

KAYE SCHOLER LLP

Marc S. Cohen (State Bar No. 65486)
Email: mcohen@kayescholer.com
Ashleigh A. Danker (State Bar No. 138419)
Email: adanker@kayescholer.com
KAYE SCHOLER LLP
1999 Avenue of the Stars, Suite 1700
Los Angeles, California 90067
Telephone: (310) 788-1000
Facsimile: (310) 788-1200

Attorneys for Debtor and Debtor in Possession
MALIBU ASSOCIATES, LLC

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
SAN FERNANDO VALLEY DIVISION**

In re)
MALIBU ASSOCIATES, LLC, a)
California limited liability company, dba)
MALIBU COUNTRY CLUB)
Debtor.)
Tax I.D. 20-4106767)

Case No. 1:09-bk-24625-MT

Chapter 11

**DEBTOR'S NOTICE OF MOTION AND
MOTION TO APPROVE DISMISSAL OF
CHAPTER 11 CASE; MEMORANDUM
OF POINTS AND AUTHORITIES;
DECLARATIONS OF THOMAS C. HIX
AND ASHLEIGH A. DANKER IN
SUPPORT THEREOF**

Date: December 22, 2011
Time: 9:30 a.m.
Place: Courtroom 302
United States Bankruptcy Court
21041 Burbank Blvd.
Woodland Hills, CA 91367

**TO THE HONORABLE MAUREEN A. TIGHE, UNITED STATES
BANKRUPTCY JUDGE, THE OFFICE OF THE UNITED STATES TRUSTEE, ALL
CREDITORS, AND OTHER PARTIES IN INTEREST:**

PLEASE TAKE NOTICE that on December 22, 2011 at 9:30 a.m. or as soon thereafter as counsel may be heard by the Honorable Maureen A. Tighe, United States Bankruptcy Judge, in Courtroom 302 located at 21041 Burbank Blvd., Woodland Hills, California 91367, debtor in possession Malibu Associates, LLC (the "Debtor" or "Malibu") in the above-captioned

KAYE SCHOLER LLP

1 bankruptcy case shall move, and hereby does move, the Court for an Order dismissing this
2 bankruptcy case (the "Motion").

3 The grounds for the Motion are that the Debtor has closed a Court-approved refinancing
4 of its secured debt (the "Modification") with U.S. Bank National Association (the "Bank") and
5 negotiated a restructuring of its equity which, together, enable the Debtor to pay its creditors upon
6 approval of the Motion and move forward with re-entitlement of the real property commonly
7 known as the Malibu Country Club, the Debtor's primary asset. The Debtor shall continue to pay
8 the Bank in accordance with the Modification.

9 The Debtor shall pay all undisputed prepetition general unsecured creditors and
10 administrative expense creditors in full without interest, or as otherwise agreed with individual
11 creditors, as soon as practicable upon approval of the Motion. A schedule of the Debtor's
12 payments is attached to the Motion as **Exhibit A**. No later than three (3) business days prior to
13 the hearing on the Motion, the Debtor shall (i) deposit \$622,291.87 into the Kaye Scholer client
14 trust account to pay the unpaid Agreed Amounts owed to the Professionals (defined below) as set
15 forth on **Exhibit A** and (ii) have on deposit in its operating account available funds of at least
16 \$554,906.75 designated to satisfy the remaining payments owed to creditors (other than the
17 Professionals) as set forth on **Exhibit A**. Admissible evidence of such deposits shall be filed with
18 the Court no later than two (2) business days prior to the hearing on the Motion.

19 The Debtor has reached agreement with each of Kaye Scholer LLP ("Kaye Scholer"),
20 Cappello & Noël LLP ("Cappello & Noël"), and Truman & Elliott LLP (collectively, the
21 "Professionals") regarding payment of their respective fees, including, in the case of Kaye
22 Scholer, a discount of its fees and a release, and, in the case of Cappello & Noël, a discount of its
23 fees, partial deferment of payment, and a release. In addition, the Court is requested to reserve
24 exclusive jurisdiction to enter any order or determine any disputes that may arise post-dismissal
25 related to pre-dismissal compensation or services of the Professionals on behalf of the estate,
26 including, without limitation, an order directing immediate payment of the deferred payment
27 owed to Cappello & Noël upon noticed motion by Cappello & Noël should the Debtor fail to
28

KAYE SCHOLER LLP

1 timely pay such deferred payment. Except as provided in the Motion, the dismissal shall not
2 affect any orders, judgments, or findings of facts and conclusions of law entered by the Court
3 during the pendency of the case, all of which shall continue in force and effect notwithstanding
4 the dismissal.

5 The Motion is brought pursuant to 11 U.S.C. §§ 305(a) and 1112(b) and is based upon this
6 Notice, the attached Memorandum of Points and Authorities, the attached declarations of Thomas
7 C. Hix and Ashleigh A. Danker, the attached exhibit, the record of this case, the arguments of
8 counsel for the Debtor at the hearing in support of the Motion, and such other pleadings and
9 evidence as may be presented at or before the hearing on the Motion.

10 **PLEASE TAKE FURTHER NOTICE** that if you do not oppose the Motion, you need
11 take no further action. If you do oppose the Motion, Local Bankruptcy Rule 9013-1(f) requires
12 that any response to the Motion be filed with the Court and served not less than fourteen (14)
13 days before the date designated for hearing upon (i) counsel for the Debtor at the address given in
14 the upper left corner of the first page of this Notice and (ii) the United States Trustee. Pursuant to
15 Local Bankruptcy Rule 9013-1(h), the failure to file and serve a timely opposition to the Motion
16 may be deemed by the Court to constitute consent to the Court's granting the relief sought
17 therein.

18 **WHEREFORE**, the Debtor respectfully requests that the Court grant the Motion and
19 such other and further relief as the Court deems just and proper.

