

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

R. BALL, JR.	:	
FOR A.L. BALL TRUST, DECEMBER 22, 1976	:	CIVIL ACTION
	:	
v.	:	
	:	
UNITED STATES OF AMERICA	:	NO. 12-921

ORDER

AND NOW, this 25th day of April 2012, upon consideration of the United States' Unopposed Motion to Enlarge Time to Respond to Complaint (Doc. No. 10), it is hereby ORDERED that the motion is GRANTED. Defendant shall have an extension of time until May 14, 2012 to respond to the complaint.

BY THE COURT:

/s/ Legrome D. Davis

Legrome D. Davis, J.

IN THE UNITED STATES COURT OF FEDERAL CLAIMS  
No. 12-88T

(Filed: April 26, 2012)

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DENNIS L. & CATHY E. NASH, )  
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 Plaintiffs, )  
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 v. )  
 )  
 UNITED STATES, )  
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 Defendant. )  
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ORDER

Pending before the court is defendant's Unopposed Motion for an Enlargement of Time, filed April 26, 2012. Defendant seeks an enlargement of 30 days, from April 30, 2012 to May 30, 2012, within which to file its response to plaintiff's complaint. This is defendant's second motion for an enlargement of time for this purpose, the court having previously granted an extension of 21 days by its order of March 28, 2012.

For good cause shown, defendant's motion is GRANTED. Defendant shall file its response to plaintiff's complaint on or before May 30, 2012.

It is so ORDERED.

s/ Charles F. Lettow  
\_\_\_\_\_  
Charles F. Lettow  
Judge

Honorable Linda B. Riegle  
United States Bankruptcy Judge



Entered on Docket  
April 26, 2012

Robert R. Kinas (Nevada Bar No. 6019)  
Nishat Baig (Nevada Bar No. 11047)  
Blakeley E. Griffith (Nevada Bar No. 12386)  
SNELL & WILMER L.L.P.  
3883 Howard Hughes Parkway, Suite 1100  
Las Vegas, NV 89169  
Telephone: (702) 784-5200  
Facsimile: (702) 784-5252  
Email: rkinas@swlaw.com  
nbaig@swlaw.com  
bgriffith@swlaw.com  
*Attorneys for Bank of Nevada*

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re

Case No. 11-16624-lbr

DESERT CAPITAL REIT, INC.,

Chapter 11

Debtor.

**ORDER APPROVING STIPULATION  
BETWEEN BANK OF NEVADA AND  
DEBTOR REGARDING THE AMOUNT  
OF BANK OF NEVADA'S CLAIM**

This Court having considered the *Stipulation Between Bank of Nevada and Debtor Regarding the Amount of Bank of Nevada's Claim* by and between Debtor, Desert Capital REIT, Inc. ("Debtor"), and Bank of Nevada ("Bank of Nevada") (collectively, the "Parties") by and through their respective counsel of record which Stipulation was filed on March 27, 2012.

The Court, having read and considered the Stipulation and good cause appearing therefore;

**IT IS HEREBY ORDERED** that the Stipulation is approved;

Snell & Wilmer

LLP  
LAW OFFICES  
3883 HOWARD HUGHES PARKWAY, SUITE 1100  
LAS VEGAS, NEVADA 89169  
(702)784-5200

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**IT IS FURTHER ORDERED** that Bank of Nevada's claim is in Class 4 and, as defined by the Disclosure Statement and Plan, for \$1,284,695.01. This amount is the amount owing as of the Bankruptcy petition date and does not include post-petition interest, fees, or expenses.

**IT IS SO ORDERED.**

Prepared and Respectfully Submitted By:

SNELL & WILMER L.L.P.

By: Blakeley E. Griffith  
Robert R. Kinas (Nevada Bar No. 6019)  
Nishat Baig (Nevada Bar No. 11047)  
Blakeley E. Griffith (Nevada Bar No. 12386)  
3883 Howard Hughes Parkway, Suite 1100  
Las Vegas, NV 89169  
Telephone: (702) 784-5200  
Facsimile: (702) 784-5252  
*Attorneys for Bank of Nevada*

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Snell & Wilmer

LLP

LAW OFFICES  
3883 HOWARD HUGHES PARKWAY, SUITE 1100  
LAS VEGAS, NEVADA 89169  
(702)784-5200

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	
	)	<b>Chapter 11</b>
	)	
<b>FOOD PROCESSING LIQUIDATION</b>	)	<b>Case No. 11-13139 (KG)</b>
<b>HOLDINGS, LLC, et al.,<sup>1</sup></b>	)	
	)	
<b>Debtors.</b>	)	<b>Jointly Administered</b>
	)	
	)	<b>Re: Docket Nos. 615, 665, 669, 672 &amp; 675</b>

**FINDINGS OF FACT, CONCLUSIONS OF LAW,  
AND ORDER CONFIRMING DEBTORS' JOINT PLAN OF  
LIQUIDATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

**RECITALS**

WHEREAS, on October 4, 2011 (the "Petition Date"), each of the above-captioned debtors and debtors-in-possession (collectively, the "Debtors") filed with this Court a petition for relief under chapter 11 (the "Chapter 11 Cases") of title 11 of the United States Code (the "Bankruptcy Code").

WHEREAS, since the Petition Date, the Debtors have continued as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Chapter 11 Cases.

WHEREAS, on October 13, 2011, the Office of the United States Trustee (the "U.S. Trustee") appointed the Official Committee of Unsecured Creditors (the "Creditors' Committee") [Docket No. 96].

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<sup>1</sup> The debtors in these cases, along with the last four digits of the federal tax identification number for each of the debtors, where applicable are Food Processing Liquidation Holdings, LLC (f/k/a Chef Solutions Holdings, LLC) [5382], FPL Distribution Holdings, LLC (f/k/a CS Distribution Holdings, LLC) [5461], FPL Distributors, Inc. of Ohio (f/k/a CS Distributors, Inc. of Ohio) [7075], FPL Prepared Foods Holdings, LLC (f/k/a CS Prepared Foods Holdings, LLC) [5434], Food Processing Liquidation Inc. (f/k/a Chef Solutions Inc.) [8101], FPL Holdings, Inc. (f/k/a Orval Kent Holdings, Inc.) [4307], FPL Intermediate Holdings, Inc. (f/k/a Orval Kent Intermediate Holdings, Inc.) [4420], FPL Parent, LLC (f/k/a Orval Kent Parent, LLC) [4553], Food Processing Liquidation, LLC (f/k/a Orval Kent Food Company, LLC) [8408] and FPL of Linares, LLC (f/k/a Orval Kent Food Company of Linares, LLC) [0418]. The debtors' corporate offices are located at 120 W. Palatine Rd. Wheeling, IL 60090.

WHEREAS, on February 13, 2012, the Debtors filed their original proposed joint plan of liquidation [Docket No. 536] (as amended, modified and/or supplemented, the “Plan”) and the accompanying disclosure statement [Docket No. 537] (as amended, modified and/or supplemented, the “Disclosure Statement”).<sup>2</sup>

WHEREAS, on March 16, 2012, the Debtors filed the final solicitation versions of the Plan [Docket No. 615] and the Disclosure Statement [Docket No. 616]. A true and correct copy of the final solicitation version of the Plan is attached hereto as Exhibit A.

WHEREAS, on March 19, 2012, after due notice and a hearing (the “Disclosure Statement Hearing”), this Court entered an Order [Docket No. 625] (the “Disclosure Statement Order”) that, among other things, (i) approved the Disclosure Statement as containing adequate information, (ii) scheduled a hearing for April 26, 2012 at 11:00 a.m. (Eastern Daylight Time) to consider confirmation of the Plan (the “Confirmation Hearing”), (iii) set related Plan voting and confirmation objection deadlines, (iv) approved the voting and the tabulation procedures in connection with voting on confirmation of the Plan, (v) established service requirements for, among other things, the Solicitation Packages, and (vi) approved the form of the Ballots.

WHEREAS, on March 26, 2012, March 28, 2012, and March 29, 2012, the Debtors’ claims, noticing and balloting agent, Donlin, Recano & Company Inc. (“DRC”), filed affidavits of service [Docket Nos. 642, 644 & 647] (collectively, the “Solicitation Package Affidavit”), evidencing DRC’s transmittal and service of (i) the Solicitation Packages (with appropriate Ballots) on the Record Holders of General Unsecured Claims (Class 3) (i.e., the Voting Class), (ii) the Confirmation Hearing Notice and the Notice of Non-Voting Status, to all of the Record Holders of (a) Claims or Interests in the Classes 1, 2, 4, and 5, and (b) Unclassified Claims, and

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<sup>2</sup> Capitalized terms used herein and not otherwise defined shall have the meanings given to them in the Disclosure Statement or the Disclosure Statement Order (as defined below), as appropriate.

(iii) a copy of the Confirmation Hearing Notice on (w) all other creditors and parties that filed a request for notices pursuant to Bankruptcy Rule 2002 that were not included in (i) and (ii) above, (x) the U.S. Trustee, (y) counsel for the Creditors' Committee, and (z) the counter-parties to the Debtors' unexpired leases and executory contracts that have not yet been assumed or rejected; provided, however, that in accordance with the Disclosure Statement Order, Solicitation Packages, Notices of Non-Voting Status and Confirmation Hearing Notices were not delivered to the Debtors' former employees (unless such employee had filed a proof of claim in the Chapter 11 Cases). No other or further notice of the Confirmation Hearing was or is required.

