the movant must prove cause by clear and convincing evidence," although the Tenth Circuit has not yet ruled on this issue. *Id.* at 640 n.8; *In re Colorado-Ute Elec. Ass'n, Inc.*, 120 B.R. 164, 173 (Bankr. D. Colo. 1990) ("The burden is on the movant to show by clear and

convincing evidence that there is cause to appoint a trustee."); *In re Mako, Inc.*, 102 B.R. 809, 811-12 (Bankr. E.D. Okla. 1988) ("For 'cause' to be found by this Court, the movant must prove its existence by a clear and a clear and convincing burden."). Here, the Movants in the Motion and the Government in the Government's Response have each failed to come close to meeting its burden.

A. Caldera and Holdings have not established that the Debtors have committed "fraud upon the Court"

The Tenth Circuit has described "fraud upon the court" as follows:

> Fraud on the court ... is fraud which is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury. It has been held that allegations of nondisclosure in pretrial discovery will not support an action for fraud on the court. It is thus fraud ... where the impartial functions of the court have been directly corrupted.
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> . . .
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> Generally speaking, only the most egregious misconduct, such as bribery of a judge or members of a jury, or the fabrication of evidence by a party in which an attorney is implicated will constitute a fraud on the court. Less egregious misconduct, such as nondisclosure to the court of facts allegedly pertinent to the matter before it, will not ordinarily rise to the level of fraud on the court.
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> . . .
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> "fraud on the court," whatever else it embodies, requires a showing that one has acted with an intent to deceive or defraud the court. A proper balance between the interests underlying finality on the one hand and allowing relief due to inequitable conduct on the other makes it essential that there be a showing of conscious wrongdoing—what can properly be characterized as a deliberate scheme to defraud—before relief from a final judgment is appropriate.... Thus, when there is no intent to deceive, the fact that misrepresentations were made to a court is not of itself a sufficient

> basis for setting aside a judgment under the guise of "fraud on the court."

United States v. Buck, 281 F.3d 1336, 1342 (10th Cir. 2002) (citing *Bulloch v. United States*, 763 F.2d 1115, 1121 (10th Cir. 1985); *Weese v. Schukman*, 98 F.3d 542, 552 (10th Cir. 1996); and *Robinson v. Audi Aktiengesellschaft*, 56 F.3d 1259, 1267 (10th Cir. 1995)). The party asserting "fraud upon the court" must prove such fraud by "clear and convincing evidence." *Id*.

The Movants attempt to establish "fraud upon the court" by arguing (i) the Debtors allegedly intentionally hid information from the Court, (ii) the Debtors' Disclosure Statement allegedly falsely characterizes the Water Lease Amendment, (iii) the Debtors allegedly did not disclose that CBCI authorized Mr. Ciardo and Mr. Dodd to act on behalf of CBCI for the limited purpose of obtaining a permit, (iv) the Sale Motion allegedly is inaccurate, (v) the Debtors allegedly intentionally submitted a document containing misrepresentations to the Court, and (vi) the Debtors' proposed lease with Mr. Ciardo is commercially unreasonable. Each of these arguments fails.

1. The Debtors have not hid anything from the Court

Caldera asserts that the Debtors made a "deliberate decision . . . to continue to hide the purpose of the December 2014 Lease" because the Water Lease and Water Lease Amendment do not mention "marijuana cultivation." Dkt. No. 262 ¶ 34. This entire argument falls flat because the Water Lease Amendment was subject to bankruptcy court approval, and such approval has never been sought. The Water Lease Amendment states, in pertinent part, that "[t]his Amendment is subject to the entry of an order by the Bankruptcy Court after appropriate notice and a hearing, approving the same, *provided however*, that pending entry of such an approval order, Purchaser shall pay the rent payments to Seller's bankruptcy counsel, in trust." Mr. Ciardo never commenced making payments under the document, so the Debtors never presented the Water Lease Amendment to the Court for approval.

Had Mr. Ciardo commenced making payments, the Debtors would have presented the Water Lease Amendment to the Court for approval. If the Debtors had sought approval of the Water Lease Amendment, the Debtors intended to disclose the intended use of the water for the cultivation of cannabis. Counsel for the Debtors had discussions with counsel for the United States Trustee and the Government about the fact that the "agricultural use" of the water would be for the cultivation of cannabis. The Debtors understood that such a use of the water was going to be opposed by the United States Trustee, and that the Debtors would be required to address the intersection of federal bankruptcy law, the Controlled Substances Act and Colorado state law. The intersection between bankruptcy law and the Controlled Substances Act is an unchartered and developing area of jurisprudence, especially in circumstances, like the present case, where the Debtor is not a grower or seller of a controlled substance, the ultimate activity is legal in the affected State, and the proposed transaction also is not with an actual grower or seller of a controlled substance, but with an intermediate third party. Nevertheless, the Debtors also understood that reasonable minds and courts can come to different conclusions on this issue, which is precisely why all of the proposed agreements expressly and unequivocally required prior bankruptcy court approval before becoming effective. Had counsel for the Movants been involved in this case, they similarly would be aware that this was not a "secret" that the Debtors were deliberately trying to hide. It is not uncommon for Debtors to engage in preliminary agreements or proposals with parties that require court approval, but are never presented to the court for approval, and never become effective, for a variety of reasons, including the failure of conditions precedent. Such activity does not show fraud, it simply shows that the Debtors are doing their job, namely, attempting to generate value for creditors. Thus, the failure to include a provision the Water Lease Amendment regarding the cultivation of marijuana does not demonstrate an effort on the part of the Debtors to hide anything from the Court.

2. The Debtors Disclosure Statement is not misleading

Next, Caldera alleges that the Disclosure Statement is somehow materially misleading because it did not reflect that the Water Lease Amendment had been signed. Dkt. No. 262 ¶ 35. Again, this argument is baseless. As a preliminary matter, the Debtors never sought to approve the Disclosure Statement, and notice of a hearing on the approval of the Disclosure Statement has not been sent to the creditors. Under these circumstances, a statement in the Disclosure Statement cannot constitute a fraud upon the Court.

As counsel for the Movants knows, disclosure statements typically undergo several revisions before they are approved and sent out to creditors. In fact, counsel for the Debtors provided then counsel for the Movants an opportunity to comment on the Disclosure Statement, but that counsel never responded. Thus, the Movants' reliance on the Disclosure Statement to support their claim of fraud is misguided.

