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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

LOUIS V. SCHOOLER and FIRST FINANCIAL PLANNING CORPORATION d/b/a WESTERN FINANCIAL PLANNING CORPORATION,

Defendants.

Case No. 12 CV 2164 GPC JMA

PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO NON-PARTY INVESTORS' MOTIONS TO INTERVENE

Dkt. Nos. 1227, 1228 &1229
Date: May 6, 2016
Time: 1:30 p.m.
Ctrm: 2D
Judge: Hon. Gonzalo P. Curiel

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

FEDERAL STATUTES

Securities Act of 1933

Securities Exchange Act of 1934

FEDERAL RULES OF CIVIL PROCEDURE

I. INTRODUCTION

Plaintiff Securities and Exchange Commission ("SEC") submits this combined opposition to the motions to intervene filed on behalf of investors represented by Gary Aguirre (the "Aguirre Investors") and Timothy Dillon (the "Dillon Investors"). *See* Dkt. Nos. 1227 and 1229.[1] The SEC has no objection to investors expressing their views, or retaining counsel to assist them in expressing those views, on issues concerning the assets of the receivership estate—to the extent those issues have not already been litigated. The receiver has made various proposals for the disposition of those assets and the distribution of the proceeds to investors, and these issues are set to be heard by the Court on May 6, 2016. The SEC already expressed its views on these matters, taking the positions that it believes are in keeping with its mission to protect investors. It is only right that the investors should be heard as well.

The SEC, however, opposes allowing the Aguirre Investors and the Dillon Investors to intervene as parties in this action so that they can, as they have proposed, re-litigate issues that have already been decided by the Court, take discovery on and litigate about the receiver's conduct over the past four years, and effectively substitute themselves in place of the Court as monitors of the receiver. Not only can the Aguirre and Dillon Investors not meet the requirements for intervention as of right or permissive under Federal Rule of Civil Procedure 24, the relief they seek is far beyond that afforded by that rule. Their intervention is also barred by Section 21(g) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §

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[1] Dillon has also moved to intervene to unseal sales documents previously ordered sealed by the Court. Dkt. No. 1228. Aguirre has joined in that motion. Dkt. No. 1231. It is the SEC's understanding that Aguirre and Dillon have asked for and received unredacted versions of all these documents from the receiver, thus mooting this motion. Dkt. No. 1261 at 3. As another court recognized in similar circumstances, revealing the details of individual sales to the public prematurely could result in "purposeful underbidding and firesale prices," which would "lead to lower sales prices and delays in the approval of transactions, neither of which would benefit . . . investors." *SEC v. TLC Invs. and Trade Co.*, 147 F.Supp.2d 1031, 1037 (C.D. Cal. 2001). Thus, disputes about "'secretive' sales procedures approved by the Court" is not a valid basis to intervene. *Id*. at 1042.

78(u)(g). Moreover, to the extent they want to raise issues with the receiver's plans for disposing assets and distributing proceeds to investors, the Aguirre and Dillon Investors can make be heard without intervening. Therefore, the SEC requests that the Court deny their motions for intervention.

II. BACKGROUND

A. The SEC's Enforcement Action against the Defendants

The SEC commenced this enforcement action almost four years ago, on September 4, 2012. *See* Dkt. Nos. 1, 3. On March 13, 2013, the Court entered a preliminary injunction enjoining the defendants from violating Section 5 of the Securities Act of 1933 (the "Securities Act"), and appointed Tom Hebrank as the permanent equity receiver in the case. *See* Dkt. No. 174. Initially, this receivership included defendant First Financial Planning Corporation d/b/a Western Financial Planning Corporation ("Western"), as well as the 87 GPs, whose interests the defendants had offered and sold to investors as part of the fraudulent and illegal scheme alleged (and later proven) by the SEC. *See id*.

Almost a year later, the SEC moved for summary judgment on the issue of whether the interests in the general partnerships, or "GPs," sold by defendants were securities. The Court granted that partial summary judgment motion on April 25, 2014. *See* Dkt. No. 583. Having settled that threshold issue, the SEC promptly moved for summary judgment on its Section 5 claim alleging that the defendants offered and sold these securities without registration. On May 19, 2015, the Court granted this motion. *See* Dkt. No. 1074. The Court then granted, in part, the SEC's motion for summary judgment on its fraud claims against the defendants on June 3, 2015, finding that the defendants had defrauded their investors in connection with the offer and sale of securities related to the Stead, Nevada property. *See* Dkt. No. 1081.

The Court entered final judgment against defendant Louis Schooler on January 21, 2016, permanently enjoining him from violations of Sections 5(a), 5(c) and 17(a) of the Securities Act , and Section 10(b) of the Exchange Act and Rule 10b-5

thereunder. *See* Dkt. Nos. 1170, 1190. As part of that judgment, Schooler was ordered to pay over $147 million in monetary remedies. *See id*.

B. The Litigation about the Receiver and the Receivership

While the SEC was prosecuting its enforcement action against the defendants, issues regarding the scope of the receivership and the conduct of the receiver were heavily litigated. During that time, hundreds of investors, including those seeking to intervene now, were allowed to express their views to the Court.

Between February and July 2013, over 220 investors filed letters with the Court, the vast majority of which complained about the receiver and requested that the GPs be removed from receivership. *See* Dkt. No. 470 (order releasing GPs from receivership) at 14-15. On August 16, 2013, the Court issued an order releasing the GPs from the receivership. *See id*. The Court spent over two pages of that order reviewing and analyzing the content of these investor letters. *See id.* at 14-17.

After the Court concluded that the interests in the GPs were securities on April 25, 2014, the Court, *sua sponte*, asked for additional briefing on the issue of whether the Court should reconsider its decision to release the GPs from the receivership. *See* Dkt. No. 583 at 20-21. Again, the investors were given a chance to be heard on this decision. Following briefing by the SEC and the defendants, investors filed letters with the Court. Although the Court concluded on July 22, 2014 that the GPs should remain in receivership, it gave the investors an opportunity to be heard before vacating its previous order releasing the GPs. *See* Dkt. No. 629 at 7. The Court allowed the investors to file briefs on the issue, and set a hearing for October 10, 2014 specifically to permit them to argue their positions to the Court. *See id.* at 7-8.

Following a second hearing on October 15, 2014, the Court directed the receiver to conduct an analysis regarding the financial health of each GP to determine whether any of the GPs could be released from receivership. *See* Dkt. No. 808 at 3-6. The receiver filed the requested report on November 21, 2014. *See* Dkt. No. 852.

Then, again, the Court permitted investors to weigh in. On December 22,

2014, the defendants filed a motion to remove and replace the receiver. *See* Dkt. No. 860. A month later, beginning in January 2015, at least 32 investors submitted letters with the Court commenting on the receiver's November 21, 2014 report, and a hearing was held on January 23, 2015. *See* Dkt. No. 947; Dkt. No. 1003 at 1 (listing the filings of investors).

On March 4, 2015, after considering arguments from all of the parties, as well as arguments from the investors, the financial analysis of the GPs prepared by the receiver, and the evidence presented by the parties regarding the conduct of the receiver in this case, the Court decided to keep the GPs in the receivership and to keep Mr. Hebrank as the receiver. *See* Dkt. Nos. 1003, 1004. The Court specifically noted that, in making its final determination to keep the GPs in receivership, it had considered all of the additional investor letters commenting on the receiver's November 2014 report. *See* Dkt. No. 1003 at 1-2.

C. The Aguirre and Dillon Investors' Numerous Motions

The Aguirre and Dillon Investors have filed dozens of motions and applications with the Court in the past couple of months. In fact, as of April 6, 2016, by the receiver's count, the Aguirre and Dillon Investors had filed 32 pleadings and declarations with the Court since February 18, 2016, made over 40 informal requests for documents and information from the receiver, and had sent over 110 emails and letters to the receiver and his counsel. Dkt. No. 1225 at 4.

The flurry of activity began in February 2016, when the receiver requested the Court to modify part of the Court's prior order approving the sale of the Jamul Valley property. *See* Dkt. No. 1191. The modification was necessary to satisfy the title insurer. *Id*. On March 7, 2016, in compliance with a prior Court order, the receiver asked the Court to approve his retention of listing agents for ten other properties. *See* Dkt. No. 1203. In response, the Aguirre Investors filed at least 15 pleadings—nine in response to the February 26th application (before he was even retained), and three for the March 7th application. *See* Dkt. Nos. 1194, 1194-1, 1194-2, 1194-3, 1198, 1199,

1200, 1201, 1202 (responding to the Feb. 26, 2016 application, Dkt. No. 1191), Dkt. Nos. 1204, 1204-1, 1206 (responding to the Mar. 7, 2016 application, Dkt. No. 1203).

Since then, both the Aguirre Investors and the Dillon Investors have continued to make submissions to the Court:

- On April 1, 2016, the Aguirre Investors filed a motion to vacate the Court's prior orders approving the sale of receivership assets. Dkt. No. 1221.
- That same day, the Aguirre Investors also filed a motion seeking an accounting by the receiver, or in the alternative, and audit of the receivership, predicated on a complete falsehood: their assertion that the receiver "keeps no books and records." Dkt. No. 1223-1 at 3.
- Also on April 1, the Dillon Investors filed a motion to unseal all previously sealed documents in the Court's docket, despite the fact that the receiver had previously provided unredacted copies of these materials. Dkt. No. 1222.
- On April 8, both the Aguirre and Dillon Investors filed their motions to intervene that are the subject of this opposition, and described below. Dkt. Nos. 1227 and 1229.
- Also on April 8, the Aguirre Investors filed a notice of intent to file yet another opposition to the sale of the Jamul property. Dkt. No. 1226.
- On April 8, the Dillon Investors filed another motion to unseal previously sealed documents in the Court's docket. Dkt. No. 1228. The Aguirre Investors joined that motion. Dkt. No. 1231.
- On April 11, the Aguirre Investors filed another motion seeking to vacate all of the Court's prior orders permitting sales of receivership properties. This motion was also styled as a motion to intervene. Dkt. No. 1230.
- Finally, on April 21, the Aguirre Investors filed another motion seeking an accounting by the receiver, or an independent audit of the receivership. This motion was also styled as a motion to intervene. Dkt. No. 1258.

D. The Motions to Intervene by the Aguirre and Dillon Investors

While all of these filings were being made, on April 5, 2016, the Court denied, without prejudice, the seven motions of the Aguirre and Dillon Investors that were before the Court at that time, because they did not comply with the requirements of Rule 24 of the Federal Rules of Civil Procedure governing the intervention of non-parties. *See* Dkt. No. 1224 at 2. The Court directed them "to follow" that rule "and file motions to intervene to the extent that they wish to refile any of these motions." *Id*.

Both the Aguirre Investors and the Dillon Investors then filed their motions to intervene. In the motion to intervene filed by the Aguirre Investors, they claim they seek "to intervene in this action solely for the purposes of obtaining relief in relation [to] [*sic*] post judgment proceedings." Dkt. No. 1229-1 at 4. But their supporting brief, and their proposed intervention complaint, tells a completely different story. For example, the Aguirre Investors seek "an audit of the receivership," "to modify the receivership ordered by this Court in this litigation" and "to investigate" the receiver's management of the receivership for the past four years. *Id*. at 4, 5, Ex. A at ¶¶ 13, 14, 17, 19. Indeed, their proposed complaint "incorporate[s]" all of the allegations of the SEC's complaint asserting fraud and securities law violations against the defendant, except for allegations regarding the remedies against the GPs. *Id*., Ex. A at ¶ 14. With their proposed complaint, the Aguirre Investors also seek to litigate their claims that the receiver has failed his duties somehow in overseeing the estate for the past four years and that the receiver is conflicted because, in their view, his "primary objective is to please the SEC." *Id*.

The Dillon Investors' motion is no different. They claim their request is for a "limited-in-scope intervention" to seek relief "in post-judgment remedial proceedings." Dkt. No. 1227-1 at 1. They also claim they do not want to "re-open any previously litigated issues." *Id*. at 7. But, at the same time, they make clear they intend to "challeng[e] the conduct of the Receiver in this action," and "to make

motions in relation to Hebrank's management," while alleging that the receiver "neglected" his duties and has "refused to disclose" matters. *Id.* at 1, 7, Ex. A at ¶¶ 44, 45, p. 15. Ultimately, the Dillon Investors seek to "[o]versee and evaluate Hebrank's management" of the GPs and their assets. *Id.*, Ex. A. at p. 14.

In addition, the Dillon Investors appear to propose a "repositioning" of the underlying real properties owned by the GP, which would include holding those properties for "an extended period of time" while entitlements or zoning variances, and the like, are obtained. *Id.* at 5. Nowhere do they explain who would pay for all of this.

III. ARGUMENT

The SEC has no objection to the Aguirre and Dillon Investors expressing their views at the upcoming May 6, 2016 hearing on the receiver's pending proposals or on issues that have not already been litigated. The SEC, however, does oppose allowing them to intervene as parties because they have failed to meet their burden of showing they can intervene as a matter of right, under Rule 24(a), or permissively, under Rule 24(b). Also, their intervention is barred by Section 21(g) of the Exchange Act. The SEC also opposes their intervention because, given their ability to be heard on the issues that matter to them, intervention is not necessary. Their proposed intervention will also cause significant delays when, given the deteriorating estate, any delays will diminish the returns that can be provided the investors.

A. The Aguirre and Dillon Investors Do Not Meet The Requirements Of Intervention as a Matter of Right Under Rule 24(a)(2)

Under Federal Rule of Civil Procedure 24(a)(2), in order to intervene as of right, a non-party must show that: (1) their request to intervene is timely, (2) they have an interest relating to the property or transaction that is the subject of the case, (3) the disposition of the action may impair or impede the applicant's ability to protect the interest, and (4) their interest is not adequately represented by the existing parties. *See* Fed. R. Civ. P. 24(a)(2); *Northwest Forest Res. Council v. Glickman*, 82

F.3d 825, 836 (9th Cir. 1996). The non-party seeking intervention bears the burden of establishing all of the criteria. *In re Novatel Wireless Secs. Litig.*, No. 08-cv-1689, 2014 U.S. Dist. LEXIS 85994 (S.D. Cal. June 23, 2014) (*quoting Donnelly v. Glickman,* 159 F.3d 405, 409 (9th Cir. 1998)); *see also Citizens for Balanced Use v. Montana Wilderness Ass'n*, 647 F.3d 893, 897 (9th Cir. 2011). "Failure to satisfy any one of the requirements is fatal to the application." *Id*. (*citing Perry v. Proposition 8 Official Proponents*, 587 F.3d 947, 950 (9th Cir. 2009); *see also League of United Latin Am. Citizens v. Wilson ("LULAC")*, 131 F.3d 1297, 1302 (9th Cir. 1997).

Here, although the Aguirre and Dillon Investors have an interest in the assets being managed by the receiver, they cannot satisfy the other three elements necessary for intervention as of right. Their request, therefore, should be denied.

1. The Aguirre and Dillon Investors' motions are untimely and they seek to re-litigate matters that have already been decided

In determining whether a non-party may intervene, "[t]imeliness is 'the threshold question.'" *Novatel Wireless*, 2014 U.S. Dist. LEXIS 85994 at *6 (*citing LULAC*, 131 F.3d at 1302). "In the Ninth Circuit, three criteria are considered in determining whether a motion to intervene is timely: '(1) the stage of proceedings; (2) whether the parties would be prejudiced; and (3) the reason for any delay in moving to intervene.'" *Id*. at *8 (*quoting Glickman*, 82 F.3d at 836-37).

The Aguirre and Dillon Investors seek to intervene as parties in this case nearly four years after this case was filed. If all they truly wanted to do was intervene so they could express their views about the receiver's proposed distribution plan and the process for selling the GP properties, then their motions might have been timely. But intervention is not needed to do that, and that is not in fact what they are trying to do. Each of their motions, and their attached proposed intervention complaints, make clear that the Aguirre and Dillon Investors seek to challenge the receiver's conduct and management of the receivership estate over the past four years. They hope to

"audit" the receivership (Dkt. No. 1229-2 at 1); the Aguirre Investors seek to modify the receivership order and want a declaratory judgment that the GP agreements are valid and enforceable (*Id.*); and the Dillon Investors want to "oversee" the receiver's management of the receivership. *See* Dkt. No. 1227-1 at 4-5.[2] If that is what these investors want to do with intervention, then their motions are, by definition, untimely. They could have sought to raise all of these issues years ago.

The Aguirre and Dillon Investors also want to revisit issues that have already been decided by the Court. Granted, they say in their briefs that they do "not intend to re-open any previously litigated issues." Dkt. No. 1227-1 at 7. But, based on their own filings, that simply is not true. These investors hope to re-litigate whether the GPs should be included in the receivership and whether the receiver is acting properly. These issues have all been decided by the Court already. After lengthy litigation, with substantial input from investors (including the Aguirre and Dillon Investors), the Court decided to keep the GPs in the receivership and refused to remove the receiver. *See* Dkt. No. 1003 (order keeping GPs in receivership); Dkt. No. 1004 (order denying removal of receiver). That makes their intervention request moot, and thus untimely. *See*, *e.g.*, *TLC Invs.*, 147 F.Supp.2d at 1042 n.8 (investors' motion to intervene denied, where, among other things, they were asking court to "revisit" liquidation plan "already decided by the Court," rendering their challenge "moot").

The Aguirre and Dillon Investors, however, contend that their motions to intervene are timely because they did not become "ripe" until the receiver filed his distribution plan on February 4, 2016. *See* Dkt. No. 1227-1 at 7; Dkt. No. 1229-1 at

[2] Indeed, the Aguirre and Dillon Investor responses to the receiver's distribution plan reveal their true goal. For example, the response filed by the Aguirre Investors focuses more on discrediting the receiver than discussing his distribution plan, using more than half of the brief to focus solely on characterizing the receiver's numbers and factual representations as false, attacking his accounting methodology, and raising irrelevant evidentiary issues. *See* Dkt. No. 1235 at 4-16.

10. In fact, they go as far to say that "the necessity for [the Investors] to bring this motion was triggered by the Receiver's 180-degree reversal on February 4, 2016," when they claim the receiver switched from "support[ing] the existence and integrity of the GPs," to being "adversarial" to them. Dkt. No. 1229-1 at 10. But there was no "180-degree reversal" by the receiver in February 2016. The receiver all along has been following the Court's orders as to how to treat the GPs. Then, in May 2015, the Court held that the offer and sale of GP interests was one, integrated offering, based, in part, on the fact that 93% of investor funds went directly to Western. *See* Dkt. No. 1074 at 7. So it is no surprise at all that the receiver's recommended distribution plan calls for a *pro rata* distribution of assets equally to all investors. The receiver's treatment of the GPs and its proposed *pro rata*, "One Pot" distribution plan are consistent with this Court's well-reasoned rulings. The Aguirre and Dillon Investors' attacks on these issues are really just attempts to ask the Court to reconsider its prior rulings and to revisit issues that have been thoroughly litigated.

The Aguirre Investors also contend that it is timely for them to intervene and argue that the GPs should be removed from receivership because the Court had previously indicated in its March 2015 Order that it planned to keep the GPs in the receivership until the "conclusion of the case." Dkt. No. 1003 at 18-19. They also argue that the Court's reasons for keeping the GPs in the receivership are "no longer operative." Dkt. No. 1229-2 at 11. But neither point is correct. In its ruling, the Court held that keeping the GPs in the receivership was the "only practical result given the extent to which Western's assets are intertwined," noting that "honoring the differing desires of investors would be difficult if not impossible in this case." Dkt. No. 1003 at 2, 17. Thus, the rationale for keeping the GPs in receivership is even stronger now, than it was back in March 2015 when the Court first issued that ruling. Moreover, the Court has just recently directed the receiver to make a proposal and recommendation regarding the exit of GPs from the receivership, including the "advantages and disadvantages of the proposal." Dkt. No. 1224. The receiver filed

that recommendation today, April 22, 2016 (Dkt. No. 1264), and so the Aguirre and Dillon Investors can now weigh in on that issue in due course. There is simply no need for them to intervene for that purpose.[3]

In any event, the receiver's February 2016 proposed distribution plan is not what precipitated the Aguirre and Dillon Investors' involvement in this case. According to Aguirre's own declaration, certain investors contacted him over nine months ago in July 2015, seeking representation, at which point he contacted the SEC and began seeking informal discovery about the case. *See* Dkt. No. 1184-1 at ¶ 7; Declaration of Sara D. Kalin ("Kalin Decl."), Ex. 1. Indeed, Aguirre has admitted that he discussed this case withg investors between July 2015 and September 2015, but was sidetracked due to a personal issue. *See* Dkt. No. 1184-1 at ¶¶ 7-8. Therefore, the timing of the Investors' multiple filings in the past couple of months has nothing to do with the judgment against Schooler or the receiver's distribution plan, but was caused by their delay in hiring attorneys, and their attorneys' failure to move to intervene until instructed to do so by the Court. *See* Dkt. No. 1224.

2. The Aguirre and Dillon Investors' interests are adequately represented already

Although they claim otherwise, the interests of the Aguirre and Dillon Investors are adequately represented here. In the Ninth Circuit, courts consider three factors in determining adequacy of representation: (1) whether the interest of a present party is such that it will make undoubtedly make all of a proposed intervenor's arguments, (2) whether the present party is capable and willing to make

[3] It is worth noting that the receiver's recommendation identifies several disadvantages to permitting the GPs to exit the receivership. Specifically, the receiver writes: "The risks and potential harms to investors in GPs allowed to exit the receivership include loss of the properties, inability of GPs and co-tenancies to manage themselves, potential misuse or waste of cash in GP accounts, intractable disputes between and among GPs and investors, and personal liability for investors. Exposing investors to these serious risks simply to accommodate the interests of a small minority of investors is not reasonable or fair." Dkt. No. 1264 at 14.

such arguments, and (3) whether a proposed intervenor would offer any necessary elements to the proceeding. *Arakaki v. Cayetano*, 324 F.2d 1078, 1086 (9th. Cir. 2003).

Of these factors, the most important is how the interests of the proposed intervenors compares with the interests of the existing parties. *See id.* When an applicant for intervention and an existing party have the same ultimate objective, a "presumption of adequate representation" arises. *See id*.; *see Northwest Forest Res. Council*, 82 F.3d at 838. The applicant seeking intervention must then rebut that presumption with a compelling showing that there is inadequate representation. *See Arakaki*, 324 F.2d at 1086; *Northwest Forest Res. Council*, 82 F.3d at 838.

The Aguirre and Dillon Investors cannot overcome that presumption here. The court in *TLC Investments* faced a similar situation. There, investors sought to intervene to seek more participation in the receivership and the liquidation plan. *TLC Invs.*, 147 F.Supp.2d at 1033. The court explained that its receiver was "an arm of the court" who "represents the interests of all the investors," not just a select few. *Id*. at 1037. Thus, the court concluded that the receiver adequately represented them: "the Receiver's goal is to maximize distributions to defrauded investors. The Applicants have the same goal." *Id*. at 1041. The same is true here. The Dillon and Aguirre investors have a financial stake in maximizing the returns from the sale of the receivership assets. The receiver has the same goal.

