

1 JEFFREY W. BROKER – State Bar No. 53226  
PAMELA J. ZYLSTRA – State Bar No. 147977  
2 BROKER & ASSOCIATES  
PROFESSIONAL CORPORATION  
3 18111 Von Karman Avenue, Suite 460  
Irvine, CA 92612-7152  
4 Telephone: (949) 222-2000  
Facsimile: (949) 222-2022  
5 email: *jbroker@brokerlaw.biz*

6 Counsel for Kathleen Otto  
Reorganized Debtor

7  
8 **UNITED STATES BANKRUPTCY COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**  
10 **RIVERSIDE DIVISION**

11  
12 In re

13 KATHLEEN JOAN OTTO, aka KATHLEEN  
J. OTTO, aka KATHLEEN KJENSRUD  
14 OTTO, aka KATHLEEN K. OTTO, aka  
KATHY OTTO,

15  
16 Reorganized Debtor.

Case No. 6:12-bk-21607 MJ

Chapter 11 Case

**REORGANIZED DEBTOR'S OBJECTION  
TO PROOF OF CLAIM NO. 7 AND  
MOTION FOR ORDER DETERMINING  
THE ALLOWED AMOUNT OF PROOF OF  
CLAIM NO. 7; MEMORANDUM OF  
POINTS AND AUTHORITIES AND  
DECLARATIONS OF KATHLEEN OTTO  
AND PAMELA J. ZYLSTRA IN SUPPORT  
THEREOF**

DATE: September 4, 2013

TIME: 1:30 p.m.

CTRM: 301

3420 Twelfth Street

Riverside, CA 92501

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22 **TO THE HONORABLE MEREDITH JURY, UNITED STATES BANKRUPTCY JUDGE;**  
23 **THE OFFICE OF THE UNITED STATES TRUSTEE; CREDITORS COBALT**  
24 **INVESTMENTS, LLC ET AL, AND THEIR COUNSEL OF RECORD:**

25 KATHLEEN JOAN OTTO, aka KATHLEEN J. OTTO, aka KATHLEEN KJENSRUD  
26 OTTO, aka KATHLEEN K. OTTO, aka KATHY OTTO, the Reorganized Debtor and Debtor-in-  
27 Possession in the within Chapter 11 case (the "Debtor" or "Reorganized Debtor"), hereby submits  
28

1 this objection to the Proof of Claim No. 7 (“Cobalt Claim”) filed by Cobalt Investments, LLC,  
2 Dragga LLC, and Real Estate Network, Inc. Profit Sharing Plan (“Cobalt Claimants”) and move  
3 this Court for an order determining the allowed amount of Proof of Claim No. 7 based on the  
4 allowance or disallowance of a substantially similar claim, Proof of Claim No. 5 (“Motion”).

5 The grounds for the Motion are:

- 6 1. No evidence. The Cobalt Claim includes no evidence to support a claim against the  
7 estate of \$700,000.00. The only evidence filed in support of the Cobalt Claim is a  
8 Complaint filed and thereafter dismissed in the United States District Court for the  
9 Southern District of New York. A dismissed pleading is not evidence of the  
10 amount of a claim.
- 11 2. Judicial Economy. The claims made in the Complaint filed in support of the Cobalt  
12 Claim are substantially similar to claims made against the Debtor by Vicken  
13 Massoyan et al (“Massoyan Claimants”) by Proof of Claim No. 5 (“Massoyan  
14 Claim”). The underlying state court litigation filed by the Massoyan Claimants was  
15 tried to judgment and is currently on appeal to the California State Court of  
16 Appeals, Fifth Circuit. To conserve estate assets and for purposes of judicial  
17 economy, both the Massoyan Claim and the Cobalt Claim should be allowed or  
18 disallowed by Final Order entered in the pending appeal, and any subsequent  
19 appeals thereof.
- 20 3. Economic Justification. The Debtor’s First Amended Disclosure Statement  
21 Describing Debtor’s First Amended Chapter 11 Plan estimates that the allowed  
22 claims of general unsecured creditors, including the Massoyan Claim, will receive a  
23 distribution of less than one percent (1%) of the principal amount of each claim.  
24 The Debtor anticipates there will be less than \$1.0 million in estate assets for  
25 distribution to creditors. If the pending appeal is determined in favor of the  
26 Massoyan Claimants, both the Massoyan Claim of \$116,626,022.38 and the Cobalt  
27 Claim of \$700,000.00 will be allowed and the distribution to the Cobalt Claimants  
28 would total less than \$7,000.00.

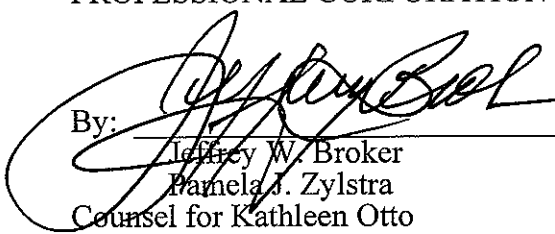
1 This Motion is based upon the annexed Memorandum of Points and Authorities and the  
2 annexed declarations of Kathleen Otto (the "Otto Declaration") and Pamela J. Zylstra (the "Zylstra  
3 Declaration"), and upon such other additional evidence, oral or documentary, that the Court may  
4 consider prior to or at the time of the hearing on the Motion.

5 Accordingly, the Debtor prays that the Court enter an order that:

- 6 1. Proof of Claim No. 7 filed by Cobalt Investments, LLC, Dragga LLC, and Real  
7 Estate Network, Inc. Profit Sharing Plan shall be disallowed in its entirety if Proof  
8 of Claim No. 5 is disallowed by a Final Order in the pending class action titled  
9 "Vicken Massoyan, et al. vs. HL Leasing, Inc., a California corporation, et al."  
10 Case No. 09-CEGG 01839 that was filed on May 26, 2009 (the "Massoyan State  
11 Court Case"), or, in the alternative,
- 12 2. Proof of Claim No. 7 filed by Cobalt Investments, LLC, Dragga LLC, and Real  
13 Estate Network, Inc. Profit Sharing Plan shall be allowed in its entirety if Proof of  
14 Claim No. 5 is allowed by a Final Order in the pending class action titled "Vicken  
15 Massoyan, et al. vs. HL Leasing, Inc., a California corporation, et al." Case No. 09-  
16 CEGG 01839 that was filed on May 26, 2009 (the "Massoyan State Court Case").
- 17 3. If Proof of Claim No. 5 is allowed under paragraph 2 above, the principal  
18 amount of the claim is to be limited to \$700,000.00; and
- 19 4. Provides for such additional relief as determined by the court.

20 DATED: August 2, 2013

BROKER & ASSOCIATES  
PROFESSIONAL CORPORATION

21  
22  
23 By:   
24 Jeffrey W. Broker  
25 Pamela J. Zylstra  
26 Counsel for Kathleen Otto  
27 Reorganized Debtor  
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **STATEMENT OF FACTS**

4 The Debtor is an individual residing in Palm Desert, California. The Debtor is a retired  
5 widow who was named as a defendant in a class action which was filed against her deceased  
6 husband and his corporate entities. Despite a jury verdict in favor of the Debtor, on March 5, 2012  
7 the state court entered a judgment against the Debtor in excess of \$100 million. An appeal from  
8 the judgment was filed on April 6, 2012 and is pending.

9 Cobalt Investments, LLC, Dragga LLC, and Real Estate Network, Inc. Profit Sharing Plan  
10 (“Cobalt Claimants”) filed Proof of Claim No. 7 asserting essentially the same claims as the class  
11 action. The Cobalt Claimants filed a Complaint and thereafter dismissed the Complaint, so the  
12 matter has not been tried and reduced to a judgment. The potential distribution to the general  
13 unsecured creditors in this case, including the Cobalt Claimants, is estimated to be one percent  
14 (1%). If the Cobalt Claim is allowed, the distribution is estimated to be \$7,000.00.

15 By the Motion, the Debtor requests that the Court consider the lack of evidence in support  
16 of the Cobalt Claim and the economic realities of the case, and enter an order that the Cobalt Claim  
17 will be allowed or disallowed to the same extent as the class action claim of Vicken Massoyan et  
18 al. described below is allowed or disallowed by final order in the current appeal and any  
19 subsequent appeals.

20 **A. Proof of Claim No. 5 (Massoyan Class Action Claim)**

21 On August 9, 2012, the Vicken Massoyan, et al filed Proof of Claim No. 5 for  
22 \$116,626,022.68 (“Massoyan Claim”). A true and complete copy of Proof of Claim No. 5 as filed  
23 with the court is attached as Exhibit 2 to the appended Declaration of Pamela J. Zylstra. Attached  
24 to Proof of Claim No. 5 is the Judgment entered March 5, 2012 in the class action lawsuit filed by  
25 Vicken Massoyan et al asserting claims against the Debtor’s deceased spouse and his corporate  
26 entities, as well as the Debtor.

27 Following a four-week trial, the jury returned a complete defense verdict in favor of the  
28 Debtor, finding the Debtor had no liability on any of the alleged tort claims. Following the jury

1 trial, the state court heard the remaining bifurcated portion of the case dealing with the alter ego  
2 claims. The trial judge found that the Debtor was not the alter ego of any of the corporate  
3 defendants. Despite these jury and court findings which completely exonerated the Debtor of any  
4 and all wrongdoing or personal liability, on January 4, 2012, the trial judge in the State Court Case  
5 entered a Memorandum of Decision holding that the Debtor's deceased husband, John Otto, (who  
6 passed away on May 11, 2009, and was not represented at trial) was the alter ego of several  
7 corporate defendants, and that the Debtor, "as his successor-in-interest, is liable for the damages  
8 awarded against those entities in this action." As a result, on March 5, 2012, Judgment was  
9 entered against the Debtor in the State Court Case in the amount of \$114,554,624.00 plus  
10 prejudgment interest in an amount to be determined.

11 The Debtor asserts that the trial judge's Memorandum of Decision and the resulting  
12 Judgment are not legally tenable, since, *inter alia*, liability for a decedent's debts can only be  
13 imposed against a decedent's representative or successor-in-interest if a claim is timely made  
14 against the decedent's estate within one year of the death. Despite this bright line rule under the  
15 Probate Code, neither Vicken Massoyan et al, nor anyone else ever made the statutorily-required  
16 claim under the Probate Code and the time for doing so has long since expired. The Debtor timely  
17 filed a Notice of Appeal of the Judgment on April 6, 2012. The record on appeal has been  
18 designated, and all briefing has been filed with the State Court of Appeals, Fifth Appellate District.  
19 Oral argument will likely be set in the near future. A decision from the Appellate Court is  
20 expected in late 2013 or early 2014.

21 The Debtor's First Amended Chapter 11 Plan provides that the Massoyan Claim is deemed  
22 disputed. The Massoyan Claim will be allowed or disallowed based on the entry of a final order in  
23 the pending appeal or any subsequent appeal(s) of the Judgment.

24 **B. Proof of Claim No. 7 (Cobalt Claim)**

25 On August 28, 2012, Cobalt Investments, LLC, Dragga LLC and Real Estate Network, Inc.  
26 Profit Sharing Plan ("Cobalt Claimants") filed Proof of Claim No. 7 for \$700,000.00 ("Cobalt  
27 Claim"). A true and complete copy of Proof of Claim No. 7 as filed with the court is attached as  
28 Exhibit 1 to the appended Declaration of Pamela J. Zylstra.

1 The Cobalt Claim states on its face that the “Basis for Claim” is “Claims asserted in Case  
2 No. 1:11-cv-02091-DAB-RLE, US District Court, Southern District of New York” which  
3 references the Complaint attached to the Cobalt Claim. Also attached to the Cobalt Claim is the  
4 Notice of Dismissal of the Case dated May 26, 2011. Attached to Proof of Claim No. 7 as exhibits  
5 are: (a) the Complaint filed in United States District Court for the Central District of New York on  
6 March 25, 2011 asserting claims against the Debtor’s deceased spouse and his corporate entities, as  
7 well as the Debtor; and (b) Notice of Dismissal of the Complaint dated May 26, 2011.

8 The Cobalt Claim asserts litigation claims which have not been reduced to a judgment. The  
9 claims asserted are substantially similar to the claims asserted by the Massoyan Claimants in the  
10 Massoyan Claim.

11 **C. Estimated Distributions Under First Amended Chapter 11 Plan**

12 The Debtor filed her First Amended Chapter 11 Plan on February 4, 2013. A true and  
13 complete copy of the Debtor’s First Amended Chapter 11 Plan as filed with the court is attached as  
14 Exhibit 3 to the appended Declaration of Pamela J. Zylstra. The Plan classifies general unsecured  
15 claims in excess of \$1,000.00 as Class 4 claims. If the disputed Class 4 claims held by the  
16 Massoyan Claimants and the Cobalt Claimants are allowed, the estimated distribution will be less  
17 than one percent (1%) of the principal amount of the claims. The estimated distribution to the  
18 Cobalt Claimants will be less than one percent of their \$700,000.00 claim for a total of less than  
19 \$7,000.00.

20 **II.**

21 **ARGUMENT**

22 **A. LEGAL STANDARDS GENERALLY WITH REGARD TO CLAIM**  
23 **OBJECTIONS**

24 Section 502 of the Bankruptcy Code authorizes the Court to determine the amount of a  
25 claim asserted against a bankruptcy estate after notice and a hearing. To support such an objection,  
26 the Debtor must merely “produce evidence which, if believed, would refute at least one of the  
27 allegations that is essential to the claim's legal sufficiency. If the objector produces sufficient  
28 evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts to the

1 claimant to prove the validity of the claim by a preponderance of the evidence.” *In re Allegheny*  
2 *International, Inc.*, 954 F.2d 167, 173-4 (3<sup>rd</sup> Cir. 1992). Accordingly, where the Debtor objects to  
3 a claim, as here, the Debtor is then merely called upon “to produce evidence and show facts  
4 tending to defeat the claim by probative force equal to that of the allegations of the proof of claim  
5 itself. But the ultimate burden of persuasion is always on the claimant.” *In re Holm*, 931 F.2d  
6 620, 623 (9th Cir. 1991) *citing* 3 Collier on Bankruptcy § 502.02 (1991); *See also In re Harrison*,  
7 987 F.2d 677 (10th Cir. 1993) (the creditor has the ultimate burden of persuasion as to the validity  
8 and amount of a claim once an objection has been interposed).

9 More recently, the Bankruptcy Appellate Panel of the Ninth Circuit stated the applicable  
10 burdens of proof as follows:

11 “The burden of proof for claims brought in the bankruptcy court under 11 U.S.C.A.  
12 §502(a) rests on different parties at different times. Initially the claimant must allege facts  
13 sufficient to support the claim. If the averments in his filed claim meet this standard of  
14 sufficiency, it is “*prima facie*” valid. In other words, a claim that alleges facts sufficient to  
15 support a legal liability to the claimant satisfies the claimant’s initial obligation to go  
16 forward. The burden of going forward then shifts to the objector to produce evidence to  
17 negate the *prima facie* validity of the filed claim. ... If the objector produces sufficient  
18 evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts  
19 to the claimant to prove the validity of the claim by a preponderance of the evidence. The  
20 burden of persuasion is always on the claimant.” (italics in the original; Underline added).  
21 *Ashford v. Consolidated Pioneer Mortgage (In re Consolidated Pioneer Mortgage)*, 178 B.R. 222,  
22 226 (9<sup>th</sup> Cir. BAP 1995), quoting *In re Allegheny International, Inc.*, 954 F.2d 167, 173-4 (3<sup>rd</sup> Cir.  
23 1992).

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**DECLARATION OF KATHLEEN OTTO**

I, Kathleen Otto, declare and state as follows:

1. Oath. I am an adult over the age of 18 years. I the Reorganized Debtor in this Chapter 11 case (“Reorganized Debtor”). The matters set forth herein are of my own personal knowledge and, if called upon, I could and would competently testify to their truth. I make this Declaration in support of the Objection To Proof Of Claim No. 7 And Motion For Order Determining The Allowed Amount Of Proof Of Claim No. 7 (“Motion”).

2. Case Background. I filed this voluntary Chapter 11 case on May 10, 2012 (the “Petition Date”). I live in Palm Desert, California. I am a widow. My deceased spouse, John Otto, died on May 11, 2009.

3. Massoyan Litigation. I was named as a defendant in a class action which was filed against my deceased husband, John Otto, and his corporate entities. Following a four-week trial, the jury returned a complete defense verdict in my favor, finding that I had no liability on any of the alleged tort claims. Following the jury trial, the state court heard the remaining bifurcated portion of the case dealing with the alter ego claims. The trial judge found that I was not the alter ego of any of the corporate defendants. Despite these jury and court findings which completely exonerated me of any and all wrongdoing or personal liability, on January 4, 2012, the trial judge in the State Court Case entered a Memorandum of Decision holding that my deceased husband, John Otto, (who passed away on May 11, 2009, and was not represented at trial) was the alter ego of several corporate defendants, and that I, “as his successor-in-interest, [am] liable for the damages awarded against those entities in this action.” As a result, on March 5, 2012, Judgment was entered against me in the State Court Case in the amount of \$114,554,624.00 plus prejudgment interest in an amount to be determined.

4. Appeal from State Court Case. The trial judge’s Memorandum of Decision and the resulting Judgment should be overturned on appeal because any liability for the debts of my deceased spouse can only be imposed against me if a claim is timely made against my deceased husband’s estate within one year of the death. No personal has made a claim against my husband’s estate and the time for doing so has long since expired. I timely filed a Notice of Appeal of the

1 Judgment on April 6, 2012. The record on appeal has been designated, and all briefing has been  
2 filed with the State Court of Appeals, Fifth Appellate District. Oral argument will likely be set in  
3 the near future. I understand that a decision from the Appellate Court is expected in 2013 or early  
4 2014.

