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UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

SANTA ANA DIVISION

In re JAMES C. GIANULIAS, Debtor and Debtor-in-Possession. CAMEO HOMES, a California corporation, Debtor and Debtor-in-Possession. RELATES TO BOTH DEBTORS	Case No. 8:08-bk-13150-RK [Substantively Consolidated With: Case No. 8:08-bk-13151-RK] Chapter 11 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF CONFIRMATION OF THE DEBTORS' FOURTH AMENDED PLAN OF REORGANIZATION (DATED MAY 27, 2010), AS MODIFIED** **HEARING DATE:** **Date:** July 9, 2010 **Time:** 11:45 a.m. **Place:** Courtroom 5D 411 West Fourth Street Santa Ana, CA 92701

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Page(s)

Page(s)

Statutes

Page(s)

Other Authorities

Rules

Treatises

James C. Gianulias ("Mr. Gianulias") and Cameo Homes ("Cameo"), the debtors and debtors-in-possession in these substantively-consolidated cases (together, the "Debtors"), hereby submit this Memorandum of Points and Authorities (the "Memorandum") in support of confirmation of the Debtors' Fourth Amended Plan Of Reorganization (Dated May 27, 2010), As Modified (the "Plan").[1] A hearing to consider confirmation of the Plan is scheduled to be held on July 9, 2010, at 11:45 a.m. (the "Confirmation Hearing").

Accompanying this Memorandum are the following documents filed in support of confirmation of the Plan:

1. Declaration of James C. Gianulias in Support of Confirmation of the Debtors' Fourth Amended Plan Of Reorganization (Dated May 27, 2010), As Modified (the "Gianulias Declaration");

2. Declaration of Dominic Santos of FTI Consulting, Inc. in Support of Confirmation of the Debtors' Fourth Amended Plan Of Reorganization (Dated May 27, 2010), As Modified (the "Santos Declaration"); and

3. Declaration of Lori Gauthier Regarding Tabulation of Ballots Regarding the Debtors' Fourth Amended Plan Of Reorganization (Dated May 27, 2010), As Modified (the "Ballot Analysis").

In support of confirmation of the Plan, the Debtors will also rely upon the other pleadings, papers, and records on file with the Bankruptcy Court in the Debtors' cases and such additional evidence and arguments as may be properly presented to the Court at or before the Confirmation Hearing.

Based on the foregoing, and for the reasons set forth herein, the Debtors respectfully request that the Court confirm the Plan pursuant to section 1129(a) of chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").[2]

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[1] Concurrently herewith the Debtors are filing the modified Plan and a redline reflecting the changes made therein. As discussed below, none of the changes are material and will not adversely change the treatment of any creditor who has previously accepted the Plan. Capitalized terms not otherwise defined herein shall have the same meanings as set forth in the Plan.

[2] Unless otherwise indicated, all section references herein are to the Bankruptcy Code, as codified in title 11 of the United States Code, 11 U.S.C. §§ 101, et seq., including all amendments thereto.

I.

INTRODUCTION

The Bankruptcy Court should confirm the Plan pursuant to section 1129 of the Bankruptcy Code. The Plan is the result of extensive, good faith negotiations among the Debtors, the Official Committee of Unsecured Creditors (the "Committee"), and other parties in interest. The Plan complies with every required section of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and applicable non-bankruptcy laws relating to confirmation thereof. There have been no objections to the Plan and each class of Claims for which ballots were submitted has voted to accept the Plan, with Creditors holding 92.86% of General Unsecured Claims in Class 3 (99.97% in dollar amount) voting in favor of the Plan.[3]

The Plan is the Debtors' best opportunity to successfully reorganize and to give holders of Claims the best possible return under the circumstances. The Plan results in payment in full of all Administrative Claims, Priority Claims and Secured Claims. Creditors holding Allowed General Unsecured Claims against the Debtors' Estates shall receive payments from the Creditors' Trust on account of (a) the Cash Flow Note in the principal amount of $42 million and (b) the Secondary Note in the principal amount of $5 million, to be issued by the Reorganized Debtors to the Creditors' Trust. The Debtors estimate that Creditors holding Allowed General Unsecured Claims will receive distributions of approximately 25.9% (51.8% for those creditors with dual claims) of the amount of the allowed claim over a period of fifteen years.

The Plan represents a settlement of various matters that were agreed to between the Debtors and the Committee following extensive negotiations among the parties. The Plan incorporates the terms agreed to between the Debtors and the Committee including, among other things:

- the establishment of the Cash Flow Note and Secondary Note and the provision of payments to holders of Allowed General Unsecured Claims;
- the allocation of the Reorganized Debtors' Gross Available Cash Flow from the Reorganized Debtors' post-Confirmation operations;

[3] No ballots were submitted in Classes 1B-2 (Secured Claim of Wells Fargo) and 1F (Secured Claim of Countrywide).

- provisions for providing "full transparency" to permit monitoring of the Debtors' post-confirmation business and operations of the Portfolio Entities and the Intermediate Entities, and the receipt, allocation and distribution of Gross Available Cash Flow from certain post-Confirmation assets, business and operations of the Portfolio Entities, Intermediate Entities and in connection with the sales, transfer or financings with respect to the Reorganized Debtors' interests therein; and

- the grant of a lien against the Reorganized Debtors' proceeds received from the Portfolio Entities and Intermediate Entities or otherwise on account of the Ownership Interests to secure prompt performance by the Reorganized Debtors of their respective obligations under the Plan, the Cash Flow Note, the Secondary Note and the other Plan Documents.

The Debtors therefore respectfully request the Bankruptcy Court confirm the Plan, which is overwhelmingly supported by each and every impaired Class of Claims entitled to vote thereon.

II.

BACKGROUND

A. The Chapter 11 Cases

1. The Debtors

Mr. Gianulias is an individual in the business of real estate development. Mr. Gianulias owns an interest in a number of single asset real estate entities that were formed to purchase and develop real estate. Cameo is a California corporation in the business of real estate development. Cameo holds an interest in many of the same real estate entities in which Mr. Gianulias holds an interest. Mr. Gianulias owns 100% of Cameo and therefore has an indirect interest in all of Cameo's interests in the various real estate entities.

The real estate interests owned in part by Mr. Gianulias and Cameo include limited liability companies, general partnerships, and limited partnerships (collectively, the "Companies"). Mr. Gianulias and Cameo established the Companies to own and operate various real estate assets, including, without limitation, condominiums, residential developments, commercial and retail developments, mixed-use developments, and multi-family apartment complexes. Through the Companies, the Debtors have built thousands of homes and apartment units throughout California, as well as in certain other regions of the country. Of those various real estate assets, there are approximately thirteen (13) single-family residence projects (twelve (12) foreclosed and one pending foreclosure), five (5) mixed-use projects (one foreclosed and one pending foreclosure)

and four (4) multi-family land development projects (two (2) foreclosed and one pending foreclosure), which are not generating income. Four (4) multi-family projects (one foreclosed and one pending foreclosure) and one (1) commercial/retail project (which is pending foreclosure) remain under construction or are in lease-up status, and are not generating sufficient income to cover operating costs and service their debt. Nine (9) multi-family projects and eight (8) commercial/retail projects have reached stabilization and are generating income.

The Companies represent a substantial portion of the Debtors' assets. Both Mr. Gianulias and Cameo have guaranteed, in whole or in part, the outstanding secured loans with respect to twenty-four (24) real estate ventures that do not generate positive cash flow. Mr. Gianulias has personally guaranteed project loans totaling approximately $135 million (net of foreclosures). Cameo has also guaranteed project loans totaling approximately $117 million (net of foreclosures). The Debtors have also borrowed or guaranteed unsecured loans in excess of $9 million.

2. The Events Leading to the Commencement of the Chapter 11 Cases

Although the Debtors' businesses span multiple states, a significant portion of their homebuilding operations are located in the State of California. The level of erosion in the California homebuilding market during the third quarter of 2007 was unexpected and cataclysmic, and it touched all homebuilding markets in California, including the markets in which the Debtors operate. The result of the market erosion in values and slow down of absorption broadly affected the Debtors' financial position and put a significant number of the Debtors' loans out of covenant compliance. With few exceptions, the Debtors were unable to make interest payments to creditors.

In response to these market conditions, the Debtors attempted to implement new reduced pricing and concession strategies, and enhanced marketing programs for all of the Debtors' projects with existing housing inventory. Unfortunately, the Debtors were unsuccessful in managing through the challenging real estate market conditions. As a result, the Debtors lacked the liquidity necessary to satisfy their debt service and therefore defaulted on several of their outstanding loans. The Companies also defaulted on numerous outstanding loans which the

Debtors guaranteed, thereby triggering, collectively, several hundred million dollars in potential guaranty liability. Moreover, the Debtors took in excess of $52.6 million of their equity and infused that capital into various of the projects in an attempt to shore up and retain the assets during those unprecedented economic times. As it turns out, all of this equity was wiped out by the continuing deterioration in the real estate markets.

In response to these defaults and continued market deterioration, the Debtors entered into discussions with their lenders regarding their outstanding debt. From November 2007 through the second quarter of 2008, the Debtors were fully engaged in these negotiations. During this time, the Debtors retained the firm of Phoenix-Issa to prepare an asset valuation report for their lenders, which was distributed to each lender in January 2008. Meetings were held with the lenders to discuss the possibility of a negotiated settlement using the asset valuation report as a framework for any potential payout. Thereafter, hoping to avoid the need to file for bankruptcy relief, the Debtors proposed an out-of-court workout whereby the Debtors and their lenders would restructure the Debtors' existing indebtedness.

After several months of negotiations, the parties determined that they would be unable to reach a consensual agreement regarding the restructuring of the Debtors' indebtedness to the lenders. As a result, a number of the Debtors' lenders commenced state court lawsuits against the Debtors in various superior courts in southern California in early 2008, further contributing to the Debtors' financial difficulties.

3. The Chapter 11 Cases

On June 6, 2008, three creditors of Mr. Gianulias commenced an involuntary case against Mr. Gianulias under chapter 7 of the Bankruptcy Code. Concurrently, the same three creditors commenced an involuntary chapter 7 case against Cameo.

On July 1, 2008, Mr. Gianulias and Cameo filed their respective Consents to the Entry of an Order for Relief and Election to Convert Chapter 7 Case to Case Under Chapter 11 of the Bankruptcy Code. On July 2, 2008, the Bankruptcy Court entered Orders for Relief and converted Mr. Gianulias' and Cameo's cases to ones under chapter 11 (the "Chapter 11 Cases").

On July 25, 2008, the Court entered an Order Granting Debtor's Motion for Order Authorizing Joint Administration of Related Cases Pursuant to 11 U.S.C. § 105 and Bankruptcy Rule 1015(b), thereby jointly administering the Debtors' cases under case number 08-13150.

4. The Committee

On August 4, 2008, the United States Trustee appointed an official committee of unsecured creditors (the "Committee") in the Chapter 11 Cases. There are currently five members of the Committee: (i) Wells Fargo Bank, successor in interest to Wachovia Bank, N.A.; (ii) Housing Capital Company; (iii) PCR Services Corporation; (iv) US Bank; and (v) David Evans & Associates, Inc.