In any event, the Movants fail to establish how the Disclosure Statement is materially misleading. The Disclosure Statement describes in detail the terms of the Water Lease Amendment, indicates that the Debtors and Mr. Ciardo are finalizing the Water Lease Amendment and states that the Debtors will be seeking approval of the Water Lease Amendment shortly after the filing of the Disclosure Statement. Such statements are not materially different than stating that the Debtors and Mr. Ciardo recently signed the Water Lease Amendment, and the Debtors will be seeking approval of it shortly after the filing of the Disclosure Statement.[9] In either case, creditors that are deciding whether to vote in favor of or against the Plan are still correctly informed of the circumstances at that time. Thus, it is immaterial that the Water Lease Amendment had been signed a few days before the filing of the Disclosure Statement, particularly because a notice of a hearing on the approval of the Disclosure Statement was never

[9] As set forth above, the Debtors ultimately did not seek approval of the Disclosure Statement because Mr. Ciardo failed to make the monthly rental payments under the Water Lease Amendment.

sent to the creditors. Moreover, the Disclosure Statement has now been revised and is likely to be further revised to address comments recently received from the DOJ and the UST.

3. The Debtors' disclosed to the Court that Mr. Ciardo was authorized to apply for a permit on behalf of CBCI

The Movants next claim that the Debtors failed to disclose that Mr. Ciardo and Mr. Dodd were authorized to obtain a permit on behalf of Camp Bird. Dkt. No. 262 ¶ 36. This accusation also is incorrect. While is it true that the Agent Authorization forms are not mentioned in the Sale Motion, the Sale Motion was filed on November 4, 2015, more than three weeks ***before*** CBCI signed the Agent Authorization Forms on November 29, 2015. Thus, the Agent Authorization forms did not exist when the Sale Motion was filed.

Further, when counsel for the Movants raised this issue at the hearing on Monday, November 30, 2015, counsel for the Debtors readily admitted that he "found out yesterday [Sunday, November 29, 2015] . . . that in order to allow Mr. Ciardo to apply for a permit . . . with respect to this property, the Debtor has, for that limited purpose, authorized him to apply for a permit with respect to this property."[10] As a result, the Debtors disclosed this information to the Court the day after the Agent Authorization forms were signed by CBCI.

Additionally, pursuant to the Amended Agreement, "any and all prior authorizations, approvals or permissions granted by the Debtors in connection with, or in relation to, either the Personal Property or the Lease are withdrawn and ineffective, until the Bankruptcy Court grants authority to the Debtor to enter into the Lease." Dkt. No. 256, Ex. A. Thus, the Debtors have revoked any agency that Mr. Ciardo may have had.

Finally, on their face the authorizations granted in the forms are extremely limited and say nothing about any agricultural operations of any kind. All they authorize is application for

[10] November 30, 2015, Audio of Hearing at 39:10 -39:41.

permits by the individuals named therein for "interior build out & framing, electrical and plumbing." Such activities are not illegal under either Colorado or Federal law.

4. The Sale Motion is accurate

The Movants next assert that the Debtors' Motion allegedly "falsely" states that "[t]he Purchaser is not an insider of the Debtors, and he has no affiliation with the Debtors' principals." Dkt. No. 262 ¶ 37. This statement is correct. The term "insider," is defined, in pertinent part, as follows:

> (B) if the debtor is a corporation—
>
> (i) director of the debtor;
>
> (ii) officer of the debtor;
>
> (iii) person in control of the debtor;
>
> (iv) partnership in which the debtor is a general partner;
>
> (v) general partner of the debtor; or
>
> (vi) relative of a general partner, director, officer, or person in control of the debtor
>
> . . .
>
> (E) affiliate, or insider of an affiliate as if such affiliate were the debtor; and
>
> (F) managing agent of the debtor

11 U.S.C.A. § 101 (31) (B), (E), (F). 11 U.S.C. § 101. Additionally, under the Bankruptcy Code, the term "affiliate" is defined as:

> (A) entity that directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than an entity that holds such securities--

> (i) in a fiduciary or agency capacity without sole discretionary power to vote such securities; or
>
> (ii) solely to secure a debt, if such entity has not in fact exercised such power to vote;
>
> (B) corporation 20 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor, or by an entity that directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than an entity that holds such securities--
>
> (i) in a fiduciary or agency capacity without sole discretionary power to vote such securities; or
>
> (ii) solely to secure a debt, if such entity has not in fact exercised such power to vote;
>
> **(C)** person whose business is operated under a lease or operating agreement by a debtor, or person substantially all of whose property is operated under an operating agreement with the debtor; or
>
> **(D)** entity that operates the business or substantially all of the property of the debtor under a lease or operating agreement

11 U.S.C.A. § 101 (2). Mr. Ciardo does not fit within any of these categories.

Mr. Ciardo is not an officer, director, a managing agent, shareholder or otherwise in control of the Debtors. While CBCI signed the Agent Authorization Forms authorizing Mr. Ciardo to act on behalf of CBCI for the limited purpose of applying for a permit from the Count of Ouray, the Agent Authorization Form was signed more the three weeks after the Debtors filed the Sale Motion. There was no Agent Authorization Form in existence for the Debtors to disclose in the Sale Motion. Additionally, the Agent Authorization Form is very limited. It only authorizes Mr. Ciardo to apply for a permit from the Count of Ouray for legal construction activities. It does not grant him authorization to control CBCI, nor does it even

allow him to engage in any construction activities on the Mine Site. It simply authorizes him to apply for a permit to engage in such activities.

Further, although Mr. Ciardo loaned funds to Mr. Blum as a third-party lender, the Movants have not provided any evidence that Mr. Ciardo somehow had control over Mr. Blum or over Mr. Blum's decisions in connection with the Debtors. There is absolutely no evidence of any "side deals" or interests that Mr. Blum, Mr. Butters or the Debtors have with Mr. Ciardo in connection with any proposed use of the Debtors' property, other than what is set forth in the terms of the proposed agreements, which, as indicated above, are not yet even effective.

