**IN THE UNITED STATES BANKRUPTCY COURT**
**FOR THE DISTRICT OF DELAWARE**

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| In re:<br><br>WOODBRIDGE GROUP OF COMPANIES, LLC, *et al.*,[1]<br><br>Debtors. | Chapter 11<br><br>Case No. 17-12560 (KJC)<br><br>Jointly Administered<br><br>**Ref. Docket Nos. 150 and 157**<br>**Hearing Date: Jan. 10, 2018, at 9:00 a.m. (ET)** |

**DEBTORS' OBJECTION TO MOTIONS OF**
**(I) OFFICIAL COMMITTEE OF UNSECURED CREDITORS**
**AND (II) THE U.S. SECURITIES AND EXCHANGE COMMISSION FOR ENTRY**
**OF AN ORDER DIRECTING THE APPOINTMENT OF A CHAPTER 11 TRUSTEE**

[1] The last four digits of Woodbridge Group of Companies, LLC's federal tax identification number are 3603. The mailing address for Woodbridge Group of Companies, LLC is 14225 Ventura Boulevard #100, Sherman Oaks, California 91423. Due to the large number of debtors in these cases, which are being jointly administered for procedural purposes only, a complete list of the Debtors, the last four digits of their federal tax identification numbers, and their addresses are not provided herein. A complete list of such information may be obtained on the website of the Debtors' noticing and claims agent at www.gardencitygroup.com/cases/WGC, or by contacting the proposed undersigned counsel for the Debtors.

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Woodbridge Group of Companies, LLC ("Woodbridge") and its affiliated debtors and debtors in possession (collectively, the "Debtors") in the above-captioned chapter 11 cases (the "Chapter 11 Cases"), hereby submit their opposition to (i) the Emergency Motion of Official Committee of Unsecured Creditors (the "Committee") for Entry of an Order Directing the Appointment of a Chapter 11 Trustee Pursuant to 11 U.S.C. § 1104 (the "Committee Motion," D.I. 150) and (ii) the Motion by the U.S. Securities and Exchange Commission (the "SEC") for Order Directing the Appointment of a Chapter 11 Trustee (the "SEC Motion," D.I. 157 and, together with the Committee Motion, the "Trustee Motions"). Due to the substantial overlap of arguments in the Trustee Motions, Debtors address both in this Objection.

## PRELIMINARY STATEMENT

1. The Debtors, operating under independent management, are acting to preserve the value of the Debtors' assets, safeguard and pursue claims against third parties and insiders, and gather the necessary information to create a proposed path forward to put as much money in the hands of investors as rapidly as possible. The SEC—the self-proclaimed statutory guardian of the investing public—complains about the alleged Woodbridge fraud that it failed to stop and the manner in which it was finally brought to an end. The Committee, made up of one trade creditor and the only two noteholders known to have waived their lien rights, relies on incomplete and inaccurate information to second guess the Debtors' business judgement—all while repeatedly refusing to meet in-person with the Debtors' independent management. None of this rises to the high standard required to justify the extraordinary remedy of appointment of a chapter 11 trustee. Meanwhile, *ad hoc* groups representing large numbers of investors (and millions of dollars of investors' claims) support the Debtors' current management, and desire that the parties promptly attend to the business of getting investors paid.

2. It is far from controversial to observe that the appointment of a chapter 11 trustee under section 1104 of the Bankruptcy Code is a remedy limited to extraordinary circumstances.[2] As the Third Circuit instructs, there is a "strong presumption" against appointing a chapter 11 trustee.[3] This presumption is so strong that it may only be refuted by the movant through clear and convincing evidence.[4] One of the primary rationales for this high burden is that the debtor in possession is a fiduciary for all of the debtors' stakeholders and, thus, is obligated by law "to refrain from acting in a manner which could damage the estate or hinder a successful reorganization."[5] Given these clear legal predicates, the Trustee Motions must be denied under the facts of these cases, as neither demonstrates cause justifying appointment of a chapter 11 trustee, nor how the appointment of a trustee is in the best interests of creditors, other parties in interest, or the estates. An analysis of the facts and applicable case law make this conclusion inescapable.

