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[PROPOSED] ATTORNEYS FOR DEBTOR
SR REAL ESTATE HOLDINGS, LLC

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

IN RE: SR REAL ESTATE HOLDINGS, LLC DEBTOR	CASE NO. 13-09784-PB11
DACA 2010L L.P. & SARGENT RANCH MANAGEMENT COMPANY, LLC MOVING PARTY SR REAL ESTATE HOLDINGS, LLC RESPONDENT	RS NO. WMR-001 **SR REAL ESTATE HOLDINGS, LLC'S OMNIBUS OPPOSITION TO SECURED CREDITOR DACA2010L L.P.'S MOTIONS TO DISMISS CHAPTER 11 CASE AND FOR RELIEF FROM STAY** **Date: November 4, 2013** **Time: 2:30 p.m.** **Dept: 4, Room 328** **Judge: Hon. Peter W. Bowie**

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SR Real Estate Holdings, LLC, debtor and debtor-in-possession (the "Debtor"), by and through its undersigned proposed counsel, hereby submits this Omnibus Opposition[1] (the "Opposition") to DACA 2010L L.P. and Sargent Ranch Management Company, LLC's (collectively, "DACA") Motions to (i) Dismiss Chapter 11 Case with Prejudice, to Find that the Debtor is a Single Asset Real Estate Debtor Again[2] or Alternatively Grant Relief From Stay (the "Motion to Dismiss") and (ii) for Relief from Stay (the "RFS Motion," together with the Motion to Dismiss, the "Motions").

I. INTRODUCTION

The backdrop of this case involves multiple individuals and persons holding claims via factionalized interests in various notes and trust deeds. Aptly, the Court, on May 17, 2011, noted that "[t]his case has a tortured history of groups of investors, fractured by distrust, claims of priority, and the like." After that date, however, a majority of 1st TD Holders[3] recorded, on August 14, 2012, a Majority Action Affidavit[4] documenting a global compromise that would have ended that tortured history. The majority of Holders were preparing to open a new chapter of development and recovery for all Holders, including the many individual lenders who have been waiting for years for a return of the money they lent to Wayne Pierce and his entity, SR LLC. Rather than end the torture for the lenders, DACA, in a transparent attempt to thwart the will of the majority, commenced litigation and threatened additional litigation to prevent the loan servicer from following the will of the majority. The 1st TD Holders became fatigued and/or

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[1] The Court authorized the Debtor to file an omnibus opposition pursuant to that certain order entered on October 16, 2013 [Dkt. No. 71].

[2] Although not briefed by DACA, the Debtor does not contest that it is a SARE and consents to the Court making such a finding at the November 4th hearing.

[3] Capitalized terms used in this Introduction shall have the meaning ascribed to such terms in this Opposition.

[4] Calif. Civ. Code § 2941.9 provides that any action taken by a majority of the interest holders in a note secured by a trust deed is not effective unless all the parties agreeing to the action sign under penalty of perjury and record a document entitled "Majority Action Affidavit" which satisfies certain content requirements set forth in the statute.

intimidated by DACA's onslaught and DACA was able to acquire the claim of Tena Collins to control the "majority in interest" (but not in number) of the 1st TD. Thereafter, DACA pursued its own recovery strategy (foreclosure) for the benefit of 14 1st TD Holders and to the detriment of the remaining approximately 56 Holders. The Debtor, with the financial backing of SDI, the expertise of FTI and the legal counsel of Foley & Lardner LLP and Solomon Ward Seidenwurm & Smith LLP, will shortly be proposing a plan of reorganization focused on developing the Property for the benefit of all creditors.

Notwithstanding DACA's baseless assertions, this case was not filed to delay the foreclosure or wait for the return of a favorable market. This case was filed to confirm a plan of reorganization that provides the 1st TD Holders what they are entitled to (a secured claim equal to the value of their collateral) and a sharing among all unsecured creditors, including the unsecured portion of the 1st TD Holders' claims, of the potential upside value of the Property. But for DACA's anti-democratic greed and desire to deprive the majority of Holders of any recovery on account of their long standing interest in the Trust Deeds (the proceeds of which not only funded the acquisition of the Property but paid interest to DACA's predecessors in interest), this case would not have been necessary. It became necessary, and in keeping with the long standing understanding among the Original Holders – many of whom are neighbors, colleagues and friends – the Debtor elected, in good faith, to pursue a strategy for reorganization that would benefit all creditors, not just the minority in number which DACA represents.

Unlike SR LLC – a separate and distinct entity with no connections whatsoever to the Debtor – this Debtor has no desire to languish in Chapter 11. Moreover, unlike the prior cases where all parties speculated as to the potential riches that could flow from the Property but none were prepared to put anything at risk, the Debtor intends to promptly propose a confirmable plan of reorganization to be funded through a capital infusion sufficient to make the plan viable and successful. The capital infusion will not be in the form of a priming lien or require the types of "guaranties" that this Court recognized were linked with all proposals received by SR LLC and its Chapter 11 Trustee. In fact, hundreds of thousands of dollars have already been put at risk to fund this case and to fund the preparation of the plan. In other words, new cash is currently at

risk and will be at risk if the plan is confirmed.

This is not Sargent Ranch #3, but rather SR Real Estate Holdings #1 with the only similarity being the Property and its attendant secured debt.

The Debtor filed this case in good faith with the present ability to propose and confirm a plan of reorganization. Recognizing that a confirmable plan would require millions of dollars to fund, the Debtor secured commitments from the principals of SDI to provide such funds in advance of the filing. Knowing that the development of the Property will require expertise not possessed by the Debtor or its principals, the Debtor suggested that SDI retain FTI (www.fticonsluting.com) to fully vet the proposed development for the Property and assist with the preparation of a detailed and complete feasibility analysis. Seeing a realistic and probable path for reorganization, the Debtor obtained loans for $350,000 to retain counsel sufficiently familiar with the complexities of the Property and debt structure to promptly prepare and propose a confirmable plan. Therefore, it is beyond dispute that the Debtor filed this case in good faith and DACA's Motion to Dismiss and RFS Motion should be denied.

II. BACKGROUND FACTS

A. The Property and the Loans.

The Debtor's property consists of approximately 6,400 acres of raw land straddling Santa Cruz and Santa Clara counties (the "Property"). The Property was initially acquired by Sargent Ranch, LLC ("SR LLC") in or around May of 2000 for an approximate purchase price of $17,000,000. SR LLC financed the acquisition through a loan provided by First Blackhawk Financial Corporation ("Blackhawk"). The initial loan, in June of 2000, was for $15 million and was subsequently increased to $25 million in November of 2000 (the "1st Loan"). Blackhawk then fractionalized and sold interests in the 1st Loan to various individual investors. The 1st Loan was secured by a deed of trust recorded against the Property (the "1st TD"). Each holder of an individual interest in the 1st Loan has a corresponding individual beneficial interest in the 1st TD (each individual holder of an interest is referred to as a "1st TD Holder").