20
21
22 Dated: November 30, 2011

Respectfully submitted,
KAYE SCHOLER LLP
Marc S. Cohen
Ashleigh A. Danker

23
24
25 By: /s/ Ashleigh A. Danker
Ashleigh A. Danker
26 Attorneys for Debtor and Debtor in Possession
MALIBU ASSOCIATES, LLC
27
28

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

By this Motion, debtor in possession Malibu Associates, LLC (the “Debtor” or “Malibu”) seeks an Order of the Court dismissing its bankruptcy case. On June 27, 2011, the Debtor successfully closed a Court-approved refinancing (the “Modification”) of its secured loan with U.S. Bank National Association (the “Bank”), made certain required post-closing deliveries on or about July 11, 2011, and subsequently made additional post-closing deliveries. The Modification has enabled the Debtor to resume its efforts to re-entitle the approximately 648.5 acre property, including an eighteen-hole golf course and restaurant, near Malibu, California (the “Property”) commonly known as the “Malibu Country Club.” In addition, the Debtor’s members have agreed to provide a cash infusion of approximately \$1,177,198.62 (the “Dismissal Funds”) to enable the Debtor to pay all undisputed prepetition general unsecured creditors and administrative expense creditors in full without interest, or as otherwise agreed with individual creditors, as soon as practicable upon approval of the Motion. See Declaration of Thomas C. Hix (“Hix Decl.”), attached hereto, ¶ 4.

As set forth herein and in **Exhibit A** hereto, the Debtor has reached agreement with Kaye Scholer LLP (“Kaye Scholer”), Cappello & Noël LLP (“Cappello”), and Truman & Elliott LLP (“Truman” and, collectively with Kaye Scholer and Cappello, the “Professionals”) regarding the total amount of their compensation and payment of the unpaid balances owed to each Professional (the “Agreed Amounts”).¹ A portion of the Dismissal Funds, \$622,291.87,

¹ As to Kaye Scholer, the Agreed Amount is \$1,803,828.20 for postpetition fees and costs through October 31, 2011, including a discount of \$259,003.78 and waiver of Kaye Scholer’s fees and costs for the period November 1, 2011 - December 15, 2011, leaving a balance owed of \$330,000 to be paid upon approval of the Motion. The Kaye Scholer Agreed Amount is conditioned upon the Motion being unopposed and Kaye Scholer not having to provide any further services on behalf bankruptcy estate after the filing of the Motion other than attendance at the hearing on the unopposed Motion and preparation and lodging of the proposed order approving the unopposed Motion. All fees, if any, incurred by Kaye Scholer after the filing of the

(continued...)

KAYE SCHOLER LLP

1 representing the unpaid portion of the Agreed Amounts owed upon approval of the Motion to the
2 Professionals as set forth in **Exhibit A** hereto, shall be deposited by the Debtor into Kaye
3 Scholer's client trust account no later than three (3) business days prior to the hearing on the
4 Motion for disbursement to each of the Professionals in the respective amounts owed upon
5 approval of the Motion. Upon approval of the Motion, Kaye Scholer is authorized to disburse
6 these amounts to the respective Professional in accordance with **Exhibit A**. The balance of the
7 Dismissal Funds, \$554,906.75, shall be held on deposit by the Debtor in its operating account no
8 later than three (3) business days prior to the hearing on the Motion and promptly disbursed by
9 the Debtor to unsecured creditors (other than the Professionals) as set forth in **Exhibit A** upon
10 approval of the Motion. *See* Hix Decl., ¶ 7. Admissible evidence of such deposits shall be filed
11 with the Court no later than two (2) business days prior to the hearing on the Motion.
12

13 **II.**

14 **STATEMENT OF FACTS**

15 On November 3, 2009 (the "Petition Date"), the Debtor filed the above-captioned chapter
16 11 bankruptcy case. Since the commencement of its case, the Debtor has been operating its
17 business and managing its affairs as a debtor in possession pursuant to 11 U.S.C. §§ 1107 and
18 1108. There is no committee of unsecured creditors appointed in this case.

19 The Debtor owns and operates the Property. The Bank, successor-in-interest to the
20 Federal Deposit Insurance Corporation ("FDIC"), receiver for California National Bank
21 ("CalNational"), is the Debtor's secured lender. Prior to and during the bankruptcy case, the
22 Debtor has been involved in litigation with the Bank regarding the secured loans (the "Loans").
23

24 _____
25 Motion that are unrelated to the Motion or incurred as a result of the Motion being contested are
26 in addition to the Agreed Amount of Kaye Scholer's fees and must also be paid as a condition of
27 dismissal of the bankruptcy case.
28

1 On May 17, 2011, the Court entered an order approving a loan modification (the
2 “Modification”) and settlement (the “Settlement Agreement”) with the Bank which provided the
3 means for the Debtor to resume its efforts to re-entitle the Property and resolve the litigation
4 among the parties. The Modification closed on June 27, 2011, certain required post-closing
5 deliveries to the Bank were made on or about July 11, 2011, and subsequent post-closing
6 deliveries have been made. In conjunction with the close of the Modification, dismissals of the
7 litigation were filed.

8 To satisfy certain payments required of the Debtor in connection with closing the
9 Modification, some of the Debtor’s members made general unsecured loans to the Debtor with
10 the understanding that the Debtor’s equity would be restructured and such loans would be
11 converted into equity upon the resolution of the Debtor’s bankruptcy case either through a plan of
12 reorganization or a voluntary dismissal of the case. Effective upon the dismissal of the
13 bankruptcy case, the Debtor’s members have agreed to the terms of the Debtor’s equity
14 restructuring, including an amendment to the Debtor’s Operating Agreement (the
15 “Restructuring”). The Bank is aware of the pending Restructuring and has informed the Debtor
16 that it has no objection thereto. See Declaration of Ashleigh A. Danker (“Danker Decl.”),
17 attached hereto, ¶ 2.

18 As part of the Restructuring, certain of the Debtor’s members have contributed the
19 Dismissal Funds to the Debtor to enable it to pay its undisputed prepetition general unsecured
20 creditors and administrative expense creditors in full without interest, or as otherwise agreed with
21 individual creditors, as soon as practicable upon approval of the Motion. A schedule of the
22 Debtor’s payments to prepetition general unsecured creditors and administrative claimants upon
23 approval of the Motion is attached hereto as **Exhibit A**.

24 As a result of the closing of the Modification and the agreed Restructuring of the Debtor,
25 including funding of the Dismissal Funds, the Debtor does not require any further restructuring of
26 its debts to move forward with the re-entitlement of the Property. Except as provided below with
27 respect to the estate’s Professionals, upon dismissal, all parties will retain all of their rights and
28

1 remedies and, to the extent that an individual creditor is not satisfied with its proposed payment
2 by the Debtor, such creditor will have the ability to exercise any right or remedy available under
3 applicable law.

4
5 **III.**

6 **COMPENSATION OF PROFESSIONALS**

7 Each of the Professionals has reached agreement with the Debtor regarding their total
8 compensation and payment balances owed as set forth herein and in **Exhibit A** hereto. The
9 unpaid balance of these requests, excluding \$150,000 as to which Cappello & Noël has agreed to
10 defer payment for twelve (12) months, is **\$622,291.87** (the "Fee Deposit") and, no later than three
11 (3) business days prior to the hearing on the Motion, the Debtor shall deposit this amount into
12 Kaye Scholer's client trust account for disbursement to the Professionals upon approval of the
13 Motion.