The Movants also argue that Mr. Ciardo had access to the Camp Bird Mine site and was given an "inside track to develop a bid to purchase the equipment" allegedly demonstrates his connection to the Debtors. Dkt. No. 262 ¶ 37. The fact that Mr. Ciardo had access to the Camp Bird Mine should come as no surprise. Mr. Ciardo is interested in leasing the property and purchasing the Equipment. The Debtors would provide similar access to any person or individual interested in the Camp Bird Mine or the Equipment.

The allegation that Mr. Ciardo was given an "inside track" also is unavailing. On August 18, 2015, the Debtors actually developed a term sheet for the Movants in connection with a sale of the Camp Bird Mine site and the Equipment. After three weeks of receiving no response to the terms sheet, the Debtors proceeded with negotiating a deal with Mr. Ciardo. To make matters worse, as recently as November 30, 2015, the Debtors renewed the offer in the term sheet to the Movants for the sale of the Camp Bird Mine site and the Equipment, and the Movants again stonewalled the Debtors. Thus, nothing in the Movants' Motion or accompanying declaration supports their assertion that Mr. Ciardo is an insider or otherwise in control of the Debtors.

5. The Debtors have not knowingly made false representations to the Court

The Movants further claim that the Debtors knowingly submitted "a document containing material misrepresentations." Dkt. No. 262, ¶ 38. The Movants allege that the Amended Agreement contains a false statement from Mr. Ciardo that he does not intend to "engage in any activity that is illegal under federal law." The Movants have not provided any evidence that this assertion is false or (even if it is) that the Debtors knew it to be false. The Debtors understand that Mr. Ciardo intends to act as a "landlord" of the leased property and that Mr. Ciardo intends to sublease it to a separate legal entity called Elevated, LLC. While Elevated, LLC may be in the business of cultivating cannabis, the Movants have provided no evidence that Mr. Ciardo is an insider of Elevated, LLC.

The interplay between federal bankruptcy law, the Controlled Substances Act and State law legalizing the cultivation, sale and use of cannabis is evolving and uncharted. The Debtors simply don't know whether it is permissible under the Bankruptcy Code for a debtor to enter into a lease knowing that the leased property will then be subleased for the purpose of cultivating cannabis in a state where such growing activity is legal. How long is the chancellor's arm in such a circumstance? Is it illegal for a Colorado taxi cab company to reorganize in bankruptcy because it generates revenue on occasion from driving customers to a retail shop where they buy pot? What about the reorganization of a paper supply company that sells bags and jars to a retail marijuana dispensery? The Debtors counsel is continuing to research this question. So far, the Debtors have not found any case directly on point. If the Debtors believe such a lease is permissible, the Debtors intend to file a motion with the Court seeking authority to enter into it. If the Debtors conclude that such an arrangement is not permissible, or that approval is highly unlikely, then they will not waste the estate's resources by seeking Court approval. At best, the current Cirado Lease is a possible opportunity for the Debtors to generate revenue for their estates and creditors – nothing more. And, the vociferous uproar about it created by the Movants

in their pleadings is nothing more than a classic tempest in a tea pot. As recently as December 18, 2015, counsel for the Debtors had a conversation with counsel for the Government regarding the Debtors' intention to proceed in this manner. Thus, the Debtors are not attempting to hide their intentions in connection with the Ciardo Lease.

6. The Court should reserve judgment on the commercially reasonableness of the Ciardo Lease

The Movants' final assertion is that the deal with Mr. Ciardo is commercially unreasonable. Dkt. No. 272, ¶ 38. The Ciardo Lease, however, is not before the Court at this time. As stated above, if the Debtors believe the Ciardo Lease is permissible, they will seek approval, at which time the Debtors will address the reasonableness of its terms. To address that issue now (in the context of a motion to appoint a trustee) is premature. In any event, the Movants have not provided any basis to assert that the terms of the Ciardo Lease somehow rise to the level of fraud or gross mismanagement. *In re Mako, Inc.*, 102 B.R. 809, 812 (Bankr. E.D. Okla. 1988) ("Gross mismanagement suggests some extreme ineptitude on the part of management to the detriment of the organization. . . . But it must rise above simple mismanagement to achieve the level envisioned by the Code.").

The Debtors have been open and honest with the creditors and other parties in interest of this estate. Counsel for the Debtors regularly have had conferences with counsel for the Government and counsel for the United States Trustee to keep them up to date on the Debtors' efforts to progress toward confirmation. Had the Movants been involved in this case for the last year, the Debtors similarly would have shared this same information with the Movants. Instead, the Movants have spent the last year on the sidelines, and they have failed to engage in good faith negotiations with the Debtors.

The Movants have disputed claims against the estate and its assets. The Movants also are indebted to the estates. These disputes need to be resolved. Rather than address these issues, the

Movants are attempting to distract the Court's attention by raising issues that lack merit, drain estate resources and do not resolve the disputes. At best, if the Motion is granted it will only add delay and expense to this burdened estate and do nothing to generate revenue for creditors. That outcome, however, is the apparent motive for the otherwise baseless Motion..

B. The Debtors have not exposed the estate to potential administrative expense claims

The Movants next claim that the Ciardo Lease promises "the delivery of water rights that the Debtors cannot legally deliver." Dkt. No. 262, ¶ 40. Through this assertion, the Movants demonstrate their misunderstanding of the Water Rights. In 1989, Royal Gold (lessees) negotiated a revision to the water decrees for some rights that CBCI had from surrounding streams. Butters Dec. ¶ 13. CBCI gave up some water rights and solidified other water rights that were used for mining, milling and domestic use. Butters Dec. ¶ 14. These water rights, however, are completely separate from the Water Rights owned by CBTMT. Butters Dec. ¶ 15. Thus, the Debtors can deliver on the water rights promised in the Ciardo Lease.