WHEREAS, the Disclosure Statement Order established (i) March 19, 2012 as the record date for determining which creditors were entitled to vote to accept or reject the Plan and (ii) 4:00 p.m. (Eastern Daylight Time) on April 18, 2012, as the voting deadline to return completed Ballots to DRC (the "Voting Deadline").

WHEREAS, on April 23, 2012, DRC filed the *Declaration of Jung W. Song of Donlin, Recano & Company, Inc. With Respect to the Tabulation of Votes and Certifying the Results of Solicitation of the Debtors' Joint Plan of Liquidation Under Chapter 11 of the Bankruptcy Code* [Docket No. 680] (the "Voting Report"), attesting and certifying to the method and results of the Ballot tabulation for the Voting Class.

WHEREAS, the Disclosure Statement Order also established April 18, 2012 at 4:00 p.m. (Eastern Daylight Time) as the deadline to object to confirmation of the Plan.

WHEREAS, on April 24, 2012, the Debtors filed the *Declaration of Adam Rosen in Support of Confirmation of Debtors' Joint Plan of Liquidation Under Chapter 11 of the Bankruptcy Code* [Docket No. 687] (the "Rosen Declaration").

NOW, THEREFORE, this Court having reviewed and considered the Disclosure Statement, the Plan, the Solicitation Package Affidavit, the Voting Report, the Rosen Declaration, and the representations of counsel at Disclosure Statement Hearing and the Confirmation Hearing; this Court having considered all evidence submitted with respect to confirmation of the Plan; this Court having taken judicial notice of the papers and pleadings on file in the Chapter 11 Cases; it appearing to this Court that notice of the Confirmation Hearing was adequate, sufficient, and appropriate as to all parties to be affected by the Plan and the transactions contemplated thereby and the legal and factual bases presented to the Court establish just cause for the relief granted herein; and after due deliberation thereon, and good cause appearing therefor,

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

THE COURT HEREBY FINDS AND DETERMINES THAT:

A. Jurisdiction and Venue. This Court has jurisdiction over the Chapter 11 Cases pursuant to 28 U.S.C. §§ 157 and 1334. Confirmation of the Plan is a core proceeding under 28 U.S.C. § 157(b)(2), and this Court has exclusive jurisdiction to determine whether the Plan complies with the applicable provisions of the Bankruptcy Code and should be confirmed. The statutory predicates for confirmation of the Plan are sections 105(a), 365, 503, 507, 1123, 1129, 1142 and 1146(a) of the Bankruptcy Code and Bankruptcy Rules 2002, 6006(a) and (c), 9007, 9014 and 9019. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

B. Eligibility for Relief. The Debtors were and are entities eligible for relief under section 109 of the Bankruptcy Code.

C. Judicial Notice. This Court takes judicial notice of (and deems admitted into evidence for purposes of confirmation of the Plan) the entire docket of the Chapter 11 Cases



maintained by the Clerk of the Court or its duly appointed agent, including, without limitation, all pleadings and other documents filed, all Orders entered, and all evidence and arguments made, proffered, or adduced at, the hearings held before this Court during the pendency of the Chapter 11 Cases..

D. Burden of Proof. The Debtors, as proponents of the Plan, have met their burden of proving the elements of sections 1129(a) and (b) of the Bankruptcy Code by a preponderance of the evidence.

E. Transmittal and Mailing of Materials; Notice. As evidenced by the Solicitation Package Affidavit, and pursuant to the Disclosure Statement Order, due, adequate, and sufficient notice of the Disclosure Statement, the Plan, and the Confirmation Hearing, together with all deadlines for voting on the Plan or objecting to confirmation of the Plan have been given to those parties entitled to receive such documents and no other or further notice is or shall be required.

F. Solicitation. Votes for acceptance and rejection of the Plan were solicited in good faith and such solicitation complied with sections 1125 and 1126 of the Bankruptcy Code, Bankruptcy Rules 3017 and 3018, all other applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Disclosure Statement Order, and all other applicable rules, laws, and regulations. Such transmittal and service of the Solicitation Packages was adequate and sufficient. No other or further notice is or shall be required. If a Person changed its mailing address after the Petition Date, the burden was on such entity, not the Debtors, to advise DRC of the new address. All procedures used to distribute Plan-related materials to Record Holders of Claims and Interests were fair, and conducted in accordance with the Disclosure Statement Order.

G. Bankruptcy Rule 3016. The Plan is dated and identifies the entities submitting it, thereby satisfying Bankruptcy Rule 3016(a). The filing of the Disclosure Statement with the Clerk of the Court satisfies Bankruptcy Rule 3016(b).

H. Section 1129(a)(1)—Plan Compliance with Bankruptcy Code. As set forth below, the Plan complies with the applicable provisions of the Bankruptcy Code as required by section 1129(a) of the Bankruptcy Code, including sections 1122 and 1123.

I. Section 1122 and 1123(a)(1)—Proper Classification of Claims and Interests. In addition to Administrative Expense Claims, Professional Fee Claims, and Priority Tax Claims, which need not be classified, Article II of the Plan designates five (5) Classes of Claims and one Class of Interests. The Claims or Interests placed in each Class are substantially similar to other Claims or Interests, as the case may be, in such Class. Valid business, factual, and legal reasons exist for separately classifying the various Classes of Claims and Interests created under the Plan, and such Classes do not unfairly discriminate among Record Holders of Claims or Interests. Thus, the Plan satisfies sections 1122 and 1123(a)(1) of the Bankruptcy Code.

J. Section 1123(a)(2)—Specification of Unimpaired Classes. Article II of the Plan specifies that both Class 1 and Class 2 are Unimpaired under the Plan, thereby satisfying section 1123(a)(2) of the Bankruptcy Code.

K. Section 1123(a)(3)—Specification of Treatment of Impaired Classes. Article II of the Plan designates each of Classes 3, 4, and 5 as Impaired and specifies the treatment of Allowed Claims and Interests in those Classes, as applicable, thereby satisfying section 1123(a)(3) of the Bankruptcy Code.

L. Section 1123(a)(4)—Equal Treatment within Classes. Article II of the Plan provides for the same treatment by the Debtors for each Claim or Interest in a particular Class

unless the Record Holder of a particular Claim or Interest in such Class has agreed to a less favorable treatment of its Claim or Interest. Thus, the Plan satisfies the requirements of section 1123(a)(4) of the Bankruptcy Code.

M. Section 1123(a)(5)—Implementation of Plan. Article III of the Plan and various other provisions of the Plan provide an adequate and proper means for the implementation of the Plan.

N. Section 1123(a)(6)—Voting Power of Equity Securities. The Plan is a liquidating plan that calls for the dissolution of the Debtors. Accordingly, section 1123(a)(6) of the Bankruptcy Code is not applicable.

O. Section 1123(a)(7)—Selection of Officers and Directors. Section 3.3 of the Plan provides that Thomas Reardon is currently the Officer and, in such capacity, is a manager and/or officer of each of the Debtors and, after the Effective Date, will be the sole officer and/or manager of Holdings. Further, pursuant to section 3.3 of the Plan, the Officer will serve in such capacity until his successor is duly elected or appointed and qualified or until the earlier of (i) the date provided for in the Officer Agreement, (ii) his death, resignation or removal in accordance with the terms of the Plan or the Disclosure Statement, (iii) the date of entry of the Final Decree, or (iv) the date provided for in the Final Decree. Accordingly, the provisions of the Plan governing the selection of directors and officers of the Debtors are consistent with the interests of creditors and equity security holders and with public policy as to the manner and selection of any officer or director and any successor thereto, thereby satisfying Bankruptcy Code section 1123(a)(7).

P. Section 1123(a)(8)—Future Income. None of the Debtors are individuals. Accordingly, section 1123(a)(8) of the Bankruptcy Code is not applicable in the Chapter 11 Cases.

Q. Section 1123(b)(1)—Impairment and Unimpairment of Classes. Pursuant to section 1123(b)(1) of the Bankruptcy Code, Article II of the Plan Impairs or leaves Unimpaired, as the case may be, each Class of Claims or Interests under the Plan.

R. Section 1123(b)(2)—Rejected Executory Contracts and Unexpired Leases. Article IV of the Plan satisfies all requirements contained in the Bankruptcy Code for the rejection of any remaining executory contracts and unexpired leases.

S. Section 1123(b)(6)—Permissive Provisions. The Plan contains other permissive provisions that are consistent with the applicable provisions of the Bankruptcy Code and, thus, the Plan satisfies the requirements of section 1123(b)(6) of the Bankruptcy Code. Specifically, the exculpations, releases and injunctions set forth in the Plan (including, without limitation, sections 6.14, 6.15, 6.16 and 6.17 thereof) and implemented by this Confirmation Order, are fair, equitable, reasonable, proposed in good faith, and are in the best interests of the Debtors, the Debtors' stakeholders and estates generally. All parties benefiting from the exculpation, release and injunction provisions have contributed and/or will contribute value to the Debtors and the Debtors' estates. The record of the Disclosure Statement Hearing, the Confirmation Hearing and the Chapter 11 Cases is sufficient to support the exculpations, releases and injunctions provided for in Article VI of the Plan.