The Aguirre and Dillon Investors nonetheless argue that the receiver cannot adequately represent them because they disagree with the way in which he plans to distribute assets in this case. Dkt. No. 1227-1 at 9; 1229-2 at 8-9. They even claim he has somehow hidden key facts from them about the sales through sealed papers. Dkt. No. 1229-1, Ex. A at 13-14. Again, the *TLC Investments* investors made the same arguments, but the court correctly recognized that these differences of opinion did not mean the receiver was unable to represent the investors' interests. For example, the investors in *TLC Investments* "did not agree with the 'secretive' sales

procedures approved by the Court." *TLC Invs.*, 147 F.Supp.2d at 11042. As the court explained, the investors there "just do not trust that the Receiver and the Court are able to make that decision and they think that their input on each proposed asset sale would be beneficial." *Id.* The court, nonetheless, rightly explained that the "The Ninth Circuit has held that the inadequacy of representation element of the intervention test is not met when the applicants present only a difference in strategy." *Id.* (*citing Northwest Forest Resources Council*, 82 F.3d at 838). Again, the same is true here. The Aguirre and Dillon Investors disagree with the receiver's plan for distribution, not his ultimate goal. Everyone wants to return as much as possible to the defrauded investors. That they may disagree on how to go about reaching that goal does not mean that the receiver does not adequately represent them. *See SEC v. American Pension Services Inc.*, 2015 WL 248575, at *5-6 (D. Utah Jan. 20, 2015) (disallowing intervention where investors objected to liquidation plan) (*citing TLC Invs.*, 147 F.Supp.2d at 1042).[4]

In their motion, the Aguirre Investors also argue that the receiver cannot represent their interests by cherry-picking a single investor—the Jenkins family—and arguing that the receiver cannot represent them because his proposed distribution plan shortchanges them. *See* Dkt. No. 1229-1 at 7, 8-9. Specifically, they contend the receiver has taken a position adverse to the Jenkins because he proposes a plan that would return approximately 13.4% of the Jenkins initial investment, "rather than the $58,000 (or 194%) they would receive under the GP agreement." *Id.* But this ignores the many investors (some of whom are represented by Aguirre and Dillon)[5]

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[4] Moreover, this Court has already decided all of these issues—in fact, in many instances, the issues were raised by the same investors seeking intervention now. There are, therefore, no "ongoing differences" between the investors and the receivers on these issues that would support the investors' argument that the receiver cannot adequately represent them now. *TLC Invs.*, 147 F.Supp.2d at 1042.

[5] From the Aguirre Investors' brief: "Intervenors are general partners in each of the 87 GPs which are the subject of the receivership…." See Dkt. No. 1229-1 at ¶ 6; From the Dillon complaint: "The Intervening Group is comprised of general partners in each of the GPs which are the subject of the receivership created by this Court."

who would get as little as 0.75% in recovery if the Jenkins were paid 194% of their investment. Dkt. No. 1181-1 at 13-14. The fact that the receiver does not advocate a distribution plan that would advantage certain investors over others based on their luck in timing of their investment in the Western enterprise, or whether they invested in a GP with undisclosed mortgages, or whether Western and Schooler marked up the value of the underlying property (markups ranged from 109% to 1800%),[6] does not mean that his interests and those of the investors are not aligned. *TLC Invs.*, 147 F.Supp.2d at 1042.[7]

The Aguirre and Dillon Investors, therefore, cannot meet their burden of overcoming the presumption of adequate representation by the receiver. *Arakaki*, 324 F.2d at 1086; *see also LULAC*, 131 F.3d at 1305 (holding that proposed intervenor, who conceded that its ultimate objective was same as existing party, failed to rebut presumption of adequate representation). Their motion to intervene as of right fails for this reason alone.

3. The Investors' interests are already protected

Finally, as to the last Rule 24(a) element, the Aguirre and Dillon Investors cannot establish that their ability to protect their interests would be impaired or impeded unless they are allowed to intervene. In equity receiverships in SEC enforcement actions, investors are routinely allowed to express their views without intervening as parties. *See*, *e.g.*, *CFTC v. Topworth International, Ltd*., 205 F.3d 1107, 1113-1114 (9th Cir. 1999) (affirming court-approved distribution plan by receiver, where investors participated in proceedings regarding plan without intervention). For this reason, several courts have denied intervention as of right of

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See Dkt. No. 1227-2 at ¶ 32.

[6] *See* Dkt. No. 1181-1 at 17-18.

[7] Indeed, based on Aguirre's logic, any party adverse to the interests of the Jenkins family cannot represent them. But since Aguirre's own clients include investors who would lose out if the Jenkins investors got that 194% return, Aguirre could not represent all of the investors he claims to represent without conflict.

investors when the investors can assert their claims in a summary process that provides adequate due process. *TLC Invs.*, 147 F.Supp.2d at 1042 (*citing CFTC v. Chilcott Portfolio Mgmt., Inc.*, 725 F.2d 584, 586-87 (10th Cir. 1984)); *CFTC v. Heritage Capital Advisory Servs., Ltd.*, 736 F.2d 384, 386-87 (7th Cir.1984); *SEC v. Charles Plohn & Co.*, 448 F.2d 546, 549 (2d Cir. 1971). The same should happen here.

In this case, as the Court is well aware, investors can and have been heard without the need to intervene. Indeed, many of the Aguirre and Dillon Investors now seeking to intervene have already previously attacked the receiver and have made prior requests for the GPs to be removed from receivership, through written letters to the Court, filed briefs, and court appearances. For example, of the 220 investor letters filed with the Court in the first half of 2013 primarily complaining these issues, at least 20 were from Aguirre and Dillon Investors. *See* Dkt. No. 470 (order initially releasing GPs from receivership) at 14-17.[8]

Further, when the Court in April 2014 decided to revisit its decision to release the GPs from the receivership, it again allowed investors to make submissions on the issue. The Court permitted them to file briefs and argue their positions at the hearing. *See* Dkt. No. 629 at 7-8. As part of this process, approximately 90 briefs and notices were filed on behalf of approximately 66 GPs. *See* Dkt. No. 808 at 2. Many of the Aguirre and Dillon Investors seeking intervention now submitted those briefs or

[8] *See* letters from Dana Anenberg (Dkt. No. 244); Thomas and Susan Brown (Dkt. No. 386); James Hettinger (Dkt. No. 453); Stephen Mitchell (Dkt. No. 374); Steven Shuey (Dkt. No. 333); Richard and Sharon Sylvester (Dkt. No. 334); Cynthia Teply (Dkt. No. 246); Alfred Pipkin (Dkt. No. 312); Beverly Bancroft (Dkt. No. 100); Bruce Hart (Dkt. No. 413); Charles Bojarski (Dkt. No. 347); David Kirsh (Dkt. No. 314); Richard and Donna Kopenski (Dkt. Nos. 282, 291, 296); Joy de Beyer (Dkt. No. 314); Mark Clifton (Dkt. Nos. 362, 423); Kenneth Prentiss (Dkt. No. 397); Robert Churchill (Dkt. No. 303); Ronald Scott (Dkt. No. 261); Stephen Yu (Dkt. No. 313); and Thomas Panzer (Dkt. No. 403). Many of these investors also have additional IRAs or trusts represented by Aguirre or Dillon. *See* Dkt. Nos. 1227-2 at 1, FN1; 1229 at 1-2.

included their names on ballots attached to the briefs that were filed.[9] At least nine of the investors now seeking to intervene spoke at the October 10, 2014 hearing, and they are making essentially the same arguments they did then—that that the GPs should be released, and that they do not believe the receiver is adequately representing their interests.[10]

In addition, in January 2015, investors again began filing letters with the Court to comment on the receiver's November 2014 report about the financial state of the GPs. *See* Dkt. No. 1003 at 1. When the Court ultimately decided to keep the GPs in the receivership and not to remove the receiver, the Court specifically noted that it had considered all of the investor letters commenting on the receiver's report. *See Id.* at 1-2. Several of the Dillon and Aguirre Investors wrote these letters, and again, their views were considered by the Court.[11]

Further, investors continue to be heard on issues that concern them. Since the Court instructed the Aguirre and Dillon Investors to comply with Rule 24, those investors who seek intervention have filed three separate briefs. Dkt. Nos. 1234, 1235, 1258. In addition, numerous other investors have submitted letters to the Court. *See* Dkt. Nos. 1239-1244, 1249-1257.

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[9] *See, e.g.*, GP briefs filed by William Loeber (Dkt. No. 665); John Jenkins (Dkt. 672); Mary Jenkins (Dkt. No. 687); Curtis Johnson (Dkt. No. 693); and Carol & Henrik Jonson (Dkt. No. 712). *See also,* Investors named in ballots attached to GP briefs in support of removing the GPs from receivership: Douglas Clarke (Dkt. 740 at 11);Robert Churchill (*id.*); Kevin and Karin Bacon (*id.*); Beverly and Mark Bancroft (Dkt. No. 741 at 11); Dana Anenberg (*id.*); James and Regina Boore (*id.*); Steven and Kristine Shuey (*id.*). *See also,* lists of Aguirre and Dillon Investors at Dkt. Nos. 1227-2, FN1 and 1229 at 1-2.

[10] The Investors include Dennis Gilman, Curtis Johnson, Arthur Rocco, Takuyaki Chubachi, Randall Alessi, George Klinki, Gene Fantano, Henrik Jonson, and William Loeber, all of whom spoke at the October 10, 2014 Hearing. *See* Dkt. No. 808 at 3, FN2; Dkt. No. 1227-2 at 1, FN1; Dkt. No. 1229 at 2-3; Kalin Decl., Ex. 2 (Hearing Tr.).

[11] *See, e.g.*, Takayuki and Tomoko Chubachi (Dkt. No. 892); W. Clinton Wilhoite (Dkt. No. 894); William Loeber (Dkt. No. 908); James and Regina Boore (Dkt. No. 913); Curt Johnson (Dkt. No. 917); Arthur Rocco (Dkt. No. 919); Dennis Gilman (Dkt. Nos. 939; 941; 943).

Therefore, the Aguirre and Dillon Investors' financial interests are already protected and will not be impaired if intervention is denied. Here, the Court has allowed and continues to allow investors to assert any arguments they may have regarding the claims and distribution process.

B. The Investors Do Not Meet The Requirements of Permissive Intervention Under Rule 24(b)

The Aguirre and Dillon Investors also do not meet the requirements for permissive intervention under Rule 24(b). Rule 24(b)(1)(B) states that the court may permit anyone to intervene who "has a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1)(B). Permissive intervention is discretionary, and in exercising its discretion the court should consider whether the intervention will unduly delay or prejudice adjudication of the action. *See Spangler v. Pasadena City Bd. of Educ.*, 552 F.2d 1326, 1329 (9th Cir. 1977). In determining whether to exercise its discretion, a court may also consider whether the proposed intervenor's interests are adequately represented by other parties, the legal position the intervenor seeks to advance and its probable relation to the merits of the case, whether intervention will prolong or unduly delay the litigation, and whether the intervenor will significantly contribute to full development of the underlying factual issues. *See id.* As with intervention as of right, a party seeking permissive intervention has the burden of establishing the basis for intervening. *See Northwest Forest Res. Council*, 82 F.3d at 839.

The Dillon Investors seek permissive intervention under Rule 24(b) on the grounds that they seek to "modify the receivership ordered by the court." Dkt. No. 1227-1 at 10. They also oppose the recommendations of the receiver regarding the management of the GPs, and seek to oversee the receiver's management of the GPs. *See id*. at 4-5. The Aguirre Investors argue that they have raised "common issues of fact and law with the various motions the Receiver has filed since February 4, 2016." Dkt. No. 1229-1 at 14. And their proposed complaint seeks adjudication of

matters already decided by the Court – the fate of the GPs and the possible removal of the receiver. *See id*. at 1.

None of this is a sufficient basis for permissive intervention. First, the Aguirre and Dillon Investors have failed to assert any claim or defense that shares common questions of law and fact with the *current* claims or defenses in this action. The underlying action between the parties has been resolved and a final judgment has been entered. Likewise, the court has already considered and rejected requests to remove the Ps from the receivership and remove the receiver.

Second, as discussed above, the Aguirre and Dillon Investors' legitimate interests are adequately represented by the receiver in this action because they share the same ultimate objective, maximizing returns to investors. Moreover, the Investors have the right to be heard, have previously been heard, and continue to be heard on their opinions regarding the sale and distribution of assets. Because the Aguirre ad Dillon Investors share the same ultimate objective as the receiver, maximizing returns, and they can and will be heard on the issues related to the disposition of receivership assets, permitting intervention will not significantly contribute to the development of the factual issues.

Third, intervention now, at this stage of the case, "will unduly delay or prejudice the adjudication of the rights of the original parties." *Venegas v. Skaggs*, 867 F.2d 527, 530 (9th Cir. 1989). Allowing the Aguirre and Dillon Investors to intervene at this late date to re-litigate matters that have already been decided would cause significant prejudice. Final judgment has been entered, all that remains is the distribution of receivership assets. Intervention by this handful of investors could seriously delay resolution of this action, to the detriment of those who do not seek to intervene. Indeed, the Dillon Investors have stated that one of their goals is the "repositioning" of the underlying real properties, which would include holding those properties for "an extended period of time," while entitlements or zoning variances, and the like, are obtained. Dkt. No. 1227-1 at 5. They have also

suggested simply "waiting out the market," which could take years. *Id.* Nowhere do they explain who would pay for any of this, nor do they take into account the prejudice of such delay and expense to the 95% of investors they do not represent.

C. Section 21(g) Of The Exchange Act Bars Intervention Without The SEC's Consent

The Aguirre and Dillon Investors are also barred from intervening as parties under Section 21(g) of the Exchange Act. That provision states that, unless the SEC consents, "no action for equitable relief instituted by the [SEC] pursuant to the securities laws shall be consolidated or coordinated with other actions not brought by the [SEC], even though such other actions may involve common questions of fact." 15 U.S.C § 78u(g). Several courts have held that Section 21(g) bars intervention in SEC actions. *See, e.g., SEC v. Egan*, 821 F. Supp. 1274, 1275 (N.D. Ill. 1993); *SEC v. Homa*, 2000 WL 1468726, at *2 (N.D. Ill. Sept. 29, 2000); *SEC v. Qualified Pensions*, 1998 WL 29496, at *3 (D.D.C. Jan. 16, 1998); *SEC v. Wozniak*, 1993 WL 34702, at *1 (N.D. Ill. Feb. 8, 1993). These cases rely on *dicta* in *Parklane Hosiery v. Shore*, where the Supreme Court stated that "the respondent probably could not have joined in the injunctive action brought by the SEC even had he so desired," citing Section 21(g). 439 U.S. 322, 332 n.17 (1979). While other courts have held that Section 21(g) only bars consolidation, not intervention, the Ninth Circuit has never directly addressed this issue. *See SEC v. Flight Trans. Corp.*, 699 F.2d 943, 949 (8th Cir. 1983) (absence of the word "intervention" from text of statute led to opposite conclusion). *See generally SEC v. ABS Fund, LLC*, 2013 WL 3752119 (S.D. Cal. 2013) (explaining variation among courts and finding no Ninth Circuit precedent).

Some courts have attempted to resolve these differing outcomes by interpreting the statute as prohibiting, at a minimum, intervention where the movant's goal is essentially to "consolidate" a separate action with the SEC enforcement case. *See*, *e.g.*, *SEC v. Benger*, 2010 WL 724416 (N.D. Ill. 2010). As the *Benger* court observed, this interpretation of the statute is consistent with its legislative history:

> The initial impetus for section 21(g) was the SEC's and Congress's concern that private litigants frequently file actions that track the Commission's enforcement cases and seek to "ride along on the Government's cases." The Commission thought this contrary to the "public interest in securing prompt relief from violations of the securities laws" and in the effective enforcement of those laws.

Id. at *6. As the decision further observed, even several courts that have declined to interpret the statute as a blanket prohibition against intervention without consent have examined the intervenor's request to ensure that it would not result in combining a separate action with the SEC enforcement action, especially where the third party had another avenue to litigate its claims. *Id*. at *8-10.

Here, the Aguirre and Dillon Investors have articulated a series of grievances against the receiver, and their intervention complaints demand orders that amount to discovery of possible claims against the receiver, such as complete access to his books and records, an accounting, and unsealing of previously sealed documents. To the extent that they wish to be heard on the disposition of receivership assets, they can and will be heard. Allowing them to intervene for any other purpose, such as pursuing claims against the receiver, or conducting discovery on possible claims, would be to permit them to consolidate some future inchoate claim with the SEC's action, and would achieve the very result that Congress sought to prevent through Section 21(g), especially if replicated by other investors, by significantly impeding the SEC's goal of "securing prompt relief from violations of the securities laws." *Benger, supra*, at *6.

IV. CONCLUSION

For all the foregoing reasons, the SEC asks the Court to deny the Aguirre and Dillon Investors' Motions for Intervention.

Dated: April 22, 2016

/s/ Lynn M. Dean
Lynn M. Dean
Sara D. Kalin
Attorney for Plaintiff
Securities and Exchange Commission

PROOF OF SERVICE

I am over the age of 18 years and not a party to this action. My business address is:

U.S. SECURITIES AND EXCHANGE COMMISSION,
444 S. Flower Street, Suite 900, Los Angeles, California 90071
Telephone No. (323) 965-3998; Facsimile No. (213) 443-1904.

On April 22, 2016, I caused to be served the document entitled **PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO NON-PARTY INVESTORS' MOTIONS TO INTERVENE** on all the parties to this action addressed as stated on the attached service list:

☐ **OFFICE MAIL:** By placing in sealed envelope(s), which I placed for collection and mailing today following ordinary business practices. I am readily familiar with this agency's practice for collection and processing of correspondence for mailing; such correspondence would be deposited with the U.S. Postal Service on the same day in the ordinary course of business.

☐ **PERSONAL DEPOSIT IN MAIL:** By placing in sealed envelope(s), which I personally deposited with the U.S. Postal Service. Each such envelope was deposited with the U.S. Postal Service at Los Angeles, California, with first class postage thereon fully prepaid.

☐ **EXPRESS U.S. MAIL:** Each such envelope was deposited in a facility regularly maintained at the U.S. Postal Service for receipt of Express Mail at Los Angeles, California, with Express Mail postage paid.

☐ **HAND DELIVERY:** I caused to be hand delivered each such envelope to the office of the addressee as stated on the attached service list.

☐ **UNITED PARCEL SERVICE:** By placing in sealed envelope(s) designated by United Parcel Service ("UPS") with delivery fees paid or provided for, which I deposited in a facility regularly maintained by UPS or delivered to a UPS courier, at Los Angeles, California.

☒ **ELECTRONIC MAIL:** By transmitting the document by electronic mail to the electronic mail address as stated on the attached service list.

☒ **E-FILING:** By causing the document to be electronically filed via the Court's CM/ECF system, which effects electronic service on counsel who are registered with the CM/ECF system.

☐ **FAX:** By transmitting the document by facsimile transmission. The transmission was reported as complete and without error.

I declare under penalty of perjury that the foregoing is true and correct.

Date: April 22, 2016

/s/ Sara D. Kalin
Sara D. Kalin

SEC v. Louis V. Schooler, et al.
United States District Court—Southern District of California
Case No. 12 CV 2164 GPC JMA

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

LOUIS V. SCHOOLER and FIRST FINANCIAL PLANNING CORPORATION d/b/a WESTERN FINANCIAL PLANNING CORPORATION,

Defendants.

Case No. 12 CV 2164 GPC JMA

DECLARATION OF SARA D. KALIN IN SUPPORT OF PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S OPPOSITION TO NON-PARTY INVESTORS' MOTIONS TO INTERVENE

Date: May 6, 2016
Time: 1:30 p.m.
Ctrm: 2D
Judge: Hon. Gonzalo P. Curiel

DECLARATION OF SARA D. KALIN

I, Sara D. Kalin, declare pursuant to 28. U.S.C. § 1746:

1. I am an attorney in good standing and admitted to practice law in the state of California and before this Court. I am employed by the Securities and Exchange Commission (the "SEC") as a Senior Counsel in the Division of Enforcement in the Los Angeles Regional Office. I make this declaration in support of the SEC's Opposition to Non-Party Investors' Motions to Intervene. Except as otherwise noted, I have personal knowledge of the following facts.

2. Attached hereto as Exhibit 1 is a true and correct copy of e-mail correspondence on or about August 5, 2015, between Gary Aguirre and me.

3. Attached hereto as Exhibit 2 is a true and correct copy of the transcript of the October 10, 2014 hearing in this matter.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 22nd day of April 2016, at Los Angeles, California.

/s/ Sara D. Kalin
Sara D. Kalin

SEC v. Louis V. Schooler and First Financial Planning Corporation
U.S.D.C. S.D. California
Case No. 12 CV 2164 GPC (JMA)

Index to the April 22, 2016 Declaration of Sara D. Kalin

Exhibit No.	Description	Page
1	August 5, 2015 Email from Gary Aguirre to Sara Kalin	1
2	October 10, 2014 Hearing Transcript	2

PROOF OF SERVICE

I am over the age of 18 years and not a party to this action. My business address is:

[X] U.S. SECURITIES AND EXCHANGE COMMISSION
444 S. Flower Street, Suite 900, Los Angeles, California 90071-9591
Telephone No. (323) 965-3998; Facsimile No. (213) 443-1904.

On April 22, 2016, I caused to be served the document entitled **DECLARATION OF SARA D. KALIN IN SUPPORT OF PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S OPPOSITION TO NON-PARTY INVESTORS' MOTIONS TO INTERVENE** on all the parties to this action addressed as stated on the attached service list:

[ ] **OFFICE MAIL:** By placing in sealed envelope(s), which I placed for collection and mailing today following ordinary business practices. I am readily familiar with this agency's practice for collection and processing of correspondence for mailing; such correspondence would be deposited with the U.S. Postal Service on the same day in the ordinary course of business.

[ ] **PERSONAL DEPOSIT IN MAIL:** By placing in sealed envelope(s), which I personally deposited with the U.S. Postal Service. Each such envelope was deposited with the U.S. Postal Service at Los Angeles, California, with first class postage thereon fully prepaid.

[ ] **EXPRESS U.S. MAIL:** Each such envelope was deposited in a facility regularly maintained at the U.S. Postal Service for receipt of Express Mail at Los Angeles, California, with Express Mail postage paid.

[ ] **HAND DELIVERY:** I caused to be hand delivered each such envelope to the office of the addressee as stated on the attached service list.

[ ] **UNITED PARCEL SERVICE:** By placing in sealed envelope(s) designated by United Parcel Service ("UPS") with delivery fees paid or provided for, which I deposited in a facility regularly maintained by UPS or delivered to a UPS courier, at Los Angeles, California.

[X] **ELECTRONIC MAIL:** By transmitting the document by electronic mail to the electronic mail address as stated on the attached service list.

[X] **E-FILING:** By causing the document to be electronically filed via the Court's CM/ECF system, which effects electronic service on counsel who are registered with the CM/ECF system.

[ ] **FAX:** By transmitting the document by facsimile transmission. The transmission was reported as complete and without error.

I declare under penalty of perjury that the foregoing is true and correct.

Date: April 22, 2016 *_/s/ Sara D. Kalin_*
Sara D. Kalin

SEC v. Louis V. Schooler, et al.
United States District Court—Southern District of California
Case No. 12 CV 2164 GPC JMA

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Court-Appointed Temporary Receiver

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Counsel for Certain Investors

EXHIBIT 1

From: Gary Aguirre
To: Kalin, Sara
Subject: RE: Western Financial
Date: Wednesday, August 05, 2015 11:57:34 PM

Ms. Kalin:

Your courtesy and assistance are appreciated.

