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**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

*Clerk, United States Bankruptcy Court
Eastern District of Calif.*

IN RE:

CHAPTER 11 (Reorganization)
No. 282-00571-D-11

**GOLDEN PLAN OF CALIFORNIA,
INC., A California Corp.**

Debtor.

**STATE LOAN SERVICING, INC.
A California Corp.**

No. 282-00572-D-11

Debtor.

**FINANCIAL SECURITIES AGENCY, INC.
A California Corporation,**

No. 282-00573-D-11

Debtor.

**MID-CENTRAL CALIFORNIA, INC.
A California Corporation,**

No. 282-00574-D-11

Debtor.

**MELVYN J. COBEN,
Trustee for GOLDEN PLAN OF
CALIFORNIA, INC., STATE LOAN
SERVICING, INC., FINANCIAL
SECURITIES AGENCY, INC.,
MID-CENTRAL CALIFORNIA, INC.**

ADVERSARY NO. 282-0593

Plaintiff,

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW
IN SUPPORT OF ISSUANCE OF
PRELIMINARY INJUNCTION**

vs.

**JEFFREY APLAND, JERROLD F. BACH,
MARY C. BACH, B & M MANAGEMENT,
B & M ENTERPRISES, BUCBOARD ENTERPRISE,
INC., A California Corporation, CENTRAL
LOAN SERVICING, INC., a California
Corporation, CAPRI ASSOCIATES,
INC., CERTIFIED T.D. SERVICE,
a California Corporation, EDWARD R. CLARK,
JOHNNY L. CLARK, LAURA FAY CLARK,
DANHEL COMPANY, INC.,
DELTA DEVELOPMENT, a California**

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1 Corporation, FRANCES K. ESPINOZA
2 (aka FRANCES PRESCOTT MONACO,
3 aka SOPHIE MONACO, aka FRANCES
4 PRESCOTT aka SOPHIE PRESCOTT),
5 F & T CATTLE COMPANY, a California
6 Corporation, AMBER HANDEL,
7 SPENCER HANDEL, JACK C. HINDS,
8 TRUDY HINDS, JANET I. HORD, RICHARD F. HORD,
9 DAVID HORN, JANICE HORN, WALTER J.
10 KALTHOF, SHARON KALTHOF,
11 ROBERT S. LYON, MICHAEL MADRIGAL,
12 GLORIA MADRIGAL, ERMA DEE MATHIS
13 (aka ERMA HATTRUP),
14 JOHN T. McNALLY, RITA McNALLY,
15 ANNA M. MONACO, CYNTHIA J. MONACO,
16 DANIEL A. MONACO, JR., DANIEL A. MONACO, SR.,
17 DELORES MONACO, DENISE MONACO,
18 FRANK D. MONACO,
19 GLORIA (MADRIGAL) MONACO,
20 GREGORY JOSEPH MONACO, HELEN MONACO,
21 JUNE MONACO, TRUDY MONACO,
22 PATTI (PATTY) J. MONACO,
23 NANCY MONACO, RONALD MONACO,
24 SAMUEL MONACO,
25 TONY MONACO, NORTHWEST TRANSPORT, a
26 California Corp., PERSONAL PLAN,
27 PERSONAL HOME LOANS, INC., a California Corp.,
28 PIONEER RESOURCES, a California Corp.,
FRANCIS K. PRESCOTT, RANCHO REMUDA, INC.,
ROLLING VALLEY LAND CO., INC., a California Corp.,
RIVER ACRES DEVELOPMENT, INC., a California Corp.,
ROSCOE TECHNOLOGY, INC., a California
Corporation, DONALD F.
SAPRONETTI, GEORGE W. SEABRON,
REATHA SEABRON, MAGGIE JEAN SMITH,
KENNETH F. SONHEIM,
LAWRENCE SORENSON (aka LARRY SORENSON),
S C & R AGENCY, WATERWEST SERVICE, INC.,
a California Corp., SAMUEL VINCENT,

Defendants.

This case reaches the Court on a complaint for a preliminary injunction filed by the TRUSTEE. The TRUSTEE sought to impose an injunction to prevent transfers of certain properties and monies held by the defendants. The TRUSTEE alleges that these properties and monies are the property of the debtor entities. The Court entered a restraining order on April 26, 1982.

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2 The court ordered at the May 24, 1982 and June 9, 1982 hearings that the
3 restraining order issued on April 26, 1982, pending further hearing on the matter, remain
4 in full force and effect pursuant to the authority granted to the court under 11 U.S.C.
5 §105(a).

6 This cause came on for hearing and was heard before the undersigned
7 bankruptcy judge on May 24, 1982, June 9, 1982, July 13, 1982 and September 2, 1982.
8 Offers of proof and oral argument in support of and in opposition to the preliminary
9 injunction, along with written briefs were received and the matter taken under
10 submission.

11 The TRUSTEE filed a Motion, which was granted, For Leave to File Second
12 Amended Complaint. This second amended complaint seeks, among other things, to
13 pierce the corporate veil of the debtor corporations and corporate defendants herein and
14 establish that the debtor corporations and the corporate defendants herein were and are
15 mere shams and that the individual defendants herein were and are the alter egos of the
16 debtor corporations and corporate defendants herein, and that the defendants hold the
17 properties and money claimed in this action in constructive trust for the plaintiff.

