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8 UNITED STATES BANKRUPTCY COURT
9 CENTRAL DISTRICT OF CALIFORNIA

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11 In re
12 LOS OSOS COMMUNITY SERVICES
DISTRICT,
13
14 Debtor.

Case No. 06-10548-RR
Chapter 9
MONTEREY MECHANICAL
COMPANY'S STATEMENT OF THE
ISSUES AND DESIGNATION OF THE
RECORD ON APPEAL

Date: NA
Time: NA
Place: NA

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19 Pursuant to Rule 8006 of the Federal Rules of Bankruptcy Procedure, appellant Monterey
20 Mechanical Company ("Appellant"), hereby submits Monterey Mechanical Company's Statement
21 of the Issues and Designation of the Record on Appeal in connection with its appeal of the Order
22 Confirming Plan for Adjustment of Debts for the Los Osos Community Services District Dated
23 October 22, 2010 (entered as docket no. 251 on August 8, 2011).

24 **I. STATEMENT OF THE ISSUES ON APPEAL**

25 A. Did the Bankruptcy Court err in overruling Appellant's objection that the Plan for
26 Adjustment of Debts for the Los Osos Community Services District Dated October 22, 2010 (the
27 "Plan") of debtor Los Osos Community Services District (the "District") is unconfirmable
28 because it requires the District take actions prohibited by law to carry out the Plan in violation of

1 Bankruptcy Code¹ section 943(b)(4) by transferring valuable assets to the County of San Luis
2 Obispo (the "County") for no consideration, thereby transgressing the fraudulent conveyance laws
3 of the State of California and the Contract Clause of the United States Constitution?

4 B. Did the Bankruptcy Court err in finding that one of the properties that might be used
5 to generate value for prepetition creditors had no value in light of various regulatory limitations
6 imposed on it when the only competent evidence on the issue was \$950,000 value the District's
7 own appraisal placed on the property after taking the regulatory restrictions in to account?

8 C. Did the Bankruptcy Court err in relying on a declaration by Mr. Bruce Buel to find
9 that the proceeds of the sale of the properties to be transferred to the County would not be
10 available to creditors in any event when Mr. Buel was not present in court to be cross examined
11 and his declaration concerned questions of law rather than questions of fact and Mr. Buel is not,
12 in any case, a lawyer?

13 D. Did the Bankruptcy Court err in rejecting Appellant's confirmation objection that the
14 Plan discriminates unfairly in violation of Bankruptcy Code sections 943(b)(1) and 1129(b)(1) in
15 separately classifying and paying a single general unsecured creditor in full when it pays all other
16 general unsecured creditors substantially less on the dollar even though the favored creditor is
17 contributing no value directly or indirectly to payment of the District's prepetition creditors under
18 the Plan?

19 E. Did the Bankruptcy Court err in rejecting Appellant's confirmation objection that the
20 plan is not in the best interests of creditors and was not proposed in good faith in violation of
21 Code sections 943(b)(7) and 1129(a)(3) because the County and the residents of the District's
22 Prohibition Zone are getting special substantial benefits, the County by being insulated from
23 liability for the District's debts through confirmation of the Plan instead of dissolution of the
24 District, and the Prohibition Zone residents by having the value of their real property protected
25 and enhanced, even though neither the County nor the residents are contributing anything directly
26 or indirectly towards payment of the District's prepetition creditors?

27 ¹ The "Bankruptcy Code" is 11 U.S.C. §§ 101-1532.

1 F. Did the Bankruptcy Court err in rejecting Appellant's confirmation objection that the
2 Plan is not in the best interests of creditors in violation of Code section 943(b)(7) because the
3 District refuses to contribute available assets towards payment of prepetition creditors when the
4 creditors will be paid 100 cents on the dollar through state law remedies if the Plan is not
5 confirmed?

6 G. Did the Bankruptcy Court err in declining to decide numerous pivotal questions of
7 state law that were raised by the Appellant in connection with its confirmation objections and
8 instead relied on its own failure to decide those questions of law to conclude that the Plan was in
9 the best interests of creditors?