Regards,

Gary J. Aguirre
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San Diego, CA 92101
Tel: 619-400-4960
Fax: 619-501-7072

www.aguirrelawapc.com

From: Kalin, Sara [mailto:KALINS@SEC.GOV]
Sent: Thursday, August 06, 2015 1:02 AM
To: Gary Aguirre
Subject: Western Financial

Mr. Aguirre,

As a follow-up to our discussion earlier today, I'm attaching for your reference a copy of the Court's March 4, 2015 Order regarding the receivership over the GPs.

Thanks,
Sara

EXHIBIT 2

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE COMMISSION,	.	
Plaintiff,	.	Docket No. 12-cv-2164-GPC-JMA
v.	.	October 10, 2014 1:30 p.m.
LOUIS V. SCHOOLER AND FIRST FINANCIAL PLANNING CORPORATION. d/b/a WESTERN FINANCIAL PLANNING CORPORATION,	.	
Defendants.	.	San Diego, California

TRANSCRIPT OF HEARING RE: SUA SPONTE RECONSIDERATION
BEFORE THE HONORABLE GONZALO P. CURIEL
UNITED STATES DISTRICT JUDGE

A-P-P-E-A-R-A-N-C-E-S

For the Plaintiff: U.S. Securities & Exchange Commission
444 South Flower Street, 9th Floor
Los Angeles, California 90071
By: SAM S. PUATHASNANON, ESQ.
SARA D. KALIN, ESQ.

For the Defendants: Law Offices of Philip H. Dyson
8461 La Mesa Boulevard
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By: PHILIP H. DYSON, ESQ.
DAVID L. HERMAN, ESQ.
- and -
Law Offices of Eric Hougen
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San Diego, California 92101
By: ERIC HOUGEN, ESQ.
- and -
Jones Day
12265 El Camino Real, Suite 200
San Diego, California 92130
By: EDWARD P. SWAN, JR., ESQ.

A-P-P-E-A-R-A-N-C-E-S

(CONTINUED:)

For the Receiver: Allen, Matkins, Leck, Gamble, Mallory & Natsis LLP
501 West Broadway, 15th Floor
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By: TED FATES, ESQ.

Court Reporter: Chari L. Possell, RPR, CRR
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Reported by Stenotype, Transcribed by Computer

SAN DIEGO, CALIFORNIA; OCTOBER 10, 2014; 1:30 P.M.

-o0o-

THE CLERK: Number 12 on calendar, Case 12-cv-2164, Securities and Exchange Commission versus Schooler, et al., for hearing sua sponte reconsideration.

THE COURT: Appearances, please.

MR. PUATHASNANON: Good afternoon, Your Honor. Sam Puathasnanon and Sara Kalin on behalf of the Securities and Exchange Commission.

MR. FATES: Ted Fates on behalf of the receiver, Hebrank, also here in court.

MR. DYSON: Good morning, Your Honor. Philip Dyson, on behalf of Louis Schooler and Western Financial.

MR. SWAN: Pat Swan of Jones Day for the defendants.

MR. HOUGEN: Eric Hougen on behalf of defendants, Louis Schooler and Western Financial.

MR. HERMAN: David Herman, Law Offices of Philip H. Dyson, on behalf of the defendants.

THE COURT: Good morning.

Did you want to say something?

MR. SWAN: I would just point out to the Court, I counted 27 investors who are in the hall because there's no seats. I wanted the Court to be aware. And there was some discussion about possibly sitting some of them in the jury box. I don't know how the Court feels about that.

THE COURT: Let me inquire, as to those 27, are they individuals that had sought leave or requested to speak?

MR. SWAN: I did not poll them, but I could.

THE COURT: What I had done is we had obtained or received a listing of names of individuals who did want to speak, and as to those individuals, I asked court staff to ensure that they were seated in the courtroom. So it's my understanding that that has in fact happened, that anyone who asked to speak has been given a seat here.

If you want to determine whether or not there's someone out there who did ask to speak and was identified as such and who is waiting out there, then you can let us know. And if you want, I will wait for a minute.

MR. DYSON: We will do that right now, Your Honor. Maybe we could just take a minute before we start.

THE COURT: That's fine.

MR. DYSON: Mr. Swan and Mr. Herman confirmed, none of the 27 outside are scheduled to speak.

THE COURT: That being the case, at this time, the Court will notice the entire audience section in the courtroom and the well portion in front of the bar is completely filled, and at this time, I am not prepared to have the jury box further seated. We do have a number of individuals -- my staff and the marshal's office -- that are currently occupying a number of seats there. But my main focus was to make sure that

anyone who indicated they wished to speak, that they would have the opportunity to be here throughout the entire proceeding. To the extent that is the case, the Court is prepared to proceed.

As a brief background, we are here because March 13 of 2013 this Court entered an order appointing Thomas Hebrank as a receiver over several properties the defendant Western entities controls and several general partnerships that the defendant organized to hold interest in property. On August 16, 2013, the Court revisited that order so that general partnerships would be released based on satisfaction of certain conditions.

On July 22, of 2014, the Court, sua sponte, modified this order releasing the GPs from the receivership and at the same time set today's hearing for purposes of hearing from the general partnerships as to their position on the Court maintaining, keeping the general partnerships within the receivership.

Towards that end, the Court directed notice be given to general partnerships in a number of different forms; that the general partnerships be allowed to file one brief in support of their respective position; that they allow dissenters' views to be considered within the submission. And given that order, the Court has received approximately 90 briefs on behalf of approximately 66 general partnerships; so as a starting point, we see that some general partnerships have filed more than one

brief. As to the objections or points of objection, it does not appear that they were incorporated into the briefs that were filed they have been otherwise submitted to the Court.

So at this time, I have received a list of speakers who wish to be heard. I have also received a list of initial speakers that the parties or that the GPs would propose to be heard first, and given that request, I am prepared to accommodate that request. I expect the reason these individuals have been chosen is because they have a greater command of the facts regarding the GPs, regarding this case, and the impact that maintaining a receiver would have on the GPs. So I am happy to accommodate that request.

Beyond the request to have eight individuals that have been chosen by the investor committee to speak, I am prepared to allow Scott Gessner to speak ninth.

After those individuals speak, I will give the remaining speakers an opportunity to speak as well. As to the remaining speakers, I would urge you to listen closely to what the initial speakers will say so that we can perhaps avoid repetition, we can avoid the repeat of the same ideas and opinions over and over again. As noted, there have been 90 briefs. They have been reviewed. And there is, it appears, a great amount of -- if not overlap, there is a number of issues that are repeated in those briefs.

So with that, I will hear first from Dennis Gilman.

Obviously, to the extent that we have the number of speakers who are prepared to speak, we aren't in a position to afford every speaker 15 minutes. If we did that, we would probably be here past midnight. So what I am prepared to do, as to those initial speakers, is begin and afford each of those up to 15 minutes as long as we are not, again, repeating ourselves. And then at that point, we will take stock of where we are.

Mr. Gilman.

MR. GILMAN: My name is Dennis Gilman. I am an investor in four properties. I am also the chairman of the committee. Much has been made about the committee, and the SEC, and the receiver's briefs filed on 9/26, that a small vocal minority of investors appointed a committee of seven to coordinate the general partnership response, that the committee took charge of exploring the avenue to remove our investments from control of the receiver. It is important, Your Honor, that you specifically understand the genesis of the committee because you are central to its formation. It is very different from what the SEC and the receiver have alleged.

Investors in attendance at the July 18 hearing met outside your courtroom angry, disillusioned, and contemptuous of what they had witnessed; that the Court, in their opinion, had ignored facts presented and that you had flip-flopped and decided for unfathomable reasons to keep us under the thumb of the receiver. Therefore, the investors in attendance met

outside your courtroom and talked of ways to proceed forward and they formed the committee tasked to communicate with their fellow investors. This meeting and formation of the committee was no different than what the American colonists did in the 1770s when they formed the Committees of Correspondence prior to our War for Independence.

This committee met for the first time on July 30 in Encinitas to review the Court order filed July 22, five days before the receiver made the Court order available to the individual investors via e-mail on August 4. At the July 30 meeting, we explored how to proceed given the requirements of the aforementioned order.

Now, the SEC and the receiver have said the committee was influenced by Mr. Schooler's attorneys. First, nothing in the order said we couldn't talk with lawyers. Second, we were in fact advised to consider requesting a postponement of today's hearing since attempting to get an "official response," quote/unquote, from over 3,500 investors in 85 general partnerships in the time allotted -- eight weeks from the date of the July 18 hearing -- was impossible. Well, to quote General McAuliffe at the Battle of the Bulge in 1945, we said "nuts" to that legal opinion and proceeded on our own.

Essentially, the committee set out to facilitate the Court's order which required an official response to the Court's decision to keep the GPs in receivership, and each GP

would, if it wished, file a brief in response to the Court's decision. But how should we obtain the official response from the GPs?

Referring to our partnership agreements, would reminded a vote of the members within each partnership was required to obtain an official response. As required by the documents, we found one person from each GP to request a ballot be sent out to the investors by the administrative secretaries. Second, votes were cast, collected, and counted. In essence, we reasoned the votes would be the official response. We didn't question these actions as the receiver did on his website. We were working from our partnership agreements, contractual agreements we had all signed.

And the receiver says in his brief of 9/26/14 that the Court order of July 22 "further requires GPs to circulate their briefs to their investors." No, the order of July 22 does not say that. And does anyone with a modicum of sense or real work experience think 85 briefs could be drafted and circulated among 3,500-plus investors for review within a five-week period, from August 4, the date of the receiver's notification of the Court order? And what about the vote or official response from GPs which did not file a brief? The receiver and SEC do not mention these investors. In sum, filing a brief was not a requirement of the Court order.

Now, much has been made by the SEC and the receiver

regarding the briefs and how they were drafted. Yes, the committee did circulate templates to the GPs for consideration. Why? So that investors within each GP who wanted to file a brief could have a model to follow. After all, most of us are not lawyers. Or they could look at the briefs posted on Mr. Schooler's lawyer's websites for examples. The Court did not say briefs had to be filed by lawyers.

And of course the briefs are pretty much the same, as were the many letters to you. The 85 partnerships, GPs, that were formed were pretty much formed all in the same way for the same type of investment. There aren't 85 arguments to be made. It's pretty the same arguments over and over again.

Now, the SEC and receiver spent considerable verbiage on the vote that was taken and go to great lengths to inform the Court that the majority of the investors did not vote. This is true. The majority of investors did not cast their ballot. Incidentally, the partnership documents for every GP say investors have three months to complete a vote, not five weeks as provided by this Court. I refer you to the section titled Written Assent of Partners, in the statement agreement of partnerships for each GP, documents we all signed.

The SEC and the receiver also say the committee intentionally ignored or eliminated investors from the vote. No, we did not. The Court agreed on 7/18, as argued by the receiver's attorney on that date, that mailing the Court order

would be financially unfeasible. And instead, the Court agreed, the Court order would be posted --

THE COURT: Let me stop you one second.

I will remind the people here, if you have a phone, just make sure you have it on silent mode.

Continue.

MR. GILMAN: The Court agreed on 7/18, as argued by the receiver's attorney on that date, that mailing the Court order would be financially unfeasible, and instead the Court agreed the Court order would be posted on the receiver's website and sent to the investors via e-mail, and this is what the receiver did. But did the receiver intentionally leave anyone out of his e-mail list? I did not receive e-mails sent August 4, and I should have received four notices from the receiver. And I know of others who did not receive the receiver's notification as well.

Now, I am sure the receiver will say he worked with the most current e-mail list he had available. So did we. It is the case that not all of the 3,500-plus investors' e-mails are current. The Court order should not -- should have gone out via regular mail, but the Court chose not to do that.

And just for completeness, if we could review the receiver's e-mail of August 4 to everyone. It's just a couple of lines.

"The Court has instructed me to deliver a copy of this

order to you via e-mail. Pursuant to that order, see the attached order dated July 22. Please read and consider the order carefully. In particular, take notice of the dates and deadlines provided therein."

Very helpful.

And did the receiver mail the Court order to the mailing address of record for each GP as specified in the order of July 22? I have not had a chance to call the administrative secretaries, but I think the answer is no.

For purposes of completeness, I will tell the Court there was, in fact, one individual who I intentionally deleted from my e-mail list. That person is Mr. Scott Gessner, a disagreeable individual in my opinion, who provided sworn testimony for the SEC in March of this year, and who has threatened me physically should I ever come in contact with him. If you are interested, I have that e-mail, but it's not germane to this hearing.

Now, it is interesting, the SEC and receiver, for all their talk about the non-vote, they say almost nothing about the votes that were cast. If the Court will look at the votes, it can find some useful information to consider. And I have here, Your Honor, in spreadsheet format, the votes for all 85 of the partnerships so the Court can see for itself how each of the partnerships voted. First, all 85 --

THE COURT: Let me ask you, have you provided a copy

of that to the SEC or the receiver?

MR. GILMAN: (Shakes head.) I wasn't -- I am just chairman of the committee.

THE COURT: I was just curious. Let me take a quick look at that, sir.

You are prepared to provide this copy to the Court?

MR. GILMAN: Yes.

THE COURT: I will ask, would you be able to make a copy for the SEC and Mr. Hebrank?

MR. GILMAN: I have another set with me. I will do that.

THE COURT: I will ask you to do that. Continue.

MR. GILMAN: What I can do is summarize that stack for you. I have worked for 25 years as a statistician, so I think I know something about numbers.

First, all 85 general partnerships voted. The vast majority of investors who cast their ballot voted to remove the receiver. In 13 general partnerships, they voted in a majority to remove the receiver. Only 46 of the 85 investments produced any votes at all to keep the receiver, and these ranged from a low of 0.24 percent of the voting units, eligible voting units, to a high of 13.05 percent.

Most revealing, the average difference between the yes and the no votes -- that is, those voting to remove the receiver versus those voting to retain the receiver -- across all 85

general partnerships averaged 39-plus percent, 39.22 percent. If you ask the question, how reliable is this average difference? You can calculate what we call a 99 percent confidence interval and find that the smallest difference to be expected is 36.39 percent.

What does that mean? If the experience of these 85 general partnerships taken over by the SEC after the Court's approval is one of an infinite number of possible experiences involving groups of 85 investments established and treated in the same way. This 99 percent confidence interval means, in 99 out of 100 instances, the average difference between those voting to remove the receiver and those voting to keep the receiver will not be smaller than 36 percent in favor to remove the receiver. Therefore, the likelihood that the nonvoters could in any way vote to keep the receiver approaches zero.

And of those 13 general partnerships that voted in the majority, the low was 51.47 percent. The high was 62 percent. Within those 13, the low for those voting "no" was 0.10 percent of the eligible voting units, to a high of 2.7 percent for the "no" votes. Again, the vote is overwhelming in favor to remove the receiver.

The SEC and the receiver in their filing of 9/26 have once again stated we, the investors, are not capable of managing our own affairs. And they attempt to support that by, as the SEC states, quote, "Their flawed attempt to coordinate a response

in accordance with the Court's July 22 order alone demonstrates the need for a receiver," unquote.

Au contraire. The fact that we pulled off a vote across 85 GPs in five weeks proves conclusively we are capable of managing our properties. I'd like to repeat that. The fact that we pulled off a vote across 85 general partnerships, 3,500-plus investors, in five weeks proves conclusively we are capable of managing our own properties. It is not up to the SEC to determine if the vote was or was not appropriate. We are constrained by partnership documents, not the SEC.

And if the SEC can make a determination that we, the investors, are not capable of managing our own affairs, shouldn't the SEC take over the management of our homes, our businesses? If I am unable to pay taxes, interest, principal payments, et cetera, as stated in section 2.2.2, under Additional Contributions to Capital in the partnership agreement I signed, then surely I must not be able to pay my property taxes on my home or the business taxes on my business.

Are there any limits to the Nanny State, Your Honor?

In conclusion, Your Honor, we, the investors, were left with the impression from the hearing of July 18 that this current hearing was scheduled to let investors be heard and satisfy due process requirements. It is nice that we finally get to be heard after 25 months of the ongoing process. But it stretches credulity to think this hearing in any way involves

due process. I am not a lawyer -- thank God -- but in order to have due process, I think the Court must at some point obtain an understanding of our intent as investors and our contractual agreements. Our intent and our contractual agreements make it very clear we should not have been dragged into this SEC morass when we have never been accused of violating any law. Those of us who are not lawyers are familiar with the Constitution, the law of the land, although we are not necessarily familiar with administrative law. But before we are given due process, shouldn't we have committed some wrongdoing and be told so?

Thank you. Any questions?

THE COURT: No, sir. We can proceed to the next speaker, who will be Gregory Post.

MR. POST: Thank you, Your Honor. My name is Gregory Post. And I am a general partner in Road Runner general partnership that owns dirt east of Yuma, Arizona. And I am a general partner in Silver City GP that owns dirt in Storey County, Nevada.

Section 1.4 of my general partnership agreements states, "The partnership is formed for the primary purpose of acquiring, maintaining, and holding unimproved real property for investment purposes. That's it. We buy hundreds of acres of dirt. We hold it. And then we sell the dirt to developers to build whatever they want. And I provided you today, Your Honor, with posterboards, here, showing you these are typical

acreages that we buy. That's raw land out there, and then we sell it, and developers develop it any way they want. They can put it into residential homes. They can put it into commercial properties.

May I approach?

THE COURT: Yes.

MR. POST: I have also, for you to keep, 13 digital photographs showing a variety of different developments that has gone on after we have sold the dirt to the developers. The first picture shows you the dirt. That's what we invest in.

So please keep this in mind; all these GPs do is buy dirt, hold dirt, and sell dirt.

The First Amendment provides that the government may not deprive citizens of life, liberty, or property without due process of law. This means that the government has to follow the rules and established procedures in everything it does. In civil cases, where receivership might be imposed upon a party, the law requires all affected parties be provided notice and a due process hearing prior to any receivership being imposed.

The SEC filed against the defendants, Western Financial and Louis Schooler. The defendants were the only parties provided with notice and an opportunity for a hearing. None of the 3,500 investors in any of the 85 general partnerships were ever provided notice or a hearing prior to the Court imposing a receivership upon them. So let me be clear for the record.

This hearing today, one and a half years after being placed into receivership, with a due process hearing, does not eliminate the general partnerships' right to due process hearings that is required by law to be provided prior to being placed into a receivership.

It is akin to what a prisoner must feel like in some Third World country where the government charges him with a crime, throws him in jail for two years without ever having a hearing to even know what he's been charged with, and then providing him with an opportunity -- and without providing him with an opportunity to defend himself. Then a couple of years later, he is brought before the Court and told, "Okay. I have already made my decision about your guilt, but I am going to give you 15 minutes to speak before sentencing."

Although we are dealing here with a civil case, the similarities are alike. Without any due process hearing being provided beforehand, a receiver was summarily imposed upon 3,500 investors in 85 partnerships. Now, almost a year and a half later, under a receiver, the Court issues its sua sponte order on July 22, 2014 stating, quote, "Because the Court now concludes that the GPs should remain in the receivership, the Court finds it appropriate to give the GPs an opportunity to be heard."

Since the Court has -- apparently it stated that it has already made its decision, one can only surmise that the Court

is conducting a test of sorts to see if the GPs are hopelessly lost and reliant on Western Financial, as the SEC has alleged, or whether the general partnerships in fact actually do have the agility and ability to organize, in compliance with the balloting and voting procedures in the general partner agreement and Court order, can gather the votes and prepare the briefs responding to the Court's order.

I think the presence of all these individual investors, both outside the courtroom and inside the courtroom, and the filing of over 90 briefs and notices to be heard leaves absolutely no doubt that the GPs are active, capable, and able to deal with any situation that is presented to the general partnerships and that the SEC's allegations are patently false.

In these past few years, the SEC has seemed to be deciding to -- that any investment, any general partnership, any life insurance contract, anything that even remotely can be considered an investment needs to be under the watchful eye of the SEC so they can product the investors. In order to do this, everything has to be first deemed a security. So the question is are our general partnerships really a security? The answer is categorically no.

There are three key factors that courts have come up with to determine whether a partnership is or is not a security. Factor one, does the agreement between the parties leave so little power in the partners' hands that they are essentially

limited partners? 90 percent of the real estate syndications in this country are structured as limited partnerships. Typically, a limited liability company is formed to serve as the general partner while the remaining partners become limited partners, and they do this by signing a power of attorney wherein they relinquish their power and control to the general partnership -- to the general partner in exchange for limiting their liability to the amount of their investment.

This is a key point. Our general partnerships are not limited partnerships. We are general partnerships. All investors are general partners with unlimited liability. There are no powers of attorney that have been signed by any of the general partners relinquishing any of their powers to Western Financial or anybody else. The general partnership agreements all provide for the investors to make all decisions, including when and for how much to sell the property, to propose actions and to make decisions by majority vote of the general partners.

Western Financial is one of the general partners. That's all they are. And the general partnership agreement specifically strips them of any voting rights whatsoever.

Factor two, the partners are so inexperienced and unknowledgeable in the particular business of the partnership that they are incapable of exercising partnership powers. Let me get this straight. The SEC is telling 3,500 investors that we are so inexperienced and unknowledgeable that we are

incapable of purchasing and selling dirt? How arrogant and condescending can a government organization get?

What I found most refreshing when I purchased my partnership interest was knowing that at last I had found an investment opportunity where I and all the other general partner investors had full authority, we had full control, and we had the power to run the general partnership as we wanted, and that there is a viable mechanism in place that enables every investor to cast their votes on any ballot measure.

Factor three, partners depend on unique abilities of a manager such that they cannot replace the manager or otherwise exercise management powers. In all of our general partnerships, all of the general partner investors are managers. We all, with the express exclusion of Western Financial and Louis V. Schooler, have voting power. We all have the authority and power to put deals together and place them before the general partnership for a vote.

Proof of the pudding, one of the investors in Rainbow and Horizon general partnerships obtained an offer from CB Richard Ellis, one of the top real estate brokerages in the country, to list the parcel for sale $2.6 million. The general partner investor, exercising her general partnership powers and authority, circulated the ballots to her fellow investors, and a majority voted to accept the broker's offer to list the property. The receiver, however, in violation of the general

partnership agreement, that he has a fiduciary duty to follow, refused to sign the listing agreement on the strange grounds that the listing broker overinflated the listing price. He said that he -- that the listing price should be only $900,000.

Now, either the receiver doesn't have any idea as to what the heck he is doing -- he should recognize that the general partnerships are listing the property for $2.6 million because they believe they can get it. And the purpose of the general partnership is buy dirt, hold dirt, and then sell it at a profit. It doesn't matter what the appraised value of the property is. It's what the buyer is willing to pay for it that matters.

THE COURT: Let me ask you something. As I understand it, part of the problem in that listing was that the property was listed as being available for commercial purposes. Is that your understanding?

MR. POST: It had a residential zoning, but it was scheduled to go commercial.

THE COURT: And it was scheduled according to what action? There's no dispute it was residential at that time. When you say it was scheduled to become designated as commercial, what proof is there of that?

MR. POST: I don't have that with me, but the -- in most cities -- for example, I own property that's dirt, and I bought it when it was rural residential because I knew that I

was going to go in and get it rezoned commercial. So that -- the value of the property, if the broker has an appraisal and can establish that he thinks he can list it and sell it for $2.6 million, and then the receiver comes in and says $900,000, that's all you can list it for, that doesn't make sense.

THE COURT: Let me ask you. As to the CB Ellis listing, it wasn't that there was a ready buyer who was prepared to plunk down $2.6 million for that property?

MR. POST: I do not know if that is the case.