3. The Trustee Motions reveal that the near-exclusive focus of the Committee and the SEC (collectively, the "Movants") is: (a) the alleged prepetition misconduct of Mr. Shapiro, who is the *former* manager of the Debtors; and (b) unwarranted negative inferences derived from certain prepetition transactions between the Debtors' current independent management and Mr. Shapiro, that resulted in Mr. Shapiro ceding control of the Debtors and hundreds of millions in assets to them, resulting in the commencement of the Chapter 11 Cases supervised in the transparent "fish bowl" of this Court. These factual predicates, however, fall well short of

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[2] *See* 7 COLLIER ON BANKRUPTCY ¶ 11402[1] (16th Rev. Ed. 2017)

[3] *See In re G-I Holdings, Inc.*, 385 F.3d 313, 319 (3d Cir. 2004) (a party "moving for appointment of a trustee . . . must prove the need for a trustee . . . by clear and convincing evidence") (quoting *In re Marvel Entm't Grp. Inc.*, 140 F.3d 463, 471 (3d Cir. 1998)). *See also Official Comm. of Unsec'd Creds. Of Cybergenics Corp. v. Chinery*, 330 F.3d 548 (3d Cir. 2003) (recognizing that there is a strong presumption that the debtor should remain as debtor in possession).

[4] *See In re G-I Holdings*, F.3d at 319.

[5] *Id.* (quoting *In re Marvel*, 140 F.3d at 471).

supporting the extraordinary measure of appointing a chapter 11 trustee and are based on a series of misunderstandings, misconceptions, and plain falsehoods contained in the Trustee Motions about the true independence of current management and the business activities being presently conducted by the Debtors.

4. The Debtors' *current* management has exercised reasoned and proper business judgment in obtaining and administering the significant assets of these estates for the benefit of their creditors and other stakeholders, principally the noteholders and unitholders. Current management has not engaged in any improper behavior, let alone behavior so egregious as to warrant the extraordinary relief the Movants are requesting. Indeed, section 1104(a) of the Bankruptcy Code is clear that "cause" is established only by showing egregious behavior of *current* management. The alleged misdeeds of Mr. Shapiro, albeit alarming, are inapposite to this question and, in any event, current management is assessing potential actions that might benefit the Debtors' estates. But Mr. Shapiro is no longer a manager of the Debtors and, upon learning of the Florida Court's asset freeze (based on the SEC's *ex parte* application) of Mr. Shapiro and other Shapiro-related entities, the Debtors immediately suspended all services and payments under the Consulting Agreement (defined below). Simply put, since December 1, 2017, Mr. Shapiro has had no control of the Debtors or role in their management and, thus, the Movants' allegations regarding his misdeeds do not bear on whether *current* management can perform as effectively as fiduciaries of the estates.

5. The Movants, apparently recognizing this defect in their argument, attempt to taint Mr. Beilinson and Mr. Perkins with Mr. Shapiro's alleged misdeeds by making unfounded inferences based on the existence of prepetition agreements between Mr. Shapiro and the Debtors. The true narrative, however, is that experienced and independent management exercised

their reasoned business judgment in negotiating to bring assets worth hundreds of millions of dollars under the supervision and ultimate control of this Court to maximize value and provide transparency for stakeholders. The notion that the decisions of the Debtors' independent management are, or ever have been, dictated by Mr. Shapiro is not only baseless, but offensive. Both Mr. Beilinson and Mr. Perkins have well-established professional credentials and substantial experience in large and complex restructurings, both in and out of court.

6. But perhaps the most important flaw in the Trustee Motions is the notion that Mr. Beilinson and Mr. Perkins could have forced Mr. Shapiro to cede control over the Debtors absent an agreement from Mr. Shapiro. Prior to December 1, 2017, independent management did not have the requisite leverage to force Mr. Shapiro to release his control of the significant assets that are now under this Court's supervision. Rather, the party that had that power was the SEC. Yet even after investigating Mr. Shapiro for over one year, the SEC had failed to take any action to protect the Debtors' investors and did not do so until several weeks *after* the Chapter 11 Cases were commenced.