SR LLC borrowed an additional $15 million from Blackhawk in November of 2000 (the "2nd Loan"), who, again, factionalized and sold individual interests in the 2nd Loan to various

individual investors. The 2nd Loan was secured by a deed of trust recorded against the Property (the "2nd TD"). Each holder of an individual interest in the 2nd Loan has a corresponding individual beneficial interest in the 2nd TD (each individual holder of an interest is referred to as a "2nd TD Holder").

SR LLC then borrowed an additional $3 million from Blackhawk in October of 2003 (the "3rd Loan," together with the 1st Loan and the 2nd Loan, the "Loans"), who, again, fractionalized and sold individual interests in the 3rd Loan to various individual investors. The 3rd Loan was secured by a deed of trust recorded against the Property (the "3rd TD," together with the 1st TD and the 2nd TD, the "Trust Deeds"). Each holder of an individual interest in the 3rd Loan has a corresponding individual interest in the Third Deed of Trust (each individual holder of an interest is referred to as a "3rd TD Holder," together with the 1st TD Holders and the 2nd TD Holders, the "Holders").

B. The Original Holders.

Blackhawk's offices were located in Danville, California. Blackhawk sold interests in the Loans primarily to people who lived and worked in the Danville area and who were neighbors, friends and colleagues with long standing relationships (the "Original Holders"). Indeed, many of the Original Holders lived in a residential community called "Blackhawk." The neighborhood and relationship based status of the Holders which led to the original financing for SR LLC cannot be overemphasized. While some of the Original Holders did not come to Blackhawk through their neighbors, all understood this to be a collective enterprise for the benefit of all Original Holders. As a result, Blackhawk used portions of the 2nd Loan to pay interest to the 1st TD Holders and use portions of the 3rd Loan to pay interest to the 1st TD Holders and the 2nd TD Holders. Moreover, due to the "neighborly" relationship between the Original Holders, for many years there was a lack of enforcement due to the lenders' general desire not to foreclose or otherwise wipe-out the interests of their neighbors, friends and colleagues.

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C. Pierce Thwarts Efforts to Recoup Collateral, 1st TD Holders Request that 3rd TD Holders Foreclose.

After SR LLC and its then manager Pierce proved that they could not capitalize on the significant potential value of the Property, the 3rd TD Holders at the direction of then majority of 1st TD Holders commenced foreclosure on the Property in late 2009. Had the 3rd TD been foreclosed, none of the lenders would have been harmed because the 1st TD Holders and the 2nd TD Holders would have retained their security interest while the 3rd TD Holders would have owned the Property. The goal of the 3rd TD Holders was to remove Pierce who had proved incompetent, if not worse, and to work with the 1st TD Holders and the 2nd TD Holders to find a fair and equitable way to (1) develop the Property and (2) distribute the proceeds among the holders of interest in the Loans but recognizing the relative priorities. The foreclosure, however, was interrupted by the first bankruptcy case filed by Pierce.

D. Pierce Files Bankruptcy on Eve of the Foreclosure by the 3rd TD.

SR LLC filed its first bankruptcy case to prevent the foreclosure by the 3rd TD Holders (again, which was initiated at the request of the 1st TD Holders). As this Court is well aware, SR LLC pursued a number of tacks, none of which was successful. Although DACA attempts to blur the lines, it is beyond dispute that the Debtor – SR Real Estate Holdings, LLC – is entirely separate from Pierce and SR LLC (the prior debtor). The only similarity is that SR LLC and the Debtor both owned the Property. Beyond that, any attempt by DACA to link the bankruptcy cases is, at best, disingenuous.

E. SR LLC's Prior Bankruptcies Were Unsuccessful Because No One Was Prepared to Risk their Own Funds.

The primary reason SR LLC's bankruptcy cases failed was because no one was willing to put their money where their mouth was. Everyone, including DACA, desired to benefit from the potential riches from the development of the Property, but no one was willing to put any money at risk. In denying the Chapter 11 Trustee's motion for financing, this Court explained that:

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> The Court is mindful that this case, which has been pending over 16 months, has not brought forth any third party, or any creditor or group of creditors, who asserts belief in the economic viability of this property. No one has stepped forward with any proposal to fund even the modest first steps the trustee proposes without all sorts of guarantees.

RJN, Ex "12" at 4:18-23. As a result at that time and based on those circumstances, this Court justifiably determined that "[t]here does not appear to be a solution in the bankruptcy arena for this property and these parties." RJN, Ex "13" at 2:20-22. But the circumstances have changed. As detailed below, certain principals of SDI and the Debtor have over $500,000 currently at risk and have committed to infuse millions into the reorganized debtor to support the plan in the form of an equity infusion, not a priming loan.

F. 3rd TD Holders Ultimately Foreclose.

Following the dismissal of the SR LLC bankruptcy cases, the 3rd TD Holders finally completed their nonjudicial foreclosure. The Debtor was created on January 25, 2012. At the time of the foreclosure in April and May of 2012, the 3rd TD Holders had not finalized an operating agreement for the Debtor and, therefore, initially took title to the Property as tenants in common. Promptly after finalizing the operating agreement, the Property was contributed into the Debtor in exchange for corresponding membership interests. Like any foreclosing entity, particularly one where there are multiple holders of interests, the 3rd TD Holders determined that it was in their best interest for the Property to be held by a separate limited liability company established 20 months before this Chapter 11 Case was filed. RJN, Ex. "11". Despite DACA's unsupported statements to the contrary, the Debtor was not formed for the sole purpose of filing a bankruptcy, but rather as a legitimate business entity based on advice received by the 3rd TD Holders.

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G. DACA Attempts to Thwart Will of Majority Through Harassing Litigation Against the 1st TD Holders, DACA Loses Time and Time Again.

At the time of the foreclosure by the 3rd TD Holders, DACA and a group of approximately 12 1st TD Holders represented by Jeff Goodrich did not control a majority in interest in the 1st TD. Rather than work to build a consensus with its fellow 1st TD Holders, DACA pursued a scorched earth litigation strategy with a singular purpose: fatigue and intimidate the individual 1st TD Holders, who at that time had a majority-in-interest, to allow DACA to acquire their interests. Each of DACA's meritless legal actions against its fellow lenders has failed.

