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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

In re PREMIER GOLF PROPERTIES, LP, a California limited partnership, Debtor-in-Possession.	CASE NO. 15-01068-CL11 Chapter 11 MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF JOINT OBJECTION TO SECURED CLAIM OF COTTONWOOD CAJON ES, LLC Date: January 29, 2016 Time: 10:30 a.m. Dept: Five Honorable Christopher B. Latham

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Debtor / Debtor In Possession Premier Golf Properties, LP (the "Debtor"), Edgewood Distributors & Management, Inc., R.H. Rodriguez, Inc., and Premier Golf Property Management, Inc. respectfully submit this memorandum of points and authorities in support of their joint objection to the secured claim (Claim No. 10) of Cottonwood Cajon ES, LLC ("Cajon").[1]

I.

INTRODUCTION

The Debtor's Golf Course Business

The Debtor conducts business under the name "Cottonwood Golf Club." The Debtor's golf course and related operations are located at 3121 Willow Glen Drive in the East County area of San Diego known as Rancho San Diego, in the southern-most part of El Cajon. The golf course was built and commenced operations in 1962. The property consists of a total of 283 acres, through which the Sweetwater River meanders from east to west, and it is approximately two miles in length. The east end of the property abuts more than 500 acres of California Fish and Wildlife land, and the west end borders more than 3,000 acres of U.S. Fish and Wildlife property and sensitive habitat/refuge areas. The rest and remainder of the development is open space and other environmental and biological easements and conservation areas. The Sweetwater River acreage flowing through Cottonwood is approximately 65 acres and is almost totally disturbed (biologically) property, as is the entirety of the remainder of Debtor's 283 acres. The operational aspects of the Debtor's property include two separate and distinct 18-hole championship golf courses, a clubhouse with restaurant and bar, a 5,000 square foot event pavilion, driving range, practice areas/greens, maintenance buildings, golf cart storage, and abundant parking. *See* the concurrently filed Declaration of Daryl Idler dated December 11, 2015 ("Idler Declaration"), ¶ 3.

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[1] The Debtor is filing Form 2015 Objection to Claim and Notice Thereof concurrently with this Memorandum of Points and Authorities. Edgewood Distributors & Management, Inc., R.H. Rodriguez, Inc., and Premier Golf Property Management, Inc. hereby join in such Objection to Claim.

The Debtor purchased the golf course in July of 2002 for $19.5 Million Dollars, of which $7.2 Million was invested cash/capital. The lender at the time of purchase was GE Capital, which took a first trust deed position. Several of the Debtor's partners collectively have contributed, either directly or through business-related entities, approximately $3.0 million of additional funds for operational and capital expenditure needs over the years, including a pay down of the first trust deed loan by $1.0 million in the transition from GE Capital to Far East National Bank as the golf course lender, and close to $400,000 upon closing of the purchase escrow to be used post-closing for much needed capital improvements in July/August of 2002. Idler Declaration, ¶ 4.

In early 2007, the initial and acquisition financing from GE Capital approached maturity. GE Capital announced in late 2006 that it was abandoning the golf lending business (it had over 150 golf course loans in its portfolio at the time), and as a result, the Debtor would have to arrange new financing. That is when Far East National Bank ("FENB") emerged. Idler Declaration, ¶ 5.

Far East National Bank and the Comptroller of Currency

FENB agreed to place a First Trust Deed and related Note against Debtor's property in December of 2007. FENB suggested a two-year loan to ensure that a certain lake construction and sand excavation project was completed, to be followed by a five-year term loan similar to the GE Capital loan. The Debtor agreed and put up nearly $1 million to cover the difference of the balance due on the GE Capital loan and the $11.5 Million FENB agreed to loan for the short term, which loan was recorded in December of 2007. In early 2009, the Debtor began the process of its renewal/extension/modification of the existing FENB short term loan. As part of the process and as specifically requested by FENB, the Debtor had the golf operations appraised, completed a Phase I environmental survey, and supplied other requested financial information and updates. Significant to note at this point is the fact that FENB had required the personal guarantee of Henry Gamboa on the short-term loan, and it was requiring Mr. Gamboa to agree to a continuation of the guarantee for the longer term loan. Idler Declaration, ¶ 6.