7. In fact, the actual alternatives that faced the Debtors' stakeholders were quite stark: Mr. Beilinson and Mr. Perkins negotiated a process to turn over control of the Debtors' assets to independent management through a series of integrated, simultaneous, and entirely reviewable transactions, while maintaining the necessary institutional knowledge and liquidity to preserve the value of hundreds of millions of dollars invested in multiple real estate projects—which serve as a major source of investors' recovery with the most pressing risk of depreciation if not protected. The SEC—which took no action at the time—and the Committee second guess certain aspects of this process. The only real alternative at the time, however, was for Mr. Shapiro to continue to manage the Debtors, while the long-running SEC investigation might (or

might not have) eventually resulted in an equity receivership that would not have had the benefits afforded by the Bankruptcy Code to protect the noteholders and unitholders, including the automatic stay, financing flexibility, the ability to sell assets free and clear, the legal right to pursue avoidance claims to enhance value, and other reporting provisions that ensure that stakeholders have a view into the Debtors' efforts to maximize value for their benefit. Given these alternatives, negotiating a process with Mr. Shapiro to transition the Debtors' assets into the Chapter 11 Cases was unequivocally in the best interests of all of the Debtors' stakeholders.

8. The Movants ignore that upon Mr. Shapiro's replacement, the Debtors' independent management took and continues to take the actions of a responsible fiduciary, and that these actions benefited and continue to benefit stakeholders. The decisive actions of the Debtors' independent management have preserved hundreds of millions of dollars of value. Specifically, the independent management took the following actions promptly after being appointed:

- Ceased all retail fundraising activities, which was the primary source of the SEC's concerns relative to Mr. Shapiro;
- Commenced the Chapter 11 Cases to protect the Debtors' assets for the benefit of all stakeholders—which the Committee admits was a sound decision, considering available alternatives;
- Disclosed all of the agreements that the Debtors entered into with Mr. Shapiro to obtain control from him, knowing full well that each prepetition contract would be subject to scrutiny by all parties in interest and the Court in the bankruptcy proceedings;
- Retained all bankruptcy rights and powers, including the power to avoid prepetition payments to Mr. Shapiro, reject prepetition agreements with Mr. Shapiro, and subordinate any claims Mr. Shapiro might assert against the Debtors in response to any of the foregoing;
- Used the leverage of the bankruptcy process—including the right of turnover under section 542 of the Bankruptcy Code—to convince Mr. Shapiro (and Ms. Pedersen) to turn over the Debtors' property to the SEC in a matter of weeks;

- Based on Mr. Shapiro's agreement to contribute 28 properties to the Woodbridge Group of Companies, obtained a commitment from an institutional third-party lender to provide $100 million in postpetition financing, thereby allowing the Debtors to preserve the value of their real estate portfolio, a decision that the Committee supports;

- Amended the agreement vesting control of the Debtors to the independent management, which drastically reduced Mr. Shapiro's ability to remove independent management;

- Identified and brought additional non-debtor assets under the control of the Debtors' independent management so that these companies and their assets could be added to the Court-supervised Chapter 11 Cases (which efforts would have resulted in chapter 11 filings for the entities holding those assets but for the *ex parte* asset freeze order obtained by the SEC on the same day such proceedings were to be commenced);

- Secured and continue to secure books and records regarding the Debtors' business and operations;

- Provided the SEC with all requested information, including all information available to the Debtors regarding the identification of non-debtor affiliates and the assets they held, which was the very information used by the SEC to implement an *ex parte* asset freeze that prevented those entities (and their assets) from being placed under this Court's supervision and protection; and

- Requested and attended several meetings with the SEC (beginning on the Petition Date) to share independent management's knowledge of the business, the Debtors' cash needs, and current business plan.

