Nicholas J. DiCarlo (Bar No. 016457)
Email: ndicarlo@thedcpfirm.com
Christopher A. Caserta (Bar No. 018755)
Email: ccaserta@thedcpfirm.com
DICARLO CASERTA MCKEIGHAN & PHELPS PLC
6900 E. Camelback Rd., Ste. 250
Scottsdale, AZ 85251
TELEPHONE (480) 222-0914
FAX (480) 222-0955
Attorneys for Plaintiff ML Liquidating Trust

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

ML LIQUIDATING TRUST, as successor-in-interest to Mortgages, Ltd. Plaintiff, vs. MAYER HOFFMAN MCCANN, P.C., a Missouri professional corporation; CBIZ, Inc., a Delaware corporation; CBIZ MHM, LLC, a Delaware limited liability company, Defendants.	Case No. 2:10-cv-02019-MHM **PLAINTIFF'S REPLY IN SUPPORT OF ITS MOTION TO REMAND TO STATE COURT**

Plaintiff ML Liquidating Trust ("Plaintiff") hereby files its Reply in Support of its Motion to Remand to State Court. In their Response to Plaintiff's Motion to Remand ("Response"), Defendants fail to meet their burden of overcoming the "strong presumption against removal jurisdiction." *Gaus v. Miles*, 980 F.2d 564, 566 (9th Cir. 1992). This matter should be remanded back to state court -- along with the other three similar suits against Defendants which were also recently remanded.

I. DEFENDANTS HAVE FAILED TO ESTABLISH "RELATED TO" BANKRUPTCY JURISDICTION UNDER THE "CLOSE NEXUS" TEST.

Defendants concede, as they must, that the existence of bankruptcy "related-to" jurisdiction becomes much narrower in a post-confirmation context and will only exist over claims which have a "close nexus to the bankruptcy plan or proceeding." (Response, pp. 9-10.) *In Re Pegasus Gold*, 394 F.3d 1189, 1194 (9th Cir. 2005).

Defendants, however, initially attempt to circumvent the "close nexus" test by essentially manufacturing an ambiguity in Ninth Circuit law -- specifically that the Ninth Circuit "has yet" to address whether the test would apply to claims pursued by a liquidating trustee. (Response, p. 10.) Defendants alternatively argue that the claims brought by Plaintiff lack the required "close nexus." (*Id.*) Both arguments fall short.

A. <u>The "Close Nexus" Test (Not The Broader Pre-Confirmation Test) Applies In The Context of Claims Brought By A Liquidating Trust.</u>

Relying heavily upon the First Circuit's decision in *In re Boston Reg'l Med. Ctr., Inc.*, 410 F.3d 100 (1st Cir. 2005), Defendants argue that the narrower post-confirmation "close nexus" test does not, as a matter of law, apply to claims brought by a liquidating trust. (Response p. 10.) Instead, Defendants contend that the broader pre-confirmation test applies. (*Id.*) Defendants' reliance on First Circuit precedent is wholly misplaced.

The Ninth Circuit has specifically "adopt[ed] and appl[ied] the Third Circuit's 'close nexus' test for post-confirmation 'related to' jurisdiction" as formulated in *In Re Resorts Int'l*, 372 F.3d 154, 167 (3d Cir. 2004) -- <u>not</u> the First Circuit's formulation of the rule. *Pegasus Gold*, 394 F.3d at 1194. The "close nexus" test was developed by the Third Circuit in the context of post-confirmation claims brought by a continuing trust based, in part, upon the court's recognition that trusts "by their nature maintain a connection to the bankruptcy even after the plan has been confirmed." *Re Resorts Int'l*, 372 F.3d at 164-65, 167. The question was, in a post confirmation setting when *the estate no longer even exists*, how much of a connection warranted jurisdiction. (*Id.* at 164-65, 167.) In fact, the Ninth Circuit adopted the Third Circuit's formulation of the test because the test reflected "the limited nature of post-confirmation jurisdiction but retain[ed] a certain flexibility, which can be especially important in cases with continuing trusts." *Pegasus Gold*, 394 F.3d at 1194.