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During December 2007 through December 2009, the Debtor made timely, regular, and full monthly payments to FENB. Although FENB at no time up to the maturity date gave any indication that it could not or would not renew the Debtor's short-term loan, by the December 2009 maturity date, FENB had not formally approved the renewal paperwork. FENB continued to send monthly invoices, and the Debtor continued to make the regular monthly payments. Finally, in April of 2010, well after the loan from FENB had by its terms matured, the Debtor first discovered that FENB was under a 24-page cease and desist order from the Comptroller of the Currency/FDIC and could not have made or granted any renewal/extension/modification of Debtor's short term loan. (OCC Order 2010-038). As an aside, also unknown to the Debtor was the fact that FENB had been the target of another cease and desist from OCC in 2005 (OCC Order 2005-63). Idler Declaration, ¶ 7.

Ultimately, despite its many efforts to work with FENB through the regulatory process, the Debtor filed suit against FENB in San Diego Superior Court, Case No. 37-2011-00065341-CU-BT-EC. The Debtor obtained a restraining order to prevent FENB from foreclosing. When the restraining order was lifted approximately six months later, on May 2, 2011, the Debtor filed its first Chapter 11 bankruptcy case. Idler Declaration, ¶ 8.

The Debtor's First Chapter 11 Case, and the Settlement Agreement

FENB was the only creditor appearing in connection with the Debtor's first Chapter 11 case during the 38 months that case was pending. The following are significant developments during the Debtor's first Chapter 11 case:

(A) Debtor was at all times a Debtor-in-Possession.

(B) FENB commenced its attack by filing a motion claiming that the Debtor's cash was FENB's collateral. FENB lost that motion. Judge Bowie's ruling was upheld after FENB appealed to the Bankruptcy Appellate Panel of the Ninth Circuit.

(C) Shortly after Judge Bowie's ruling on FENB's motion concerning cash collateral, FENB filed a Motion for Relief From Stay. After a dozen days of depositions, and some 8 or 9 days of trial, the matter was submitted for decision in August of 2012. FENB had argued that the golf course was only worth $8.0 million; the Debtor argued the course was worth $14 million

operationally and millions more as developed/entitled property. Judge Bowie did not issue a ruling.

(D) The Debtor was not required to make adequate protection payment to FENB during the first Chapter 11 case.

(E) In the absence of any ruling by Judge Bowie, FENB came to the settlement table in December of 2013. (Incidently, the cease and desist from 2010 was lifted as against FENB in August of 2013.) Pursuant to a Settlement Agreement dated December 23, 2013 (the "Settlement Agreement"), a true and correct copy of which is attached to Cajon's Claim No. 10 at ECF pp. 106 - 113), FENB agreed to reduce its then-alleged almost $13.0 million claim to $8.5 million and extend the final balance payoff of $8.5 Million to March of 2016. In return, the Debtor agreed to (1) dismiss its Complaint against FENB in the Superior Court, with prejudice, (2) commence monthly payments to FENB in January of 2014 of $42,500, and (3) pay all accumulated real property taxes to the County of San Diego by late March of 2014 (which was the later of December 31, 2013 or 90 days after the Settlement Agreement was signed). The documents were signed, the monthly payments commenced, the Superior Court case against FENB was dismissed with prejudice, and the Debtor's first Chapter 11 case was dismissed in April of 2014 pursuant to a joint motion of the Debtor and FENB. Idler Declaration, ¶ 9.