B. Substantive Consolidation

As part of their plan development efforts, the Debtors and their professional advisors analyzed the integrated web of relationships and shared interests of the Debtors, and weighed the costs and benefits associated with any attempt to separate, value and allocate the intertwined attributes. Believing that it was in the best interests of the Debtors' creditors to consolidate their estates, on November 7, 2008, the Debtors filed a motion seeking the substantive consolidation of Cameo's chapter 11 estate into Gianulias' chapter 11 estate, effective as of June 6, 2008.

In an attempt to eliminate any creditor objections related to alleged harm in connection with substantive consolidation, the Debtors' substantive consolidation motion proposed to pay all creditors of both estates a dividend equal to or greater than what they would receive absent the proposed consolidation. Further, the substantive consolidation motion did not propose to alter the taxation standing of either Debtor, nor did it propose to impact or erase any intercompany claims.

Following the filing of the motion and several responses to the same, the Debtors, the Committee and other objecting parties entered into discussions in an attempt to resolve their disputes and reach an agreement with respect to substantive consolidation. In response to successful negotiations between the parties, on December 11, 2008, the Court entered an order substantively consolidating Cameo's chapter 11 estate into Gianulias' chapter 11 estate. In addition, the stipulation and order provided that the creditors of both estates would receive a dividend equal to or greater than what they would receive absent the consolidation, the federal and

state income tax status of the Debtors and their estates would be unaffected by the consolidation, and inter-company claims existing between Mr. Gianulias and Cameo would continue to exist and would not be eliminated as a result of the consolidation.

C. The Plan

The Plan satisfies all of the requirements of section 1129 of the Bankruptcy Code, including those provisions of section 1129 which apply exclusively to individual chapter 11 debtors. The Plan is supported by the Committee and has been overwhelmingly accepted by voting creditors. The Plan was proposed in good faith and provides for the payment of significant value to all creditors, including estimated distributions to general unsecured creditors of approximately 25.9% (51.8% for those creditors with dual claims) of the amount of allowed claims over a period of fifteen years. The Plan contemplates (among other things) a reorganization of the Debtors' business, with the following structure:

- Creditors holding Allowed General Unsecured Claims against the Debtors' Estates shall receive payments from the Creditors' Trust, which will administer assets and resolve Disputed Claims. The Creditors' Trust shall receive a stream of payments from the Reorganized Debtors on account of (a) the Cash Flow Note in the principal amount of $42 million, subject to adjustment as provided therein, and (b) the Secondary Note in the principal amount of $5 million, to be issued by the Reorganized Debtors to the Creditors' Trust. The Cash Flow Note will be secured by a lien against the Debtors' proceeds received from the Portfolio Entities and Intermediate Entities or otherwise on account of the Ownership Interests.

- Certain secured creditors shall have their debt obligations modified with respect to repayment terms and interest rates as provided in the Plan, and are entitled to vote on the Plan. Other secured creditors shall retain, unaltered, all of their legal, equitable and contractual rights, and, consequently, shall be deemed to vote in favor of the Plan.

- Creditors holding allowed priority claims against each Debtor shall receive payment in full under the terms of the Plan.

- The Debtors shall retain their ownership interests in assets of the Estates, subject to the obligations created by or preserved under the Plan, and shall continue the business operations of Cameo and its subsidiaries following confirmation of the Plan.

The Plan incorporates the terms agreed to between the Debtors and the Committee following extensive negotiations among the parties. The Debtors and the Committee believe that

the Plan will produce a greater recovery for the Holders of Claims than would be achieved in a Chapter 7 liquidation, and that the Plan is in the best interest of the Debtors' Estates and Creditors.

The Plan was approved by all of the classes of Claims for which ballots were submitted following a solicitation conducted in accordance with the Bankruptcy Code and the Bankruptcy Rules.

As set forth in this Memorandum, the Plan should be confirmed because all Classes are either unimpaired or have accepted the Plan except for Classes 1B-2 and 1F, for which no ballots were submitted. However, as set forth below, the Plan is nevertheless confirmable since the Plan satisfies the requirements of section 1129(b) with respect to Classes 1B-2 and 1F. This Memorandum presents a comprehensive analysis of the issues before this Court regarding the Plan, and demonstrates that the Plan complies with the applicable provisions of the Bankruptcy Code and the Bankruptcy Rules, and provides the legal and evidentiary bases necessary for this Court to confirm the Plan pursuant to section 1129.

D. The Results of Voting on the Plan

On May 28 2010, the Court entered its order approving the Disclosure Statement and establishing Plan solicitation and voting procedures (the "Solicitation Procedures Order"). The Court: (i) fixed July 2, 2010 at 4:00 p.m. (PDT) as the date and time by which all ballots to accept or reject the Plan must have been completed and received, (ii) fixed July 2, 2010 at 4:00 p.m. (PDT) as the last day for creditors and other parties in interest to file objections to confirmation of the Plan, (iii) fixed July 9, 2010 at 11:45 a.m. (PDT) as the date and time to consider confirmation of the Plan, and (iv) prescribed the form and manner of notice with respect to the foregoing. As set forth in the Affidavit of Mailing filed on or about June 8, 2010, the Debtors have fully complied with each of the directives of the Solicitation Procedures Order.

The deadline for submitting ballots to accept or reject the Plan was July 2, 2010 at 4:00 p.m. (PDT). The Debtors are submitting, contemporaneously with this Memorandum, the Ballot Analysis. As reflected therein, all impaired classes of Claims entitled to vote on the plan have voted to accept the Plan, except Classes 1B-2 and 1F, for which no ballots were submitted:

Class	Status	Balloting Results
Class 1A: Secured Claim of Pacific Mercantile	Impaired	Accepted
Class 1B-1: Secured Claim of Wells Fargo on Account of the Colorado Note	Impaired	Accepted
Class 1B-2: Secured Claim of Wells Fargo on Account of the First Hawaii Note	Impaired	No Ballot Submitted
Class 1B-3: Secured Claim of Wells Fargo on Account of the Second Hawaii Note[4]	Impaired	Accepted
Class 1C: Secured Claim of National Bank	Unimpaired	Deemed Accepted; Not Entitled to Vote
Class 1D: Secured Claim of Marilyn Gianulias[5]	Impaired	Accepted
Class 1E: Secured Claim of Gus Gianulias	Unimpaired	Deemed Accepted; Not Entitled to Vote
Class 1F: Secured Claim of Countrywide	Impaired	No Ballot Submitted
Class 1G: Secured Claim of Chase	Unimpaired	Deemed Accepted; Not Entitled to Vote
Class 1H: Other Secured Claims	Unimpaired	Deemed Accepted; Not Entitled to Vote
Class 2: Priority Claims	Unimpaired	Deemed Accepted; Not Entitled to Vote
Class 3: General Unsecured Claims	Impaired	Accepted
Class 4: Inter-Debtor Claims	Impaired	Accepted
Class 5: Subordinated Claims	Unimpaired	Deemed Accepted; Not Entitled to Vote

[4] Class 1B-3 was added to the Plan at the request of Wells Fargo, to reflect the fact that two different divisions of Wells Fargo made loans to Mr. Gianulias secured by the Hawaii property and, as a result, have separate deeds of trust with respect to this property. No modifications have been made to the treatment of Wells Fargo's Secured Claims, nor has the total amount of the Secured Claims been modified. This modification is discussed in greater detail in Section V below.

[5] Originally, the Plan stated that Class 1D contained the Secured Claim of Marilyn Gianulias Robbins. Following the hearing on the Disclosure Statement, the Debtors learned the secured creditor Marilyn Gianulias Robbins' legal name was Marilyn Hester Gianulias. Hence, the defined term in the Plan has been changed from "Robbins" to "Marilyn Gianulias." This change is designed merely to correct the secured creditors' legal name and has no impact on the Secured Claim held by Marilyn Gianulias.

Class 6: Interests in Cameo	Unimpaired	Deemed Accepted; Not Entitled to Vote

III.

THE PLAN COMPLIES WITH ALL APPLICABLE PROVISIONS OF SECTION 1129(a) OF THE BANKRUPTCY CODE, EXCEPT SECTION 1129(a)(8)

Under the Bankruptcy Code, a plan of reorganization shall be confirmed if all of the applicable confirmation requirements set forth in section 1129 are satisfied. See Brady v. Andrew (In re Commercial Western Fin. Corp.), 761 F.2d 1329, 1338 (9th Cir. 1985). The balance of this Memorandum, along with the Gianulias Declaration, demonstrates that the Plan satisfies each of the applicable requirements of section 1129, with the exception of section 1129(a)(8). However, the Plan should still be confirmed as it satisfies the "cramdown" provisions set forth in section 1129(b).

A. The Plan Complies With the Applicable Provisions of Title 11 (Section 1129(a)(1))

Section 1129(a)(1) provides that a Court may confirm a plan only if all requirements of section 1129 are met, including that "[t]he plan complies with the applicable provisions of this title." 11 U.S.C. § 1129(a)(1). Although the scope of section 1129(a)(1) is broad on its face, the legislative history of section 1129(a)(1) suggests that this subsection relates primarily to those provisions of the Bankruptcy Code concerning the form and content of a plan of reorganization such as sections 1122 and 1123 which govern classification of claims and interests and the contents of a plan. See S. Rep. No. 95-55, 95th Cong., 2d Sess. 126 (1978), reprinted in 1978 U.S.C.C.A.N. 5787, 5912; Kane v. Johns-Manville Corp., 843 F.2d 636, 648-49 (2nd Cir. 1988); In re Texaco, 84 B.R. 893, 905 (Bankr. S.D.N.Y. 1988), appeal dismissed, 92 B.R. 38 (S.D.N.Y. 1988) ("In determining whether a plan complies with section 1129(a)(1), reference must be made to Code §§ 1122 and 1123 with respect to classification of claims and the contents of a plan of reorganization."). As discussed below, the Plan satisfies the requirements of both section 1122 and section 1123.