Thus, the Ninth Circuit's "close nexus" test not only applies in the context of post-confirmation claims brought by a liquidating trust, it was specifically adopted with such claims in mind. Thus, Defendants' attempt to apply the wrong jurisdictional test should be rejected.

B. Defendants Cannot Establish A "Close Nexus" Under The Ninth Circuit's "Close Nexus" Test.

Defendants alternatively argue that even if the "close nexus" test applies, jurisdiction exists. Plaintiff briefly addresses each of Defendants' flawed arguments.

1. A "Close Nexus" Is Not Created Merely Because Claims Are Pursued By A Liquidating Trust.

Defendants argue that jurisdiction exists in this case because the Litigation Trust was created by the ML bankruptcy plan, "is an integral component of the bankruptcy process," and "represents the estate." (Response, pp. 10-11.)

Contrary to what Defendants suggest, "jurisdiction does not extend necessarily to all matters involving litigation trusts." *Resorts Int'l*, 372 F.3d at 169. Indeed, the Third Circuit specifically rejected the argument that jurisdiction exists over a state law malpractice claim simply "because the Litigation Trust is effectively a continuation of the bankruptcy estate." *Resorts Int'l*, 372 F.3d at 157, 169.

As Defendants point out, "the Plan transferred to the Trust the rights 'in [ML's] Non-Loan Assets,' including any 'Causes of Action' that ML" may have had against third parties. (Response, p. 11.) Plaintiff (not the debtor) now has "exclusive control and possession" of the claims it is pursuing against Defendants. (Plan § 6.6.) "The deliberate act to separate the litigation claims from the bankruptcy estate weakens" -- not strengthens -- Defendants' position that the Liquidating Trust effectively "has the same jurisdictional nexus as that of the estate." *Resorts Int'l*, 372 F.3d at 169.

Moreover, the Ninth Circuit "close nexus" test focuses in the main on the *nature and substance of the claims being pursued* -- not the party bringing those claims. Only where the resolution of a claim involves the "interpretation, implementation, consummation, execution, or administration of the confirmed plan will typically have the requisite close nexus." *Pegasus Gold*, 394 F.3d at 1194 (citing *Resorts Int'l*, 372 F.3d at 167) *See also Resorts Int'l*, 372 F.3d at 170 (close nexus exists only where resolution of claims requires court "to interpret or construe" plan or trust agreement.) Where, however, a claim "exist[s] entirely apart from the bankruptcy proceeding and d[oes] not necessarily depend upon resolution of a

substantial question of bankruptcy law" the required close nexus will not exist. *In re Ray*, 624 F.3d 1124, 1135 (9th Cir. 2010).

Plaintiff's Arizona state law claims for accountant malpractice, breach of contract and negligent misrepresentation exist entirely "apart from" ML's bankruptcy proceeding, do not "depend upon resolution of a substantial question of bankruptcy law," and do not require the court "to interpret or construe" ML's plan for their resolution. *See Resorts Int'l,* 372 F.3d at 170 ("Whether Price Waterhouse was negligent or breached its contract will not be determined by reference to" plan or trust agreement.) The *only* connection to the ML bankruptcy case, therefore, is that the plaintiff in this matter is a liquidating trust created under ML's plan. This "bare factual nexus" is insufficient to create jurisdiction. *Resorts Int'l*, 372 F.3d at 170-71; *see also In re Haws*, 158 B.R. at 971.