14 For the period from November 3, 2009 - October 31, 2011, Kaye Scholer has incurred
15 fees and costs of \$1,803,828.20. The Debtor has raised concerns regarding the overall amount of
16 Kaye Scholer's billings, which Kaye Scholer disputes. Copies of Kaye Scholer's monthly billing
17 statements through September 30, 2011 have been filed with the Court and notices thereof served
18 on all creditors and equity holders throughout the case with no objections having been filed.

19 In response to the Debtor's concerns, Kaye Scholer has agreed to, and hereby does agree
20 to, a discount of its fees in the amount of \$259,003.78 for the postpetition period through
21 October 31, 2011 and waiver of its fees and costs for the period November 1, 2011 -
22 December 15, 2011, subject to the limitations set forth herein, including in footnote 1 hereof. The
23 Debtor, in exchange, has agreed to waive, discharge, and release, and hereby does waive,
24 discharge, and release Kaye Scholer of any and all claims, obligations, and/or causes of action of
25 every type, kind, nature, description or character, and irrespective of how, why, or by reason of
26 what facts, whether heretofore or now existing, or which could, might or may now or hereafter be
27 claimed to exist, of whatever kind, name or nature, whether known or unknown, past or present,
28

KAYE SCHOLER LLP

1 suspected or unsuspected, anticipated or unanticipated, fixed or contingent, liquidated or
2 unliquidated, which in any way relate to Kaye Scholer's services on behalf of the Debtor,
3 including the amount charged for such services. The Debtor expressly waives any law that
4 provides: "A general release does not extend to claims which the creditor does not know or
5 suspect to exist in his or her favor at the time of executing the release which if known by him or
6 her must have materially affected his or her settlement with the debtor."

7 For the period from November 3, 2009 - October 31, 2011, Cappello & Noël has incurred
8 hourly rate fees and costs of \$110,449.50 for its services on behalf of the Debtor, of which
9 \$16,848.01 is unpaid. In addition, Cappello & Noël has asserted a right to a contingency fee in
10 the amount of \$805,816.63 in accordance with the terms of its employment by the Debtor. The
11 Debtor has disputed Cappello & Noël's entitlement to the contingency fee. In response, Cappello
12 & Noël has agreed to reduce the amount of its contingency fee by \$405,816.63 to \$400,000 (the
13 "Reduced Contingency Fee"). It has further agreed to defer payment of \$150,000 of the Reduced
14 Contingency Fee for a period not to exceed twelve (12) months following approval of the Motion
15 (the "Deferred Reduced Contingency Fee"), provided that the Court reserve jurisdiction to enter
16 an order directing the immediate payment of the Deferred Reduced Contingency Fee upon
17 noticed motion by Cappello & Noël should the Debtor fail to timely pay the Deferred Reduced
18 Contingency Fee.

19 In exchange for the concessions agreed by Cappello & Noël, the Debtor has agreed to
20 waive, discharge, and release, and hereby does waive, discharge, and release Cappello & Noël of
21 any and all claims, obligations, and/or causes of action of every type, kind, nature, description or
22 character, and irrespective of how, why, or by reason of what facts, whether heretofore or now
23 existing, or which could, might or may now or hereafter be claimed to exist, of whatever kind,
24 name or nature, whether known or unknown, past or present, suspected or unsuspected,
25 anticipated or unanticipated, fixed or contingent, liquidated or unliquidated, which in any way
26 relate to Cappello & Noël's services on behalf of the Debtor, including the amount charged for
27 such services. The Debtor expressly waives any law that provides: "A general release does not
28

1 extend to claims which the creditor does not know or suspect to exist in his or her favor at the
2 time of executing the release which if known by him or her must have materially affected his or
3 her settlement with the debtor.”

4 The procedure for handling of Professionals’ fees has been proposed as an
5 accommodation to the Debtor to avoid the need for the Professionals to prepare final fee
6 applications, which, given the length and complexity of the case and the fact that no prior interim
7 fee applications were filed, could be time consuming and expensive to prepare. The Debtor has
8 been informed that if the Professionals are required to prepare final fee applications, the
9 reasonable fees and costs for the preparation of such fee applications are allowable by the Court
10 and must be paid by the Debtor.

11 All of the funds being used to pay the Professionals upon approval of the Motion have
12 been provided by certain of the Debtor’s members pursuant to the pending Restructuring of the
13 Debtor for the specific purpose of paying the Professionals. None of the amounts being used to
14 pay the Professionals upon approval of the Motion would have been property of the estate but for
15 the agreement of the non-debtor members of the Debtor to contribute such payments.

16 Accordingly, no funds generated by the operations or assets of the estate have been or will be
17 used to pay the fees and expenses of the Professionals.

18 The Court is requested to reserve exclusive jurisdiction to enter any order or determine
19 any disputes that may arise post-dismissal related to pre-dismissal compensation or services of the
20 Professionals on behalf of the estate or payment thereof, including, without limitation, with
21 respect to the Deferred Reduced Contingency Fee of Cappello & Noël.

22 **IV.**

23 **QUARTERLY FEES AND COURT COSTS**

24 The Debtor has paid all of its quarterly fees and Court costs currently due in connection
25 with this case. *See Hix Decl.*, ¶ 17.

26 ///

27 ///

V.

**DISMISSAL OF THE CASE IS IN THE BEST INTERESTS OF THE DEBTOR AND ITS
CREDITORS**

A. Dismissal is Appropriate Pursuant to Section 305(a) of the Bankruptcy Code

Section 305(a)(1) of the Bankruptcy Code provides that a bankruptcy court may dismiss a bankruptcy case if “the interests of creditors and the debtor would be better served by such dismissal . . .” The authority to dismiss a case pursuant to section 305(a)(1) applies not only to involuntary cases and requests by creditors, but also to requests by debtors in voluntary cases. *See, e.g., In re Capistrano Associates*, 66 B.R. 421 (Bankr. S.D. Fla. 1986); *In re Colonial Ford, Inc.*, 24 B.R. 1014 (Bankr. D. Utah 1982).