FENB's Breach and Lack of Good Faith

In January of 2014, upon commencement of the monthly payments to FENB under the Settlement Agreement, the Debtor began making arrangements to obtain the necessary funds (more than $2 million) to bring all property taxes current. The Debtor desired to secure subordinate financing for this purpose. Because the underlying FENB loan documents required FENB to first approve any subordinate financing, in late December of 2013 or early January of 2014, the Debtor's representative, Daryl Idler, requested of FENB's counsel, Byron Mauss, that FENB consent to subordinate financing to allow the Debtor to pay the taxes in compliance with the Settlement Agreement. Multiple additional requests were made as well. The Debtor arranged for subordinate financing from MVP Mortgage in an amount necessary to pay all real property taxes, and the Debtor received a written loan commitment by March 25, 2014. Idler

Declaration, ¶ 10 & Ex. 1. However, FENB still had not indicated its consent to subordinate financing. In fact, instead of consenting, FENB issued a default letter to the Debtor in late March of 2014 on account of the unpaid taxes. (The default letter was premature given that the Settlement Agreement had not yet been approved by the bankruptcy court in the Debtor's first bankruptcy case.) To the Debtor it made no sense that FENB would not approve the financing given that the effect of the financing would have been to take a debt (the taxes) that was senior to FENB and make it junior to FENB through subordinate financing. FENB never objected to subordinate financing, and it eventually gave a conditional approval in late April in 2014. By then, however, the subordinate lender was either not able or not willing to proceed because (i) it needed to place its funds and begin earning interest, and (ii) FENB's default letter had not been withdrawn, and the lender was not interested in spending time on financing if FENB was taking the position that the settlement was no longer valid. Idler Declaration, ¶ 11.

The Debtor made each and every monthly payment to FENB until August of 2014, at which time FENB returned the Debtor's August payment and issued a Notice of Trustee's Sale due to the Debtor's failure to pay all taxes due. Once again, and still puzzled, the Debtor initiated a process of discussions/ negotiations with FENB. Between August of 2014 and February of 2015, the parties met, the Debtor provided requested development details to FENB, and the Debtor even went so far as to obtain and deliver a cashier's check in the amount of $500,000 as a showing of good faith that it was serious about honoring its obligations under the Settlement Agreement. During this same seven month period, FENB continued the foreclosure sale date five times. Significantly, Debtor also provided written proof that the County of San Diego was not going to conduct a tax sale for delinquent property taxes in the March 2015 tax sale process–an assurance/proof from the County of San Diego Tax Assessor that FENB had specifically asked for during the process of the FENB "approval" of Debtor's placement of a second trust deed. Idler Declaration, ¶ 12.

Finally, in the afternoon of February 23, 2015, after FENB and its counsel had suddenly gone totally and completely unresponsive by telephone, text, and email, and with a looming foreclosure sale date of February 24, 2015 that had not been continued, the Debtor filed the

instant Chapter 11 case. The Debtor later discovered that before it had obtained the $500,000 Cashier's Check and agreed (at FENB's request) that the funds be non-refundable regardless of outcome of negotiations (FENB requested Debtor's showing of "good faith"), FENB had already sold/assigned the Note and Deed of Trust to Cajon. Idler Declaration, ¶ 13.

Ronald Richards, Michael Schlesinger and Cottonwood Cajon ES, LLC

Cajon is best described as a predatory investor. The principal(s) of Cajon also acquired two other golf courses in San Diego by purchasing the underlying debt obligations and then foreclosing. In those instances, as with the current profit making scheme, they used catchy, creative names designed to make a point: "Stuck In The Rough LLC" foreclosed on the now closed Escondido Country Club, and "No Stone Left Unturned, LLC" foreclosed on the StoneRidge Country Club located in the Escondido/Poway area. Idler Declaration, ¶ 14.