5 5. Estimated Distributions to Unsecured Creditors. I estimate that based on the  
6 pending sale of my personal residence and the completed sales of personal property, including  
7 jewelry and the Aston Martin automobile, there will be less than \$1.0 million to distribute to  
8 holders of allowed general unsecured claims. If the appeal is determined in favor of the Massoyan  
9 Creditors, then the estimated distribution to general unsecured creditors will be less than one  
10 percent (1.0 %) of the amount of the allowed claims.

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

13 Executed this 1<sup>st</sup> day of August 2013 at Palm Desert, California.

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Kathleen Otto

**DECLARATION OF PAMELA J. ZYLSTRA**

I, Pamela J. Zylstra, declare and state as follows:

1. Oath. The matters stated herein are true and correct and are within my personal knowledge, and if called upon to testify as a witness, I could and would testify competently thereto. I am an attorney at law, duly licensed to practice in the State of California and before the bar of this Court. I am "Of Counsel" to Broker & Associates Professional Corporation, a California corporation, general reorganization counsel to KATHLEEN JOAN OTTO, aka KATHLEEN J. OTTO, aka KATHLEEN KJENSRUD OTTO, aka KATHLEEN K. OTTO, aka KATHY OTTO, the Reorganized Debtor (the "Reorganized Debtor") in the within Chapter 11 case. I make this declaration in support of the Reorganized Debtor's Objection To Proof Of Claim No. 7 And Motion For Order Determining The Allowed Amount Of Proof Of Claim No. 7; Memorandum Of Points And Authorities And Declarations Of Kathleen Otto And Pamela J. Zylstra In Support Thereof ("Motion").

2. Proof of Claim No. 7 Filed by Cobalt Claimants. On August 28, 2012, Cobalt Investments, LLC, Draga LLC and Real Estate Network, Inc. Profit Sharing Plan (collectively "Cobalt Investments") filed a Proof of Claim in the amount of \$700,000.00 ("Cobalt Claim"). The only documents attached to the Cobalt Claim were a copy of a Complaint filed in the United States District Court for the Southern District of New York on March 25, 2011 and a copy of the Notice of Dismissal as to me as a Defendant signed on May 26, 2011. A true and correct copy of the Cobalt Claim that was filed with the court as Proof of Claim No. 7 is attached hereto as Exhibit 1.

3. Proofs of Claim Filed by Massoyan Creditors. On August 9, 2012, the Vicken Massoyan, et al filed Proof of Claim No. 5 for \$116,626,022.68 ("Massoyan Claim"). A true and complete copy of Proof of Claim No. 5 as filed with the court is attached hereto as Exhibit 2.

4. Debtor's First Amended Chapter 11 Plan. The Reorganized Debtor filed her First Amended Chapter 11 Plan on February 4, 2013. A true and complete copy of the Debtor's First Amended Chapter 11 Plan that was filed with the court as docket no. 69 is attached hereto as Exhibit 3.



EXHIBIT 1

ORIGINAL

B 10 (Official Form 10) (12/11)

<b>UNITED STATES BANKRUPTCY COURT</b> Central District of California		<b>PROOF OF CLAIM</b>
Name of Debtor: Kathleen Joan Otto aka Kathleen J. Otto, aka Kathleen Kjensrud		Case Number: 6:12-bk-21607-MJ
NOTE: Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503.		<div style="border: 2px solid black; padding: 5px; margin: 0 auto; width: 150px;"> <p style="font-size: 1.2em; margin: 0;">FILED</p> <p style="font-size: 1.5em; margin: 0;">AUG 28 2012</p> <p style="font-size: 0.8em; margin: 0;">CLERK U.S. BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA BY: <i>CW</i> Deputy Clerk</p> </div>
Name of Creditor (the person or other entity to whom the debtor owes money or property): Cobalt Investments, LLC; Draga, LLC, and Real Estate Network, Inc. Profit Sharing Plan.		
Name and address where notices should be sent: Vadim Braslavsky, Esq.; Herzfeld & Rubin, LLP; 1925 Century Park E, Suite 900, Los Angeles CA 90067		<b>COURT USE ONLY</b>
Telephone number: (310) 553-0451      email: vbraslavsky@hrlp-law.com		<input type="checkbox"/> Check this box if this claim amends a previously filed claim.  Court Claim Number: _____ (If known)  Filed on: _____
Name and address where payment should be sent (if different from above):		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars.
Telephone number:      email:		
1. Amount of Claim as of Date Case Filed:      \$ <u>700,000.00</u>		
If all or part of the claim is secured, complete item 4.		
If all or part of the claim is entitled to priority, complete item 5.		
<input type="checkbox"/> Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.		
2. Basis for Claim: <u>Claims asserted in Case No. 1:11-cv-02091-DAB-RLE; US District Court, Southern District of New York</u> (See instruction #2)		
3. Last four digits of any number by which creditor identifies debtor:	3a. Debtor may have scheduled account as: _____ (See instruction #3a)	3b. Uniform Claim Identifier (optional): _____ (See instruction #3b)
4. Secured Claim (See instruction #4) Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information.		Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any: \$ _____
Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe:		Basis for perfection: _____
Value of Property: \$ _____		Amount of Secured Claim: \$ _____
Annual Interest Rate _____ % <input type="checkbox"/> Fixed or <input type="checkbox"/> Variable (when case was filed)		Amount Unsecured: \$ _____
5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507 (a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount.		
<input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507 (a)(1)(A) or (a)(1)(B).	<input type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11 U.S.C. § 507 (a)(4).	<input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. § 507 (a)(5).  Amount entitled to priority: \$ _____
<input type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. § 507 (a)(7).	<input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. § 507 (a)(8).	<input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. § 507 (a)(____). \$ _____
*Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.		
6. Credits. The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #6)		



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

**11 CIV 2091**

COBALT INVESTMENTS, LLC, DRAGGA LLC,  
AND REAL ESTATE NETWORK, INC. PROFIT  
SHARING PLAN,

Plaintiffs Demand  
Trial by Jury

Civil Action No.:

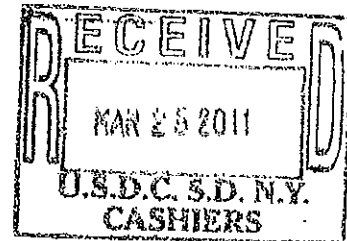
Plaintiffs,

**JUDGE BATTS**  
**COMPLAINT**

vs.

MANUFACTURERS ACCEPTANCE CORPORATION,  
HL LEASING, INC., HERITAGE PACIFIC LEASING,  
THE ESTATE OF JOHN W. OTTO, DAN RAMIREZ,  
KATHLEEN J. OTTO, ANDY FERNANDEZ, NORMA  
LEWIS, CALLAHAN & BLAINE, REGENCY BANK,  
PALM SPRINGS SAVINGS BANK, NEW ERA  
FUNDING CORP., CENTERPOINT FINANCIAL  
SERVICES, PENTECH FINANCIAL SERVICES, INC.,  
FINANCIAL PACIFIC LEASING, LLC,  
FIRST SIERRA FINANCIAL INC., BELVEDERE  
EQUIPMENT FINANCE CORP., and DOES 1-100,

Defendants.



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Plaintiffs, by their attorneys, Herzfeld & Rubin, P.C., allege upon information and belief except as to the allegations pertaining to themselves, which are alleged upon each respective plaintiff's personal knowledge, as follows:

**OVERVIEW OF THE COMPLAINT**

1. Manufacturers Acceptance Corporation ("MAC"), HL Leasing, Inc. ("HL Leasing"), Heritage Pacific Leasing ("Heritage"), Kathleen J. Otto, ("Ms. Otto") John W. Otto ("Otto" and/or "Estate of John W. Otto"), Dan Ramirez ("Ramirez"), Andy Fernandez ("Fernandez"), Norma Lewis ("Lewis") (collectively "MAC Defendants"), and defendants Regency Bank, Palm Springs Savings Bank, New Era Funding Corp., Commercial Equipment Lease Corp., Centerpoint Financial Services ("Centerpoint"), Pentech Financial Services, Inc.

("Pentech"), Financial Pacific Leasing, LLC, First Sierra Financial, Inc., and Belvedere Equipment Finance Corp., together with their entity instrumentalities, human accomplices and institutional confederates, each playing key roles, operated and aided and abetted the operation of a Ponzi scheme disguised as a successful national equipment leasing business, which, during its lifespan, bilked in excess of \$138 million from more than 1,200 individual and corporate investors nationwide. This lawsuit seeks to hold the defendants to account for their misfeasance, which enabled the massive fraud to continue unchecked against unsuspecting investors.

2. Otto owned and controlled several major companies, including but not limited to MAC, HL Leasing and Heritage, Centerpoint and Pentech, all ostensibly in the equipment leasing, investment and securitization businesses. According to the Heritage-Pacific Web Site, Centerpoint provided "an additional funding source enhancing their production potential. The securitization process allows both [sic] companies to minimize their risk and enhance cash flow." (<http://www.heritage-pacific.com>)

3. Heritage represented it was a licensed California broker and identified Otto as President/C.E.O. at one point when investors were solicited. The representation on the letterhead indicated Heritage as a division of Manufacturer's Acceptance Corp., with Otto's wife Kathleen J. Otto, CFO-Sec; and Lewis, Exec VP Operations. Promotional materials which sought to solicit investors listed Regency Bank, Fresno, CA and Palm Springs Savings Bank, Palm Springs, CA as financial references. Upon information and belief, Regency Bank and Palm Springs Savings Bank provided financing to MAC, HL Leasing and Heritage. Additional funding sources included defendants New Era Funding Corp., Hoffman Estates, IL; Commercial Equipment Lease Corp., Eugene, OR; Centerpoint Financial Services, Denver, CO (owned by Otto); Financial Pacific Leasing, LLC, Tacoma, Washington; First Sierra Financial, Inc., Los

Angeles, CA: Belvedere Equipment Finance Corp., San Francisco, CA 904107. At certain times Heritage acted as the predecessor to or alter ego of HL Leasing Inc. in obtaining loans from investors.

4. From its infancy, HL Leasing/Heritage aggressively targeted investors with promises of a high rate of return based on the purported business of equipment leasing. The equipment leases were allegedly used as collateral for the loans investors provided to Heritage/HL Leasing. However, the returns were paid through the generation of unsuspecting new investors who injected new dollars into the scheme. As the prospect of new investors providing loan funds to Heritage/HL Leasing decreased, the scheme began to unravel, ultimately resulting in the payments to investors to halt. All of the alleged fraud was done on a standardized basis of leases, notes and the same promotional materials.

5. Specifically, on or about April 28, 2009, Otto issued a letter to all Heritage/HL Leasing investors to inform them that it would not be making the monthly payments as required pursuant to investors' respective loan agreements. Otto claimed that he had "entered into an agreement with another company (because of confidentiality agreement, cannot disclose) to sell HL Leasing." The letter further stated that the sale transaction would close "approximately May 8th."

6. A second letter was issued to all investors on May 8, 2009, coming from HL Leasing, Inc.'s agent, the law firm of Callahan & Blaine. This letter indicated that Mr. Otto had a stroke, which caused the deal with the undisclosed company to fall apart. A few days later, Otto committed suicide.

7. Based on information and belief, Heritage/HL Leasing, together with their entity instrumentalities, human accomplices and institutional confederates, each playing key

roles, had committed fraud by representing security interests in loans held by investors that never existed or were sold off. Further, standardized representations of a deferred payment were untrue. The loan agreements between Heritage/HL Leasing and investors were all violated when, pursuant to their respective agreements, the April 25, 2009 payments of principle and interest were not issued. No payments of principal and/or interest have been made to plaintiffs with respect to any subject loans since March 2009.

8. As a consequence of defendants' misconduct described more particularly herein, plaintiffs were reassured and duped, the fraud continued and expanded, the ongoing theft remained concealed, and plaintiffs lost over \$700,000.

#### PARTIES

9. Plaintiff Cobalt Investments, LLC ("Cobalt") and Dragga LLC ("Dragga") are Nevada Limited Liability Companies.

10. Plaintiff Real Estate Network, Inc. Profit Sharing Plan ("Real Estate Network") is a profit sharing plan of Real Estate Network, Inc., a New York corporation.

11. The true names and capacities, whether individual, corporate, associate, or otherwise of defendants Does 1 through 100 inclusive are not known.

12. Defendant MAC is a corporation organized under the laws of California with its principal place of business in Palm Desert, California, and is believed to be wholly owned and/or controlled by Otto, now the Estate of John W. Otto.

13. Defendant HL Leasing is a corporation organized and existing under the laws of the State of California, having its principal place of business in Palm Desert/Palm Springs, California.

14. Defendant Heritage Pacific Leasing is an entity having its principal place of business in Fresno, California.

15. Defendant the Estate of John W. Otto is the estate of Otto, who was at relevant times the Chief Executive Officer and owner of HL Leasing, Inc. and Heritage Pacific Leasing until his suicide in May, 2009 and a citizen of California.

16. Defendant Heritage is believed to be a purchaser and seller of equipment leases and solicitor of investment funds from wealthy persons and entities which operated at relevant times in the County of Riverside, state of California and throughout the United States.

17. Defendant Ramirez was at relevant times the President of HL Leasing, Inc. and resides in the County of Fresno, state of California.

18. Defendant Lewis was at relevant times the Executive Vice President of HL Leasing and a citizen of California.

19. Defendant Fernandez was at relevant times the Chief Financial Officer of Heritage and a citizen of California.

20. Defendant Kathleen Otto was at relevant times the wife of John Otto and a participant in his wrongful acts.

21. Defendant Callahan & Blaine is a law firm with an office in Santa Ana, California.

22. The remaining named defendants are identified in paragraphs I and 3 above.

23. Plaintiffs are informed and believe and based upon such information and belief allege that, each fictitious defendant was in some way responsible for, participated in, or contributed to the matter and things of which plaintiffs complain herein, and in some form and

under some theory, is subject to liability therefore. When the exact nature and identity of such fictitious defendants' responsibility for, participation in, and contribution to the matters herein alleged is ascertained by plaintiffs, they will seek leave to amend this Complaint to set forth the same.

24. Plaintiffs are informed and believe and thereon allege that at all time relevant herein, defendants, and DOES 1-100, were/are doing business in the State of California and throughout the United States.

25. At all times herein relevant, all defendants and each of them were the agents, servants, and/or employees of each and every other defendant.

26. All defendants carried out a joint scheme, business plan or policy in all respects pertinent hereto and all acts and omissions herein complained of were performed within the course and scope of said employment, service, agency, common scheme, plan and/or policy.

27. Defendants' founders, owners and executive officers directed, authorized, ratified and/or participated in the conduct that gives rise to the claims asserted herein and derived personal financial benefit from such conduct.

28. The aforementioned "Ponzi" fraud scheme could not be completed without the malfeasance, misfeasance, negligence, or outright fraudulent co-conspiracy of Defendants.

#### JURISDICTION

29. Under 28 U.S.C. §1332(a), this Court has subject matter jurisdiction over this action in that there is complete diversity of citizenship among plaintiffs and defendants and the matter in controversy, exclusive of interest and costs, exceeds the sum of \$75,000.

### VENUE

30. A substantial part of the events or omissions giving rise to the claims herein, including the injuries complained of, occurred in this District, making venue in this District proper under 28 U.S.C. § 1391(a)(2).

### UNNAMED PARTICIPANTS

31. Numerous other individuals and entities participated actively during the course of and in furtherance of the Ponzi scheme herein alleged. There was a conspiracy and many acts were done in the course of and in furtherance of the conspiracy by statements, conduct, and intent to defraud. The individuals and entities acted in concert by joint ventures and by acting as agents for principals, in order to advance the objectives of the conspiracy. The acts were intended to promote the conspiratorial objectives.

### SUBSTANTIVE ALLEGATIONS

32. Defendant Manufacturing Acceptance Corporation, is believed to be an umbrella entity for Otto's various corporations, including but not limited to defendants HL Leasing.

33. HL Leasing is a company that was owned or controlled by Otto, and was purportedly engaged in the business of acquiring equipment leases.

34. HL Leasing raised funds by soliciting investors to loan money to HL Leasing in consideration for promises of a high rate of return in the form of interest.

35. Potential investors were advised by HL Leasing representatives, including Otto, Ramirez, Fernandez and Lewis, that the return on their investment would be generated by equipment leases acquired by HL Leasing at a discount, and that the leases were "seasoned" leases, meaning that they had a good track record with regard to payment by the lessees.

36. Potential investors were further advised that such leases would serve as collateral for their loans.

37. Investors were also advised that payment of interest on their investments was personally guaranteed by Otto.

38. Further representations were embodied in standardized documentation provided to all investors for each loan (the "Loan Agreements") which, inter alia, (a) provided for the repayment of the principal sum of the loan and specified the rate of interest to be paid and (b) set forth particulars as to the leases which purportedly served as collateral for the particular loan, including "Lease Numbers," the monthly payments due on the leases, and the outstanding balance due under the leases at the time the loan was made.

39. Prospective investors were provided with lists of existing investors and individual references who could be contacted to vouch for their experience and the safety of investing with HL Leasing.

40. In addition, the company offices would issue a letter to the investors with a purported "Independent Account Report of HL Leasing [sic] Procedure," in an effort to make HL Leasing's operations appear legitimate.