1. The Plan Complies With the Classification Requirements of Section 1122

A court has broad discretion to approve classification schemes in a plan of reorganization. See Steelcase v. Johnston (In re Johnston), 21 F.3d 323, 327 (9th Cir. 1994); State Street Bank and Trust Co. v. Elmwood, Inc. (In re Elmwood, Inc.), 182 B.R. 845, 849 (D. Nev. 1995). Indeed, the Bankruptcy Code's only restriction on the creation of classes is section 1122(a), which provides that a plan may place a claim or interest in a particular class only if the claim or interest is "substantially similar" to other claims or interests in the class. For the following reasons, the Plan's classification of claims and interests complies with section 1122.

a. *Secured Claims*

With respect to classes of secured claims, as a matter of law, it has long been recognized that secured claimants with different lien rights must be separately classified because their legal rights against the debtor and its property are fundamentally different. See Commercial Western, 761 F.2d at 1338. Here, the Plan has separately classified each Secured Claim as follows:

- Class 1A: Secured Claim of Pacific Mercantile
- Class 1B-1: Secured Claim of Wells Fargo on Account of the Colorado Note
- Class 1B-2: Secured Claim of Wells Fargo on Account of the First Hawaii Note
- Class 1B-3: Secured Claim of Wells Fargo on Account of the Second Hawaii Note
- Class 1C: Secured Claim of National Bank
- Class 1D: Secured Claim of Marilyn Gianulias
- Class 1E: Secured Claim of Gus Gianulias
- Class 1F: Secured Claim of Countrywide
- Class 1G: Secured Claim of Chase
- Class 1H: Other Secured Claims

Thus, the Plan's classification scheme for Secured Claims, with separate classes for each Secured Claim, complies with the classification requirements of section 1122.

b. *Priority Unsecured Claims*

The classification of Class 2 Claims (Priority Claims, other than Administrative Claims and Priority Tax Claims), separate from general unsecured claims, is justified because their legal

rights against the Debtors and the Debtors' property have statutory priority over general unsecured claims. See 11 U.S.C. §§ 507(a), 1129(a)(9). The grouping of various Priority Claims into Class 2 is justified because, unless the holder of an Allowed Priority Claim in Class 2 agrees to a different treatment, each holder of an Allowed Priority Claim in Class 2 will be paid in Cash on the Effective Date the principal amount of such Allowed Priority Claim, without interest.

c. *General Unsecured Claims*

The Plan contains two (2) classes of general unsecured claims: Class 3: General Unsecured Claims and Class 4: Inter-Debtor Claims. The holders of Allowed Claims in Class 3 shall receive periodic payments from the Creditors' Trust, to be made after payment in full of all Allowed Administrative Claims and Allowed Priority Claims, as and when determined by the Creditors' Trust Trustee in accordance with and as provided by the Creditors' Trust Agreement. Each holder of an Allowed Claim in Class 3 shall receive the lesser of (a) an amount equal to such Creditor's Allowed Claim in Class 3, or (b) such Creditors' Pro Rata share of the available sum of monies to be distributed to all holders of Allowed Claims in Class 3 by the Creditors' Trust Trustee.

Under the law of this Circuit, separate classification of Class 4 Claims (Inter-Debtor Claims) is warranted for several reasons. In Steelcase, the Ninth Circuit addressed the appropriateness of separate classification of unsecured claims, and upheld the proposed classification scheme. See Steelcase, 21 F.3d at 327-28. In that case, the court was confronted with a creditor who was embroiled in litigation with the debtor, which distinguished it from other unsecured claims. Id. at 328. The Ninth Circuit, in articulating the basis for permitting separate classification of unsecured creditors, cited several relevant considerations: whether a creditor has different rights vis-à-vis other creditors, whether a creditors' claim is currently being litigated, and whether a creditor would be entitled to payment in full before other unsecured creditors because of payment as a result of litigation. Id. at 327-28. In deciding whether claims are "substantially similar" (which must be classified together), the court must evaluate "the nature of each claim, i.e., the kind, species, or character of each category of claims." Id. at 327.

Inter-Debtor Claims of Class 4 will continue to exist and will not be eliminated under the Plan. However, Allowed Inter-Debtor Claims shall be subordinated to all Allowed General

Unsecured Claims and shall not receive any distribution under the Plan. Therefore, separate classification of Inter-Debtor Claims in these cases is warranted under the Steelcase test because the Inter-Debtor Claims are distinct in nature from the General Unsecured Claims. See id. at 328 (separate classification is appropriate under section 1122(a) where the legal character of a claim is not "substantially similar" to other claims of such class).

d. *Interests*

The Plan, in compliance with section 1122, classifies the equity interests in Cameo separately from classes of holders of Claims.

2. The Plan Includes Provisions Consistent With Section 1123 of the Bankruptcy Code

Section 1123 sets forth the mandatory and permissive contents of a plan. As demonstrated below, the Plan contains each of the mandatory provisions required by section 1123(a), and a number of the provisions expressly permitted by section 1123(b).

a. *Designation of Classes of Claims and Interests (Section 1123(a)(1)).*

Section 1123(a)(1) requires that a plan designate classes of claims other than claims of a kind specified in section 507(a)(1) (administrative expense claims), section 507(a)(2) (claims arising during a "gap" period in an involuntary case), or section 507(a)(8) (tax claims). See, e.g., In re Haardt, 65 B.R. 697, 700 (Bankr. E.D. Pa. 1986). Article IV of the Plan designates Classes of Claims and Interests in accordance with section 1123(a)(1). The Plan does not classify claims of the type described in sections 507(a)(1), 507(a)(2) and 507(a)(8). Thus, the Plan satisfies the requirements of section 1123(a)(1).

b. *Specification of Unimpaired Classes (Section 1123(a)(2)).*

Section 1123(a)(2) requires that a plan "specify any class of claims or interests that is not impaired under the plan." See In re Smith, 123 B.R. 863, 865 (Bankr. C.D. Cal. 1991). Under section 1124, a class of claims is impaired unless each claim in that class is treated in either of the following ways: (1) the plan leaves unaltered the legal, equitable, and contractual rights to which such claim is entitled; or (2) the plan cures any default, reinstates the maturity, compensates the holder for damages, and does not otherwise alter the legal, equitable, or contractual rights to which

such claim entitles the holder. See 11 U.S.C. § 1124. Article IV of the Plan specifies that Classes Class 1C (Secured Claim of National Bank), Class 1E (Secured Claim of Gus Gianulias), Class 1G (Secured Claim of Chase), Class 1H (Other Secured Claims), Class 2 (Priority Claims), Class 5 (Subordinated Claims) and Class 6 (Interests in Cameo) are not impaired under the Plan because their claims are either cured and reinstated pursuant to section 1124(2), or they retain unaltered their legal, equitable, and contractual rights pursuant to section 1124(1).

c. *Specification of Treatment of Impaired Classes (Section 1123(a)(3)).*

Section 1123(a)(3) requires that a plan "specify the treatment of any class of claims or interest that is impaired under the plan." Classes Class 1A (Secured Claim of Pacific Mercantile), Class 1B-1 (Secured Claim of Wells Fargo on Account of the Colorado Note), Class 1B-2 (Secured Claim of Wells Fargo on Account of the First Hawaii Note), Class 1B-3 (Secured Claim of Wells Fargo on Account of the Second Hawaii Note), Class 1D (Secured Claim of Marilyn Gianulias), Class 1F (Secured Claim of Countrywide), Class 3 (General Unsecured Claims), and Class 4 (Inter-Debtor Claims) are designated as impaired in Article IV of the Plan. Article V specifies the treatment of each impaired class of Claims and Interests. Thus, the requirements of section 1123(a)(3) are satisfied.

d. *Provide Same Treatment for Each Claim or Interest Within a Class (Section 1123(a)(4)).*

Section 1123(a)(4) requires that the Plan "provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest."

Section V of the Plan provides for the same treatment for each of the Allowed Claims and Allowed Interests contained in each of the Classes under the Plan in compliance with section 1123(a)(4).

e. *Adequate Means for Implementation of the Plan (Section 1123(a)(5)).*

Section 1123(a)(5) requires that a plan "provide adequate means for the plan's implementation" and provides several non-exclusive means for such implementation. See Florida Partners Corp. v. Southeast Co. (In re Southeast Co.), 868 F.2d 335 (9th Cir. 1988).

On the Effective Date, among other actions, the following will occur or become effective to implement the Plan:

- The Plan Documents, including the Cash Flow Note and the Secondary Note, shall be executed and implemented.
- The Creditors' Trust will be created and the Creditors' Trust Trustee shall begin to perform his responsibilities under the Creditors' Trust Agreement and the Plan Documents.
- Certain secured creditors shall have their debt obligations modified with respect to repayment terms and interest rates as provided in the Plan.
- On the Effective Date, title to all assets, claims, causes of action, properties, and business operations of the Debtors and of the Estates shall revest in each respective Reorganized Debtor, and thereafter, the Reorganized Debtors shall own and retain such assets free and clear of all liens and Claims, except as expressly provided in the Plan and the Plan Documents.
- From and after the Effective Date, in accordance with the terms of the Plan and Confirmation Order, the Reorganized Debtors shall perform all obligations under all executory contracts and unexpired leases assumed in accordance with Article IX of the Plan.
- Following the Effective Date, Reorganized Debtor Gianulias will operate and manage his interests in Reorganized Debtor Cameo, and the business operations of Reorganized Debtor Cameo and its subsidiaries.

Based on the means for implementation of the Plan described above and elsewhere in the Plan, the Plan adequately describes the means for its implementation in satisfaction of section 1123(a)(5).

f. *Charter of Reorganized Debtor (Section 1123(a)(6)).*

Section 1123(a)(6) requires that a Plan provide for the inclusion in the charter of a corporate debtor a provision prohibiting the issuance of nonvoting equity securities and providing, as to the several classes of securities possessing voting power, an appropriate distribution of such

power among such classes. Section 1123(a)(6) is inapplicable because Mr. Gianulias is an individual and the Plan does not provide for the issuance of any new securities with respect to Cameo, which is owned 100% by Mr. Gianulias.

Accordingly, section 1123(a)(6) does not apply.

g. *Selection of Officers and Directors (Section 1123(a)(7)).*

Section 1123(a)(7) requires that a plan "contain only provisions that are consistent with the interests of creditors and equity security holders and with public policy with respect to the manner of selection of any officer, director, or trustee under the plan and any successor to such officer, director, or trustee." Mr. Gianulias is an individual, and section 1123(a)(7) therefore does not apply.

The existing officers and directors of Cameo will continue to serve in their same capacities for Reorganized Debtor Cameo following the Effective Date. The initial officers and directors of Reorganized Debtor Cameo will be: James C. Gianulias (sole Director of the Board of Directors) and David Gianulias (President, Secretary and Chief Financial Officer). Neither Mr. Gianulias or David Gianulias are currently receiving any compensation for their services.[6] Following the Effective Date, Reorganized Debtor Cameo's officers and directors may be kept in place or may be replaced in accordance with Reorganized Debtor Cameo's policies and corporate bylaws. Reorganized Debtor Cameo shall have the power to elect new officers.

The Plan provides that Mesa Management, Inc. ("Mesa Management"), a company 100% owned by Mr. Gianulias, will serve as the disbursing agent and will make all required payments to creditors holding Allowed Claims commencing on the Effective Date, except for creditors holding Allowed General Unsecured Claims, who shall receive distributions from the Creditors' Trust. The Disbursing Agent Agreement, a copy of which is attached to the Plan as Exhibit F, provides for the resignation or removal of the Disbursing Agent and appointment of a successor Disbursing Agent. The Plan also provides that the Creditors' Trust Trustee will be selected by the Committee

[6] On October 22, 2008, the Court entered an order authorizing Cameo to pay David Gianulias a salary of $24,000 a month. This Order expired on March 31, 2009. Since that time, David Gianulias has not received a salary from Cameo.

prior to the Effective Date of the Plan. The Creditors' Trust Agreement, a copy of which is attached to the Plan as Exhibit A, provides for the resignation or removal of the Creditors' Trust Trustee and appointment of a successor Creditors' Trust Trustee.