Frustrated that it could not rally a majority-in-interest of the 1st TD Holders to support its chosen course of action, DACA filed an action against 1st TD Holders Al and Linda Kralik for supposed breach of fiduciary duty for voting against DACA's plans and encouraging others to do the same. This action was *DACA 2010L, LP v. Sargent Ranch Servicing Corp. et al.*, Case No. CIV MSC 12-00654. RJN, Ex. "4". The purpose of the DACA litigation was to intimidate and silence the voices of those who disagreed with DACA. The Contra Costa Superior Court agreed that DACA's litigation attack on the Kralik Family was an impermissible SLAPP suit, dismissed it and ordered DACA to pay the Kralik Family's attorney's fees in the amount of $29,795.60. DACA paid the amount. RJN, Ex. "8". The Court specifically found the statements made by the Kraliks against DACA's pursuit of foreclosure to be protected speech: "It was in this context of discussions over the future of Sargent Ranch – an issue of public interest – that Mrs. Kralik communicated her views to other lenders. Such communications were in connection with an issue of public interest, and fall under the protections of §425.16." RJN, Ex. "6" at 5:4-7.

Undeterred, DACA also alleged breach of fiduciary duty by other 1st TD Holders who also held junior debt. The Contra Costa Superior Court found that the lenders did not owe each other any fiduciary duty as a matter of law but instead were free to vote their own conscience and interests with respect to the Property. RJN, Ex. "7" at 4:17-20. Accordingly, the demurrer of the 1st TD Holders was sustained and the Court dismissed DACA's breach of fiduciary duty claim with leave to amend. RJN, Ex "7". DACA filed an amended complaint against the same 1st TD

Holders which plead a claim for breach of covenant of good faith and fair dealing based on the fact that the defendant 1st TD Holders did not vote to support immediate foreclosure on the Sargent Ranch property. This claim also failed as a matter of law and DACA's claims against the defendant 1st TD Holders were dismissed without leave to amend. In so holding, the Court wrote: "Indeed, where the Agreement expressly makes provision for a course of action to be determined by voting, it is reasonable to expect that there would be discussion among the lenders regarding such a vote, with different lenders having different interests and different views as to the best course of action." RJN, Ex. "9" at 5:12-15. In sum, the Court flatly rejected DACA's efforts to inhibit the ability of its fellow lenders to vote their own interests and to discuss those votes among themselves freely. The Court subsequently entered judgment against DACA and in favor of the defendant 1st TD Holders.

At the same time, and in the same Court, DACA and Mr. Goodrich sought to multiply the litigation burden on the 1st TD Holders by filing a separate action entitled *Associated Management et al. v. Kralik et al.*, Case No. CIV MSC 12-00786. RJN, Ex. "5". Initially, this action sought only declaratory relief among the lenders but, earlier this year, plaintiffs filed an amended complaint against the 1st TD Holders, without leave of court, that sought to add (among others) the same meritless breach of fiduciary duty and breach of covenant claims asserted in the separate DACA action referenced. In addition to being legally meritless and repetitive of the claims rejected in Case No. CIV MSC 12-00654, this purported amended complaint was impermissible based on lack of leave of court. On July 9, 2013 the Contra Costa Superior Court granted a motion to strike the amended complaint and instructed that leave of court would be needed before any further amendments would be permitted. RJN, Ex. "5". To date, despite the passage of over three months, neither DACA nor Mr. Goodrich's clients have sought leave to amend. *Id.*

H. The Consensual Agreement with Majority of 1st TD Holders and 2nd TD Holders – A Possible Universal Settlement.

After the foreclosure of the 3rd TD and removal of Pierce, the Holders began negotiation a consensual agreement to end the "torture." On August 14, 2012, the Majority Action Affidavit

#1 ("MAA #1") was recorded against the Property. RJN, Ex. "1". MAA #1 was validly executed by holders of more than 50% of the beneficial interests in the 1st TD. Pursuant to MAA #1, the majority of 1st TD Holders instructed the servicer selected by DACA – Sargent Ranch Servicing Corporation – to pursue a global settlement in the form attached as Exhibit "B" to MAA #1. The settlement agreement, titled "Real Property Asset Exchange and Payment Agreement" (the "Consensual Agreement"), provided for transfer of the Property to the 1st TD Holders and a payment waterfall for the distribution of any proceeds from the Property. *Id.* Under the Consensual Agreement, the 1st TD Holders were to receive the first $37.5 million in proceeds, sharing of additional proceeds until the 2nd TD Holders and 3rd TD Holders received a return of their principal ($18 million). All remaining proceeds were to flow to the 1st TD Holders.

I. Defective Notice of Default is Recorded and DACA Acquires an Additional Claim To Thwart Majority and Pursue the Desire of Minority.

Prior to the execution of MAA #1, Richard Ehrenberger (a client of Mr. Goodrich) recorded a defective Notice of Default purporting to be on behalf of all 1st TD Holders. RJN, Ex. "3", at Exhibits 3 and 4. However, the majority at the time did not authorize the recording of a Notice of Default and MAA #1 expressly disavowed this defective Notice of Default.

Shortly after MAA #1 was recorded, DACA asserted that the signature of Tena Collins was not valid because Shazara Services Ltd. was the record holder of that interest and not Ms. Collins. DACA then threatened litigation against Sargent Ranch Servicing Corporation to prevent the servicer from complying with the terms of MAA #1. Rather than risk protracted litigation (and further "torture") with DACA, the servicer sought to have Ms. Collins re-execute MAA #1 in the name of Shazara Services Ltd. However, behind the scenes DACA was actively pursuing an acquisition of Ms. Collins' interest in the 1st TD. Knowing that acquiring Ms. Collins' claim would give DACA a majority in interest (when combined with Mr. Goodrich's clients) and rather than allowing the "torture" to finally end by way of the Consensual

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Agreement, DACA elected to thwart the will of the majority.[5] The sole purpose of DACA's acquisition of Tena Collins' interest in the 1st TD was to prevent the 1st TD Holders from going forward with MAA #1 and allowing all Holders to benefit from the Consensual Agreement.

J. DACA, Having Acquired "Majority in Amount," Pursues Foreclosure Against the Wishes of the Vast Majority in Number of 1st TD Holders.

After acquiring Tena Collins' interest in the 1st TD, DACA together with the purported clients of Mr. Goodrich owned approximately 57% of the interests in the 1st TD. As such and pursuant to the loan servicing agreement governing the 1st TD, DACA purchased not only its interests but also control and the ability to pursue its foreclosure strategy.[6] DACA then fired the servicer because DACA felt the servicer was more aligned with those creditors interested in a consensual agreement[7], replaced it with another hand-picked servicer, purported to ratify the defective Notice of Default recorded by Mr. Ehrenberger and instructed the new servicer to pursue a foreclosure of the Property. RJN, Ex. "2".[8] After buying the majority in interest of the 1st TD, DACA was unwilling to negotiate with the majority in number of 1st TD Holders, put its blinders on and pursued its foreclosure notwithstanding the significant harm that such foreclosure would cause the majority of the Original Holders.