41. In September and October 2008, HL Leasing sent mailings to its investors, in which it stressed its high interest rates; represented a growth of its business of 60%; and advised of its acquisition of millions of dollars in additional leases from American Express.

42. Cobalt Investments LLC and Real Estate Network, Inc. Profit Sharing Trust first invested with defendants in or about 1995.

43. Prior to making those investments, those plaintiffs spoke with defendant Ramirez, who made representations as set forth in paragraphs 35 to 39 above.

44. Based on such representations, the two entities loaned funds to Heritage, as the predecessor to or alter ego of HL Leasing, and HL Leasing, and received documentation of those defendants' obligations to pay interest and repay principal as described in paragraph 36 above, signed by representatives of said defendants.

45. Subsequently, plaintiff Dragga loaned money to HL Leasing as well, and HL Leasing provided similar signed loan documentation with respect to these loans.

46. Because the term of the loans by Plaintiffs generally did not exceed three years, plaintiffs regularly made new loans to HL Leasing upon the expiration of existing loans, entering into new loan agreements based on HL Leasing's representations and documentation for the new loans as described above.

47. From the time plaintiffs made their investments until April 2009, HL Leasing sent to the plaintiffs monthly disbursements as purported interest on their investments in accordance with the terms of the Loan Agreements.

48. Defendants never revealed the source of these payments to investors. In fact, HL Leasing was "repaying" investors with funds from new investors and other sources. In making continued representations to investors, through HL Leasing's Loan Agreements with purported collateral and otherwise, HL Leasing and its agents intended to deceive Plaintiffs into believing their investments were sound and secure, and to conceal from Plaintiffs the facts regarding HL Leasing's actual finances.

49. In reliance on HL Leasing's representations, and its failure to disclose the true state of its financial condition, Plaintiffs continued to make new loans to HL Leasing through October 2008.

50. As of April 2009, HL Leasing's obligations to pay Plaintiffs pursuant to loan agreements then in effect amounted to in excess of \$700,000.

51. On April 28, 2009, HL Leasing investors received a letter from Otto to "HL Leasing Clients," in which Otto stated in part: For the past twenty years Heritage has prided itself on its history of paying its obligations on or before the due date. For the first time in our history, Heritage will not be making its payment of principal due on the 25th of April.

52. Otto advised in the letter that he had entered into an agreement with another company to sell HL Leasing; that the transaction would be closed shortly; and that the monthly checks would be delayed for "about two weeks." The letter also indicated that all HL Leasing's accounts would be frozen until the transaction was consummated.

53. The reference to "Heritage" in Otto's letter was to defendant Heritage Pacific Leasing. Heritage functioned as a broker for HL Leasing, purportedly purchasing and selling equipment lease contracts and soliciting funds from investors in conjunction and association with HL Leasing investment dollars. Heritage and HL Leasing were functioning as a joint enterprise and/or were alter egos of one another. Heritage's Chief Financial Officer, Defendant Fernandez, has been involved in the sales and purchases of the equipment leases that were supposed to be collateral to the loan agreements.

54. On May 8, 2009 the law firm of Callahan & Blaine sent a letter to investors in HL Leasing advising that Otto was having severe health problems which "had an impact on the acquisition of HL Leasing [by the purported purchaser referenced in Otto's April 28 letter], and to date the sale has not been consummated."

55. The letter sent by Callahan & Blaine further falsely stated that HL Leasing had retained that firm, which was "diligently working through a plan of action to ensure that the monthly payments to [the investors] get back on track in short order."

56. No payments of principal and/or interest have been made with respect to Plaintiffs' loans or the loans of other investors to HL Leasing since March 2009.

57. As a direct and indirect result of Defendants' acts, omissions and conspiracy, plaintiffs were subjected to a massive fraudulent investment scheme involving countless individual fraudulent transactions which totaled approximately \$138 Million. As herein alleged upon the facts in this Complaint, each Plaintiff was injured by Defendants as a result of their acts and/or omissions.

#### ALTER EGO ALLEGATIONS

58. Plaintiffs are informed and believe and thereon allege that there exists, and at all times herein mentioned, there existed a unity of interest and ownership between defendants, such that any individuality and separateness between defendants have ceased, and defendants are the alter ego of each other in that defendants are completely controlled, dominated, managed, and operated by each other and intermingled the assets of each to suit defendants' convenience by placing the fixed assets of defendants in the name of defendants in order to evade obligations owed to creditors of each defendant.

59. Plaintiffs are informed and believe and thereon allege that adherence to the fiction of the separate existence of defendants as entities distinct from each other would permit an abuse of corporate privilege and would promote injustice in that defendants caused the money owed to plaintiffs to be withdrawn from each other and distributed to themselves, all for

the purpose of avoiding and preventing attachment and execution by creditors, including thereby rendering themselves insolvent and unable to meet their financial obligations.

60. Plaintiffs are informed and believe and thereon allege that the corporate defendants, and at all times herein mentioned were, a mere shell and sham without capital, assets and/or stocks. Plaintiffs are informed and believe and thereon allege that those defendants were conceived, intended, and used by each other as a device to avoid individual liability and for the purpose of substituting a financially insolvent corporation in the place of each other.

61. Plaintiffs are informed and believe and thereon allege that the corporate defendants are, and at all times herein mentioned were, so inadequately capitalized that, compared with the business to be done and the risks of loss, their capitalization was trifling.

62. Plaintiffs are informed and believe and thereon allege that defendants, and at all times herein mentioned were, controlled, dominated and operated by each other as their individual business and alter ego, in that the activities and the business of defendants were carried out without the holding of directors' or shareholders' meetings, no records or minutes of any corporate proceedings were maintained, and defendants entered into personal transactions with each other without holding shareholders meetings.

#### **FRAUDULENT CONCEALMENT AND DISCOVERY**

63. MAC Defendants, and DOES 1-100, actively participated in the events complained of and fraudulently concealed their conduct, preventing Plaintiffs from discovering the facts supporting this Complaint until late April/May 2009.

64. Plaintiffs exercised due diligence in attempting to ascertain the facts on which this Complaint is based.

65. Many of the facts alleged herein have only been discovered after the April 28, 2009 letter was issued by Otto, as there was no advance notice or suspicion of a problem or any triggering aspect prior to this date to indicate that anything had gone wrong.

66. Plaintiffs could not have discovered the facts supporting this Complaint earlier in the exercise of due diligence.

**FIRST CLAIM FOR RELIEF**  
**(For Fraud, against the MAC Defendants and Does 1-100)**

67. Plaintiffs hereby re-assert and incorporate by reference the allegations of paragraphs 1 through 66 of this Complaint and incorporate the same by reference as set forth in detail herein.

68. Beginning in or around 1995, the MAC defendants, in order to lull plaintiffs and induce them to provide loans, falsely and fraudulently represented to plaintiffs: (a) that HL Leasing purportedly engaged in the business of acquiring equipment leases; (b) that plaintiffs will receive high rate of return on the loans given to HL Leasing in the form of interest, and (c) that the return on their investment would be generated by equipment leases acquired by HL Leasing at a discount; (d) that the leases were "seasoned" leases, meaning that they had a good track record with regard to payment by the lessees; (e) that such leases would serve as collateral for the subject loans; (f) and that payment of interest on their investments was personally guaranteed by Otto;

69. Said defendants' conduct in soliciting, obtaining and securing the subject loans based on the foregoing promises and associated documents presented to plaintiffs, was knowingly deceptive, and false. Said defendants knew of this falsity. Specifically, they knew that HL Leasing did not intend and would not be able to provide promised returned because they

knew that the funds generated from equipment leases either did not exist or were not available to repay principal and interest on the loans, as represented.

70. Said defendants further knew that the loans by plaintiffs were not collateralized by equipment leases, as represented.

71. Said defendants were also aware that the representations in the Loan Agreements that interest would be paid on the loans and that principal would be paid were false, in that they knew or had reason to believe at the time the Loan Agreements were signed that funds would not be available to make such payments, and that the source of funds being paid to investors was not equipment leases but rather loans from other investors.

72. In addition, despite representations and assurances to the contrary, Otto did not personally guarantee the subject loans.

73. Furthermore, the representations in the mailings identified in paragraph 39 above were false. American Express was no longer in the equipment leasing business at the time HL Leasing purportedly acquired the leases referenced in such mailings.

74. In sum, said defendants knew of the falsity of the representations at the time they were made, and either participated in making such representations or deliberately concealed the true facts from plaintiffs, who had every right and reason to rely on the representation provided to them.

75. The representations at issue, and the facts concealed from plaintiffs were material. Plaintiffs reasonably relied on the specified representations in making loans to HL Leasing.

76. Plaintiffs justifiably relied on the aforesaid representations and were thereby induced to make subject loans to HL Leasing, thereby making possible and facilitating the looting of their assets and funds by HL Leasing and its confederates.

77. The MAC defendants had a duty to disclose the facts, because the facts differed materially from what they disclosed, represented, and concealed in all documents and communications pertaining to the subject loans solicited and obtained from plaintiffs. Plaintiffs did not know and could not reasonably discover the truth in time to take action to prevent or mitigate the looting of their assets and funds. Said defendants had actual, culpable knowledge, of information which clearly indicated that plaintiffs will not be provided returns on their loans as promised.

78. Had plaintiffs known the truth fraudulently concealed from them, then plaintiffs would not have made the subject loans; would have never have continued to permit their funds and assets to remain in HL Leasing's hands, and/or would have taken immediate action to recover funds already transferred to HL Leasing.

79. The MAC defendants, in creating, acceding to and participating in the Ponzi scheme as described in this Complaint, intentionally caused injury to plaintiffs.

80. As a direct and proximate result of the wrongful conduct of HL Leasing alleged above, plaintiffs have been damaged in amount not less than \$700,000.

**SECOND CLAIM FOR RELIEF**  
**(For Conspiracy to Commit Fraud,**  
**against all Defendants, and Does 1-100)**

81. Each of the above alleged paragraphs is incorporated by reference in this and each of the causes of action, *infra*, as if fully set forth herein/therein, and plaintiffs re-allege the above Facts Applicable to All Claims For Relief.

82. In committing the wrongful acts alleged herein, Defendants have pursued a common course of conduct and acted in concert with and conspired with one another in furtherance of their common plan, scheme or design. In addition to the wrongful conduct herein alleged as giving rise to primary liability, Defendants further aided and abetted and knowingly assisted each other in breach of their respective duties as herein alleged.

83. During all relevant times hereto, Defendants, and each of them, initiated and/or joined in a course of conduct which was designed to and did (i) siphon funds from MAC in order to use such funds in other business ventures in which Otto and his associated entities were engaged and (ii) deceive Plaintiffs regarding defendants' representation as to the investment return on plaintiffs' loans provided to defendants, and the legitimacy and existence of defendants' equipment leasing business; and (iii) cause Plaintiffs to invest in defendants' business by providing loans. In furtherance of this plan, conspiracy and course of conduct, defendants, and each of them, took the actions as set forth herein.

84. Defendants engaged in a conspiracy or common course of conduct in violation of statutory and common law, the purpose and effect of which was, inter alia, to disseminate artificially inflated and deceitful information regarding the legitimacy of defendants' equipment leasing business and financial projections and to conceal the adverse facts concerning defendant's true financial condition.

85. Defendants accomplished their conspiracy or common course of conduct of disseminating artificially inflated and deceitful information regarding the legitimacy of defendant's representations vis-à-vis investment returns on plaintiffs' loans by making and collaborating defendants' claims and representations regarding the collateralized nature and health of subject equipment leasing business, thus creating a false impression of growth and

profitability. Each defendant was a direct, necessary and substantial participant in the conspiracy and common course of conduct complained of herein.

86. Each of the Defendants herein aided and abetted and rendered substantial assistance in the wrongs complained of herein. In taking the actions, as particularized herein, to substantially assist the commission of the fraud complained of, each defendant acted with knowledge of the primary wrongdoing, substantially assisted the accomplishment of that fraud, and was aware of his or its overall contribution to and furtherance of the fraud. Defendants' act of aiding and abetting include, *inter alia*, the acts they are alleged to have committed in furtherance of the conspiracy and common course of conduct complained of herein.

87. Upon information and belief, defendants Regency Bank and Palm Springs Savings Bank had actual knowledge of the fraudulent scheme in which the MAC defendants were engaged. In lending funds to Otto, MAC, Heritage and HL Leasing, said defendants of necessity reviewed the books and records of those entities and were thus aware that the funds purportedly generated from equipment leases either did not exist or were being used for purposes other than repaying the loans made by plaintiffs and others.

88. Said defendants also had to have known that the loans by plaintiffs and others were not collateralized by equipment leases as represented.

89. In allowing their names to be used as financial references by the MAC defendants, Regency Bank and Palm Springs Savings Bank substantially assisted the MAC defendants in perpetrating their fraudulent scheme.

90. By continuing to lend money to Otto, MAC, Heritage and HL Leasing, Regency Bank and Palm Springs Savings Bank gave further substantial assistance to the MAC

defendants enabling them to stay afloat and to continue to solicit loan funds from investors in furtherance of their scheme.

91. Upon information and belief, defendants New Era Funding Corp., Commercial Equipment Lease Corp., Centerpoint Financial Services, Financial Pacific Leasing, LLC, First Sierra Financial, Inc. and Belvedere Equipment Finance Corp., in providing funding to Otto, MAC, HL Leasing and Heritage, also had actual knowledge of the fraudulent scheme. One or more of the foregoing defendants, including Centerpoint, had such knowledge by virtue of the fact that they were owned or controlled by Otto. The remaining entities necessarily gained such knowledge in the same manner as Regency Bank and Palm Springs Savings Bank, as described above.

92. Upon information and belief, defendants New Era Funding Corp., Commercial Equipment Lease Corp., Centerpoint Financial Services, Financial Pacific Leasing, LLC, First Sierra Financial, Inc. and Belvedere Equipment Finance Corp., provided substantial assistance to the MAC defendants in carrying out their fraudulent scheme, in the same manner set forth in paragraph 90 above.

93. In addition, upon information and belief, Centerpoint, Pentech, and such other defendants as were owned or controlled by Otto, and thus had knowledge of the fraud, provided substantial assistance in carrying out the fraud through their receipt of funds loaned by the defrauded investors.

94. Defendant Callahan & Blaine, having been retained by HL Leasing, participated in the fraud by knowingly sending the false letter referenced in paragraphs 54 and 55 above, in which reference was made to a plan of action to resume payments to investors which did not exist and could not have existed at the time in question.

95. As a result of this wrongful conduct alleged herein, Plaintiffs suffered damages in an amount to be determined according to proof at the time of trial.

**THIRD CLAIM FOR RELIEF**  
**(For Negligent Misrepresentation,  
against the MAC Defendants, and Does 1-100)**

96. Each of the above alleged paragraphs is incorporated by reference in this and each of the causes of action, *infra*, as if fully set forth herein/therein, and plaintiffs re-allege the above Facts Applicable to All Claims For Relief.

97. The MAC defendants owed plaintiffs a duty to provide truthful and timely information regarding the subject loan transactions. Instead, they negligently made the false representations specified above and failed to disclose the whole truth by stating misleading half-truths which contained incomplete information, which they had a duty to disclose since they had undertaken to provide some information.

98. In making the representations they did, the MAC defendants failed to state the true material facts that HL Leasing was not safe, that HL Leasing was a Ponzi scheme, and that the collateral claimed to support the contracts was not real.

99. The MAC defendants asserted facts that were not true, while having no reasonable ground for believing them to be true.

100. The MAC defendants made positive assertions in a manner not warranted by the information in their possession, of that which was not true, though they may have believed them to be true. They made these assertions to induce the reliance of Plaintiffs.

101. At all relevant times, Plaintiffs were ignorant of the true facts and reasonably relied upon the representations and half-truths of the MAC defendants and were induced to invest in HL Leasing in reliance on such negligent misrepresentations.

102. As a direct and proximate result of the conduct described above, Plaintiffs were damaged in the manner described above in an amount to be proved at trial.

**FOURTH CLAIM FOR RELIEF**  
**(For Breach of Fiduciary Duty,**  
**against the MAC Defendants, and Does 1-100)**

103. Each of the above alleged paragraphs is incorporated by reference in this and each of the causes of action, *infra*, as if fully set forth herein/therein, and plaintiffs re-allege the above Facts Applicable to All Claims For Relief.

104. By virtue of their relationship, activities and actions, the MAC defendants, and each of them, set out to create and did in fact create a special relationship of trust and confidence, and thereby owed Plaintiffs a fiduciary duty. Plaintiffs placed trust and confidence in the fidelity and integrity of said defendants in entrusting said defendants with their money and believing that the collateral was real. Said defendants, and each of them, set out to induce and did induce Plaintiffs to rely wholly on the representation of collateral supporting the respective loan agreements and that said defendants would do nothing to jeopardize this collateral. Accordingly, a confidential and fiduciary relationship existed at all times herein. Plaintiffs relied upon said defendants' false representations, concealments, and nondisclosures in investing in HL Leasing, which reliance was justified.

105. The MAC defendants each owed duties of loyalty to the Plaintiffs, fiduciary in nature, (a) to carry out the leasing operations and to protect the collateral of Plaintiffs in good faith arising out of the client relationship; (b) to disclose all material facts

known to them or that should have been known to them, and not misrepresent facts or conceal any facts in connection with the agreements, business operations or the collateral associated with their agreements; and (c) to use due diligence to verify the legitimacy and soundness of HL Leasing and the collateral supporting the loan agreements with Plaintiffs and not to act in conflict with their clients' interests for their own benefit.