On February 24, 2015, the Debtor received a call from a person identifying himself as Ronald Richards, a lawyer and managing member of Cajon. Mr. Richards said he had purchased the FENB note. While the Debtor's representative was speaking with Mr. Richards, the representative was looking at the California Secretary of State records for Cajon and noted that Michael Schlesinger was listed as agent for service of process. The representative recognized that name as similar or exact to a developer who had been in the San Diego news for months for having purchased the note on Escondido Country Club, foreclosed, closed the course and dumped five tons of chicken manure on the golf course, while attempting to force the City of Escondido to grant him the permits/entitlements to build hundreds of homes on what used to be an active golf community. Mr. Schlesinger had orchestrated a similar foreclosure subsequent to a discounted note purchase at the StoneRidge Country Club in Poway, California the previous year or so. Mr. Richards and/or Mr. Schlesinger also are involved in the acquisition of the Rancho Mirage golf course near Palm Springs, and Silverstone golf course in Las Vegas, both of which resulted in well-publicized lawsuits by homeowners. When asked if Michael Schlesinger was involved in Cajon, Mr. Richards said "no." However, when confronted with the information from the Secretary of State, Mr. Richards said that "Michael's name appeared by mistake." Thereafter, a week or so later, a further review of the Secretary of State records of Cajon

reflected that another filing had taken Michael Schlesinger off as agent and now Ronald Richards was listed in his place. Although Mr. Schlesinger was "not involved," in two subsequent telephone conversations with Mr. Richards, Mr. Schlesigner also participated and asked questions about the golf course plans and operations. Likewise, when the Debtor's representative traveled to Beverly Hills at the end of February 2015 to meet with Mr. Richards for the first time in person, Mr. Schlesinger was in attendance and participated in the two-hour meeting. Idler Declaration, ¶ 15.

The Debtor's Plan; Cajon's Claim; Objection to Cajon's Claim

Cajon filed Proof of Claim No. 10 on May 14, 2015. On October 12, 2015, the Debtor filed a Joint Plan of Reorganization [Docket No. 119] that proposes to obtain outside funding through a development partner to satisfy all creditors' claims and enable the Debtor jointly to develop its real property. To satisfy Cajon's claim, the Plan proposes to cure all of the Debtor's defaults under the Settlement Agreement–if in fact the Debtor is in default and was not excused from timely performing under the Settlement Agreement due to FENB's prior breach–and to pay the Cajon's claim in the amount required by the Settlement Agreement.

As a result of the cure provisions contained in the Plan, the Debtor will be required to do only the following: (1) Pay on the Effective Date of the Plan all real estate taxes that are due and owing; (2) pay to Cajon on the Effective Date of the Plan all of the missed interest-only payments ($42,500 per month) called for under the Settlement Agreement from and after August of 2014 (which is when FENB rejected the Debtor's tender of the normal monthly payment); and (3) on the later of March 1, 2016 or the Effective Date of the Plan, pay Cajon the $8.5 million balloon payment that the Settlement Agreement provides is due March 1, 2016. The Debtor is entitled to a credit on account of $120,000 that it paid to Cajon during 2015 in contemplation of a new settlement agreement that the Debtor ultimately determined not to pursue. *See* the Idler Declaration, ¶ 16; Part II below. Alternatively, if for any reason the Debtor is not entitled to cure any defaults under the Settlement Agreement, the Debtor was excused from timely performing under the Settlement Agreement due to FENB's prior breach. In that instance, the Debtor will owe the same amounts recited above because Cajon, as FENB's predecessor, acquired the loan

subject to all defenses that were available against FENB. *See* Part III below. In addition, Cajon's claim includes more than $1 million of charges that are unclear and not substantiated. *See* Part IV below. Because Cajon's claim is overstated and otherwise ambiguous and unsubstantiated, the objecting parties further object to Cajon's claim. For the reasons discussed below, the objections should be sustained.

II.

UPON CONFIRMATION OF THE JOINT PLAN, CAJON'S CLAIM WILL BE LIMITED TO APPROXIMATELY $8.5 MILLION.