The Movants' further criticize the Debtors for not seeking approval of the Water Lease Amendment, arguing that "Court approval is required for any transaction outside the ordinary course of business." Dkt. No. 262, ¶ 41. This criticism also reflects a misunderstanding of the document. The Water Lease Amendment itself provides that it is not effective until it is approved by the Bankruptcy Court. As set forth above, the Debtors have not yet sought approval of the Water Lease Amendment, so the entire argument is a red herring

C. The Movants' assertions that Mr. Ciardo caused damage to the Camp Bird Mine and stole the Equipment is based on pure speculation

The Movants argue that Mr. Ciardo caused damage to the Camp Bird Mine and stole some of the Equipment. Dkt. No. 262, ¶ 42. These assertions appear to be entirely based on facebook posts that were made at or around the time of the reported theft and because Mr. Ciardo

was convicted of a drug related offense more than twenty (20) years ago.[11] The Movants have no evidence that Mr. Ciardo actually stole any equipment or that he actually damaged the Camp Bird Mine site. Nevertheless, the Debtors have asked Mr. Ciardo whether he did, in fact, remove any equipment or cause damage to the Camp Bird Mine site. Blum Dec. ¶12. Mr. Ciardo denies these accusations. Blum Dec. ¶13. In the event it is revealed that Mr. Ciardo did, in fact, wrongfully remove equipment or damage the Camp Bird Mine site, then the Debtors have no intention of proceeding with any transaction with Mr. Ciardo, and will bring appropriate action against him. The Debtors further reserve all rights and claims related to any theft or damage occurring on the Camp Bird Mine site.

While the Movants and the Government appear to blame Mr. Ciardo for the alleged theft and damage, the Debtors believe that any loss of property was more likely caused by the Movants' former employees, who live in the area, know what type of equipment at the Camp Bird Mine site, and know that the site was unoccupied after the Movants vacated. It would make little sense for Mr. Ciardo to remove approximately $40,000 worth of equipment (as the Movants alleged) at a time when the Debtors knew he was on the property inspecting it. It seems far more probable that former employees of the Movants who live in the area would return to the site, take the equipment and damage the property because they knew that Caldera had abandoned the property.

The Debtors, however, promptly reported the alleged theft to the proper authorities. Mr. Butters spoke at length with the Sherriff's office and informed the Sherriff's office that no one should be removing property from the Camp Bird Mine. The Sherriff's office said it would try to have someone go to the mine a couple of times a day to check on things. This information

[11] The Movants repeatedly point out that Mr. Ciardo was convicted of a drug related charge in 1992. The Movants ignore the fact that this occurred more than twenty (20) years ago. Instead, they want to continue to punish Mr. Ciardo for this conviction by using it to deny him the right to freely enter into contracts and to conduct business. The Movants' attempted use of Mr. Ciardo's prior conviction on a drug related offense as evidence of current misconduct is inadmissible improper character evidence and should be excluded by the Court. Fed. R. Evid. 609.

was provided to then counsel for the Movants. Interestingly, Caldera did not report the theft to the police, even though it now claims that it owned the stolen equipment. Caldera also didn't file a casualty loss claim with any insurance company for the alleged theft, which is what you would expect any reasonable "owner" to do if their property is stolen. Thus, Caldera's allegation that the Debtors are mismanaging the estates' assets because of the alleged theft, only further supports the Debtors' position that they own this property.

As soon a weather permitted, the Debtors, the Government and the Movants conducted an inspection of the Camp Bird Mine to, among other things, ensure that it was secure and to inventory the Equipment. Counsel for the Debtors also informed counsel for the Government of the reported theft during one of their conference calls regarding the status of the case. The Debtors acted appropriately in response to the alleged theft. The Government's purported concern over the lack of transparency of Debtors' current management with respect to its dealings with Ciardo is easily assuaged. Debtors have produced all documents relevant to this relationship that were requested by the Movants and the Government in the discovery requests propounded on the Debtors in connection with the Sale Motion.

D. The Debtors have not violated the Controlled Substances Act (CSA)

The Movants assert that the Debtors have violated the CSA through the Ciardo Lease. Dkt. No. 262 ¶¶ 43-51. First, the Movants intentionally mischaracterize the Ciardo Lease. The express terms of the document provide that Mr. Ciardo or his designee is not "engaged in any activity that is illegal under federal law" and does not intend "to engage in any activity that is illegal under federal law . . . ." Dkt. No. 256, Ex. A. The Movants also fail to acknowledge that the Ciardo Lease is not effective until it is approved by the Bankruptcy Court. Thus, the Debtors are not "leasing property to a marijuana business," as the Movants allege, and the Ciardo Lease has no legal force or effect at this time.

Second, the Movants similarly fail to acknowledge that the overlay between bankruptcy law and the CSA is evolving and is unresolved. The Movants have cited no controlling authority that somehow indicates that a debtor is prohibited from leasing land in a bankruptcy case to an individual, who, in turn, subleases it for the purposes of cannabis cultivation, especially where Mr. Ciardo's obligation to pay rent is a wholly separate and independent obligation from any obligation of the subtenant to pay rent to Mr. Ciardo, and where Mr. Ciardo may satisfy his obligations to the Debtor under the lease from revenue sources other than the revenue Mr. Ciardo realizes from the sublease. Because this area of the law is evolving, the Debtors are proceeding cautiously.

The Movants also contend that "CBCI's application for a Colorado state permit using a convicted drug felon as its agent is a violation of Colorado state law." Dkt. No. 262 ¶ 49. In support of this contention, the Movants argue that C.R.S. § 12-43-.3-307 prohibits Mr. Ciardo from applying for a permit. This section provides, in relevant part:

> (1) A license provided by this article shall not be issued to or held by:
>
> . . .
>
> (h)(i) A person who has discharged a sentence for a conviction of a felony in the five years immediately preceding his or her application date; or
>
> (ii) A person who has discharged a sentence for a conviction of a felony pursuant to any state or federal law regarding the possession, distribution, manufacturing, cultivation, or use of a controlled substance in the ten years immediately preceding his or her application date or five years from May 28, 2013, whichever is longer; except that the licensing authority may grant a license to a person if the person has a state felony conviction based on possession or use of marijuana or marijuana concentrate that would not be a felony if the person were convicted of the offense on the date he or she applied for licensure.

Colo. Rev. Stat. Ann. § 12-43.3-307 (1)(h). The permits relate only to "interior build out & framing, electrical and plumbing." These are not prohibited activities under either Colorado ro Federal law. Additionally, the Debtor has no control over the issuance of a permit for the cultivation of cannabis and has not granted any authority to anyone for the issuance of any such permit on the Debtors' property. Thus, C.R.S. § 12-43.3-307 is not applicable on its face.