K. Debtor Files Bankruptcy Case to Promptly Propose Plan of Reorganization.

On August 20, 2013 (the "Petition Date"), the Debtor filed its voluntary petition for relief under chapter 11 of the Bankruptcy Code (the "Chapter 11 Case"). The Debtor is operating its

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[5] Based on DACA's actions and its unclean hands, the Debtor is currently evaluating the possibility of equitably subordinating its claims to those of the Original Holders.

[6] As set forth in the Debtor's voting procedures motion which will be heard simultaneous with the Motions, while the Loan Servicing Agreements govern certain actions outside of bankruptcy, they do not control voting under 1111(b) or 1126 of the Bankruptcy Code.

[7] The termination of the prior servicer, Sargent Ranch Servicing Corporation, has given rise to a claim for unpaid servicing fees to which DACA has exposed all 1st TD Holders even those not in agreement with the strategy.

[8] The amendment to DACA's purported Majority Action Affidavit was recorded against the Debtor's Property on October 11, 2013 – i.e. postpetition – and is, therefore, void. Similarly, DACA recorded a purported Majority Action Affidavit #2 on the same date which is also void.

business and managing its properties as a debtor-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this Chapter 11 Case.[9]

The Debtor filed the Chapter 11 Case in the Northern District of California – the only permissible venue for the Chapter 11 Case. The case was assigned to the Honorable Charles Novack who found that "[t]his Chapter 11 case could not have been originally filed … in the Southern District of California." *See* Dkt. No. 42, at 2: 9-10. Notwithstanding that venue was only proper in the Northern District of California, on September 26, 2013, venue of the Chapter 11 Case was transferred to this District at the joint request of DACA and the Debtor and assigned to this Court.

The Debtor will be promptly proposing a confirmable plan of reorganization and a detailed disclosure statement describing the feasible development plan that will be executed by the reorganized debtor and its professional and experienced management team. The Debtor has secured a commitment from Sycamore Development, Inc. ("SDI") to provide several million dollars by way of an equity infusion. In addition, SDI has retained FTI Consulting, LLC ("FTI") and Solomon Ward Seidenwurm & Smith LLP to assist with the preparation of the plan, the development strategy, the feasibility analysis and the valuation of the Property. The plan will provide for a significant equity infusion, give the 1st TD Holders[10] a new note equal to the value of the Property secured by a new deed of trust and distribute to the unsecured creditors (including the undersecured portions of the 1st Loan and the 2nd Loan) cash and equity in the reorganized debtor.

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[9] A receiver was appointed over the Property by the Superior Court of the State of California County of Santa Clara. On October 1, 2013, the receiver turned over the Property to the Debtor.

[10] With the exception of those certain 1st TD Holders, including DACA, who might be equitably subordinated to the Original Holders.

L. Clarification of DACA's Allegations.

To avoid perpetuating misleading and/or false statements in DACA's Motions, the Debtor provides the Court with the following information. **First**, there is no such thing as a "Conflicted Holder." As explained in Section II.G., *supra*, DACA's claims of breach of fiduciary duty and covenant of good faith and fair dealing were raised and dismissed by the Contra Costa Court. Each Holder is permitted to look out for its own interest or the interests of its fellow Holders.[11] To be absolutely clear, DACA's definition of a Conflicted Holder is: any Holder who does not support DACA's foreclosure strategy. **Second**, Foley & Lardner LLP does not represent – in any matter – directly or indirectly Admiral Benson or any of his related entities which have claims in this case. *See* Vilaplana Decl., Dkt. No. 28 at ¶33 and Schedule I.[12] **Third**, the Chapter 11 Case is support by a majority in number of 1st TD Holders and the vast majority of the unsecured creditors. The Chapter 11 Case will provide a fair and equitable solution for all Holders. **Fourth**, the Chapter 11 Case will not deprive the 1st TD Holders of anything. They will be entitled to a secured claim equal to the value of the Property or, with the requisite support, the benefits which might flow from an 1111(b) election. Further, the Holders of the unsecured portion of the 1st TD will share in the equity in the reorganized debtor which will be distributed to all unsecured creditors pro rata. **Finally**, without evidentiary support – because none exists – DACA alleges that that Enderley Limited and Barry Seymour "orchestrated" the Debtor's filing and "lent" Foley & Lardner to the Debtor. These allegations are false. The Holders were on the verge of a global compromise agreement to end the "torture." DACA, through intimidation and litigation onslaught, managed to acquire the claim of Tena Collins thereby acquiring control and thwarting the global compromise. The Debtor commenced this case to pursue a similar compromise which the Debtor believes is supported by 42% in amount and more than half in number (based on DACA's own calculation) of 1st TD Holders and

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[11] On information and belief, DACA owns (or has options to own) interests in the 2nd TD. Therefore, DACA itself is a Conflicted Holder, if such a holder could exist.

[12] On or about October 24, 2013, DACA retracted its false accusation regarding Foley's representation of Admiral Benson.

the vast majority (likely all except for DACA) of the unsecured creditors, including the 2nd TD Holders. The baseless allegations of bad faith and behind the scenes orchestration could not be further from the truth.

M. Debtor's Post-Filing Cooperation with DACA Demonstrates the Debtor's Good Faith.

Since the Petition Date and notwithstanding the significant anticipated disputes with DACA, the Debtor has pursued a strategy of cooperation with DACA further evidencing its good faith in filing the petition. As detailed above, this is not Sargent Ranch #3, but rather a legitimate chapter 11 case with a singular goal: promptly propose and confirm a plan of reorganization while avoiding unnecessary and unproductive disputes.

When DACA challenged the Debtor's choice of venue, the Debtor informed DACA that the Northern District was the only proper venue (as confirmed by Judge Novack) but agreed to file a joint motion requesting that venue be transferred to this District and to this Court.[13] The Debtor further agreed to cooperate with DACA regarding the receiver – first to let him stay, then later when DACA changed its mind to have him turn over the Property of the Debtor.

The Debtor's willingness to cooperate with DACA evidences the Debtor's good faith in pursuing this Chapter 11 Case. If the case were about delay (as asserted by DACA), the Debtor would not have agreed to work with DACA to transfer venue to this District, to allow DACA's receiver to remain in place, or to allow DACA with reasonable access to the Property in connection with the core issue in this case: the value of the Property.

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[13] To clarify: This case was filed in the Northern District because that was the only site of proper venue. The Debtor quickly agreed to the transfer and agrees further that given this Court's knowledge of the Property and its debt structure it is the most suitable to preside over the Case.