No party has suggested that the Plan provisions for the manner of selection of officers and their successors are inconsistent with public policy or the interests of creditors and equity security holders. Based on the foregoing, the Plan meets the requirements of section 1123(a)(7).

3. The Plan Contains Permissive Provisions Consistent With Section 1123(b) of the Bankruptcy Code

Section 1123(b) describes certain permissive plan provisions. The Plan contains a number of these provisions.

a. *Impairment/Nonimpairment (Section 1123(b)(1)).*

Section 1123(b)(1) provides that a Plan may "impair or leave unimpaired any class of claims, secured or unsecured, or of interests." As discussed more fully above, the Plan impairs Class 1A (Secured Claim of Pacific Mercantile), Class 1B-1 (Secured Claim of Wells Fargo on Account of the Colorado Note), Class 1B-2 (Secured Claim of Wells Fargo on Account of the First Hawaii Note), Class 1B-3 (Secured Claim of Wells Fargo on Account of the Second Hawaii Note), Class 1D (Secured Claim of Marilyn Gianulias), Class 1F (Secured Claim of Countrywide), Class 3 (General Unsecured Claims), and Class 4 (Inter-Debtor Claims), and leaves Class 1C (Secured Claim of National Bank), Class 1E (Secured Claim of Gus Gianulias), Class 1G (Secured Claim of Chase), Class 1H (Other Secured Claims), Class 2 (Priority Claims), Class 5 (Subordinated Claims) and Class 6 (Interests in Cameo) unimpaired. (See Article IV of the Plan.)

b. *Assumption/Rejection of Executory Contracts and Unexpired Leases (Section 1123(b)(2)).*

Subject to section 365, section 1123(b)(2) permits a plan to provide for the assumption, rejection, or assignment of any executory contract or unexpired lease of the debtor not previously rejected. See 11 U.S.C. § 1123(b)(2); see also In re TS Indus., Inc., 117 B.R. 682, 685 (Bankr. D. Utah 1990). Bankruptcy Rule 6006(a) provides that the assumption or rejection of an executory

contract or unexpired lease as a part of a plan is not governed by Bankruptcy Rule 9014. Thus, no separate motion, notice, or hearing is required.

Article IX of the Plan provides for the assumption of certain of the Debtors' executory contracts and unexpired leases. Article IX.A provides that all executory contracts and unexpired leases of the Debtors set forth on Exhibit B to the Plan shall be assumed pursuant to the provisions of section 365 and 1123. Such assumed executory contracts and unexpired leases shall, as of the Effective Date, vest in the Reorganized Debtors. Any contracts and leases assumed under the Plan shall be deemed to be assigned to the Reorganized Debtors without the need for a formal assignment or documentation of the assignment. Article IX.C provides that any and all unexpired leases and executory contracts that are not contracts and leases to be assumed that are listed on Exhibit B to the Plan will be rejected pursuant to the Plan and the Confirmation Order effective on the Effective Date.

The Debtors have analyzed all of their executory contracts and unexpired leases and have determined, in their reasonable business judgment, that it is in the best interests of the Debtors to assume the executory contracts and unexpired leases set forth on Exhibit B and to reject all others. See Robertson v. Pierce (In re Chi-Feng Huang), 23 B.R. 798, 800-01 (B.A.P. 9th Cir. 1982) (discussing application of business judgment standard to decision to assume or reject executory contracts and leases); Richmond Leasing Co. v. Capital Bank, N.A., 762 F.2d 1303, 1309 (5th Cir. 1985) (affirming bankruptcy court's authorization of assumption of lease). There have been no objections to either the proposed assumption of the unexpired leases and executory contracts or the proposed cure amounts set forth in *Notice Of Cure Amounts To Be Paid In Connection With The Assumption Of Certain Leases And Executory Contracts Under Debtors' Fourth Amended Plan Of Reorganization (Dated May 27, 2010).*

Based on the foregoing, the Plan meets the requirements of section 1123(b)(2).

c. *Exculpation (Section 1123(b)(3)(A)).*

Section 1123(b)(3)(A) provides that a Plan may include the settlement or compromise of any claim belonging to a debtor or its estate. Article XI.C of the Plan contains customary exculpation provisions establishing liability standards. The exculpation provisions are designed to

prevent parties from circumventing the Plan's discharge injunction by suing affiliates of the Debtors and other third parties for their participation in reorganizing the Debtors and seeking to confirm the Plan. The exculpation provisions of the Plan set forth in Article XI.C are consistent with section 1125(e) and applicable Ninth Circuit law and should be approved. See, e.g., In re W. Asbestos Co., 313 B.R. 832, 846-47 (Bankr. N.D. Cal. 2003).

d. *Modification of Rights of Holders of Claims (Section 1123(b)(5)).*

Section 1123(b)(5) provides that "a plan may modify the rights of holders of secured claims . . . or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims." 11 U.S.C. § 1123(b)(5). Section V of the Plan provides that the rights of holders of Claims in Classes Class 1C (Secured Claim of National Bank), Class 1E (Secured Claim of Gus Gianulias), Class 1G (Secured Claim of Chase), Class 1H (Other Secured Claims), Class 2 (Priority Claims), Class 5 (Subordinated Claims) and Class 6 (Interests in Cameo) will remain unaltered. The Plan modifies the rights of the holders of Claims in the remaining Classes. Notwithstanding such modifications, here have been no objections to the Plan and each class of Claims for which ballots were submitted has voted to accept the Plan.[7]

e. *Other Appropriate Provisions (Section 1123(b)(6)).*

Section 1123(b)(6) specifies that a plan may "include any other appropriate provision not inconsistent with the applicable provisions" of title 11. 11 U.S.C. § 1123(b)(6). Most of the provisions of the Plan fit within the mandatory and permissive categories of plan provisions identified in section 1123, and discussed above. To the extent that the provisions of the Plan do not fit within these categories, as set forth in greater detail below, the Debtors believe that these permissive provisions are consistent with section 1123(b) of the Bankruptcy Code.

i. The Settlement Between the Debtors and the Committee Should Be Approved

The foundation of the Plan is a settlement of the various matters that were negotiated between the Debtors and the Committee following extensive, good-faith negotiations. Settlements

[7] No ballots were submitted in Classes 1B-2 (Secured Claim of Wells Fargo) and 1F (Secured Claim of Countrywide).

are permitted if they are fair and equitable to the debtor in light of the following four factors: (a) probability of success in litigation; (b) difficulties, if any, to be encountered in matter of collection; (c) complexity of litigation involved and expenses; and (d) paramount interests of creditors and proper deference to their reasonable views. See In re Arden, 176 F.3d 1226, 1228 (9th Cir. 1999) (citing Martin v. Kane (In re A & C Properties), 784 F.2d 1377, 1381 (9th Cir. 1986)).

In making its determination, "the Court need not conduct a wholly independent investigation" in determining the reasonableness of a proposed settlement. Vaughn v. Drexel Burnham Lambert Group, Inc. (In re Drexel Burnham Lambert Group, Inc.), 134 B.R. 499, 505 (Bankr. S.D. N.Y. 1991). Nor must the Court conduct a "mini trial" on the settlement's merits. Dicola v. American S.S. Owners Mut. Protection & Indem. Ass'n. (In re Prudential Lines, Inc.), 170 B.R. 222, 247 (S.D. N.Y. 1994). Moreover, a compromise should be approved if it falls above "the lowest point in the range of reasonableness." In re Teltronics Services, Inc., 762 F.2d 185, 189 (2nd Cir. 1984); Cosoff v. Rodman (In re W.T. Grant Co.), 699 F.2d 599, 608 (2nd Cir.), cert. denied, 464 U.S. 822 (1983) (quoting Newman v. Stein, 464 F.2d 689, 693 (2nd Cir. 1972), cert. denied sub nom. Benson v. Newman, 409 U.S. 1039 (1972)); see also In re Technology for Energy Corp., 56 B.R. 307, 311-12 (Bankr. E.D. Tenn. 1985); In re Mobile Air Drilling Co., 53 B.R. 605, 608 (Bankr. N.D. Ohio 1985).

The Plan is the result of extensive, good-faith negotiations between the Debtors and the Committee which resulted in a settlement of various matters. The Debtors filed their original plan of reorganization on March 30, 2009 (the "Original Plan"). Recognizing that a number of issues pertaining to the confirmation requirements of the Bankruptcy Code might impact the treatment of Creditors under the Original Plan, the Debtors and the Committee agreed to ask the Court to consider certain issues in advance of the hearing on approval of the Disclosure Statement and the hearing on confirmation of the Plan. As a result, on May 12, 2009, the Debtors and the Committee entered into a stipulation (the "Issues Stipulation") to address three key issues in the Cases: (1) what effect did substantive consolidation have upon the rights of unsecured creditors of Gianulias and Cameo; (2) what effect did the absolute priority rule have upon the rights of

unsecured creditors of Cameo; and (3) whether the Original Plan satisfied the requirements of the Bankruptcy Code relating to individual Chapter 11 debtors (collectively, the "Confirmation Issues"). The Issues Stipulation also set forth a briefing schedule to file the cross-motions and an expedited appeal process. On May 14, 2009, the Court entered an order approving the Issues Stipulation and setting a hearing on the cross-motions on June 25, 2009. After hearing arguments from counsel for the Debtors and the Committee, the Court requested supplemental briefing on the issue of substantive consolidation and set a further hearing on August 13, 2009.

While the Confirmation Cross-Motions were pending, the Debtors and the Committee continued to negotiate in an effort to resolve certain issues, including the Confirmation Issues, and move forward with a consensual plan of reorganization. In an effort to finally resolve these issues, in July 2009, the Debtors and the Committee commenced a mediation. Over the next several months, the Debtors and the Committee continued to meet with the mediator and worked diligently to reach a resolution on the disputed issues. These efforts resulted in the Debtors and the Committee entering into the Term Sheet, which formed the basis for further negotiations to agree to the Plan Documents, which implement the Plan terms agreed to by the Debtors and the Committee. The terms agreed to by the Debtors and the Committee are incorporated into the Plan and the Plan Documents. As a result, the Committee supports confirmation of the Plan.

As part of this settlement, the Debtors agreed to, among other things: (i) the establishment of the Cash Flow Note and Secondary Note and the provision of payments to holders of Allowed General Unsecured Claims; (ii) the allocation of the Reorganized Debtors' Gross Available Cash Flow from the Reorganized Debtors' post-Confirmation operations; (iii) provisions for providing "full transparency" to permit monitoring of the Debtors' post-confirmation business and operations of the Portfolio Entities and the Intermediate Entities, and the receipt, allocation and distribution of Gross Available Cash Flow from certain post-Confirmation assets, business and operations of the Portfolio Entities, Intermediate Entities and in connection with the sales, transfer or financings with respect to the Reorganized Debtors' interests therein; and (iv) the grant of a lien against the Reorganized Debtors' proceeds received from the Portfolio Entities and Intermediate Entities or otherwise on account of the Ownership Interests to secure prompt performance by the

Reorganized Debtors of their respective obligations under the Plan, the Cash Flow Note, the Secondary Note and the other Plan Documents.

