

1. I am one of the attorneys representing Lender Respondents and am familiar with the facts and circumstances surrounding the subject matter of this litigation.

2. Attached hereto as Exhibit 1 is a true and correct copy of the Pre-Trial Scheduling Order in Case No. 09-03333 as Docket No. 588. This scheduling order set a discovery deadline of July 1, 2011 and an expert disclosure deadline of May 1, 2011 with rebuttal experts due on June 1, 2011.

3. This pending summary proceeding (now case) which until Judge Davis' April 19, 2011 Order was being litigated under the "main" receivership cases filed by the SEC and the CFTC seeking the appointment of the Receiver. File No. 09-03333 (SEC) and 09-03332 (CFTC). Lender Respondents had moved to dismiss the summary proceeding arguing that the Court did not have subject matter jurisdiction over the summary proceeding because, among other reasons, the Receiver had to commence a separate civil action with a separate case number based on the Receiver's claims in the Petition rather than being part of the underlying receivership proceedings which for the most part have nothing to do with the Lender Respondents. While there have been limited docket entries directly related to the summary proceeding, there have been numerous filings in the underlying receivership proceedings (the docket in 09-3332 is up to at least Docket No. 727 as of April 26, 2011 and the docket in 09-3333 is up to Docket No. 764 as of April 26, 2011 – new docket filings are added virtually daily). The vast majority of these docket entries have nothing to do with the above captioned case which was previously captioned in the two receivership proceedings.

4. Thus, regardless of whether the filing had to do with general receivership issues such as a motion for approval of the receiver's attorney fees or issues surrounding a specific summary proceeding such as the summary proceeding involving the Lender Respondents, the caption for each docket filing was the same. More importantly, none of the captions involving any summary proceeding specifically identifies any of the "Respondents" such as the Lender Respondents in the caption. Simply put, unless specific document filed on ECF with respect to a specific summary proceeding somehow referred specifically to that summary proceeding in the body of the document, there was no way to tell whether that document related to a specific summary proceeding. Thus, the attorneys and support staff in the Lender Respondents' office who were working on this case and who received via ECF all docket filings on the underlying receivership proceedings could not immediately tell if a filing related to this summary proceeding.

5. On December 21, 2010, the Court entered another document identified in the caption as simply "Pretrial Order" in Case No. 09-3333 as Docket No. 639 (A Copy of this Pretrial Order is attached as Exhibit 2 to this Declaration). There was nothing on the face of this Pretrial Order to indicate that it was not a Pretrial Order governing the above captioned case and previous summary proceeding. For instance, the Pretrial Order did not reference any particular Pretrial Conference after which the Pretrial Order was entered.

6. As a result, after the Lender Respondents' attorneys received this December 21, 2011 Pretrial Order via the ECF system, the undersigned believed that the Court had amended the November 17, 2011 Pretrial Order in this case with new dates. After

receiving this, I thought that the Court had *sua sponte* amended the Pretrial Order as a result of the hearing held on the Lender Respondents' Motion to Dismiss only two business days earlier on December 17, 2010. I believed that after this hearing the Court entertained significant doubts regarding whether the Court had subject matter jurisdiction and thus wanted the parties to avoid expediting discovery on a case which could be dismissed.

7. I directed that the dates in the Court's November 17, 2011 scheduling order be changed to the dates contained in the December 21, 2011 scheduling order. These changes were significant. Among other things, the December 21, 2011 scheduling order extended the discovery deadline three months from July 1, 2011 to October 1, 2011 and the date for disclosure of experts and reports from May 1, 2011 to November 1, 2011.

8. However, after investigation following the motion hearing, it appears that this Pretrial Order was entered in some other summary proceeding potentially involving Mr. Patrick Kiley.

9. Thus, as a result of the confusion in our office, the attorneys and staff in our office have been operating under the assumption that the discovery deadline in this case was set for October 1, 2011 and expert disclosures were not due until December 1, 2011. In actuality, the discovery deadline is July 1, 2011 and the initial expert disclosure deadline is May 1, 2011 – four days from now. I would also note that because Judge Davis entered an Order requiring this summary proceeding to have its own file number and assignment to Judge Nelson, this problem should not occur in the future.

10. After being provided a proposed discovery extension by Lender Respondents' counsel William Mohrman, the Receiver's counsel Tara Norgard indicated she was amenable to amending the scheduling order, but has conditioned her agreement to include exact deposition dates for our clients. *See*, Mohrman Declaration. Because of the compressed timelines and the fact that we represent thirteen clients, some of which are retired and not actively checking e-mail and retrieving voicemails we are unable to schedule exact deposition times in time to come to a stipulation prior to the filing of this motion. I attempted to call Ms. Norgard to get her to modify her request slightly because of our inability to reach all of our clients for scheduling, but was unable to reach her because she was in meetings. We are confident that we will be able to address these scheduling issues with Ms. Norgard, but are unable to complete them prior to the filing of this motion because of the proximity of the expert witness disclosure deadline and to allow her seven days to respond to the motion in the unlikely event that a stipulation cannot be reached.

FURTHER YOUR AFFIANT SAYETH NOT.

Dated: April 28, 2011.

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