2. <u>The Timing Of The Conduct Giving Rise To Plaintiff's Claims Is Irrelevant Under The "Close Nexus" Test.</u>

Splitting hairs even further, Defendants argue that the "close nexus" exists "whenever a post-confirmation liquidation trust prosecutes pre-petition claims." (Response, p. 11.)[1] Even assuming Plaintiff's claims are "pre-petition claims," this contention is meritless.[2] The "close nexus" test applies to "any claim or cause of action filed post-confirmation, regardless of when the conduct giving rise to the claim or cause of action occurred." *In re Seven Fields Dev. Corp.*, 505 F.3d 237, 265 (3rd Cir. 2007). As discussed above, the test looks to the nature of the claim and whether resolution of the claims requires the Court to "interpret or construe" the confirmation plan -- not the timing of the conduct giving rise to the claims.

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[1] Defendants attempt to distinguish the *Resorts Int'l* case from this case based upon the fact that the accountant malpractice claim in that case arose out of accounting services provided to the liquidating trust in the post-confirmation context. (Response, p. 13.) Such a claim, however, would appear to be more closely connected then Plaintiff's so-called "pre-petition" claims. *Resorts Int'l,* 372 F.3d at 158. In any event, what is clear is that state law accounting malpractice claims (pre or post-petition) lack the required close nexus.

[2] Although Plaintiff's claims are based upon wrongful conduct which pre-dated the bankruptcy petition, it was not until *after* the bankruptcy was filed and Plaintiff was able to obtain and review Defendants' workpapers that Plaintiff learned that it even had a claim.

Resorts Int'l, 372 F.3d at 170. As in other cases, the non-bankruptcy state law tort claims asserted by Plaintiff -- even if deemed "pre-petition" claims – simply lack the required close nexus. *See In re BWI Liquidating Corp.*, 437 B.R. at 164-65 ("Close nexus" lacking over state law claims which arose pre-petition); *In re Insilco Technologies, Inc.* 330 B.R. at 524 ("[E]ven though the claims alleged by the Liquidating Trustee in the Amended Complaint arose prepetition, their resolution does not require interpretation of the Plan and will not affect the bankruptcy estate or the Debtor"); *Haws*, 158 B.R. at 971 (jurisdiction lacking over pre-petition claims where court not "asked to construe or interpret the confirmed plan or to see that federal bankruptcy laws are complied with…").[3]

C. <u>Defendants' Additional Arguments Also Lack Merit.</u>

Citing various ML plan provisions, Defendants also argue (as they did in their removal notice) that a "close nexus" exists because the ML plan retained jurisdiction over the claims, and because the suit will "benefit ML's unsecured creditors." (Response, pp. 11-13.) As discussed more fully in Plaintiff's opening memorandum, these arguments fail as well.

First, where jurisdiction is lacking, as it is here, "the parties cannot create it by agreement even in a plan of reorganization." *Resorts Int'l*, 372 F.3d at 161 ("Neither the bankruptcy court nor the parties can write their own jurisdictional ticket"); *Haws*, 158 B.R. at 968-69.

Second, the Ninth Circuit has squarely rejected the argument that a "close nexus" exists merely because a group of creditors may ultimately benefit by the resolution of the

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[3] Defendants rely heavily upon the decision in *In re Refco, Inc. Sec. Lit.*, 628 F.Supp.2d 432 (S.D.N.Y. 2008) and the line of district court cases cited therein, including *In re Premium Escrow Servs*., Inc., 342 B.R. 390, 399 (Bankr. D.D.C. 2006), *In re Railworks Corp*., 325 B.R. 709, 723 (Bankr. D.Md. 2005), and *In re AstroPower Liquidating Trust*, 335 B.R. 309, 325 (Bankr. Del. 2005). It is notable, however, that in rendering its decision, the *Refco* court cited the First Circuit decision in *In re Boston Medical* with approval (628 F.Supp. at 442) -- a decision which, as discussed above, is squarely at odds with the Ninth Circuit and Third Circuit's formulation of the "close nexus" test.

claims as a rationale which "could endlessly stretch a bankruptcy court's jurisdiction." *Pegasus Gold*, 394 F.3d at n.1, p. 1194; *See also Resorts Int'l*, 372 F.3d at 170.