The totality of these facts, coupled with the substantial benefits they conferred to the Debtors' stakeholders, completely undermines the unsupported—and unsupportable—insinuations by the Movants that Mr. Beilinson and Mr. Perkins are somehow controlled or tainted by Mr. Shapiro.

9. The success of the Debtors' post-filing negotiations with Mr. Shapiro is not accidental. As seasoned bankruptcy professionals, both Mr. Beilinson and Mr. Perkins were aware that an immense leverage shift would occur upon filing the Chapter 11 Cases—with visibility increased and the assistance of the Court and interested parties to assert appropriate pressure. The Debtors' independent management team has made maximum use of the process to

obtain value for the Debtors' stakeholders, and these results should comfort the Court that the best path forward is the current path, despite the second-guessing of the Movants.

10. The Movants also fail to demonstrate that it is in the best interest of all interested parties to appoint a chapter 11 trustee. The Committee represents a small fraction of interested parties here. The Debtors estimate that unsecured creditors hold approximately $9 million in claims, while noteholders that have not waived their lien rights and unitholders combined hold close to $1 billion in claims or interests. As such, the Committee is in no position to assert that it speaks for more than a relative handful of creditors.

11. Likewise, the SEC cannot credibly assert that it is acting in the best interests of the estates. Since the filing of these Chapter 11 Cases, the SEC has taken actions to disrupt the orderly administration of the Debtors' assets, not the least of which is to commence, under seal, an action to assert an equity receivership over the Debtors' assets, in contravention of the automatic stay and without any effort to obtain relief from this Court. Moreover, the SEC commenced this action *after* the Debtors' independent management cooperated fully with the SEC, even to the point of convincing Mr. Shapiro and Ms. Pedersen to turn over documents to aid in its investigation. Worse still, the SEC sat silently during the second interim hearing to approve the DIP Financing (as defined below) while its receiver motion was still under seal. The DIP Financing contains a typical provision that the commencement of a receivership action could trigger a default, which would obviously prejudice all stakeholders.[6]

12. By contrast, the Debtors' independent management has succeeded in stabilizing the Debtors' business and managing their continued construction of the Debtors' real estate

[6] As aptly noted in a similar situation, to seek the appointment of a chapter 11 trustee in this context is not only not in the best interests of the estates, but borders on "disgraceful." *See In re DBSD N. Am., Inc.*, 421 B.R. 133, 141 (Bankr. S.D.N.Y. 2009) (describing as "disgraceful" a group of investors' motion to appoint a trustee, "knowing that such would cause a default on the Debtors' DIP financing facility and a default on the sale of the company upon which all of the creditors' recoveries would rest").

portfolio to maximize value. Appointing a trustee would threaten the DIP Financing, which the Committee admits is "required … to continue construction, to maximize value."[7] The best interests of all parties would be served by allowing the Debtors—managed by Mr. Beilinson and Mr. Perkins—to continue the important and time-sensitive work they are accomplishing at this very moment.

13. For all of these reasons, and as detailed below, the Trustee Motions should be denied.

## I. BACKGROUND

### A. General Background

14. On December 4, 2017 (the "Petition Date"), each of the 279 Debtors commenced a voluntary case under chapter 11 of the of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code"). Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, the Debtors are continuing to manage their financial affairs as debtors in possession. The Chapter 11 Cases are being jointly administered pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Local Rule 1015-1. No trustee or examiner has been appointed.

15. Information regarding the Debtors' history and business operations, capital structure and primary secured indebtedness, and the events leading up to the commencement of the Chapter 11 Cases can be found in the *Declaration of Lawrence R. Perkins in Support of the Debtors' Chapter 11 Petitions and Requests for First Day Relief* (D.I. 12) (the "First Day Declaration") and the *Supplemental Declaration of Lawrence R. Perkins* (D.I. 84) (the "Supplemental Declaration").