106. Said defendants breached their fiduciary duties to Plaintiffs by committing the wrongful acts described above.

**FIFTH CLAIM FOR RELIEF**  
**(For Breach of Contract, against HL Leasing)**

107. Each of the above alleged paragraphs is incorporated by reference in this and each of the causes of action, *infra*, as if fully set forth herein/therein, and plaintiffs re-allege the above Facts Applicable to Claims For Relief.

108. Plaintiffs allege that written agreements were executed between plaintiffs and HL Leasing, concerning the subject loans. Plaintiffs entered into the Loan Agreements with HL Leasing containing the same material terms. The essential terms of the contracts were that HL Leasing would make monthly payments (of either interest only or principal and interest) at a specified rate of interest on the 25th of every month for a specified period, with the entire principal being paid at the end of the period in the case of loans with interest only monthly payments. These standardized agreements also specified underlying leases as collateral for the loans.

109. Plaintiffs performed all duties required of them under the contract.

110. HL Leasing had a duty to make interest payments on the 25th of every month.

111. HL Leasing breached the contracts by failing to make payment of principal or interest on or after April 25, 2009.

112. Plaintiffs were damaged as the result of HL Leasing, Inc.'s breach of contract, in an amount to be proved at trial, insofar as all of their investments remaining with HL Leasing, Inc., plus interest, were lost.

WHEREFORE, Plaintiffs demand the following relief:

A. Judgment for damages, jointly and severally, against Defendants according to their liability for the respective claims for relief in this complaint, in an amount to be determined but not less than \$700,000;

B. Punitive damages; and

C. Such other and further relief as the Court deems just and proper.

DATED: New York, New York  
March 24, 2011

HERZFELD & RUBIN, P.C.

By: 

Howard L. Wexler  
Attorneys for Plaintiffs  
125 Broad Street, 12<sup>th</sup> Floor  
New York, New York 10004  
(212) 471-8500

## UNITED STATES DISTRICT COURT

Southern

District of New York

COBALT INVESTMENTS, LLC,  
DRAGGA LLC, AND REAL ESTATE  
NETWORK, INC. PROFIT SHARING  
PLAN,

Plaintiffs,

v.

**NOTICE OF DISMISSAL**

**CASE NUMBER: 11 CIV 2091**

MANUFACTURERS ACCEPTANCE CORPORATION,  
HL LEASING, INC., HERITAGE PACIFIC LEASING,  
THE ESTATE OF JOHN W. OTTO, DAN RAMIREZ,  
KATHLEEN J. OTTO, ANDY FERNANDEZ, NORMA  
LEWIS, CALLAHAN & BLAINE, REGENCY BANK,  
PALM SPRINGS SAVINGS BANK, NEW ERA  
FUNDING CORP., CENTERPOINT FINANCIAL  
SERVICES, PENTECH FINANCIAL SERVICES, INC.,  
FINANCIAL PACIFIC LEASING, LLC,  
FIRST SIERRA FINANCIAL INC., BELVEDERE  
EQUIPMENT FINANCE CORP., and DOES 1-100,

Defendants.

NOTICE OF DISMISSAL AS TO DEFENDANT Kathleen Otto  
(Fed. R. Civ. P. 41(a)(1)(A)(i))

The Plaintiffs, COBALT INVESTMENTS, LLC, DRAGGA LLC, and REAL ESTATE NETWORK, INC. PROFIT SHARING PLAN, dismiss, without prejudice, all claims asserted in this action against defendant Kathleen Otto and against that defendant only. The action remains pending and is not dismissed by this Notice as to any other defendant.

Plaintiff dismisses defendant Kathleen Otto pursuant to Rule 41(a)(1)(a)(i) of the Federal Rules of Civil Procedure on the grounds that this defendant has not yet served an answer or moved for summary judgment in this action.

Dated: New York, New York  
May 26, 2011

HERZFELD & RUBIN, P.C.


By:   
Charles A. Crum  
Attorneys for Plaintiffs  
125 Broad Street, 12<sup>th</sup> Floor  
New York, New York 10004  
212-471-8500

EXHIBIT 2

B 10 (Official Form 10) (12/11)

<b>UNITED STATES BANKRUPTCY COURT</b> <b>Central District of California</b>		<b>PROOF OF CLAIM</b>
Name of Debtor: Kathleen Joan Otto		Case Number: 6:12-bk-21607 MJ
NOTE: <i>Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503.</i>		
Name of Creditor (the person or other entity to whom the debtor owes money or property): Vicken Massoyan, et al		<b>COURT USE ONLY</b>
Name and address where notices should be sent: c/o Ara Jabaghourian, Esq. 840 Malcolm Road Burlingame, CA 94010  Telephone number: (650) 697-6000    email: ajabaghourian@cpmlegal.com		<input type="checkbox"/> Check this box if this claim amends a previously filed claim.  Court Claim Number: _____ (If known)  Filed on: _____
Name and address where payment should be sent (if different from above):    Telephone number: _____    email: _____		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars.
1. Amount of Claim as of Date Case Filed:      \$ <u>116,626,022.68</u>		
If all or part of the claim is secured, complete item 4. If all or part of the claim is entitled to priority, complete item 5. <input type="checkbox"/> Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.		
2. Basis for Claim: <u>Judgment entered March 5, 2012 (attached)</u> (See instruction #2)		
3. Last four digits of any number by which creditor identifies debtor:	3a. Debtor may have scheduled account as: _____ (See instruction #3a)	3b. Uniform Claim Identifier (optional): _____ (See instruction #3b)
4. Secured Claim (See instruction #4) Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information.  Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe:  Value of Property: \$ _____  Annual Interest Rate _____% <input type="checkbox"/> Fixed or <input type="checkbox"/> Variable (when case was filed)		Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any: \$ _____  Basis for perfection: _____  Amount of Secured Claim:    \$ _____  Amount Unsecured:            \$ _____
5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507 (a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount.		
<input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507 (a)(1)(A) or (a)(1)(B).	<input type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11 U.S.C. § 507 (a)(4).	<input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. § 507 (a)(5).  Amount entitled to priority: \$ _____
<input type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. § 507 (a)(7).	<input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. § 507 (a)(8).	<input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. § 507 (a)(____).
*Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.		
6. Credits. The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #6)		

B 10 (Official Form 10) (12/11)

2

7. Documents: Attached are redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. If the claim is secured, box 4 has been completed, and redacted copies of documents providing evidence of perfection of a security interest are attached. (See instruction #7, and the definition of "redacted".)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

8. Signature: (See instruction #8)

Check the appropriate box.

- I am the creditor. I am the creditor's authorized agent. I am the trustee, or the debtor, or their authorized agent. I am a guarantor, surty, indorser, or other codebtor. (Attach copy of power of attorney, if any.) (See Bankruptcy Rule 3004.)

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.

Print Name: John Walshe Murray Title: Company: Murray & Murray, APC Address and telephone number (if different from notice address above): 19400 Stevens Creek Blvd, Suite 200 Cupertino, CA 95014-2548 Telephone number: (650) 852-9000 email: iwurray@murraylaw.com

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, exceptions to these general rules may apply.

Items to be completed in Proof of Claim form

Court, Name of Debtor, and Case Number: Fill in the federal judicial district in which the bankruptcy case was filed... Creditor's Name and Address: Fill in the name of the person or entity asserting a claim... 1. Amount of Claim as of Date Case Filed: State the total amount owed to the creditor... 2. Basis for Claim: State the type of debt or how it was incurred... 3. Last Four Digits of Any Number by Which Creditor Identifies Debtor: State only the last four digits... 3a. Debtor May Have Scheduled Account As: Report a change in the creditor's name... 3b. Uniform Claim Identifier: If you use a uniform claim identifier, you may report it here.

4. Secured Claim: Check whether the claim is fully or partially secured... 5. Amount of Claim Entitled to Priority Under 11 U.S.C. § 507 (a): If any portion of the claim falls into any category shown... 6. Credits: An authorized signature on this proof of claim serves as an acknowledgment... 7. Documents: Attach redacted copies of any documents that show the debt exists... 8. Date and Signature: The individual completing this proof of claim must sign and date it.

**DEFINITIONS**

**INFORMATION**

**Debtor**

A debtor is the person, corporation, or other entity that has filed a bankruptcy case.

**Creditor**

A creditor is a person, corporation, or other entity to whom debtor owes a debt that was incurred before the date of the bankruptcy filing. See 11 U.S.C. §101 (10).

**Claim**

A claim is the creditor's right to receive payment for a debt owed by the debtor on the date of the bankruptcy filing. See 11 U.S.C. §101 (5). A claim may be secured or unsecured.

**Proof of Claim**

A proof of claim is a form used by the creditor to indicate the amount of the debt owed by the debtor on the date of the bankruptcy filing. The creditor must file the form with the clerk of the same bankruptcy court in which the bankruptcy case was filed.

**Secured Claim Under 11 U.S.C. § 506 (a)**

A secured claim is one backed by a lien on property of the debtor. The claim is secured so long as the creditor has the right to be paid from the property prior to other creditors. The amount of the secured claim cannot exceed the value of the property. Any amount owed to the creditor in excess of the value of the property is an unsecured claim. Examples of liens on property include a mortgage on real estate or a security interest in a car. A lien may be voluntarily granted by a debtor or may be obtained through a court proceeding. In some states, a court judgment is a lien.

A claim also may be secured if the creditor owes the debtor money (has a right to setoff).

**Unsecured Claim**

An unsecured claim is one that does not meet the requirements of a secured claim. A claim may be partly unsecured if the amount of the claim exceeds the value of the property on which the creditor has a lien.

**Claim Entitled to Priority Under 11 U.S.C. § 507 (a)**

Priority claims are certain categories of unsecured claims that are paid from the available money or property in a bankruptcy case before other unsecured claims.

**Redacted**

A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. A creditor must show only the last four digits of any social-security, individual's tax-identification, or financial-account number, only the initials of a minor's name, and only the year of any person's date of birth. If the claim is based on the delivery of health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information.

**Evidence of Perfection**

Evidence of perfection may include a mortgage, lien, certificate of title, financing statement, or other document showing that the lien has been filed or recorded.

**Acknowledgment of Filing of Claim**

To receive acknowledgment of your filing, you may either enclose a stamped self-addressed envelope and a copy of this proof of claim or you may access the court's PACER system ([www.pacer.psc.uscourts.gov](http://www.pacer.psc.uscourts.gov)) for a small fee to view your filed proof of claim.

**Offers to Purchase a Claim**

Certain entities are in the business of purchasing claims for an amount less than the face value of the claims. One or more of these entities may contact the creditor and offer to purchase the claim. Some of the written communications from these entities may easily be confused with official court documentation or communications from the debtor. These entities do not represent the bankruptcy court or the debtor. The creditor has no obligation to sell its claim. However, if the creditor decides to sell its claim, any transfer of such claim is subject to FRBP 3001(e), any applicable provisions of the Bankruptcy Code (11 U.S.C. § 101 *et seq.*), and any applicable orders of the bankruptcy court.

**FILED**

**MAR 05 2012**

FRESNO COUNTY SUPERIOR COURT  
By \_\_\_\_\_ DEPT. 502

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**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF FRESNO**

VICKEN MASSOYAN; and MAGGIE  
ANTARAMIAN; both individually and on  
behalf of all others similarly situated,

Plaintiffs,

v.

HL LEASING, INC., a California  
Corporation; MANUFACTURERS  
ACCEPTANCE CORP. dba HERITAGE  
PACIFIC LEASING, a California  
Corporation; ESTATE OF JOHN W.  
OTTO; DAN RAMIREZ; NORMA  
LEWIS; ANDY FERNANDEZ; AIR  
FRED, LLC, a Limited Liability Company;  
and DOES 1 to 10 inclusive,

Defendants.

**CASE NO. 09 CECG 01839**  
Assigned For All Purposes To:  
Honorable Donald S. Black  
Department 502

**[PROPOSED] JUDGMENT**

**Trial Date: July 11, 2011**  
**Time: 9:00 a.m.**  
**Judge: Hon. Donald S. Black**  
**Location: Dept. 502**  
**B.F. Sisk Courthouse**  
**1130 O Street**  
**Fresno, CA 93721**

**[PROPOSED] JUDGMENT**

1 This action came on regularly for trial on July 11, 2011, in Department 502 of the Fresno  
2 Superior Court, the Hon. Donald S. Black presiding. Plaintiffs VICKEN MASSOYAN and  
3 MAGGIE ANTARAMIAN, and the Certified Class appeared by attorneys Ara Jabaghourian and  
4 Aron K. Liang of Cotchett, Pitre & McCarthy, LLP and co-counsel Donald R. Fischbach of  
5 Dowling, Aaron & Keeler, Inc. The Defendants, KATHLEEN OTTO appeared by attorneys Marc  
6 P. Miles and Kristy Schlesinger of Callahan & Blaine; DAN RAMIREZ appeared by attorney C.  
7 Russell Georgeson of Georgeson and Belardinelli; and ANDY FERNANDEZ appeared by  
8 attorney David J. St. Louis of Law Offices of David J. St. Louis, Inc.

9 A jury of 12 persons with four alternates was regularly impaneled and sworn. Witnesses  
10 were sworn and testified. After hearing the evidence and arguments of counsel, the jury was duly  
11 instructed by the Court and the cause was submitted to the jury. The jury deliberated and  
12 thereafter, on August 5, 2011, returned into court with its verdict as follows:

13 **Question No. 1:**

14 Did Dan Ramirez intentionally fail to disclose an important fact that Vicken Massoyan,  
15 Maggie Antaramian and the class members did not know and could not reasonably have  
16 discovered?

17 **ANSWER:** Yes

18 **Question No. 2:**

19 Did Dan Ramirez intend to deceive Vicken Massoyan, Maggie Antaramian and the class  
20 members by concealing the fact?

21 **ANSWER:** Yes

22 **Question No. 3:**

23 Did Vicken Massoyan, Maggie Antaramian and the class members rely on Dan Ramirez's  
24 deception and was such reliance reasonable under the circumstances?

25 **ANSWER:** Yes

26 **Question No. 4:**

27 Was Dan Ramirez's concealment a substantial factor in causing harm to Vicken  
28 Massoyan, Maggie Antaramian and the class members?

1 **ANSWER:** Yes

2 **Question No. 5:**

3 What are Vicken Massoyan, Maggie Antaramian and the class members' damages?

4 **ANSWER:** \$720,000.00

5 **Question No. 6:**

6 Did Dan Ramirez make a false representation of an important fact to Vicken Massoyan,  
7 Maggie Antaramian and the class members?

8 **ANSWER:** Yes

9 **Question No. 7:**

10 Did Dan Ramirez honestly believe that the representation was true when he made it?

11 **ANSWER:** Yes

12 **Question No. 8:**

13 Did Dan Ramirez have reasonable grounds for believing the representation was true when  
14 he made it?

15 **ANSWER:** YES

16 **Question No. 9:**

17 Did Dan Ramirez intend that Vicken Massoyan, Maggie Antaramian and the class  
18 members to rely on the representation?

19 **ANSWER:** Intentionally unanswered by jury

20 **Question No. 10:**

21 Did Vicken Massoyan, Maggie Antaramian and the class members reasonably rely on the  
22 representation?

23 **ANSWER:** Intentionally unanswered by jury

24 **Question No. 11:**

25 Were Vicken Massoyan, Maggie Antaramian and the class members' reliance on Dan  
26 Ramirez's representation a substantial factor in causing harm to Plaintiffs or the class?

27 **ANSWER:** Intentionally unanswered by jury

28 ///

1 **Question No. 12:**

2 What are Vicken Massoyan, Maggie Antaramian and the class members' damages?

3 **ANSWER:** Intentionally unanswered by jury

4 **Question No. 13:**

5 Was Dan Ramirez aware that John Otto planned to conceal material facts from Vicken  
6 Massoyan, Maggie Antaramian and the class members?

7 **ANSWER:** Yes

8 **Question No. 14:**

9 Did Dan Ramirez agree with John Otto and intend that material information be concealed  
10 from Vicken Massoyan, Maggie Antaramian and the class members?

11 **ANSWER:** No

12 **Question No. 15:**

13 At all times was Dan Ramirez acting as an agent or employee of HL Leasing, Inc. and not  
14 acting to advance his own personal interests?

15 **ANSWER:** Intentionally unanswered by jury

16 **Question No. 16:**

17 Was Andy Fernandez aware that John Otto and/or Dan Ramirez planned to conceal  
18 material facts from Vicken Massoyan, Maggie Antaramian and the class members?

19 **ANSWER:** No

20 **Question No. 17:**

21 Did Andy Fernandez agree with John Otto and/or Dan Ramirez and intend that material  
22 information be concealed from Vicken Massoyan, Maggie Antaramian and the class members?

23 **ANSWER:** Intentionally unanswered by jury

24 **Question No. 18:**

25 At all times was Andy Fernandez acting as an agent or employee of HL Leasing, Inc. and  
26 not acting to advance his own personal interests?

27 **ANSWER:** Intentionally unanswered by jury

28 ///

1 **Question No. 19:**

2 Was Kathy Otto aware that John Otto and/or Dan Ramirez planned to conceal material  
3 facts from Vicken Massoyan, Maggie Antaramian and the class members?

4 **ANSWER:** No

5 **Question No. 20:**

6 Did Kathy Otto agree with John Otto and/or Dan Ramirez and intend that material  
7 information be concealed from Vicken Massoyan, Maggie Antaramian and the class members?