In recognition that the bankruptcy process can be expensive, distracting and inefficient for an operating business, a central purpose of section 305(a)(1) is to facilitate out-of-court workouts where possible. The legislative history to section 305 provides:

The court may dismiss or suspend under the first paragraph, for example, if an arrangement is being worked out by creditors and the debtor out of court, there is no prejudice to the results of creditors in that arrangement, and an involuntary case has been commenced by a few recalcitrant creditors to provide a basis for future threats to extract full payment. The less expensive out-of-court workout may better serve the interests in the case.

H.R. Rep. No. 95-595 95th Cong., 1st Sess. 325, U.S. Code Cong. & Admin. News, p. 6281. *See also, In re Colonial Ford, Inc.*, 24 B.R. at 1015 (“Section 305(a)(1) reflects a policy, embodied in several sections of the Code, which favors “workouts”: private, negotiated adjustments of creditor-company relations. Congress designed the Code, in large measure, to encourage workouts in the first instance, with refuge in bankruptcy as a last resort.”).

Dismissal of these chapter 11 cases is in the best interests of the Debtor and its creditors. As a result of the Modification and Restructuring, litigation with the Bank has been settled, the Debtor has cash to pay its creditors, and the Debtor has financing to move forward with its effort to re-entitle the Property, which is the Debtor’s primary purpose. The Debtor has no need to sell

KAYE SCHOLER LLP

1 its assets or to impair the claims of creditors or interests of equity holders (except as agreed
2 through the Restructuring). Moreover, confirmation of a plan could take months, thereby
3 significantly increasing administrative expenses and delaying payment to creditors, while
4 dismissal will permit payment of claims on an expedited basis. Where a debtor can pay claims in
5 full without the need for confirmation of a plan, dismissal is appropriate. *See, e.g., In re Walter,*
6 108 B.R. 244, 251 (Bankr. C.D. Cal. 1989) (“[D]ismissal would be in the best interest of creditors
7 because the Debtors have sufficient assets to pay off all their creditors in full and creditors would
8 be paid in a more expedited basis outside of bankruptcy.”).

9
10 B. Dismissal Is Appropriate Pursuant To Section 1112(b) Of The Bankruptcy Code.

11 Dismissal is also appropriate under section 1112(b) of the Bankruptcy Code, which
12 provides that a bankruptcy court shall dismiss a chapter 11 case if the movant establishes “cause.”
13 A debtor may request a voluntary dismissal pursuant to section 1112(b). *See, e.g., In re*
14 *OptInRealBig.com, LLC*, 345 B.R. 277, 282-83 (Bankr. D. Colo. 2006). A request for voluntary
15 dismissal should be granted unless a creditor can establish “legal prejudice.” *See, e.g., In re*
16 *Hickman*, 384 B.R. 832, 840 (Bankr. 9th Cir. 2008).

17 The Debtor’s bankruptcy case was triggered by the Debtor’s dispute with the Bank
18 regarding maturity of the Debtor’s financing for the entitlement process. As a result of the
19 Modification and Settlement Agreement with the Bank, continuation of the case serves no
20 purpose that will benefit the Debtor or its creditors. Where the primary cause of a bankruptcy
21 case is resolved without the need for confirmation of a plan, dismissal is appropriate. For
22 example, in *In re OptInRealBig.com, LLC*, 345 B.R. 277, 283 (Bankr. D. Colo. 2006), the debtor
23 filed bankruptcy because of significant pending litigation. During the case, the litigation was
24 settled. The cause of the bankruptcy resolved, the debtor then moved for dismissal pursuant to
25 section 1112(b). In determining that dismissal was appropriate, the court held:

26 The Debtors no longer desire to continue down the road to
27 reorganization. The evidence makes it clear moreover that
28 reorganization is not necessary for these Debtors. They are able to
return to the marketplace and operate successfully without the

1 assistance of the Bankruptcy Court. Reorganization is a process that
2 is costly and time consuming for the parties and for the Court.
3 Where there has been a material change in a debtor's circumstances,
4 such that reorganizing under the protection of the Bankruptcy Court
no longer serves the interests of a debtor or its creditors, then the
Court believes that cause exists for dismissal or conversion of the
case under § 1112(b).

5 *See also, In re Melp, Ltd.*, 143 B.R. 890 (Bankr. E.D. Mo. 1992) (where debtor operated
6 profitably, had resolved all disputes with third parties during case, and remaining dispute was
7 between general partner and limited partner over control of the debtor, dismissal was appropriate
8 upon motion of the debtor).

9
10 **VI.**

11 **CONCLUSION**

12 This bankruptcy case has served its purpose. The Debtor was able to negotiate the
13 Modification and Settlement Agreement with the Bank and agree on the pending Restructuring
14 which, among other things, provides the Debtor with the Dismissal Funds. As a result, the Debtor
15 can exit chapter 11 without any need to sell assets or impair general unsecured claims or equity
16 interests (except as agreed as part of the Restructuring). Accordingly, the Debtor requests the
17 Court to enter an order dismissing this case and reserving jurisdiction as set forth above and
18 granting such other and further relief as the Court deems just and proper under the

19 ///

20 ///

21 ///

22

23

24

25

26

27

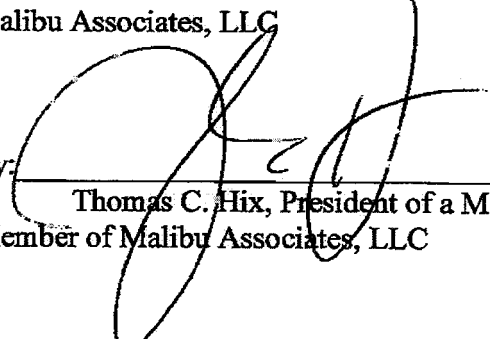
28

KAYE SCHOLER LLP

1 circumstances. Except as provided herein with respect to compensation of the Professionals, the
2 dismissal shall not affect any orders, judgments, or findings of facts and conclusions of law
3 entered by the Court during the pendency of the case, all of which shall continue in force and
4 effect notwithstanding the dismissal.

5
6 Dated: November 30, 2011

Malibu Associates, LLC

7
8 By: 
9 Thomas C. Hix, President of a Managing
Member of Malibu Associates, LLC

10
11 KAYE SCHOLER LLP
12 Marc S. Cohen
13 Ashleigh A. Danker

14 By: /s/ Ashleigh A. Danker
15 Ashleigh A. Danker
16 Attorneys for Debtor and Debtor in Possession
17 MALIBU ASSOCIATES, LLC
18
19
20
21
22
23
24
25
26
27
28

KAYE SCHOLER LLP

DECLARATION OF THOMAS C. HIX

I, Thomas C. Hix, declare as follows:

1. I am the President of Hix Rubenstein Companies (“HRC”), a managing member of debtor and debtor-in-possession Malibu Associates, LLC (the “Debtor” or “Malibu”). I have been involved in the development and management of real estate for over thirty (30) years, including many projects similar to the redevelopment of the Property contemplated by the Debtor. I have personal knowledge of the facts set forth herein and, if called as a witness, could and would testify competently thereto. Capitalized terms not otherwise defined herein have the same meanings ascribed to them in the pleading to which this declaration is attached.