[7] *Woodbridge Grp. of Cos., LLC v.* SEC, Case no. 17-51891 (KJC), Dkt. No. 1 ("Verified Compl."), Ex. H ("December 21 Hearing Transcript") at 123:5-7. A true and correct copy of the December 21 Hearing Transcript is attached as Exhibit A.

16. On December 14, 2017, the Office of the United States Trustee (the "U.S. Trustee") appointed the Committee pursuant to section 1102 of the Bankruptcy Code.

17. On December 28, 2017, the Committee filed the Committee Motion. On January 2, 2018, the SEC filed the SEC Motion.

**B. The SEC Investigation Prior to the Chapter 11 Cases and Florida Securities Action**

18. Prior to the Petition Date, the Debtors received a variety of inquiries from federal and state regulators in connection with their fundraising activities. As of the Petition Date, certain of the Debtors had received information requests from state securities regulators in approximately 25 states.

19. The concerns raised by state regulators generally focused on the alleged offer and sale of unregistered securities, including by allegedly unregistered agents. Three of these inquiries were resolved through settlements, which included the entry of consent orders. As of the Petition Date, the Debtors had resolved actions in Massachusetts, Pennsylvania and Texas, all without admission of fault or wrongdoing. In each proceeding against certain Debtors pending in Arizona, Colorado, Idaho, Michigan, Oregon and South Carolina, the Debtors' prepetition management, with the assistance of counsel from large national law firms, was engaged in advanced settlement discussions with the applicable regulators prior to the commencement of the Chapter 11 Cases. The Debtors' current independent management team has continued the efforts to negotiate further settlements of the pending investigations.

20. Since September 2016, the Debtors have been under investigation by the SEC in connection with possible securities law violations. In connection therewith, the SEC brought two applications to enforce administrative subpoenas that it issued against certain Woodbridge Group entities (among other entities). Specifically, on September 27, 2016, the SEC issued a formal order directing an investigation of Debtor Woodbridge Mortgage Investment Fund 3, LLC. On

July 17, 2017, the SEC filed an application in the District Court for the Southern District of Florida (the "Florida Court") seeking enforcement of an administrative subpoena that it issued on January 31, 2017 (the "Woodbridge Group Subpoena"). *See SEC v. Woodbridge Grp. of Cos.*, 17-cv-22665 (CMA) (S.D. Fla. Jul. 17, 2017), Dkt. No. 1. The Florida Court issued an order granting the SEC's request on September 20, 2017. *Id.*, Dkt. No. 25.

21. On October 13, 2017, the SEC filed a motion for contempt of court, alleging that Woodbridge had failed to provide certain company-related emails from the AOL accounts of Mr. Shapiro and Nina Pedersen. *Id.*, Dkt. No. 29. This motion was pending as of the Petition Date.[8]

22. On October 31, 2017, the SEC also filed a second application in the Florida Court (the "LLC Application") seeking an order to show cause enforcing subpoenas that it issued on August 16 and 17, 2017 (the "LLC Subpoenas") to 235 limited liability companies allegedly owned and controlled by Robert Shapiro to explain why they had not fully complied with the LLC Subpoenas. *See SEC v. 235 Ltd. Liab. Cos.*, No. 17-mc-23986 (PCH) (S.D. Fla. Nov. 14, 2017), Dkt. No. 1.

23. While the Debtors sought to resolve disputes over these subpoenas, the Debtors to date have provided over three million pages of documents, including loan documentation, real property information, attorney trust account records, sales and marketing materials, company emails, accounting records and recorded telephone calls. The Debtors have also made available and facilitated site visits and interviews of several employees throughout the course of the SEC's investigation.

24. As of the Petition Date, the SEC had not commenced an enforcement action and

[8] As discussed below, the Debtors' current independent management successfully obtained stipulations from Mr. Shapiro and Ms. Pedersen, approved by order of the Florida Court, requiring that they turn those emails over to the SEC.

did not issue a Wells Notice. On September 21, 2017 (a year after commencing its investigation), despite its investigation of possible securities laws violations involving "Woodbridge's receipt of more than $1 billion of investor funds from thousands of investors nationwide," the SEC stated:

> The SEC is continuing its fact-finding investigation and to date *has not concluded that any individual or entity has violated the federal securities laws*.