In short, the required "close nexus" simply does not exist in this case and Defendants, therefore, cannot establish "related to" jurisdiction.

II. THE COURT IS VESTED WITH EQUITABLE REMAND POWERS UNDER 28 U.S.C. 1452(B).

Even though three related suits against Defendants have now been equitably remanded to state court pursuant to 28 U.S.C. § 1452(b), Defendants contend that equitable remand is inappropriate in this case. (Response, p. 2.) Defendants' argument is premised on the flawed assertion that the Court "has no power to equitably remand a case removed…on the basis of diversity jurisdiction." (Response, pp. 8, 14.) Defendants appear to suggest that the Court has been stripped of its equitable remand powers under 28 U.S.C. § 1452(b) simply because Defendants have also sought removal on diversity grounds. Defendants clearly miss the point.

A. This Court's Equitable Remand Powers Exist Notwithstanding The Fact That Defendants Have Also Removed on Diversity Grounds.

Defendants seek removal of this case pursuant to 28 U.S.C. § 1452(a) on the basis of alleged bankruptcy jurisdiction. 28 U.S.C. § 1452(b) states that "[t]he court to which such claim or cause of action is removed *may remand such claim or cause of action on any equitable ground*." (Emphasis added.) Nothing in the statute suggests what Defendants suggest here -- specifically that the Court loses its equitable remand powers when a matter is also removed on an alternative non-bankruptcy basis. To the contrary, the Ninth Circuit has clearly held that "the 'any equitable ground' remand standard is *an unusually broad grant of authority*. It subsumes and reaches beyond all of the reasons for remand under non-bankruptcy removal statutes." *In re McCarthy*, 230 B.R. 414, 417 (9th Cir. 1999).

As discussed in Plaintiff's opening memorandum, "[c]ourts may consider up to fourteen factors" when deciding whether to exercise their remand powers under 28 U.S.C. § 1452(b). *In re Cedar Funding, Inc.*, 419 B.R. 807, 820 (9th Cir. BAP 2009); *In re Cytodyn of New Mexico, Inc.*, 374 B.R. 733, 738 (Bankr. C.D. Cal. 2007). "Any one" of these factors

"may provide an equitable basis upon which to remand an action." *Federal Home Loan Bank of Seattle v. Deutsche Bank Sec. Inc.*, No. C10-0140 RSM, 2010 WL 3512503, *7 (W.D. Wash. Sept. 1, 2010). The Ninth Circuit has made it clear that the existence of a "jurisdictional basis, if any, other than § 1334" is but one of these factors. *In re Cedar Funding, Inc.*, 419 B.R. at 821, n. 18; *See also In re Cytodyn*, 374 B.R. at 740; *In re Roman Catholic Bishop of San Diego*, 374 B.R. 756, 761 (Bankr. S.D. Cal. 2007); *Davis v. Life Investors Ins. Co. of* America**,** 282 B.R. 186, 187-88, 194 (S.D. Miss. 2002).

Courts may exercise their equitable remand powers under 28 U.S.C. § 1452(b) even in cases where an action is also removed on diversity or federal question grounds. *See In Re Cytodyn*, 374 B.R. at 738; *Davis*, 374 B.R. at 194 (remanding action removed on grounds of diversity and bankruptcy related jurisdiction); *Vig v. Indianapolis Life Ins. Co.*, 336 B.R. 279, 281, 285-86 (S.D. Miss. 2005) (remanding action removed on bankruptcy related grounds as well as under 28 U.S.C. § 1446 (federal question), 28 U.S.C. § 1331 (ERISA)).[4]

Thus, contrary to Defendants' unsupported position, the Court can (and should) exercise its equitable remand powers in this case even though Defendants have also removed this case on diversity grounds. As set forth below, however, diversity jurisdiction is lacking -- which is yet another factor favoring equitable remand.