8 **ANSWER:** Intentionally unanswered by jury

9 **Question No. 21:**

10 Did Dan Ramirez know that concealment of material facts was being committed by John  
11 Otto against Vicken Massoyan, Maggie Antaramian and the class members?

12 **ANSWER:** Yes

13 **Question No. 22:**

14 Did Dan Ramirez give substantial assistance or encouragement to John Otto?

15 **ANSWER:** Yes

16 **Question No. 23:**

17 Was Dan Ramirez's conduct a substantial factor in causing harm to Vicken Massoyan,  
18 Maggie Antaramian and the class members?

19 **ANSWER:** Yes

20 **Question No. 24:**

21 Did Andy Fernandez know that concealment of material facts was being committed by  
22 John Otto and/or Dan Ramirez against Vicken Massoyan, Maggie Antaramian and the class  
23 members?

24 **ANSWER:** Yes

25 **Question No. 25:**

26 Did Andy Fernandez give substantial assistance or encouragement to John Otto and/or  
27 Dan Ramirez?

28 **ANSWER:** Yes

1 **Question No. 26:**

2 Was Andy Fernandez's conduct a substantial factor in causing harm to Vicken Massoyan,  
3 Maggie Antaramian and the class members?

4 **ANSWER:** Yes

5 **Question No. 27:**

6 Did Kathy Otto know that concealment of material facts was being committed by John  
7 Otto and/or Dan Ramirez against Vicken Massoyan, Maggie Antaramian and the class members?

8 **ANSWER:** Yes

9 **Question No. 28:**

10 Did Kathy Otto give substantial assistance or encouragement to John Otto and/or Dan  
11 Ramirez?

12 **ANSWER:** Yes

13 **Question No. 29:**

14 Was Kathy Otto's conduct a substantial factor in causing harm to Vicken Massoyan,  
15 Maggie Antaramian and the class members?

16 **ANSWER:** No

17 **Question No. 30:**

18 Did Plaintiffs' own negligence cause Plaintiffs' harm?

19 **ANSWER:** Yes

20 **Question No. 31:**

21 What percent of Plaintiffs' negligence caused their damages?

22 **ANSWER:** 50%

23 **Question No. 32:**

24 What are Plaintiffs' damages after reducing their total damages by the percentage of  
25 responsibility that you attribute to Plaintiffs?

26 **ANSWER:** \$46,500,000.00

27 ///

28 ///

1 It appearing by reason of said verdict that Plaintiffs VICKEN MASSOYAN and  
2 MAGGIE ANTARAMIAN, and the Certified Class, are entitled to judgment against Defendant  
3 DAN RAMIREZ for (1) Aiding and Abetting Fraud and for (2) Fraudulent Concealment; and  
4 against Defendant ANDY FERNANDEZ for Aiding and Abetting Fraud.

5 On August 16, 2011, the Court entered a directed verdict against Defendants HL  
6 LEASING, INC. ("HL Leasing"), MANUFACTURERS ACCEPTANCE CORP DBA  
7 HERITAGE PACIFIC LEASING ("MAC") and AIR FRED, LLC ("Air Fred"). The directed  
8 verdict held that "[b]ased upon the Court's factual findings, this Court finds that Defendants HL  
9 Leasing, MAC and Air Fred are liable to Plaintiffs and the Certified Class for: (1) fraudulent  
10 concealment, (2) negligent misrepresentation, (3) breach of contract and (4) breach of the implied  
11 covenant of good faith and fair dealing. Therefore, pursuant to Code of Civil Procedure § 630,  
12 this Court enters a directed verdict in favor fo the Plaintiffs and the Certified Class against  
13 Defendants HL Leasing, MAC and Air Fred on those causes of action." It appearing by reason of  
14 said directed verdict that Plaintiffs VICKEN MASSOYAN and MAGGIE ANTARAMIAN, and  
15 the Certified Class, are entitled to judgment against Defendants HL LEASING, INC.,  
16 MANUFACTURERS ACCEPTANCE CORP DBA HERITAGE PACIFIC LEASING and AIR  
17 FRED, LLC for: (1) Fraudulent Concealment, (2) Negligent Misrepresentation, (3) Breach of  
18 Contract and (4) Breach of the Implied Covenant of Good Faith and Fair Dealing.

19 On January 4, 2012, the Court entered a Memorandum of Decision and Order Re: Alter  
20 Ego Claims ("Alter Ego Order"). In the Alter Ego Order, the Court held that, "plaintiffs have  
21 proven John Otto was the alter ego of HL Leasing, MAC and Air Fred and Kathleen Otto, as his  
22 successor-in-interest, is liable for the damages awarded against those entities in this action." It  
23 appearing by reason of said order that Plaintiffs VICKEN MASSOYAN and MAGGIE  
24 ANTARAMIAN, and the Certified Class, are entitled to judgment against Defendant  
25 KATHLEEN OTTO, as the successor-in-interest to John Otto, for the damages awarded against  
26 Defendants HL LEASING, INC., MANUFACTURERS ACCEPTANCE CORP DBA  
27 HERITAGE PACIFIC LEASING and AIR FRED, LLC.

28 ///

1           **NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:**

2           1.       Plaintiffs VICKEN MASSOYAN and MAGGIE ANTARAMIAN, and the  
3 Certified Class, recover from DEFENDANT DAN RAMIREZ sum of seven hundred and twenty  
4 thousand dollars and no cents (\$720,000) found by the jury for Fraudulent Concealment.

5           2.       Plaintiffs VICKEN MASSOYAN and MAGGIE ANTARAMIAN, and the  
6 Certified Class, recover jointly and severally from DEFENDANTS DAN RAMIREZ and ANDY  
7 FERNANDEZ the sum of forty six million, five hundred thousand dollars and no cents  
8 (\$46,500,000.00) found by the jury for Aiding and Abetting.

9           3.       Plaintiffs VICKEN MASSOYAN and MAGGIE ANTARAMIAN, and the  
10 Certified Class, recover jointly and severally, from Defendants HL LEASING, INC.,  
11 MANUFACTURERS ACCEPTANCE CORP DBA HERITAGE PACIFIC LEASING and AIR  
12 FRED, LLC the sum of one hundred and fourteen million, five hundred and fifty four thousand,  
13 six hundred and twenty four dollars and no cents (\$114,554,624.00) pursuant to the Court's  
14 Directed Verdict, plus the sum of \$ TBD, in prejudgment interest on that  
15 amount, calculated at the rate of 7% per annum starting from the date August 16, 2011 when the  
16 Court entered its Directed Verdict through the date on which this judgment is entered for *total*  
17 *damages* against the aforementioned Defendants, jointly and severally, in the amount of  
18 \$ TBD.

19           4.       Plaintiffs VICKEN MASSOYAN and MAGGIE ANTARAMIAN, and the  
20 Certified Class, recover from Defendant KATHLEEN OTTO the sum of one hundred and  
21 fourteen million, five hundred and fifty four thousand, six hundred and twenty four dollars and no  
22 cents (\$114,554,624.00), plus the sum of \$ TBD, in prejudgment interest  
23 on that amount, calculated at the rate of 7% per annum starting from the date August 16, 2011  
24 when the Court entered its Directed Verdict through the date on which this judgment is entered  
25 for *total damages* against the aforementioned Defendant in the amount of  
26 \$ TBD. KATHLEEN OTTO, as the successor-in-interest to John Otto, whom  
27 the Court has determined is the alter ego of Defendants HL LEASING, INC.,  
28 MANUFACTURERS ACCEPTANCE CORP DBA HERITAGE PACIFIC LEASING and AIR

1 FRED, LLC, is liable for the damages awarded against Defendants HL LEASING, INC.,  
2 MANUFACTURERS ACCEPTANCE CORP DBA HERITAGE PACIFIC LEASING and AIR  
3 FRED, LLC. To the extent that Defendants HL LEASING, INC., MANUFACTURERS  
4 ACCEPTANCE CORP DBA HERITAGE PACIFIC LEASING and AIR FRED, LLC satisfy any  
5 amount of this judgment, KATHLEEN OTTO's liability shall be reduced accordingly.

6 5. The judgment against Defendants DAN RAMIREZ and ANDY FERNANDEZ, as  
7 set forth in Paragraphs 1 and 2 of this judgment, is a subset of the judgment against Defendants  
8 HL LEASING, INC., MANUFACTURERS ACCEPTANCE CORP DBA HERITAGE PACIFIC  
9 LEASING, AIR FRED, LLC and KATHLEEN OTTO, as set forth in Paragraphs 3 and 4 of this  
10 judgment.

11 6. Plaintiffs VICKEN MASSOYAN and MAGGIE ANTARAMIAN, and the  
12 Certified Class, shall also recover jointly and severally from Defendants DAN RAMIREZ,  
13 ANDY FERNANDEZ, KATHLEEN OTTO, HL LEASING, INC., MANUFACTURERS  
14 ACCEPTANCE CORP DBA HERITAGE PACIFIC LEASING and AIR FRED, LLC, costs of  
15 suit/disbursements in the amount of \$ TBD.

16 7. Post-judgment interest shall be calculated upon each judgment amount set forth  
17 above in paragraphs 1 through 4 of this judgment at the rate of ten percent (10%) per annum from  
18 the date of the entry of this judgment, until paid, and post-judgment interest shall be calculated  
19 upon the court's award of litigation costs/disbursements at the rate of ten percent (10%) per  
20 annum from the date of entry of the costs award, until paid.

21 **IT IS SO ORDERED.**

22  
23  
24 Dated: 3-5-12


  
25 HONORABLE DONALD S. BLACK  
26 JUDGE OF THE SUPERIOR COURT  
27  
28

EXHIBIT 3

Case 6:12-bk-21607-MJ Doc 69 Filed 02/04/13 Entered 02/04/13 14:46:06 Desc  
Main Document Page 1 of 29

1  
2 JEFFREY W. BROKER – State Bar No. 53226  
3 PAMELA J. ZYLSTRA – State Bar No. 147977  
4 BROKER & ASSOCIATES PROFESSIONAL CORPORATION  
5 18111 Von Karman Avenue, Suite 460  
6 Irvine, CA 92612-7152

7 Telephone: (949) 222-2000  
8 Facsimile: (949) 222-2022  
9 Email: [jbroker@brokerlaw.biz](mailto:jbroker@brokerlaw.biz)

10 General Reorganization Counsel for  
11 Debtor and Debtor-in-Possession

12 **UNITED STATES BANKRUPTCY COURT**  
13 **CENTRAL DISTRICT OF CALIFORNIA**

14 In re:

15 KATHLEEN JOAN OTTO, aka KATHLEEN  
16 J. OTTO, aka KATHLEEN KJENSRUD  
17 OTTO, aka KATHLEEN K. OTTO, aka  
18 KATHY OTTO,

19 Debtor and

20 Debtor-in-Possession

Bk. No. 6:12-bk-21607 MJ

In a Case Under Chapter 11  
of the Bankruptcy Code  
(11 U.S.C. § 1101 et seq.)

**DEBTOR'S FIRST AMENDED  
CHAPTER 11 PLAN**

**Disclosure Statement Hearing**

Date: February 13, 2013  
Time: 1:30 p.m.  
Ctvm: 301  
United States Bankruptcy Court  
3420 Twelfth Street  
Riverside, CA 92501

**Plan Confirmation Hearing**  
**See Disclosure Statement for**  
**Voting and Objecting**  
**Procedures**

Date: To be set by the Court  
Time: To be set by the Court  
Ctvm: United States Bankruptcy Court  
3420 Twelfth Street  
Riverside, CA 92501

21 Revised August 2005

**F 3018-1**

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I.

**INTRODUCTION**

Kathleen Joan Otto, aka Kathleen J. Otto, aka Kathleen Kjensrud Otto, aka Kathleen K. Otto aka Kathy Otto ("Kathleen Otto" or "Debtor") is the Debtor in a Chapter 11 bankruptcy case. On May 10, 2012, Kathleen Otto commenced a bankruptcy case by filing a voluntary Chapter 11 petition under the United States Bankruptcy Code ("Bankruptcy Code"), 11 U.S.C. § 101 et seq. This document is the Chapter 11 Plan ("Plan") proposed by Kathleen Otto ("Plan Proponent"). Sent to you in the same envelope as this document is the Disclosure Statement which has been approved by the Court, and which is provided to help you understand the Plan.

This is a liquidating plan. In other words, the Proponent seeks to accomplish payments under the Plan by pursuing pending litigation to a final determination while Debtor liquidates the assets of the estate to distribute the proceeds to pay all Allowed Claims. The Effective Date of the proposed Plan is 30 days after the entry of an order confirming the Debtor's Plan.

A term used in the Plan that is capitalized is either defined in Exhibit D or is used in the Bankruptcy Code and shall have the meaning ascribed to such term in the Bankruptcy Code.

II.

**CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS**

**A. General Overview**

As required by the Bankruptcy Code, the Plan classifies claims and interests in various classes according to their right to priority of payments as provided in the Bankruptcy Code. The Plan states whether each class of claims or interests is impaired or unimpaired. The Plan provides the treatment each class will receive under the Plan.

**B. Unclassified Claims**

Certain types of claims are not placed into voting classes; instead they are unclassified. They are not considered impaired and they do not vote on the Plan because they are automatically entitled to specific treatment provided for them in the Bankruptcy Code. As such, the Proponent has not placed the following claims in a class. The treatment of these claims is provided below.

**1. Administrative Expenses**

Administrative expenses are claims for costs or expenses of administering the Debtor's Chapter 11 case which are allowed under Code Section 507(a)(1). The Code requires that all administrative claims be paid on the Effective Date of the Plan, unless a particular claimant agrees to a different treatment.

The following chart lists all of the Debtor's § 507(a)(1) administrative claims and their treatment under this Plan.

<u>Name</u>	<u>Amount Owed</u>	<u>Treatment</u>
Broker & Associates PC	\$35,000.00 (estimated)	Paid in full on the Effective Date
Callahan & Blaine, APLC	\$10,000.00 (estimated)	Paid in full on the Effective Date
Clerk's Office Fees	\$00.00	If any, will be paid in full on the Effective Date
Office of the U.S. Trustee Fees	\$650.00	Paid in full on the Effective Date (quarterly fees for fourth quarter 2012)
<b>TOTAL</b>	<b>\$45,650.00</b>	

Court Approval of Fees Required:

The Court must approve all professional fees listed in this chart. For all fees except Clerk's Office fees and U.S. Trustee's fees, the professional in question must file and serve a properly noticed fee application and the Court must rule on the application. Only the amount of fees allowed by the Court will be required to be paid under this Plan.

2. Priority Tax Claims

Priority tax claims are certain unsecured income, employment and other taxes described by Code Section 507(a)(8). The Code requires that each holder of such a 507(a)(8) priority tax claim receive the present value of such claim in deferred cash payments, over a period not exceeding six years from the date of the assessment of such tax. The Debtor owes no priority tax claims.

C. Classified Claims and Interests

1. Classes of Secured Claims

Secured claims are claims secured by liens on property of the estate. The following chart lists all classes containing Debtor's secured pre-petition claims and their treatment under this Plan:

<u>CLASS#</u>	<u>DESCRIPTION</u>	<u>INSIDERS</u> (Y/N)	<u>IMPAIRED</u> (Y/N)	<u>TREATMENT</u>
1	Secured Claim of: ● Name = U.S. Bank ● Collateral description = (1) Commercial Security Agreement in lease portfolio of Manufacturers Acceptance Corporation (2) 49355 Sunrose Lane, Palm Desert, CA 92260 (real property) ● Collateral value = (as of Petition Date) Lease portfolio: \$6,555.30 Real property: \$1,920,000.00	N	Y	<ul style="list-style-type: none"> <li>● Pymt Interval = Monthly</li> <li>● Pymt amt/interval = \$1,000.00 (estimated monthly payment)</li> <li>● Balloon pymt = \$318,535.38 (reduced by collection of lease portfolio postpetition plus interest and attorneys' fees accrued postpetition and prior to entry of the Confirmation Order)</li> <li>● Begin date = Effective Date</li> <li>● End date = August 1, 2013</li> <li>● Interest rate % = 3.75%</li> <li>● Total payout 100%</li> <li>● Treatment of Lien = Retain lien against real property collateral</li> </ul> Payments of interest only, payable monthly, at an interest rate of 3.75% simple interest starting on the Effective Date and continuing until the Secured Claim is paid in full. The Debtor shall have until June 30, 2013 to close on a sale of the real property collateral. The Debtor shall

	<ul style="list-style-type: none"> <li>● Priority of security int. = First</li> <li>● Principal owed = \$318,535.38 (as of Petition Date)</li> </ul>			have an additional 30 days after June 30, 2013 to pay the Secured Claim in full from the proceeds of an auction of the real property collateral; or a loan secured by the real property collateral; or another source obtained by the Debtor. If the Secured Claim has not been paid in full by August 1, 2013, then U.S. Bank shall be deemed to have been granted relief from the automatic stay to proceed to foreclose its lien recorded against the real property collateral.
	<ul style="list-style-type: none"> <li>● Pre-pet. arrearage amount = \$00.00</li> <li>● Post-pet. Arrearage amount = \$00.00</li> <li>● Total claim amount = \$318,535.38 reduced by collection of lease portfolio postpetition plus interest and attorneys' fees accrued postpetition and prior to entry of the Confirmation Order</li> </ul>			

CLASS#	DESCRIPTION	INSIDERS (Y/N)	IMPAIRED (Y/N)	TREATMENT
2	Secured Claim of: <ul style="list-style-type: none"> <li>● Name = Riverside County Taxing Authority</li> <li>● Collateral description = 49355 Sunrose Lane, Palm Desert, CA 92260 (real property)</li> <li>● Collateral value = (as of Petition Date) Real property: \$1,920,000.00</li> <li>● Priority of security int. = statutory lien</li> <li>● Principal owed = \$25,484.16 (as of Petition Date) 2012 taxes as of 1/01/12</li> <li>● Pre-pet. arrearage amount = \$00.00</li> <li>● Post-pet. Arrearage amount = \$00.00</li> </ul>	N	N	<ul style="list-style-type: none"> <li>● Pymt Interval = Semi-annual</li> <li>● Pymt amt/interval = \$13,000.00 (estimated semi-annual payment)</li> <li>● Balloon pymt = 00.00</li> <li>● Begin date = December 1, 2012</li> <li>● End date = April 1, 2014</li> <li>● Interest rate % = 18.0% (if applicable)</li> <li>● Total payout 100%</li> <li>● Treatment of Lien = Retain lien against real property collateral</li> </ul> The secured claim of the Riverside California Taxing Authority will be paid timely and in the normal course of business with all applicable costs, fees, charges and interest pursuant to 11 U.S.C. §§ 506(b) and 511, if applicable. If the Debtor fails to make a payment to the Riverside County Taxing Authority and further fails to make the missed payment within 10 days after written notice sent by the Riverside County Taxing Authority, the Taxing Authority may

	<ul style="list-style-type: none"> <li>● \$25,484.16 (estimate per year)</li> </ul>			enforce the entire amount of its claim, plus all penalties and interest accrued under state law, against the Debtor in accordance with applicable state law remedies.
	\$12,742.08 due 12/01/12 \$12,742.08 due 4/01/13 \$13,000.00 due 12/01/13 (estimated) \$13,000.00 due 4/01/14 (estimated)			

**2. Classes of Priority Unsecured Claims**

Certain priority claims that are referred to in Code Sections 507(a)(3), (4), (5), (6), and (7) are required to be placed in classes. These types of claims are entitled to priority treatment as follows: the Code requires that each holder of such a claim receive cash on the Effective Date equal to the allowed amount of such claim. However, a class of unsecured priority claim holders may vote to accept deferred cash payments of a value, as of the Effective Date, equal to the allowed amount of such claims.