T. Section 1129(a)(2)—Debtors' Compliance with the Applicable Provisions of the Bankruptcy Code. The Debtors have complied with the applicable provisions of the Bankruptcy Code, thereby satisfying section 1129(a)(2) of the Bankruptcy Code. Specifically:

- (a) the Debtors are proper debtors under section 109 of the Bankruptcy Code and proper proponents of the Plan under section 1121(a) of the Bankruptcy Code;
- (b) the Debtors have complied with the applicable provisions of the Bankruptcy Code, including sections 1125 and 1126(b), the Bankruptcy Rules, and the Local Rules in transmitting the Plan-related materials and in soliciting and tabulating votes on the Plan, except as otherwise provided or permitted by Orders of the Court, including, without limitation, the Disclosure Statement Order; and
- (c) the Debtors have otherwise complied with applicable provisions of the Bankruptcy Code, except as otherwise provided or permitted by Orders of the Court.

U. Section 1129(a)(3)—Plan Proposed in Good Faith. The Debtors, as proponents of the Plan, acting through their respective agents, representatives and professionals, have (i) proposed the Plan (a) in good faith, and (b) not by any means forbidden by law, and (ii) acted in good faith in the negotiation and formulation of the Plan. Accordingly, the Plan satisfies section 1129(a)(3) of the Bankruptcy Code.

V. Section 1129(a)(4)—Payments for Services or Costs and Expenses. Any payment made or to be made by the Debtors for services or for costs and expenses in or in connection with the Chapter 11 Cases, or in connection with the Plan and incident to the Chapter 11 Cases, has been approved by, or is subject to the approval of, this Court as reasonable. Accordingly, the Plan satisfies section 1129(a)(4) of the Bankruptcy Code.

W. Section 1129(a)(5)—Directors, Officers and Insiders. The Debtors have disclosed in the Plan the identity, affiliations and compensation of the Officer, and the appointment and/or employment of the Officer (and/or any successor thereto) is consistent with the interests of creditors and equity security holders and with public policy. Accordingly, the Debtors have complied with section 1129(a)(5) of the Bankruptcy Code.

X. Section 1129(a)(6)—No Rate Changes. The Plan does not provide for any change in rates subject to governmental regulation. Thus, section 1129(a)(6) of the Bankruptcy Code is not applicable in the Chapter 11 Cases.

Y. Section 1129(a)(7)—Best Interests of Creditors Test. The liquidation analysis contained in the Disclosure Statement, the Rosen Declaration, and other evidence proffered or adduced with respect to confirmation of the Plan (i) are persuasive and credible, (ii) have not been challenged or controverted by other evidence, and (iii) establish that the recoveries expected to be available to the Record Holders of Allowed Claims under the Plan will be greater than the recoveries expected to be available in a Chapter 7 liquidation. Thus, the Plan satisfies section 1129(a)(7) of the Bankruptcy Code.

Z. Section 1129(a)(8)—Acceptance or Rejection by Certain Classes. Record Holders of Claims in Classes 1 and 2 are deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. As set forth in the Voting Report, as of the Voting Deadline, the percentage of Record Holders of Claims in Class 3 (General Unsecured Claims) (i.e., the Voting Class) that voted to accept or reject the Plan are as follows:

Impaired Class of Claims Entitled to Vote	Percentage Accepting of Voted Claims (Dollar Amount)	Percentage Accepting of Voted Claims (Number of Claims)	Percentage Rejecting of Voted Claims (Dollar Amount)	Percentage Rejecting of Voted Claims (Number of Claims)
Class 3 (General Unsecured Claims)	92.93% (\$12,152,665.31)	90.22% (166)	7.07% (\$924,197.49)	9.78% (18)

Accordingly, Class 3 (General Unsecured Claims), which was the only Class of Claims or Interests entitled to vote on the Plan, has voted to accept the Plan pursuant to section 1126(c) of the Bankruptcy Code. Record Holders of Claims in Class 4 (Inter-company Claims) and Interests in Class 5 (Interests) are conclusively deemed to have rejected the Plan pursuant to

section 1126(g) of the Bankruptcy Code. The Plan, therefore, does not satisfy section 1129(a)(8) of the Bankruptcy Code. Notwithstanding the lack of compliance with section 1129(a)(8) of the Bankruptcy Code with respect to Classes 4 and 5, the Plan is confirmable because it satisfies section 1129(b)(1) of the Bankruptcy Code with respect to such Classes, as set forth below.

AA. Section 1129(a)(9)—Treatment of Administrative, Priority and Tax Claims. The treatment of Administrative Expense Claims, Professional Fee Claims, Priority Tax Claims and Other Priority Claims pursuant to Articles I and II of the Plan satisfies the requirements of sections 1129(a)(9)(A), (B) and (C) of the Bankruptcy Code.

BB. Section 1129(a)(10)—Acceptance of at Least One Impaired Class. As set forth in the Voting Report and demonstrated by the above chart, Class 3 (General Unsecured Claims) has voted to accept the Plan and has accepted the Plan in requisite number and amount without the necessity of including any acceptance of the Plan by any insider. Thus, the Plan satisfies section 1129(a)(10) of the Bankruptcy Code.

CC. Section 1129(a)(11)—Feasibility. The Plan itself calls for liquidation of the Debtors. Therefore, confirmation of the Plan is not likely to be followed by the need for further financial reorganization of the Debtors, thereby satisfying (or eliminating the need to consider) section 1129(a)(11) of the Bankruptcy Code.

DD. Section 1129(a)(12)—Payment of Fees. All fees under 28 U.S.C. § 1930 presented to date have been paid or provided for. Moreover, as set forth in section 6.11 of the Plan, after the Effective Date, Holdings shall pay all fees payable under 28 U.S.C. § 1930 for each quarter (including any fraction thereof) until the Final Decree is entered. Accordingly, section 1129(a)(12) of the Bankruptcy Code is satisfied.

EE. Section 1129(a)(13)—Continuation of Retiree Benefits. The Debtors have no retiree benefit obligations and, thus, section 1129(a)(13) of the Bankruptcy Code is inapplicable.

FF. Section 1129(a)(14) and (15)—Postpetition Domestic Support Obligations and Disposable Income. Sections 1129(a)(14) and (15) of the Bankruptcy Code impose certain requirements on individual chapter 11 debtors. None of the Debtors are individuals. Accordingly, sections 1129(a)(14) and (15) of the Bankruptcy Code are not implicated by the Plan.

GG. Section 1129(a)(16)—Transfers of Property by Nonprofit Entities. Section 1129(a)(16) of the Bankruptcy Code imposes certain requirements on corporations or trusts that are not a moneyed, business or commercial corporation or trust. Each of the Debtors is a moneyed, business, or commercial corporation. Accordingly, section 1129(a)(16) of the Bankruptcy Code is not implicated by the Plan.

HH. Section 1129(b)—Confirmation of Plan Over Nonacceptance of Impaired Classes. As described above, the Plan satisfies all of the applicable requirements of section 1129(a) of the Bankruptcy Code other than section 1129(a)(8). Class 3 (General Unsecured Claims), which is the only Impaired Class that is entitled to vote on the Plan, has voted to accept the Plan. Classes 4 (Inter-company Claims) and 5 (Interests) are not receiving a distribution or retaining any property under the Plan, and, consequently, are deemed to have rejected the Plan. Pursuant to section 1129(b)(1) of the Bankruptcy Code, the Plan may still be confirmed, notwithstanding that not all Impaired Classes have voted to accept the Plan, if the Plan is fair and equitable with respect to, and does not unfairly discriminate against, such Classes. Here, Claims in Class 4 (Inter-company Claims) are deemed cancelled as a result of the substantive consolidation of the Debtors' estates. Additionally, no Record Holders of Claims or Interests



that are subordinate to the Interests in Class 5 (Interests), as applicable, will receive a distribution or retain any property under the Plan. Accordingly, the Plan is fair and equitable with respect to such Class and does not unfairly discriminate against such Class. Therefore, the Plan complies with section 1129(b) of the Bankruptcy Code and may be confirmed notwithstanding that both Classes 4 and 5 were deemed to have rejected the Plan.

II. Section 1129(c)—Only One Plan. Other than the Plan (including previous versions thereof), no other plan has been filed in the Chapter 11 Cases. Accordingly, the requirements of 1129(c) of the Bankruptcy Code have been met.

JJ. Section 1129(d)—Principal Purpose. The principal purpose of the Plan is neither the avoidance of taxes nor the avoidance of section 5 of the Securities Act of 1933. The Plan, therefore, satisfies the requirements of section 1129(d) of the Bankruptcy Code.