Verified Compl., Ex. E ("September 21 Press Release"). A true and correct copy of the September 21 Press Release is attached hereto as Exhibit B.

**C. Prepetition Agreements With Mr. Shapiro**

25. Prior to the transfer of authority, independent management had no authority over the Debtors and their affiliates (collectively, the "Woodbridge Group"), who were subject to the complete and exclusive control of Mr. Shapiro. As the corporate structure annexed as Exhibit A to the First Day Declaration (the "Organizational Chart") makes clear, the RS Protection Trust, which is wholly controlled by Mr. Shapiro, is the direct or indirect owner of all of the entities set forth on Schedule A-2 thereto. These are all "PropCo" and "MezzCo" entities that are mortgagors to the various Debtor investment funds. Prior to entry into the Contribution Agreement, the entities listed on Schedule A-1 to the Organizational Chart were also wholly-owned and controlled by the RS Protection Trust.

26. Given this structure, Mr. Beilinson and Mr. Perkins could not obtain control of the Debtors from the RS Protection Trust without Mr. Shapiro's consent. Accordingly, Mr. Beilinson and Mr. Perkins negotiated a framework whereby (a) Mr. Shapiro would give them, through the WGC Independent Manager entity, control of the Debtors, (b) the RS Protection Trust would contribute its equity in the Debtors holding the 28 properties that serve as collateral for the DIP financing, and (c) the RS Protection Trust would deliver to the Debtors certain proceeds of sales (above and beyond the amount needed to repay noteholders) of RS Protection Trust-owned

properties. These negotiations culminated in three prepetition agreements with Mr. Shapiro executed in connection with delivering control of the Debtors to Mr. Beilinson and Mr. Perkins: the Contribution Agreement, the Consulting Agreement, and the Forbearance Agreement.

27. Consulting Agreement. Independent management agreed to a transition services agreement (the "Consulting Agreement"), pursuant to which WGC Independent Manager agreed to retain Mr. Shapiro as a consultant to provide informational services such as to locate and provide historical data concerning the Woodbridge Group's real property holdings and development plans. *See* First Day Decl. Ex. B. Given the scope and complexity of the Debtors' operations and assets, the Woodbridge business information asymmetry between Mr. Shapiro, (who operated the business for over 20 years) and the independent management, as well as less than optimal internal corporate documentation, Mr. Beilinson and Mr. Shapiro determined that it would be beneficial to the estates to have the option to require Mr. Shapiro to provide services to the Debtors if such services were later determined to be necessary. One prepetition payment of $175,000 was made to Mr. Shapiro under the Consulting Agreement. *See* Ex. A, at 20:22-25. No postpetition payments have been made under the Consulting Agreement. *Id.* at 21:1-9.

28. Contribution Agreement. Independent management and Mr. Shapiro executed a prepetition contribution agreement (the "Contribution Agreement") whereby RS Protection Trust contributed its membership interests in certain "MezzCos" and (and indirectly, their associated "PropCos") WMF Management to Woodbridge. The Contribution Agreement was entered into by independent management to ensure that the Debtors could obtain additional liquidity sufficient to fund their operations during the pendency of the Chapter 11 Cases. Indeed, Hankey Capital, LLC (the "DIP Lender") would not have agreed to provide its $100 million in financing (the "DIP Financing") if the Debtors had not obtained the assets provided in the Contribution

Agreement. The Contribution Agreement implements the following arrangement (the "Distribution Arrangement") with respect to the proceeds of sales of DIP Financing collateral properties held by the PropCo Debtors. After all Notes issued by the PropCos holding the Contracted Properties and the MezzCos holding such PropCos have been satisfied in full, (i) 50% of any remaining proceeds up to a cap of $500,000 will be promptly paid to RS Protection Trust as an advance on any distributions to which it may be entitled as the member of the MezzCos, and (ii) any remaining proceeds will be retained by the PropCo. *See* First Day Decl., at ¶ 37, Ex. H. No payments have been made to the RS Protection Trust under the Distribution Arrangement.