B. The Equitable Remand Factors Weigh Heavily In Favor of Remand.

Most, if not all of the equitable remand factors discussed in Plaintiff's opening memorandum weigh heavily in favor of remand. Defendants only seriously dispute two of the fourteen factors.

First, Defendants contend that judicial efficiency weighs in favor of this Court

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[4] Defendants argument is predicated on a footnote in *A.H. Robins Co., Inc. (Dalkon Shield Claimants Trust*) *v. MacLeod*, 197 B.R. 575 (E.D. Va. 1995), a case decided in the context of a "motion to interpret" a plan of reorganization – not a motion to remand. In fact, as set forth below, *AH Robins* actually debunks Defendants' separate argument that, for purposes of determining Plaintiff's citizenship, the Court should look only to the citizenship of the Trustee.

keeping this matter because if this Court remands this suit, the "state and federal courts will *both* have to oversee similar suits against Defendants." (Response, p. 15.) Defendants miss the point.

The state and federal courts will both be overseeing suits against Defendants *even if the Court chooses not to remand.* Two suits against Defendants were recently equitably remanded back to state court -- specifically *Askenazi, et. al. v. Greenberg Traurig LLP*, et. al. (Case No. 2:10-ap-01402) and *Victim's Recovery LLC v. Greenberg Traurig, et. al*. (Case No. 2:10-ap-01214). (*See* Minute Entry dated November 17, 2010, Plaintiff's Motion, Exhibit 1). Moreover, since Plaintiff filed its Motion, *a third suit* against Defendants -- *Marsh et. al. v. Greenberg Traurig LLP, et. al.* (Case No. 2:10-ap-1824) -- has also been equitably remanded back to state court. (*See* Order Granting Stipulation to Remand Case to State Court, attached hereto as Exhibit 1).[5]

Judicial efficiency, therefore, clearly favors relieving this Court's over-burdened docket[6] by having this matter remanded to state court so that it can be litigated alongside the other three related non-class action suits against Defendants.[7]

Defendants further contend that if the Court declines jurisdiction, then the "suits against Defendants in different courts create the possibility of inconsistent results." (Response, p. 16.) Again, however, at this point, this possibility exists even if the Court does not remand this case. In fact, because all of the other non-class action suits against Defendants have already been remanded to state court, *the possibility of inconsistent results*

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[5] It is unclear why Defendants did not point this out to the Court in their Response brief.

[6] The Court's overloaded docket is evident from the recent reassignment of this matter from Judge Murguia in the District of Arizona to the Honorable Judge John Sedwick in the District of Alaska and then to the Honorable Chief Judge Ralph R. Beistline also of the District of Alaska.

[7] If this suit is remanded, then the only suit remaining in federal court would the class action litigation in *Facciola v. Greenberg Traurig, LLP*, 2:10-cv-01025-MHM (D. Ariz.) which, as Defendants note, "is in federal court based on the Class Action Fairness Act." (Response, p. 15.)

is now only increased if this matter is not also remanded.[8]

The various factors considered by courts in the Ninth Circuit weigh heavily in favor of having this suit equitably remanded to state court. *See In re Cedar Funding, Inc.*, 419 B.R. at 820; *In re Cytodyn of New Mexico, Inc.*, 374 B.R. at 738.

III. THE COURT LACKS DIVERSITY JURISDICTION.

Based upon affidavits provided to the Court, Defendants take the position that they are citizens of Kansas (Mayer Hoffman) and Ohio (CBIZ and CBIZ-MHM), collectively, for diversity purposes. (Response, pp. 6-7.) Even if Defendants' affidavits are taken at face value,[9] diversity is lacking because, as set forth herein, Plaintiff is also a citizen of Ohio for diversity purposes.