10 **II. DESIGNATION OF THE RECORD ON APPEAL**

Item	Docket No./Ex. No.	Filing Date	Name
1	V	NA	July 14, 2011 deposition of Paavo Ogren 6:8-25 16:16-18:8 18:23-21:6 22:10-23:2 23:5-30:7 36:10-13 49:3-5 50:2-11
2	W	NA	June 28, 2011 deposition of W. Dan Gilmore 5:15-22 15:22-16:25 21:6-9 21:23-22:7 28:14-30:10

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Item	Docket No./Ex. No.	Filing Date	Name
3	A	NA	Ruling and Order Denying Petition for Peremptory Writ of Mandate, <i>Prohibition Zone Legal Defense Fund v. Regional Quality Control Board, Central Coast Region</i> , San Luis Obispo County Superior Court, Case No. CV 070472. December 28, 2010
4	B	NA	Proposed Los Osos Community Services District Measure K-98 and attachment, including Argument in Favor of Measure K-98
5	C	NA	Legislative History of AB 2701
6	D	NA	Senate Local Government Committee, Senator Christine Kehoe, Chair, report dated June 28, 2006 on AB 2701, "Special Districts in San Luis Obispo"
7	E	NA	Memorandum to Members, Formation Commission, from Paul Hood, Executive Officer, dated September 21, 2006, Subject: Dissolution of the Lost Osos Community Services District (2-R-06)
8	F	NA	Memorandum to Members, Formation Commission, from Paul Hood, Executive Officer, dated August 17, 2006, Subject: Dissolution of the Lost Osos Community Services District (2-R-06)
9	G	NA	Email string (most recent W. Jensen top T. McNulty, June 16, 2006 04:19 PM) attaching Report On Policy and Legislative Considerations Related To The Los Osos Community Wastewater Project for the San Luis Obispo County Board of Supervisors (June 2006), County Bates Nos. 0023-0037, Ex. 15 to Ogren Deposition
10	H	NA	Letter N. King to L. Schicker dated September 5, 2006, Ex. 12 to Ogren deposition
11	I	NA	Email W. Jensen to R. Biering dated December 20, 2006 04:20 PM, County Bates No. 0414

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Item	Docket No./Ex. No.	Filing Date	Name
12	J	NA	Email W. Jensen to R. Biering dated May 16, 2006 11:55 AM, County Bates Nos. 0386-0387
13	K	NA	Memorandum "Conversation with Ray Biering, May 15, 2006" by WRJ, County Bates No. 0385
14	L	NA	Attachment A, Los Osos Community Services District, Dissolution Proposal: Options and Issues
15	M	NA	Email string (most recent B. Glaser to W. Jensen et al., December 20, 2006 01:10 PM), County Bates Nos. 0408-0409
16	N	NA	Email string (most recent W. Jensen to G. Wilcox et al., June 15, 2006 01:57 PM), County Bates Nos. 0083-0084, Ex. 17 to Ogren deposition
17	O	NA	Email string (most recent P. Detwiler to W. Jensen et al., June 16, 2006 09:51 AM), County Bates Nos. 0088-0089, Ex. 16 to Ogren deposition
18	P	NA	Email string (most recent W. Jensen to G. Wilcox et al., June 5, 2006 01:52 PM) attaching proposed legislation, County Bates No. 0010-0014, Ex. 13 to Ogren deposition
19	Q	NA	Email N. King to S. Blakeslee, et al, dated August 17, 2006 11:38 AM, County Bates No. 0138, Ex. 14 to Ogren Deposition
20	R	NA	[Omitted]
21	S	NA	State Water Board Board Meeting agenda for March 1, 2011, including package for Item 5 (excluding scientist's evaluation of health issues)
22	T	NA	State Water Resources Control Board Resolution No. 2011-009
23	U	NA	California Regional Water Quality Control Board Central Coast Region Order No. R3-

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Item	Docket No./Ex. No.	Filing Date	Name
			2003-0007
24	216 in Case No. 06-10548-RR	April 22, 2011	Second Amended Disclosure Statement With Respect to Plan for Adjustment of Debts [etc.] 10:26-11:14 13:3-16:12 19:17-20:2 23-25 27:5-15 & Ex. E 28:12-14 29:2-6 38:12-14 41:5-7 41:19-24 67:2-20 67:31-68:2 & Ex. E at 273-75 68:8-14 68:19-23 69:26-70:11 & Ex. E at 271-73 75:14-76:23
25	13 in Case No. 06-10548-RR	September 28, 2006	Notice of Removal
26	39 in Case No. 06-10548-RR	February 21, 2007	Notice of Motion and Motion for Relief From the Automatic Stay Under 11 U.S.C. § 362 (with supporting declarations) (Movant: Barnard Constr. and Monterey Mech.)
27	126 in Case No. 06-10548-RR	March 21, 2008	Omnibus Reply Memorandum of Points and Authorities in Support of Motion for Authority to Compromise a Controversy with