The following chart lists all classes containing Debtor's 507(a)(3), (4), (5), (6), and (7) priority unsecured claims and their treatment under this Plan: NONE

**3. Class of General Unsecured Claims**

General unsecured claims are unsecured claims not entitled to priority under Code Section 507(a). The following chart identifies this Plan's treatment of the classes containing all of Debtor's general unsecured claims:

CLASS #	DESCRIPTION	IMPAIRED (Y/N)	TREATMENT
3	General unsecured Claims (excluding Claims classified in the Class 4 Administrative Convenience Class below)  <ul style="list-style-type: none"> <li>● Total amt of Claims = \$117,326,022.68</li> </ul>	Y	<ul style="list-style-type: none"> <li>● Pymt interval = See below</li> <li>● Pymt amt/interval = See below</li> <li>● Begin date = See below</li> <li>● End date = See below</li> <li>● Interest rate % = See below</li> </ul>
	<b>ALL CLAIMS ARE DISPUTED CLAIMS</b>		<ul style="list-style-type: none"> <li>● Total payout 1.00 % =</li> <li>See below for treatment \$1,200,000.00</li> </ul>

The holders of Allowed Claims in this Class will share pro-rata in future distributions up to 100% of the principal amount of their Allowed Claims, which shall not bear interest. If the principal amount of all Allowed Claims are paid in full, then this Class will share pro rata in remaining funds up to 100% of the interest on their Allowed Claims. The funding will come from the cash Estate Assets and the liquidation of non-cash Estate Assets. See, Funding of Plan, Section D.1. below. The Debtor estimates that if all Disputed Claims in this class are allowed, and based on the cash anticipated from liquidation of non-cash Estate Assets, creditors holding Class 3 Claims will receive distributions equal to approximately 1.0 % of the approximately \$117 million in Disputed Claims.

CLASS #	DESCRIPTION	IMPAIRED (Y/N)	TREATMENT
4	Administrative Convenience Class Allowed claims in the amount of \$1,000.00 or less will be paid in full on the Effective Date from cash on hand. ● Total amt of claims \$746.14	Y	<ul style="list-style-type: none"> <li>● Pymt interval One payment</li> <li>● Pymt amt/interval One time Effective</li> <li>● Begin date Date</li> <li>● End date N/A</li> <li>● Interest rate % 0%</li> <li>● Total payout 100% See below for treatment \$746.14</li> </ul>

The holders of Allowed Claims in Class 4 will receive payment of 100% of the principal amount of their Allowed Claims, which shall not bear interest. The funding will come from the cash Estate Assets on hand on the Effective Date. The Debtor estimates that Allowed Claims in the amount of \$1,000.00 or less in this class will receive distributions equal to 100.0 % of the amount of the Allowed Claims which total \$746.14.

**4. Class(es) of Interest Holders**

Interest holders are the parties who hold ownership interest (i.e., equity interest) in the Debtor. If the Debtor is a corporation, entities holding preferred or common stock in the Debtor are interest holders. If the Debtor is a partnership, the interest holders

1 include both general and limited partners. If the Debtor is an individual, the Debtor is the  
2 interest holder. The following chart identifies this Plan's treatment of the class of interest  
3 holders:

<u>CLASS #</u>	<u>DESCRIPTION</u>	<u>IMPAIRED</u> (Y/N)	<u>TREATMENT</u>
5	Kathleen Otto	Y	The Debtor will retain all Exempt Assets. See Exhibit C. If the objections to allowance of the Class 3 Disputed Claims are sustained, then Class 3 Disputed Claims will receive no distributions under the Plan and the Debtor will retain all Exempt Assets and all Estate Assets, including the cash proceeds from the sale of any Estate Assets, after payment of all Allowed Claims.

18 **D. Means of Performing the Plan**

19 **1. Funding for the Plan**

20 The Plan will be funded by the following: (a) the cash Estate Assets which the  
21 Debtor estimates will total \$50,000.00 on the Effective Date; (b) the sale of non-cash  
22 Estate Assets, including the 2006 Aston Martin automobile and jewelry which is not  
23 claimed as exempt; and (c) the sale of the real property Estate Asset which is the  
24 personal residence of the Debtor located at 49355 Sunrose Lane, Palm Desert,  
25 California 92260 ("Personal Residence"). The Estate Assets to be sold to fund the Plan

1 are identified in Exhibit A. The sale of the Estate Assets shall be conducted in an  
2 orderly manner commencing on or before the Effective Date. The Debtor shall market  
3 each Estate Asset in the manner she deems will result in obtaining the highest and best  
4 price for the asset. The deadline to sell the Personal Residence will be June 30, 2014,  
5 with the right to seek an extension of time to close an imminent sale of the asset or for  
6 other good cause shown. The remaining Estate Assets to be liquidated to fund the Plan  
7 will be sold by December 31, 2013, with the right to seek an extension of time for good  
8 cause shown. After entry of a Final Order determining all Disputed Claims, the  
9 deadlines for liquidating Estate Assets may be accelerated.

10 From and after the Confirmation Date, subject to the requirement for notice and  
11 opportunity to object set forth below, the Debtor shall be entitled to sell, assign, transfer  
12 or otherwise dispose of any interest that she may have in any Estate Asset set forth on  
13 Exhibit A, without the need for any order of the Bankruptcy Court with respect thereto.  
14 Prior to the close of any sale, assignment, transfer or other disposition of any interest in  
15 any Estate Asset set forth on Exhibit A, the Debtor shall provide a copy of every written  
16 offer to purchase any Estate Asset to: (1) Maggie Antarmain in care of Ara  
17 Jabaghourian <[ajabagchourian@cpmlegal.com](mailto:ajabagchourian@cpmlegal.com)>; and (2) John Walshe Murray  
18 [murray.john@dorsey.com](mailto:murray.john@dorsey.com) and an opportunity to object to the proposed sale within five  
19 (5) days of transmission of the notice. Notwithstanding the foregoing, the Debtor shall  
20 have the right to seek, on an expedited basis, an order of the Bankruptcy Court  
21 authorizing the sale of any Estate Asset free and clear of any liens encumbering that  
22 Estate Asset pursuant to the provisions of Section 363(f) of the Bankruptcy Code, with  
23 the jurisdiction of the Bankruptcy Court expressly reserved for that purpose. Notice of  
24 any request for Bankruptcy Court approval of any such sale of an Estate Asset shall be  
25 provided to the following entities: (i) Class 3 Creditors; (ii) the U.S. Trustee; (iii) any  
26 person who has filed a request for special notice in the case; and (iv) any person

1 asserting a lien encumbering such asset. Objections to any such proposed sale shall  
2 be filed as required by the notice to creditors or as required by the Local or Federal  
3 Rules of Bankruptcy Procedure. In the event that no objection to the proposed sale is  
4 timely filed, the sale shall be deemed approved, and an order may be entered by the  
5 Bankruptcy Court approving the sale, without the need for further notice or hearing with  
6 respect thereto. In the event that an objection to the proposed sale is timely filed, the  
7 Debtor shall schedule the matter for hearing before the Bankruptcy Court and the  
8 Bankruptcy Court will determine the merits of the objection.

9 **2. Post-Confirmation Management**

10 The Debtor will continue to oversee the management of her post-confirmation  
11 financial affairs and will remain in possession of the Personal Residence, the non-cash  
12 assets of the estate and all property claimed by the Debtor as exempt. The Debtor  
13 received no compensation for the management of her financial affairs during the course  
14 of the chapter 11 case and will receive no compensation for the management of her  
15 post-confirmation financial affairs. The Plan Agent described in paragraph 3 below will  
16 manage the cash assets that are Estate Assets.

17 **3. Plan Agent**

18 Robert F. Bicher & Associates shall act as the Plan Agent for the purpose of  
19 (a) taking possession of and responsibility for all cash Estate Assets; (b) holding all  
20 cash Estate Assets in trust for the beneficiaries of the Plan in segregated interest-  
21 bearing depository account(s) at one or more financial institutions on the approved list  
22 issued by the Office of the United States Trustee; (c) paying reasonable costs and  
23 expenses for the preservation, maintenance, and protection of all Estate Assets,  
24 including paying the reasonable compensation of the Plan Agent and of professionals  
25 employed postconfirmation; (d) making all distributions provided for under the Plan;  
26 (e) preparing quarterly reports regarding the Estate Assets; and (f) taking such other

1 and further action as required to implement the terms of the Plan after providing notice  
2 and an opportunity to object to such proposed further action. The Plan Agent shall  
3 serve with a bond and shall receive reasonable compensation at his customary hourly  
4 rate for services rendered of \$295.00 and reimbursement of expenses incurred  
5 pursuant to the Plan. The Plan Agent may employ Lori Ensley as a paraprofessional  
6 to handle administrative and other services at her customary rate of \$195.00 per hour.  
7 These hourly rates may be increased by written notice to the Debtor and parties  
8 requesting special notice.

9 **4. Payment of Professional's Fees and Expenses After Confirmation**  
10 **Date.**

11 Any professional employed by the Debtor after the Confirmation Date shall be  
12 entitled to obtain payment of their reasonable fees and costs as a post-confirmation  
13 expense of the Reorganized Debtor from Estate Assets without need for any further  
14 order of the Bankruptcy Court. The professional shall submit to the Plan Agent, with  
15 copies to (1) Maggie Antarmain in care of Ara Jabagchourian  
16 <[ajabagchourian@cpmlegal.com](mailto:ajabagchourian@cpmlegal.com)>; and (2) John Walshe Murray  
17 [murray.john@dorsey.com](mailto:murray.john@dorsey.com) a written request for payment of professional fees and  
18 reimbursement of costs with invoices detailing the professional fees earned and the  
19 expenses incurred on behalf of the Reorganized Debtor. Objections, if any, to  
20 payment of professional fees and reimbursement of costs shall be delivered by email  
21 to the professional within five (5) days of transmission of the request for payment.  
22 Notwithstanding the foregoing, the Debtor shall have the right to seek, on an  
23 expedited basis, an order of the Bankruptcy Court authorizing the payment of  
24 professional fees and reimbursement of costs upon reasonable notice to the persons  
25 listed above.

1           **5. Compromise of Claims or Controversies**

2           The Debtor shall have the right to seek, on an expedited basis, an order of the  
3 Bankruptcy Court authorizing the compromise of Claims or controversies pursuant to  
4 the provisions of Rule 9019 of the Federal Rules of Bankruptcy Procedure, with the  
5 jurisdiction of the Bankruptcy Court expressly reserved for that purpose. Notice of any  
6 request for Bankruptcy Court approval of any such compromise shall be provided to the  
7 following entities: (i) Class 3 Creditors; (ii) the U.S. Trustee; (iii) any person who has  
8 filed a request for special notice in the Case; and (iv) Class 1 Creditor. Objections to  
9 any such proposed compromise shall be filed within fourteen (14) days after service of  
10 the notice of the proposed compromise. In the event that no objection to the proposed  
11 compromise is timely filed, the compromise shall be deemed approved, and an order  
12 may be entered by the Bankruptcy Court approving the compromise, without the need  
13 for further notice or hearing with respect thereto. In the event that an objection to the  
14 proposed compromise is timely filed, the Debtor shall schedule the matter for hearing  
15 before the Bankruptcy Court and the Bankruptcy Court will determine the merits of the  
16 objection.

17           **6. Disputed Claims**

18           In the case of any claim that is disputed by the Debtor or asserted by the Debtor  
19 as being contingent (a "Disputed Claim"), the holder of the Disputed Claim shall receive  
20 no distribution under the Plan unless: (a) such creditor timely filed a proof of claim prior  
21 to the bar date or (b) unless and until the Disputed Claim is allowed by a Final Order of  
22 the Bankruptcy Court that is not subject to an appeal or (c) the contingency has been  
23 resolved. Pending the entry of any Final Order not subject to an appeal determining the  
24 allowed amount of all Class 2 Disputed Claims, no distributions shall be made or  
25 allocable to such Disputed Claims. The cash Estate Assets shall be deposited into an  
26 interest-bearing segregated bank account, or multiple accounts at the discretion of the

1 Plan Agent ("Disputed Claims Reserve"). The Proof of Claim No. 5 filed by Vicken  
2 Massoyan, et al and the Proof of Claim No. 7 filed by Cobalt Investments, LLC et al  
3 shall both be deemed to be Disputed Claims. A list of Disputed Claims is attached  
4 hereto as Exhibit B. After giving notice and an opportunity to object to (1) Maggie  
5 Antarmain in care of Ara Jabagchourian <[ajabagchourian@cpmlegal.com](mailto:ajabagchourian@cpmlegal.com)>; and (2)  
6 John Walshe Murray [murray.john@dorsey.com](mailto:murray.john@dorsey.com), the Plan Agent shall have authority to  
7 make disbursements from the Disputed Claims Reserve to pay: (a) reasonable costs  
8 and expenses for the preservation, maintenance, and protection of all Estate Assets,  
9 including paying the reasonable compensation and expenses of the Plan Agent;  
10 (b) distributions provided for under the Plan; (c) for preparing quarterly reports regarding  
11 the Estate Assets; and (d) for taking such other and further action as required to  
12 implement the terms of the Plan.

13 Within five (5) days after entry of the Final Order allowing a Disputed Claim the  
14 amount reserved in the Disputed Claims Reserve on account of such Allowed Claim  
15 shall be disbursed to the holder of such Allowed Claim, and any further distributions on  
16 account of such Allowed Claim shall be paid directly to the holder of the Allowed Claim  
17 in an aggregate amount not to exceed the amount of the Allowed Claim plus interest.

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1 be filed against a claimant at any time, subject to the claims objections limitations set  
2 forth hereinabove.

3 **8. Unclaimed Distributions**

4 Each Claimant shall provide to the Debtor written notice of any change of  
5 address from the address of the Claimant set forth in the Schedules or in any Proof of  
6 Claim filed by the Claimant. The Debtors shall be entitled to rely upon the address for  
7 the Claimant set forth in the Schedules or in any Proof of Claim filed by the Claimant,  
8 and shall not be required to perform any investigation or inquiry as to the proper  
9 address for such Claimant if the address stated in the Schedules or in the Proof of  
10 Claim is incorrect. Any unclaimed Distribution ("Unclaimed Distribution") provided for  
11 under the Plan (which shall include (i) checks which have been returned as  
12 undeliverable without a proper forwarding address, (ii) checks which were not mailed  
13 or delivered because of the absence of a proper address to which to mail or deliver  
14 the same or (iii) checks which remain unclaimed for a period of ninety (90) days) shall  
15 be deposited by the Debtor into an unclaimed property reserve ("Unclaimed Property  
16 Reserve") to be held in trust for the benefit of holders of Allowed Claims entitled  
17 thereto under the terms of the Plan. For the earlier to occur of (i) one (1) year after an  
18 Unclaimed Distribution is deposited into the Unclaimed Property Reserve or (ii) ninety  
19 (90) days after the making of the Final Distribution to be made to any Creditor under  
20 the Plan (the "Unclaimed Property Holding Period") such Unclaimed Distribution shall  
21 be held in the Unclaimed Property Reserve for the benefit of the holders of Allowed  
22 Claims who failed to previously claim such Unclaimed Distribution. Any holder of an  
23 Allowed Claim entitled to an Unclaimed Distribution may request payment from the  
24 Debtors or the Disbursing Agent; provided, however that after the expiration of the  
25 Unclaimed Property Holding Period, such Unclaimed Distribution shall be refunded to  
26 the Reorganized Debtor for her use to the extent still required under the Plan, and the

1 holders of Allowed Claims otherwise entitled to said Unclaimed Distribution shall  
2 cease to be entitled thereto and their claims based thereon shall be deemed waived  
3 and forever barred.