18 The Court, having read and considered the arguments in support of and in
19 opposition to the preliminary injunction and having taken judicial notice of the files and
20 records in this and all related proceedings on file with this court, and having heard and
21 considered the evidence including offers of proof, statements, arguments and
22 representations of counsel, now makes the following Findings of Fact and Conclusions of
23 Law:

24 FINDINGS OF FACT

25 1. On February 18, 1982, an involuntary petition for relief under Chapter 11,
26 Title 11 U.S.C. was filed against GOLDEN PLAN OF CALIFORNIA, INC., a California
27 corporation [hereinafter referred to as "GOLDEN PLAN"], STATE LOAN SERVICING,
28 INC., a California corporation [hereinafter referred to as "S.L.S."], FINANCIAL

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SECURITIES AGENCY, INC., a California corporation [hereinafter referred to as "F.S.A."], and MID-CENTRAL CALIFORNIA, INC., a California corporation [hereinafter referred to as MID-CENTRAL].

2. On April 9, 1982, an order for relief was entered by this court and Melvyn J. CoBen [hereinafter sometimes referred to as "TRUSTEE"] was appointed TRUSTEE for the debtor corporations herein.

3. On April 23, 1982, the TRUSTEE, through its attorney of record, filed a complaint CoBen v. Apland, et al., Adversary No. 282-0593. The complaint requested that a temporary restraining order issue and preliminary injunction be granted.

4. On April 26, 1982, this Court granted an order to show cause and restraining order. The order, provides in pertinent part, as follows:

(1) That the defendants, and each of them, their employees and their agents be and hereby are pending hearing restrained and enjoined from transferring or encumbering any real property or livestock owned by them, in their possession or recorded in their name.

(2) That the defendants, and each of them, be, and hereby are restrained and enjoined from transferring any real property or money in any one transaction where more than \$1,000.00 in value is involved.

5. On May 24, 1982, June 9, 1982, July 13, 1982, and September 2, 1982, further hearings on the order to show cause, restraining order and preliminary injunctions were held.

6. The restraining order issued on April 26, 1982 was ordered by the Court at the May 24, 1982 and June 9, 1982 hearings, pending further hearing on the matter, to remain in full force and effect pursuant to the authority granted to the Court under 11 U.S.C. §105(a).

7. On October 29, 1982, the TRUSTEE, through his attorneys of record, submitted an Opening Brief in Support of Issuance of Preliminary Injunction.

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2 8. On July 10, 1983, defendants FRANK MONACO, TRUDY MONACO,
3 DANIEL A. MONACO, SR., HELEN MONACO, GREGORY MONACO, PATTI MONACO,
4 DANHEL COMPANY, INC., F & T CATTLE CO., RANCHO REMUDA, INC. and ROSCOE
5 TECHNOLOGY, INC., through their attorneys of record, filed their Opening Brief in
6 Opposition to Issuance of Preliminary Injunction.

7 9. On November 15, 1983, the TRUSTEE filed, through his attorneys of
8 record, Cooper & Shaffer, a Response to Defendants' Opposition to Issuance of
9 Preliminary Injunction.

10 10. The debtor corporations and the defendant corporations have
11 interlocking and overlapping officers and directors so that such corporations were prior
12 to April 9, 1982 influenced, dominated and controlled by the same individual defendants.
13 Such continues to be true as to the defendant corporations.

14 11. The debtor corporations and the defendant corporations were
15 incorporated and controlled by members of the MONACO family, their relatives and
16 friends.

17 12. GOLDEN PLAN, a debtor corporation, was incorporated by defendants
18 FRANK D. MONACO, ROBERT C. RICCI and TRUDY PEDRI. Prior to the August 31,
19 1981 sale of GOLDEN PLAN from defendant FRANK MONACO to defendant DANIEL A.
20 MONACO JR., the officers and directors were defendants FRANK MONACO, DENISE
21 MONACO and GREGORY MONACO.

22 13. F.S.A., a debtor corporation, was incorporated by defendant FRANK
23 MONACO. The officers and directors of F.S.A. were defendants JERROLD F. BACH,
24 IRMA MATHIS and JANET HORD.

25 14. S.L.S., a debtor corporation, was incorporated by Betty Thompson. The
26 officers and directors of S.L.S. were Joanne Wiepy and defendants JOHN T. McNALLY
27 and WALTER KALTHOF.
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2 15. MID-CENTRAL, a debtor corporation, was incorporated by defendants
3 GREGORY MONACO, MICHAEL MADRIGAL and GLORIA MADRIGAL (MONACO). The
4 officers and directors of MID-CENTRAL were defendants KENNETH SONHEIM, JOY
5 MEACHUM and DONALD SAPRONETTI.

6 16. PERSONAL HOME LOANS, INC. [hereinafter referred to as "P.H.L."],
7 a debtor corporation, was incorporated by the law offices of Darrell D. Tipton. The
8 officers and directors of P.H.L. were defendants DANIEL MONACO JR. and GEORGE
9 W. SEABRON.