2. I am the primary member of the Debtor responsible for supervising the Debtor’s effort to re-entitle the Property and to guide the Debtor through its bankruptcy case, including the Modification and the Restructuring.

3. On May 17, 2011, the Court entered an order approving the Modification and the Settlement Agreement with the Bank which provides the means for the Debtor to resume its efforts to re-entitle the Property and resolve the litigation among the parties. On June 27, 2011, the Debtor successfully closed the Modification, made certain required post-closing deliveries on or about July 11, 2011, and has subsequently made other post-closing deliveries. In conjunction with the close of the Modification, dismissals of the litigation with the Bank in this Court, in the Superior Court, and before the arbitrator were filed.

4. The Modification has enabled the Debtor to resume its efforts to re-entitle the approximately 648.5 acre property, including an eighteen-hole golf course and restaurant, near Malibu, California (the “Property”) commonly known as the “Malibu Country Club.” In addition, the Debtor’s members have agreed to a restructuring of the Debtor’s equity which will become effective upon the dismissal of the bankruptcy case and provides, among other things, a cash infusion of approximately **\$1,177,198.62** (the “Dismissal Funds”) to enable the Debtor to pay all undisputed prepetition general unsecured creditors and administrative expense creditors in full

KAYE SCHOLER LLP

KAYE SCHOLER LLP

1 without interest, or as otherwise agreed with individual creditors, as soon as practicable upon
2 approval of the Motion.

3 5. To satisfy certain payments required of the Debtor in connection with closing the
4 Modification, some of the Debtor's members made general unsecured loans to the Debtor with the
5 understanding that the Debtor's equity would be restructured and such loans would be converted
6 into equity upon the resolution of the Debtor's bankruptcy case either through a plan of
7 reorganization or a voluntary dismissal of the case. Effective upon the dismissal of the bankruptcy
8 case, the Debtor's members now have agreed to the terms of the Debtor's equity restructuring,
9 including an amendment to the Debtor's Operating Agreement (the "Restructuring"). The Bank is
10 aware of the pending Restructuring and has informed the Debtor that it has no objection thereto.

11 6. As part of the Restructuring, certain of the Debtor's members have contributed the
12 Dismissal Funds to the Debtor to enable it to pay its undisputed prepetition general unsecured
13 creditors and administrative expense creditors in full without interest, or as otherwise agreed with
14 individual creditors, as soon as practicable upon approval of the Motion. A schedule of the
15 Debtor's payments to prepetition general unsecured creditors and administrative claimants upon
16 approval of the Motion is attached hereto as **Exhibit A**.

17 7. Each of the Professionals has reached agreement with the Debtor regarding their
18 total compensation and payment balances owed as set forth herein and in **Exhibit A** hereto. The
19 unpaid balance of these requests, excluding \$150,000 as to which Cappello & Noël has agreed to
20 defer payment for twelve (12) months, is \$622,291.87 (the "Fee Deposit") and, no later than three
21 (3) business days prior to the hearing on the Motion, the Debtor shall deposit this amount into Kaye
22 Scholer's client trust account for disbursement to the Professionals upon approval of the Motion.

23 8. For the period from November 3, 2009 - October 31, 2011, Kaye Scholer has
24 incurred fees and costs of \$1,803,828.20. Kaye Scholer has provided copies of its monthly bills to
25 the Debtor throughout the case, which I and others acting on behalf of the Debtor have reviewed.
26 On behalf of the Debtor, I have raised concerns regarding the overall amount of Kaye Scholer's
27 billings, which Kaye Scholer disputes.
28

1 9. In response to the concerns I raised on behalf of the Debtor, Kaye Scholer and the
2 Debtor have agreed that Kaye Scholer shall reduce its fees by \$259,003.78 for the postpetition
3 period through October 31, 2011 and waive its fees and costs for the period November 1, 2011 -
4 December 15, 2011, leaving an unpaid balance due upon dismissal of the bankruptcy case of
5 \$330,000, subject to the following conditions: the Motion is unopposed and Kaye Scholer does not
6 have to provide any further services on behalf bankruptcy estate after the filing of the Motion other
7 than attendance at the hearing on the unopposed Motion and preparation and lodging of the
8 proposed order approving the unopposed Motion. All fees, if any, incurred by Kaye Scholer after
9 the filing of the Motion that are unrelated to the Motion or incurred as a result of the Motion being
10 contested are in addition to the \$330,000 unpaid balance and must also be paid upon approval of
11 the Motion.

12 10. In exchange, after due consultation with the Debtor's members, I, as a Managing
13 Member of the Debtor, acting on behalf of the Debtor have agreed to and hereby do waive,
14 discharge, and release Kaye Scholer of any and all claims, obligations, and/or causes of action of
15 every type, kind, nature, description or character, and irrespective of how, why, or by reason of
16 what facts, whether heretofore or now existing, or which could, might or may now or hereafter be
17 claimed to exist, of whatever kind, name or nature, whether known or unknown, past or present,
18 suspected or unsuspected, anticipated or unanticipated, fixed or contingent, liquidated or
19 unliquidated, which in any way relate to Kaye Scholer's services on behalf of the Debtor, including
20 the amount charged for such services. The Debtor expressly waives any law that provides: "A
21 general release does not extend to claims which the creditor does not know or suspect to exist in his
22 or her favor at the time of executing the release which if known by him or her must have materially
23 affected his or her settlement with the debtor."

24 11. For the period from November 3, 2009 - October 31, 2011, Cappello & Noël has
25 incurred hourly rate fees and costs of \$110,449.50 for its services on behalf of the Debtor, of which
26 \$16,848.01 is unpaid. In addition, Cappello & Noël has asserted a right to a contingency fee in the
27 amount of \$805,816.63 in accordance with the terms of its employment by the Debtor. On behalf
28

KAYE SCHOLER LLP

1 of the Debtor, I have disputed Cappello & Noël's entitlement to the contingency fee. In response,
2 Cappello & Noël has agreed to reduce the amount of its contingency fee by \$405,816.63 to
3 \$400,000 (the "Reduced Contingency Fee"). It has further agreed to defer payment of \$150,000 of
4 the Reduced Contingency Fee for a period not to exceed twelve (12) months following approval of
5 the Motion (the "Deferred Reduced Contingency Fee"), provided that the Court reserve jurisdiction
6 to enter an order directing immediate payment of the Deferred Reduced Contingency Fee upon
7 noticed motion by Cappello & Noël should the Debtor fail to timely pay the Deferred Reduced
8 Contingency Fee.