In exchange for the consideration to be provided to the Creditors' Trust for the benefit of holders of Allowed General Unsecured Claims under the Plan, among other things, the right of any holder of a General Unsecured Claim to seek to modify the Plan pursuant to section 1127(e) of the Bankruptcy Code is waived.

This settlement is appropriate because, among other things, it resolved litigation with a highly uncertain outcome concerning unsettled law with respect to the application of chapter 11 to a substantively consolidated individual and corporation. Further, the settlement negotiated by the Debtors and the Committee results in a substantial payment to Unsecured Creditors and eliminates the continuing accrual of significant expenses associated with the extremely complicated issues. The settlement has been negotiated between the Debtors and the Committee and, in the Debtors' business judgment is in the best interest of the Debtors, all creditors, and all parties in interest in these cases, and provides the Debtors with the best opportunity for a successful reorganization of their business. No parties in interest have objected to the terms of the settlement incorporated into the Plan and the Plan Documents. As a result, the Court should approve the settlement, which is appropriate under the Ninth Circuit's standards, by confirming the Plan.

ii. The Interests in the Creditors' Trust are Exempt from Registration

The Plan provides that on the Effective Date, the Creditors' Trust will issue Interests in the Creditors' Trust on account of Allowed Claims in Class 3. The Interests in the Creditors' Trust issued pursuant to this provision shall be exempt from the registration requirements of the Securities Exchange Act of 1933, as amended (the "Securities Act"), and any State or local law requiring registration or qualification for the offer or sale of a security, pursuant to section 1145(a) of the Bankruptcy Code.

Section 1145(a)(1)(A) provides in pertinent part that, except with respect to an entity that is an underwriter, Section 5 of the Securities Act and any state or local law requiring registration for offer or sale of a security or registration or licensing of an issuer of a security do not apply to the offer or sale under a plan of reorganization of a security of a successor to a debtor under the

plan in exchange for an interest in the debtor. The Creditors' Trust qualifies for the exemption under Section 1145(a)(1)(A) because the Creditors' Trust is a successor to the Debtors and will issue Interests in the Creditors' Trust under the Plan in exchange for unsecured claims against the Debtors. As the successor to the Debtors, the Creditors' Trust further does not qualify as an underwriter within the meaning of section 1145(a)(1)(A). See In re The Stanley Hotel, Inc., 13 B.R. 926, 932-33 (D. Colo. 1981) (holding that the drafters of the Bankruptcy Code did not intend that the debtor or its successor, as issuers of securities under a plan, be considered an underwriter for purposes of Section 1145).

Similarly, the Debtors do not believe that the Creditors' Trust will be required to register its membership interests under Section 12(g) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). Section 12(g) of the Exchange Act and Rule 12g-1 promulgated thereunder generally require those companies with more than $10 million in total assets and 500 or more record holders of a class of equity security to register such class of equity security. The Exchange Act therefore does not apply as the Creditors' Trust will not have more than $10 million in assets on the Effective Date and will be issuing equity securities in the form of the Interests in the Creditors' Trust to less than 500 persons.

For the foregoing reasons, the Interests issued by the Creditors' Trust shall be exempt from the Securities Act and the Exchange Act.

B. The Debtors Have Complied With the Applicable Provisions of Title 11 (Section 1129(a)(2))

Section 1129(a)(2) requires that the proponent of the plan comply with the "applicable provisions" of title 11. In this context, the "applicable provisions" of title 11 are section 1121, dealing with who may file a plan, and section 1125, dealing with the solicitation of acceptances of a plan. See In re Hoff, 54 B.R. 746, 750-51 (Bankr. D.N.D. 1985); accord In re Downtown Inv. Club III, 89 B.R. 59 (B.A.P. 9th Cir. 1988).

Section 1121(a) permits a debtor to file a plan at any time in a voluntary or involuntary case. The Debtors were, therefore, qualified under that section to file the Plan.

Section 1125(b) provides that a proponent may not solicit acceptances of its plan unless, at or before the time of such solicitation, there is transmitted to the solicitee both a copy of the plan and a court-approved disclosure statement. See Duff v. U.S. Trustee (In re California Fidelity, Inc.), 198 B.R. 567, 571 (B.A.P. 9th Cir. 1996).

The Debtors have fully complied with this requirement. In the Solicitation Procedures Order, the Court approved the Debtors' Disclosure Statement as containing adequate information as required by section 1125. In accordance with the Solicitation Procedures Order and Bankruptcy Rule 3017(d), the Debtors transmitted solicitation packages to all members of Impaired Classes. Declarations of service regarding the distribution of the solicitation packages have been filed with the Court. Accordingly, the Debtors have complied with the solicitation requirements of section 1125.

C. The Plan is Proposed in Good Faith (Section 1129(a)(3))

Section 1129(a)(3) requires that a plan must be proposed "in good faith and not by any means forbidden by law." See Acequia, Inc. v. Clinton (In re Acequia, Inc.), 787 F.2d 1352, 1360 (9th Cir. 1986).

Although the term "good faith" is left undefined by the Bankruptcy Code, "[i]n the context of a chapter 11 reorganization . . . a plan is considered proposed in good faith 'if there is a reasonable likelihood that the plan will achieve a result consistent with the standards prescribed under the Code.'" Hanson v. First Bank of South Dakota, 828 F.2d 1310, 1315 (8th Cir. 1987) (quoting In re Toy & Sports Warehouse, Inc., 37 B.R. 141, 149 (Bankr. S.D.N.Y. 1984)); accord Stolrow v. Stolrow's, Inc. (In re Stolrow's, Inc.), 84 B.R. 167, 172 (B.A.P. 9th Cir. 1988) ("Good faith requires that a plan will achieve a result consistent with the objectives and purposes of the Code."). As demonstrated below, the Plan here clearly satisfies the "good faith" requirement of section 1129(a)(3).

There is ample evidence to support a finding of good faith. The Plan is the culmination of extensive negotiations among the Debtors, the Committee, and other parties in interest, and is the tangible product of the parties' efforts to reach an acceptable accommodation among various

creditor interests. The creditors' support for the Plan is evidenced by the overwhelming majority of votes cast in favor of the Plan by all classes for which ballots were submitted.[8]

The Debtors believe that if the Plan fails to be confirmed, renegotiations will not result in any better recovery for any Class. To the contrary, renegotiations and/or litigation would delay the process of making distributions to creditors, perhaps for years. The Debtors will then incur substantial additional administrative claims. Thus, if any plan can be put forth in good faith in the context of these bankruptcy cases, this is it.

D. The Plan Provides for Court Approval of Fees and Costs Paid by the Estate (Section 1129(a)(4))

Section 1129(a)(4) provides that the court shall confirm a plan only if:

> [a]ny payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable.

11 U.S.C. § 1129(a)(4).

Section 1129(a)(4) is directed primarily at policing the award and payment of professional fees from the estates in chapter 11 cases. See 5 COLLIER ON BANKRUPTCY ¶ 1129.02[4] at 1129-31 (15th ed. 1991) ("section 1129(a)(4) protects the integrity of the reorganization process by assuring creditors that payments from the debtor's estate will be subject to court review.").

The procedures set forth in the Plan for the Court's review and ultimate determination of the fees and expenses to be paid to Professionals from the Estate satisfy the objectives of section 1129(a)(4). See In re Future Energy Corp., 83 B.R. 470, 488 (Bankr. S.D. Ohio 1988) ("Court approval of payments for services and expenses is governed by various Code provisions, e.g., §§ 328, 329, 330, 331, and 503(b) and need not be explicitly provided for in a Chapter 11 plan.") Thus, payments of the type specified in section 1129(a)(4) will only be made after this Court allows the expenses as reasonable.

[8] No ballots were submitted in Classes 1B-2 (Secured Claim of Wells Fargo) and 1F (Secured Claim of Countrywide).

E. The Plan Complies with Section 1129(a)(5) Regarding the Identity of Officers, Directors, and Insiders

Section 1129(a)(5) mandates that plan proponent disclose the identity and affiliations of any known individual proposed to serve after confirmation of the Plan as an officer, director, or voting trustee and further requires the disclosure of any insider to be employed or retained by the Debtors and the nature of compensation to be paid to such insider. With respect to any officer, director or voting trustee, the appointment or continuance in office of an individual must be consistent with the interests of creditors and equity security holders and with public policy.

As discussed above, the existing officers and directors of Cameo will continue to serve in their same capacities for Reorganized Debtor Cameo following the Effective Date. Mesa Management will serve as the disbursing agent and will make all required payments to creditors holding Allowed Claims commencing on the Effective Date, except for creditors holding Allowed General Unsecured Claims, who shall receive distributions from the Creditors' Trust. The Creditors' Trust Trustee will be selected by the Committee prior to the Effective Date of the Plan.

This method of selecting officers and directors is supported by the Debtors and the Committee, and no creditors have objected. See In re Apex Oil Co., 118 B.R. 683, 704-05 (Bankr. E.D. Mo. 1990) (where debtors as well as creditors' committee believe control of entity by proposed individuals will be beneficial, the requirements of section 1129(a)(5) are satisfied). Based on the foregoing, the requirements of section 1129(a)(5) are satisfied.

F. The Plan Does Not Require Approval of Any Regulatory Commission (Section 1129(a)(6))

Section 1129(a)(6) requires that "[a]ny governmental regulatory commission with jurisdiction, after confirmation of the plan, over the rates of the debtor has approved any rate change provided for in the plan, or such rate change is expressly conditioned on such approval." In the present case, the Plan does not provide for changes in rates of the Debtors nor are such rates subject to approval by any governmental regulatory commission. Therefore, section 1129(a)(6) is inapplicable.

G. The Plan Satisfies the Best Interests of Creditors Test (Section 1129(a)(7))

Section 1129(a)(7) requires that a plan proponent demonstrate that the plan meet the "best interest of creditors" test. See In re M. Long Arabians, 103 B.R. 211, 216 (B.A.P. 9th Cir. 1989); In re Diversified Investors Fund XVII, 91 B.R. 559, 561 (Bankr. C.D. Cal. 1988). Under this test, each holder of a claim or interest in an impaired class must either accept the plan or receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under a hypothetical chapter 7 case. See 11 U.S.C. § 1129(a)(7); Travelers Ins. Co. v. Pikes Peak Water Co. (In re Pikes Peak Water Co.), 779 F.2d 1456, 1460 (10th Cir. 1985); In re Victory Constr. Co., Inc., 42 B.R. 145, 151 (Bankr. C.D. Cal. 1984).