10 17. Defendant F & T CATTLE CO. was incorporated by defendants FRANK
11 MONACO, TRUDY MONACO, DANIEL MONACO SR. The officers and directors were
12 defendants FRANK MONACO, TRUDY MONACO and DANIEL MONACO SR.

13 18. Defendant RANCHO REMUDA, INC. was incorporated by defendant
14 FRANK MONACO and the officers were defendants FRANK MONACO, TRUDY
15 MONACO and DANIEL MONACO SR.

16 19. Defendant ROSCOE TECHNOLOGY, INC. [hereinafter referred to as
17 "ROSCOE"] was incorporated by defendant DANIEL A. MONACO, SR. The officers and
18 directors were defendants DANIEL MONACO SR., HELEN D. MONACO and DENISE
19 MONACO.

20 20. Defendant DANHEL COMPANY, INC. [hereinafter referred to as
21 "DANHEL"] was incorporated by defendant DANIEL MONACO SR. The officers were
22 defendants DANIEL MONACO SR., DENISE S. MONACO and HELEN MONACO.

23 21. The directors of defendant PIONEER RESOURCES, INC. were
24 defendants GREGORY MONACO, HELEN MONACO and DANIEL MONACO.

25 22. Defendant BUCBOARD ENTERPRISES was incorporated by defendants
26 DANIEL A. MONACO JR., JUNE E. MONACO and SAMUEL MONACO. The directors
27 were defendants DANIEL A. MONACO JR., JUNE E. MONACO and SAMUEL MONACO.
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2 23. Defendant RIVER ACRES DEVELOPMENT CO., INC. [hereinafter
3 referred to as "RIVER ACRES"] was incorporated by defendant GREGORY MONACO.
4 The officers of defendant RIVER ACRES were defendants GREGORY MONACO and
5 PATTI MONACO.

6 24. The records and ledgers of GOLDEN PLAN, S.L.S., F.S.A. and MID-
7 CENTRAL are incomplete. Many records have never been located. Defendants
8 presented no meaningful evidence which would explain the missing and/or otherwise
9 incomplete records.

10 25. The Franchise Tax Board [hereinafter sometimes referred to as
11 "BOARD"] conducted an audit of the books and records of GOLDEN PLAN, F.S.A.,
12 S.L.S., MID-CENTRAL and P.H.L. in 1982 in the month of May or June. The BOARD
13 determined that there was a significant failure to report or under-reporting of income by
14 GOLDEN PLAN, its affiliated corporations and shareholders.

15 26. The Franchise Tax Board attempted to locate records for GOLDEN
16 PLAN, F.S.A., S.L.S. and MID-CENTRAL for the years 1979 through 1981. The BOARD
17 located only one partial ledger for GOLDEN PLAN for the year 1981. Because of the
18 absence of, or inadequate record keeping, the BOARD was forced to make its
19 determination regarding the under-reporting of income of GOLDEN PLAN, its affiliated
20 corporations and shareholders on the basis of check vouchers only.

21 27. The state of the debtor corporations' records, both the lack thereof and
22 the lack of organization thereto, is a direct result of the acts of the defendants herein.
23 Said acts were done by the defendants with the intent to fraudulently conceal the various
24 transfers and transactions of the defendants.

25 28. Defendant FRANK MONACO claimed the 5th Amendment privilege
26 against self incrimination with regard to all questions directed to him, in these
27 proceedings.
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2 29. Defendant DANIEL A. MONACO SR. asserted the 5th Amendment
3 privilege against self incrimination with regard to all questions directed toward him
4 including questions with regard to his declaration in Opposition to the Issuance of a
5 Preliminary Injunction.

6 30. Defendant ROBERT LYON asserted the 5th Amendment privilege
7 against self incrimination. This court finds, however, that defendant ROBERT LYON
8 waived this privilege.

9 31. The Franchise Tax Board examined during May or June 1982 the
10 following: (1) check vouchers for GOLDEN PLAN's general account, for the years 1979,
11 1980 and 1981; (2) GOLDEN PLAN's trust two account for the years 1979, 1980 and
12 1981; (3) S.L.S.'s general account for the years 1980, 1981; (4) S.L.S.'s client trust
13 account for the years 1980 and 1981; (5) MID-CENTRAL's account for 1980 and 1981; (6)
14 check vouchers for F.S.A.'s general account for the years 1980, 1981; (7) F.S.A.'s trust
15 account for 1981; (8) P.H.L.'s general ledger for the years 1980 and 1981; and (9)
16 certain check stubs for defendant B & M MANAGEMENT.

17 32. The Franchise Tax Board submitted its audit of GOLDEN PLAN and its
18 affiliated entities audit on the basis of year by year summaries.