If the Debtors do discovery that Mr. Ciardo is undergoing activities in violation of federal or state law in the name CBCI, the Debtors have no intention of proceeding with Mr. Ciardo, and will take appropriate action against him. To date, the Movants have provided no such evidence. Rather, their entire Motion is based upon speculation, innuendo and conclusory allegations.

E. The Government has not established that cause exists to appoint a Chapter 11 Trustee

The Government cites heavily to *In re Rivermeadows Associates, Ltd.*, 185 B.R. 615 (Bankr. D. Wyo. 1995), a non-controlling case, to support its assertion that a Chapter 11 trustee should be appointed. The Government's Response cherry-picks certain factors the court considered in *Rivermeadows*, while omitting others, in order to advance its position. However, even as it concerns the factors that the Government's Response *does* address, the facts of *Rivermeadows* are clearly distinguishable from this case.

First, the *Rivermeadows* court found that Donald Albrecht, the debtor's management, showed a "disregard for judicial authority", because he did not appear for required judicial proceedings in the state of Wyoming, regularly failed to cooperate with the appointed receiver, failed to turn over receipts, and failed to provide an accounting, which resulted in the court issuing a bench warrant for his arrest. *Id.* at 617-618. Mr. Albrecht even failed to provide debtor's counsel with the assistance necessary to help counsel represent the debtor's interest in the case. Nothing in the history of the cases at issue supports a contention that Mr. Blum has

shown a disregard for judicial authority, let alone one that meets the standard the Government itself has cited to.

Second, the Government claims that Mr. Blum's business dealings, like Mr. Albrecht's in *Rivermeadows*, have an "unbelievably complex history." As evidence of this, the Government cites to the fact that its forensic accounting expert described the business dealings as "confusing." The Government stretches the holding of the case too far by asking this Court to equate "confusing" *pre-bankruptcy* business dealings with those sufficient to meet the high bar of "unbelievably complex." In *Rivermeadows*, a review of Mr. Albrecht and the debtor's voluminous financial records produced no documentation to support "certain transactions, transfers, or financial dealings involving the debtor." *Id.* at 618. Extensive discovery requests were unable to yield trust agreements, documents related to real property, and tax returns. *Id.* The court noted that assets worth $15,000,000 were transferred *without a paper trail*. *Id.* (emphasis added). No such evidence exists in the present case.

Finally, the Government refers to certain findings made by the Idaho Federal Court regarding Mr. Blum being the "alter ego" of the Debtors and as having made an alleged "fraudulent transfer" of the CBCI stock. What the Government fails to identify is any "post-petition" conduct by the Debtors' management of a similar nature. It also fails to mention that the alleged fraudulent transfer was *reversed* by Mr. Blum and his Trust before the Debtors filed bankruptcy. It fails to mention that Mr. Blum has committed his personal assets to pay administrative expenses of these Debtors, without any legal obligation to do so, and it fails to mention that Mr. Bum continues to subordinate his personal and affiliate claims to the valid claims of other creditors so that those valid third-party claims can be paid before Mr. Blum or his affiliates receive a single dime from these estates. This conduct does not show a breach of fiduciary duty – it shows exactly the opposite.

The Government has failed to carry its burden of proving that the extraordinary remedy of the appointment of a trustee is warranted.

F. The appointment of a Chapter 11 Trustee would only serve to create an additional substantial administrative burden for the estates

Neither the Movants nor the Government show or even propose to show how appointment of a Chapter 11 Trustee would benefit these estates. These cases have been pending for more than a year. They involve two pending adversary proceedings, several contested matters and an appeal to the Ninth Circuit. Any newly appointed Chapter 11 trustee would incur significant additional administrative expenses to become informed of the various parties, assets and undertakings. The appointment of a Chapter 11 trustee similarly would delay any efforts to confirm a plan or resolve disputes. Any trustee would first need to conduct an extensive review of the status of these cases before proceeding with pending matters. In other words, the appointment of a Chapter 11 trustee would needlessly increase the administrative burden on these estates, delay these proceedings and provide no benefit.

The request for the appointment of a Chapter 11 trustee is particularly unnecessary here. The Debtors' Plan seeks the appointment of an independent liquidating agent. This independent liquidating agent would be vested with the Debtors' assets, including the Camp Bird Mine and the Debtors' claims and causes of action. The independent liquidating agent would then proceed in any manner it believes necessary to fulfill its duties under the Plan and trust agreement, including selling or leasing the Camp Bird Mine, selling or leasing the Equipment, pursuing any claims of the Debtors and resolving creditor disputes. Thus, confirmation of the Debtors' Plan achieves essentially the same result as appointment of a trustee, but without the needless accrual of additional administrative expenses and delay. Moreover, a Chapter 11 trustee might move to convert the case to a Chapter 7 and, if that were to happen, there would be a significant loss to the estate, and a significant detriment to creditors. Under the Plan, but not under a Chapter 7,

Aztec and CHH have agreed to voluntarily subordinate approximately $29 million of secured and unsecured claims to the claims of other creditors. The same result could only be achieved in a Chapter 7, if at all, through considerable delay and expense.

The Government claims that the current Plan is deficient as currently drafted. The Debtors have received detailed and helpful comments from the Government setting forth its concerns, and the Debtors are in the process of reviewing those comments, and those received from the United States Trustee. A revised Disclosure Statement and Plan will be filed that attempts to address these concerns in a manner that serves the best interests of the estates and their creditors. The Government is aware of and has participated in discussions related to the Plan. They know that confirmation of a revised Plan serves the best interests of all parties involved. That is why the Government has participated in these discussions.

On the contrary, appointment of a Chapter 11 trustee is contrary to the best interests of these estates and their creditors.

IV. CONCLUSION

The Movants repeatedly have accused the Debtors of committing fraud upon the Court, but they have failed to prove any such fraud. Instead, they have relied on speculation, personal aspersions, pejorative statements and innuendo to support their Motion, with the obvious intent of increasing the administrative expense of these estates, delaying resolution of disputes, distracting the court from their own wrongdoing and attempting to obtain a tactical advantage by changing the Debtors' management. The Movants further have shown no advantages to creditors from such a tactic. Nor have the Movants provided any other basis for the appointment of a Chapter 11 trustee under 11 U.S.C. § 1104. The Court therefore should deny the Motion.

DATED this 11th day of January, 2016.

SNELL & WILMER L.L.P.