KK. Exculpations, Limitations of Liability, Releases and Injunctions. This Court has jurisdiction under sections 1334(a), (b) and (d) of title 28 of the United States Code and authority under Bankruptcy Rule 9019(a) to approve the exculpations, limitations of liability, releases and injunctions set forth in sections 6.14, 6.15, 6.16, and 6.17 of the Plan and such provisions were prominently disclosed in the Plan and the Disclosure Statement. Moreover, section 105(a) of the Bankruptcy Code and the case law promulgated thereunder permit the issuance of the injunction and approval of the releases set forth in Article VI of the Plan, if, as has been established here, such provisions: (i) are essential to the formulation and implementation of the Plan, as provided in section 1123(a)(5) of the Bankruptcy Code; (ii) are important to the overall objectives of the Plan to finally resolve, except to the extent otherwise provided in the Plan, all Claims among or against the parties in interest in the Chapter 11 Cases with respect to the Debtors, (iii) confer substantial benefits on the Debtors' estates, (iv) are fair and reasonable, and (v) are in the best

interests of the Debtors, the Debtors' estates, and parties in interest. Based upon the record of the Chapter 11 Cases, the Rosen Declaration and the evidence proffered, adduced and/or presented at the Disclosure Statement Hearing and the Confirmation Hearing, this Court finds that the provisions set forth in Article VI of the Plan, are consistent with sections 105, 1123, 1129 and other applicable provisions of the Bankruptcy Code, the Bankruptcy Rules and applicable law. The failure to effect the exculpations, limitations of liability, releases, and injunctions set forth in Article VI of the Plan, would seriously impair the Debtors' ability to confirm the Plan.

LL. Substantive Consolidation. Section 3.2 of the Plan is premised upon substantively consolidating all Assets of and Claims against the Debtors. The Disclosure Statement expressly advised Record Holders of such consolidation and no such holder objected to such consolidation. The Plan provides that all Assets of and Claims against the Debtors will be deemed to be substantially consolidated and all Claims filed against multiple Debtors seeking recovery of the same debt shall only receive a single distribution from the consolidated Debtors' estates to the extent that such Claim is an Allowed Claim. Accordingly, the substantive consolidation provided for in the Plan is consistent with the requirements of the Bankruptcy Code.

MM. Section 1125(e)—Good Faith Solicitation. Based on the record before the Court in the Chapter 11 Cases, the Debtors have solicited acceptances of the Plan in good faith and in compliance with the applicable provisions of the Bankruptcy Code, including, without limitation, sections 1125(a) and (e) of the Bankruptcy Code, the Bankruptcy Rules, the Disclosure Statement Order, and any applicable non-bankruptcy law, rule, or regulation governing the adequacy of disclosure in connection with such solicitation. Specifically, the Debtors and their officers, directors, agents, financial advisors, attorneys, employees, equity holders, partners,

affiliates, and representatives have acted in “good faith” within the meaning of section 1125(e) of the Bankruptcy Code and in compliance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules and the Disclosure Statement Order in connection with all activities relating to the solicitation of acceptances or rejections of the Plan and therefore shall not be liable, at any time, for any violation of any applicable law, rule, or regulation, governing solicitation of acceptances or rejections of the Plan and are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code and the exculpation provisions set forth in section 6.14 of the Plan.

NN. Bankruptcy Rule 3018. The solicitation of votes to accept or reject the Plan satisfies Bankruptcy Rule 3018. Votes to accept or reject the Plan have been solicited and tabulated fairly, in good faith, and in a manner consistent with the Bankruptcy Code, the Bankruptcy Rules, and the Disclosure Statement Order.

OO. Implementation. All documents necessary to implement the Plan and all other relevant and necessary documents have been negotiated in good faith and at arms-length, are in the best interests of the Debtors, and shall, upon execution, be valid, binding, and enforceable documents and agreements not in conflict with any federal or state law.

PP. Good Faith. The Debtors and their respective officers, directors, agents, financial advisors, attorneys, employees, equity holders, partners, affiliates, and representatives will be acting in good faith if they proceed to (i) consummate the Plan and the agreements, settlements, transactions, and transfers contemplated thereby, and (ii) take the actions authorized and directed by the Plan and this Confirmation Order.

QQ. Likelihood of Satisfaction of Conditions Precedent to Effectiveness. Each of the conditions precedent to the Effective Date, as set forth in Article V of the Plan, has been satisfied

or waived in accordance with the provisions of the Plan, or is reasonably likely to be satisfied or waived.

RR. Retention of Jurisdiction. Pursuant to sections 105(a) and 1142 of the Bankruptcy Code, and notwithstanding the entry of this Confirmation Order or the occurrence of the Effective Date, this Court, except as otherwise provided in the Plan or herein, shall retain exclusive jurisdiction over all matters arising out of, and related to, the Chapter 11 Cases and the Plan to the fullest extent permitted by law and shall also have jurisdiction over (i) the matters set forth in Section 6.3 of the Plan, (ii) any motion Filed or other request by the Debtors or Holdings, as applicable, and/or the Creditors' Committee pursuant to Bankruptcy Code section 554 to abandon any of the Remaining Assets, including but not limited to, the Wheeling Facility, and (iii) any disputes regarding, or in connection with, the Administrative Reserve, including, without limitation, an Administrative Reserve Deficiency (as defined below).

### **ORDER**

BASED ON THE FOREGOING RECITALS, FINDINGS OF FACT AND CONCLUSIONS OF LAW, IT IS THEREFORE ORDERED, ADJUDGED, DECREED AND DETERMINED THAT:

1. Confirmation. For the reasons set forth herein, all requirements for confirmation of the Plan have been satisfied. Accordingly, the Plan is confirmed under section 1129 of the Bankruptcy Code. All objections to the Plan not heretofore settled or withdrawn are overruled in their entirety. The terms of the Plan are incorporated by reference into and are an integral part of this Confirmation Order.

2. Findings of Fact and Conclusions of Law. The findings of fact and the conclusions of law stated in this Confirmation Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to the proceeding by Bankruptcy Rule 9014. To the extent 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.

3. References to Plan Provisions. The failure specifically to include or reference any particular provision of the Plan in this Confirmation Order shall not diminish or impair the effectiveness of such provision, it being the intent of this Court that the Plan be confirmed in its entirety.

4. Provisions of Plan and Order Nonseverable and Mutually Dependent. The provisions of this Confirmation Order, including the findings of fact and conclusions of law set forth herein, are nonseverable and mutually dependent.

5. Modifications to Plan. In accordance with section 6.9 of the Plan, as was set forth on the record at the Confirmation Hearing, this Confirmation Order modifies the Plan in several immaterial aspects. After the entry of this Confirmation Order, the Debtors may, after consultation with, and approval of, the Creditors' Committee, upon Order of the Court, amend or modify the Plan, in accordance with section 1127(b) of the Bankruptcy Code, or remedy any defect or omission or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan.

6. Notice, Solicitation and Tabulation. Notice of the Confirmation Hearing and the solicitation and tabulation of votes on the Plan complied with the terms of the Disclosure Statement Order, the Bankruptcy Code, and the Bankruptcy Rules, and was appropriate and satisfactory based on the circumstances of the Chapter 11 Cases.

7. Plan Classification Controlling. The classification of Claims and Interests for purposes of the distributions to be made under the Plan shall be governed solely by the terms of the Plan. The classifications and amounts of Claims, if any, set forth on the Ballots returned by

the Debtors' creditors in connection with voting on the Plan (i) were set forth on the Ballots solely for purposes of voting to accept or reject the Plan, (ii) do not necessarily represent, and in no event shall be deemed to modify or otherwise affect, the actual amount or classification of such Claims under the Plan for distribution purposes, and (iii) shall not be binding on the Debtors or Holdings, as applicable.

8. Substantive Consolidation; Closing of the Subsidiary Debtors' Cases. The substantive consolidation of the Debtors' estates for all purposes of the Chapter 11 Cases and the Plan, as set forth more fully in Section 3.2 of the Plan, is hereby approved and shall be deemed to occur on the Effective Date; provided, however, that in accordance with Local Rule 1017-3, following the Effective Date, Holdings shall promptly submit a separate Order substantively consolidating each of the Debtors' estates under certification of counsel, which Order shall be in form and substance acceptable to the U.S. Trustee and the Creditors' Committee. Such separate Order may also close each of the Subsidiary Debtors' Chapter 11 Cases in accordance with section 3.4 of the Plan.

9. Vesting of Remaining Assets. On the Effective Date, all Remaining Assets shall vest in Holdings free and clear of any liens, claims, encumbrances and interests of any kind. Holdings may sell, transfer, or liquidate the Remaining Assets without further Order; provided, however, that Holdings may seek an Order to approve the sale, transfer, or other disposition of any Remaining Assets, including, without limitation, the Wheeling Facility, pursuant to the Bankruptcy Code, including section 363 thereof, at its discretion. Notwithstanding any provision to the contrary in the Plan, this Confirmation Order, or any implementing Plan documents, Holdings and/or the Creditors' Committee may also seek an Order pursuant to Bankruptcy Code

section 554 to abandon any of the Remaining Assets, including, without limitation, the Wheeling Facility.