19 33. The audit disclosed the following: (1) a check was drawn in 1979 from
20 the GOLDEN PLAN general account in the sum of \$76,114.84 and made payable to
21 defendant RANCHO REMUDA; (2) a check was drawn in 1979 from the GOLDEN PLAN
22 general account in the sum of \$29,235.00 and made payable to F & T CATTLE CO.; (3) a
23 check was drawn in 1979 from the GOLDEN PLAN general account in the sum of
24 \$80,305.88 and made payable to PIONEER RESOURCES, INC.; (4) a check was drawn in
25 1979 from the GOLDEN PLAN general account in the sum of \$15,000.00 and made
26 payable to BUCBOARD ENTERPRISES; (5) a check was drawn in 1980 from the GOLDEN
27 PLAN general account in the sum of \$310,000.00 and made payable to defendant
28 RANCHO REMUDA; (6) a check was drawn in 1980 from the GOLDEN PLAN general

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2 account in the sum of \$194,195.00 and made payable to ROSCOE; (7) a check was drawn
3 in 1981 from the GOLDEN PLAN general account in the sum of \$255,759.00 and made
4 payable to ROSCOE; (8) a check was drawn in 1981 from the GOLDEN PLAN general
5 account in the sum of \$300,000.00 and made payable to RANCHO REMUDA; (9) a check
6 was drawn in 1981 from the GOLDEN PLAN general account in the sum of \$41,096.00 and
7 made payable to S C & R AGENCY.

8 34. The audit also disclosed the following: (1) a check was drawn in 1979
9 from the GOLDEN PLAN Escrow Trust Two Account in the sum of \$1,103,656.00 and
10 made payable to ROSCOE; (2) a check was drawn in 1979 from the GOLDEN PLAN
11 Escrow Trust Two Account in the sum of \$940,387.39 and made payable to PIONEER
12 RESOURCES; (3) a check was drawn in 1979 from the GOLDEN PLAN Escrow Trust Two
13 Account in the sum of \$53,940.26 and made payable to BUCBOARD ENTERPRISES; (4) a
14 check was drawn in 1979 from the GOLDEN PLAN Escrow Trust Two Account in the sum
15 of \$150,000.00 and made payable to WATERWEST SERVICES; (5) a check was drawn in
16 1980 from the GOLDEN PLAN Escrow Trust Two Account in the sum of \$365,051.60 and
17 made payable to F & T CATTLE CO.; (6) a check was drawn in 1980 from the GOLDEN
18 PLAN Escrow Trust Two Account in the sum of \$80,400.00 and made payable to
19 PIONEER RESOURCES; (7) a check was drawn in 1980 from the GOLDEN PLAN Escrow
20 Trust Two Account in the sum of \$2,048,300.00 and made payable to ROSCOE; and (8) a
21 check was drawn in 1981 from the GOLDEN PLAN Escrow Trust Two Account in the sum
22 of \$3,049,010.76 and made payable to ROSCOE.

23 35. The Franchise Tax Board was unable to determine a legitimate business
24 reason for the transfers or payments as set forth in paragraphs 33 and 34 above, due to
25 the destruction or concealment of relevant records by the defendants.

26 36. Defendants presented no meaningful evidence to explain the transfers
27 or written check vouchers.

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2 37. Defendants received such transfers and payments, as set forth above in
3 paragraphs 33 and 34, from GOLDEN PLAN. Such transfers and payments or the
4 proceeds thereof were, are, and remain the property of the TRUSTEE herein.

5 38. Defendants tendered or paid no consideration for the receipt of the
6 transfers or payment, as set forth in paragraphs 33 and 34, from GOLDEN PLAN.

7 39. Defendants initiated the transfer of monies, as set forth in paragraphs
8 33 and 34 with actual intent to defraud the investors and creditors of these debtor
9 corporations and did so defraud the investors and creditors of the debtor corporations in
10 making or causing such transfers and payments to be made.

11 40. On July 7, 1977, defendant F & T CATTLE CO. transferred to defendant
12 BUCBOARD ENTERPRISES, INC. real property located in the county of San Joaquin,
13 State of California. Said property is Deed No. 42558 and was recorded on July 7, 1977, at
14 the San Joaquin County Recorder's Office.

15 41. On September 21, 1979, defendant BUCBOARD ENTERPRISES, INC.
16 transferred to GOLDEN PLAN real property located in the county of San Joaquin, State
17 of California. Said property is Deed No. 79076330 and was recorded on October 10, 1979,
18 at the San Joaquin County Recorder's Office.

19 42. On August 1, 1981, GOLDEN PLAN transferred to defendant F & T
20 CATTLE CO. real property located in the county of San Joaquin, State of California.
21 Said property is Deed No. 81057935 and was recorded on September 3, 1981, at the San
22 Joaquin County Recorder's Office.

23 43. On December 1, 1981, defendant F & T CATTLE CO. transferred to
24 defendant DANHEL COMPANY, INC. real property located in the county of San Joaquin,
25 State of California. Said property is Deed No. 81076260 and was recorded on December
26 11, 1981, at the San Joaquin County Recorder's Office.

27 44. On March 31, 1982 defendant DANHEL COMPANY, INC. transferred to
28 defendant ROLLING VALLEY LAND COMPANY, INC. real property located in the

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2 county of San Joaquin, State of California. Said property is Deed No. 82018110 and was
3 recorded on April 8, 1982, at the San Joaquin County Recorder's Office.