A. The Debtor Will Cure Under Section 1123 and *Entz-White*.

Bankruptcy Code section 1123 provides, in pertinent part, as follows:

> (a) Notwithstanding any otherwise applicable nonbankruptcy law, a plan shall–
> . . .
> (5) provide adequate means for the plan's implementation, such as–
> . . .
> (G) curing or waiving of ***any*** default . . . .

11 U.S.C. § 1123 (emphasis added); *see also In re Mendoza*, 2010 WL 1610120 at *1 (Bankr. N.D. Cal. April 20, 2010) ("In reorganization proceedings, essentially all defaults are curable."); 11 U.S.C. § 1124 (cure and reinstatement leaves a creditor unimpaired). Some effects of a cure under section 1123(a)(5)(G) were examined in *Great Western Bank & Trust v. Entz-White Lumber & Supply (In re Entz-White Lumber & Supply)*, 850 F.2d 1338 (9th Cir. 1988) (*"Entz-White*"). In *Entz-White*, the Chapter 11 debtor cured a defaulted loan by confirming a plan of reorganization and immediately paying off the debt (which by its terms was fully due). The court defined "cure" as its common meaning: Nullifying the consequences of a default and returning to pre-default conditions, reinstating the debt, and restoring matters to the status quo ante. *Id*. at 1340; *see also Di Pierro v. Taddeo (In re Taddeo)*, 685 F.2d 24, 26-27 (2d Cir. 1982) (curing a default means returning to pre-default conditions, and nullifying the consequences thereof). By curing the default and paying off the debt, one consequence of returning to the status quo ante

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was that there was no default for which interest at a higher default rate was owed. *See Entz-White,* 850 F.2d at 1342.

Here, if the Debtor is in default, then the Debtor may fully cure that default pursuant Bankruptcy Code section 1123(a)(5)(G). The effect of such cure is to return the Settlement Agreement to its pre-default status, which means, among other things, that the Debtor may take advantage of the $8.5 million payoff provided for in the Settlement Agreement. Given the Debtor's right to cure as a matter of law, the Court need not actually decide whether the Debtor is in default, because the amount owed by the Debtor would be the same whether (i) the Debtor were in default and cured, or (ii) the Debtor were not in default in the first instance.

It is not presently clear whether the Debtor also needs relief from any default rate of interest pursuant to *Entz-White*. First, although the Settlement Agreement explains when a default is deemed to occur (*see* section 4.0), it does not provide for any remedies in the event of a default under the Settlement Agreement, nor does it indicate that a higher, default rate of interest is due upon any default under the Settlement Agreement.[2] Also, it is unclear from Cajon's Proof of Claim whether Cajon is claiming a higher default rate of interest on account of any alleged breach of or default under the Settlement Agreement by the Debtor. If the Court determines that a default under the Settlement Agreement gives rise to a higher, default rate of interest, and if Cajon actually is claiming a higher default rate of interest, then under *Entz-White*, liability for such default interest will be eliminated when the Debtor otherwise cures all alleged defaults.

Based on the foregoing, the Debtor is entitled fully to cure any alleged defaults under the Settlement Agreement, and the cure shall consist of the following: Payment of all real estate

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[2] Section 1.3(b) of the FENB Loan Agreement (attached to Cajon's Proof of Claim) provides that upon a default, five percentage points (5%) are added to the interest rate. Section 3.5 of the Settlement Agreement provides that the underlying loan documents remain in effect except as revised by the Settlement Agreement. Objecting parties submit that section 3.5 is not the equivalent of providing default interest for a default under the Settlement Agreement. Even if it were, however, any liability for default interest would be eliminated upon cure in accordance with *Entz-White*.