III. THE DEBTOR'S CHAPTER 11 CASE SHOULD NOT BE DISMISSED

A. DACA Has Failed to Show by a Preponderance of the Evidence That Cause Exists to Dismiss the Chapter 11 Case.

As the party seeking to dismiss the Chapter 11 Case, DACA bears the burden of demonstrating that cause exists by a preponderance of the evidence. *Labankoff v. United States Tr. (In re Labankoff)*, 2010 Bankr. LEXIS 5083, *9 (B.A.P. 9th Cir. June 14, 2010). DACA has failed to carry this burden. Preponderance of the evidence "means that [the evidence] is sufficient to persuade the finder of fact that the proposition is more likely true than not." *United States ex. rel. Farmers Home Admin. v. Arnold & Baker Farms (In re Arnold & Baker Farms)*, 177 B.R. 648, 654 (B.A.P. 9th Cir. 1994). Here, that threshold was not satisfied. DACA's attempts to link the Debtor's Chapter 11 Case with the prior bankruptcy cases by SR LLC are misplaced. That the Debtor's primary asset is the Property, that the Chapter 11 Case was filed to stop a foreclosure and that the Debtor has no employees is insufficient to establish cause by a preponderance of the evidence. Accordingly, the Motion to Dismiss should be denied. However, even if the Court finds that DACA carried its burden – which it did not – the overwhelming evidence shows that the Debtor filed the Chapter 11 Case in good faith.

B. The Debtor Filed the Chapter 11 Case in Good Faith and is Pursuing a Legitimate Bankruptcy Strategy: A Reorganization for the Benefit of All Creditors.

Ninth Circuit precedent provides "good faith is lacking only when the debtor's actions are a clear abuse of the bankruptcy process." *In re Arnold*, 806 F.2d 937, 939 (9th Cir. 1986). No abuse of the bankruptcy process exists when "the purpose is not to delay or defeat creditors, but rather … to invoke the operation of the [bankruptcy law] in the spirit indicated by Congress in the legislation, namely, to attempt to effect a speedy efficient reorganization, on a feasible basis..." *Id.* (quoting *In re Thirtieth Place, Inc.*, 30 B.R. 503, 505 (B.A.P. 9th Cir. 1983)). "The existence of good faith depends on an amalgam of factors and not on a specific fact." *Id.* "The test is whether a debtor is attempting to unreasonably deter and harass creditors or attempting to effect a speedy, efficient reorganization on a feasible basis." *In re Marsch*, 36 F.3d 825, 828 (9th

Cir. 1994). As detailed herein, the Debtor commenced the Chapter 11 Case for the benefit of all creditors (*i.e.* the spirit indicated by Congress) to achieve a speedy and efficient reorganization. Accordingly, the Chapter 11 Case was filed in good faith and "cause" does not exist to dismiss the Chapter 11 Case.

1. The Debtor is Not Abusing the Bankruptcy Process.

The Chapter 11 Case was not commenced to abuse the bankruptcy process but, rather, to facilitate (as nearly as possible) the Consensual Agreement reached by a majority in number of the 1st TD Holders and 2nd TD Holders before DACA thwarted the agreement by purchasing Tena Collins' interest in the 1st TD. DACA provides no support for its contention that the Debtor is somehow abusing the bankruptcy process. Indeed, the legal authority cited by DACA militates toward a finding that the Chapter 11 Case is not an abuse of the bankruptcy process. *See* 7 Collier on Bankruptcy ¶ 1112.07[1] n. 2 (Alan N. Resnick & Henry J. Sommer eds., 16th ed.) (discussing abuse of chapter 11 process as reason to dismiss chapter 11 case and citing to cases where debtor had no intent or ability to reorganize).[14]

Here, the Debtor has both the intent and ability to reorganize. The Debtor has obtained commitments from SDI, the plan sponsor, to fund the plan and is working closely with the plan sponsor's professionals and advisors to prepare and file (and fund) a confirmable and viable plan of reorganization. Moreover, the prior cases of SR LLC – a separate and distinct entity with no connections whatsoever to the Debtor – are irrelevant as is the fact that SR LLC was incapable of confirming a plan. The 3rd TD Holders – the owners of the Debtor – have had an interest in the Property since the 3rd TD was recorded in 2003. After foreclosure of the 3rd TD, the 3rd TD Holders contributed the Property into the Debtor in exchange for membership interests therein. The 3rd TD Holders believed that a Consensual Agreement was in place that would have resulted

[14] This Court's opinion in *In re Strause* (considering the good faith filing of a chapter 13 case when a chapter 7 case was pending) is wholly inapplicable (when cited in full) to the facts of this case. 97 B.R. 22, 29 (Bankr. S.D. Cal. 1989) ("The viability of the subsequent petition under Chapter 13 [filed when a chapter 7 case was pending] should be assessed in light of the standards applicable to Chapter 13 cases generally and, more particularly in light of the debtor's good faith.")

in the repayment of their $3 million in principal after the 1st TD Holders and 2nd TD Holders recovered a sum certain. However, DACA's acquisition of the Tena Collins claim and the majority of interests in the 1st TD prevented the Consensual Agreement from being consummated.

The Debtor's plan will be filed shortly (and certainly within the SARE deadlines) and will provide fair and equitable treatment for all creditors. The Chapter 11 Case is not an abuse of the bankruptcy process. The Chapter 11 Case is the first bankruptcy case filed by this Debtor, was filed due to DACA's unwillingness to support the Consensual Agreement, and was filed with the intent and ability to reorganize. Accordingly, the Chapter 11 Case should not be dismissed.

2. *ACI Sunbow* is Inapposite.

DACA's decision to centerpiece this Court's opinion in *ACI Sunbow* is as curious as it is misguided. As the keystone for DACA's argument, it is essential to explore the facts of that case. Originally, an entity called Rancho Del Sur gave a note for $5 million to United Enterprises, Inc. secured by a first priority trust deed on Rancho Del Sur's property. 206 B.R. 213, 215 (Bankr. S.D. Cal. 1997). Rancho Del Sur borrowed additional funds secured by a second trust deed. *Id*. By 1996, the principal amount and accrued interest on the note secured by the second trust deed exceeded $25 million. *Id*. The principals of ACI Sunbow who, at the time, had "no economic involvement with the real property or its then owner, Rancho Del Sur" decided "to bid for the note and second position trust deed." *Id*. An investment vehicle (ACI Sunbow) was created, and acquired the note and second trust deed position against the property paying some 1% of face value. *Id*. Notably, at the time of ACI Sunbow's creation the note secured by the first trust deed was not only already in default, but was to become all due and payable by its terms just a week later. *Id*. at 216. Despite the actual knowledge of a soon to mature $9.4 million debt ($10.4 million when taxes were included), the principals of ACI Sunbow created their investment vehicle without a dollar of equity capital and acquired the property by foreclosure subject to the first trust deed. *Id*. Unable to negotiate a deal with the first trust deed holders, ACI Sunbow filed its Chapter 11 case. *Id*. Ultimately, this Court granted

the first trust deed holders' motion for relief from stay for cause based on a finding of the debtor's bad faith. *Id*. at 225.