MR. DYSON: Your Honor, if I may, Phil Dyson. Your Honor, it is residential. It's presently zoned residential. It is in a sea of commercial. It's surrounded by commercial. I think the broker that was looking at the property, who listed at that price, with the anticipation that somebody would buy it subject to it being changed to commercial. That's done all the time in escrows. Escrows are made where somebody buys it under one zoning, Your Honor, with a price subject to it being rezoned, which is done usually by the buyer of the property during an escrow period.

So this one here is -- I think you are right in saying it is residential, but I think the purpose is it's in a sea of commercial. That's what a lot of these properties are. The path of development has come to a tremendous amount of these properties that have been bought by these people, and dozens of previous partnerships put together by Western Financial and

Mr. Schooler, where at one time they were residential.

In fact, I think, if you recall, Your Honor, the receiver keeps bringing up this property where there was a caretaker on it, if you recall at the last hearing, which, again, there was one house left on this property, which, prior to that time, had 80 houses on it, which were all torn down besides one of them because it is not going to be residential; it will be commercial some day, whether that day is today, a week from now, or a month from now, or a year from now. That's where I think the disconnect is.

THE COURT: All right. Thank you.

MR. DYSON: If there's anything further you need on that, I'd be glad to answer it, Your Honor. Thank you.

THE COURT: Thank you. Yes.

MR. POST: On that point, Your Honor, what would it have hurt if the partners had all voted to list it for $2.6 million? Let's suppose that the broker was wrong. They listed it and nobody bought it. What is the damage? The listing ceases and everything goes right back to the way it was. But what if the broker was right? Then the property would have sold for $2.6 million, as the general partnership voted for. It's not the prerogative of the receiver to come in and say what we voted for and we took the ballot measure and decided upon it shouldn't be done. But he refused to sign the listing agreement, so nothing happened.

But I think the real reason for refusing to sign the listing agreement was that by signing the listing agreement, he would totally undermine the SEC's specious claim that the receiver was absolutely necessary because the investors were incapable of managing the GP on their own. That's what I think the reason was.

A second example, in 2008, Sierra Pacific, a utility company, took approximately 480 acres of the 620 total acreage owned by four GPs and as co-tenants. The Court allowed the utility company appraisal to be considered by the jury but only allowed one of the two appraisals that the GPs submitted, indicating that the second appraisal for 20 to $30 million was too speculative. Thus, the jury ended up awarding only 4.4 million.

The GPs, not satisfied with the award, voted to hire an attorney and file an appeal. Subsequent to the appeal being filed, the receiver was installed. The receiver has a fiduciary duty to act and conduct business in accordance with the terms and conditions of the general partnership agreement. He did not do so. The GPs had voted to appeal the jury's compensation decision and the appeal had already been filed, yet the receiver unilaterally, without authorization and without complying with the voting procedure in the general partnership agreement, settled with the utility company for the jury's low compensation award and dropped the appeal. The

result was the investors only got back less than two-thirds of their original investments.

You have to ask yourselves why would he do that? Because if he moved forward with the appeal that the general partnerships had voted upon, he would again validate everything the general partnerships have said from the very beginning, that we are a true general partnership. All general partners have the ability, the authority, the power, and the skills to handle their own affairs without any assistance. It would prove that the SEC is dead wrong. The general partnerships are not limited partnerships, and the general partnerships are not a security. And if the general partnerships aren't securities, then there is no justification for imposing a receiver on any of them.

It doesn't make sense to spend general partnership money on appraising raw land that may sit for several more years before a developer offers to buy it, but that's exactly what the receiver did. Unless the receiver intends to liquidate the assets of each general partnership for whatever he can get, what reason would he have to go out and just do an appraisal of all the properties and spend money? He's treating the properties, it appears, in the same manner as the receiver would handle a liquidation of assets in a bankruptcy proceeding. He would then use the proceeds to pay off the court-approved receiver's fees and attorney's fees that to date

exceed $735,000.

The receiver's statement in his response to the general partnership briefs was very revealing. He states, quote, "Until the Court authorizes him to, the receiver has no intention to sell general pertnership properties. The receiver intends to solicit listing agreements from qualified listing brokers in the local area surrounding each property with input from the investors and seek Court approval of such listings as well as procedures designed to generate the highest and best prices for GP properties. None of this will begin, however, unless and until the Court has approved the process."

Mark my words, if the receiver is allowed to remain in place, by this time next year, a sizable number of our general partnerships will be liquidated for cents on the dollar, almost all of the proceeds will have been paid to the receiver and his attorneys for ever-increasing receiver's fees approved by the Court, and the investors will be left holding a bag of pennies.

There is a solution, however, Your Honor, a way out of this mess, by the Court ordering that all 85 general partnerships be immediately released from the receivership. First, any and all appeals based on the Court's denial of due process will evaporate. Second, the devastation wreaked upon the general partnerships by the SEC will cease. Third, the ever-increasing receivership fees that will bleed viable general partnerships dry will end. And fourth, the general

partnerships can get back to buying dirt, holding dirt, and selling dirt for a profit. Thank you, Your Honor.

THE COURT: Thank you, sir.

Curtis Johnson?

MR. C. JOHNSON: Thank you, Your Honor. If you would care to have copies of my notes --

THE COURT: Have you provided a copy to --

MR. C. JOHNSON: I brought them with me.

THE COURT: You may proceed.

MR. C. JOHNSON: Your Honor, my name is Curtis Johnson, and I am an investor in five of the partnerships. Today I am speaking specifically about the Wild Horse Partners, Nevada View Partners, and Desert View Partners.

In preparing my remarks today, I was just thinking about all the different people that we have as partners. And we have attorneys; we have doctors; we have a great source of knowledge. But one of the unique things that I bring to the table Your Honor, is that I am a real estate agent, and I have been one since April of 1991; nearly a quarter of a century, I have been representing people in buying and selling of real estate. So this is definitely my core set of competency. I have been involved in nearly 1500 transactions, so I do feel that qualifies me as an expert in the field of real estate. In addition to residential resale, I have also been involved with a number of land developments, and currently work with a

builder, finding them property, such as what we have -- what we own as general partners. The idea that the receiver claims that we lack knowledge to handle our own affairs without guiding hand of Western Financial or Louis Schooler is laughable. The only thing that's more ridiculous than that is that the receiver should be our shepherd in this endeavor.

This, for me as a real estate agent, is very clearly pointed out the difference of understanding a very, very simple process in real estate and what the difference is between an as-is appraisal and a highest-and-best-use appraisal. When you are looking at purchasing land, as a builder, you don't want to know what it is; you want to know what it will become. In a moment, we will look at a very specific example that I individually was involved in to, I believe, help answer some of the questions that you had regarding the listing that was not taken.

We, the investors, are fully capable of understanding the complexities of our purchase of dirt, holding of dirt, and selling of dirt. And I, for one, would never have invested in this if I did not feel like we were 100 percent in control. And I look at that based on the way that the title is held. So, Your Honor, when -- I think a natural question would be why would somebody like myself, who is a real estate expert, why in the world would I invest in these types of partnerships when I have the skill set and competency to be able to go out and find

this stuff on my own and work with developers? Well, the simple reason is trying to find small developments that I could afford on my own is very difficult. There's a lot of competition, and they really cost an awful lot.

So by bringing a bunch of investors together, we frankly bring the Costco approach to it: We buy in bulk, we get a better deal, and at the end, we have got to carry our own mattress home. Well, Your Honor, we can carry our own mattress. We are good. And we can handle the control of these investments.

In a previous land investment that was set up exactly the way these are the investors decided we would sell the property after holding it less than three years. In that time, we were able to double our money. One of the properties that I am here discussing is the Wild Horse property. Just before the market crashed, we had that property in escrow with Ryder Homes for $15,000 an acre.

THE COURT: Let me ask you something.

MR. C. JOHNSON: Yes, sir.

THE COURT: How did that work in terms of, for example, the Wild Horse Partners investment and the determination being made that it was primed and ready for sale? Did you have meetings with your co-investors, or did you receive some form of communication with Western that let you know the timing was right? How did all that unfold?

MR. C. JOHNSON: We received a communication from Ryder Homes. They contacted the general partnerships and, through the partnership secretaries, all the investors were notified. We were balloted, and we agreed to a price and escrow period, at which time, much as was discussed, they decided what they were going to be able to do with that land.

THE COURT: When you say Ryder Homes, that was the ultimate purchaser?

MR. C. JOHNSON: Yes, sir. That was the developer.

THE COURT: They reached out and contacted your secretary that was assigned for your --

MR. C. JOHNSON: Yes. They contacted the general partnership as a result of who was on title. Yes.

They made that offer. We agreed to it. And again, during that escrow process, what they are looking at is they are looking at the vision of what this is going to become.

Currently, the Spanish Spring properties are very large, 40-acre parcels of land. As it sits, they are not worth probably even what we paid for it.

THE COURT: Let me ask you something. To the extent that Ryder Homes or someone like Ryder Homes would be interested in purchasing, for example, Nevada View Partners, and they would attempt to reach out to the owner of record, and then at some point they are referred to the receiver, and then the receiver is aware there is this offer for purchase, and

then the receiver lets the Court know there's this offer, and the Court says, "That's wonderful; let's bless it; let's make it happen," what would be the problem in that situation?

MR. C. JOHNSON: Well, the scenario that you are proposing -- in the building industry, when you have additional layers of people that are causing different people to be able to say yes or no to a transaction, the less likely it is that somebody is going to actually want to get involved with that. If Ryder Homes comes to us and says, "We want to buy your property for $15,000 an acre."

And we say, "Oh, goodness. You have to go here, talk to the receiver first, and get it approved by judge. And by the way, it's probably going to take six or eight months" -- that's way too long of a process, Your Honor.

THE COURT: What if the process was streamlined? What if the Court had an order that if Ryder Homes or someone like Ryder Homes approached with that type of offer, that that would have to be streamlined so that a decision would have to be made within seven days or 14 days? What would the problem be in that situation?

MR. C. JOHNSON: In my mind, again, having worked with developers, if they are looking and saying there's a court involved -- there's plenty of other land out there. We are not the only people that own dirt, Your Honor. And if they see that and perceive that as something that's going slow down

their processes, if they see it as something that's an additional hurdle in the road, they are going to move on to the next piece of dirt.

THE COURT: Let me ask you. In the Ryder Homes situation, once that offer was made and then it was turned over to the general partnerships, how long did it take for the vote to be made?

MR. C. JOHNSON: It was a number of years ago. I don't remember the exact timing but --

THE COURT: Was it more than a month?

MR. C. JOHNSON: If that. The ballots went out. They were counted. It was nearly unanimous to sell the property. And we put it into a six-month escrow, and we were able to secure it. And then during that process, we had the collapse of the housing market, of course. But the due diligence process they are going through is determining what that property can become. So they are not buying it for what it currently is. And when you look at the appraisals, these are as-is appraisals. It's a ridiculous way to look at it. It's a complete waste of money; just throw it in the fireplace. As you will see in just a moment, that's not what people buy dirt for. People buy dirt for what it will become, not what it currently is.

THE COURT: You may continue.

MR. C. JOHNSON: So we are being asked to believe the

Spanish Springs property has dropped 98 percent in value. And while I understand that there has been a decrease in the value of property, I find it very hard to fathom that is actually the case.

As a real estate agent, I have an obligation as a fiduciary to my clients, so I am fully aware of the role that the receiver is playing as a fiduciary. There's a couple of issues that, as a real estate agent, give me a lot of grief.

The first is there were funds that were collected to pay notes that were not paid on time. The collection of money and the holding of money, as a fiduciary, is extremely important. And if that is breached, as a real estate agent, I should probably just take the license off my wall and send it into the BRE because I am going to have my license revoked. That kind of breach of fiduciary duty is a huge problem.

Second, the refusal to sign the listing contract. We talked a little bit about that. And from the listing standpoint, not only are we not at any risk of loss, it is the listing agent that is going to go out and they are going to do advertising, do marketing. So why in the world would that listing agent give us a price that they don't think they can get? It's ludicrous on its surface. When I take a listing, I tell people what I think I can get because I am going to go out and I am having professional photographs done, I am doing brochures, I am spending all this money, and it would be

absolutely insane for me to do all of that knowing that I was three times beyond the market value. It makes absolutely no sense.

So the refusal to sign that, and then just the general basic conflict of interest, that the SEC's case against Mr. Schooler and the general partnerships -- these are financially at odds with each other at times because the SEC and the receiver are trying to gather as much money as they can, and they are looking to our investments, to possibly sell those off, in order to gain funds -- you see? The conflict is troubling.

THE COURT: Just so we are clear, sir, at the end of the day, the decision to appoint a receiver is that of the Court, and the Court's focus is on trying to protect the investment, trying to protect the investors. That's my focus. And I see a number of people kind of shaking their heads. But ultimately, that's why we are here, and the questions that I will pose are related to that ultimate goal.

And so at this point, whatever the SEC may hope for or wish, that's not really the point. The question is at this point whether or not what the Court has in place is adequately preserving, conserving the assets that are before the Court, and --

THE AUDIENCE: No.

THE COURT: I am being respectful to all of you. I

am not going to laugh or groan, whatever you say, even if I may disagree with it. I would just ask that you also give the Court respect in that way.

So, in any event, why don't you continue, sir.

MR. C. JOHNSON: Yes. Thank you, Your Honor.

One of the things that I really had to ask myself was, why -- in putting myself in your shoes, why is it that you would want us to be held in this receivership? So I gave that some thought. And the first answer that I came up with was that you had a concern that the partnerships might fall under the influence of a particular unscrupulous individual. And so I thought through that. But the investors are the ones who make all the decisions through a majority vote, and if some person or entity was to try to circumvent that and put themselves into that place and sign for the partnerships or anything like that without the proper procedural vote taking place, no title insurance company would actually insure the title. So I feel very comfortable that that that's not going to happen with anyone else. Unfortunately, that's not true with the receiver, because if the receiver signs something off with the power of the Court, a title insurance company would insure it in a minute. So that's troubling to me.

And the second thing was I felt like there might be some feeling that, you know, the Court needs to give deference to the SEC, but I don't find that to be your goal here.

So the third option I came up with was that the Court looks at us investors as basic simpletons, that we need Big Brother's helping hand in order for us to buy and sell dirt.

THE COURT: Just so you know, I don't look at the investors as simpletons. But what we do have here is a very complicated structure investment which, by its nature, makes it difficult for one general partnership for the other to manage it. And to the extent that Western was in that position, it was able to basically guide the general partnerships in a way that they had the platform for.

I guess my question to you is, to the extent that Western is no longer involved in the investment at this point, how would go about replacing everything that Western did with one or more people?

MR. C. JOHNSON: I am glad you asked, Your Honor. Let's turn to the next page. What we need to do is take this all the way back down to the basics. In land investment, it is a very simple thing. I think one of the things we are looking at is we are trying to make something very complicated that actually isn't. But when we look at the way that things are being approached, just to throw out a value of something -- as this gentleman so eloquently put, it's like we are getting ready for a fire sale. And getting ready for a fire sale is crazy, because if you look at something just for what it is - this is a project -- the next page says "As Is" at the top.

This is a property that my clients purchased. As it is, it is a two-bedroom, one-bath house in Lemon Grove. It's value is probably 200 to $250,000.

THE COURT: What page are you looking at?

MR. C. JOHNSON: It's the one with the photographs, "As Is" at the top.

When they looked that property, and I told them, "I can get you this great deal on the property. I can get this for you for $565,000." On the surface, that seems absolutely ludicrous. Why would you pay $565,000 for something that's worth 200? Well, it's because it is a different vision.

Your Honor, if you look at the next page, this is what they saw. What they saw is its highest and best use. They were willing to pay $565,000 because, while it was zoned as a single-family home with one property on it, they were able to see the vision of being able to change that zoning, and they put eight single-family homes that are selling between 439,000 and $510,000. This is a project that's going on right now with my clients.

So what we are talking about, Your Honor, is people being able to see a vision that is different. And when we look at dirt, we have to look at what it has the potential to become and who would invest in it.

THE COURT: Let me ask you. One of the things that the receiver pointed out was that prior to his appointment,

Western was actively collecting loan payments from the investors and was still unable to make mortgage payments and to pay its operating expenses, and as a result, Western, through Schooler, was going into its pocket to obtain the moneys necessary to purchase -- or to maintain the properties.

Do you have any views on whether or not that is accurate or whether or not your vision would still be able to maintain your respective general partnership without any fears that it would collapse?

MR. C. JOHNSON: Your Honor, that's not something that I have specific knowledge of, and I would hesitate to speculate on that.

MR. DYSON: I can speak to that, Your Honor.

THE COURT: That's okay. You can continue.

MR. C. JOHNSON: Thank you, sir.

Specifically, what I wanted to address was just what you are talking about previously, was the direction that Western offered, and is there an adequate replacement for that. And so, one of the things that I have provided is some very specific information about the investments that I am in. And the investors all have very specific interests, and we know what is going on in these properties.

So the investors in the Wild Horse Partners have spoken very clearly that they do not want the receiver controlling their investment. The same thing with the Nevada View

properties. The specifics of those votes are on the next four pages.

THE COURT: Tell me, moving forward, without Western, without a receiver, what would be the actions taken by the general partnerships?

MR. C. JOHNSON: Well, I can really only speak for myself.

THE COURT: Sure.

MR. C. JOHNSON: But as a real estate investment, these are things I am looking at. I look at this map. I look at this, and go, "Okay. I am seeing some path of progress. I know where my property is. I know what's going on here." This is a 107,000-acre Tahoe-Reno Industrial Center. I am keeping a really close watch on that because there's very specific things that need to happen in order for certain of my properties to become more valuable in the path of progress.

THE COURT: I guess my question is more directed at the role that Western was playing in terms of collecting loan payments from investors, making the necessary mortgage payments that existed for these parcels. What do you have in mind as a means to take the place of Western, take the place of the receiver as to those actions?

MR. C. JOHNSON: I believe the partnership secretaries were the ones doing that in the first place. I don't have specific knowledge of anything beyond that.

MR. DYSON: Again, I could --

THE COURT: Yes.

MR. DYSON: Thank you, Your Honor. The properties' cash flow now and have since January of '14. And there is more money coming in for the payments of the notes that are passed through Western that are then passed through the mortgage people. During the time that Western was administering and the secretaries were administering it, there never was a payment missed. There was a delta of about $1,200 negative for the two years past, which was about $14,000.

THE COURT: Do you contest there were cash infusions from Schooler?

MR. DYSON: No. There was. For that $1,200, Your Honor, for the two years prior to January of '14.

We had submitted to this Court a chart back at the initial part of this, that those funds were already paid for by Mr. Schooler into Western to be able to take care of this delta. Since January of '14 -- and that's only $14,000 a year as compared to the hundreds of thousands of dollars that have been in receiver's expenses since that time.

Since January of '14, Your Honor, it's actually a cash-positive situation. It might even be a little bit before then. So there are -- all the administrative secretaries do, then, is get the moneys collected from the note holders that own the partnership units and pass it through to the mortgages,

which were disclosed to them in the partnership documents, and there's money left in the kitty, actually, afterwards today. That's all they do. It wasn't Mr. Schooler doing it. It was the partnership secretaries. It's been the partnership secretaries since that time. To make this as if it's some Byzantine thing that was hundreds of thousand of dollars -- no, it was $1,200 a month.

You may not recall, Your Honor, but there was a time here where we had a meeting with the receivers -- and I can't recall if it was you or Judge Burns, but we have only had three appearances so far in this case, so it was one of you -- where we actually met with the receiver in the jury room, trying to attempt, where Mr. Schooler said --

THE COURT: You know, at this point, since we have limited time for the investors, let me get back to that. It's already a quarter to 3:00 --

MR. DYSON: But your fact is wrong.

THE COURT: Well, and I have given you that opportunity.

Continue, please.

MR. C. JOHNSON: Thank you, Your Honor.

Speaking specifically about the properties that we are invested in, we are told essentially from the receiver that our land is worthless. However, when you look at this map, and you just do some basic research about what is going on in the area,

you will read that the Tahoe-Reno Industrial Center is coming in, 107,000 acres, and it's bringing in some amazing businesses, and the area is going to be growing. So what happens then is you have to look at how many jobs are coming in, what are the numbers of people that have to support them, and what is the housing need. So that's something -- again, that is absolutely in my area of expertise.

If you skip past the part about the Tahoe-Reno Industrial Center, you will see something that is incredibly important to me -- however, I would doubt very important to the receiver -- however, the investors are very happy to see that Tesla decided to put their giga-battery factory at the Tahoe-Reno Industrial Center. That might not mean much to anybody else, but it got me so excited I just about can't sit in my chair. The reason is that that is 6,500 jobs, Your Honor, 6,500 jobs coming into the area where we own dirt. There is nothing more exciting than that.

When you start to look at what does that mean, you already have a shortage of homes in the area. There's a chart that talks about the fact that the inventory is down in the Reno-Sparks area by 17 percent year over year. A housing shortage, when you take all of that, 6,500 jobs, you figure in how many ancillary services have to be done, they are -- just with Tesla alone, Your Honor, they are short 8,000 housing units. And if that doesn't get you excited owning dirt in

Reno, nothing will. So that's what we are excited about. And I, for one -- I don't think my land is worthless. I think it's actually getting more valuable as I am speaking to you.

So I think that having control of that land is a must for the investors. I don't want Ryder Homes to come in and go, "Oh, we have all these hurdles to jump. There's somebody next door to Spanish Springs that we can just go make a straight deal with them."

It is imperative for to us be able to take advantage of this timing. The timing is so critical, and you have to understand how the development business works. All of this stuff is slated to be on line by 2020. That gives us a little more than five years to be -- having sticks in the air, being built. So that process of the entitlement of land and all that that Ryder Homes is going to go through, that takes, in some cases, up to five years. Right now is when we need to be looking at the property in that area, seeing who is in the game, who are the builders that we need to be talking to. That's incredibly important.

But when we look at the other property I am talking to you about today, Desert View Partners, the exact opposite is something that happened.

THE COURT: Just so you know, I have given you more than 15 minutes. At the same time, I am permitting you to continue to speak because I expect that your fellow investors

are of the view that what you are saying is of such consequence and is important enough that we should give you the additional time, and that they will take that into account when it's their turn to speak, and if they don't need to provide any further information that hasn't already been provided, they won't. Go ahead. Let me let you continue.

MR. C. JOHNSON: Thank you, Your Honor. I will be brief.

The other property that I am speaking about today, there's an oil refinery that was scheduled to be on line in 2012 in the Yuma, Arizona, area, and that got delayed. And the Obama administration has basically said we are not going to grant you the permit. The right thing for us to do right now is do nothing. Right now, that dirt is just land, out in the middle of the desert. But where this land is located, where they relocated that refinery to is directly across the I-8 freeway. The refinery is on the north; we are on the south. It's a fantastic piece of land, but it's not fantastic today. It will be in the future.

Your Honor, again, I really appreciate the time to be able to talk to you today, and I really see that there is no reason for us, as investors, to be shackled by an additional layer, that an investor will look at, coming in, saying, "Oh, my goodness. I am not sure that I want to do this." We have so many very competent to be able to deal with this. We just want

what we agreed to in out partnership agreements, to be in control. And right now is such a critical time, especially for the Reno-Sparks area, that we need to be taking action to make some things happen so we are getting highest and best use of our land. Thank you so much.

THE COURT: Thank you, Mr. Johnson.

Leslie Campbell.