taxes that are due and owing;[3] payment to Cajon of the missed interest-only payments called for under the Settlement Agreement from and after August of 2014 (which is when the Debtor tendered a payment to FENB and FENB refused it) until the $8.5 million balloon payment is paid; and on the later of March 1, 2016 or the Effective Date of the Plan, payment of the $8.5 million balloon payment that the Settlement Agreement provides is due March 1, 2016. To the extent, if any, that the attorneys' fees provision of the Settlement Agreement (section 12.0) applies to any aspect of this bankruptcy proceeding, then the "prevailing party" will be entitled to recover attorneys' fees. The objecting parties contend that Cajon will not be a "prevailing party" within the meaning of section 12.0 of the Settlement Agreement such that Cajon is not, and will not be, entitled to any attorneys' fees. The Debtor is entitled to a credit on account of $120,000 that it paid to Cajon during 2015 in contemplation of a new settlement agreement that the Debtor ultimately determined not to pursue. *See* the Idler Declaration, ¶ 16.

Upon payment of the above-mentioned amounts, any defaults will be fully cured, the Settlement Agreement will be reinstated, and nothing more will be owed to Cajon or its predecessor, FENB. The objecting parties object to Cajon's claim to the extent Cajon asserts a right to payment of anything other than the above-mentioned amounts.

B. *Entz-White* Remains the Law in this Circuit.

Although *Entz-White* was decided in 1988, the case remains the law in the Ninth Circuit. In fact, in *General Electric Capital Corp. v. Future Media Products*, 547 F.3d 956 (9th Cir. 2008), which involved application of *Entz-White* outside of the context of a confirmed plan and therefore beyond the reach of a cure under section 1123, the Ninth Circuit Court of Appeal had the opportunity to overrule *Entz-White* and find that liability for default interest is not eliminated through a cure. However, the court did not overrule *Entz- White* and instead limited application of *Entz-White* to cases in which there is a confirmed plan of reorganization, which is what will exist in the instant case. *Future Media*, 547 F.3d at 960.

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[3] If the amount of real estate taxes due and owing is not agreed upon by the Debtor and the tax collector, then the amount to be paid will be determined by the Court.

Other cases confirm that *Entz-White*'s determination, that default interest is not owed when defaults are cured under a plan, remains the law in the Ninth Circuit. *See Platinum Capital, Inc. v. Sylmar Plaza, LP (In re Sylmar Plaza, LP)*, 314 F.3d 1070, 1075 (9th Cir. 2002) (defaults were cured, secured creditor was not impaired and was not entitled to default interest), *cert. denied*, 538 U.S. 1035 (2003); *Citibank v. Udhus (In re Udhus)*, 218 B.R. 513, 516 (BAP 9th Cir. 1998) ("Under *Entz-White*, a § 1123 cure corrects all defaults and prohibits an award of default interest."); *In re Phoenix Business Park LP*, 257 B.R. 517, 519-22 (Bankr. D. Ariz. 2001) (Bankruptcy Code section 1123(d) did not overrule *Entz-White*); *Brody v. Geared Equity, LLC*, 2014 WL 4090549 at *3-*4 (D. Ariz. 2014) (same).

III.

ALTERNATIVELY, CAJON'S PREDECESSOR BREACHED THE SETTLEMENT AGREEMENT.[4]

As detailed in Part I above, FENB, which is Cajon's predecessor, failed timely to consent to a junior encumbrance on the Property that would have allowed the Debtor timely to pay the real property taxes in or before late March 2014. When the parties entered into the Settlement Agreement, FENB knew that the Debtor would need subordinate financing to pay the property taxes because it knew, due to its participation in the Debtor's first bankruptcy case, that (i) the Debtor did not have sufficient cash on hand upon dismissal of its first bankruptcy case to pay the property taxes, and (ii) the Debtor was not generating anywhere near enough net profits to pay the property taxes by late March of 2014. Therefore, FENB could not claim it was surprised by the Debtor's request for FENB's approval of subordinate financing. Indeed, FENB never raised any objection that the financing was not appropriate or would prejudice FENB in any way. Idler Declaration, ¶ 17. In addition, section 16.0 of the Settlement Agreement provides as follows:

[4] Cajon is not required to address FENB's breach at this time because the Court ordered that the parties should address the issue of cure first, and, depending on the Court's ruling on the cure issue, the issue of whether the Debtor was excused from performing under the Settlement Agreement would (or would not) be addressed later. The Debtor presents its initial allegations at this time, to avoid waiving its defense based on FENB's prior failure to perform, breach of contract, breach of the covenant of good faith and fair dealing, and fraud.