As set forth in the Disclosure Statement, the Plan provides each creditor with the same or better treatment than if the Debtors were liquidated under Chapter 7. See Disclosure Statement, Article VI.C.4, Ex. 3. In the absence of the Plan, all of the Debtors' assets would be liquidated or abandoned by a chapter 7 trustee. After considering the effects that a chapter 7 liquidation would have on the ultimate proceeds available for distribution to Creditors, including (i) the increased costs and expenses of a liquidation under chapter 7 arising from fees payable to a trustee in bankruptcy and professional advisors to such trustee and (ii) the likely erosion in value of assets in a chapter 7 case in the context of an expeditious liquidation and the "forced sale" atmosphere that would prevail under chapter 7, the Debtors have determined that the Holders of all Allowed Claims would receive substantially less than they will receive under the Plan. Specifically, following the payment of Secured Claims, Administrative Claims, and chapter 7 expenses, the Debtors estimate that approximately $2 million will remain for distribution to Holders of Allowed General Unsecured Claims. See Disclosure Statement, p. 133-34. This results in a distribution of .8% to Holders of Allowed General Unsecured Claims, as compared to the estimated distribution to Holders of Unsecured Creditors of 25.9% (51.8% for those creditors with dual claims) proposed under the Plan.

One of the key facets of the Plan is that it permits Mr. Gianulias to retain his ownership and control of Cameo and the Companies, which preserves significant value that would be

unavoidably lost if Mr. Gianulias were divested of ownership and control of certain of the Companies. Due to change in control clauses contained in loan agreements between these entities and a variety of lenders, a change in ownership or control of Cameo and/or certain of the Companies would trigger defaults under a wide array of loan agreements. The financial effect of these potential defaults, and the resulting consequences, has been analyzed by the Debtors' and the Committee's financial advisors.[9] Based on this analysis, the Debtors believe that defaults resulting from a change in ownership and control of Cameo and/or the Companies (to someone other than Mr. Gianulias) would trigger significant pre-payment penalties. Comparing the potential financial impact of these penalty clauses on creditors to the proposed distributions to creditors under the Plan, the Debtors have concluded that unsecured creditors will receive more under the Plan than they would have received in a realistic liquidation scenario in which Mr. Gianulias' ownership and control of Cameo and/or the Companies is not preserved.

Based on the information set forth in the Disclosure Statement, all Persons holding impaired Claims will receive distributions under the Plan having a value of at least as much or more than they would receive in a Chapter 7 liquidation. Accordingly, the Debtors believe that the requirements of section 1129(a)(7) are satisfied.

H. Acceptance or Impairment (Section 1129(a)(8))

Section 1129(a)(8) requires that each class of Claims and Interests has either accepted the Plan or is not impaired under the Plan. A class of Claims accepts the Plan if holders of at least two-thirds in dollar amount and a majority in number of claims of that class vote to accept the Plan, counting only those claims whose holders actually vote on the Plan. See 11 U.S.C. § 1126(c). A class of Interests accepts the Plan if holders of at least two-thirds of the number of

[9] In preparing a plan that would satisfy the requirements of section 1129 of the Bankruptcy Code, including the "best interests of creditors" test, the Debtors employed FTI Consulting, Inc. ("FTI") to provide expert valuations of the real estate entities owned in part by Gianulias and Cameo, including the Companies. The Committee has employed its own valuation expert, Deloitte Financial Advisory Services, LLP ("Deloitte"), and Deloitte and FTI have met on a number of occasions to discuss issues concerning valuation of the assets. Given the extensive asset base of the Debtors, as well as the sensitive and highly volatile nature of the current real estate market, both the Committee and the Debtors have spent a significant amount of time completing expert valuations of the Debtors' assets.

shares vote to accept the Plan, counting only those shares whose holders actually vote. See 11 U.S.C. § 1126(d).

As discussed above, Class 1C (Secured Claim of National Bank), Class 1E (Secured Claim of Gus Gianulias), Class 1G (Secured Claim of Chase), Class 1H (Other Secured Claims), Class 2 (Priority Claims), Class 5 (Subordinated Claims) and Class 6 (Interests in Cameo) are not impaired under the Plan and, therefore, are deemed to have accepted the Plan. See 11 U.S.C. §§ 1124, 1126(f); Great Western & Trust v. Entz-White Lumber & Supply, Inc. (In re Entz-White Lumber & Supply, Inc.), 850 F.2d 1338, 1340 n.3 (9th Cir. 1988) (class that is not impaired under section 1124 is conclusively presumed to have accepted plan).

As indicated in the Ballot Analysis, impaired Class 1A (Secured Claim of Pacific Mercantile), Class 1B-1 (Secured Claim of Wells Fargo on Account of the Colorado Note), Class 1D (Secured Claim of Marilyn Gianulias), Class 3 (General Unsecured Claims), and Class 4 (Inter-Debtor Claims) have voted to accept the Plan. As a result, section 1129(a)(8) is satisfied as to these Classes.

No ballots were submitted in Classes 1B-2 (Secured Claim of Wells Fargo on Account of the First Hawaii Note) and 1F (Secured Claim of Countrywide). Therefore, section 1129(a)(8) is not satisfied as to these Classes. However, as set forth below, the Plan is nevertheless confirmable since the Plan satisfies the requirements of section 1129(b) with respect to Classes 1B-2 and 1F.

I. Payment of Administrative and Priority Claims (Section 1129(a)(9))

Sections 1129(a)(9) contains provisions generally requiring payment in cash of administrative and non-tax priority claims and permitting the deferred payment of priority tax claims over a period not exceeding six years. Article III of the Plan provides for the payment in full in Cash of Allowed Administrative Claim, unless the holder agrees to other treatment of the Claim. Payment of an Allowed Administrative Claim shall occur on the later of the Plan's Effective Date, or the date on which the Administrative Claim is allowed.

The Allowed Administrative Claims of Professionals shall not be paid in full on the Effective Date. Instead, Allowed Administrative Claims of Professionals shall be paid, Pro Rata, from the cash generated by the Portfolio Entities and Intermediate Entities and received by the

Reorganized Debtors (subject to the payment of $1.8 million annually to the Reorganized Debtors in the first and second year following the Effective Date and the payments to be made to Marilyn Gianulias on account of her Secured Claim as set forth in the Plan). Because of the magnitude of the Administrative Claims of Professionals incurred in the Cases, it is anticipated that the payment of the Administrative Claims of Professionals will take approximately eighteen (18) months following the Effective Date to be completed. All Professionals have agreed to this deferral. Absent said deferral, the Plan would not be feasible, unless the Effective Date were deferred until such time as sufficient Cash was accumulated to pay said Administrative Claims in full on the Effective Date.

With respect to Tax Claims entitled to priority under section 507(a)(8), Article III of the Plan provides that, except as otherwise agreed to by the parties, each holder of an Allowed Priority Tax Claim against the Debtors shall receive, on the Effective Date, in full satisfaction, release and discharge of such Allowed Priority Tax Claim, at the election of the Debtors, either: (i) Cash payment in the amount of the holder's Allowed Priority Tax Claim; (ii) deferred Cash payments over a period not to exceed five (5) years, from the Petition Date, equal to the Allowed amount of such claim; (iii) in a manner not less favorable than the most favored nonpriority unsecured claim provided for by the Plan; or (iv) such other terms as may be agreed upon by such holder and the Debtors. The rate of interest to be paid on Priority Tax Claims paid out over a period not to exceed five (5) years from the Petition Date shall be equal to the underpayment rate specified in 26 U.S.C. § 6621 (determined without regard to 26 U.S.C. § 6621(c)) as of the Effective Date or such higher rate as required by 11 U.S.C. § 511(a).

Article III of the Plan provides for the payment in full in Cash of Allowed Gap Claim, unless the holder agrees to other treatment of the Claim. Payment of an Allowed Gap Claim shall occur on the Effective Date.

In addition, Article V of the Plan provides that all Allowed Class 2 Claims (i.e., Allowed Priority Claims entitled to priority under any of sections 507(a)(3)-(6) of the Bankruptcy Code) will be paid in full in Cash on the Effective Date.

As a consequence, the Plan satisfies all of the requirements of section 1129(a)(9).

J. The Plan Has Been Accepted by At Least One Impaired Class (Section 1129(a)(10))

Section 1129(a)(10) requires that at least one class of impaired claims has accepted the Plan, determined without including any acceptance of the Plan by an insider holding a claim in such a class. See In re Ruti-Sweetwater, Inc., 836 F.2d 1263, 1267 (10th Cir. 1988); In re Toy & Sports Warehouse, Inc., 37 B.R. at 151; Buffalo Sav. Bank v. Marston Enters., Inc. (In re Marston Enters., Inc.), 13 B.R. 514, 518-19 (Bankr. E.D.N.Y. 1981).

All of the voting classes for which ballots were submitted – consisting of Class 1A (Secured Claim of Pacific Mercantile), Class 1B-1 (Secured Claim of Wells Fargo on Account of the Colorado Note), Class 1D (Secured Claim of Marilyn Gianulias), Class 3 (General Unsecured Claims), and Class 4 (Inter-Debtor Claims) – have accepted the Plan. (See Ballot Analysis). Therefore, the requirements of section 1129(a)(10) have been satisfied.

K. Feasibility (Section 1129(a)(11))

Section 1129(a)(11) requires that the Court find that confirmation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Debtors, unless such liquidation or reorganization is provided for in the Plan. The feasibility requirement is satisfied by a showing of a "reasonable probability of success." See In re Acequia, Inc., 787 F.2d at 1364.

In interpreting the requirements of section 1129(a)(11), courts have found the language of the statute to be "sufficiently broad so as to have provided a great deal of latitude to Courts interpreting its provisions." In re Eddington Thread Mfg., Co., 181 B.R. 826, 832-33 (Bankr. E.D. Pa. 1995). The courts have also universally interpreted the statute to mean that a debtor need only demonstrate a reasonable assurance of commercial viability, and the court need not require a guarantee of success in order to find that a plan satisfies the feasibility requirement. See, e.g., In re T-H New Orleans Ltd. P'ship, 116 F.3d 790, 801 (5th Cir. 1997); In re Briscoe Enters., Ltd., 994 F.2d at 1165-66; Kane v. Johns-Manville Corp., 843 F.2d at 649-50; In re Prussia Assocs., 322 B.R. 572, 584 (Bankr. E.D. Pa. 2005).

While the debtor bears the burden of proving plan feasibility, the applicable standard is by a preponderance of the evidence – proof that a given fact is "more likely than not." In re Briscoe

Enters., Ltd., 994 F.2d at 1164; see also In re T-H New Orleans Ltd., P'ship, 116 F.3d at 802; Corestates Bank, N.A., 202 B.R. at 45. Further, a number of courts have held that this constitutes "a relatively low threshold of proof." In re Eddington Thread Mfg. Co., 181 B.R. at 833; In re Mayer Pollack Steel Corp., 174 B.R. 414, 423 (Bankr. E.D. Pa. 1994) (stating that the debtors "have established that they meet the requisite low threshold of support for the Plan as a viable undertaking ..."); see also In re Briscoe Enters. Ltd., 944 F.2d at 1116 (upholding the bankruptcy court's ruling that a reorganization that had only "'a marginal prospect of success'" was feasible because only "a reasonable assurance of commercial viability" was required). "Just as speculative prospects of success cannot sustain feasibility, speculative prospects of failure cannot defeat feasibility. The mere prospect of financial uncertainty cannot defeat confirmation on feasibility grounds since a guarantee of the future is not required." In re Drexel Burnham Lambert Group Inc., 138 B.R. at 762.