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Item	Docket No./Ex. No.	Filing Date	Name
			County of San Luis Obispo; Declaration of Joseph M. Sholder (with Proof of Service)
28	162 in Case No. 06-10548-RR	January 13, 2010	Declaration of Joseph M. Sholder re Opposition to Motion of Barnard Construction Co. and Monterey Mechanical Co. to Dismiss the Case
29	191 in Case No. 06-10548-RR	December 13, 2010	Transfer Of Claim Other Than For Security
30	Exhibit A to 216 in Case No. 06-10548-RR	April 22, 2011	Second Amended Plan for Adjustment of Debts for the Los Osos Community Services District Dated October 22, 2010
31	232 in Case No. 06-10548-RR	July 8, 2011	Monterey Mechanical Company's Objections to Confirmation of the Second Amended Plan
32	235 in Case No. 06-10548-RR	July 20, 2011	Los Osos Community Services District's Memorandum of Points and Authorities in Support of Confirmation of Plan for Adjustment of Debts of Los Osos Community Services District Dated October 22, 2010
33	233 in Case No. 06-10548-RR	July 8, 2011	Official Committee of Unsecured Creditors' Brief in Response to Second Amended Disclosure Statement [sic] with Respect to Plan for Adjustment of Debts of Los Osos Community Services District Dated October 22, 2010
34	243 in Case No. 06-10548-RR	July 20, 2011	County of San Luis Obispo's Reply to Monterey Mechanical's Objections to Confirmation of the Second Amended Plan
35	234 in Case No. 06-10548-RR	July 20, 2011	Declaration of Joseph M. Sholder re Receipt of Voting Ballots
36	242 in Case No. 06-10548-RR	July 20, 2011	Monterey Mechanical's List of Witnesses and Exhibits for Confirmation Hearing
37	248 in Case No. 06-10548-RR	July 25, 2011	Monterey Mechanical's Errata to List of Witnesses and Exhibits for Confirmation Hearing

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Item	Docket No./Ex. No.	Filing Date	Name
38	245 in Case No. 06-10548-RR	July 20, 2011	County of San Luis Obispo's List of Witnesses and Exhibits for Hearing on Confirmation of Plan for Adjustment of Debts for the Los Osos Community Services District Dated October 22, 2011 (with attached exhibits)
39	237 in Case No. 06-10548-RR	July 20, 2011	Los Osos Community Services District's List of Witnesses and Exhibits for Hearing on Confirmation of Plan for Adjustment of Debts for the Los Osos Community Services District dated Oct. 22, 2010
40	236 in Case No. 06-10548-RR	July 20, 2011	Los Osos Community Services District's Request for Judicial Notice
41	NA	NA	Transcript of Proceedings of July 28, 2011 in Case No. 06-10548-RR (ordered but not available yet)
42	252 in Case No. 06-10548-RR	August 12, 2011	Transcript of Proceedings of July 29, 2011 in Case No. 06-10548-RR
43	NA	NA	Docket Sheet in Case No. 06-10548-RR
44	1 in Adversary Proceeding no. 06-01098	September 28, 2006	Notice of Removal
45	3 in Adversary Proceeding no. 06-01098	October 12, 2006	Motion For Order Vacating Preliminary Injunction, Memorandum of Points and Authorities, Declaration of Lisa Schicker and Request To Take Judicial Notice
46	13 in Adversary Proceeding no. 06-01098	December 1, 2006	Reply to Responses in Opposition to Motion for Order Vacating Preliminary Injunction
47	16 in Adversary Proceeding no. 06-01098	January 12, 2007	Order Vacating Preliminary Injunction and Restricting the Use of SRF Loan Proceeds
48	27 in Adversary Proceeding no. 06-01099	March 9, 2007	Stipulation to Continue Status Conference; Extending Time for Defendant to Respond to Plaintiff's First Amended Complaint; and Continuing Hearing re Relief from Automatic