MS. CAMPBELL: Good day, Your Honor. I think my partners have done a really fine job of going over the legal technicalities. Some of those, I would like to review, but first, I would like to give you the background of me. And it's not that I am vain and trying to make this about me, but all these other "me's" in the audience are investors as well. So, with that, I'd like to tell you that I was educated by Jesuits at the University of San Francisco. I graduated Magna Cum Laude, back when it counted, with a degree in social science, a concentration in organizational behavior -- it's the soft side of a business degree -- and I did my work for a minor in philosophy, concentration in ethics.

I went to work in my last year of school and started with the state. I didn't qualify to be anything but a clerical assistant. So over the years, I promoted nine rankings in ten years, became an associate level journey analyst and went on from there to become management -- I was a suit -- and they moved me down to San Diego.

In my career, I have been a director of Caltrans budgets and I managed $10 billion a year from 49 different streams of revenue, each with its own separate consequences and availability for use in construction operations and maintenance. I then went to another agency, SANDAG, and I had 29 and a half years in with the state -- 16 and a half with the Department of Justice, one and a half with Consumer Affairs, and 12 years with Caltrans Department of Transportation, California. My mother cried because I quit. I went to a local agency. And it was because I did have the intelligence to avail myself of my retirement information and knew I could transfer it. So I went from Caltrans to SANDAG and became a director.

So in my 36 years of work, I went from assistant clerk to director. And it's not just that I had a glorious career, but I actually did an okay job at it, too, with commendations and plaques from the state senate and from my workplaces.

I am saying this because I am trying to explain that I work on progression and making myself better. I am educated. I have had a career. I have managed over 1,000 people. And even working as a minion for the state, I have educated myself.

So I started getting a little money. And people, politicians and financial pundits, were telling us, "Well, Social Security might not be there for you." And I paid in, so I thought, "Well, I have to do my IRAs. I have to my Roths. I

have to do my 457s." So, baby steps, I got into mutual funds. I learned about dilution. So I went into the stock market. I learned about that. My rating with TD Ameritrade, I am classified to use any kind of investment tool, including options, and that's not easy to come by. You have to be a substantiated, qualified investor. And I have been granted all rights in trading.

Again, I knew I had to diversify. So with that, I thought, "Well, okay. Bonds." So I get into that. Fine. Make a little money. Getting ahead of inflation.

Now, real estate. So I got moved down to San Diego from Sacramento. So I kept my house in Sacramento, and I thought, "Oh, two streams of real estate appreciation. Woo hoo!" Well, I found that I hated being a landlady: Late rents, loss of operational costs, advertising from a distance, and renters trashed the place. So I pulled out of real estate.

Went into commodities. I have had fun with the gold and precious metals commodities. You have to be very alert and watch the markets, and get out high, go in low, keep buying and selling. It takes a lot of attention.

And you know, at this point, I had all my portfolio, and I am looking at it, and my house in San Diego, the equity in that is a worth more than what I have made, and I have been making profits. So I thought, "Okay, I have to get into real estate again."So I didn't want to be a landlord. I knew that. I did

try limited partnerships, and they are limited, and the tax advantages of those have gone away. And I looked at REITs, but those are corporations where somebody else is in charge.

And then I found the general partnership. I was going to be a real partner, somebody who had a vote. And this mattered to me, as it matters to all the people in this room.

I have samples of a ballot, and a vote tally sheet if you are interested in that.

THE COURT: Why don't you describe that. A vote for what?

MS. CAMPBELL: This was the vote just recently for taking out the receivership. But we have had votes on all kinds of things.

THE COURT: Like what? Votes on other things such as what?

MS. CAMPBELL: If we are interested in selling. For Verde View, which sold eight or nine years ago -- that was my second investment -- second or third. We were surrounded -- it's a Nevada investment, near Reno. There is a housing shortage in Nevada.

What interested me in Nevada was that 80 percent of the land is government owned, either national forest or military. So 20 percent is available for people to work and live on. That immediately tells you that it's -- supply and demand is in our favor if you invest there.

So I invested in Verde View. And the plot next to us was being developed, and then it hopscotched and the plot on the other side was being developed. The utilities ran right by us -- water, electrical, sewer -- and it made us very desirable. We doubled and went out in three years. So -- and that was done by ballot. And there is some going back and forth when there are ballots.

THE COURT: That was the one eight, nine years ago?

MS. CAMPBELL: Yes -- no. It was in 2006 or 2007 when we sold, so about six or seven years ago.

And then, with that, I rolled my profits, split it and bought into two more general partnerships. Woo hoo! Seemed good. And then you know what happened in 2008. So, this is the type of real estate that you don't have to collect rents. We are sitting on dirt. We just wait. At this point, you can afford to wait, so you sit tight. Now we are in a real estate market that's pretty hot and we are not being allowed to do anything.

So I hope I am convincing you that I am a sophisticated investor --

THE COURT: When you say you are not being allowed to do anything, could you be more specific? Specifically what aren't you being you allowed to do? And other than the one example as far as the listing --

MS. CAMPBELL: The samples that were listed -- I have

another sample that I am up to represent, P39 Aracobra, and Painted Desert and Mountain View -- so with that, do I get 45 minutes? I won't take 45, but it might be more than 15.

THE COURT: I am not sure you want to be here until midnight.

MS. CAMPBELL: No. But -- I kind of lost my track...

THE COURT: We were talking about P39 Aracobra --

MS. CAMPBELL: Yes, those are the ones I am up to represent. I did the briefs on those.

What I am trying to convince you is I am your typical investor. They are people who are professional, they are self-taught, people who look for investments. We are trying to do the right thing. We know that Social Security -- maybe it will be here, but it won't be enough. I would like to have enough money to live until I am 90. I am retired now. I am almost 61. I was counting on this little pot of money to be my medical benefit. And it's not my only stream of revenue.

But I think I am not uncommon. All of us have gotten into these things because we needed to diversify. We are trying to do what everybody tells us to do, to save your money, to make sure you can take care of yourself well into your old age, not to depend on the government and Social Security. And for me, not to even depend on my retirement system, which has been deemed unsustainable at times. And now it's being made very difficult for us to do that.

THE COURT: And tell me about that, in terms of how it's being made more difficult.

MS. CAMPBELL: Because we have to go through a receiver. And if we do ballots, the receiver ignores it. That has been proven by the men in front of me that spoke.

THE COURT: Other than the one or two examples, are there any others that you are aware of?

MS. CAMPBELL: There is one -- and I am not representing for Rolling Hills, but I became personally interested in that. I am a partner. It was also in the state of Nevada, and the state did an eminent domain take -- which I am very well aware of how that law works because I worked at Caltrans -- and it was for a utility. So a utility company was going to go in and provide more electricity. That is for the greater good. So they had a good position. They did not have a good appraisal on the land.

THE COURT: "They" being --

MS. CAMPBELL: Rolling Hills.

So they wanted to buy us out cheap, and government is supposed to try to do that. And we went to court. They would not allow all the evidence, and I am not sure what all that evidence was. But even without that, the jury saw for us to get around 5 million. So all of us got our checks, which were not what we put in; that was the risk of being a general partner. The take on that I think when it started was around

6 million, we got around 5 million, so that is a loss. The utility company only needed about three-quarters of the land. So I am seeing e-mails -- we are verbose; there's e-mails that go back and forth among the partners -- saying, "We got the lousy quarter of it because it's all rock and gravel." And my ears perked up. I thought, "Gravel?" Gravel is the new gray gold. In construction, there is a desperate need for fines. Fines are the part of the earth that aren't loam or soil. It's sand gravel, like for construction. And since the tsunami in 2004 in Thailand, cement and fines are getting more and more expensive. And we have become more ecological, so -- and most gravel is done with open-pit mining.

THE COURT: So what did the receiver do or not do as to that?

MS. CAMPBELL: Well, he wasn't on at that point. But there was an appraisal done on the land for the gravel, and it was worth 25 to 30 million on a $6 million piece of property, which we had already lost and given checks back for our shares of the 5 million. So here we had this small portion of the land, and we are going to the Supreme Court. Now, this is where it comes in -- and I have been told that the receiver, in April of 2014 -- just this year, and I only just found this out this week -- that he went to the utility company and offered to drop the case and give them the other portion of land.

We could have quadrupled our money. Well, just say that's

ridiculous. Even I would say, okay, we are not going to go into development. But there's another mining operation for gravel one mile away. Do you think that we would have at least asked for a contract and taken royalties off of that? And ecologically speaking, since it's only a utility company that would have been next door, we could have gotten something for that, instead of taking our loss? And, you know, we are grownups. We pull up our big-girl panties, we take the loss, and go on. But we weren't even given the opportunity. He made a deal, and the utility company took it.

Here is the other thing -- and I am not sure of Nevada law, but we are in the United States of America. If there's an eminent domain take, it has to be for the greater good, and that was taken, and the utility company was never built. The electrical needs didn't seem to appear. So at that point, under our law, anyway, we are supposed to get it back at the same price. We didn't get that opportunity.

Is that specific enough?

THE COURT: Yes. I appreciate it.

MS. CAMPBELL: So, also, I would like to bring up something besides myself. The other thing that hasn't been mentioned -- I am sure -- maybe it's because it's so obvious, and you and the SEC and everybody here understands. But a corporation, an LLC, or a partnership that has its own EIN from the IRS is an entity. It is a separate child. It is a

standalone. And as such, every time our partnerships were developed and we get our own tax statements that come out from our own entity, it's a standalone. So it's not right that we are -- we are not any part and parcel of Western Financial and Mr. Schooler with the SEC. These are separate issues. As such, we have been denied our due process. And Dennis already went on eloquently about that, so I will try not to repeat.

But we have been denied for 25 months because we weren't given a hearing, the theory being that we received no financial harm. I think some of us have already proved that we have received financial harm, and there is a pattern here, and we can't guarantee we won't continue to receive financial harm. We are getting harmed if we were not allow to make our profits in this real estate market. We manage ourselves as partners through ballots and through losses. We are not limited partners. The structure documents, the statement of the agreement partnerships -- and it is section 5, and I brought a copy of that. May I read it to you?

THE COURT: Yes.

MS. CAMPBELL: "Rights and duties of partners. General partners right to control the partnership. Notwithstanding the" -- and we all signed this as our documents when we put in for our shares of the partnerships.

"Notwithstanding the provisions of the section titled signatory partner, each partner, other than the nonvoting

partners defined below, shall participate in the control, management, direction of the business of the partnership."

That's 5.1.1.

5.1.2, "All partnership decisions shall be made in accordance with the vote of a majority of the interest in the capital contributed to the partnership owned by partners entitled to vote. For purposes of this agreement, the term 'majority in interest of the capital contributed to the partnership' shall mean a vote of more than 50 percent of the capital contributed to the partnership, excluding the capital interest of the nonvoting partners, each unit being entitled to one vote" -- and we all own various amounts of units, and it comes out a percentage.

"Partnership decisions may be made at the meetings of the partners or by written assent of the partners," and it goes on.

I made copies of these pages if you would like that.

THE COURT: I think we have it.

MS. CAMPBELL: Okay. A receiver cannot cause harm to the company he is managing. I thought that was a definition of a receiver, "protection." Please don't protect me anymore. I can't take much more of this. Because, in fact, the receiver has harmed us. I hope I am giving voice to the people I am representing, that we are intelligent and not naive investors; that we are active.

It doesn't take a lot of action. That's another thing

that drew me to this type of real estate. As the partners before me explained, it's dirt. Sometimes it's really good gravel dirt, but it's something that can sit there and wait. I don't have to pay taxes. I don't have to watch the market go up and down. I don't have to study fundamentals and technical analysis. I just have to look at all the prospectus.

And in fact, when I went into P39 Aracobra, it was because I went to my financial investor, and I said, "Okay. I am ready to do another general partnership. I have saved up a little bit." And I just read that Slim Pickens had picked up about 80 percent of the water rights in the United States of America. Well, okay. If it's good enough for Slim -- I asked, "Do any of these properties have water rights?"

He went off and looked, and he came back. "As a matter of fact, P39 is sitting on fresh springs." Fresh springs that feed water -- that goes downhill towards Reno. So I jumped in again. It was a considered move on my part. I hadn't considered any of this legal stuff happening, but it was, on the whole, I think, a logical and good move for finances.

So with that, I would plead that you consider that we don't need a parent; that we do manage ourselves; that we can continue to do so. And that if for, I believe, for all the wrong reasons you decide we have to have a receiver, that we have to have a foster parent, at least give us one that doesn't abuse us. You know, I feel like I am in foster care and all

the worst horror stories you hear.

With that, I would plead that you remove the receiver, and allow us to manage our investments.

THE COURT: Thank you so much, Ms. Campbell.

Next will be Stephen Finn. Mr. Finn.

MR. FINN: Good afternoon. Thank you for the voice. We haven't had one in about 18 months. I am an investor currently in seven properties, which might be the record in this room right now, maybe. And I have also had an eighth, which sold for about double the amount of money I invested ten years ago.

One of the seven I am currently in also sold, and an interesting story about that one was it sold because we, as the partners, voted to sell, to accept the offer. And the offer involved a down payment, which tripled my original investment right off the bat. Unfortunately, it was 20 years after my original investment, so tripling was about okay. And then there were monthly -- yearly annual payments for the next five years, and then a balloon. That was in about 2005. So two years later, three years later, we know what happened, and the buyer defaulted. And we had to then decide, well, what are we going to do about this? This is crap. We are in trouble. But one of the possibilities to us was to take the land back. So again, we voted. It was us; not Western, not Mr. Schooler. We, the investors in that partnership, voted and agreed to take

the land back. And right now it's probably a good thing. Eventually, that land will probably be worth a reasonable amount.

Another one I want to talk a little bit about is Rolling Hills, that Ms. Campbell just spoke to and Doug also talked about. And they talked about the appeal to the Supreme Court for the settlement in the eminent domain case. All of that is true, and it's somewhat disappointing that the receiver just settled the case, dropped the case, without us having a chance to vote on it.

One thing that they didn't mention, however, was, again, the partners voted to set aside, from the original sale of around 5 million, $600,000 to support the appeal to the state Supreme Court because of the vast mineral rights that were on the property. So that $600,000 was set aside. We started the appeal. The appeal was well along, so I imagine somewhat of the $600,000 has been spent, but a lot of it is still there. So if the case has been dropped, I would like my money. I would like my share of that $600,000 or whatever is left of it. There's no reason to be holding on to it.

So that's an example of how I think we have been harmed by the receiver.

Going forward in the future, how we might be fire-saled out of this -- the one I mentioned, where we just took it back, the receiver recently appraised it for $740,000, but there's a

website called LoopNet, which is like Zillow for investment property. And there's a property right next to ours, exactly the same size, that s currently appraised for 1.85, so more than double. And there is another one nearby that's slightly less than that. So, again, you know, I wouldn't want to sell it right away if there's a chance it's going to go up.

Some of the others who went before me talked about the Tesla facility that's going in. So one of my other multiple properties, called High Desert, is currently -- it's approximately six miles from where Tesla will be going in. It's preapproved for housing. It's the closest property in the area that's zoned for housing. So with the 6,500 jobs that Tesla is planning to provide, plus all the ancillary jobs from all the businesses that will come along, I would ask the receiver not to sell it right away because I think it's going to go up.

And then nearby, there's another property called Osprey. It's right near the freeway. There's a city line -- a county line that goes through it, a road that goes through it, and Tesla is going to want a road from their facility to the freeway. It's probably going to go through that property -- very likely to go through that property, and very likely be a collector road, which means lots of other businesses -- fast food, gas stations, motels, strip malls, stuff like that. So, again, on the chance that that might happen, can you please

hang on to it for a little bit and see?

And lastly, there's another one I am in called Railroad, which is a little further out, but it's actually right near an airstrip that's supposed to be turned into a cargo airport, which Tesla is going to need to serve it. So, yeah, you know, wait a little bit, please. Okay? Let's not just fire-sale these, please.

Anyway, I am not going to take any more time because a lot of people said all the things I was planning to say.

But I just want to say that -- you asked about how we, as the GPs, plan to deal -- how we will police ourselves in the future, do without Western or the receiver, what have you. I am really glad that someone like Ms. Campbell is out there looking around and knows that gravel is worth something, or that Doug knows how to look for investor properties. And everybody else in this room probably has some skill that's going to come along and benefit the partnership. And I would much rather take my chances on that for the future than fire-sale and get nothing, pennies on the dollar, and all the pennies are going to go for legal costs and receiver costs. Please, let me take my chances on my own and everybody else. Thank you.

THE COURT: And just so you know, the receiver cannot sell anything without the Court approving it. And so my --

MR. FINN: Then, please hold on to the land for us.

THE COURT: At this point, I am not aiming to have any fire sale of a property like High Desert or Osprey or Railroad, a fire sale of anything unless there's clear indication that those actions would be appropriate. So at this point, I haven't heard from the receiver that any of these three properties should be sold, but I am mindful of the need to receive input from the investors. That is one thing that's very clear to me. Thank you for appearing today, Mr. Finn.

MR. FINN: Thank you.

THE COURT: Next will be Arthur Rocco. Rocco -- did I say that correctly?

MR. ROCCO: Correct. Correct. It's Rocco. Your chief security officer made it clear to me in the hallway to behave myself. Sometimes that last name of "Rocco" makes people step back a little bit, you know what I mean? So I have had a little bit of fun with that, your Honor. Thank you for this opportunity.

THE COURT: Thank you.

MR. ROCCO: Mr. Finn addressed something I wanted to address, and it's more of your concerns about what if the Court went away, the receiver went away, Western has already gone away, basically. What would we do? Well, we'd just take care of business. It's simple. It's not that complicated. And yes, Ms. Campbell would be a candidate. The logical choice would be to hire Beverly or Alice. They are the most

knowledgeable. They've collected money. It doesn't have to be those two.

But the thing I would do personally is get the e-mail list -- which I have many of them -- contact my fellow partners and say, "What are we going to do? The Court let us go." We are going to have to run this business like it's our business and pull together, go find someone to manage it, collect the money, file the tax returns, pay the taxes, get a K-1. It's not that difficult, really; just like three simple steps.

Without the receiver, without the Court and anybody else, I would like to have that choice, to either hire someone myself -- I could do it.

THE COURT: And I guess the problem is that if it was a partnership of three, four, five, six people, that would be easy enough to have you all show up in a room and debate this and decide. How would you propose to do it to the extent there is --

MR. ROCCO: Sure, and I understand your concern, and it is a good one. You saw today evidence today, that 85 partnerships got together in less than five weeks and threw together a vote. So to get one partnership together that I belong to -- and I am representing four today, Your Honor: Valley Vista, Jamul Partners, Galena, and Spruce Heights.

I am involved in seven other ones, by the way, so I've got the other guy beat by four, so I want to just get that in the

stats. I have a lot of money at risk here.

So we would have to run it like a business, the same way I started my business. You have to have somebody to pay bills, somebody to take care of maintenance.

Leslie's point, I too -- I have tenants. I have rentals. I bought the raw land because it was just dirt. I didn't want to have to pay a lot of maintenance, I didn't want to get a call on the weekend that the water heater went out. I didn't want anything like that. I knew these were long-term investments.

And we would get together and hire somebody to manage it, so much per property -- the ones that I am in, of course. Everybody else can do the same thing. We would need a small staff, probably two people, in case one was sick. You always want somebody to answer the phone. You want to make sure someone is there. We would need to hire an accountant. I would say probably seek the same accounting firm.

And I'd like to make a quick comment. When the receiver first came on, I think he terminated Alice and Beverly, but then realized he needed their assistance, so he hired them back.

We would do the same thing, or we would take a vote. "Do you want them, or do you want to make a complete change in personnel?" And maybe somebody within the partnership would be able to do it, have the time, maybe -- like, Leslie is retired.

Perfect for her to make an extra 2,000, $3,000 a month. I don't see the process as being that difficult for us to be on our own.

THE COURT: Are you familiar with the finances involving the 11 investments that you have made with the Western enterprise? Are you aware of how much is owed for each of these, how it breaks out in terms of --

MR. ROCCO: Not specifically. Most of the ones that I am in I think are paid for completely because I came in in the '80s, early '90s, mostly. I learned through some of the correspondence from the receiver some of them may have been a little bit behind, but I heard today that we now have extra money in the kitty.

A lot of people got discouraged and just quit paying their administration dues. You know, the markets were bad, things were down, and they ran out of money. People lost their homes, they lost their jobs, and they quit paying. And I would say that was the major reason why we got behind a little bit. I think more people are --

THE COURT: Let me ask you. In real time, did you know that you were behind in any of the 11 investments?

MR. ROCCO: No, not really. Honestly, I didn't correspond with Western. I didn't talk to them. I didn't need them for anything. I didn't ask them for anything. I realized it was a general partnership -- which was a big reason why I

bought in, because I had a voting right and I had partners.

Really, if nothing else, as partners, we were a little complacent and just going along. But I would say this event has stirred a lot of us up, and we are now paying attention. You have got us on the ball. You have got us focused on what our needs are, and we have direction. We know what we need to do.

And honestly, Your Honor, I beg the Court to let us succeed or fail on our own. We spent our money. We put our time into it. Let us hire someone to run it. And either we win or lose on our own merits, not because somebody didn't sign on a real estate deal, or somebody went to the Nevada Supreme Court -- which I didn't know that the other small percentage of that property was made in the deal by the receiver, so I don't know that the receiver's been transparent.

You can have a good receiver, sure. And honestly, in my heart, Your Honor, your intention was to make sure we were protected. I really believe that. Now, it comes down to, well, do we have a good king, or do we have a bad king? That's how I look at it.

And on the administration fees that come out on an annual basis, when I got the new ones from the receiver, I wrote -- I noticed that they went up. So I pulled out the full 20 years -- 15 years, 10 years. And said, well, they have been consistent, within five dollars, two dollars of every payment.

So I agreed to pay what was historically correct or what was the historical amount. And I wrote on my return invoice, "Please explain to me why the fees have gone up." I never got an answer, Your Honor, and I wrote that on probably six of those partnerships. Never got an answer.

Am I supposed to pick up the phone and call the receiver and say, "How come you don't give me an answer?" Well, I should have. But the fact that he didn't respond and I gave it to him in writing shows me that it slipped through the cracks. And I am not going to say he intentionally didn't answer. I didn't get an answer and I still want to know why my administration fees have gone up. I don't know. I don't have an answer to that.

But I want to at least let you know, I feel in my heart we can honestly manage on our own, and we got dragged into this by no fault of our own doing. So therefore, I do beg the Court to give us the opportunity to stand tall on our own or fall.

I also want to make a comment about your concern that if -- what is the problem with having a receiver or Court or somebody else in the middle of everything. I own a condo downtown, and it's in litigation. Something with the builder, faulty plumbing, and all that kind of stuff. When somebody comes to buy that condo in my building and they find out that it's in litigation, most people will take a step back and say, "Forget it. I don't want to buy this piece of property because

there's complications." Maybe it works out great and doesn't affect the value of the property, but there's delays. Legal, courts -- there's delays.

For example, if you listed your home for sale, and I found out it was in litigation because it was in an HOA or some kind of community, and the community was getting sued by somebody, I would walk away from it. There's a lot of other places. I would think in my own mind, "It is not for me."

So having this -- I also understand -- maybe other people don't -- that we could still today, as a group, say, "Let's list our property." Just because it is in receivership doesn't mean it's frozen. But most people, when they hear receivership, U.S. government -- kind of like getting that letter from the IRS in the mail. You don't want to open it. "What is it?"