4 45. On April 12, 1982, defendant ROLLING VALLEY LAND COMPANY,
5 INC. transferred to Stagestone Associates, Inc. real property located in the County of
6 San Joaquin, State of California. Said property is Deed No. 82018927 and was recorded
7 on April 13, 1982, at the San Joaquin County Recorder's Office.

8 46. On February 9, 1977, Warmerdams transferred to defendant F & T
9 CATTLE CO. real property located in the county of San Joaquin, State of California.
10 Said property is Deed No. 4229-797 and was filed on February 24, 1977, at the San
11 Joaquin County Recorder's Office.

12 47. On August 31, 1977, defendant F & T CATTLE CO. transferred to
13 defendant BUCBOARD ENTERPRISES, INC. real property located in the County of San
14 Joaquin, State of California. Said property is Deed No. 57598 and was recorded on
15 September 2, 1977, at the San Joaquin County Recorder's Office.

16 48. On August 21, 1979, defendant BUCBOARD ENTERPRISES, INC.
17 transferred to GOLDEN PLAN real property located in the County of San Joaquin, State
18 of California. Said property is Deed No. 79076293 and was recorded on October 10, 1979,
19 at the San Joaquin County Recorder's Office.

20 49. On August 1, 1981, GOLDEN PLAN transferred to defendant F & T
21 CATTLE CO. real property located in the County of San Joaquin, State of California.
22 Said property is Deed No. 81057934 and was recorded on September 3, 1981, at the San
23 Joaquin County Recorder's Office.

24 50. On January 2, 1982, defendant F & T CATTLE CO. transferred to
25 defendant ROLLING VALLEY LAND COMPANY, INC. real property located in the
26 County of San Joaquin, State of California. Said property is Deed No. 82004944 and was
27 recorded on January 29, 1982, at the San Joaquin County Recorder's Office.
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2 51. On March 31, 1982, defendant DANHEL COMPANY, INC. transferred to
3 defendant ROLLING VALLEY LAND COMPANY, INC. real property located in the
4 County of San Joaquin, State of California. Said property is Deed No. 82018110 and was
5 recorded on April 8, 1982, at the San Joaquin County Recorder's Office.

6 52. On May 5, 1981, Buffalo Stop transferred to defendant F & T CATTLE
7 CO. real property located in the County of San Joaquin, State of California. Said
8 property is Deed No. 81034598 and was recorded on July 11, 1981, at the San Joaquin
9 County Recorder's Office. On January 2, 1982, this same real property was transferred
10 from defendant F & T CATTLE CO to defendant DANHEL COMPANY, INC. Said
11 property is Deed No. 82004942 and was recorded on January 29, 1982 at the San Joaquin
12 County Recorder's Office. On April 8, 1982 this same real property was transferred from
13 defendant DANHEL COMPANY, INC. to Acampo Company, Inc. Said property is Deed
14 No. 82018111 and was recorded on April 8, 1982 at the San Joaquin County Recorder's
15 Office.

16 53. On October 14, 1976, the Munos transferred to defendant PIONEER
17 RESOURCES, INC. real property located in the County of San Joaquin, State of
18 California. Said property is Deed No. 56444 and was recorded on October 25, 1976, at
19 the San Joaquin County Recorder's Office.

20 54. On November 17, 1976, defendant PIONEER RESOURCES, INC.
21 transferred to MID-CENTRAL real property located in the county of San Joaquin, State
22 of California. Said property is Deed No. 61476 and was recorded on November 18, 1978,
23 at the San Joaquin County Recorder's Office.

24 55. On July 9, 1979, MID-CENTRAL transferred to defendant F & T
25 CATTLE CO. real property located in the County of San Joaquin, State of California.
26 Said property is Deed No. 7954130 and was recorded on July 20, 1979, at the San Joaquin
27 County Recorder's Office.

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2 56. On August 12, 1981, GOLDEN PLAN transferred to defendant F & T
3 CATTLE CO. real property located in the County of San Joaquin, State of California.
4 Said property is Deed No. 81054019 and was recorded on August 18, 1981, at the San
5 Joaquin County Recorder's Office.

6 57. On January 1, 1982, defendant F & T CATTLE CO. transferred to
7 defendant RIVER ACRES DEVELOPMENT CO., INC. real property located in the County
8 of San Joaquin, State of California. Said property is Deed No. 82004941 and was
9 recorded on January 29, 1982, at the San Joaquin County Recorder's Office.

10 58. On March 3, 1982, defendant ROLLING VALLEY LAND COMPANY
11 transferred to Acampo Company, Inc. real property located in the county of San Joaquin,
12 State of California. Said property is Deed No. 82018108 and was recorded on April 8,
13 1982, at the San Joaquin County Recorder's Office. On August 1, 1981, GOLDEN PLAN
14 transferred to defendant F & T CATTLE CO. real property located in the County of San
15 Joaquin, State of California. Said property is Deed No. 8105793 and was recorded on
16 September 3, 1981 at the San Joaquin County Recorder's Office. The grant deed is signed
17 by the president of GOLDEN PLAN, defendant FRANK D. MONACO.