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Item	Docket No./Ex. No.	Filing Date	Name
			Stay and Order Thereon
49	28 in Adversary Proceeding no. 06-01099	March 18, 2007	Order re: Stipulation to Continue Status Conference; Extending Time for Defendant to Respond to Plaintiff's First Amended Complaint; and Continuing Hearing re Relief from Automatic Stay
50	30 in Adversary Proceeding no. 06-01099	May 17, 2007	Stipulation to Continue Status Conference; Extending Time for Defendant to Respond to Plaintiff's First Amended Complaint; and Continuing Hearing re Relief from Automatic Stay and Order Thereon
51	31 in Adversary Proceeding no. 06-01099	May 21, 2007	Order re: Stipulation to Continue Status Conference; Extending Time for Defendant to Respond to Plaintiff's First Amended Complaint; and Continuing Hearing re Relief from Automatic Stay
52	33 in Adversary Proceeding no. 06-01099	August 15, 2007	Stipulation to Continue Status Conference; Extending Time for Defendant to Respond to Plaintiff's First Amended Complaint; and Continuing Hearing re Relief from the Automatic Stay and Order Thereon
53	34 in Adversary Proceeding no. 06-01099	September 2, 2007	Order re: Stipulation to Continue Status Conference; Extending Time for Defendant to Respond to Plaintiff's First Amended Complaint; and Continuing Hearing re Relief from Automatic Stay
54	35 in Adversary Proceeding no. 06-01099	October 17, 2007	Stipulation to Continue Status Conference; Extending Time for Defendant to Respond to Plaintiff's First Amended Complaint; and Continuing Hearing re Relief from the Automatic Stay and Order Thereon
55	36 in Adversary Proceeding no. 06-01099	October 18, 2007	Order re: Stipulation to Continue Status Conference; Extending Time for Defendant to Respond to Plaintiff's First Amended Complaint; and Continuing Hearing re Relief from Automatic Stay
56	39 in Adversary Proceeding no. 06-01099	February 29, 2008	Motion for Authority to Compromise a Controversy with County of San Luis Obispo; Memorandum of Points and Authorities;

Item	Docket No./Ex. No.	Filing Date	Name
			Declaration of Joseph M. Sholder
57	40 in Adversary Proceeding no. 06-01099	February 29, 2008	Notice of Motion for Authority to Compromise a Controversy with County of San Luis Obispo; Memorandum of Points and Authorities; Declaration of Joseph M. Sholder
58	251 in Case No. 06-10548-RR	August 8, 2011	Order Confirming Plan for Adjustment of Debts for the Los Osos Community Services District Dated October 22, 2010
59	253 in Case No. 06-10548-RR	August 22, 2011	Monterey Mechanical Company's Notice of Appeal
60	254 in Case No. 06-10548-RR	August 23, 2011	Statement of Election to Have Appeal Transferred and Heard by the United States District Court Pursuant to 28 U.S.C. § 158(C)(1)(B) re Monterey Mechanical Company's Notice of Appeal of Plan Confirmation Order
61	255 in Case No. 06-10548-RR	August 24, 2011	Monterey Mechanical Company's Amendment to Its Notice of Appeal
62	256 in Case No. 06-10548-RR	August 23, 2011	Notice of Referral of Appeal

Dated: September 6, 2011

ADAM A. LEWIS
MILES H. IMWALLE
VINCENT J. NOVAK
MORRISON & FOERSTER LLP

By: /s/ Adam A. Lewis
Adam A. Lewis

Attorneys for Appellant
MONTEREY MECHANICAL
COMPANY

NOTE: When using this form to indicate service of a proposed order, **DO NOT** list any person or entity in Category I. Proposed orders do not generate an NEF because only orders that have been entered are placed on the CM/ECF docket.

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:

Morrison & Foerster LLP, 425 Market Street, 32nd Floor, San Francisco, CA 94105

A true and correct copy of the foregoing document described as **Monterey Mechanical Company's Statement of the Issues and Designation of the Record on Appeal** 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 **September 6, 2011**, 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:

- Helen G Arens helen.aren@doj.ca.gov
- William C Beall artyc@aol.com, bbassist@beallandburkhardt.com; carissa@beallandburkhardt.com
- Joseph P Buchman jbuchman@bwslaw.com
- Robert Christmas rchristmas@nixonpeabody.com
- Louis J Cisz lcisz@nixonpeabody.com
- Donald H Cram dhc@severson.com
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- Michael D Good mgood@southbaylawfirm.com
- David L Hagan lawprofessional@charter.net, lawprofessional@att.net
- Bonnie M Holcomb bonnie.holcomb@doj.ca.gov
- Joseph M. Sholder sholder@g-tlaw.com
- Peter Susi cheryl@msmlaw.com, peter@msmlaw.com
- United States Trustee (ND) ustpregion16.nd.ecf@usdoj.gov

Service information continued on attached page

II. SERVED BY U.S. MAIL OR OVERNIGHT MAIL(indicate method for each person or entity served):

On **September 6, 2011**, 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.

Via U.S. Mail:

Hon. Robin L. Riblet, Northern Division, U.S. Bankruptcy Court, 1415 State Street, Suite 103, Santa Barbara, CA 93101

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 **Fill in Date Document is Filed**, 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.

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.

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

09/06/2011
Date

Margaret McIlhargie
Type Name

/s/ Margaret McIlhargie
Signature