4 III.

5 TREATMENT OF MISCELLANEOUS ITEMS

6 A. Executory Contracts and Unexpired Leases

7 1. Assumptions

8 The following are the unexpired leases and executory contracts to be assumed  
9 as obligations of the reorganized Debtor under this Plan: **Not Applicable**

10 On the Effective Date, each of the unexpired leases and executory contracts  
11 listed above shall be assumed as obligations of the reorganized Debtor. The Order of  
12 the Court confirming the Plan shall constitute an Order approving the assumption of each  
13 lease and contract listed above. If you are a party to a lease or contract to be assumed  
14 and you object to the assumption of your lease or contract, you must file and serve your  
15 objection to the Plan within the deadline for objecting to the confirmation of the Plan. See  
16 Section {I.B.3.} of the Disclosure Statement describing this Plan for the specific date.

17 2. Rejections

18 On the Effective Date, the following executory contracts and unexpired leases will  
19 be rejected: **Not Applicable**

20 The order confirming the Plan shall constitute an order approving the rejection of  
21 the lease or contract. If you are a party to a contract or lease to be rejected and you  
22 object to the rejection of your contract or lease, you must file and serve your objection to  
23 the Plan within the deadline for objecting to the confirmation of the Plan. See Disclosure  
24 Statement for the specific date.

1 THE BAR DATE FOR FILING A PROOF OF CLAIM BASED ON A CLAIM  
2 ARISING FROM THE REJECTION OF A LEASE OR CONTRACT IS 30 days after the  
3 Effective Date. Any claim based on the rejection of an executory contract or unexpired  
4 lease will be barred if the proof of claim is not timely filed, unless the Court later orders  
5 otherwise.

6 **B. Changes in Rates Subject to Regulatory Commission Approval**

7 This Debtor not subject to governmental regulatory commission approval of any  
8 rates.

9 **C. Retention of Jurisdiction**

10 The Court will retain jurisdiction to the extent provided by law.

11 **IV.**

12 **EFFECT OF CONFIRMATION OF PLAN**

13 **A. Discharge**

14 This Plan provides that upon payment in full of proposed plan payments to the  
15 holders of Allowed General Unsecured Claims, Debtor shall be discharged of liability for  
16 payment of debts incurred before confirmation of the Plan, to the extent specified in  
17 11 U.S.C. § 1141. However, any liability imposed by the Plan will not be discharged.

18 **B. Revesting of Property in the Debtor**

19 Except as provided in Section {IV.E.}, and except as provided elsewhere in the  
20 Plan, the confirmation of the Plan revests all of the property of the estate in the Debtor.

21 **C. Modification of Plan**

22 The Proponent of the Plan may modify the Plan at any time before confirmation.  
23 However, the Court may require a new disclosure statement and/or revoting on the Plan  
24 if proponent modifies the plan before confirmation.

1 The Proponent of the Plan may also seek to modify the Plan at any time after  
2 confirmation so long as (1) the Plan has not been substantially consummated and  
3 (2) the Court authorizes the proposed modifications after notice and a hearing.

4 **D. Post-Confirmation Status Report**

5 Within 120 days of the entry of the order confirming the Plan, Plan Proponent  
6 shall file a status report with the Court explaining what progress has been made toward  
7 consummation of the confirmed Plan. The status report shall be served on the United  
8 States Trustee, the twenty largest unsecured creditors, and those parties who have  
9 requested special notice. Further status reports shall be filed every 120 days and served  
10 on the same entities.

11 **E. Quarterly Fees**

12 Quarterly fees accruing under 28 U.S.C. § 1930(a)(6) to date of confirmation shall  
13 be paid to the United States Trustee on or before the effective date of the plan. Quarterly  
14 fees accruing under 28 U.S.C. § 1930(a)(6) after confirmation shall be paid to the United  
15 States Trustee in accordance with 28 U.S.C. § 1930(a)(6) until entry of a final decree, or  
16 entry of an order of dismissal or conversion to chapter 7.

17 **F. Post-Confirmation Conversion/Dismissal**

18 A creditor or party in interest may bring a motion to convert or dismiss the case  
19 under § 1112(b), after the Plan is confirmed, if there is a default in performing the Plan.  
20 If the Court orders the case converted to Chapter 7 after the Plan is confirmed, then all  
21 property that had been property of the Chapter 11 estate, and that has not been  
22 disbursed pursuant to the Plan, will revert in the Chapter 7 estate, and the automatic  
23 stay will be reimposed upon the revested property only to the extent that relief from stay  
24 was not previously granted by the Court during this case.

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3 **G. Final Decree**

4 Once the estate has been fully administered as referred to in Bankruptcy  
5 Rule 3022, the Plan Proponent, or other party as the Court shall designate in the Plan  
6 Confirmation Order, shall file a motion with the Court to obtain a final decree to close the  
7 case.

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9 DATE: February 4, 2013

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Kathleen Joan Otto  
Debtor and Debtor-in-Possession

APPROVED AS TO FORM AND CONTENT:

BROKER & ASSOCIATES  
PROFESSIONAL CORPORATION

By: 

Jeffrey W. Brokey  
Pamela J. Zylstra  
General Reorganization Counsel for Debtor  
and Debtor-in-Possession

**EXHIBIT A – LIST OF ASSETS TO BE SOLD TO FUND THE PLAN**

<u>DESCRIPTION OF ASSET</u>	<u>LIENS OR CLAIMS (IF ANY)</u>	<u>ESTIMATE OF GROSS VALUE</u>
<u>Real Property</u> Personal residence 49355 Sunrose Lane, Palm Desert, California 92260 APN # 655290017-9	Total: \$525,000.00 (estimated) (1) U.S. Bank Secured claim of \$350,000.00 (estimated) (2) Homestead exemption Claim of exemption by Debtor \$175,000	\$1,700,000.00
<u>Personal Property</u> Motor vehicle 2006 Aston Martin DB9 convertible	No known claims asserted	\$90,000.00
<u>Personal Property</u> Jewelry (list attached as supplement)	No known claims asserted	\$193,000.00

**SUPPLEMENT TO EXHIBIT A**  
**LIST OF JEWELRY**

<u>DESCRIPTION OF ITEM</u>	<u>ESTIMATED RESALE VALUE</u>
<u>Ladies jewelry</u>	
1. Platinum 3 diamond cocktail ring; 8.2 carat center diamond with 2.04 carat diamond and 2.0 carat diamond on either side	\$90,000.00
2. 18k gold necklace and earrings (classic design) with emeralds (12.76 carats) and diamonds (27.88 carats)	\$30,000.00
3. Black onyx and diamond necklace and bracelet set with white gold. Necklace has diamonds (12.83 carats) and bracelet has diamonds (11.88 carats)	\$13,000.00
<u>Watches</u>	
4. Men's Audemars Piguet jump hour minute repeater watch	\$30,000.00
5. Men's yellow gold ring with diamond	\$14,000.00
6. Men's 18k IWC Schaffhausen "Dopple Chronograph" watch with black dial	\$11,000.00
7. Men's Breitling Chronograph watch	\$3,000.00
8. Men's Breitling emergency malfunction watch	\$1,000.00
9. Women's Cartier "two time zone" watch	\$1,000.00
<b>TOTAL</b>	<b>\$193,000.00</b>

EXHIBIT B – LIST OF DISPUTED CLAIMS

<u>NAME OF CLAIMANT</u>	<u>PROOF OF CLAIM</u>	<u>STATUS OF DISPUTE</u>
Vicken Massoyan, et al	Proof of Claim No. 5 filed on 8/09/12 in the amount of \$116,626,022.38	Litigation is pending between the Debtor and Vicken Massoyan, et al and such action shall be <u>deemed to constitute an objection to the Disputed Claim of Vicken Massoyan</u> without the need for the filing of any further action in the Bankruptcy Court. <b><u>The claim of Vicken Massoyan et al is deemed a Disputed Claim.</u></b>
Cobalt Investments, LLC et al	Proof of Claim No. 7 filed on 8/28/12 in the amount of \$700,000.00	The Debtor has filed an application to expand the scope of employment of special litigation counsel to include filing an objection to Proof of Claim No. 7 filed by Cobalt Investments LLC, et al. <b><u>The claim of Cobalt Investments, LLC et al is deemed a Disputed Claim.</u></b>

EXHIBIT C – EXEMPT ASSETS

DESCRIPTION OF EXEMPT ASSET	CLAIM OF EXEMPTION	ESTIMATE OF VALUE OF DEBTOR'S INTEREST
Personal residence 49355 Sunrose Lane, Palm Desert, California 92260 APN # 655290017-9 Homestead exemption	C.C.P. § 704.730(a)(2)	\$175,000.00
Motor vehicle 2007 GMC Acadia	C.C.P. § 704.010	\$2,725.00
Household goods and furnishings and wearing apparel	C.C.P. § 704.020	\$7,810.00
Jewelry a. Pearl necklace, ring and earrings (not a matched set) \$2,000.00 (est value) b. 18k gold band ring with diamonds (2 carats) and emeralds (3.2 carats) \$2,000.00 (est value) c. 14k gold bangle bracelet with diamonds (2.4 carats) \$1,000.00 (est value) d. One women's and one men's Corum watch with Rolls Royce grille design \$2,000.00 (est value)	C.C.P. § 704.040	\$7,175.00

<b>EXHIBIT C – EXEMPT ASSETS</b> (continued)		
<u>DESCRIPTION OF EXEMPT ASSET</u>	<u>CLAIM OF EXEMPTION</u>	<u>ESTIMATE OF VALUE OF DEBTOR'S INTEREST</u>
Benefits from matured life insurance policy Life Insurance Policy Immediate benefit acct No. 10032340 Protective Life Insurance Company Insured: John Otto Date cashed: 6/24/09; 8/07/09; 1/15/10 Cash (Chase Safety Deposit Box)(prepetition) DIP account: Wells Life Insurance Proceeds a. Account No. #3 - 6530 b. Account No. #4 - 5463	C.C.P. § 704.100	\$131,120.00
Benefits from matured life insurance policy Immediate benefit acct No. 10032340 Protective Life Insurance Company Insured: John Otto Date cashed: 4/26/12 (balance of life insurance proceeds plus interest) Deposit Account (Chase Savings 8135)(prepetition) DIP account: Chase Life Insurance Proceeds Account No. #2 - 9453	C.C.P. § 704.100	\$56,816.81
IRA (Thrivent Financial for Lutherans) Acct No. LC4786725 Cash surrender value as of 4/16/12	11 U.S.C. § 522(b)(3)(C)	\$285,932.15

#### EXHIBIT D – PLAN DEFINITIONS

A term used in the Plan that is not defined below but is used or defined in the Bankruptcy Code and will have the meaning ascribed to such term in the Bankruptcy Code. The following terms when used in the Plan shall have the meanings specified below.

1. "Allowed Claim" means any Claim, in whole or part, proof of which was timely and properly filed with the Court, or, if no proof of claim was filed which has been listed by the Debtor on her schedules filed under Bankruptcy Code Section 521(1) as liquidated in amount and not disputed or contingent, provided that a timely filed proof of claim shall supersede the scheduling of such claim; and as to which (i) no objection to the allowance thereof has been timely filed on or before the Claims Objection Date or such other applicable period of limitation fixed by the Court, or (ii) any objection has been withdrawn or has been denied in whole or part (in which case only the allowed portion of such Claim) by a Final Order of the Court; or (b) based on an application of a professional person to the extent such application is approved by a Final Order of the Court or, for postconfirmation services, by the Debtor.
2. "Claim" means any right (a) to payment from the Debtor as Debtor or Debtor in Possession, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured; or (b) to an equitable remedy for breach of performance if such breach gives rise to a right of payment from the Debtor as Debtor or Debtor in Possession, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured.
3. "Claimant" means the holder of a Claim.
4. "Confirmation Date" means the latter of: (a) the first Business Day after the expiration of time for an appeal of the Confirmation Order, provided that no appeal of the Confirmation Order has been timely filed; or (b) the first Business Day after the expiration of the time to seek further appeal of the Confirmation Order, in the event that an appeal of the Confirmation Order has been filed and a stay of the confirmation Order pending appeal has been granted; or (c) the first business day after the expiration or termination of any stay pending appeal.
5. "Confirmation Order" means the order entered by the Court confirming the Plan pursuant to Bankruptcy Code Section 1129.
6. "Creditor" means any entity that is the holder of (i) a Claim that arose on or before the Petition Date; or (ii) a Claim of the kind specified in Bankruptcy Code Sections 502(g), 502(h), or 502(i).
7. "Disputed Claim" means any claim that is listed as contingent or unliquidated in the schedules filed by the Debtor and/or to which the Debtor has filed an objection and/or which is deemed disputed by the Plan.

8. "Effective Date" means the thirtieth (30<sup>th</sup>) day, which is also a business day, after the Confirmation Date.
9. "Estate Assets" mean those real property and personal property assets that were listed in the schedules filed by the Debtor and which assets were not the subject of a claim of exemption by the Debtor.
10. "Exempt Assets" mean those real property and personal property assets that were listed in the schedules filed by the Debtor and which assets were the subject of a claim of exemption by the Debtor and are listed on Exhibit C.
11. "Final Order" means an order or judgment of a court as to which (a) the time for an appeal has expired and no appeal has been timely filed; or (b) any appeal that has been taken has been finally determined or dismissed and the time for any further appeal has expired.
12. "Personal Residence" means residential real estate owned by the Debtor and commonly identified as 49355 Sunrose Lane, Palm Desert, California 92260.
13. "Plan Agent" means Robert F. Bicher & Associates.

### 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:

18111 Von Karman, Suite 460, Irvine, CA 92612

A true and correct copy of the foregoing document entitled (*specify*): DEBTOR'S FIRST AMENDED CHAPTER 11 PLAN 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 stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) February 4, 2013, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

COUNSEL FOR DEBTOR:	Jeffrey W Broker	<a href="mailto:jbroker@brokerlaw.biz">jbroker@brokerlaw.biz</a>
Request for Courtesy Notice:	Regis Guerin	<a href="mailto:efilings@amlegalgroup.com">efilings@amlegalgroup.com</a>
COUNSEL FOR MASSOYAN:	Doris A Kaelin	<a href="mailto:dkaelin@murraylaw.com">dkaelin@murraylaw.com</a>
COUNSEL FOR RIVERSIDE CTY:	Martha E Romero	<a href="mailto:Romero@mromerolawfirm.com">Romero@mromerolawfirm.com</a>
UST:	Kelly L Morrison	<a href="mailto:Kelly.L.morrison@usdoj.gov">Kelly.L.morrison@usdoj.gov</a>
United States Trustee (RS)	<a href="mailto:ustregion16rs.ecf@usdoj.gov">ustregion16rs.ecf@usdoj.gov</a>	
Request for Courtesy Notice:	Pamela Jan Zylstra	<a href="mailto:zylstralaw@gmail.com">zylstralaw@gmail.com</a>

Service information continued on attached page

**2. SERVED BY UNITED STATES MAIL:**

On (*date*) February 4, 2013, I served the following persons and/or entities at the last known addresses 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 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.

Office of the United States Trustee, attn Michael Bujold, 3801 University Ave., Suite 720, Riverside, CA 92501

Service information continued on attached page

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served):** Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) February 4, 2013, I served the following persons and/or entities by personal delivery, overnight mail service, 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 personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Personal Service: The Honorable Meredith A. Jury, 3420 Twelfth Street, Suite 325, Courtroom 301, Riverside, CA 92501  
Email Service: Doris Kaelin, counsel for objecting creditors: <[dkaelin@MURRAYLAW.com](mailto:dkaelin@MURRAYLAW.com)>

Service information continued on attached page

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

2/04/13  
Date

Myra Blunt  
Printed Name

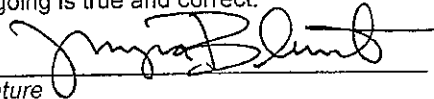
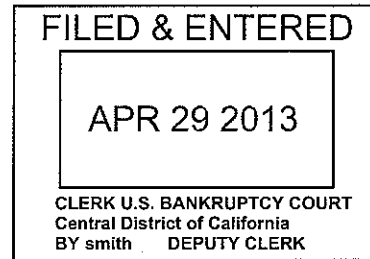
  
Signature

EXHIBIT 4

1 JEFFREY W. BROKER – State Bar No. 53226  
2 PAMELA J. ZYLSTRA – State Bar No. 147977  
3 BROKER & ASSOCIATES  
4 PROFESSIONAL CORPORATION  
5 18111 Von Karman Avenue, Suite 460  
6 Irvine, CA 92612-7114  
7 Telephone: (949) 222-2000  
8 Facsimile: (949) 222-2022  
9 email: *jbroker@brokerlaw.biz*

6 General Reorganization Counsel  
7 for Debtor and Debtor-in-Possession



8 UNITED STATES BANKRUPTCY COURT

9 CENTRAL DISTRICT OF CALIFORNIA

10 RIVERSIDE DIVISION

11  
12 In re

13 KATHLEEN JOAN OTTO, aka KATHLEEN  
14 J. OTTO, aka KATHLEEN KJENSRUD  
15 OTTO, aka KATHLEEN K. OTTO, aka  
16 KATHY OTTO,

16 Debtor and  
17 Debtor-in-Possession

Case No. 6:12-bk-21607-MJ  
Chapter 11 Case  
**AMENDED**  
**ORDER CONFIRMING DEBTOR'S FIRST**  
**AMENDED CHAPTER 11 PLAN**  
**[Reference Original Order Docket No. 99]**

Date: April 10, 2013  
Time 1:30 p.m.  
Ctrm: 301  
3420 Twelfth Street  
Riverside, CA 92501

18 The matter of the Confirmation of the *DEBTOR'S FIRST AMENDED CHAPTER 11 PLAN*  
19 (the "Plan" – ECF Docket No. 69),<sup>1</sup> came on for hearing before the undersigned United States  
20 Bankruptcy Judge on April 10, 2013 at the hour of 1:30 p.m. in Courtroom 301, United States  
21 Bankruptcy Court, Riverside Division ("Confirmation"). Martha Romero, Esq. of Romero Law  
22 Firm appeared on behalf of Secured Creditor Riverside County Tax Collector. Michele Sabo  
23 Assayag, Esq. of Assayag Moss LLP appeared telephonically on behalf of U.S. Bank. Jeffrey W.  
24 Broker, Esq. of Broker & Associates Professional Corporation appeared as General Reorganization  
25 Counsel to KATHLEEN JOAN OTTO, aka KATHLEEN J. OTTO, aka KATHLEEN KJENSRUD

27 <sup>1</sup> Capitalized terms used herein without definition have the meanings provided for in the Plan. In addition, any term  
28 used in the Plan or this Order that is not defined in the Plan or this Order, but that is used in the Bankruptcy Code or the  
Bankruptcy Rules, shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules.