18 59. On December 1, 1981, defendant F & T CATTLE CO. transferred this
19 same real property to defendant DANHEL COMPANY, INC. Said property is Deed No.
20 81076260 and was recorded on December 11, 1981 at the San Joaquin County Recorder's
21 Office. The grant deed is signed by defendant FRANK D. MONACO, President of
22 defendant F & T CATTLE and then President of GOLDEN PLAN and defendant TRUDY
23 MONACO, Secretary of defendant F & T CATTLE. On April 8, 1982, by way of grant
24 deed the same parcel of property was granted from defendant DANHEL CO. to
25 defendant ROLLING VALLEY [hereinafter referred to as "ROLLING VALLEY"]. Said
26 Grant Deed was signed by defendant DANIEL A. MONACO, SR., then President of
27 GOLDEN PLAN and defendant HELEN D. MONACO, Secretary of defendant DANHEL
28 CO., INC. On April 13, 1982, the same parcel property was transferred by way of grant

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2 deed from defendant ROLLING VALLEY to Stagestone Associates, Inc. This grant deed
3 was signed by defendant DANIEL A. MONACO, SR., then President of GOLDEN PLAN
4 and defendant HELEN MONACO, Secretary of defendant ROLLING VALLEY.

5 60. The TRUSTEE's Exhibit Nos. 25, 26 , and 27 exemplify similar types of
6 transfers of properties.

7 61. Defendants presented no meaningful evidence to explain the transfers
8 of the properties described in paragraphs 40 through 60 above.

9 62. Defendants tendered no consideration for the transfers of the
10 properties described in paragraphs 40 through 60.

11 63. Defendants transferred the properties described in paragraphs 40
12 through 60 with actual intent to defraud the investors and creditors of the debtor
13 corporations and did so defraud the investors and creditors of the debtor corporations.

14 64. Some payments at GOLDEN PLAN were made on a must-pay system.
15 The investor, under this system, indicated on the lender's instructions to the loan
16 contract that he or she wanted monthly payments. Accordingly, the investor received
17 such payments regardless of whether the borrower made his or her payments on the loan.

18 65. Defendant F & T CATTLE borrowed money from GOLDEN PLAN on its
19 must pay system.

20 66. Defendants offered no meaningful evidence that would establish that F
21 & T CATTLE tendered payment on the loans taken out from GOLDEN PLAN on its must
22 pay system.

23 67. The loans described in paragraph 65 were made to defendant F & T
24 CATTLE without its tender of payments to GOLDEN PLAN.

25 68. The loans described in paragraph 65 were made to F & T CATTLE by
26 GOLDEN PLAN with intent to defraud the investors and creditors of the debtor
27 corporations and did defraud the investors and creditors of the debtor corporations.

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2 69. MID-CENTRAL while under the control of the defendants engaged in
3 the same course of conduct as that described of defendant F & T CATTLE in paragraphs
4 65 through 68.

5 70. Defendant F & T CATTLE also was an investor. As an investor,
6 defendant F & T CATTLE was on GOLDEN PLAN's must-pay system and received
7 payments regardless of whether the borrower tendered payment on the loan.

8 71. Defendants offered no meaningful evidence to establish that F & T
9 CATTLE's receipt of payments, as described in paragraph 70 above was not wrongful.

10 72. The receipt of payments as an investor by F & T CATTLE from
11 GOLDEN PLAN was wrongful, made with intent to defraud the investors and creditors of
12 the debtor corporations whose monies were used to pay defendant F & T CATTLE and did
13 so defraud the investors and creditors of the debtor corporations.

14 73. When the involuntary Chapter 11 Bankruptcy petition was filed,
15 GOLDEN PLAN retained approximately 3.2 million dollars in uncashed checks drawn on
16 the S.L.S. account made payable to the GOLDEN PLAN Escrow Trust Two Account.

17 74. The source of these checks were "payouts". After an investor received
18 notice that the borrower made final payment on the investor's loan the investor would
19 instruct his investment counselor to reinvest his money. A check would then be written
20 from the S.L.S. client's trust account to the GOLDEN PLAN Escrow Trust Two Account.

21 75. Although the ledger cards in GOLDEN PLAN's Escrow Trust Two
22 Account (the investor's escrow trust account) indicates that these checks were
23 negotiated, cashed or otherwise in the account, the checks were not in fact negotiated.

24 76. The investors funds from the payouts described in paragraphs 73
25 through 75 were, during the summer, fall and winter of 1981, misappropriated by
26 GOLDEN PLAN for S.L.S.'s general servicing of other investors' notes and deeds of trust.

1
2 77. Defendants did not disclose to the investors and in fact concealed from
3 the investors that their monies on the "payouts" would be treated in the manner
4 described in paragraphs 73 through 76 above.

5 78. The "payouts" and the nondisclosure by the defendants of material facts
6 described in paragraphs 73 through 76 above to investors were transfers made by
7 defendants with intent to defraud the investors and did so defraud the investors.

8 79. GOLDEN PLAN, despite the 3.2 million dollar shortage, continued to
9 solicit money from investors and the defendants herein knowingly and fraudulently
10 participated and conspired to perpetuate this scheme.

11 80. No information regarding the shortage was disseminated from GOLDEN
12 PLAN to the investing public or its borrowers.