The courts have fashioned a series of factors to be considered in the determination of whether a debtor's plan is feasible. These factors, while varying from case to case, traditionally include: the adequacy of the debtor's capital structure, the earning power of its business, economic conditions, the ability of the debtor's management, the probability of the continuation of the same management, and other related matters affecting successful performance under the provisions of the Plan. See, e.g., In re Prussia Assocs., 322 B.R. at 584; In re Greate Bay Hotel & Casino, Inc., 251 B.R. at 226-27; see also In re T-H New Orleans Ltd., P'ship, 116 F.3d at 801 (discussing the factors that the bankruptcy court examined in its decision that the debtor's plan was feasible). As the evidence will show, the Plan satisfies each of the factors courts consider in determining whether a plan of reorganization is feasible.

Attached as Exhibit 2 to the Disclosure Statement are financial projections of the Reorganized Debtors' expected annual performance through the end of 2024 (the "Financial Projections"). The Financial Projections were based on a thorough analysis of economic, competitive, and general business conditions relevant to the Debtors and the Companies. The evidence set forth in the Debtors' financial projections (and to be provided at the Confirmation Hearing if required by the Court) establishes that the Debtors' will have sufficient cash flow from

the Companies' operations to make all payments that must be made pursuant to the Plan, including paying all Administrative Claims and Priority Claims in full, and, therefore, that confirmation of the Plan is not likely to be followed by liquidation or the need for further reorganization. Although it is speculative to forecast, with any degree of specificity, the cash flow figures more than five years in the future, the Debtors estimate that the net cash flow from the Companies will remain relatively stable over time and that they will be able to fund their operations going forward. Furthermore, the Cash Flow Note is a cash flow note, and as such the monthly payments are calculated based on Available Cash Flow. As a result, feasibility is virtually guaranteed since the payments on the Cash Flow Note are, with the exception of the payment due at maturity, purely a function of Available Cash Flow.

Accordingly, the Debtors have established (or will establish if the Court determines that additional evidence is required) that confirmation of the Plan is not likely to be followed by liquidation or the need for further reorganization of the Debtors, and the Plan therefore meets the standards of § 1129(a)(11).

L. The United States Trustee's Fees Will be Paid (Section 1129(a)(12))

Section 1129(a)(12) requires that all fees payable pursuant to 28 U.S.C. § 1930 (consisting primarily of the quarterly fees to the United States Trustee) have been paid or that the Plan provides for the payment of all such fees on the Effective Date of the Plan. Section XIII.J of the Plan so provides, and therefore, the Plan satisfies section 1129(a)(12).

M. Retiree Benefits (Section 1129(a)(13))

Section 1129(a)(13) requires that a plan provide for the continued payment of certain retiree benefits "for the duration of the period that the debtor has obligated itself to provide such benefits." 11 U.S.C. § 1129(a)(13). This requirement is not applicable to Mr. Gianulias, an individual.

As set forth in the Gianulias Declaration, Cameo's only remaining retirement plan consists of a Profit Sharing Plan administered by South Coast Pension Services, Inc.[10] As of May 31,

[10] The Cameo Homes Defined Benefit Pension Plan administered by the Pension Benefit Guaranty Corporation under Title IV of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §§ 1301-1461 (2006) was terminated on December 1, 2008.

2010, the assets of the Profit Sharing Plan totaled $202,153. There are three participants with balances in the Profit Sharing Plan. The Debtors have no funding obligations with respect to the Profit Sharing Plan. Reorganized Debtor Cameo will maintain the Profit Sharing Plan following the Effective Date of the Plan. The Profit Sharing Plan will pay retiree benefits as and when they become due. The Debtors do not have any other obligations to pay retiree benefits.

Therefore, section 1129(a)(13) is satisfied.

N. Domestic Support Obligations (Section 1129(a)(14))

Section 1129(a)(14) of the Bankruptcy Code, which requires a debtor to pay domestic support obligations required to be paid by judicial or administrative order, is not applicable to the Plan or these Chapter 11 Cases.

O. Distributions in Cases in which the Debtor is an Individual (Section 1129(a)(15))

Section 1129(a)(15) of the Bankruptcy Code applies to cases in which the debtor is an individual. Section 1129(a)(15) provides:

> (15) In a case in which the debtor is an individual and in which the holder of an allowed unsecured claim objects to the confirmation of the plan—
>
> > (A) the value, as of the effective date of the plan, of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or
> >
> > (B) the value of the property to be distributed under the plan is not less than the projected disposable income of the debtor (as defined in section 1325(b)(2)) to be received during the 5-year period beginning on the date that the first payment is due under the plan, or during the period for which the plan provides payments, whichever is longer.

11 U.S.C. § 1129(a)(15). For purposes of determining "disposable income," section 1129(a)(15)(B) of the Bankruptcy Code adopts the chapter 13 definition of disposable income found in section 1325(b)(2), which provides that the term "disposable income" means current monthly income received by the debtor less amounts reasonably necessary to be expended.[11]

[11] "Disposable income" in a Chapter 13 case is calculated using the "means test" set forth in section 1325(b)(3). However, Section 1129(a)(15)(B) does not adopt section 1325(b)(3)'s incorporation of the "means test" for above-median income debtors, and, as a result, the means test does not apply in a chapter 11 proceeding. See In re Roedemeier, 374 B.R. 264, 271-73 (Bankr. D. Kan. 2007) (finding that the "projected disposable income" of a chapter 11 debtor is determined solely with reference to the expenses found in section 1325(b)(2), rather than with reference to the "means test" expenses incorporated by section 1325(b)(3)); Advisory Committee Notes to Official Form 22B (Chapter 11 Statement of Current Monthly

Since no creditor has objected to the confirmation of the Plan, the Plan does not need to satisfy this section. However, even if an unsecured creditor had objected, the Plan provides that holders of Allowed General Unsecured Claims will receive distributions significantly greater than those required by section 1129(a)(15).

As set forth on Exhibit 2 to the Disclosure Statement, based on the Financial Projections, the Debtors will cash flow of approximately $3,057,883 in 2010, $3,086,650 in 2011, $4,968,070 in 2012, $5,486,834 in 2013 and $6,069,486 in 2014 available for Plan payments (following payment of federal and state taxes and certain business and personal expenses). The projected disposable income that the Reorganized Debtors would expect to receive during the five-year period beginning on the date the first payment is made following confirmation would therefore be approximately $22.6 million. In comparison, the Plan provides that the Reorganized Debtors will make payments to the Creditors' Trust Trustee from Available Cash Flow for the benefit of holders of Allowed Claims in Class 3 under the Cash Flow Note, in the principal amount of $42 million over a period of fifteen years, and the payment of the Secondary Note in the amount of $5 million in 2025. Since the Plan proposes to make distributions in an amount far greater more than the estimated $22.6 million of disposable income required by section 1129(a)(15)(B), the Plan satisfies this relatively new confirmation requirement.

Therefore, the Plan fully complies with the requirements of section 1129(a)(15), which requires that unsecured creditors receive payments from disposable income for a five year period.

P. Transfers in Accordance with Nonbankruptcy Law (Section 1129(a)(16))

Section 1129(a)(16) of the Bankruptcy Code applies only to cases of nonprofit entities. Neither of the Debtors is a nonprofit entity, and this provision has no application to the Plan or these Chapter 11 Cases.

Income) ("The Chapter 11 form is the simplest of the three [22A, 22B, and 22C], since the means-test deductions of § 707(b)(2) are not employed in determining the extent of an individual Chapter 11 debtor's disposable income.") (emphasis added); COLLIER ON BANKRUPTCY, 1129.03[15][a] (15th ed. rev. 2008) ("individual creditor insistence on the artificial expenses standards found in chapter 7 are neither necessary nor appropriate in chapter 11 cases.").

IV.

THE REQUIREMENTS OF SECTION 1129(b) ARE SATISFIED AS TO ALL IMPAIRED CLASSES THAT DID NOT VOTE TO ACCEPT THE PLAN

Section 1129(b) of the Bankruptcy Code permits the Court to "cram down" a plan over the dissenting vote of an impaired class or classes of claims or equity interests and confirm the plan notwithstanding such dissenting votes. 11 U.S.C. § 1129(b)(1). Section 1129(b)(1) provides in pertinent part:

> Notwithstanding section 510(a) of this title, if all of the applicable requirements of [section 1129(a) of the Bankruptcy Code] other than [the requirement contained in section 1129(a)(8)] are met with respect to a plan, the court, on request of the proponent of the plan, shall confirm the plan notwithstanding the requirements of such paragraph if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

11 U.S.C. § 1129(b)(1). Thus, under section 1129(b), the Court may "cram down" a plan over the dissenting vote of an impaired class or classes of claims or equity interests as long as the plan does not "discriminate unfairly" and is "fair and equitable" with respect to the dissenting class or classes.

The Bankruptcy Code does not articulate any guidelines for determining whether a plan "discriminates unfairly" with respect to a dissenting class, within the meaning of section 1129(b)(1). See I. Pachulski, "The Cram Down and Valuation Under Chapter 11 of the Bankruptcy Code," 58 N.C. L. Rev. 925, 936 (1980). The legislative history to section 1129(b), however, indicates that this requirement is "included for clarity" and applies "in the context of subordinated debentures." 124 Cong. Rec. H11, 104 (Daily Ed. Sept 28, 1978) (remarks of Rep. Edwards). The Ninth Circuit Court of Appeals has noted in this regard that "the concept of unfair discrimination applies to plans in which claims or interests have been subordinated." In re Acequia, Inc., 787 F.2d at 1364. The Acequia court observed that the "unfair discrimination" provision "requires that a plan 'allocate [ ] value to the class in a manner consistent with the treatment afforded to other classes with similar legal claims against the debtor.'" Id. (quoting 5 COLLIER ON BANKRUPTCY ¶ 1129.03, at 1129-50 (15th ed. 1992)).

Notwithstanding the Bankruptcy Code's lack of guidelines for determining whether a plan "discriminates unfairly," as explained below, the Bankruptcy Code does provide specific examples of when a plan is "fair and equitable." Based on the foregoing standards, and as set forth below, the Plan satisfies all of the requirements set forth in section 1129(b) with respect to each impaired Class that did not vote to accept the Plan.

Holders of Secured Claims in Class 1B-2 (Secured Claim of Wells Fargo) and Class 1F (Secured Claim of Countrywide) are Classes of Secured Claims, which implicates section 1129(b)(2)(A) and requires that, to satisfy the condition that the Plan be "fair and equitable" and to be confirmed, the Plan must provide:

> (i) (I) that the holders of such claims retain the liens securing such claims, whether the property subject to such liens is retained by the debtor or transferred to another entity, to the extent of the allowed amount of such claims; and (II) that each holder of a claim of such class receive on account of such claim deferred cash payments totaling at least the allowed amount of such claim, of a value, as of the effective date of the plan, of at least the value of such holder's interest in the estate's interest in such property;
>
> (ii) for the sale, subject to section 363(k) of this title, of any property that is subject to the liens securing such claims, free and clear of such liens, with such liens to attach to the proceeds of such sale, and the treatment of such liens on proceeds under clause (i) or (iii) of this subparagraph; or
>
> (iii) for the realization by such holders of the indubitable equivalent of such claim.