1 OTTO, aka KATHLEEN K. OTTO, aka KATHY OTTO, the Debtor and Debtor-in-Possession (the  
2 “Debtor”), in support of Confirmation. There were no other appearances in connection with the  
3 hearing on Confirmation. The Court having considered the matters before it in connection with  
4 matters relating to Confirmation of the Plan and the pleadings filed in support thereof, and based  
5 upon (a) the Court’s review of the *DEBTOR’S FIRST AMENDED DISCLOSURE STATEMENT*  
6 *DESCRIBING DEBTOR’S FIRST AMENDED CHAPTER 11 PLAN* (the “Disclosure Statement” –  
7 ECF Docket No. 70), (b) all of the evidence proffered or adduced at, filings in connection with, and  
8 arguments of counsel made at the hearings on Confirmation, and (d) the record of this Chapter 11  
9 case; and after due deliberation thereon and good cause appearing therefore, and there being no  
10 objections filed to Confirmation of the Plan, and for the reasons set forth on the record at the  
11 hearing on Confirmation, the Court **HEREBY FINDS AND DETERMINES:**<sup>1</sup>

12 1. The Court has jurisdiction over the Debtor’s chapter 11 case pursuant to 28 U.S.C.  
13 §§157 and 1334. Venue is proper pursuant to 28 U.S.C. §§1408 and 1409. Confirmation of the  
14 Plan is a core proceeding pursuant to 28 U.S.C §157(b)(2)(L) over which the Court has exclusive  
15 jurisdiction.

16 2. The Court takes judicial notice of the matters set forth in the pleadings and other  
17 documents filed with, and all orders entered by, and all evidence made, proffered or adduced in  
18 connection with the hearing on Confirmation of the Plan.

19 3. The Plan, the Disclosure Statement, the Order Approving Debtor’s Disclosure  
20 Statement, and ballots in a form previously approved by the Court were duly and timely transmitted  
21 to all creditors and parties in interest, in accordance with the requirements of Section 1125 of the  
22 Bankruptcy Code.

23 4. The Plan complies with the requirements of Section 1123 of the Bankruptcy Code.  
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26 <sup>1</sup> The findings of fact and conclusions of law stated in this Order shall constitute findings of fact and conclusions of  
27 law pursuant to Fed. R. Bankr. P. 7052, made applicable to this proceeding by Fed. R. Bankr. P. 9014. To the extent  
28 any finding of fact shall be determined to be a conclusion of law, it shall be so deemed, and to the extent any conclusion  
of law shall be determined to be a finding of fact, it shall be so deemed.

1           5.     The Plan complies with the applicable provisions of Title 11 as required by  
2 Section 1129(a)(1) of the Bankruptcy Code.

3           6.     The Debtor, as the proponent of the Plan, has complied with the applicable  
4 provisions of Title 11 as required by Section 1129(a)(2) of the Bankruptcy Code.

5           7.     The Plan has been proposed in good faith and not by any means forbidden by law as  
6 required by Section 1129(a)(3) of the Bankruptcy Code.

7           8.     Any payments made or promised by the proponents of the Plan for services or for  
8 costs and expenses incurred in, or in connection with, the Plan and incident to the case, have been  
9 fully disclosed to the Court and are reasonable, or if to be fixed after confirmation of the Plan, will  
10 be subject to the approval of the Court as required by Section 1129(a)(4) of the Bankruptcy Code.

11          9.     The Debtor has disclosed the identities and the proposed compensation that will be  
12 paid to all of the parties contemplated under Section 1129(a)(5) of the Bankruptcy Code.

13          10.    Each holder of an impaired claim or interest has accepted the Plan, or, will receive  
14 or retain under the Plan property of a value, as of the Effective Date of the Plan, that is not less than  
15 the amount that such holder would so receive or retain if the Debtor was liquidated under Chapter 7  
16 of the Bankruptcy Code on such date as required by Section 1129(a)(7) of the Bankruptcy Code.

17          11.    With respect to each Class of Claims, each Class that voted has accepted the plan.  
18 The Debtor has therefore satisfied the requirements of Section 1129(a)(8) of the Bankruptcy Code  
19 under his Plan.

20          12.    The Plan fully complies with all of the requirements of Section 1129(a)(9) of the  
21 Bankruptcy Code. All allowed administrative and priority claims will be paid in full, in cash, by  
22 the Effective Date of the Plan, unless the holder of a particular claim agrees otherwise.

23          13.    At least one class of claims that is impaired under the Plan (Classes 1, 3, and 4) has  
24 accepted the Plan, determined without including any acceptances by any insider, thereby satisfying  
25 the requirements of Section 1129(a)(10) of the Bankruptcy Code.

26          14.    The Plan is feasible, and the Debtor has demonstrated by competent evidence that  
27 confirmation of the Plan is not likely to be followed by the liquidation or the need for further  
28

1 financial reorganization of the Debtor, thereby satisfying the requirements of Section 1129(a)(11)  
2 of the Bankruptcy Code.

3 15. All fees payable under 28 U.S.C. §1930 have been paid, and the Debtor shall pay all  
4 additional fees as required by Section 1129(a)(12) of the Bankruptcy Code.

5 16. The Debtor has otherwise complied with the requirements of all subsections of  
6 Section 1129(a) of the Bankruptcy Code, with subsections (a)(6) and (a)(13) and (a)(14) of Section  
7 1129(a) of the Bankruptcy Code being inapplicable to the Debtor and subsection (a)(15) being  
8 inapplicable in this case.

9 Good cause appearing therefor, IT IS HEREBY ORDERED THAT:

10 A. The Plan is hereby CONFIRMED and all terms thereof are incorporated herein and  
11 are deemed a part of this Order to the extent not inconsistent herewith and shall be deemed  
12 enforceable as an Order of this Court.

13 B. With regard to the administrative claim of the County of Riverside, the 2013-2014  
14 fiscal year's taxes will be paid timely and in the normal course of business with all applicable costs,  
15 fees, charges and interest pursuant to 11 U.S.C. §§ 506(b) and 511. A failure by the Debtor to  
16 make a payment to the County of Riverside pursuant to the terms of the Plan shall be an Event of  
17 Default. If the Debtor fails to cure an Event of Default as to tax payments within ten (10) days after  
18 service of written notice of default, then it may enforce the entire amount of its claim, plus all  
19 penalties and interest accrued under state law, against the Debtor in accordance with applicable  
20 state law remedies.

21 C. The Debtor, as an individual defendant/appellant, and Vicken Massoyan, et al, the  
22 plaintiffs/appellees in a class action entitled "Vicken Massoyan, et al vs. HL Leasing, Inc., a  
23 California corporation, et al" in the Superior Court of the State of California for the County of  
24 Fresno, Case No. 09-CEGG 01839 that is currently on appeal before the Court of Appeal Fifth  
25 Appellate District for the State of California as Court of Appeal Case No. F064875/F065392 shall  
26 proceed with the appeal/litigation to entry of a Final Order as provided in the Plan.

27

28

1 D. The Debtor shall comply fully with Local Bankruptcy Rule 3020-1(b), which  
2 provides as follows: "Within 120 days of the entry of this order, the Reorganized Debtor shall file  
3 a status report explaining what progress has been made toward consummation of the confirmed  
4 plan of reorganization. The initial report must be served on the United States Trustee, the 20  
5 largest unsecured creditors, and those parties who have requested special notice. Further reports  
6 shall be filed every 180 days thereafter and served on the same entities, unless otherwise ordered by  
7 the court. The report shall include at least the following information:

8 i. A schedule listing for each debt and each class of claims: the total amount  
9 required to be paid under the plan; the amount required to be paid as of the date of the  
10 report; the amount actually paid as of the date of the report; and the deficiency, if any, in  
11 required payments;

12 ii. A schedule of any and all post-confirmation tax liabilities that have accrued  
13 or come due, and a detailed explanation of payments thereon;

14 iii. Debtor's projections as to its continuing ability to comply with the terms of  
15 the plan;

16 iv. An estimate of the date for plan consummation and application for final  
17 decree; and

18 v. Any other pertinent information needed to explain the progress toward  
19 completion of the confirmed plan."

20 E. Until this case is closed, the Court shall retain jurisdiction over this case to ensure  
21 that the purposes and intent of the Plan are carried out until the Plan has been fully consummated,  
22 pursuant to and for the purposes set forth in the Bankruptcy Code, and specifically for the purposes  
23 of:

24 i. Classification of the Claim of any Creditor or the determination of such  
25 objections as may be filed to Creditors' Claims;

26 ii. The allowance of compensation or other administrative expenses;

- 1           iii.       To hear and determine Claims concerning state, local, and federal taxes  
2           pursuant to Sections 346, 505, 525, and 1146 of the Bankruptcy Code;
- 3           iv.       To hear and determine any action or proceeding brought by Debtor under  
4           Sections 510, 543, 544, 545, 548, 549, 550, 551, and 553 of the Bankruptcy Code, whether  
5           such action or proceeding is brought before or after the Effective Date;
- 6           v.       To hear and determine all actions and proceedings which relate to pre-  
7           confirmation matters brought by the Debtor whether such action or proceeding is brought  
8           before or after the Effective Date;
- 9           vi.       The determination of any issues relating to the assumption or rejection of  
10          executory contracts and unexpired leases including the assumption or rejection of executory  
11          contracts or unexpired leases not expressly dealt with herein;
- 12          vii.       The modification of this Plan after Confirmation pursuant to the Federal  
13          Rules of Bankruptcy Procedure and the Bankruptcy Code;
- 14          viii.       The enforcement and interpretation of the terms of this Plan;
- 15          ix.       The correction of any defects, the curing of any omission, or the  
16          reconciliation of any inconsistency of this Plan or in this Confirmation Order as may be  
17          necessary to carry out the purposes and intent of this Plan;
- 18          x.       The entry of any order, including injunctions, necessary to enforce title,  
19          rights and powers of the Debtor and to impose such limitations, restrictions, terms and  
20          conditions of such title, rights and powers as this Court may deem necessary including,  
21          without limitation, any right of the Debtor to recover assets pursuant to any of the relevant  
22          provisions of the Bankruptcy Code;
- 23          xi.       The determination of the validity, extent and priority of all liens and security  
24          interests against property of the Debtor's Chapter 11 estate;
- 25          xii.       To hear and determine such matters and make such orders as are consistent  
26          with the Plan as may be necessary or desirable to carry out the provisions thereof and to  
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adjudicate any disputes arising under or relating to any Order entered by the Court in this proceeding; and

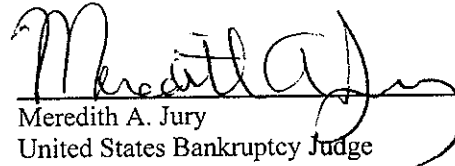
xiii. The entry of an Order concluding and closing this Chapter 11 case.

F. If the above-referenced case is converted to one under Chapter 7, the property of the Reorganized Debtor shall be revested in the Chapter 7 Estate.

G. When the Plan is substantially consummated, the Debtor shall file an application for a Final Decree closing this case.

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Date: April 29, 2013

  
Meredith A. Jury  
United States Bankruptcy Judge

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### NOTICE OF ENTERED ORDER AND SERVICE LIST

Notice is given by the court that a judgment or order entitled (*specify*):  
**ORDER CONFIRMING DEBTOR'S FIRST AMENDED CHAPTER 11 PLAN** was entered on the date indicated as Entered on the first page of this judgment or order and will be served in the manner stated below:

**1. SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF)** – Pursuant to controlling General Orders and LBRs, the foregoing document was served on the following persons by the court via NEF and hyperlink to the judgment or order. As of (*date*) April 26, 2013, the following persons are currently on the Electronic Mail Notice List for this bankruptcy case or adversary proceeding to receive NEF transmission at the email addresses stated below.

COUNSEL FOR DEBTOR:	Jeffrey W Broker	jbroker@brokerlaw.biz
Request for Courtesy Notice:	Regis Guerin	efilings@amlegalgroup.com
COUNSEL FOR MASSOYAN:	Doris A Kaelin	doris.kaelin@berliner.com
COUNSEL FOR RIVERSIDE CTY:	Martha E Romero	romero@mromerolawfirm.com
COUNSEL FOR UST:	Jason K Schrader	Jason.K.Schrader@usdoj.gov
United States Trustee (RS)		ustpreion16.rs.ecf@usdoj.gov
CREDITOR:	Jaime L Watkins	ecf@bass-associates.com
Request for Courtesy Notice:	Pamela Jan Zylstra	zylstralaw@gmail.com

Service information continued on attached page

**2. SERVED BY THE COURT VIA UNITED STATES MAIL:** A copy of this notice and a true copy of this judgment or order was sent by United States mail, first class, postage prepaid, to the following persons and/or entities at the addresses indicated below:

Service information continued on attached page

**3. TO BE SERVED BY THE LODGING PARTY:** Within 72 hours after receipt of a copy of this judgment or order which bears an Entered stamp, the party lodging the judgment or order will serve a complete copy bearing an Entered stamp the party lodging the judgment or order will service a complete copy bearing an Entered stamp by United States mail, overnight mail, facsimile transmission or email and file a proof of service of the entered order on the following persons and/or entities at the addresses, facsimile transmission numbers, and/or email addresses stated below:

COUNSEL FOR U.S. BANK Michele Sabo Assayag michelea@amlegalgroup.com

Service information continued on attached page

### 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 18111 Von Karman, Suite 460, Irvine, CA 92612

A true and correct copy of the foregoing document entitled (*specify*): **REORGANIZED DEBTOR'S OBJECTION TO PROOF OF CLAIM NO. 7 AND MOTION FOR ORDER DETERMINING THE ALLOWED AMOUNT OF PROOF OF CLAIM NO. 7; MEMORANDUM OF POINTS AND AUTHORITIES AND DECLARATIONS OF KATHLEEN OTTO AND PAMELA J. ZYLSTRA 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 stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) August 2, 2013, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

COUNSEL FOR REORGANIZED DEBTOR:	Jeffrey W Broker	jbroker@brokerlaw.biz
Request for Courtesy Notice:	Regis Guerin	efilings@amlegallgroup.com
COUNSEL FOR MASSOYAN:	Doris A Kaelin	dkaelin@berliner.com
COUNSEL FOR RIVERSIDE CTY:	Martha E Romero	Romero@mromerolawfirm.com
UST:	Jason.K.Schrader	jason.K.Schrader@usdoj.gov
United States Trustee (RS)	ustpregion16.rs.ecf@usdoj.gov	
Request for Courtesy Notice	Jaime L. Watkins	ecf@bass-associates.com
Request for Courtesy Notice:	Pamela Jan Zylstra	zylstralaw@gmail.com

Service information continued on attached page

**2. SERVED BY UNITED STATES MAIL:**

On (*date*) August 2, 2013, I served the following persons and/or entities at the last known addresses 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 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.

Office of the United States Trustee, attn Jason Schrader, 3801 University Ave., Suite 720, Riverside, CA 92501  
Honorable Meredith Jury, 3420 Twelfth Street, Suite 325, Courtroom 301, Riverside, CA 92501-3819  
Vadim Braslavsky, Esq., Herzfeld & Rubin, LLP, 1925 Century Park E, Suite 900, Los Angeles, CA 90067 (COBALT)

Service information continued on attached page

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (*state method for each person or entity served*):** Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) August 2, 2013, I served the following persons and/or entities by personal delivery, overnight mail service, 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 personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

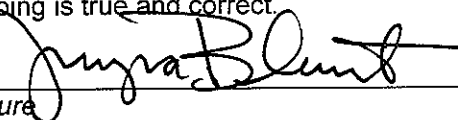
Ara Jabagchourian <ajabagchourian@cpmlegals.com>  
John Waishe Murray <murray.john@dorsey.com>  
Thomas Hwang <hwang.thomas@dorsey.com>

Service information continued on attached page

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

August 2, 2013  
Date

Myra Blunt  
Printed Name

  
Signature