13 81. Defendant DANIEL A. MONACO JR. purchased GOLDEN PLAN from
14 defendant FRANK MONACO on or about August 31, 1981 for approximately 3 million nine
15 hundred thousand dollars.

16 82. Without authority and with intent to defraud GOLDEN PLAN investors,
17 defendant DANIEL A. MONACO JR. reconveyed or caused to be reconveyed deeds of
18 trust on properties owned by defendant FRANK MONACO valued at \$900,000.00 plus
19 prepayment penalties. The liens so released were held by GOLDEN PLAN investors.

20 83. Defendant BOB LYONS received a check from defendant B & M
21 MANAGEMENT to pay off the GOLDEN PLAN investors who held liens on these
22 properties. The check was not cashed and the defendants did not intend to cash the
23 check.

24 84. The transactions described in paragraphs 79 through 83 above were
25 made by defendants with intent to defraud the investors of the debtor corporations who
26 held liens on the properties reconveyed by defendant DANIEL A. MONACO JR. to
27 defendant FRANK MONACO and did so defraud the investors of the debtor corporations.
28

1
2 85. Between 1980 and 1981 GOLDEN PLAN paid to defendant RANCHO
3 REMUDA on a monthly basis \$15,000.00 to \$40,000.00 per month.

4 86. GOLDEN PLAN also paid the payroll and salary of defendant RANCHO
5 REMUDA's, ranch owned by defendant FRANK MONACO.

6 87. Defendant RANCHO REMUDA rendered no services to GOLDEN PLAN.

7 88. Many of the checks from GOLDEN PLAN to defendant RANCHO
8 REMUDA were signed by then President of GOLDEN PLAN, defendant FRANK
9 MONACO.

10 89. During 1980 and 1981, defendant DAN MONACO SR. received \$600.00
11 and \$1,000.00 monthly stipends from the general account of MID-CENTRAL and/or
12 GOLDEN PLAN. Defendant DANIEL MONACO SR. rendered no services to MID-
13 CENTRAL or GOLDEN PLAN.

14 90. The transactions described in paragraphs 85 through 89 above were
15 made by defendants without consideration, with corporate authority and with actual
16 intent to defraud the investors and creditors of the debtor corporations and did so
17 defraud the investors and creditors of the debtor corporations.

18 91. MID-CENTRAL was a borrower on a loan for \$400,000.00 from
19 GOLDEN PLAN with investors who each invested and received a fractionalized interest.
20 The loan proceeds were disbursed to defendant ROSCOE in the amount of \$90,000.00
21 with the balance to the borrower MID-CENTRAL.

22 92. This loan was not repaid nor did defendants in fact at the time of
23 making said loan intend to repay the loan.

24 93. The loan described in paragraphs 91 and 92 was made by defendants with
25 intent to defraud the investors and creditors of the debtor corporations and did defraud
26 the creditors and investors of the debtor corporations.

1
2 94. Mr. CoBen was solicited by Anthony G. Tessier Jr., corporate attorney
3 for GOLDEN PLAN, on January 25, 1982 regarding Mr. CoBen's possible representation of
4 either GOLDEN PLAN, S.L.S., F.S.A., or MID-CENTRAL.

5 95. Mr. Tessier requested that Mr. CoBen meet with him regarding Mr.
6 Tessier's corporate client, GOLDEN PLAN.

7 96. On January 26, 1982, Mr. CoBen met with Mr. Tessier and defendant
8 ROBERT LYON, GOLDEN PLAN's corporate controller. Mr. CoBen advised Mr. Tessier
9 and defendant ROBERT LYON that a TRUSTEE should be appointed.

10 97. After discussion with Mr. Tessier and defendant ROBERT LYON, Mr.
11 CoBen, as a condition precedent of representing the corporation, stated that the
12 defendant DANIEL A. MONACO JR., should be fully informed of the necessity for a
13 TRUSTEE. Defendant DANIEL A. MONACO JR. came to the meeting. Mr. CoBen
14 spoke with defendant DANIEL A. MONACO JR. approximately 10-15 minutes before it
15 became apparent that defendant DANIEL A. MONACO JR. was under the influence of
16 an intoxicating substance and was not capable of understanding the import of what Mr.
17 CoBen stated.

18 98. After this brief conversation Mr. CoBen discussed with Mr. Tessier the
19 necessity of obtaining private counsel for defendant DANIEL A. MONACO, JR. separate
20 and apart from that of corporate counsel.

21 99. Mr. Ruthenbeck, one of the attorneys contacted, agreed to and did
22 thereafter represent defendant DANIEL A. MONACO, JR.

23 100. On January 26, 1982, W. Blair Stewart and Kathleen Shelton,
24 representatives from the Department of Real Estate, appeared at the conference room
25 where Mr. Tessier, ROBERT LYON and Mr. CoBen were meeting. Mr. Stewart and Ms.
26 Shelton asked Mr. Tessier for the floppy disks which contained the records of GOLDEN
27 PLAN. Mr. Tessier asked Mr. CoBen's advice. Mr. CoBen advised Mr. Tessier to turn
28 over to the Department of Real Estate the floppy disks.