> **Agreement to Perform Necessary Acts.** The Parties shall execute and deliver all documents and perform any and all further acts that may be reasonably necessary to effectuate the provisions of this Agreement.

FENB thus agreed to cooperate with the Debtor's efforts to secure subordinate financing to pay the taxes.

FENB's conduct in failing timely to consent to the subordinate financing constituted, at a minimum, failure to perform under the Settlement Agreement and breach of both the above-quoted "Necessary Acts" provision of the Settlement Agreement and an implied consent to financing term in the Settlement Agreement. FENB's conduct otherwise constituted fraud and breach of the implied covenant of good faith and fair dealing. As a result, the Debtor was excused from the requirement to pay the real property taxes by late March of 2014. *See, e.g., Hale v. Sharp Healthcare*, 183 Cal. App. 4th 1373, 1387 (2010) (prevention of performance under a contract by one party excuses performance by the other party) (and cases cited); *Wall Street Network, Ltd. v. New York Times Co.*, 164 Cal. App.4th 1171, 1178 (2008) (plaintiff cannot recover for breach of a contract when it has not performed or provided an adequate excuse for not performing). According to the assignment documents attached to Cajon's Proof of Claim (at ECF p. 4 of 143), Cajon acquired the loan from FENB on February 10, 2015, which was long after the late March 2014 deadline for payment of the taxes, and at a time when the Debtor allegedly was in default. Cajon purporting to have acquired the obligation after the Debtor allegedly defaulted, it is not a holder in due course and takes subject to all of the Debtor's defenses. Cal. Comm. Code §§ 3302(a)(2), 3305. Therefore, if for any reason the Debtor is not entitled to cure any alleged default, then FENB's prior conduct excused the Debtor's failure timely to pay the real property taxes, and the Debtor is entitled to pay them at this time (upon Plan confirmation) and proceed under the Settlement Agreement.

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IV.

CAJON'S CLAIM OTHERWISE IS UNCERTAIN AND UNSUPPORTED.

The Settlement Agreement provides (at Recital L) that FENB's claim, absent the $8.5 million settlement, would be $15,379,362.49. Cajon asserts a claim in the amount of $16,428,631.60. The Proof of Claim is not sufficiently detailed to enable the objecting parties to determine the components of the excess $1,049,269.11 ($16,428,631.60 - $15,379,362.49) and whether any portion thereof is allowable in excess of the amounts required to cure as set forth in Part II above. The objecting parties might stipulate to allow certain components of Cajon's claim that comprise the extra $1,049,269.11. However, unless and until sufficient documentation is provided, the objecting parties object, due to lack of documentation or substantiation, to the following components of Cajon's claim to the extent they comprise the unsubstantiated $1,049,269.11: Interest, appraisal fees, foreclosure fees, attorneys' fees, witness fees, force place insurance, and "other fees." *See* Cajon's Proof of Claim, ECF p. 1 of 143. The objecting parties reserve the right to address on reply (and if necessary, through supplemental objection) to any new or additional information or documentation that Cajon submits to shed light on these components of its purported claim.

V.

CONCLUSION

For the reasons stated above, Cajon's claim should be limited to the missed interest-only payments called for under the Settlement Agreement from and after August of 2014 (which is when the Debtor tendered a payment to FENB and FENB refused it) until the $8.5 million

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balloon payment is paid, plus the $8.5 million balloon payment, less credit for the $120,000 that the Debtor paid to Cajon during 2015.

Dated: December 11, 2015

CURRY ADVISORS
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and

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