10. Binding Effect. Pursuant to section 1141 of the Bankruptcy Code, except as otherwise expressly provided for in the Plan, on and after the Effective Date, the Plan and all exhibits thereto, and this Confirmation Order shall bind: (i) the Debtors and their estates; (ii) all holders of Claims and Interests in any of the Debtors, whether known or unknown, whether or not impaired under the Plan and whether or not, if impaired, such holders accepted the Plan; (iii) any holders of liens against or on all or any portion of the Debtors' estates and all non-Debtor counterparties to any assumed executory contracts and unexpired leases; (iv) any other party-in-interest; (v) any Person making an appearance in the Chapter 11 Cases, and (vi) the respective heirs, successors, assigns, trustees, executors, administrators, affiliates, officers, directors, agents, representatives, attorneys, advisors, beneficiaries, or guardians of each of the foregoing. This Confirmation Order shall inure to the benefit of the Debtors, their estates, their creditors and their respective successors and assigns. Upon the occurrence of the Effective Date, the Plan shall be deemed consummated under sections 1101 and 1127(b) of the Bankruptcy Code. All Persons are hereby forever prohibited and enjoined from taking any action that would adversely affect or interfere with the ability of the Debtors to consummate the transactions contemplated by the Plan in accordance with the terms of the Plan and this Confirmation Order.

11. Exemption from Certain Transfer Taxes. Pursuant to section 1146(a) of the Bankruptcy Code, all transactions specifically provided for by the Plan, or consummated by the Debtors and approved by the Court, including, without limitation, settlements pursuant to Bankruptcy Rule 9019(a), shall be deemed to have been made under, in furtherance of, or in connection with, the Plan and, therefore, shall not be subject to any stamp, real estate transfer,

mortgage recording, sales, or other similar tax. This Court retains jurisdiction to enforce the foregoing authorization.

12. Documentation. All documents and agreements introduced into evidence by the Debtors (including all exhibits and attachments thereto and documents referred to therein), and the execution, delivery, and performance thereof by the Debtors and the signatories thereto, are authorized and approved. The Debtors or Holdings, as applicable, are authorized to execute and deliver all documents contemplated by the Plan or otherwise necessary to implement the Plan and to take all steps deemed necessary by the Debtors to consummate the transactions contemplated thereby, all without further Order of the Court.

13. Bankruptcy Rule 9019(a) Settlement. The provisions of the Plan constitute a good faith compromise of all Claims and Interests or controversies relating to the contractual and legal rights that a Record Holder of a Claim or Interest may have with respect to any Allowed Claim, or any distribution to be made on account of such an Allowed Claim. The entry of this Confirmation Order constitutes this Court's approval of the compromise or settlement of all such Claims and Interests or controversies (including, but not limited to, the exculpations, releases and related injunction set forth in the Plan), and this Court's finding that such compromise or settlement is in the best interests of the Debtors, their estates and the Record Holders of Claims and Interests, and is fair, equitable, and reasonable.

14. Continuation of Automatic Stay. Except as otherwise expressly provided in the Plan, this Confirmation Order, or a separate Order of this Court, all injunctions or stays provided for in the Chapter 11 Cases under sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the occurrence of the Effective Date.



15. Provisions Regarding Distributions. The provisions contained in Article III of the Plan, including, without limitation, the provisions governing distributions, are found to be reasonable and are hereby approved.

16. No Distributions to Classes 4 and 5. Pursuant to Article II of the Plan, the Record Holders of Claims in Class 4 (Inter-company Claims) and Interests in Class 5 (Interests) shall not receive a distribution or retain any property on account of such Claims or Interests under the Plan.

17. Setoffs and Recoupments. Subject to further Order, the Debtors shall be permitted, but not required, to setoff against any Claim, or the distributions to be made under the Plan on account of such Claim, any claims of any nature whatsoever the Debtors have against the Record Holder of such Claim. In addition, neither the failure to exercise any such setoff nor the allowance of any Claim under the Plan will constitute a waiver or release by the Debtors of any such Claim the Debtors may have against such creditor.

18. Procedures for Resolving Disputed Claims and Rejection Claims. The provisions contained in Articles III and IV of the Plan are found to be reasonable and are hereby approved.

19. Professional Fees. The Professional Fee Claim Bar Date and the procedures for the filing of final applications for Professional Fee Claims and providing notice of the Final Fee Hearing, as more fully set forth in section 1.4 of the Plan, are hereby approved. Notwithstanding any provision to the contrary in the Plan, this Confirmation Order, any implementing Plan documents, and/or the Bankruptcy Rules, service of the notice of the Final Fee Hearing as provided for in the Plan and the Disclosure Statement shall constitute good and sufficient notice thereof and no other or further notice need be given.

20. Statutory Fees Notwithstanding any provision to the contrary in the Plan, this Confirmation Order, or any implementing Plan documents, all fees payable under 28 U.S.C. § 1930, as determined by the Court at a hearing, if necessary, shall be paid for each quarter (including any fraction thereof) until the Chapter 11 Cases are converted, dismissed or the Final Decree is entered, whichever occurs first.

21. Executory Contracts and Unexpired Leases. The provisions contained in Article IV of the Plan, including, without limitation, the provisions regarding the rejection of the Debtors' executory contracts and unexpired leases and the deadlines and procedures for filing proofs of claim relating to any Claim arising from such rejection, are hereby approved and found to be fair and reasonable. Notwithstanding any provision to the contrary in the Plan, this Confirmation Order, or any implementing Plan documents, all executory contracts and unexpired leases of the Debtors which are not assumed and assigned, rejected, or subject to a pending motion to assume and/or assign, prior to the Confirmation Date, shall be deemed rejected as of the Effective Date.

22. Exculpations, Releases and Injunction Related to Releases. The provisions contained in Article VI of the Plan regarding the exculpations, releases and the injunction related to releases are hereby approved and found to be fair and reasonable.

23. Authorization to Take Acts Necessary to Implement Plan. Pursuant to section 1142(b) of the Bankruptcy Code, 8 Del. C. § 303, and any comparable provision of the business corporation laws of any other state, each of the Debtors hereby is authorized and empowered to take such actions and to perform such acts as may be necessary, desirable, or appropriate to comply with or implement the Plan and any matters under the Plan, and all documents, instruments, and agreements related thereto, and the obligations thereunder shall constitute legal,

valid, binding, and authorized obligations of each of the respective parties thereto, enforceable in accordance with their terms without the need for any board, officer and/or manager approval. Each of the Debtors hereby is authorized and empowered to take such actions, to perform all acts, to make, execute, file, and deliver all instruments and documents, and to pay all fees and expenses as set forth in the documents relating to the Plan and that may be required or necessary for its performance thereunder without the need for any board, officer and/or manager approval. On the Effective Date, the Officer is authorized and empowered to issue, execute, file, and deliver the agreements, documents, securities, and instruments contemplated by or necessary to effectuate the Plan in the name of and on behalf of the Debtors or Holdings, as applicable. Each of the Debtors or Holdings, as applicable, and the Officer is authorized to take any such actions without further corporate, company or partnership action.

24. Cancellation of Claims and Interests. Except as otherwise set forth in the Plan, and except for purposes of evidencing a right to a distribution on account of a Claim, on the Effective Date, all agreements and other documents evidencing the Claims or rights of any creditor against the Debtors, including all notes, guarantees, mortgages, and all Interests shall be cancelled.

25. No Interest on Claims. Except as otherwise set forth in this Confirmation Order or a postpetition agreement in writing between the Debtors or Holdings, as applicable, and a Record Holder of a Claim, postpetition interest shall not accrue or be paid on Claims, and no Record Holder of any Claim shall be entitled to interest accruing on or after the Petition Date on any Claim. In addition, and without limiting the foregoing, interest shall not accrue on or be paid on any Claim in respect of the period from the Effective Date to the date a Distribution is made with respect to such Claim.

26. Governmental Approvals Not Required. This Confirmation Order shall constitute all approvals and consents required, if any, by the laws, rules, or regulations of any State or any other governmental authority with respect to the implementation or consummation of the Plan and any documents, instruments, or agreements, and any amendments or modifications thereto, and any other acts referred to in or contemplated by the Plan, the Disclosure Statement, and any documents, instruments, or agreements contained therein, and any amendments or modifications of any of the foregoing.

27. Dissolution of the Creditors' Committee. Notwithstanding any provision to the contrary in the Plan, this Confirmation Order, or any implementing Plan documents, on the later of the Effective Date, the closing date of the sale of the Wheeling Facility, or the entry of an Order pursuant to Bankruptcy Code section 554 authorizing the abandonment of the Wheeling Facility, the Creditors' Committee shall be dissolved and their members shall be deemed released of any continuing duties, responsibilities and obligations in connection with the Chapter 11 Cases or the Plan and its implementation, and the retention and employment of the Creditors' Committees' attorneys, advisors and other agents shall terminate, except with respect to: (i) any matters concerning the Final Fee Hearing, including, without limitation, the preparation of any fee applications, (ii) any appeals of the Confirmation Order through the date such appeals are finally decided, settled, withdrawn, or otherwise resolved, (iii) any matters relating to replacing the current Officer and appointing a successor Officer, (iv) any matters relating to the Wheeling Facility, including without limitation, the sale of such facility or the abandonment of such facility pursuant to Bankruptcy Code section 554, and (v) any other matters that the Debtors or Holdings, as applicable, in consultation with the Creditors' Committee, determine are necessary in order to implement and carry out the provisions of this Plan. Notwithstanding the foregoing,

Holdings may retain the Creditors' Committee's current attorneys and/or financial advisor in order to assist with the wind down of Holdings' estate. Further, notwithstanding any provision to the contrary in the Plan, this Confirmation Order, or any implementing Plan documents, including, without limitation, the Officer Agreement, the Creditors' Committee (or its designee, successor or professionals) may, at any time, without cause or notice, remove the current Officer and replace such Officer with a successor Officer.