So there's that layer of complication. It creates difficulties and delays. It is not good. Most people don't want to buy something that's in this process. Why? This has been going on for two and a half years now, so is it going to go on another two and a half? I don't know that. But I think it would maybe be easier on Your Honor if you let us go and you won't have to deal with us anymore. Wipe that off the slate, take it off right now and they are gone. Now you just have Schooler and the SEC, their deal.

And I am not saying there was problems or wasn't problems.

I would like to address the fact my agent was thorough. Maybe some of Mr. Schooler's employees made mistakes and promised things they didn't deliver. That's possible.

THE COURT: Your agent?

MR. ROCCO: My agent was Richard. I don't know if Richard wants me to release his name or not. But he was a good guy. Is it too late? He is very thorough.

When my wife and I were in our early 30s, we were thinking about our future. We weren't thinking about buying raw land and selling it in a year. We knew that it was long term time. But we also liked the idea that we could get it cheaper, the Costco effect, in bulk, get it cheaper; and then in 20, 25, 30 years, where it is today, we would be reaping in some benefits. It isn't working out that way at this moment, but we also thought, if it didn't sell -- honestly, raw land is not worth the buffalo on a nickel if someone doesn't want to buy it. Honestly, it's not. But there are comps and other things going on, so there is some value, typically.

So we took the chance. And I have had two of them sell, and I rolled that money into two other ones because we liked what was going on. So, you know, we thought they were good, solid investments for long term and even believed that if it didn't work out, our kids will get them. And if it doesn't work out for them, they will get it.

So to take appraisals in today's economy, when it's

recessionary, honestly -- my own opinion -- it was a waste of time and money. Now, I would have appreciated the fact -- the receiver went to the Court and asked for permission to get the money to do the appraisal. That's fine. I've got no problem with that. But then he could have come back to us as general partners and says, "I have got approval from the Court. I'd like to get an appraisal on the property, and I'd like to take vote of the partners, and are you willing to do that?"

Hands down, most people would have said, "No, don't waste our time or money," because we all know it's low. Real estate has been down for a long time. And when you appraise real estate as is, like Mr. Johnson talked about, there is a big difference from what it is to what it's going to become. That's why, like Tesla -- hasn't made a profit yet. It's $250 a share. Are you kidding me? It hasn't turned a profit. Why? Because they are thinking about it as a future investment for the world's battery source. Not the car; its batteries is what the world wants. It's selling for $250 a share. How about that? Would have been nice to buy at 10 or 20.

But, you know, our land, as is, may be worth only what he says it is. That's it. But when it becomes -- you know, for example, use Jamul.

And I have something here from a fellow partner, who e-mailed me, wanted me to bring this into court. So there is communication with me and another partner and several other

ones, too. He said that Bratton View and Jamul properties was appraised by the appraiser for $68,000. 48 acres, Your Honor, in the middle of Jamul. It's not too far away from downtown San Diego. $68,000? If I had enough money right now, I would buy every piece of property that man appraised, right now, and I would buy them all, and I would be a Rockefeller. My last name would be Rocco Rockefeller.

Having said that, a similar appraisal of a piece of property down the road, a mile and a half, was listed for 12 to $14,000 an acre. The receiver's appraisal is at $1,420 an acre. So which is it? We are talking half a million dollars.

THE COURT: And I know there has been a considerable amount of attention given to and discussion of the appraisals that were made. The appraisals were initially made at the direction of the Court just so we can get a sense of how much are these properties worth. And I appreciate land, uniquely so, is something that -- today it may be worth $1,000; tomorrow it may be worth $100; next year or ten years, may be worth $100,000. So I understand it is an up and down.

I understand the investors were of the view, "I am not expecting this to be $100,000 tomorrow. I am in it for the long haul," so I get that.

Mr. Rocco, do you have anything else?

MR. ROCCO: Well, I had some other stuff, and a lot of it was covered, so I will just get to the bottom line

because it's getting late.

Let me also let you know that I am 61 years old. I have been married for 37 years. I have got two kids. I have been in business for 34 years, my own business. I am a managing director for another business. I sit on the board for another business. I sit on two architectural committees. And I served as the president of the Dental Laboratory Owners Association for over two years. And I am fully capable -- if nobody else in my partnership wants to take control over managing, I will do it. I want to let you know. And I think your concern is how are we going to stand on our own two feet. I just want to assure the Court, we can.

THE COURT: Thank you, sir.

We are going to take a short break because, for the last two hours, my court reporter has, amazingly, been taking down everything that has been said. She needs a break. I will give her about eleven minutes, and then we will resume, and we will see how far we can get. All right.

(Recess taken from 3:28 p.m. to 3:41 p.m.)

THE COURT: We are back on record. And at this time, we are ready to proceed with Takuyaki and Tomoko Chubachi.

Good afternoon, Ms. Chubachi.

MS. CHUBACHI: Good afternoon. I am Tomoko Chubachi, an investor and owner of the general partners Falcon Heights and Nighthawk, and I came here from North Carolina today, and I

wanted to be heard.

THE COURT: Please.

MS. CHUBACHI: I found that we are under the control of the receivership right now, and the concern is whether we are capable to manage and operate and make proper decision by ourselves or not.

Recent two or three months, I have been really impressed that the -- receiving e-mails from my partners. When I go to the financial institution or financial advisers, they gave me the prospectus of some kind of the mutual fund or some investment, but the explanation for each investment was not really easy to understand. It's not easy for laypersons. But when I receive the e-mails, what I really impressed was that the partners, a couple of partners stepped up, and then try to explain to the general partners what is happening, what is going on, what will be the future and what is the concern. And I found that that kind of communication has really informed me about the type of the investment and what decision making should be done.

So what I wanted to say is that I didn't receive such information from Western Financial. I didn't receive that kind of information from the receivership. So that the general partners can educate each other, using e-mails. And with the decision-making process, the e-mail could be that good method, but we may come up with more creative ideas to use our decision

making sooner. And also, as a forum, maybe using internet, that technology, so it will help us, too. But I think that someone, you know, talk about one position, and the other person come up in a different position. Actually, I saw that in the e-mails. And it's really educate me, and what I could do, and how I can make my own decision.

I think that these general partners are very, very educated and eager to learn what is happening, and they are -- they try to step up, what -- just following some directions, and we don't need to be protected, and we want to own our decision, so that can be done, really, within the general partners. The communication is a really great thing, and I thought that's a really healthy thing, when I saw the e-mails and one person mentioned one position and the other person the other position. So the way that we should remove the receivership or we should stay with the receivership. So that kind of decision I really learned from the e-mails, and that is not the kind of communication I received from the receiver or I received from the Western.

So what I want to say is that our general partners are very educated and very motivated to communicate each other and make our decision for ourselves and for our benefit.

THE COURT: Thank you so much.

Next on the agenda is Keith -- Pedersen?

MR. PEDERSEN: Thank you, Your Honor. And yes, it is

Keith Pedersen. Appreciate your effort. I want to thank you for giving us time to address you. It's been two long years we felt we haven't had a chance and a voice to be heard by the Court, and I appreciate your respectful attitude and your willingness to listen to us this afternoon. It's helped me a lot.

THE COURT: Thank you, sir.

MR. PEDERSEN: I am here because my wife, Betina Jane Tate Pederson, my spouse, and I have three partnerships, Greenview, Sonora View, and Big Ranch. And I am speaking on behalf of the Greenview and Sonora View Partners today, and I will keep my comments together for both of those out of respect of time.

The results of the balloting I think is important to note. So I will say for Sonora View, there were 35 ballots received, representing 39 percent of the partnership units. 34 of those 35 ballots voted to have the partnership removed from the control of the receiver, with one dissenting vote.

For Greenview, there were 34 ballots received, representing 42 percent of participating units. 33 percent -- sorry -- 33 ballots voted to have the partnership removed, with only one dissenting vote.

And although that's not a majority of people who have responded, certainly our election in a month, national election, will be decided by about a similar number of people

who will vote, historically speaking, and the whole weight of the country's future depends upon that.

This overwhelming support -- 20:1 -- indicates that the vast majority of people who have responded and feel passionately about this want our investments removed from the receivership. I think there are a couple of reasons for that, many have been elucidated, so I will keep my remarks brief.

Primarily, we have lost control of something -- of our investment we thought we had, to someone we didn't know, we didn't ask for. That person has power to spend our money, has power to make decisions on our behalf, powers to try to make deals and improvements, and we have not had any input into that at all. So we have lost a great deal of control. And just as importantly, we have lost that control to someone that many of us don't trust.

THE COURT: Let me ask you. With respect to this power, can you point to any situations where that power was exercised unwisely or improperly?

MR. PEDERSEN: I would refer my remarks to previous speakers in that case; so not personally to my particular investments, but from what I have heard from other partners.

THE COURT: All right. Thank you.

MR. PEDERSEN: Trust we have a -- I have a problem with trusting our receivership primarily because of the increase in costs. As has already been alluded to, our costs

have gone up astronomically. Which, previously, our costs per year were almost nil and now we are being asked for a great deal more money. We have some arbitrary actions that have been taken on our behalf by the receiver, as has been elucidated by the previous speakers.

THE COURT: Let me ask you. There was a speaker earlier, Mr. Rocco, who indicated there was an increase in certain monthly expenses -- or not expenses, but charges, and that he had inquired about the reason for those increases, and that he didn't receive a response. Did that occur to you, where you asked for an explanation for why more money was being --

MR. PEDERSEN: The responses that I received was we had increased legal fees and we have to cover them.

And if I may refer to an email I received from another investor, who knew I was going to be speaking on their behalf --

THE COURT: As to that remark you just made, that you received a reply that the reason for the additional moneys was increased legal fees, did that come from the receiver or someone else?

MR. PEDERSEN: It was not a reply. It was in the statement that I received, a letter from the receiver, that we have increased fees, and increased fees are because we have increased legal fees.

THE COURT: You received a letter from the receiver that said that?

MR. PEDERSEN: Yes.

THE COURT: Do you have it with you?

MR. PEDERSEN: Unfortunately, I don't.

THE COURT: All right. Continue, sir.

MR. PEDERSEN: What I was going to say is that Harry Morgan wrote to me and he said one of his concerns is the receiver claiming high management expenses to manage the properties held by the GPs. "The cost to manage our properties is practically nil, yet this receiver has repeatedly submitted expenses ranging from 75,000 to $116,000 a month to cover their legal expenses and to cover their administration fees to manage the properties purchased by the GPs." So that was a comment from another investor.

I would also say one of my concerns about the receivership is the lack of communication. I think I have had maybe five communications with the receiver in the last two years or so. And as Mr. Morgan also points out, that he -- he says, "In the 25 months since I was first made aware of the receiver being assigned to take over our partnerships, I have had a total of two phone conversations with the receiver's office, and both of those took place in the first week of the receiver being assigned control of our properties. Since that time, I have made dozens or scores of phone calls and left messages every

time, along with sending approximately 24 e-mails, one per month. In all of that time, the receiver has not responded to one phone call or e-mail. The receiver simply posting brief and incomplete updates on their web page once in a while isn't exactly reasonable and timely communication."

THE COURT: Let me compare that with your prior experience when Western was managing or involved. How often did you communicate with Western on a yearly basis?

MR. PEDERSEN: I did not personally communicate directly. When there was an issue that came up, whether it was a vote on a possible sale, whether it was -- I have an example I want to share with the Court, something that happened in the last two years. This is a letter dated -- excuse me -- March 30, 2012, for Big Ranch Partners. I will read a little bit, give you an idea.

THE COURT: This is a letter from Western?

MR. PEDERSEN: From Big Ranch Partners, which is one of my partnerships, and it's addressed from Alice Jacobsen and Beverly Schooler, the two assistants who have been helping.

"As you may remember, the partnership was balloted in October 1 regarding a" -- "2009, regarding a bond process that would in turn provide funding needed to construct and pave a portion of the roads that leads to the partnership property. Your partnership, along with the three other partnerships that own land voted to accept the bond process and then eventually

start paying off the bond."

So I just -- there is more that comes along with this, but I just share that with the idea that even when there's issues that come up that aren't directly involved with the sale of land, perhaps something that will help, the partnerships are available and able, through Alice and Beverly, to conduct a ballot to express their will and then move ahead on that. That bond was passed. And that's an example of how, again, we can handle ourselves.

We have had a great deal of communication from the committee in the last two months, people organizing in the partnerships themselves, far more than we have had from our receivership.

I was very discouraged -- because I was here in July -- to wait for two weeks before the receiver sent us out an indication of what we were being asked by you to do, further cutting into the time that we had to accomplish this Herculean task. And in that time, I had had many, many communications from the investors themselves. So investors are doing better at communicating with each other than our receivership.

I will skip ahead over some other issues, here.

The fact that the summation of your decision in July was so cryptically abbreviated really didn't, I think, communicate to our members -- this is the communication from the receiver -- was not communicated to our members in a way we

understood, if you had not been in the courtroom, what was being asked of us. He mentioned pay attention to some dates, pay attention to some deadlines, but he didn't tell us what that was about and why this was important. So we had to find that out on our own. And I think you have seen that we can find out those details and take care of our business on our own. You mentioned sometimes that --

THE COURT: As far as the cryptic communication, was that relating to the briefing schedule and what would be required in the briefs and the hearing that we are having today?

MR. PEDERSEN: It was the one that was read earlier, that came out about two weeks after the July hearing, where he just referenced the hearing had been held --

THE COURT: From the receiver. I thought you were referencing the Court's order.

MR. PEDERSEN: No. It was the receiver's communication to us.

THE COURT: I am sorry.

MR. PEDERSEN: Thank you.

There has been some reference made to the fact that some -- some people, investors, have not paid some of their fees. I would just submit to the Court that people don't mind paying fees for investments that they have an interest in, but with respect to those in this room, they do hate paying fees to

lawyers they haven't asked for. And when we have an impression that all the money that we are giving is going to lawyers that we haven't asked for, it makes it difficult for some people to pay those fees.

One of the reasons I am staying late here today to make my presentation is I did have two communications from members of my partnerships who said, "What if we dissent? What if we want to have our investments maintained inside the receivership?" And I believe your order asked for us to include these in the briefs. And I e-mailed them back, and I said I would definitely represent them, so I'd like to read their e-mails. There was one in each partnership.

THE COURT: All right.

MR. PEDERSEN: So I'd read them so you can hear from them as well.

David Riker writes, "I probably like everyone who voted to remove the receiver, am not happy with the fees..."

THE REPORTER: You have to slow down.

MR. PEDERSEN: I am sorry. I am getting really excited here. I have a bunch of college students waiting for me in three minutes.

"I, like probably everyone who voted to remove the receiver, am not happy with the fees being charged ultimately from whatever value is left in the land investment. But my no vote was done ultimately because I trust the receiver to be

able to handle whatever operational issues come up far more than the will of a group of unknown fellow investors. When I originally invested, it was my understanding that Western would be handling all the operations and the partnerships were there to do the final vote when a decent offer for the land" --

THE COURT: Slow down. She's good, but --

MR. PEDERSEN: Would it be better if I just left this?

THE COURT: You can leave it, but why don't you read right after "final vote."

MR. PEDERSEN: "...when a decent offer for the land came in. No offer ever came during the time frame Western was talking about. After that time frame was up, I never got a decent answer from Western about what was going on until they were sued by the SEC. So I have zero faith right now in Western/Louis Schooler. And unfortunately, it appears to me from limited e-mails I get from the other partners, they feel the biggest problem is the receiver, not the initial investment with Western. This group of investors couldn't even seem to get a majority of investors to vote. So while I certainly don't like having a receiver with high fees, I trust them more than a group of investors the only thing I know about is that they invested in the same investment. I feel it was the worst financial decision I ever made. Thanks for asking for the opposing opinion and good luck in court. The sooner all of

this is over, the better."

And then from one other investor: "My rationale is this. I firmly believe that Western Financial misrepresented what we were buying in the first place. Had I known that I was buying property that was eight times the actual cost, I would never have invested in said property. It was clear to me that Mr. Schooler is some type of con artist. I was one of his pawns. That is the only thing I know for sure. I also know Mr. Schooler wants us to be removed from receivership; that leads me to believe there is some type of benefit to him for pushing such an agenda. The SEC, on the other hand, is charged with protecting investors like us. If they suggest staying within the receivership, I trust them more than I do Mr. Schooler. As such, I would rather stay with the receivership. At least I know my interests are being considered."

I submit these not because I agree with them but because that was your request to us and I felt, in good conscience, I needed to do that.

THE COURT: And I appreciate that, sir.

MR. PEDERSEN: Certainly.

And I would also conclude by saying, as is evidenced by the voting and the people, I believe, here, the vast majority of the people in these investments oppose being under the receivership. Thousands of investors around the United States

have indicated they want out. Some of them have come from North Carolina to be here. Many could not be here and so we are speaking on their behalf.

We have been caught in a conflict between the SEC and Louis Schooler, and I know the SEC lawyers are public servants seeking to do their jobs as best they can. But in the process, in their desire to uphold the letter of the law, in this process, we are supporting a process by which the rights of the investors have been appropriated by another entity, and we are asking for the Court's redress of our grievances and return control of our partnership, return control of our investments to their legal owners, the investors themselves.

THE COURT: Thank you, sir.

MR. PEDERSEN: I would just add one other thing. We believe we have the ability to handle our own affairs. We have a CPA, Duffy Chris Bolen. One of those is an investor as well. And this CPA handles our K-1's, our financial statements, and has been continuing to do so, I believe, in the receivership. All the billing, all the administration is being handled by very competent administrative assistants, Beverly and Alice, and I believe they -- they did it before the receivership; they are continuing now; and I don't see why that team can't continue in place to help us handle whatever we need to. We believe we are capable, and we would like control of our investments back. Thank you for your time.

THE COURT: Thank you, sir.

MR. PUATHASNANON: Your Honor, can I make one request? There have been a handful of documents that have been read into the record. Would it be possible to have their documents submitted into the record today?

THE COURT: Yes. Do you have those?

MR. PEDERSEN: Which documents are you looking for?

MR. PUATHASNANON: You read a couple of e-mails. This is in reference to some of the other people, earlier. I know we received and the Court received a copy of the voting spreadsheets as well as Mr. Johnson's presentation --

THE COURT: Yes.

MR. PUATHASNANON: -- but I believe that other speakers read into the record documents that they referred to. And if possible, if those documents could be made part of the record, I think that would be helpful.

THE COURT: Can you identify which other ones?

MR. PUATHASNANON: Sure. I don't remember which speaker it was. Someone read an e-mail. Mr. Pedersen read about --

MR. PEDERSEN: Here is my two e-mails. I have copies. And one from --

MR. PUATHASNANON: The letter. So there's three here.

THE COURT: Right. Anything else?

MR. PUATHASNANON: I will have to think -- there was another one read into the record. Let me think about it.

THE COURT: If at this point it's been read into the record -- if you can identify what it is and if we can identify the speaker and what it was, I will ask for it. But at this juncture, without further identification, the record will speak for itself.

MR. PUATHASNANON: Understood, Your Honor. Thank you.

THE COURT: Thank you, sir. And then at this time, we are prepared to allow Scott Gessner to speak.

MR. GESSNER: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MR. GESSNER: Apparently, I am a vocal member of the silent majority. I am a partner in five general partnerships sold by Western Financial: Goldridge, Railroad, Pine View, Pueblo, and Falcon Heights. And I'd like to start with a quote related to the statistics Mr. Gilman shared with the Court. I think it's attributed to Mark Twain, and it goes something like, "There are lies, there are damn lies, and then there are statistics."

The most important statistic Mr. Gilman left out was that a simple majority was not achieved in most, if not all, of the GPs for removal from the receiver. Several partners filed briefs in pro per allegedly on behalf of Goldridge and Railroad

Partners; however, these briefs did not reflect the position of the majority of the partners. No party contact me, solicited input, or shared the content of the brief prior to its filing. I spoke with 32 other partners in my GPs and they were treated similarly.

The briefs also failed to satisfy forms of the August 16, 2013 order, specifically item 6 and 7 of page 6. And I think this is already covered in a letter that I filed with the Court, so I won't take up the Court's time.

During August and September, there was a concerted e-mail campaign by a small group of partners who appointed themselves to a committee. The apparent intent of the committee was to produce a groundswell of support for removal of the GPs from receivership. When that groundswell did not materialize, this group engaged in number of what I consider to be unethical tactics to generate that support: Misinformation, removal of dissenting partners from copy lists, and ultimately the production of a cookie cutter brief.

THE COURT: Let me ask you about that. You said misinformation. What form of misinformation?

MR. GESSNER: I could produce the actual e-mails that I received. One of them is from Dennis Gilman, but there was a number of others. Art Rocco. There was one claim or suggestion that $750,000 had been accrued in various fees by the receivership that was paid for by the general partners.

That's just one example. I don't have the list here, but there's quite a few.

THE COURT: All right.

MR. GESSNER: Ultimately, there was misinformation, removal of dissenting parties from copy lists, and ultimately the production of cookie-cutter briefs under the pretense they represented each of the 66 GPs who filed briefs.

Ironically, this behavior, in my opinion, illustrates the need for an unbiased administrator to manage the affairs of the GPs and that the GPs cannot manage themselves out of fear that a small minority may actually manipulate the rest.

I read dozens of the cookie-cutter briefs, briefs that did not solicit or include dissenting views, and I respectfully submit my points of disagreement to those briefs.

One, the GPs were never set up to be self-managing. Western Financial actively promoted their expertise in purchasing, administering, managing, and selling properties. It was their purported expertise and success in buying and selling raw land that prompted me to buy into the five general partnerships that I am a part of.

An unbiased approached to managing ourselves would have been to involve or poll the partners after providing relevant factual information and then allowing discussion. Instead, a small group initiated a biased, manipulative, and misleading e-mail campaign to remove the GPs from receivership. Claims

were made that the GPs were paying exorbitant fees to the receiver, for example. Anyone who voiced opposition or introduced facts that undermined their narrative were removed from e-mail copy lists and became effectively removed from the discussions. In other words, they no longer had a voice.

THE COURT: What proof do you have that people were removed from e-mail copy lists?

MR. GESSNER: I was removed from an e-mail list that other partners who were not removed forwarded to me. And I can provide those to the Court.

THE COURT: All right. You may continue.

MR. GESSNER: So in other words, they no longer had a voice. These tactics illustrate the inability of the GPs to manage themselves. Ironically, the briefs argue that the receiver and the SEC had failed to take adequate steps to determine what the interest of the investors are. The fact is that those promoting removal of the GPs from the receivership have ignored the interest of investors who opposed them, who have an opposing point of view, and have tried to exclude them from the process. In contrast to the claims in section one, the argument of these briefs -- and again, there are all pretty much the same -- I have contacted both the receiver and the SEC attorney and found them to be very professional and helpful, contrary to the characterization in the referenced brief.

In section 1B of the briefs, a testimonial of events

taking place in two cotenant GPs, Horizon and Rainbow Partners, is offered in support of a claim that the receiver and the SEC made inaccurate factual representations and omissions of fact. No factual evidence is given to support that narrative. And I don't see what the relevance of this to the removal of the GP from receivership is anyway.

In section 1C of the briefs, this deliberately misstates that the SEC and receiver claim that defendants control -- present tense -- the general partnerships when in fact the assertion is that the defendants controlled the GPs prior to being taken into receivership. While the GPs retain final say in whether to accept an offer to sell the land owned by a GP or GPs, they relied almost exclusively on the expertise and advice of the defendants to make that decision. It was my understanding that constitutes control.

In section 1D of the brief, it is argued that the GPs are capable of managing their partnerships and property and selling the land for a profit, yet no factual or reasonably persuasive argument is given to support that position in my opinion.