1
2 101. As a result of the events of January 27, 1982 and January 28, 1982, and
3 the auditing activities of the Department of Real Estate, Mr. CoBen was asked by Mr.
4 Tessier to inform the employees at GOLDEN PLAN of the insolvency of the debtor
5 corporations and their possible bankruptcy. Mr. CoBen consented to and did so inform
6 the employees of this.

7 102. No agreement was reached regarding Mr. CoBen's fees for
8 representation of the debtor corporations. Employment conditions were not met.
9 Representation of the debtor corporations was not undertaken by Mr. CoBen. Mr. CoBen
10 is not disqualified from acting as TRUSTEE herein for any reason by virtue of any
11 conduct connected with or arising out of the transactions set forth in paragraphs 94
12 through 101 herein.

13 103. The existence of an attorney-client relationship between the TRUSTEE
14 and the defendants in their individual capacities or as officers, directors and
15 shareholders has not been established and never existed.

16 104. The probability that prebankruptcy confidences were obtained by Mr.
17 CoBen during his brief negotiation to consider representation of the corporate debtors is
18 unlikely, has not been established and none are found to exist.

19 105. A substantial relationship between the TRUSTEE's brief representation
20 of the debtor corporations and present representation of the debtor corporations which
21 would give rise to a conflict of interest has not and never has been established.

22 106. Defendant DANIEL MONACO, SR. filed a declaration in opposition to
23 the issuance of the Preliminary Injunction.

24 107. Defendant DANIEL MONACO, SR. claimed the Fifth Amendment
25 privilege against self incrimination when asked questions regarding his declaration in
26 Opposition to the Issuance of the Preliminary Injunction.

1
2 108. Defendant DANIEL MONACO SR.'S declaration in Opposition to the
3 Issuance of the Preliminary Injunction was not made or declared under penalty of
4 perjury.

5 109. Defendants have failed to show that the TRUSTEE's conduct has been
6 either unconscionable or tainted with bad faith.

7 110. The defendants are guilty of material misrepresentation concealment
8 and nondisclosures when under a duty to disclose which resulted in numerous fraudulent
9 and improper transfers of property of substantial value and substantial sums of money
10 from the debtor corporations to the defendants herein. Defendants have presented no
11 meaningful evidence to contradict or explain the transfers of monies and properties from
12 the debtor corporations to the individual defendants or the defendant corporations under
13 the control the individual defendants. The court finds as a result of numerous
14 unexplained transfers, the lack of complete records, and the assertion by the defendants
15 of the 5th Amendment right against self-incrimination that these transfers were made
16 with corporate authority, actual intent to defraud the investors and creditors of the
17 debtor corporations and did so defraud the investors and creditors of the debtor
18 corporations.

19 111. Adequate notice and reasonable opportunity to be heard has been
20 afforded all parties who have appeared in this action.

21 112. If the preliminary injunction is denied defendants course of conduct
22 may very likely hinder these proceedings and deprive thousands of investors and
23 creditors of the debtor corporations impossible from ever recovering on their claims.
24 The number of creditors who are subject to being so defrauded is in excess of 3,500 and
25 the magnitude of the damages to these creditors is likely to be substantially in excess of
26 \$5,000,000.00.

27 113. The temporary loss of defendants' freedom to convey certain property
28 or monies is minimal when balanced against the interests of the creditors.

1 114. The balance of the hardships tip decidedly toward the plaintiff.

2
3 115. The status quo of the parties will not be maintained if the preliminary
4 injunction is not granted.

5 116. A significant public interest will be served by the issuance of a
6 preliminary injunction.

7 CONCLUSIONS OF LAW

8 A. This Court has jurisdiction over this adversary proceeding.

9 B. Venue is proper.

10 C. The motion for preliminary injunction was heard after adequate notice
11 and sufficient opportunity to be heard.

12 D. The debtor estates and the creditors of the debtor estates will suffer
13 substantial irreparable harm and damage if the preliminary injunction against defendants
14 does not issue.

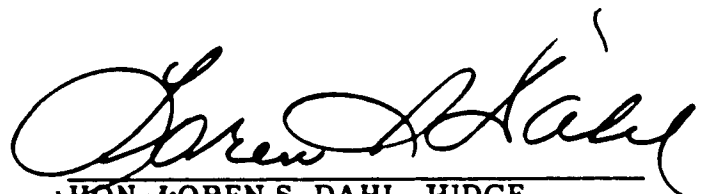
15 E. There is a strong likelihood that the TRUSTEE will prevail in this
16 adversary proceeding.

17 F. There is comparatively no or minimal harm to the defendants if this
18 preliminary injunction issues.

19 G. The public interest will best be served by issuance of this preliminary
20 injunction.

21 H. The status quo of the parties will not be maintained if the preliminary
22 injunction is not granted.

23 I. Defendants have made no showing that Mr. CoBen has unclean hands or
24 a conflict of interest or should be disqualified for any reason from serving as TRUSTEE
25 in these proceedings.

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27
28 

HON. LOREN S. DAHL, JUDGE
U.S. BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
Clerk U. S. Bankruptcy Court.

By 
Deputy Clerk

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SUZANNE BEAUDREAU
RECORDER
Carol A. Hart
Rep.

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