28. Notice of Entry of Confirmation Order and Effective Date. Notwithstanding any provision to the contrary in the Plan, this Confirmation Order, any implementing Plan documents and/or the Bankruptcy Rules, within five (5) business days following the Effective Date, Holdings will file and post on the Noticing Agent Website a notice of confirmation and occurrence of the Effective Date, which shall also include the Administrative Expense Request Deadline. Such notice shall be served in accordance with the Bankruptcy Rules and the Local Rules; provided, however, that Holdings shall have no obligation to serve such notice on the Debtors' former employees (unless such employee previously had filed a proof of claim in the Chapter 11 Cases).

29. Dissolution of Subsidiary Debtors. On the Effective Date or as soon thereafter as is reasonably practicable, the affairs of the Subsidiary Debtors may be wound up and the Subsidiary Debtors may be dissolved and/or their legal existence may be terminated at any time without the need for any further action or approval, including the payment of any fees, franchise taxes or other taxes required to be paid under applicable state law.

30. Records. Pursuant to section 554 of the Bankruptcy Code, Holdings shall be authorized to abandon all originals and/or copies of documents and business records to the extent set forth in section 3.3.6 of the Disclosure Statement; provided, however, that no documents and

business records necessary for the wind down of the Debtors' estates shall be abandoned until Holdings is dissolved and its legal existence is terminated.

31. Conflicting Provisions. In the event and to the extent that any provision of the Plan is inconsistent with the provisions of the Disclosure Statement, or any other agreement to be executed by any Person pursuant to the Plan, the provisions of the Plan shall control and take precedence. In the event of any inconsistency between any provision of any of the foregoing documents, and any provision of this Confirmation Order, this Confirmation Order shall control and take precedence; provided, however, that nothing in the Disclosure Statement, the Plan, or this Confirmation Order shall supersede or abrogate the terms and provisions of the Bid Procedures Order, the APA, the Sale Order and the DIP Orders (as such documents may be modified and/or clarified by (i) any statements made on the record at any hearing in these Cases or (ii) any other agreement between the Purchaser, Reser's Fine Foods, Inc. and/or the Debtors or Holdings, as applicable) to negatively impair or affect the Purchaser's, Reser's Fine Foods, Inc.'s, Mistral's, the Debtors' or Holdings' rights thereunder.

32. Applicable Non-Bankruptcy Law. Pursuant to sections 1123(a) and 1142(a) of the Bankruptcy Code, the provisions of this Confirmation Order, and the Plan, or any amendments or modifications thereto shall apply and be enforceable notwithstanding any otherwise applicable non-bankruptcy law.

33. Effectiveness of Order. This Confirmation Order is and shall be deemed to be a separate Order with respect to each of the Debtors for all purposes. This Confirmation Order is intended to be a Final Order and the period in which an appeal must be filed shall commence upon the entry hereof. Pursuant to Bankruptcy Rules 7062, 9014 and 6006(d), this Confirmation

Order shall be effective immediately upon entry and the Debtors are authorized to close the transactions contemplated by the Plan immediately upon the Effective Date.

34. Substantial Consummation. Substantial consummation of the Plan shall be deemed to occur on the Effective Date.

35. Final Decree; Dissolution of Holdings. After Holdings fulfills the standards necessary in order to close Holdings' Case, Holdings shall File the Final Decree Motion requesting the entry of a Final Decree pursuant to section 350(a) of the Bankruptcy Code. The Final Decree shall, among other things, serve as authorization to dissolve and terminate the legal existence of Holdings without the need for any further action or approval, including the payment of any fees, franchise taxes or other taxes required to be paid under applicable state law.

#### **RESOLUTION OF CERTAIN OBJECTIONS**

36. Informal Objection of RMJV, L.P.

- (a) Notwithstanding any provision to the contrary in the Plan, this Confirmation Order, or any implementing Plan documents but subject to paragraph 31 and 36(b) of this Confirmation Order, in the event that the Administrative Reserve is insufficient to satisfy, among other things, all Allowed Claims that the Purchaser was arguably required to pay or satisfy (either directly or indirectly) pursuant to the Bid Procedures Order, the APA, the Sale Order, the DIP Orders and any other agreement between the Purchaser, Reser's Fine Foods, Inc. and/or the Debtors or Holdings, as applicable (in such case, an "Administrative Reserve Deficiency"), the Debtors or Holdings, as applicable, after consultation with the Creditors' Committee, shall have no more than sixty (60) days from the Administrative Expense Request Deadline to file a motion with this Court or otherwise bring a claim or cause of action against the Purchaser in this Court seeking funds from the Purchaser as a result of such Administrative Reserve Deficiency; provided; however, that the Debtors or Holdings, as applicable, after consultation with the Creditors' Committee, may file a motion with this Court seeking to extend such 60-day period for cause shown.
- (b) Nothing in the Plan, this Confirmation Order or any implementing Plan documents, shall: (1) affect the rights of the Purchaser and Reser's Fine Foods, Inc. to defend themselves against any action brought against the Purchaser and Reser's Fine Foods, Inc. by the Debtors and/or Holdings or

any assignee or successor in interest, including, but not limited to, any action to recover any funds from the Purchaser or Reser's Fine Foods, Inc., and such rights are fully preserved; (2) serve as a finding that the Debtors and/or Holdings or any assignee or successor in interest are entitled to any funds from the Purchaser or Reser's Fine Foods, Inc. or have any valid claims against the Purchaser or Reser's Fine Foods, Inc.; and (3) create any rights or enforce any rights of the Debtors and/or Holdings or any assignee or successor in interest to recover any funds from the Purchaser or Reser's Fine Foods, Inc.

37. Objection of the United States [Docket No. 669]. Nothing in the Plan, this Confirmation Order, or any implementing Plan documents, shall: (i) affect the ability of the Internal Revenue Service ("IRS") to pursue any non-Debtors to the extent allowed by non-bankruptcy law for any liabilities that may be related to any federal tax liabilities owed by the Debtors or the Debtors' estates; (ii) affect the rights of the IRS to assert setoff and recoupment and such rights are expressly preserved; or (iii) require the IRS to file a request for payment of an administrative expense in order to receive payment for any liability described in Bankruptcy Code sections 503(b)(1)(B) and (C) in accordance with Bankruptcy Code section 503(b)(1)(D).

38. Objection of Best Label Company Inc. [Docket No. 672]. Notwithstanding any provision to the contrary in the Plan, this Confirmation Order, or any implementing Plan documents, proof of claim no. 815 filed by Best Label Company Inc. shall be a Disputed Claim pursuant to the Plan and reserved for in accordance with section 3.7 thereof..

Dated: April 26, 2012  
Wilmington, Delaware

  
\_\_\_\_\_  
THE HONORABLE KEVIN GROSS  
CHIEF UNITED STATES BANKRUPTCY JUDGE



**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION**

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 DAVID RAY FRANKLIN, RACHEL )  
 WIGGINS, WILLIAM BROWN, )  
 AND INSTANT TAX REFUND )  
 SERVICE, (d/b/a Instant Tax Service) )  
 )  
 Defendants. )

CAUSE NO. 1:12-CV-394-SEB-DKL

**ORDER ON DEFENDANT'S MOTION TO ENLARGE TIME**

Defendant, William Brown, by counsel, having filed his Unopposed Motion for Enlargement of Time for Twenty-one days, and the Court, having reviewed the Motion, hereby **GRANTS** the same.

It is therefore **ORDERED** and **AGREED** the Defendant, William Brown, has until May 15, 2012 to answer Plaintiff's complaint.

Date: 04/26/2012



Denise K. LaRue  
United States Magistrate Judge  
Southern District of Indiana

Distribution to all registered counsel of record via ECF.

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

**FILED**

APR 26 2012

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

BRIAN KENNER; KATHLEEN  
KENNER,

Plaintiffs - Appellants,

v.

ERIN KELLY; JENNIFER PLASKY;  
CAROL ROSE; MARY K. PITTNER; C.  
JOHN CRAWFORD; PATRICIA  
BLIZZARD; CHARLOTTE A.  
BECERRA; SYLVIA L.  
SHAUGHNESSY; DAVID ALITO;  
MINDY MEIGS, individuals; CAPITAL  
ONE, a corporation; ANTHONY J.  
BATTAGLIA, Federal Judge, in his  
official capacity; BARRY T.  
MOSKOWITZ, Federal Judge, in his  
official capacity; DOES, 1-50 inclusive;  
UNITED STATES OF AMERICA,

Defendants - Appellees.

No. 12-55758

D.C. No. 3:11-cv-02520-BEN-BGS  
U.S. District Court for Southern  
California, San Diego

**TIME SCHEDULE ORDER**

The parties shall meet the following time schedule.

If there were reported hearings, the parties shall designate and, if necessary, cross-designate the transcripts pursuant to 9th Cir. R. 10-3.1. If there were no reported hearings, the transcript deadlines do not apply.

**Fri., May 25, 2012**

Transcript shall be ordered.

**Mon., June 25, 2012**

Transcript shall be filed by court reporter.