/s/
David E. Leta
Troy Aramburu
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Attorneys for Federal Resources Corporation and Camp Bird Colorado, Inc.

CERTIFICATE OF SERVICE

Electronic Service (CM/ECF) – I hereby certify that on the 11th day of January, 2016, I electronically filed the foregoing document with the United States Bankruptcy Court for the District of Utah by using the Court's CM/ECF system. I further certify that the parties of record in this case, as identified below, are listed as registered CM/ECF users and will be served through the CM/ECF system:

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- United States Trustee USTPRegion19.SK.ECF@usdoj.gov

Mail Service – I further certify that on the 11th day of January, 2016, I caused the foregoing document to be sent by first class United States mail, postage fully prepaid, to the following at the addresses set for the below:

Robert D. Comer
Tabor Center
1200 17th Street, Suite 1000
Denver, CO 80202-5835

Christopher Grivakes
Affeld, Grivakes Zucker LLP
12400 Wilshire Blvd.
Suite 1180
Los Angeles, CA 90025

James P. Murphy
Murphy, Armstrong & Felton
701 Millennium Tower
719 2nd Avenue
Seattle, WA 98104

Susan Mae Polk
16756 Chino-Corona Rd.
Corona, CA 92880

Timothy S. Springer
2200 Ross Avenue, Suite 3600
Dallas, TX 75201-7932

Louis R. Strubeck
2200 Ross Avenue, Suite 3600
Dallas, TX 75201-7932

Greg Wilkes
2200 Ross Avenue, Suite 3600
Dallas, TX 75201-7932

/s/ David E. Leta

EXHIBIT 1

April 1, 2015 Email Chain

Kalawaia, Wendy

From: Leta, David
Sent: Wednesday, April 01, 2015 9:08 PM
To: 'Wilkes, Greg'
Cc: 'Scott A. Butters'; Hardenbrook, Andrew
Subject: RE: Camp Bird Equipment
Attachments: FRC_CBCI - Disclosure Statement ISO Plan_21197002_8.DOCX

Here you go.

_____

David E. Leta

Snell & Wilmer L.L.P.

15 West South Temple, Suite 1200

Gateway Tower West

Salt Lake City, Utah 84101-1547

Direct: (801) 257-1928

Fax: 801-257-1800

Mobile: 801-560-LETA (5382)

www.swlaw.com <http://www.swlaw.com/> ; dleta@swlaw.com <mailto:dleta@swlaw.com>

From: Wilkes, Greg [mailto:greg.wilkes@nortonrosefulbright.com]
Sent: Wednesday, April 01, 2015 1:54 PM
To: Leta, David
Cc: 'Scott A. Butters'; Hardenbrook, Andrew
Subject: RE: Camp Bird Equipment

Thanks, David. I will pass this information along.

On another matter, do you mind sending us a word version of the disclosure statement? We will have comments that we would like included in the agreement, hopefully in lieu of a formal objection.

Regards,

Greg Wilkes

Greg Wilkes | Sr. Associate

Norton Rose Fulbright US LLP

2200 Ross Avenue, Suite 3600, Dallas, Texas 75201-7932, United States
Tel +1 214 855 7166 | Fax +1 214 855 8200

greg.wilkes@nortonrosefulbright.com <mailto:greg.wilkes@nortonrosefulbright.com>

From: Leta, David [mailto:dleta@swlaw.com <mailto:dleta@swlaw.com>]
Sent: Wednesday, April 01, 2015 2:32 PM

To: Wilkes, Greg
Cc: 'Scott A. Butters'; Hardenbrook, Andrew
Subject: Camp Bird Equipment

Greg:

Thank you for your call today and for the information that you provided. Based on that information, the Debtor's management has started an investigation. An excerpt from an email that I received regarding the same is reported below for your benefit.

_____

David E. Leta

Snell & Wilmer L.L.P.

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Gateway Tower West

Salt Lake City, Utah 84101-1547

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Denver, Las Vegas, Los Angeles, Los Cabos, Orange County, Phoenix, Reno, Salt Lake City, Tucson

From: S.A. Butters [mailto:campbirdcolorado@comcast.net <mailto:campbirdcolorado@comcast.net>]
Sent: Wednesday, April 01, 2015 10:03 AM
To: Leta, David
Subject: FW: Camp Bird Mine

David,

I spoke at length with the sheriff's office. Someone (presumably Caldera) filed a complaint with them yesterday about a truck with Oklahoma plates removing equipment from the property. The woman I talked to is named Shelly, and her husband works for the county road dept. She said that he talked the guy in the truck and couldn't get him to tell him who he was. I explained to her that no one should be removing anything from the property at the present time. She said that the sheriff's office would try and have someone go up to the mine a couple times a day to check on things. She amended the complaint to add the information I provided to her, and will call me if the sheriff or anyone else sees anyone on the mine site. She wanted to know if we could put a lock on the gate (which goes across the public road). I found this humorous, as we fought the county so long to keep the road private to prevent exactly this type of problem. I told her we would love to keep the gate locked.

I told her that when I make it over to the property I will check in with the sheriff's office before I go up to the property.

EXHIBIT 2

SEPTEMBER 14, 2015 EMAIL CHAIN

Kalawaia, Wendy

From: Leta, David
Sent: Monday, September 14, 2015 4:23 PM
To: Comer, Bob; Wilkes, Greg
Cc: Hardenbrook, Andrew
Subject: RE: Camp Bird - Stipulation/Order

Per our email of September 2, 2015 (below) we need a response today.

David E. Leta
15 West South Temple, Suite 1200
Gateway Tower West
Salt Lake City, Utah 84101-1547
Direct: (801) 257-1928
Fax: 801-257-1800
Mobile: 801-560-LETA (5382)
www.swlaw.com; dleta@swlaw.com

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From: Comer, Bob [mailto:bob.comer@nortonrosefulbright.com]
Sent: Monday, September 14, 2015 4:21 PM
To: Leta, David; Wilkes, Greg
Cc: Hardenbrook, Andrew
Subject: RE: Camp Bird - Stipulation/Order

David, I will have to check with the client. Bob.

From: Leta, David [mailto:dleta@swlaw.com]
Sent: Monday, September 14, 2015 4:18 PM
To: Comer, Bob; Wilkes, Greg
Cc: Hardenbrook, Andrew
Subject: RE: Camp Bird - Stipulation/Order

When can we expect to receive a response to the term sheet?