9 12. In exchange for the concessions agreed by Cappello & Noël, after due consultation
10 with the Debtor's members, I, as a Managing Member of the Debtor, acting on behalf of the Debtor
11 have agreed to and hereby do waive, discharge, and release Cappello & Noël of any and all claims,
12 obligations, and/or causes of action of the Debtor of every type, kind, nature, description or
13 character, and irrespective of how, why, or by reason of what facts, whether heretofore or now
14 existing, or which could, might or may now or hereafter be claimed to exist, of whatever kind,
15 name or nature, whether known or unknown, past or present, suspected or unsuspected, anticipated
16 or unanticipated, fixed or contingent, liquidated or unliquidated, which in any way relate to
17 Cappello & Noël's services on behalf of the Debtor, including the amount charged for such
18 services. The Debtor expressly waives any law that provides: "A general release does not extend
19 to claims which the creditor does not know or suspect to exist in his or her favor at the time of
20 executing the release which if known by him or her must have materially affected his or her
21 settlement with the debtor."

22 13. I understand that the procedure for handling of Professionals' fees has been
23 proposed to avoid the need for the Professionals to prepare final fee applications, which, given the
24 length and complexity of the case and the fact that no prior interim fee applications were filed,
25 could be time consuming and expensive to prepare. I am aware that if the Professionals are
26 required to prepare final fee applications, the reasonable fees and costs for the preparation of such
27 fee applications are allowable by the Court and must be paid by the Debtor.
28

KAYE SCHOLER LLP

1 14. All of the funds being used to pay the Professionals upon approval of the Motion
2 have been provided by certain of the Debtor's members pursuant to the pending Restructuring of
3 the Debtor for the specific purpose of paying the Professionals. None of the amounts being used to
4 pay the Professionals upon approval of the Motion would have been property of the estate but for
5 the agreement of the non-debtor members of the Debtor to contribute such payments. Accordingly,
6 no funds generated by the operations or assets of the estate have been or will be used to pay the
7 fees and expenses of the Professionals.

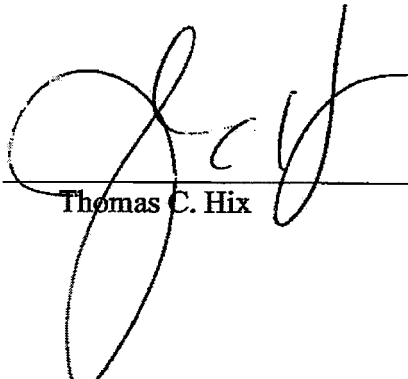
8 15. The balance of the Dismissal Funds, \$554,906.75, shall be held on deposit by the
9 Debtor in its operating account no later than three (3) business days prior to the hearing on the
10 Motion and promptly disbursed by the Debtor to unsecured creditors (other than the Professionals)
11 as set forth in **Exhibit A** upon approval of the Motion.

12 16. As a result of the closing of the Modification and the agreed Restructuring of the
13 Debtor, including funding of the Dismissal Funds, the Debtor does not require any further
14 restructuring of its debts to move forward with the re-entitlement of the Property.

15 17. The Debtor has paid all of its quarterly fees and Court costs currently due in
16 connection with this case.

17 I declare under penalty of perjury under the laws of the United States of America that the
18 foregoing is true and correct.

19
20 Dated: November 30, 2011

21 
22 _____
23 Thomas C. Hix
24
25
26
27
28

DECLARATION OF ASHLEIGH A. DANKER

I, Ashleigh A. Danker, declare:

1. I am a bankruptcy counsel at Kaye Scholer LLP (“Kaye Scholer”), proposed counsel for debtor-in-possession Malibu Associates, LLC (the “Debtor”). I am one of the attorneys at Kaye Scholer with primary responsibility for the representation of the Debtor. I have personal knowledge of the facts in this declaration and, if called as a witness, I could and would testify competently thereto. Capitalized terms not otherwise defined herein have the same meanings ascribed to them in the motion to which this declaration is attached.

2. Effective upon the dismissal of the bankruptcy case, the Debtor’s members have agreed to the terms of the Debtor’s equity restructuring, including an amendment to the Debtor’s Operating Agreement, which I have read (the “Restructuring”). The Bank is aware of the pending Restructuring and counsel for the Bank, Joshua Wayser, has informed me that the Bank has no objection thereto.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: November 30, 2011