Of critical importance to the holding in *ACI Sunbow* – a fact referred to not less than ten times – was that "***Sunbow was a stranger to the property, as were its principals***" and Sunbow was not seeking to "***preserve any investment*** made by any of its principals in the Rancho Del Sur project prior to acquisition of the new land by Sunbow." *Id*. at 223-24 (emphasis added). The Court explained:

> It is essential to understand what Sunbow does not propose to do. Sunbow did not ride in on its proverbial white horse with a sack full of cash to salvage the Rancho Del Sur joint venture. Nor is this a bankruptcy case filed to reorganize Rancho Del Sur to preserve the going concern or to save jobs of Rancho's employees. Nor is there any intent to pay any of the creditors for debts Rancho Del Sur incurred, except for the two unavoidable ones – the real estate taxes and United's senior trust deed. Nor is Sunbow trying to preserve any investment made by any of its principals in the Rancho Del Sur project prior to acquisition of the new land by Sunbow.

Id. at 223. This Court further explained that the debtor's bad faith was evidenced by the fact that "[k]nowing that the senior lien was in default and foreclosure had begun, knowing that the note was on the eve of maturing, and knowing that the debtor had no ability to pay if off, the debtor was created to borrow funds to buy the junior lien and then squeeze United to agree to a restructuring with the threat of bankruptcy." *Id*. at 224. Further, this Court noted that "[w]here there is ***no prior economic relationship between the proponent and the property***, the bankruptcy process has no interest in the transaction because it serves no legitimate bankruptcy interest." *Id*. (emphasis added). This Court went on to explain that "bankruptcy has no role to play in that transaction when the purchaser does not seek to [reorganize] a struggling business or to ***salvage equity interests previously invested in that struggling enterprise***." *Id*. (emphasis added).

The facts of this case are distinguishable in substantial and material ways from those of *ACI Sunbow*.[15] **First**, the Debtor is comprised of the former holders of the 3rd TD. The 3rd TD Holders have had an interest in the Property since 2003 when they lent $3 million to SR LLC (much of which was paid to the 1st TD Holders and 2nd TD Holders as interest payments). Therefore, unlike the principals in *ACI Sunbow*, the principals of the Debtor have had an interest in the Property for over a decade. DACA's unsubstantiated claim that the Debtor "came to the property with no prior interest in it" is factually false. **Second**, the Debtor only commenced the Chapter 11 Case after obtaining commitments to fund a viable plan of reorganization. Thus, unlike *ACI Sunbow*, the Debtor is riding the proverbial white horse with a sack full of cash to fund a confirmable plan. **Third**, the Debtor intends to use the bankruptcy process to consummate a deal that closely resembles the Consensual Agreement DACA thwarted.[16] The Debtor is confident, based on the support shown via the Consensual Agreement, that it will have sufficient votes to confirm its plan of reorganization. **Fourth**, while the Debtor likely will have no choice but to invoke the cram-down powers of the Bankruptcy Code, the Debtor is not doing so to pursue a speculative and uncapitalized venture to the detriment of the secured creditors, but rather with a material investment to preserve the potentially significant value for all creditors. In sharp contrast to *ACI Sunbow*, where none of Rancho Del Sur's creditors were expected to

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[15] DACA's reliance on *ACI Sunbow* is especially curious given that DACA (like the debtor in ACI Sunbow) first acquired its interests in the 1st TD beginning on or around the commencement of the first bankruptcy case by SR LLC and likely at significant discounts. Like the principals of ACI Sunbow, DACA had no prior economic interest in the 1st TD prior to buying others' initial investments. DACA's interests were acquired over 7 years after the 1st TD went into default. Finally, on the eve of the Consensual Agreement, among all lenders, DACA purchased its final piece to embark on a strategy to wipe out the junior creditors and grab any potential future value for itself. The Debtor questions whether that is a legitimate strategy that will be tolerated by this Court. In any event, tarring the Debtor's principals with motives and tactics described in *ACI Sunbow*, on this record, is a bit like the pot calling the kettle "black", except that the Debtor is not even a kettle.

[16] It is critical to note that this case does not pose a single senior creditor against a single junior creditor/debtor. Rather, both the 1st TD and the 2nd TD have numerous holders who have conflicting goals and plans for the Property. Simply because DACA acquired a majority in amount of the 1st TD, does not mean that DACA's desire to foreclose must be the only solution.

benefit from the reorganization, here, the many unsecured creditors stand to potentially benefit from a successful reorganization. **Fifth**, the Debtor's plan is not a speculative real estate venture imposing uncompensated and unreasonable risk on the secured creditors as DACA hypothesized. Instead, the Debtor's plan will provide the 1st TD Holders with what they are entitled to under the Bankruptcy Code – including the ability to make the section 1111(b) election – while providing an interest reserve to adequately protect the 1st TD Holders and sufficient capital to pursue a viable business plan for the reorganized Debtor. At risk is the new capital, not the 1st TD Holders' interest in the Property.

As this Court held in *ACI Sunbow*, "Congress did not intend to extend to business adventurers who are strangers to the debt the use of Chapter 11 to coerce agreements from secured creditors under the circumstances present in this case." *Id*. at 225. The Debtor is not a business adventurer, is not a stranger to the debt (like DACA) and is not using Chapter 11 to coerce agreements from the secured creditors. Rather, the Debtor, owned by the former 3rd TD Holders, took title to the Property after the foreclosure of the 3rd TD and commenced this Chapter 11 Case only after DACA's coercive tactics prevented the consummation of the Consensual Agreement. Accordingly, *ACI Sunbow* offers DACA no support and the Debtor's case should not be dismissed.

3. The *Little Creek* Factors Do Not Support Dismissal of the Debtor's Bankruptcy Case.

A determination of bad faith "depends largely upon the bankruptcy court's on-the-spot evaluation of the debtor's financial condition, motives, and the local financial realities." *In re Little Creek Development Co.*, 779 F.2d 1068, 1072 (5th Cir. 1986). Courts often apply the factors enumerated in *In re Little Creek* (the "*Little Creek* Factors") in making the "on-the-spot evaluation" of the debtor. Here, an application of the *Little Creek* Factors does not yield a finding of bad faith. The *Little Creek* Factors are:

1. Debtor has one asset, such as a tract of undeveloped or developed real property;

2. The secured creditors' liens encumber this tract;

3. There are generally no employees except for the principals;

4. There is little or no cash flow;

5. There are no available sources of income to sustain a plan of reorganization or to make adequate protection payments;

6. Few, if any, unsecured creditors whose claims are relatively small;

7. The Property has been posted for foreclosure because of arrearages on the debt and the debtor has been unsuccessful in defending actions against the foreclosure in state court;

8. Alternatively, the debtor and one creditor may have proceeded to a stand-still in state court litigation, and the debtor has lost or been required to post a bond which it cannot afford;

9. Bankruptcy offers the only possibility of forestalling loss of the property;

10. There are sometimes allegations of wrongdoing by the debtor or its principals;

11. The existence of the "new debtor syndrome."

Id. at 1072-73. While certain of the *Little Creek* Factors are present, it is well established that the mere existence of some of the "indicia of bad faith" are not, alone, sufficient to establish a bad faith finding. *See In re Can-Alta Properties, Ltd.*, 87 B.R. 89, 92 (B.A.P. 9th Cir. 1988) (Ninth Circuit BAP found that bankruptcy court abused its discretion in granting relief from stay notwithstanding existence of most of the *Little Creek* Factors where Debtor was not formed on the eve of bankruptcy, the debtor had equity in the property and relief from stay was granted only six months prior to the order lifting the stay).