Plaintiff ML Liquidating Trust is just that -- a trust. According to the Supreme Court, the citizenship of a trust for diversity purposes hinges upon whether the underlying suit is being brought by (or against) a trustee or in the name of the trust itself. Indeed, in *Navarro Savings Assoc. v. Lee*, 446 U.S. 458, 100 S.Ct. 1015 (1980), the Court held that in a suit by or against a trustee (as opposed to the trust itself), courts should look to the citizenship of the trustee "without regard to the citizenship of the trust beneficiaries." *Id.* at 459, 100 S.Ct. 1781; *see also Emerald Investors Trust v. Gaunt Parsippany Partners*, 492 F.3d 192, 201

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[8] Unlike a single plaintiff suit such as this one, "class actions suits tend to be among the more lengthy and complicated cases." *See Allapattah Services, Inc. v. Exxon Corp.*, 362 F.3d 739 (11th Cir. 2004.) The risk of inconsistent legal rulings is far more pronounced if this matter remains in federal court while the other three non-class action suits against Defendants (arising from the same allegedly failed audits) are litigated in state court.

[9] In *Hertz Corp. v. Friend*, 130 S.Ct. 1181 (2010), cited by Defendants, the Supreme Court clarified that for diversity jurisdiction purposes, a corporation's principal place of business is governed *solely* by the "nerve center" test -- a test long applied in the Ninth Circuit. *Hertz Corp.*, 130 S.Ct. at 1190, 1192. Defendants characterize *Hertz* as creating a "bright line rule," but this is contradicted by the Court's own recognition that the "nerve center" test will, at times, be factually difficult to apply. *Id.* at 1194. *Hertz* actually confirms that removing defendants "must support their allegations by competent proof." *Id.* at 1194-95 (emphasis added). Using terse affidavits, which hardly seem like "competent evidence," CBIZ and CBIZ-MHM claim Ohio as their principal place of business while Mayer Hoffman claims Kansas.

(3rd Cir. 2007) (discussing *Navarro*). In its later decision in *Carden v. Arkoma*, 494 U.S. 185, 110 S.Ct. 1015 (1990), however, the Court concluded that in a suit by or against an "artificial entity" (such as the partnership who brought the suit in that case), "diversity of citizenship *depends upon the citizenship of all the members*." 494 U.S. at 195; 110 S.Ct. at 1019. *Emerald Investors*, 492 F.3d at 200. (discussing *Carden*) (emphasis added).

To Plaintiff's knowledge, the Ninth Circuit has never squarely addressed the citizenship of a trust -- also an "artificial entity"[10] -- in the context of a suit by (or against) a trust under the principals set forth in *Carden*. After considering both *Navarro* and *Carden*, however, the Third Circuit has held that where a trust (as opposed to its trustees) is party to a suit, "the citizenship of *both the trustee and the beneficiary* should control in determining the citizenship of a trust." 492 F.3d at 205 (emphasis added). Other courts from the Fourth, Tenth and Eleventh Circuits have concluded that *Carden* alone is controlling in this context and that, for diversity purposes, a trust is "a citizen of each state in which it has a beneficial shareholder." *Riley v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* 292 F.3d 1334, 1337 (2002); *Dixon v. DB50 2007-1 Trust*, 2010 WL 5174758, *3 (Slip Copy) (Dec. 15, 2010, M.D.Ga.) ("[A] trust is a citizen of each state in which it has at least one beneficial owner."); *A.H. Robins Co., Inc.*, 197 B.R. at 579 (cited by Defendants) ("[W]here the party suing or being sued is an artificial entity, such as the Trust,…the citizenship of the entity is determined by the citizenship of *all* its members."); *See also San Juan Basin Royalty Trust v. Burlington Resources Oil & Gas, Co., L.P.*, 588 F.Supp. 1274, 1280 (D. N.Mex. 2008) (relying on *Lenon v. St. Paul Mercury Ins. Co.*, 136 F.3d 1365 (10th Cir. 1998)).