Ashleigh A. Danker

KAYE SCHOLER LLP

EXHIBIT A

EXHIBIT A - SCHEDULE OF DISMISSAL FUNDS

	A	B	C	D
1	Name	Total Fees/Costs Incurred ("Agreed Amount")	Unpaid Balance of Agreed Amount to Be Paid As Provided in Motion to Dismiss	Notes
2	PROFESSIONALS:			
3	Kaye Scholer LLP - November 3, 2009 - December 15, 2011	\$1,803,828.20	\$330,000.00	\$1,803,828.20 represents Kaye Scholer's actual postpetition fees and costs through October 31, 2011. \$330,000.00 represents a negotiated discount of \$259,003.78, plus an additional courtesy discount of the amount of Kaye Scholer's fees and costs incurred from November 1, 2011 through December 15, 2011. The Kaye Scholer Agreed Amount is conditioned upon the Motion being unopposed and Kaye Scholer not having to provide any further services on behalf of the bankruptcy estate after the filing of the Motion other than attendance at the hearing on the unopposed Motion and preparation and lodging of the proposed order approving the unopposed Motion. All fees, if any, incurred by Kaye Scholer after the filing of the Motion that are unrelated to attendance at the hearing on the Motion or incurred as a result of the Motion being contested are in addition to the Agreed Amount of Kaye Scholer's fees and must also be paid prior to dismissal of the bankruptcy case.
4	Cappello & Noel LLP - November 3, 2009 - December 15, 2011	\$916,266.13	\$416,848.01	\$916,266.13 represents Cappello & Noel's actual postpetition fees and costs through October 31, 2011, including a partial contingency fee in the amount of \$805,816.63. No additional fees and costs are expected to be incurred thereafter. \$416,848.01 represents the unpaid balance of Cappello & Noel's hourly fees (\$16,848.01) and a negotiated discount of Cappello & Noel's unpaid partial contingency to \$400,000 (reduction of \$405,816.63). Cappello & Noel has agreed to defer payment of \$150,000 of the balance owed to it for a period of twelve (12) months following entry of the Order dismissing the case.
5	Truman & Elliott LLP - Unpaid services through December 15, 2011.	\$273,067.03	\$25,443.86	\$273,067.03 represents Truman & Elliott's prepetition unpaid fees and costs of \$25,443.86, actual postpetition fees and costs through October 31, 2011 of \$222,623.17, and estimated fees and costs for the period November 1, 2011 - December 15, 2011 of \$25,000. The Agreed Amount for Truman & Elliott is \$25,443.86 representing its unpaid prepetition fees and costs of \$25,443.86. Truman & Elliott has further agreed that unpaid postpetition fees and costs for the postpetition period through October 31, 2011 of \$31,607.75 and estimated fees and costs for the period of November 1, 2011 through December 15, 2011 of \$25,000 may be paid by Malibu in the ordinary course of business after the dismissal of the bankruptcy case.
6	SUBTOTAL:	\$2,993,161.36	\$772,291.87	\$150,000.00 of this amount will be deferred for twelve (12) months per the Debtor's agreement with Cappello & Noel. \$622,291.87 shall be deposited by the Debtor into the Kaye Scholer client trust account no later than three (3) business days prior to the hearing on the Motion for disbursement to the applicable Professional immediately following approval of the Motion by the Court from the bench.
7	GENERAL UNSECURED CLAIMS:			
	Adler & Colvin	\$219.50	\$219.50	

EXHIBIT A - SCHEDULE OF DISMISSAL FUNDS

	A	B	C	D
1	Name	Total Fees/Costs Incurred ("Agreed Amount")	Unpaid Balance of Agreed Amount to Be Paid As Provided in Motion to Dismiss	Notes
10	California Franchise Tax Board	\$1,814.75	\$1,814.75	
11	California Strategies LLC	\$83,000.00	\$83,000.00	
12	Debitte Tax LLP	\$1,480.00	\$1,480.00	
13	Development Management Services	\$103,961.53	\$103,961.53	
14	DP Planning & Development Inc.	\$41,155.62	\$41,155.62	
15	Envicom Corporation	\$8,393.70	\$8,393.70	
16	Hix/Rubenstein Companies	\$513,750.00	\$263,750.00	Reflects a voluntary reduction of \$250,000.
17	Hollister & Brace	\$225.00	\$225.00	
18	LRS Architects	\$12,644.19	\$12,644.19	
19	Novogradac & Company	\$1,690.00	\$1,690.00	
20	RCE Consultants, Inc.	\$9,565.14	\$9,565.14	
21	Restoration Design Group, LLC	\$9,201.97	\$9,201.97	
22	RJR Engineering Group	\$17,767.00	\$17,767.00	
23	W&H Pacific	\$38.35	\$38.35	
	SUBTOTAL:	\$804,906.75	\$554,906.75	The Debtor shall have these funds on deposit in its operating account no later than three (3) business days prior to the hearing on the Motion.
24				
25				
26	GRAND TOTALS:	\$3,798,068.11	\$1,327,198.62	\$150,000 of this amount will be deferred for twelve (12) months per the Debtor's agreement with Cappello & Noel

Main Document Page 22 of 27

In re: Malibu Associates, LLC dba Malibu Country Club Debtor.	CHAPTER 11 CASE NUMBER 1:09-bk-24625-MT
--	--

Note: When using this form to indicate service of a proposed order, **DO NOT** list any person or entity in Category I. Proposed orders do not generate an NEF because only orders that have been entered are placed on the CM/ECF docket.

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

1999 Avenue of the Stars, Suite 1700
Los Angeles, California 90067

The foregoing document described as *Debtor's Notice Of Motion And Motion To Approve Dismissal Of Chapter 11 Case; Memorandum Of Points And Authorities; Declarations Of Thomas C. Hix And Ashleigh A. Danker In Support Thereof* will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner indicated below:

I. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF") – Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s) ("LBR"), the foregoing document will be served by the court via NEF and hyperlink to the document. On **November 30, 2011**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated below:

Service information continued on attached page

II. SERVED BY U.S. MAIL OR OVERNIGHT MAIL(indicate method for each person or entity served): On **November 30, 2011**, I served the following person(s) and/or entity(ies) at the last known address(es) in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States Mail, first class, postage prepaid, and/or with an overnight mail service addressed as follows. *Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.*

Service information continued on attached page

III. SERVED BY PERSONAL DELIVERY, FACSIMILE TRANSMISSION OR EMAIL (indicate method for each person or entity served): Pursuant to Fed. R. Civ. Proc. 5 and/or controlling LBR, on _____, **2011**, I served the following person(s) and/or entity(ies) by personal delivery, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. *Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.*

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

November 30, 2011 Deborah G. Clow
Date Type Name

Deborah G. Clow
Signature

KAYE SCHOLER LLP

SERVICE LIST

**In re Malibu Associates, LLC
USBC, CDCA Case No. 1:09-bk-24625-MT**

I. SERVED ELECTRONICALLY VIA NEF:

- Katherine Bunker kate.bunker@usdoj.gov
- Alicia Clough alicia.clough@kayescholer.com
- Marc S Cohen mcohen@kayescholer.com
- Ashleigh A Danker adanker@kayescholer.com
- Ramesh Singh claims@recoverycorp.com
- United States Trustee (SV)
ustpreion16.wh.ecf@usdoj.gov
- Joshua D Wayser joshua.wayser@kattenlaw.com

II. SERVED VIA OVERNIGHT MAIL:

Honorable Maureen A. Tighe
U.S. Bankruptcy Court
21041 Burbank Blvd., Suite 325
Woodland Hills, CA 91367