**Fri., August 3, 2012**

Appellants' opening brief and excerpts of record shall be served and filed pursuant to FRAP 32 and 9th Cir. R. 32-1.

**Tue., September 4, 2012**

Appellees' answering brief and excerpts of record shall be served and filed pursuant to FRAP 32 and 9th Cir. R. 32-1.

**The optional appellants' reply brief shall be filed and served within fourteen days of service of the appellees' brief, pursuant to FRAP 32 and 9th Cir. R. 32-1.**

**Failure of the appellants to comply with the Time Schedule Order will result in automatic dismissal of the appeal. See 9th Cir. R. 42-1.**

FOR THE COURT:

Molly C. Dwyer  
Clerk of Court

Gerald Rosen  
Deputy Clerk

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,	)	Civil No. 12-CV-120-L (NLS)
	)	
Plaintiff,	)	<b>ORDER VACATING AND RESETTING</b>
v.	)	<b>EARLY NEUTRAL EVALUATION</b>
	)	<b>CONFERENCE</b>
ARNOLD A. LISS, et al.,	)	
	)	(Dkt. No. 16.)
Defendants.	)	
_____	)	


Currently pending before this Court is the parties' joint motion for a sixty day continuance of the Early Neutral Evaluation Conference set for May 2, 2012, at 9:30 a.m. (Dkt. No. 16.) This Court finds good cause to grant this request because the taxpayer whose tax liability is at issue has not yet been served.

**ACCORDINGLY**, it is hereby

**ORDERED** that the Early Neutral Evaluation Conference set for **May 2, 2012, at 9:30 a.m.** is hereby **VACATED** and **RESET** for **July 11, 2012, at 2:30 p.m.**

**IT IS SO ORDERED.**

DATED: April 26, 2012

  
 Hon. Nita L. Stormes  
 U.S. Magistrate Judge  
 United States District Court

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**UNITED STATES DISTRICT COURT**  
**District of Minnesota**

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United States of America,

Petitioner,

**JUDGMENT IN A CIVIL CASE**

V.

Case Number: 12-mc-11 (PJS/JJK)

Brad J. Montagne,

Respondent.

**Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

**Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED THAT:

1. Petitioner's Petition to Enforce Internal Revenue Service Summons (Doc. No. [1]) is **GRANTED**; and
2. Respondent's Motion to Quash (Doc. No. [4]), is **DENIED**.

April 26, 2012

Date

RICHARD D. SLETTEN, CLERK

s/ MMP

(By)

MMP Deputy Clerk

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA

UNITED STATES OF AMERICA	)	
	)	
Petitioner,	)	
	)	
v.	)	Civil No. 12-MC-00011-PJS-JJK
	)	
BRAD J. MONTAGNE	)	
	)	
Respondent.	)	

**ORDER FOR ENFORCING IRS SUMMONS**

The Court having adopted the report and recommendation issued by Magistrate Judge Keyes (Dkt. No. 20) and having granted the United States’ petition to enforce the IRS Summons issued to respondent, Brad J. Montagne, on November 7, 2011 (“the IRS Summons”),

It is hereby ORDERED that Brad J. Montagne comply fully with the IRS Summons;

It is further ORDERED that Brad J. Montagne appear and give testimony to Revenue Officer Wallin on Tuesday May 22, 2012 at 10:00 AM at 1550 American Blvd. East, Suite 500, Bloomington, MN 55425; and

It is further ORDERED that Brad J. Montagne produce to IRS Revenue Officer Richard Wallin all documents requested in the IRS Summons no later than May 22, 2012 at 10:00 AM.

Entered this 26<sup>th</sup> day of April, 2012.

BY THE COURT:

s/Patrick J. Schiltz  
 Judge Patrick J. Schiltz  
 UNITED STATES DISTRICT COURT

The Honorable Benjamin H. Settle

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IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

PHILLIPS REAL ESTATE SERVICES, LLC )  
a Washington limited liability company, )  
  
Plaintiff, )  
  
v. )  
  
ORION DEVELOPMENT, L.C., a Utah limited )  
liability company; SAMUEL R. FOX, an )  
individual; UNITED STATES OF AMERICA, )  
DEPARTMENT OF THE TREASURY, )  
INTERNAL REVENUE SERVICE, )  
  
Defendants. )

Civ. No. 3:12-cv-5064  
~~PROPOSED~~ ORDER TO TRANSFER  
INTERPLED FUNDS

Before the Court is the parties' Joint Motion to Order Transfer of Interpled Funds ("Joint Motion to Transfer"). Based upon the Joint Motion to Transfer, the record in this case, and for good cause shown, the Court GRANTS the Joint Motion to Transfer and ORDERS that all funds interpled with the Pierce County Superior Court in connection with this case (i.e., the principal deposited and any interest accrued thereon since the time of deposit) be transferred to the registry of the United States District Court for the Western District of Washington. The transfer of said funds shall be made by mailing a check made payable to the United States District Court for the Western District of Washington with a

~~PROPOSED~~ ORDER TO  
TRANSFER INTERPLED  
FUNDS  
(Civ. No. 3:12-cv-5064)

U.S. DEPARTMENT OF JUSTICE  
Tax Division, Western Region  
P.O. Box 683, Ben Franklin Station  
Washington, D.C. 20044-0683  
Telephone: (202) 307-6322

1 notation that the funds are interpled funds whose ownership is to be determined in USDC Civil Case No.

2 3:12-cv-5064. The check shall be sent to the following address:

3 Clerk of Court  
4 United States District Court  
5 Western District of Washington  
6 1717 Pacific Avenue, Room 3100  
7 Tacoma, WA 98402-3200

8 IT IS SO ORDERED.

9   
UNITED STATES DISTRICT JUDGE

10 Dated this 26 day of April 2012  
11 Presented by:

12  
13 s/ Rebecca J. Guadamud  
14 Rebecca J. Guadamud  
15 ANDERSON HUNTER LAW FIRM, P.S.  
16 2707 Colby Avenue, Suite 1001  
17 P.O. Box 5397  
18 Everett, Washington 98206-5397  
19 Attorney for Plaintiff,  
20 Philips Real Estate Services, LLC

KATHRYN KENEALLY  
Assistant Attorney General

By: s/ Richard A. Schwartz  
RICHARD A. SCHWARTZ  
Trial Attorney, Tax Division  
U.S. Department of Justice  
Post Office Box 683  
Ben Franklin Station  
Washington, D.C. 20044  
Tel: (202) 307-6322  
Fax: (202) 307-0054  
[richard.a.schwartz@usdoj.gov](mailto:richard.a.schwartz@usdoj.gov)

Of Counsel:

JENNY A. DURKAN  
United States Attorney

21  
22  
23  
24  
25  
26  
27 **[PROPOSED] ORDER TO**  
**TRANSFER INTERPLED**  
**FUNDS**  
28 (Civ. No. 3:12-cv-5064)

U.S. DEPARTMENT OF JUSTICE  
Tax Division, Western Region  
P.O. Box 683, Ben Franklin Station  
Washington, D.C. 20044-0683  
Telephone: (202) 307-6322



FILED

UNITED STATES COURT OF APPEALS

APR 26 2012

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DAVID PRIESTLY,

Defendant - Appellant.

DEBRA PRIESTLY; et al.,

Defendants.

Nos. 11-56692, 12-55037

D.C. No. 2:10-cv-06604-GAF-  
MAN

Central District of California,  
Los Angeles

ORDER

Before: Peter L. Shaw, Appellate Commissioner.

Upon review of the record, this court has determined that the appointment of pro bono counsel in these consolidated appeals would benefit the court's review. Accordingly, the motions for appointment of counsel filed in these consolidated appeals are granted. The court by this order expresses no opinion as to the merits of the appeals.

Appellant's motion for an extension of time to file the consolidated opening brief is denied as unnecessary. *See* 9th Cir. R. 27-13.

The Clerk shall enter an order appointing pro bono counsel to represent appellant for purposes of these consolidated appeals only, and establishing a revised briefing schedule. These consolidated appeals are stayed pending further order of this court.

# In the United States Court of Federal Claims

No. 06-28T

(Filed: April 26, 2012)

\*\*\*\*\*

**RADIOSHACK CORPORATION,**

**Plaintiffs,**

**v.**

**THE UNITED STATES,**

**Defendant.**

\*\*\*\*\*

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## SCHEDULING ORDER

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The Court will hold a telephonic status conference at **3 p.m.** on **May 1, 2012**. At the status conference, the Court will ask the Government to provide updated information concerning the number of taxpayers who have requested a refund of the communications excise tax using the administrative mechanism. In addition, the Court will ask the Government how it intends to proceed in light of the District of Columbia District Court's decision in In re Long-Distance Telephone Service Federal Excise Tax Refund Litigation.

**s/Mary Ellen Coster Williams**

Mary Ellen Coster Williams

Judge

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
FORT PIERCE DIVISION  
Case No 11-14392-CIV-GRAHAM/LYNCH

UNITED STATES OF AMERICA, )  
 )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 GARY D. REDICK )  
 PAMELA R. HUSMAN )  
 )  
 Defendants. )  
\_\_\_\_\_ )

**ORDER SCHEDULING MEDIATION**

The mediation conference in this matter shall be held with Marlene Quintana, Esq., on July 26, 2012 at 10:00 A.M., at Gray Robinson, P.A., 1221 Brickell Avenue, Suite 1600, Miami, Florida 33131.