David E. Leta
15 West South Temple, Suite 1200
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Fax: 801-257-1800
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www.swlaw.com; dleta@swlaw.com

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From: Comer, Bob [mailto:bob.comer@nortonrosefulbright.com]
Sent: Monday, September 14, 2015 4:15 PM
To: Leta, David; Wilkes, Greg
Cc: Hardenbrook, Andrew
Subject: RE: Camp Bird - Stipulation/Order

David, the response is limited to the request pertaining to the sale of mine assets. Bob.

From: Leta, David [mailto:dleta@swlaw.com]
Sent: Monday, September 14, 2015 4:07 PM
To: Comer, Bob; Wilkes, Greg
Cc: Hardenbrook, Andrew
Subject: RE: Camp Bird - Stipulation/Order
Importance: High

Bob / Greg:

We interpret your email below as a rejection of the prior term sheet that we sent you and a refusal to propose a counteroffer. If this interpretation is incorrect, then please advise immediately. Otherwise, we will proceed accordingly tomorrow.

David E. Leta
15 West South Temple, Suite 1200
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www.swlaw.com; dleta@swlaw.com

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From: Comer, Bob [mailto:bob.comer@nortonrosefulbright.com]
Sent: Monday, September 14, 2015 3:54 PM
To: Hardenbrook, Andrew; Wilkes, Greg
Cc: Leta, David
Subject: RE: Camp Bird - Stipulation/Order

Dear Andrew, this responds to your note of September 2, 2015, concerning the proposed sale of equipment from the Camp Bird mine. My client has advised me that it objects to any such asset sale. Please do not hesitate to contact me should you have any questions. Sincerely, Bob.

From: Hardenbrook, Andrew [mailto:ahardenbrook@swlaw.com]
Sent: Wednesday, September 02, 2015 7:26 PM
To: Wilkes, Greg; Comer, Bob
Cc: Leta, David
Subject: RE: Camp Bird - Stipulation/Order

Greg and Bob,

We recently received an offer from a third party (unaffiliated with Mr. Blum) to purchase all of the equipment that is now located on the Camp Bird property. The proposed purchaser would like to close as soon as possible so that he may remove the equipment before the snow comes and the site is no longer accessible. Thus, this is a rather urgent matter. We therefore request that Caldera respond to the term sheet that we sent over on August 18, 2015 by no later than **September 14, 2015, and that we agree to either reach terms for a sale, or agree that we are at an impasse, no later than September 18, 2015.** If we are at impasse, then the Debtors will proceed with seeking bankruptcy court approval of the sale of the equipment (subject to higher and better offers, and free of liens, with valid liens to attach to the sale proceeds) and also proceed to file the complaint against Caldera that was included in my prior email.

If you have any questions, please let us know.

Sincerely,

Andrew V. Hardenbrook
Snell & Wilmer L.L.P.
15 West South Temple
Suite 1200
Salt Lake City, Utah 84101-1547
Salt Lake City Office: 801.257.1961
Phoenix Office: 602.382.6229
Cell: 615.478.1834
ahardenbrook@swlaw.com www.swlaw.com

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---

From: Hardenbrook, Andrew
Sent: Tuesday, August 18, 2015 9:36 AM
To: Wilkes, Greg; Comer, Bob
Cc: Leta, David
Subject: RE: Camp Bird - Stipulation/Order

Subject to Fed. R. Evid. 408

Greg,

Thank you for your follow up. I am attaching the Term Sheet from CBCI and FRC. As a courtesy, I also am sending you a working draft of the Caldera complaint, which is what we intent to file, subject to further revision, if the parties are unable to reach an acceptable deal related to the purchase of the assets.

If you have any questions, please let us know.

Sincerely,

Andrew V. Hardenbrook
Snell & Wilmer L.L.P.
15 West South Temple
Suite 1200
Salt Lake City, Utah 84101-1547
Salt Lake City Office: 801.257.1961
Phoenix Office: 602.382.6229
Cell: 615.478.1834
ahardenbrook@swlaw.com www.swlaw.com

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---

From: Wilkes, Greg [mailto:greg.wilkes@nortonrosefulbright.com]
Sent: Tuesday, August 18, 2015 8:33 AM
To: Hardenbrook, Andrew; Comer, Bob
Cc: Leta, David
Subject: RE: Camp Bird - Stipulation/Order

Andrew and David,

I am checking in to see the status of the term sheet you are preparing. Any update would be appreciated.

Regards,

Greg Wilkes

Greg Wilkes | Sr. Associate
Norton Rose Fulbright US LLP
2200 Ross Avenue, Suite 3600, Dallas, Texas 75201-7932, United States
Tel +1 214 855 7166 | Fax +1 214 855 8200
greg.wilkes@nortonrosefulbright.com

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The Dallas office has a new location. Please make note of our new address.

From: Hardenbrook, Andrew [mailto:ahardenbrook@swlaw.com]
Sent: Wednesday, July 29, 2015 11:22 AM
To: Comer, Bob; Wilkes, Greg
Cc: Leta, David
Subject: Camp Bird - Stipulation/Order

Bob and Greg,

Thank you again for setting up the call and taking the time to speak with us regarding the Camp Bird mine. I have attached the Stipulation filed in the Idaho District Court and the Order granting the Stipulation.

Sincerely,

Andrew V. Hardenbrook
Snell & Wilmer L.L.P.
15 West South Temple
Suite 1200
Salt Lake City, Utah 84101-1547
Salt Lake City Office: 801.257.1961
Phoenix Office: 602.382.6229
Cell: 615.478.1834
ahardenbrook@swlaw.com www.swlaw.com

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EXHIBIT 3

NOVEMBER 30, 2015 EMAIL

Kalawaia, Wendy

From: Hardenbrook, Andrew
Sent: Monday, November 30, 2015 5:08 PM
To: 'Leta, David'; 'Martin Brill'; 'mjb@lnbyb.com'
Cc: 'Scott A. Butters'
Subject: RE: Camp Bird
Attachments: RE: Camp Bird - Stipulation/Order

Marty,

In Caldera's opposition to the Sale Motion, Caldera expresses a desire to purchase the Camp Bird mine and the Equipment. Please let us know whether Caldera is willing to accept the Term Sheet previously sent to you by David on 11/26. In light of the upcoming evidentiary hearing, we request Caldera's response to the Term Sheet on or before close of business December 4, 2015 to provide time for the parties to potentially come to a mutual resolution before additional resources are spent in connection with the sale hearing.