For these reasons, I ask the Court not recognize the referenced briefs as the effective briefs of the GPs; furthermore, due to a lack of expertise for managing, organizing, administering, and marketing currently within our GPs, I request that the Court order to remain in receivership stand.

THE COURT: Let me ask you, sir, if the Court were to release the GPs from the receivership, do you have any opinions as to what would be the next step, what would happen?

MR. GESSNER: I don't.

THE COURT: What would you do if I were to release the general partnerships?

MR. GESSNER: I would -- I would try to work with the members. I am in touch with at least 32 other members that oppose removal from the receivership.

THE COURT: These 32 individuals are part of which partnership?

MR. GESSNER: 32 for the five partnerships that I am in.

THE COURT: The five separate partnerships?

MR. GESSNER: Correct.

THE COURT: These are people you have identified? Have they been identified in any Court document?

MR. GESSNER: I don't think they have, but I could make them available to the Court.

THE COURT: Do you have the names of them?

MR. GESSNER: Not here, no.

THE COURT: And these are people that you have communicated with regularly --

MR. GESSNER: Through August and September, during the time that these e-mail blasts were coming out -- primarily

from Dennis Gilman, Art Rocco and a few others -- the copy lists were available to everybody, and those voicing opposing points of view started listening to one another and started communicating on the side.

THE COURT: As to these 30-some individuals, were they removed from the e-mail list?

MR. GESSNER: I don't know. I know that -- not sure.

THE COURT: Do you have anything else?

MR. GESSNER: That's it.

THE COURT: Thank you.

And I understand that the defendants didn't want to hear from Mr. Gessner, and given that he appears to be someone who has expressed some questions about the process, why is it specifically that the defense didn't want to hear from --

MR. DYSON: That's mistaken. That wasn't our position at all. In fact, we had brought up Mr. Gessner in our pleadings, Your Honor.

THE COURT: You never said that because he didn't take certain steps, he shouldn't be allowed to speak today?

MR. DYSON: No. We said he didn't follow the procedural steps, Your Honor. But we solicited and we actually welcomed him appearing in court today, to come. We just wanted you to understand that he didn't follow any of the steps that Your Honor had made and, you know, disregarded regarding circulations. That is what we had put in our brief.

THE COURT: Did you also let the Court know that a number of other individuals had disregarded the Court's directions?

MR. DYSON: That's correct. The problem is, Your Honor, you asked for a Herculean task in five weeks --

THE COURT: I am just saying, you pointed it out as to Mr. Gessner but didn't become so specific when it came to other individuals; is that right?

MR. DYSON: No, it wasn't, Your Honor. It was especially to Mr. Gessner because of the voluminous rantings that he submitted to the Court and also to --

THE COURT: Did you think he ranted today?

MR. DYSON: No, Your Honor. I use that term based on the e-mails. That's what I said. I did not say I believe he ranted today.

THE COURT: Thank you.

Next we are going to go alphabetically; however, I do note that there are some individuals here that may have traveled from out of town. And what I would propose is if there is someone that is from out of state or out of the Southern California area, to get let them go first. Is there anyone who is not from the Southern California area?

All right. I see no hands. Let's then proceed alphabetically.

Number 10 is Randall Alessi.

MR. ALESSI: Thank you, Your Honor.

THE COURT: Good afternoon.

MR. ALESSI: How are you today?

THE COURT: Very good.

MR. ALESSI: Gee, I get to follow that.

First of all, thank you very much for finally allowing us a voice. In respect of the Court's time, I have a lot of facts here that I am not going to bore you with because you've heard a lot of them already. I guess I will just attack this from more of a personal view. My name is Randall Alessi. I am an optometrist. I live in Laguna Niguel. I have been married for 19 year. I have got two kids. I still practice. I have sold a practice. I work with -- consulting with optometric practices now up in Orange County and I serve as administrator of a group called Vision Source.

Excuse me. I am a little bit nervous. This is a little different scenario than I usually speak to.

THE COURT: No problem, sir.

MR. ALESSI: I represent two groups, North Springs and Mountain View. In our two groups, our two partnerships, the voting was unanimous. We had 29 yes votes in Mountain View. We had 36 yes votes in North Springs. Although it was disappointing that many fellow investors did not vote, it was a resounding approval vote that clearly showed, in my opinion, that the partnership's desire to remain independent of the

receiver's association was very apparent.

THE COURT: So those 29 votes for, was that Mountain --

MR. ALESSI: Mountain View was 29 to 0.

THE COURT: And how many actual investors were there that could have voted?

MR. ALESSI: 92 total. So 63 did not vote in Mountain View, and 56 did not vote in North Springs.

THE COURT: Thank you.

MR. ALESSI: To reply to the last gentleman, who had a dissenting view, I guess I am wondering why were there so few "no" votes if there were so many investors that took the other side to this? I mean, from my understanding, everybody got a ballot. I think Beverly and Alice were very good about everybody having their opportunity to voice their opinion. Now, whether they came off of an e-mail list or whatever afterwards, I don't know. But where were these "no" votes? In my two -- at least in my two, there were none, and from what I hear from the other statistics, there were very few.

But, you know, in my opinion, what that all comes down to is control. What attracted me to this type of investment in the first place was the opportunity to diversify into a land vehicle, into something where I maintained control or some control, at least, as a general partner with voting rights of how this land was eventually going to be sold off.

You heard about the partnership agreements. I won't go into that. You know that we have to have a majority vote before anything can happen.

And not only was I comfortable with that process, I was looking forward to it because in my other investments -- I was mostly involved with mutual funds and things like that, where you don't get direct voting rights on how your investment is going to do.

THE COURT: Let me ask you. How long have you been an investor?

MR. ALESSI: 2005.

THE COURT: So about nine years?

MR. ALESSI: Yeah.

THE COURT: In those nine years, do you have an estimate as to how many times you have been called upon to vote?

MR. ALESSI: Well, our particular partnerships have -- as you know, with the timing of everything, there was no thought process of us selling. So we would get communications from Beverly and Alice, but that is it. There was nothing to vote upon.

THE COURT: So there were very few votes. And I am asking because I am trying to determine whether or not the receiver has prevented your group from at any time voting on something. Can you think of an instance where the receiver

either prevented you or that you did vote and that he didn't advise the Court of such a vote?

MR. ALESSI: I would say more there's a lack of communication there overall. There was no direct denial of my right to vote on something, but I have not -- other than the directive that you gave this summer that he reach out to us, that was the only correspondence I got from him at all.

THE COURT: As far as the lack of communication, can you think of something specifically he failed to communicate to you that you would have been advised of by the predecessor?

MR. ALESSI: Yeah. I was given information that he has already dipped into our funds, into our operating funds, to cover some fees, and that upset me very much. The way our partnership agreements are drawn up is that we are supposed to be notified and have the authority to vote on any use of our assets being used, and that was not done.

THE COURT: As far as this dipping into operating funds for fees, is this something that was communicated to you by the receiver, or was it some other channels that you --

MR. ALESSI: The administrative team. And like I say, I have not talked to him at all. So for me to call him up and say, "Hey, are you taking my money?" Is -- I am not thinking that was going to go over very well. I did not do that.

THE COURT: All right. Anything else, sir?

MR. ALESSI: There were a bunch of facts that I don't want to go into, that I don't want to waste your time, or the Court's time. My take on all this, from reading all of the transcripts that have happened already, is that so much of this was a he said/she said scenario, back and forth, accusations. And to me, all of this debate speaks to that relationship that needs to be in place between the receiver and Western. We shouldn't have anything to do with that. We can and easily are able to take care of these on our own.

I will personally, and I would bet you the majority of the people sitting here would stand up for their partnerships, and if there's something that administratively needs to be done that Beverly or Alice cannot do -- I have sold practices. I have run optometric practices. I can surely find professionals to do the accounting and the operating stuff that needs to be done for us to stand on our own in my two partnerships. I really think that I wouldn't have to do that. I think that we already are very well taken care of by Bev and Alice. But if for some reason their career paths take them somewhere else, we will be able to take care of these.

THE COURT: Thank you, sir.

MR. ALESSI: One more thing. You have asked a couple of times about harm and what harm do you think has been done to us and, you know, why we are so sensitive about this. You know, the appraisal topic came up. We don't need to discuss

that anymore. I don't think that ever should have been done in the first place, to be honest with you, for the reasons we have already discussed today and the fact that we have already dipped into our funds. I can't understand that. How could you allow that? How is that acceptable to you personally? If this was your investment, sir, how would you feel about that? Wouldn't that just get you in here, that -- how is this allowed?

And it just really comes down to the fact that I feel this receivership has more power over our investments than Western has ever had. And you know, he's already talked -- as I mentioned, he's written checks out of our accounts. If you want exact numbers, 399 shares came out of Mountain View thus far; 918 shares came out of North Springs.

He has the ability to decide what debt to pay, what priority -- I believe you know these facts already, Your Honor. I don't know that I need to go into this. But all of this has been done without any authorization from us. And because of that, how are we supposed to believe that the receiver, the SEC, or the Court has been acting in our own best interest? Why weren't we notified? Why weren't we asked? We feel like we are just collateral damage here. And I want to plead with you, these are our investments. Not all investments make a profit, but that's our risk to take. It's unacceptable. It's, frankly, un-American, I think, that this control has been taken

away from us. I honestly can't understand how this could have happened. I plead with you today, please reconsider. Let us show you that we can do this.

THE COURT: All right. Thank you, sir.

MR. ALESSI: Thank you for your time.

THE COURT: Next is Hajime Aoki.

MR. FATES: I don't want to interrupt the process, but I want to ask for the opportunity to respond. There's a lot of false accusations being made.

THE COURT: Why don't you do that at this time.

MR. FATES: The first thing I want to address, because it's continuously coming up, the issue of legal fees being taken from general partnership accounts. It's all false. It's never happened. I don't know how many times we have said this in briefs, and those briefs all get posted to the receivership website, which every single investor has been given the web address repeatedly. I don't know how else we make this any more clear, but general partnerships do not pay a single penny of receivership fees or receiver counsel fees. So it is frustrating for us, as you can tell, because we have been saying this over and over and over. I think you know.

But clearly, people are being lied to, and it's caused a lot of the emotion in this room because I think that's the single thing that everybody points out when they come up here and say, "How is the receiver harming you?"

"We are paying these exorbitant legal fees."

And it's just false, and they have been lied to.

MR. ALESSI: Can I address what I know about that, what I was told about that?

THE COURT: Sure.

MR. ALESSI: You are not taking the money out of our individual shares; you are taking it out of the operational funds. And what happens once those operational funds are dry? Where is the money going to come from?

MR. FATES: We are not taking the money out of operational. That's false as well.

THE COURT: Wait. Wait. Wait.

At this point, the matter is whether or not there's legal fees that are being taken from the GPs, and the answer is no, they are not being taken from the GPs. So at this point, to the extent that there's been a -- if not a constant refrain, there's been reference to that point, that is not true. And with respect to -- what was the next point you were going to make --

MR. HOUGEN: Your Honor, could I address --

THE COURT: No. No. This is in order to expedite the proceedings, we have had -- do you contest --

MR. HOUGEN: Yes. What has happened is Mr. Fates is correct in one fact. There have not been funds that have gone directly from a GP checking account to the receiver. That has

not happened. And that's the technicality they have hung their hat on and repeated.

THE COURT: Why is that a technicality?

MR. HOUGEN: Because what has happened is the receiver, without consulting with investors, has prioritized certain subordinated debt that was owed to Western and made sure to pay that from GP accounts to Western even though it was not in the GPs' interest to do so. That created cash in the Western account. From the Western account, then the receiver was paid. As a technical matter, he's only been paid out of Western checking accounts; but as a substantive matter, decisions have been made using the receiver's discretion to transfer funds from GP accounts to Western accounts to make that cash available to pay the fees.

Mr. Fates is correct in a technical manner, and the investors are correct in a substantive manner.

MR. FATES: That's absolutely false. The only moneys that have been paid to Western from the GPs are for loans that Western made to those GPs that the Court specifically instructed the receiver to collect. Okay. The operational bills that went out to investors, per the Court's instruction, included amounts to be collected that were to be repaid to Western for loans Western had made pre-receivership to the GPs to cover their operational shortfalls.

If you recall, there's about a half a million dollars

worth of loans that were outstanding. At the time --

THE COURT: The Linmar ones or other ones?

MR. FATES: No, we are not talking about Linmar at all. We are talking about loans made to the GPs by Western to cover. When the GPs could not raise enough money from the investors to pay their bills, Western made loans to the GPs to cover the shortfalls, about half a million dollars that was outstanding. The Court instructed the receiver to collect it, so he did.

THE COURT: So ultimately, let me just leave it at this. In our next order, we will clearly address this issue because this is something that the investors are very concerned about. And so to the extent there's a lot that does not appear clear as to how the receiver is being paid, our order will specifically address that. At this point, given that we only have a half hour, we will leave it at that.

The next speaker, as I indicated, is Hajime Aoki. Is Hajime Aoki here? No.

Next on the list is Lorna Apolonio. Are you here?

Next is Arkady Bablumyan and Susanna Petrosyan. Hearing no response.

Next is Lars Boeryd. Come forward, sir. Good afternoon, sir.

MR. BOERYD: Good afternoon, Your Honor. So I am here on the behalf on the ABL Partners. And ABL Partners

voted. There were 49 or 50 votes. A total of 44 percent of them all voted against staying in the receivership and going on their own as partners. So that's a little bit of a background on ABL Partners.

Personally, I am Lars Boeryd, an engineer by training. I also have a business degree. I have been working in the high tech field, in electronics for space station, cars, pacemaker, et cetera. I come from Sweden. I have been investing, part of my diversification strategies. I invested in Tecate investment with ABL Partners. At that point, I understood -- and it was very important to me -- it was a general partnership. We, as general partners, had a say in how we wanted to manage the affairs and whether we wanted to sell the real estate and the properties that we invested in.

In the recent event, it feels like our partnerships have been hijacked -- excuse the expression -- by the SEC and the receivership, and that they don't -- are not looking out for our interest. In particular, when we got the list of all the properties we were looking to sell, that really rubbed me the wrong way. I saw that investment as a long-term investment, and it looked that they wanted to do a fire sale to sell off, liquidate, and get whatever money, give whatever money was left to the partners. I felt long -- I am in it for the long run. I want the opportunity to be able to be part of those decisions and not be at the whim of the SEC and the receivership.

So, lots of points have been made. I just wanted to reach out to you and beg you to consider releasing us from the receivership. I think it's been shown today there are a lot of very competent, highly educated people around here. I am confident that we can put together and manage these partnerships. And I would savor that opportunity and feel that I would be better served if that would be to happen as opposed to staying within the receivership.

THE COURT: Thank you so much, sir.

Next is Number 15, Bert Bonem.

MR. KLINKE: Your Honor, I am not Bert, but Bert had a last-minute thing come up and asked me to step in on his behalf.

THE COURT: As his proxy, what is your name?

MR. KLINKE: George Klinke, K-L-I-N-K-E.

And the good news is I am much briefer than Bert.

First, I want to make clear I am speaking only on behalf of myself and the majority of voting shares for Spanish Spring general partners. I have no knowledge of the other partnerships and their issues or concerns, just Spanish Springs.

This has been confusing for us that have been involved in this investment from the standpoint that we can't figure out how we got into a receivership. And the reason is if you -- if I were a financial advisor, which I am in some capacities, as a

member of this general partner, if the SEC had made this action against me, the other general partners probably wouldn't know anything about it nor would they be in a receivership simply because myself, as a financial advisor, did something the SEC took issue with. And we kind of look at it that same way with Western. They were a financial advisor. They have some issue with the SEC. And because they happen to be a member of our general partnership really doesn't involve us, in our opinion. That's where we stand on that.

Now, the third thing I wanted to bring up is we really appreciate the Court and your concern for our welfare. We think it's a little misplaced, but I think that's a good concern to have. And I want to tell you a little bit about our members. Within the Spanish Spring, we have a real estate expert. We have a CPA. We have financial advisers that are intimately familiar with how these general partnerships are put together, how they operate, what the duties and responsibilities are. And we have already put together a plan on what we would do should we be released from the receivership, in that Frank Kelton, who has been doing the K-1s and acting for this forever, has no reason to change from, continue there. Alice Jacobsen has been the administrator of this -- and probably does the lion's share of all the work, if the truth be told -- has suggested she would continue on in this regard. As far as getting the property taxes paid, the

insurance handled, all these things are just part of the normal day-to-day duties Alice and others perform.

We don't have the financial information as it relates to who owes money to Western. That's something that we would be happy to discover. In my business, we do a lot of collections, so working in that regard, we could do that. Within the general partnership agreement, should people become in default, there's a remedy for how you handle that. So those issues are spelled out. We don't see insurmountable hurdles in any way, shape, or form as it relates to us taking over this program, and partnership, outside of the receivership.

THE COURT: All right. Thank you for your input today, sir.

MR. KLINKE: Thank you.

THE COURT: Next is Number 16, Bruce Case. Good afternoon, sir.

MR. CASE: Thank you, Your Honor, for giving me the opportunity to come in and give a little bit of my side of what I have seen of what is going on. I have been involved in four partnerships over a period of about seven years. I started getting involved in about 2003. Part of the reason that I did get involved in this is, like everything, you have a time in your life when it comes time that you say, "Okay, I can do something of this nature." Western impressed me with the aspect they come around, talked to me a little bit about this

information, and I had told them that I wasn't interested at that point in time. And probably close to ten years later, they came back, and said, you know, "Here is what we have got to offer today."

Well, at that point in time, my life had changed a little bit. I had a little extra money to be able to say, "Okay. We have to look towards the future." And as some of the other people said here, there's diversification you have to do. Most all of my money was tied up in the stock market through my retirement plan. At that point in time, I said, "Okay. It's time to start diversifying a little bit."

And I liked the idea of this. I looked -- when I first came out to the California in the '80s, I had looked at some of the limited partnerships out there, and I didn't like the idea of the limited partnerships. So with this being a general partner, and my needs of looking at my family, trying to say, "Hey, where am I going to go for the future? How am I going to make sure the stock market is up, stock market is down, things of that nature?" Real estate is, to a degree, too. That's true. At least it's something solid you do wind up owning.

I myself am -- like so many people, I am in business. I have got a four-year degree. After getting a four-year degree, I wound up working at a couple of different corporations, lived and worked in nine different states. Today I am out here, happily married 33 years. My wife has been by my side, helping

me do a lot of the things we do.

In this case, with four partnerships that we are involved in -- Ocotillo View Partners, we had 36 vote that said yes, they want to be removed from the receivership. We had one vote out of that that said, "No, I do not." There's been e-mails that went out. I notified people that I was going to come and talk as a proponent of saying I would like to be removed, and I would support the rest of them. I had no further comments back from anybody else as far as an e-mail saying "Hey, this is what we need to wind up doing. I would like, you know, you to support my side of it." Didn't have any of that.

Antelope Springs Partners, we had 46 percent of the vote to remove. We had one vote -- 41 people. We had one vote say they wanted to stay in the partnership.

Rose Vista Partners, we had 34.6 percent that voted I want to be removed. We had zero that voted to say in receivership.

Storey County Partners -- I am not in that, per se; it's my wife that's in it. She said, "Tell them what has taken place on that side." We had 62 of the votes that said, "Please remove us from the receivership." And we have had zero that said, "Leave us in that receivership."

THE COURT: What was the percentage of all of the investors as to those 62 individuals?

MR. CASE: Well, if you probably give me a few minutes, I could probably find it in my notes, how many

investors there are in that.

THE COURT: If you don't have it handy, that's okay.

MR. CASE: Okay. But again, with that, a lot of people have given a lot of verification, we are capable individuals. I bought my first house. I sold my first house on my own; didn't have a real estate person involved in it. I wound up buying my next house. I bought it on my own. Why? Because I can save some money. That's why I was able to put my three kids through college, things of that nature.

So I just wanted to say to the Court that I very much want to impress, like others have, that we have -- for one, I am very much in question of how did we wind up in this situation? We have something going on in the court here between Mr. Schooler and the SEC, and yet I am in a general partnership that has basically -- is not involved with Western at this point in time, and I don't know why my life is being dragged into this. This is the first time I have ever been in a court situation other than going for jury duty or something like that, so I apologize if I am a little nervous up here.

I am here today and fighting for my rights as a citizen to make my point of view heard. And I thank the Court for giving me this chance. And today, I am here to support the position that I feel the Court has overstepped its bound by having our GPs under receivership. We have done nothing to put us in that receivership position. And it's been shown today there's a lot

of capabilities in our accounts.

One of the things that has happened, when I got into many of them, the four that I was into, it was about the height of the market in the 2003, 2004, 2006, and the market basically has tanked since then. So at this point, there's been little or no reasons for -- we had one partnership that was offered for sale, and that was -- I don't remember the details of it, but Ryan Homes was involved. They came to Western and said, "We want to offer to buy this piece of property." And we got into a vote. We voted yes, we would go that route. But the market started to tank and some other things happened before we were able to actually go through and sell, sell the program.

So kind of with that, I am just trying to say we are very capable. As I said, I am not sure why we wound up in this position. I don't think we should have been dragged into this situation.

And based on the notes that we got -- one of the things that I want to say is that the two secretaries, we put them through a lot that they didn't expect to have to happen. And that is -- just as earlier was brought up, there's some 3,000 people that are involved in this. And I think, like I said, not much has been done in my GPs; therefore, not a whole lot of communication going on because the market is kind of dead. And yet, when it came down to, "How do we put this together? How do we all communicate" -- and I think we did a pretty good job

of putting together the vote.

Why we don't have more voters than we do, I am not sure. One of the lists that I have, the top half of it -- for Antelope Springs, the top half of it, we have votes. The bottom half, the second page, I got zero votes. So I don't know whether that means something from a degree that all the e-mails didn't go out. I had talked to somebody earlier, and they said that may be a problem, that certain e-mail carriers -- I am not sure the right word for that, but there is a limit of how many e-mails you can send out through that carrier. That may be some of the reason we did not get more of the votes than we have gotten.

I appreciate the Court for allowing me time to get up here and talk. Thank you.

THE COURT: Appreciate your being here, Mr. Case. Thank you, sir.

Next is Number 17, Lucas Curtolo. Lucas Curtolo.

Next in line is 18, Vikram Desair. Vikram Desair, number 18? I hear no response.

Number 19 is Gene Fantano.

Mr. Fantano, good afternoon, sir.

MR. FANTANO: Thank you. Good afternoon. First of all, I want to thank you for being so patient with us and hearing from us. It's been very good of you.

THE COURT: Thank you for being here, sir.

MR. FANTANO: My name is Gene Fantano. I am a general partner for Bratton View and Vista Tecate partnerships. I am here to inform you the partners of the Bratton View and Vista Tecate partnerships voted overwhelmingly in favor of removing the court-appointed receivership. As a matter of fact, it was unanimous. And I think we received about 40 percent of the vote for each one.

The partners want control of the management and direction of the investment partnership in order to fulfill the primary goal of enhancing the value of the property, and eventually selling it. Each partner signed an agreement of partnership which specifically states, in section 1.8 -- at least in our agreement -- and I think it was read previously. But in summary, it says, "Each partner shall participate in the control, management, and direction of the business of the partnership."

We believe it is unfair for the Court to give control of the partnership to the receiver before consulting with the true owners of the interest. As I see it, there are two business responsibilities that need to be considered. First -- and this was talked about before, too, about fulfilling certain administrative needs of the partnership. Such aspects as bookkeeping, accounting, tax preparation, and other administrative duties. I understand that the receiver has contracted these duties out to the same company that has been

doing it for years. The general partners could have done that.