Significantly, at least one district court within the Ninth Circuit has now expressly adopted the *Emerald Investors* approach, concluding that the citizenship of *both* the trustee and beneficiaries controls the citizenship of the trust for diversity purposes. *PDP La Mesa*,

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[10] The Ninth Circuit equates trusts to partnerships in so far as their status as an "artificial" entity is concerned. *Cetacean Community v. Bush*, 386 F.3d 1169, 1176 (9th Cir. 2004) (referring to both a trust and partnership as "artificial persons.").

LLC v. La Salle Medical Office Fund II, 2010 WL3988598, *3 (Slip Copy) (Oct. 12, 2010, S.D. Cal.) ("[T]his Court adopts the rule set out by the Third Circuit…")

This authority clarifies an important point: In suits by or against a trust, the citizenship of the trust beneficiaries will govern (in whole or in part) the citizenship of the trust for diversity purposes. Defendants Response, which considers *only* the citizenship of the Liquidating Trustee,[11] is flawed and incomplete.

As set forth in the attached affidavit of Matthew Hartley, Trustee of the ML Liquidating Trust, the Trust's "Beneficiaries" include individual investors who are citizens of the state of Ohio. (*See* Declaration of Matthew Hartley, attached hereto as Exhibit 2.) Defendants CBIZ and CBIZ-MHM also claim to be citizens of Ohio. Complete diversity and, hence, diversity jurisdiction is lacking.[12] *See Cook v. AVI Casino Enterprises, Inc.*, 548 F.3d 718 (9th Cir. 2008) (jurisdiction exists only where citizenship of plaintiff is diverse from each defendant.)

IV. CONCLUSION.

For the reasons set forth herein and in Plaintiff's Motion, Plaintiff requests that this matter be remanded back to Maricopa County Superior Court where it was originally filed.

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[11] Defendants rely on the Ninth Circuit's decision in *Johnson v. Columbia Prop. Anchorage, LP*, 437 F.3d 894 (9th Cir. 2006) where the court stated that "a trust has the citizenship of its trustee or trustees." *Id.* at 899. However, as one court noted, *Johnson* is inapposite because "a trust was not a named party and the citizenship of the trust for purposes of diversity was not directly at issue." *San Juan Basin Royalty Trust*, 588 F.Supp. at 1279. Moreover, as the Southern District of California noted in the *PDP La Mesa* decision, "the case *Johnson* relies on for that statement is *Navarro*, and as discussed above, *Navarro* had nothing to do with the citizenship of a trust, since it was a suit by the trustees in their own names." 2010 WL 3988598 at *3.

[12] As discussed in Plaintiff's Motion, Defendant Mayer Hoffman clearly has a very strong presence in California and has even represented in public documents that its principal place of business is in California. This is significant because, many of the Trust beneficiaries are also citizens of California. (*See* Exhibit 2.) Thus, to the extent the Court does not find that diversity is lacking for the reasons set forth herein, Plaintiff alternatively requests jurisdictional discovery to determine whether California is really Mayer Hoffman's "nerve center." *Hertz* does not preclude such discovery as Defendants claim.

RESPECTFULLY SUBMITTED: this 14th day of January, 2011.

DICARLO CASERTA MCKEIGHAN & PHELPS PLC

/s/ Nicholas J. DiCarlo
Nicholas J. DiCarlo
Christopher A. Caserta

ORIGINAL electronically filed with the Clerk's Office;
COPY electronically transmitted to Honorable Ralph R. Beistline; and
COPY electronically transmitted to the following
CM/ECF registrants this same date to:

Marty Harper mharper@polsinelli.com
Katherine V Brown kvbrown@polsinelli.com

David F Adler dfadler@jonesday.com
James R Wooley jrwooley@jonesday.com
Louis A Chaiten lachaiten@jonesday.com

By: */s/ Nicholas J. DiCarlo*