I also have attached the email chain with Bob Comer. This appears to have been inadvertently omitted from David's prior email.

Sincerely,

Andrew V. Hardenbrook
Snell & Wilmer L.L.P.
15 West South Temple
Suite 1200
Salt Lake City, Utah 84101-1547
Salt Lake City Office: 801.257.1961
Phoenix Office: 602.382.6229
Cell: 615.478.1834
ahardenbrook@swlaw.com www.swlaw.com

-----Original Message-----
From: Leta, David [mailto:dleta@swlaw.com]
Sent: Thursday, November 26, 2015 4:33 PM
To: Martin Brill
Cc: Hardenbrook, Andrew; Scott A. Butters
Subject: Camp Bird

Marty:

Pursuant to your request below, I am attaching a copy of the Term Sheet we prepared, dated August 18, 2015, together with a copy of an email chain of communications between us and Caldera's former counsel on this subject. After Mr. Comber's last email, we had no further contact from Mr. Comber, or his firm, until I was notified that they were withdrawing.

With regard to your suggestions below, and based on the history of relationships between the Debtors and your clients, the Debtors have no confidence that Caldera will ever make a good faith offer to purchase these assets, or, if it did make such an offer, that it would follow through and actually close. I will discuss your request with my client tomorrow morning, but I suspect that they will want to proceed with the hearing. We have a valid buyer, with earnest money on deposit. We are at risk of losing that buyer if the sale is delayed. If Caldera really wants to buy the mine and really believes that it needs the Equipment in connection with such a purchase, then it should withdraw its objection, let the auction go forward, and buy the Equipment at the auction. If it is the high bidder, and pays cash, I suspect that my client would be willing to hold the cash in escrow subject to further order of the court regarding the validity of the lien, or apply the cash toward a larger purchase of the mine, with the Equipment, if a satisfactory purchase arrangement can be negotiated. In part, doing so will demonstrate that Caldera is serious and that it actually has money.

_____

David E. Leta
15 West South Temple, Suite 1200
Gateway Tower West
Salt Lake City, Utah 84101-1547
Direct: (801) 257-1928
Fax: 801-257-1800
Mobile: 801-560-LETA (5382)
www.swlaw.com; dleta@swlaw.com

Denver, Las Vegas, Los Angeles, Los Cabos, Orange County, Phoenix, Reno, Salt Lake City, Tucson

-----Original Message-----
From: Martin Brill [mailto:martinjbrill@icloud.com]
Sent: Thursday, November 26, 2015 11:08 AM
To: Leta, David
Subject: Camp Bird

David,

I am in receipt of the Reply you filed last night. In the reply you refer to a term sheet delivered on August 18, 2015. Would you mind sending that to me? My client is serious about trying to work out a mutually satisfactory resolution of the case. New management is now making decisions for Caldera. It believes that the sale of the equipment will significantly harm the value of the mine. Caldera spent hundreds of thousands of dollars (if not millions) on the equipment and the Debtor proposes to sell it for $87,000. It makes no sense. Anyone buying the mine will want that equipment and if it has to replace it, will pay that much less for the mine. The sale is not in the best interests of the estate.

What is the harm in continuing the hearing on the sale for a week or 10 days so that we can talk?

Happy Thanksgiving!

Regards,

Marty

Sent from my iPhone

EXHIBIT 4

APRIL 1, 2015 EMAIL

Kalawaia, Wendy

From: Wilkes, Greg <greg.wilkes@nortonrosefulbright.com>
Sent: Wednesday, April 01, 2015 1:54 PM
To: Leta, David
Cc: 'Scott A. Butters'; Hardenbrook, Andrew
Subject: RE: Camp Bird Equipment

Thanks, David. I will pass this information along.

On another matter, do you mind sending us a word version of the disclosure statement? We will have comments that we would like included in the agreement, hopefully in lieu of a formal objection.

Regards,

Greg Wilkes

Greg Wilkes | Sr. Associate

Norton Rose Fulbright US LLP

2200 Ross Avenue, Suite 3600, Dallas, Texas 75201-7932, United States
Tel +1 214 855 7166 | Fax +1 214 855 8200

greg.wilkes@nortonrosefulbright.com <mailto:greg.wilkes@nortonrosefulbright.com>

The Dallas office has a new location. Please make note of our new address.

From: Leta, David [mailto:dleta@swlaw.com]
Sent: Wednesday, April 01, 2015 2:32 PM
To: Wilkes, Greg
Cc: 'Scott A. Butters'; Hardenbrook, Andrew
Subject: Camp Bird Equipment

Greg:

Thank you for your call today and for the information that you provided. Based on that information, the Debtor's management has started an investigation. An excerpt from an email that I received regarding the same is reported below for your benefit.

_____

David E. Leta

Snell & Wilmer L.L.P.

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Salt Lake City, Utah 84101-1547

Direct: (801) 257-1928

Fax: 801-257-1800

Mobile: 801-560-LETA (5382)

www.swlaw.com <http://www.swlaw.com/> ; dleta@swlaw.com

From: S.A. Butters [mailto:campbirdcolorado@comcast.net]
Sent: Wednesday, April 01, 2015 10:03 AM
To: Leta, David
Subject: FW: Camp Bird Mine

David,

I spoke at length with the sheriff's office. Someone (presumably Caldera) filed a complaint with them yesterday about a truck with Oklahoma plates removing equipment from the property. The woman I talked to is named Shelly, and her husband works for the county road dept. She said that he talked the guy in the truck and couldn't get him to tell him who he was. I explained to her that no one should be removing anything from the property at the present time. She said that the sheriff's office would try and have someone go up to the mine a couple times a day to check on things. She amended the complaint to add the information I provided to her, and will call me if the sheriff or anyone else sees anyone on the mine site. She wanted to know if we could put a lock on the gate (which goes across the public road). I found this humorous, as we fought the county so long to keep the road private to prevent exactly this type of problem. I told her we would love to keep the gate locked.

I told her that when I make it over to the property I will check in with the sheriff's office before I go up to the property.