Here, the Property is the Debtor's its only substantial asset, the Property is encumbered by the 1st TD and the 2nd TD, the Debtor has no employees, the Property has little or no cash flow[17], the Property was scheduled to be foreclosed, and – as a result of DACA's acquisition of the majority of interest of the 1st TD – bankruptcy is the only option to prevent the loss of the

[17] DACA's contention that the Debtor did not file a Statement of Financial Affairs is false. *See* Dkt. No. 25.

Property and the destruction of possible value for a significant number of junior creditors. The Chapter 11 Case is, in many respects, similar to that underlying the BAP's decision in *Can-Alta* where the BAP overruled the Bankruptcy Court's bad faith finding, made after three days of evidentiary hearings and included seventeen findings relevant to the *Little Creek* Factors (far more than can be found here), holding that the presence of "some of the indicia of bad faith" were insufficient to find bad faith. *Can-Alta Properties*, 87 B.R. at 92. The presence of these few *Little Creek* Factors, here, like in *Can-Alta*, is insufficient to support a bad faith finding. This result is especially true when these factors have no intrinsic attributes of "bad faith".

The remaining *Little Creek* Factors do not support a bad faith finding. The Debtor has secured a commitment from SDI to infuse sufficient cash into the reorganized Debtor to sustain a plan of reorganization, make the capital investments necessary to generate cash flow from the Property and protect the 1st TD Holders pending the generation of cash flow from the Property. Additionally, the Debtor has unsecured creditors owed in excess of $500 million. The entire 2nd TD ($406 million) is unsecured and the majority of the 1st TD ($127 million) is unsecured. Even using DACA's inflated valuation[18], between $60 million and $80 million of the 1st TD is unsecured. Thus, unlike the majority of the bad faith cases, the Debtor has an unsecured creditor pool to protect which excluding the undersecured portion of the 1st TD exceeds $400 million held by over 20 entities. Indeed, the 2nd TD Holders would be wiped-out by a foreclosure of the 1st TD and the Chapter 11 Case will protect the potential value for the 2nd TD Holders. DACA concedes it possesses no allegations of wrong-doing by the Debtor or its principals. Finally, as detailed in section III.C., *infra*, this is not a "new debtor syndrome" case. The Ninth Circuit BAP in *Can-Alta* explained: "***Importantly***, the Debtor was not formed on the eve of bankruptcy as was the case in both *Little Creek* and *Thirtieth Place*." 87 B.R. at 92 (emphasis added).[19]

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[18] DACA's contention that the Debtor valued the property between eight and nine million dollars is false. *See* Motion to Dismiss, 14:23-25. Moreover, DACA's valuation – which it presumably would not challenge as "bogus" – also results in over $450 million of unsecured claims.

[19] Unlike in *Can-Alta*, the Debtor concedes that it does not have any equity in the Property. However, the Debtor's Chapter 11 Case satisfies fewer of the *Little Creek* Factors than the debtor in *Can-Alta*.

Also, relevant to the *Can-Alta* decision, is that the Debtor's case has been pending for less than 3 months.[20] 87 B.R. at 92 (debtor's "case was filed only six months prior to order lifting stay").

Notwithstanding the presence of certain of the *Little Creek* Factors, an "on-the-spot evaluation of the debtor's financial condition, motives, and the local financial realities" reveals that this Debtor was formed for a legitimate business purpose well in advance of the Petition Dave, the Debtor's motive for filing the Chapter 11 Case is to preserve value for the majority in number of creditors, the Debtor has a viable prospect of reorganizing and the Debtor is realistic both in the amount of capital that will be required (i.e. enough to provide some interest reserve for the 1st TD and adequately capitalize the reorganized debtor until the Property generates cash flow) and the source. For these reasons and the absence of any real indicia of bad faith, the Motion to Dismiss must be denied.

C. The Debtor's Chapter 11 Case Does Not Represent a "New Debtor Syndrome" Type Case.

1. The Debtor Was Not Formed on the Eve of Bankruptcy.

The Debtor's case is not a "new debtor syndrome" bankruptcy case. As Judge Adler explained in *In re 2218 Bluebird Ltd. P'ship*, the "so-called 'new debtor syndrome' is commonly raised by secured creditors who find that their foreclosure sale is stayed by the transfer of the property to a new entity which ***immediately*** files bankruptcy." 41 B.R. 540, 543 (Bankr. S.D. Cal. 1984) (emphasis added). The Debtor was formed on January 25, 2012 – approximately 20 months before the Petition Date. RJN, Ex. "11". The Debtor's principals created the Debtor with the intent of having the Debtor acquire title to the Property at the foreclosure sale. However, due to delays in finalizing the operating agreement, the principals – who foreclosed in April of 2012 – contributed the Property into the Debtor – in exchange for corresponding membership interests – in December of 2012 – approximately 8 months before the Petition Date. The overwhelming legal authority supports that this is not a "new debtor syndrome" case. *See*

[20] And even here, much of this period has been devoted to the determination of where not how the case would proceed.

Thirtieth Place, 30 B.R. at 505-06 (reversing bankruptcy court and holding new debtor syndrome present where debtor was formed one day prior to filing); *Laguna Assocs, Ltd. v. Aetna Cas. & Sur. Co. (In re Laguna Assocs. Ltd.)*, 30 F.3d 734, 737 (6th Cir. 1994) (applying new debtor syndrome analysis to debtor created the day before filing); *YBA Nineteen, LLC v. IndyMac Venture, LLC (In re YBA Nineteen, LLC)*, 2013 U.S. Dist. LEXIS 91520 (S.D. Cal. June 28, 2013) (declining to apply new debtor analysis where debtor was not formed on the eve of bankruptcy).

2. DACA Did Not Suffer Harm or Prejudice in Connection with the Foreclosure by the 3rd TD and Contribution of the Property into the Debtor.