**DONE AND ORDERED** in Chambers at Miami, Florida, this 25<sup>th</sup> day of April, 2012.

s/Donald L. Graham  
DONALD L. GRAHAM  
UNITED STATES DISTRICT JUDGE

cc:

Gary D. Redick  
Pamela R. Husman



UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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United States of America,  
  
Plaintiff,

Civil No. 11-556 (RHK/LIB)

v.

**ORDER**

Eugene E. Rivetts et al,  
  
Defendants,

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This matter came before the undersigned United States Magistrate Judge pursuant to a general assignment, made in accordance with the provisions of 28 U.S.C. § 636(b)(1)(A), upon Plaintiff's motion to be relieved of the requirement to have a person with full settlement authority attend the settlement conference between the parties scheduled for June 14, 2012. For the reasons outlined below, the Court grants Plaintiff's motion and cancels the motion hearing currently scheduled for May 24, 2012 as moot.

On February 7, 2012, the Court issued a Settlement Conference Order which directed that “[c]ounsel who will actually try the case and each party, armed with full settlement discretion, shall be present in person.” (Order [Docket No. 55] at 1) (emphasis in original).

The United States of America (Plaintiff) “requests that it be relieved from the requirement that a representative with full settlement authority attend the settlement conference scheduled in this case for June 14, 2012, in Fergus Falls, Minnesota,” and rather, “its trial counsel be required to attend in person and the official with full settlement authority be available by telephone for consultation during the conference.” (United States’ Unopposed Mot. [Docket No. 73] at 1). Plaintiff provides that “[t]he Justice Department trial attorney who will attend the

settlement conference, Martin M. Shoemaker, has primary responsibility for handling this case and is accordingly the Department official most familiar with the factual and legal issues relevant to the settlement conference.” (Mem. of Law in Supp. of United States’ Unopposed Mot. [Docket No. 75] at 5). Additionally, according to Plaintiff, “[i]n exercising their settlement authority the appropriate Department officials with settlement authority accord substantial weight to the trial attorney’s recommendation, because the recommendation will be based on the trial attorney’s knowledge of the strengths and weaknesses of the parties’ positions.” (Id.)

Generally, the Court has authority to require that a person with full settlement authority attend the settlement conference. See Fed. R. Civ. P. 16(c)(1) (“If appropriate, the court may require that a party or its representative be present or reasonably available by other means to consider possible settlement.”); D. Minn. LR 16.5(a)(2) (“Trial counsel for each party, as well as a party representative having full settlement authority, shall attend each Settlement Conference ordered by the Court.”); Universal Coops., Inc. v. Tribal Co-op. Mktg. Dev., 45 F.3d 1194, 1196 (8th Cir. 1995); Scott v. United States, 552 F. Supp.2d 917, 921 (D. Minn. 2008) (affirming the Magistrate Judge’s order “requiring the Assistant Attorney General to participate in a settlement conference” by appearing through telephone and rejecting the argument that In re Stone, 986 F.2d 898 (5th Cir. 1993), prohibited the Court from issuing such an order). Even In re Stone, on which Plaintiff appears to rely, acknowledged that “the district judge possesses the ultimate power to require the attendance at issue, [but] it is a power to be very sparingly used.” 986 F.2d at 900 (“subject to the abuse-of-discretion standard, district courts have the general inherent power to require a party to have a representative with full settlement authority present-or at least reasonably and promptly accessible-at pretrial conferences. This applies to the government as well as private litigants. We find no statute or rule that attempts to regulate the court’s use of that

inherent power. But a district court must consider the unique position of the government as a litigant in determining whether to exercise its discretion in favor of issuing such an order”).

To ensure that a scheduled settlement conference is beneficial for both parties, the Court ordinarily expects each party to be represented at the settlement conference by an individual with full settlement authority. The requirement that individuals capable of settling the dispute be the ones involved in the process of settlement ensures that once the parties have reached a mutual agreement, it can be appropriately reduced to a final binding agreement without further involvement of additional parties that may then require additional discussion, thereby potentially resetting the process. The Court is hesitant to excuse parties from this duty absent compelling circumstances and will only do so on rare instances.

Nevertheless, in this particular case, Plaintiff has demonstrated that it may be excused from having a representative with full settlement authority at the upcoming settlement conference between the parties, in light of its agreement to have the individual “Department official most familiar with the factual and legal issues relevant to the settlement conference” attend in person and “with the official with final settlement authority available by telephone to provide consent to any possible agreement.” (Mem. of Law in Supp. of United States’ Unopposed Mot. at 5). Of particular importance to the Court is that Defendants have no objection to Plaintiff’s request. (*Id.* at 1). Plaintiff should not understand, however, the Court’s limited exception in this case as a standing exception that the United States of America would be excused from this requirement in any future settlement conferences, whether in this case or a different case.



**III. CONCLUSION**

NOW, THEREFORE, It is –

ORDERED:

1. That Plaintiff's motion to be relieved of the requirement to have a person with full settlement authority attend the settlement conference [Docket No. 73] is GRANTED as more fully described above.
2. That the motion hearing scheduled for May 24, 2012, is cancelled as moot.

BY THE COURT:

Dated: April 26, 2012

s/Leo I. Brisbois  
Leo I. Brisbois  
U.S. MAGISTRATE JUDGE

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
LEWIS T. BABCOCK, JUDGE**

Civil Case No. 12-cv-00752-LTB

ROCKIES CONDOMINIUM ASSOCIATION, INC., a Colorado non-profit corporation,  
Plaintiff,

v.

JOHN B. KUNEY, III and  
U.S. DEPARTMENT OF THE TREASURY - INTERNAL REVENUE SERVICE,  
Defendants.

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**ORDER OF REMAND**

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Upon the Unopposed Motion to Remand Action to State Court (Doc 7), Defendant United States of America's Disclaimer (Doc 6), and review of the file, it is

ORDERED that the Motion to Remand is GRANTED and this action is REMANDED to the District Court for Routt County, Colorado, for further proceedings.

BY THE COURT:

s/Lewis T. Babcock  
Lewis T. Babcock, Judge

DATED: April 26, 2012

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 12-cv-00479-PAB-MEH

THE VILLAGES OF PARKER MASTER ASSOCIATION, INC., d/b/a Canterbury Crossing  
Master Association,

Plaintiff,

v.

ERIC HANSEN,  
DAWN HANSEN,  
HOME LOAN MORTGAGE CORPORATION, d/b/a Home Loan Corporation of Texas, d/b/a  
Expanded Mortgage Credit,  
MORTGAGE ELECTRONIC REGISTRATION SYSTEM, INC.,  
INTERNAL REVENUE SERVICE, and  
DOUGLAS COUNTY PUBLIC TRUSTEE and OCCUPANT,

Defendants.

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**MINUTE ORDER**

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**Entered by Michael E. Hegarty, United States Magistrate Judge, on April 26, 2012.**

The Joint Motion to Vacate Scheduling Conference [[filed April 25, 2012; docket #7](#)] is **granted in part** and **denied in part**. The Scheduling Conference set for April 30, 2012, at 9:45 a.m. is hereby **converted** to a Status Conference and will be held in Courtroom A501 on the fifth floor of the Alfred A. Arraj United States Courthouse, 901 19th Street, Denver, Colorado.

If counsel choose to do so, they may appear telephonically at the hearing by first conferencing together, then calling my Chambers at (303) 844-4507 at the appointed time.

Please remember that anyone seeking entry into the Alfred A. Arraj United States Courthouse will be required to show a valid photo identification. *See* D.C. Colo. LCivR 83.2B.

RECEIVED  
IN LAKE CHARLES, LA.

APR 26 2012

TONY R. MOORE, CLERK  
BY DAE DEPUTY

THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF LOUISIANA  
LAKE CHARLES DIVISION

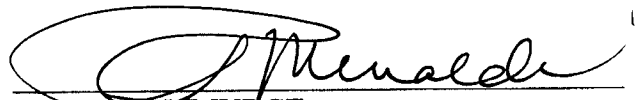
LAURA HARRISS WINFORD	§	CIVIL ACTION NO. 2:12-CV-00322
AS PERSONAL REPRESENTATIVE	§	
OF THE ESTATE OF	§	JUDGE PATRICIA MINALDY
LAURA MCELLOWNEY BISHOP	§	
	§	
VERSUS	§	MAGISTRATE JUDGE KATHLEEN KAY
	§	
UNITED STATES OF AMERICA	§	

**ORDER**

Upon motion of Petitioner, Laura Harriss Winford as Personal Representative of the Estate of Laura McEldowney Bishop, for an extension to Thursday, May 10, 2012, in which to respond to Defendant's Motion to Dismiss;

IT IS HEREBY ORDERED that Petitioner be granted the additional time and that the response to Defendant's Motion to Dismiss is now due to be filed on May 10, 2012.

THUS DONE AND SIGNED in Chambers at Lake Charles, Louisiana, this 25 day of April, 2012.

  
 HONORABLE JUDGE  
 UNITED STATES DISTRICT COURT  
 WESTERN DISTRICT OF LOUISIANA  
 LAKE CHARLES DIVISION