11 U.S.C. § 1129(b)(2)(A).

1. Class 1B-2 (Secured Claim of Wells Fargo)

The Plan provides that Wells Fargo will receive the treatment set forth in Class 1B-2 on account of its Secured Claim in this class. Pursuant to a promissory note dated October 27, 2005 (the "Wells Fargo Note"), Wells Fargo made a $3,000,000 loan to Mr. Gianulias secured by property located at 13 Coconut Grove Lane, #13, Lahaina, Hawaii (the "Hawaii Property"). The Wells Fargo Note is secured by a first deed of trust on the Hawaii Property.[12]

[12] Wells Fargo also has a second deed of trust on the Hawaii Property, which has been separately classified in Class 1B-3. Class 1B-3 voted to accept the Plan.

Wells Fargo is an oversecured creditor which will retain its lien on the Hawaii Property in the full amount of its Allowed Claim and will be paid through deferred payments totaling the value of its outstanding claim as of the Effective Date. On April 3, 2009, Wells Fargo filed a *Motion for Relief from the Automatic Stay* (the "Wells Fargo Motion") [Docket No. 355] with respect to the Hawaii Property, which was denied by Order dated June 28, 2010. In the Wells Fargo Motion, Wells Fargo states that the fair market value of the Hawaii Property is $3.7 million. See Declaration of Kamiylah Chanah-Bey attached to the Wells Fargo Motion. As set forth on Schedule A (Real Property) of Mr. Gianulias' Schedules and Statements of Financial Affairs, the Debtors value the Hawaii property at $4.275 million. As of the date hereof, the outstanding balance of the Wells Fargo Note in approximately $3.327 million. Wells Fargo is therefore oversecured with respect to this Secured Claim. Per the terms set forth in the Plan, the modified Wells Fargo Note will have a principal amount equal to $3.327 million, which is the outstanding balance of the Wells Fargo Note. Wells Fargo will receive monthly payments on the modified Wells Fargo Note based on a 30-year amortization, with interest at the fixed rate of 6.25%. Because Wells Fargo is retaining its lien on the Hawaii Property and is receiving deferred payments equal to the total amount of its Secured Claim on account of the First Hawaii Note, section 1129(b)(2)(A)(i) of the Bankruptcy Code is therefore satisfied.

2. Class 1F (Secured Claim of Countrywide)

The Plan provides that Countrywide will receive the treatment set forth in Class 1F on account of the Secured Claim of Countrywide. Pursuant to a promissory note dated March 25, 2005 (the "Countrywide Note"), Countrywide (or its predecessor) made a $472,500 loan to Mr. Gianulias secured by property located at 77320 Camino Quintana, La Quinta, California (the "La Quinta Property"). The Countrywide Note is secured by a deed of trust on the La Quinta Property.

On October 26, 2009, Countrywide filed a *Motion for Relief from the Automatic Stay* (the "Countrywide Motion") [Docket No. 561] with respect to the La Quinta Property. In order to resolve the Countrywide Motion, Countrywide and Mr. Gianulias entered into the *Stipulation Resolving Motion For Relief From Stay Filed By BAC Home Loans Servicing, LP* (the "Countrywide Stipulation") [Docket No. 583], which was approved by an Order entered February

2, 2010. The Countrywide Stipulation sets forth the treatment of the Secured Claim of Countrywide under the Plan. Because the terms set forth in the Plan are identical to the terms agreed to in the Countrywide Stipulation, the Plan is "fair and equitable," does not unfairly discriminate, and satisfies the requirements of section 1129(b).

Furthermore, even if Countrywide had not agreed to the treatment set forth in the Plan, Countrywide is an oversecured creditor which will retain its lien on the La Quinta Property in the full amount of its Allowed Claim and will be paid through deferred payments totaling the value of its outstanding claim as of the Effective Date. In Countrywide's Motion for Relief from Stay, Countrywide acknowledged that the fair market value of the La Quinta Property was $648,000, which was the amount set forth in the Debtors' Schedules. See Declaration of Judy Graves attached to the Countrywide Motion. Per the terms set forth in the Countrywide Stipulation and the Plan, the modified Countrywide Note will have a principal amount equal to the outstanding balance of the note as of the Effective Date (estimated at $509,372.60 as of Oct. 26, 2009, plus interest thereon through the Effective Date at the rate of 5.625% per annum). Countrywide will retain its lien on the La Quinta Property and receive monthly payments on the Countrywide Note based on a 30-year amortization, with interest at the fixed rate of 5.75%. Therefore, section 1129(b)(2)(A)(i) of the Bankruptcy Code is satisfied.

3. The Plan Satisfies 1129(b)

The Plan provides that the holders of Secured Claims in Classes 1B-2 and 1F will retain the liens securing their respective Secured Claim and will receive deferred payments equal to the total amount of the Secured Claim in satisfaction of section 1129(b)(2)(A)(i). Based on the foregoing, section 1129(b) is satisfied, and the Plan should be confirmed.

V.

MODIFICATIONS TO PLAN

Section 1127 provides that a plan may be modified at any time before confirmation and that after the modifications are filed with the court, the plan as modified becomes the plan. See 11 U.S.C. § 1127. Bankruptcy Rule 3019 provides that if the court determines that the proposed modification "does not adversely change the treatment of the claim of any creditor or the interest

of any equity security holder who has not accepted in writing the modification, it shall be deemed accepted by all creditors and equity security holders who have previously accepted the plan." FED. R. BANKR. P. 3019.

The Debtors propose to make the following modifications to the Plan:

- The defined term "Robbins" has been changed to "Marilyn Gianulias."

As discussed above, this clarification is made to correct the secured creditors' legal name and has no impact on the Secured Claim held by Marilyn Gianulias.

- Article V.D of the Plan, which describes the treatment of the Secured Claim of Marilyn Gianulias, has been modified to clarify that beginning with the payment made on the 49th month, the payment amounts with respect to Marilyn Gianulias are approximate amounts, representing the remaining amounts owing to Marilyn Gianulias (amortized over the last 12 months) in connection with her Secured Claim. Similar modifications were made in Articles II.A.11, II.A.89 and VII.D of the Plan.

These modifications were made to make clear that the remaining amounts owed to Marilyn Gianulias beginning on the 49th month, plus any interest that accrues thereon, will be amortized over the last 12 months of payment of the Secured Claim. These modifications are consistent with the Financial Projections provided in connection with the Disclosure Statement and are designed to remove any confusion over the payments made to Marilyn Gianulias during the last year of payments made on account of her Secured Claim.

- Article V.D of the Plan has also been modified to clarify that in the event that Gross Available Cash Flows for a particular month are insufficient to pay the required amount for such month, (a) to the extent that the amount paid for such month is insufficient to pay the accrued interest for the such month, the unpaid accrued interest shall be added to the principal amount owed to Marilyn Gianulias, and (b) any shortfall in the payment for such month shall be paid from Gross Available Cash Flows for the following month before any payment is made to the Reorganized Debtors under

Section VII.D.1. Similar modifications were made in Article VII.D of the Plan.

These modifications were made to clarify that the monthly payments made to Marilyn Gianulias will be made from Gross Available Cash Flow and that, if Gross Available Cash Flow is insufficient, that the shortfall will be paid the following month before any payments are made to the Reorganized Debtors. These modifications are consistent with Section VII.D.1 of the Plan and are designed to remove any confusion regarding the priority of payments between Marilyn Gianulias and the Reorganized Debtors.

- Former Class 1B-2 has been divided into two classes – Class 1B-2 and 1B-3. Both of these Classes are comprised of Secured Claim of Wells Fargo secured by property located in Hawaii. Both Class 1B-2 and Class 1B-3 receive the treatment previously set forth in Class 1B-2. The Secured Claim of Wells Fargo in Class 1B-2 has been reduced from $3.7 million to $3.327 million and the Secured Claim of Wells Fargo in Class 1B-3 is $373,000. In addition, the definition of "Wells Fargo" has been changed to "Wells Fargo Bank, National Association and/or Wells Fargo Bank N.A."

These modifications were made to reflect the fact that two different divisions of Wells Fargo made loans to Mr. Gianulias secured by the Hawaii property and, as a result, have separate deeds of trust with respect to this property. No modifications have been made to the treatment of Wells Fargo's Secured Claim, nor has the total amount of the Secured Claim been modified. Previously Wells Fargo's Secured Claim in Class 1B-2 was $3.7 million, which was the value of the Hawaii property set forth in Wells Fargo's motion for relief from stay filed in May 2009. The Secured Claim in Class 1B-2 has been reduced to $3.327 million to reflect the amount owing on the first deed of trust, which is fully secured, and the Secured Claim in Class 1B-3 has been set at $373,000, which is the difference between the value of the property and the outstanding amount of the first deed of trust. This modification was made at the request of counsel for Wells Fargo.

The Debtors believe that these proposed clarifications and modifications, and any clarifications or modifications agreed to at the Confirmation Hearing, will not adversely change

the treatment of any creditor who has previously accepted the Plan, and that the Plan may be confirmed without any further solicitation. See generally, In re Mount Vernon Plaza Cmty. Urban Dev. Corp. I, 79 B.R. 305 (Bankr. S.D. Ohio 1987).

VI.

CONCLUSION

The Plan satisfies each of the requirements for confirmation set forth in section 1129(a). Therefore, the Debtors respectfully request that the Court enter an order confirming the Plan under section 1129.

DATED: July 7, 2010

IRELL & MANELLA LLP

By: Kerri A. Lyman

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-and-

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In re: James C. Gianulias and Cameo Homes Debtor(s).	CHAPTER 11 CASE NUMBER 8:08-bk-13150-RK

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: 840 Newport Center Drive, Suite 400, Newport Beach, CA 92660-6324

The foregoing document described as **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF CONFIRMATION OF THE DEBTORS' FOURTH AMENDED PLAN OF REORGANIZATION (DATED MAY 27, 2010), AS MODIFIED** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner indicated below:

I. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF") – Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s) ("LBR"), the foregoing document will be served by the court via NEF and hyperlink to the document. On July 7, 2010, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated below:

☒ Service information continued on attached page

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

☐ Service information continued on attached page

III. SERVED BY PERSONAL DELIVERY, FACSIMILE TRANSMISSION OR EMAIL (indicate method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on July 7, 2010, I served the following person(s) and/or entity(ies) by personal delivery, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. *Listing the judge here constitutes a declaration that personal delivery on the judge will be completed no later than 24 hours after the document is filed.*

SERVED VIA PERSONAL DELIVERY
Chambers of Honorable Robert W. Kwan
United States Bankruptcy Court
411 W. Fourth Street
Santa Ana, CA 92701

Office of the United States Trustee
Attn: Michael Hauser, Esq.
411 W. Fourth Street, # 9041
Santa Ana, CA 92701-4593

☐ Service information continued on attached page

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

7/7/2010	Lori Gauthier	/s/ Lori Gauthier
Date	*Type Name*	*Signature*

In re: James C. Gianulias and Cameo Homes Debtor(s).	CHAPTER 11 CASE NUMBER 8:08-bk-13150-RK

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