DACA was not harmed or prejudiced by the contribution of the Property into the Debtor. The "new debtor syndrome" cases typically involve a transfer that causes some harm or prejudice to the secured creditor. *In re Beach Club*, 22 B.R. 597, 599-600 (Bankr. N.D. Cal. 1982) (eve of bankruptcy filing does not necessarily result in a bad faith finding where objecting lender is not prejudiced). As recognized by Judge Adler in *Bluebird Ltd. P'ship*, the "Court must look to the substance of what has been done to determine whether the transfer to the new entity has detrimentally altered the substantive or procedural rights of any creditor regarding assets which were available prior to the transfer." 41 B.R. at 543. "[M]ere delay to creditors, in and of itself, will not constitute bad faith or give rise to dismissal." *Id*. at 544. Here, DACA is not prejudiced. It has not lost its right to assert claims against the Debtor (it never had any) and it retains all of its rights against SR LLC and Pierce.

3. Foreclosing Junior Lien Holders Do Not Constitute "New Debtor Syndrome" Cases.

Moreover, at least two published decisions have found that foreclosing junior lien holders who transfer the foreclosed property into a new entity are not "new debtor syndrome" cases. *See In re LGCI Fairfield, LLC*, 424 B.R. 846, 851-52 (Bankr. N.D. Cal. 2010); *In re N.R.G. Invs.*, 99 B.R. 475, 476 (Bankr. M.D. Fl. 1989). That is precisely what occurred here. The 3rd TD

Holders foreclosed on the 3rd TD and, after the Consensual Agreement was thwarted by DACA, commenced the case to preserve the potential value for all creditors.

DACA's Motion to Dismiss should be denied. DACA has failed to demonstrate by a preponderance of the evidence that the Debtor's case was filed in bad faith. However, as detailed above, even if DACA satisfied its burden, the overwhelming evidence and legal authority demonstrate that the Debtor filed the Chapter 11 Case in good faith. Accordingly, "cause" to dismiss the Chapter 11 Case does not exist and the Motion to Dismiss should be denied.

IV. DACA IS NOT ENTITLED TO RELIEF FROM STAY

A. DACA Did Not Comply with Local Rule 4001-2(a)(2) and, Therefore, Relief From Stay Must be Denied.

Local Bankruptcy Rule 4001-2(a)(2) requires a party seeking relief from stay to "[n]ame, **as respondents**, the debtor, the trustee, **and other entities entitled to receive notice of default or notice of sale under applicable non-bankruptcy law governing foreclosure of real or personal property which is the subject of the motion…**" (emphasis added). Pursuant to section 2924b of the California Civil Code, holders of junior interests are required to receive notice after the recording of a notice of a default by a senior lienholder. Accordingly, the 2nd TD Holders – as parties entitled to receive notice of default under California law – are required to be named as respondents. DACA's RFS Motion only named the Debtor as a respondent. This defect is material and fatal. *See* Local Bankruptcy Rule, 4001-2(b). Therefore, DACA's RFS Motion is procedurally deficient[21] and must be denied.

B. Cause to Grant Relief From State Does Not Exist Because The Debtor Filed the Chapter 11 Case in Good Faith.

As set forth in detail above, the Debtor commenced the Chapter 11 Case in good faith. This Court's holding in *ACI Sunbow* is inapposite to the facts and circumstances of the Chapter

[21] DACA similarly failed to attach the legal description of the Property as required by Local Form CSD 1160, at 1.c.

11 Case. The Debtor hereby incorporates its arguments set forth in sections III.B and C, *supra*, and respectfully states that "cause" to lift the automatic stay does not exist because the Debtor commenced the Chapter 11 Case in good faith.

C. The Property is Necessary to an Effective Reorganization that is in Prospect.

The Property is necessary to the Debtor's effective reorganization, and, therefore, relief from stay should be denied. The Property is the primary asset of the Debtor and without it, the Debtor will not be able to reorganize.

1. The Property is Necessary.

The Property is essential and necessary to the Debtor's effective reorganization. In general, property is necessary to an effective reorganization "whenever it is necessary, either in the operation of the business or in a plan, to further the interests of the estate through rehabilitation." *In re Koopmans*, 22 B.R. 395, 407 (Bankr. Utah 1982). Here, the Property is necessary for the Debtor's plan because it is the primary asset of the Debtor, the basis of the reorganization and the source of a potentially significant recovery for all creditors. The Debtor's plan will further the interests of the estate by providing a feasible, confirmable plan which will provide for the fair and equitable treatment of all creditors.

2. An Effective Reorganization is Reasonably Possible.

The Debtor's reorganization is reasonably possible. To demonstrate an effective reorganization, the Debtor must demonstrate "a reasonable possibility of a successful reorganization within a reasonable time." *United Savings Ass'n of Texas v. Timbers of Inwood Forest Ass'n, Ltd.*, 484 U.S. 365, 376 (1988). In *In re Building 62 Limited Partnership*, the court provided the following illustrative list of requirements necessary for a debtor to show in order to show that the plan has a reasonable possibility of confirmation:

1. The debtor must be moving meaningfully to propose a plan;

2. The plan must provide the lender's allowed secured claim would be valued and payable from the debtor's net operating income generated by its property or the ability to propose a plan based on the infusion of new capital;

3. The plan must have a realistic chance of confirmation;

4. The proposed plan must not be obviously unconfirmable;

5. The reorganization must occur in a reasonable period of time.

132 B.R. 219, 222 (Bankr. D. Mass. 1991).

Here, all of the factors above are satisfied by the Debtor. The Debtor is in the process of finalizing its plan which will provide the 1st TD with a new note and deed of trust equal to the value of the Property at a market rate of interest, an interest reserve to protect the 1st TD Holders pending the generation of cash flow from the Property, a distribution of cash and equity in the reorganized debtor to all unsecured creditors and a feasible and executable business plan supported by adequate capitalization. The plan has a reasonable prospect of confirmation because it will provides for the equitable treatment of all creditors in accordance with the absolute priority rule and comply with all other statutory requirements of section 1129 of the Bankruptcy Code. The plan closely resembles the Consensual Agreement DACA thwarted and is expected to find support from the vast majority, if not all, of the non-DACA/Goodrich constituency. Finally, the reorganization will occur in a reasonable period of time. The Debtor anticipates filing the plan and disclosure statement prior to the hearing on the Motion to Dismiss and Motion for Relief From Stay but will certainly file its plan prior to the SARE deadline. A hearing to approve the disclosure statement and then confirm the plan can be scheduled promptly after the plan is filed.

Therefore, the Property is *necessary* for the *effective reorganization* of the Debtor and relief from stay is not proper under section 362(d)(2) of the Bankruptcy Code.

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V. CONCLUSION

For the foregoing reasons, the Debtor respectfully requests that the Court deny DACA's Motion to Dismiss and RFS Motion and grant such other relief as the Court deems just and proper.

DATE: OCTOBER 24, 2013

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