The second is engage a real estate consultant whose interest would be to enhance the value of the property and eventually find a buyer. We need to find someone who will sit on planning committees, speak to the government representatives, and work with developers. That is not happening today. The investors want to sell the property. Land values are beginning to rise. The commercial environment in Tecate is improving, and hopefully development in East County will open up. I do not believe the receiver has done anything to enhance the value of the property or find a buyer.

THE COURT: Let me ask you. As far as the enhancement of values, what is your understanding as far as efforts that were taken by the predecessor, Western, to enhance values?

MR. FANTANO: In our Bratton View property, which is close to Jamul, I believe Mr. Schooler was a part of the developing committee. I think he even -- he was working with, I think -- is there Supervisor Hahn who is in charge of that area? -- to work with him to try to improve the value of property there, I think, work out certain zoning -- not zoning -- open up East County. East County was very much of a no-growth area. He was very much involved in trying to improve that environment.

THE COURT: So to the extent that the receiver was

removed, what would be your response in terms of making sure that there was such a real estate consultant?

MR. FANTANO: That's a good question. I think we talked about how there was a lot of accomplished individuals as part of our partnership. We do need an expert. What I would do -- we would have to seek out and find a similar type of consultant who would get involved with us. And I don't know how we would pay them, whether it would be hourly rate or whatever. But that individual would need to get involved with planning commissions, work with government representatives and so forth, because we do need to make our property more available. They have talked about it today, about, you know, it's not what the property is worth today; it's what it can be zoned to be worth or how you can enhance the value. That's what we would need to do, and it would be left up to us to do that. At least we would have the control to do that. And I don't think that's in the receivership's scope of responsibility to do that.

And as I point out here, time is of the essence. The values of lands are going up, and if we are going to sell it and realize our dream, we need to be working on that.

THE COURT: Let me ask you, do you believe that the Court should have, in the first instance, directed the receiver to contract with a real estate consultant?

MR. FANTANO: I think that needs to be done. I would

probably rather have control of it.

THE COURT: Who would pay for that?

MR. FANTANO: It would be -- the partnership would have to do that. First of all --

THE COURT: Would it be placed up to a vote, then?

MR. FANTANO: Yes. It would have to be.

THE COURT: Thank you.

MR. FANTANO: I am also making make the point that a receivership does not come cheap. I received a bill last year which was in the range of, I think, 300 or $400 for one partnership and maybe $200 for the partnership which I had a lesser interest in, saying that I had to pay for costs related to -- I thought it was the receivership, but the receivership expenses and so forth.

THE COURT: You said you "heard." You heard from who?

MR. FANTANO: We received a letter saying we need to pay these fees -- a fee, an assessment, to pay for the current expenses incurred by the receiver.

THE COURT: Let me ask. Had a there been a letter gone out to your knowledge?

MR. FATES: There's never been a letter that says that. Letters go out with operational bills explain that -- the projected expenses for the GP coming up that are being billed, as well as the amounts that are owed to Western for

loans that loans that Western made to that GP, which, as we discussed, the Court directed we collect.

THE COURT: Did you know any of that?

MR. FANTANO: Well, Bratton View and Vista Tecate are very old partnerships. They were 1980s, or early 1990s. So looking at the K-1 -- and I am an accountant, so I can understand it -- that there is no -- very little operating expenses. The only operating expenses they have are real estate taxes and that type of thing.

So -- and with Western, what we were charged, we were charged once in a while for some administrative costs, but I think it was about -- about that much, but every five years. So this -- and as the preceding speaker said, it's -- when you are asked to pay an amount of money and not have a vote on it, you get concerned.

You know, also, too, there was -- you had asked questions regarding what was our control. I think ever since the late '80s, early '90s, with my two partnerships, we were asked to vote for certain activities. One was for a consulting study to be done for -- in East County, and to be involved until that, and they asked us to vote for it. And I think -- I don't know what the vote ended up being, but it was a negative vote because we never did it.

Also, too, I think there's an easement placed upon our Tecate property, and I don't think there was a matter of a vote

on that, but at least we were informed by the defendant that we were -- this happened. So at least we were kept informed.

And I can -- I also will say, too, as I said earlier, if we were in control over the properties, it would not be easy, I think, but we would have to get together. When I -- I e-mailed all my partners saying that I was going to take the initiative to do the brief and speak here today. I got maybe five or six or seven e-mails saying, "Go get 'em; thank you very much," that type of thing. But you know, if -- each partnership would have to have certain leaders who will step up, suggest ways of proceeding, and hopefully have conference calls and that type of thing to get people involved or contact people by e-mail and move forward. But I would think that a consultant, like I suggested, would need to be engaged somehow.

THE COURT: All right.

MR. FANTANO: Thank you, Your Honor.

THE COURT: Thank you, sir.

Next is Number 20, Jaleh Firooz.

Good afternoon, Ms. Firooz.

MS. FIROOZ: Good afternoon, and thank you for the opportunity. I am just here -- my husband and I, Michael Grazinski, and myself own three properties, Green View, Sierra View, and Checkered Flags. And I just wanted to ditto everything that everybody else said. And we voted, and we'd like to be out of the receivership.

Basically, just briefly, my husband and I are both engineers. I am an electrical engineer with an MBA with 33 years of experience. My husband is also a mechanical engineer. He actually is a rocket scientist. He designs rockets. So I think we know enough that we can take care of our business, I hope.

THE COURT: Because this isn't rocket science.

MS. FIROOZ: Yes. That's all I have. Thank you.

THE COURT: Thank you, ma'am. Thank you for being here.

Next is Number 21, Elena Gomez.

Good afternoon, Ms. Gomez.

MS. GOMEZ: Good afternoon. I represent Twin Plant Partners and Sun Tech. And first of all, I want you all to know, I am not an attorney, so I don't speak your language. I am originally from Mexico. And I have had the privilege to live in this country for the last four years, and that affords me a comparison in the legal systems. I know full well that I would not be in this position that I am right now, in front of a federal court judge to be heard, fighting for my rights, in any other country.

That said, I want to begin my remarks by asking you respectfully to consider the information you hear today when you make the decision at hand. I would hate to come out of this experience knowing that I and many -- all of my partners

have come to you, wanting to be heard, without the Court having the intention to be actually listened to. Forgive me. It seems that way, like the decision -- that we are just getting airtime when a decision is already made. So I am counting on you --

THE COURT: Just so you know --

MS. GOMEZ: I am counting on you as a civic leader to hear all of us and to do what is right and fair. I have a 24-year-old daughter who is developmentally disabled. She has an IQ of 69. That is her reality. Her parents, Howard Barr and I -- Howard is also a partner that I represent, and are new spouses. We make life decisions for her. She can't make these life decisions herself. When somebody's impaired like that, a third party must come in and make those decisions for them.

My Twin partners and Sun Tech Partners and I are not impaired. We are all of sound mind and body, as you have heard, and none need a third party, whether it be you -- with all due respect -- the receivers, the SEC, Western Financial.

One of the things that, you know, we were talking about is when you have something that's actually just working fine and just going along, nobody says, "Hey, let's hire five attorneys." Okay. With all due respect to all of you -- you have to make a living, and I am sure you are all fine people -- but we really don't need you.

It is my fervent belief that what the receiver is doing is

just taking away our investment. They are taking away our ability to invest.

THE COURT: Could you be more specific? How is that happening?

MS. GOMEZ: We are general partners. Nowhere in the documents that I signed, in my general partnership, does it say, "Oh, by the way, we may or may not bring in a receiver to take over your affairs."

THE COURT: As a practical matter, is there something that's happened?

MS. GOMEZ: No. And you keep asking that, "Where has the receiver done damage?" Why are we asking that question instead of asking, "Where is the receiver actually helping?" I don't see the receiver is helping all that much.

And you do accrue bills, gentlemen. You can't tell me, in your fancy suits, that you haven't accrued bills.

THE COURT: Ma'am, do me a favor. Address the Court. We are here so you can be heard by the Court, not by the attorneys.

MS. GOMEZ: I appreciate that.

You asked Curtis what would happen if the -- if the receiver came to you and came to us and said, "Okay. We want to sell the property." And we told the judge, and the judge said fine. What would happen? It's like it would -- nothing would happen differently than if we didn't have a receiver. We

would sell the property, you know. It doesn't matter whether we have a receiver or not. Things will always be the same.

I have been in this investment since 1984. And granted, it was probably not the best decision. But I am standing with it because it's a long-term goal, and I have these children that I need to take care of. Nothing has changed all this time. Beverly and Alice have been in charge of doing all the work. They collect the fees, pay the taxes, put out the K-1s. It's dirt. We all know that. So we are already in place. There -- we are not getting any benefit from this receiver, at least not that I have seen.

Can you tell me of a benefit that the receiver has given us?

THE COURT: And at this time, again, I am prepared to issue an order after all of this is done, and we will recite with, I think, great, hopefully, clarity what the Court's reasoning is. But I don't want to turn this into a press conference, where the Court is being asked to justify any action. It's to hear you.

MS. GOMEZ: I would like to know why we are in receivership because we are not a party to this SEC versus Western Financial. I don't know why we are here. We didn't have anything to do with this.

I don't want to take up any more of your time. But, you know, I feel like I come to you as a member of these

partnerships. Both partnerships voted. We had two dissenting voters and the rest were all positive. And you have the numbers, in your folders, of the percentages. So please, get us out of receivership.

THE COURT: All right. Thank you for being here, Ms. Gomez.

Next is Number 22, Ronald Goodwin. Ronald Goodwin.

Good morning, sir -- good afternoon, sir. It will be morning soon enough.

MR. GOODWIN: I am sure it will. Good afternoon. Thank you, Your Honor, for taking the time to hear our concerns.

THE COURT: Thank you for being here, sir.

MR. GOODWIN: I am a general partner with Reno Vista Partners, and we have 26 members in our partnership. In the voting that we took place, we voted 25 percent to remove the receiver, and 6 percent not to remove. It is my --

THE COURT: I am sorry. Were there 25 percent of the investors that voted?

MR. GOODWIN: 25 percent, yes.

THE COURT: And that turned out to be 26 members?

MR. GOODWIN: That's 26 members.

THE COURT: Thank you, sir.

MR. GOODWIN: We have been -- Reno Vista Partners voted to sell their property, and through some legal finding of

another partnership, we were unable to do that.

THE COURT: When did that vote take place?

MR. GOODWIN: That took place in -- I think it was in August.

THE COURT: Two months ago?

MR. GOODWIN: Yes.

THE COURT: There was a vote where the majority of general partners voted to place the property for sale?

MR. GOODWIN: Correct. But due to --

THE COURT: Do you have something in front of you that confirms that, sir?

MR. GOODWIN: Yes, I do.

THE COURT: Could I see that?

Why don't you stand right there. I will take a look at it and hand it right back to you.

All right.

You obtained this from the website, E3advisor.com?

MR. GOODWIN: Yes.

THE COURT: All right. Let me ask you to hand that to the SEC and to the attorney for the receiver to review as well.

MR. PUATHASNANON: Thank you.

THE COURT: Are you familiar with this?

MR. FATES: Yes. Absolutely. This is the table that appears on the receivership website that shows the results of

the votes to extend the term of the GPs that had expired terms. And Reno Vista was one of the GPs with an expired term. That's what this shows.

THE COURT: And did the receiver take any action here in denying or disregarding this vote?

MR. FATES: No. No. Those partnerships have voted to extend their term. That has happened.

THE COURT: Can you return that to Mr. Goodwin.

MR. FATES: Yes.

THE COURT: I thought I understood you to say there had been an action voted on by your investment group, and that the receiver had essentially shut it down or ignored it and had rejected it.

MR. GOODWIN: Well, that's because of the other company or the other partnership, Reno -- View, I think it was?

THE COURT: All right. So what I will do is I will ask the receiver at the appropriate time to give me further information about that. It's not clear what that's referencing.

Mr. Goodwin, I interrupted you. Why don't you continue.

MR. GOODWIN: Well, that's all I have.

THE COURT: All right. Thank you for being here today, Mr. Goodwin.

Then I will call upon next Number 23, John and Mary Jenkins. John and Mary Jenkins. No response.

Number 24 is Carol and Henrik Johnson.

MR. H. JOHNSON: Thank you, Your Honor.

THE COURT: Thank you, sir.

MR. H. JOHNSON: Thank you for listening to us today. I represent Production Partners, Free Trade Partners, and Mesa View, and I will give you a quick synopsis of the votes for those. Production Partners, 41 of 72 responded -- there was one nay, 40 yeas. And the nay -- by shares, 99.6 percent of the responders voted yea.

THE COURT: So 99 percent of the --

MR. H. JOHNSON: Of the responders. So whatever 41 divided by 72 is, that's the percentage, like -- almost 60 percent. So it was a majority.

Free Trade, 40 of 91 eligible voters responded. 100 percent yea.

24 of 72 responders of Mesa View. There were -- two are nays, so about 97 percent were yeas.

I am also from Sweden. I am an immigrant.

Mr. Boeryd, how are you? Good to see you.

I am an experienced investor. I am an engineer. I have worked as a software engineer 40-some years here in San Diego; owned, managed, sold investment and rental properties. I am very familiar with real estate investments. I will leave it to that rather than read my whole CV to you, as I was going to do, and I think I will skip just to the end. A lot of good points

have been made.

I think if you are looking for one reason to take the partnerships out of the receivership, is that it's very ironic that the receivership has more control over the partnerships than Mr. Schooler or Western ever did. He's -- and they have done far more harm. Not maybe. There isn't direct linkage to the money, anything that has been taken from us, but the indirect results that several people have alluded to; the fact we do have control, by voting, over our properties, but people are reluctant to work with us because we are in receivership. So he has effectively reduced the value of all of our properties across the board without -- there's nothing we can do about it. Very frustrating. If you are looking for one reason, we are in a much worse situation now than we ever were, even if the alleged situation was such with Western. Thank you.

THE COURT: All right. Thank you, Mr. Johnson.

Next is 25, Rakesh and Julie Ann Kumar. Number 25, Rakesh and Julie Ann Kumar. I see the Kumars have left us.

Number 26 is Suzanne Lenz. I see no response.

Number 27 is Richard and Dena Lieber. I see no response.

Number 28 is William Loeber.

Mr. Loeber, good afternoon, sir.

MR. LOEBER: Yes. Down to the two-minute warning here, I will try and make it very, very quick. I have very

little to add to what's been said today except I would like to go through the vote for Big Ranch Partners.

THE COURT: Of course.

MR. LOEBER: We had -- 41 percent voted. 99 percent voted in favor of removing -- removing the receivership, and one percent voted no. So, pretty overwhelming in favor of eliminating the receivership from the control of our investment.

I don't know what I can add to what's been said, so I am not going to repeat what's been said, but there was one thing I think that may be under-represented, and that's the questionable value add that the receiver is providing to us. I think Elena was heading that direction. I, for the life of me, can't figure out what I am getting from the receivership. It got my attention over a year ago when I got the invoice from them for, I think, $1,200. Kind of eye-popping. But I did not know what I was getting in terms of value.

THE COURT: What was that invoice for, sir?

MR. LOEBER: That was for operational funds.

THE COURT: So would you normally receive an invoice back in the time frame when Western was managing?

MR. LOEBER: Nowhere near that level.

THE COURT: You would receive them, but they weren't that high?

MR. LOEBER: Nowhere near that high.

THE COURT: In your experience, how much were the invoices, generally?

MR. LOEBER: I don't recall. I wouldn't want to give you an incorrect number. But hundreds, not over 1,000, is my recollection.

THE COURT: All right.

MR. LOEBER: I come from the private sector, and there the watchword is you create value, and then you can charge for the value. If you don't create the value, you don't get to charge for it, and you probably are run out of town or you are out of business. So I guess I would direct my comments to the confusion that I have on what we are getting or not getting from the receiver that we didn't get from Western Financial. You have heard we are very capable. I am very impressed with many of the people I didn't know until they talked about their skills. The GPs are full of talent. We are capable of doing this. And I am not just getting the value from the receivership. I will stop there.

THE COURT: Thank you for being here.

Next is Number 29, David Luke.

Good afternoon, sir.

MR. LUKE: Thank you, Your Honor. I don't really have anything of substance to say, so I think I will basically just defer to the next speaker. Just to summarize quickly, that I represent Comstock Fairways, Grand View, and Sky View

Partners. We are all allowed to vote. The results of balloting should be part of the record, or at least they are on the file with the briefs. But pretty overwhelmingly in favor of release of the receiver. Only two dissenting opinions. And I gave an opportunity for them to come forward with any arguments for that position and nobody came forward.

Again, I question why we are in this position because I think we have pretty clearly demonstrated that the GPs are their own entity. They don't belong under receivership. And I'd just request your careful consideration to let us out from that.

THE COURT: Mr. Luke, thank you for being here.

Next is 30, Maurice McNeil. Good afternoon, sir.

MR. McNEIL: I am Maurice McNeil, representing Borderland Partners. I am one of the GPs, not a lawyer. Thank you very much for giving us the opportunity. I will be very brief. Borderland Partners voted. 40 percent of the partners responded unanimously requesting removal from receivership.

Our partnership has been in effect for a long time. We manage ourselves. We have no debts. We pay our bills.

From a personal perspective, I am not going to bore you with my curriculum vitae because I am not here for employment. But over the last 12 years, I have averaged 15 percent annualized return on my investments. That includes 2008, when, thanks to the SEC, I lost about $75,000. I am an experienced

investor. I manage my own investments. I would like to leave it at that. Thank you for your time, sir.

THE COURT: Thank you for being here, Mr. McNeil.

Next is Number 31, Sushma Prasada. Sushma Prasada.

Next is 32, Beverly Rhodes.

Next is 33, Frederick Rosso. Hearing no response.

34 is Robert Sciotto, S-C-I-O-T-T-O. All right. No response.

Number 35 is Gail Short. No response.

Next is Mark Totman.

Good afternoon, Mr. Totman.

MR. TOTMAN: Your Honor, I am here to represent High Desert, Snowbird, and Storey County, and my wife is in Checkered Flag Partners. And I just can't add any more than what's been said before me today, just that we would like to be removed from our receivership, and thanks for allowing me to speak.

THE COURT: Thank you for being here, sir.

Next is Number 37, Kathy Wall. Kathy Wall -- there you are.

Good afternoon, Ms. Wall.

MS. WALL: Good afternoon, Your Honor, and thank you for addressing our concerns. I will make this brief. My name is Kathy Wall. I am an investor in Hidden Hills and Twin Plant since 1989. In addition to Hidden Hills and Twin Plant, I am a

co-owner of a current residence and co-own and co-manage rental property in Mira Mesa. All of the concerns of my partnerships have been addressed. I will make this very brief.

We, as a general partner, voted 4.9 percent yes to removal of the receivership, and 2.8 percent no. We, as general partnerships, are more than competent to handle these investments on our own. Thank you for your time.

THE COURT: Thank you for being here.

38 is Brent Wiltshire.

And last, but not least, is Number 39, Oren Zaslansky. Calling once, calling twice. 39, Oren Zaslansky. I don't think Mr. Zaslansky made it to the end.

Thank you, all investors, for being here. I appreciate your being here. I have listened closely. I have taken nine pages of notes so that I can refer back to them because I haven't made up my mind one way or another. Ultimately, as I referenced earlier, the reason that the Court had created the receivership was in order to conserve, protect assets. That's the lodestar. That is the guiding light that the Court is focused on.

So at this point, what I anticipate is that I would like for the parties to address some of the issues that were raised. Since we are now at 5:20, I don't intend to do that today. I believe we have a hearing scheduled for October 31; is that correct?

MR. PUATHASNANON: Yes.

THE COURT: My inclination would be to do it then. On the other hand, the other possibility is to hear it before that, on an off day. Any points of view on that?

MR. DYSON: Yes, Your Honor. And regarding the October 31 date, that might be the first day we might be available on this side here. And I have already exchanged my schedule with the SEC, and we have been working in depositions. I was thinking this was going to go much longer because there's a number of issues, Your Honor, which I am sure you know we want to address from our perspective of this as well. This would go into not only the October 31 -- I think this hearing, continued hearing, needs to happen, Your Honor, before we would even get close to the 31st because the rulings you make in this hearing might have some effect on not only the hearings on the 31st but the MSJ set in January as well.

THE COURT: So you are saying that you are not available the week of October 20th?

MR. DYSON: No. I am in Europe that week, Your Honor. I leave the 18th, come back the 28th, for the hearing on the 31st.

THE COURT: And you are not available next week?

MR. DYSON: May I have a second, Your Honor?

THE COURT: Is the government available and the receiver available next week?

MR. DYSON: I understood the government is not available the 15th, 16th, and 17th, Your Honor.

MR. PUATHASNANON: Your Honor, if it is a 1:30 hearing, those dates would be available.

THE COURT: We could do it the 16th at 1:30.

MR. SWAN: Can we do it the 15th, if that's okay with Mr. Dyson?

MR. FATES: Yes, that's fine with the receiver.

THE COURT: Let's reconvene on Wednesday, October 15, at 1:30 p.m., so that we can at least conclude this hearing. I can have a number of concerns and issues addressed by the parties. So is there anything else before we conclude today?

MR. FATES: Your Honor, there is one issue I would like to raise that's separate from the proceedings today. I'd like to have a minute of the Court's time.

THE COURT: What does it relate to?

MR. FATES: It relates to the server that belongs to Western.

MR. DYSON: That I believe that is sui juris to this meeting, Your Honor. And I have said this before. This is something in front of Magistrate Adler. I mean, this is, again --

THE COURT: I am not looking at deciding, taking up something cold without the matter having been previously addressed in some pleadings, briefed.

MR. DYSON: Exactly.

THE COURT: I don't know about this. Have I had anything to do with this issue?

MR. FATES: You have not. We were trying to avoid the expense of a motion before the Court, and --

THE COURT: I appreciate that.

MR. DYSON: An expense after they spent $700,000?

THE COURT: Sir, don't interrupt me.

I appreciate that. At the same time, that's not how we do business here. Both sides should have an opportunity to consider these issues. The Court should have adequate opportunity to review these matters.

MR. FATES: I absolutely understand. Could I make a request that -- we now have a hearing set for October 15. Can we brief this issue for that hearing?

THE COURT: We are talking about two work days -- a work day and a half, because Monday is a holiday. And so it's 5:25. This briefing would, I guess, be filed either tonight or over the weekend. That doesn't make any sense at all.

So at this point, if there is something, there needs to be a showing that this can't either, number one, be taken up by the magistrate, and as I understand it, this is taken up by the magistrate.

MR. DYSON: No. This is just, you know, litigation by lying in wait. This issue is not sui juris.

THE COURT: We are not going to disparage each other with any of those. And I don't need to expose these fine people to this.

At this point, let me conclude these proceedings. Thank you all for being here.

(End of proceedings at 5:32 p.m.)

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C-E-R-T-I-F-I-C-A-T-I-O-N

I hereby certify that I am a duly appointed, qualified and acting official Court Reporter for the United States District Court; that the foregoing is a true and correct transcript of the proceedings had in the aforementioned cause; that said transcript is a true and correct transcription of my stenographic notes; and that the format used herein complies with rules and requirements of the United States Judicial Conference.

DATED: October 13, 2014, at San Diego, California.

/s/ Chari L. Possell
_____
Chari L. Possell
CSR No. 9944, RPR, CRR