III. SERVED VIA REGULAR U.S. MAIL:
(see attached pages)

KAYE SCHOLER LLP

KAYE SCHOLER LLP

SERVICE LIST
In re Malibu Associates, LLC
USBC, CDCA Case No. 1:09-bk-24625-MT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Debtor	20 Largest Unsecured Creditors
Malibu Associates, LLC	Hix Rubenstein Companies
480 San Antonio Road	480 San Antonio Road
Suite 205	Suite 205
Attn: Neal G. Aronson	Attn: Neal Aronson
Mountain View, CA 94040	Mountain View, CA 94040
Special Litigation Counsel to	20 Largest Unsecured Creditors
Debtor/Guarantor Counsel	L.A. County Treasurer and Tax Collector
A. Barry Cappello, Esq.	P.O. Box 54110
Matthew H. Fisher, Esq.	Los Angeles, CA 90054-0110
Cappello & Noël	
831 State Road	20 Largest Unsecured Creditors
Santa Barbara, CA 91301	L.A. County Treasurer and Tax Collector
U.S. Trustee	P.O. Box 54088
Office of the U.S. Trustee	Ref: 901 Encinal Cyn Rd 90265
21051 Warner Center Lane	Attn: Bonita Sandoz
Suite 115	Los Angeles, CA 90054-0110
Attn: Katherine C. Bunker, Esq.	20 Largest Unsecured Creditors
Woodland Hills, CA 91367	Development Management Srvc
Secured Creditors/RFSN	480 San Antonio Road #205
California National Bank/U.S. Bank	Attn: Karen Trifari
c/o Katten Muchin Rosenman LLP	Mountain View, CA 94040
2029 Century Park East #2600	20 Largest Unsecured Creditors
Attn: Joshua D. Wayser	California Strategies, LLC
Los Angeles, CA 90067	1880 Von Karman Ave. #190
Secured Creditors	Attn: Accounts Receivable
California National Bank/U.S. Bank	Irvine, CA 92612
1515 Westcliff Drive, Second Floor	20 Largest Unsecured Creditors
Attn: Celeste Gladych	DP Planning & Development, Inc
Newport Beach, CA 92660	1525 Brentford Avenue
Secured Creditors	Attn: Drew Purvis
General Electric Capital Corp.	Westlake Village, CA 91361
1961 Hirst Drive	
Attn: Contracts Department	
Moberly, MO 65270	

KAYE SCHOLER LLP

1 20 Largest Unsecured Creditors
Truman & Elliott LLP
2 626 Wilshire Blvd. Suite 550
Attn: Kathleen O'Prey Truman
3 Los Angeles, CA 90017

20 Largest Unsecured Creditors
Deloitte Tax LLP
Attn: Louis S. Weller
555 Mission Street, Floor 14
San Francisco, CA 94105

4 20 Largest Unsecured Creditors
RJR Engineering Group
5 P.O. Box 3398
6 Attn: Accounts Receivable
Ventura, CA 93006

20 Largest Unsecured Creditors
American Express
P.O. Box 0001
Attn: Accounts Receivable
Los Angeles, CA 90096

7 20 Largest Unsecured Creditors
8 LRS Architects
9 720 NW Davis, Suite 300
Attn: Accounts Receivable
10 Portland, OR 97209

20 Largest Unsecured Creditors
Adler & Colvin
Attn: Accounts Receivable
235 Montgomery Street, #1220
San Francisco, CA 94014

11 20 Largest Unsecured Creditors
RCE Consultants, Inc.
12 7595 Irvine Center Dr., #150
13 Attn: Accounts Receivable
Irvine, CA 92618

20 Largest Unsecured Creditors
W&H Pacific
123 SW Columbia Street
Attn: Accounts Receivable
Bend, OR 97702

14 20 Largest Unsecured Creditors
15 Restoration Design Group, LLC
16 2612B 8th Street
17 Attn: Drew
Berkeley, CA 94710

20 Largest Unsecured Creditors
Hollister & Brace
P.O. Box 630
Attn: Accounts Receivable
Santa Barbara, CA 93102

18 20 Largest Unsecured Creditors
19 Envicom Corporation
20 28328 Agoura Road
Attn: Accounts Receivable
21 Agoura Hills, CA 91301

Creditors
Employment Development Dept.
Bankruptcy Group MIC 92E
P.O. Box 826880
Sacramento, CA 94280-0001

22 20 Largest Unsecured Creditors
California Franchise Tax Board
23 Attn: Bankruptcy
24 P.O. Box 2952
Sacramento, CA 95812-2952

Creditors
Internal Revenue Service
P.O. Box 21126
Philadelphia, PA 19114

25 20 Largest Unsecured Creditors
26 Novogradac & Company
27 246 First Street, 5th Floor
Attn: Accounts Receivable
28 San Francisco, CA 94105

Creditors
Malibu Golf F&B Co., Inc.
480 San Antonio Road
Suite 205
Attn: Thomas C. Hix
Mountain View, CA 94040

KAYE SCHOLER LLP

1 Creditors
2 Malibu Golf Club, LLC
3 480 San Antonio Road
4 Suite 205
5 Attn: Neal G. Aronson
6 Mountain View, CA 94040

Equity Security Holders
Hix Rubenstein Cos. Inc.
480 San Antonio Road #205
Attn: Thomas C. Hix
Mountain View, CA 94040

5 Equity Security Holders
6 Crankstart Foundation
7 3000 Sand Hill Rd Bldg 4 #180
8 Attn: Michael Moritz
9 Menlo Park, CA 94027

Equity Security Holders
The Leone-Perkins Trust
3000 Sand Hill Road, Building 4, #180
Attn: Doug Leone
Menlo Park, CA 94027

9 Equity Security Holders
10 Dr. David Agus
11 1117 North Beverly Drive
12 Beverly Hills, CA 90210

Equity Security Holders
Third Millennium Trust
3000 Sand Hill Road, Building 4, #180
Attn: Mark A. Stevens
Menlo Park, CA 94027

12 Equity Security Holders
13 MPK Development LLC
14 c/o Paul Johannsen
15 P. O. Box 1748
16 Whitefish, MT 59937

Interested Party
Jeffrey S. Klein
2549 East Bluff Drive
Suite 484
Newport Beach, CA 92660

15 Equity Security Holders
16 Alexis Klein
17 Pacific Capital Investments LP
18 2295 Francisco Street, #2
19 San Francisco, CA 94123

RFSN
L.A. County Treasurer and Tax Collector
P.O. Box 54110
Los Angeles, CA 90054-0110

18 Equity Security Holders
19 Alexis Klein
20 Pacific Capital Holdings, Inc.
21 2295 Francisco Street, #2
22 San Francisco, CA 94123

22 Equity Security Holders
23 RSF, Jr., LLC
24 P. O. Box 3977
25 Attn: Richard S. Fuld, Jr.
26 Albany, NY 12203

25 Equity Security Holders
26 T&J Investment Partners, LLC
27 480 San Antonio Road #205
28 Attn: Thomas C. Hix
Mountain View, CA 94040