29. Independent management also convinced Mr. Shapiro to turn over the proceeds of the sale of a property from a prepetition agreement between a non-Debtor Woodbridge Group entity and a third party that closed on November 30, 2017. *See* First Day Decl. at 29-31. While $500,000 of the proceeds of this sale was paid to WFS Holding Co LLC, an entity owned by Mr. Shapiro, the Debtors are currently holding all of the remaining net proceeds from this sale and have reserved all of their rights with respect to the property that was sold. With respect to a second prepetition agreement between a non-Debtor Woodbridge Group entity and a third party, independent management obtained a prepetition representation from Mr. Shapiro that he would distribute proceeds of the sale in accordance with the Distribution Arrangement in the Contribution Agreement, even though the non-Debtor seller was not contributed pursuant to the Contribution Agreement. *Id.* This sale closed on December 12, all of the net proceeds from this sale, which are subject to the TRO Asset Freeze Order, are being held by the Debtors, and the Debtors have reserved all of their rights with respect to the property.[9]

[9] The SEC Motion (at ¶ 40) alleges that independent management "[a]llowed Shapiro to sell assets just before and just after the bankruptcy was filed, allowing him to keep an unknown amount of proceeds." The SEC

30. Forbearance Agreement: Independent management entered into a forbearance agreement (the "Forbearance Agreement") and two subordination, non-disturbance, and attornment agreements (the "SNDAs") that permit Mr. Shapiro (and his wife) to continue to occupy two residential properties during the pendency of the Chapter 11 Cases as long as the existing leases for such properties remain in effect. Rent is paid on these properties pursuant to existing leases with certain of the Debtors. If rent payments are not made, remedies can be pursued under the leases notwithstanding the Forbearance Agreement and the SNDAs, and if the leases are terminated, the forbearance and the non-disturbance under the SNDAs are also terminated. These agreements allow Mr. Shapiro to make rent payments to the Debtors under existing leases for two of the approximately 140 properties.

31. During the course of these negotiations, Mr. Shapiro was represented by his own counsel, the law firm DLA Piper. Counsel for the Debtors advised DLA Piper that each of the Contribution Agreement, Forbearance Agreement, and the Consulting Agreement would constitute executory contracts under the Bankruptcy Code, and may be subject to avoidance or subordination actions. Under the agreements, the Debtors did not waive any of the manifold powers conferred to them by commencing the Chapter 11 Cases, including the power to avoid prepetition payments, seek turnover of estate assets, reject executory contracts, and subordinate asserted claims. Further, the Debtors were not required to take any action in the early stages of the case to assume or affirm these agreements, giving parties in interest ample time to get up to speed and evaluate the arrangements.

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Motion ignore that these were not sales of the Debtors' assets, the Debtors retain the proceeds they've received from the sales, and the Debtors have reserved all of their rights with respect to the properties. *See* First Day Decl. at 29-31.

**D. The Appointment of an Independent Management Team for the Debtors**

32. As of October 5, 2017, the Debtors retained the law firm of Gibson, Dunn & Crutcher LLP ("Gibson Dunn") to conduct an analysis of alternatives to restructure its business. Gibson Dunn and the Debtors interviewed financial advisors, including SCP, and ultimately retained SierraConstellation Partners ("SCP") to assist in that analysis on October 23, 2017. SCP had no involvement with Mr. Shapiro or the Debtors' business prior to being considered for this role.[10]

33. After retaining advisors, the Debtors considered a number of alternatives related to their business, including that the Debtors be placed under independent management, that an institutional source of liquidity be obtained to allow the Debtors to preserve the value of their real estate portfolio, and that the Debtors commence chapter 11 cases to obtain the breathing space necessary to implement a restructuring. Following that review, on November 14, 2017, SCP recommended to Mr. Shapiro that all fundraising activity cease.

34. To address the requirements of the office of the U.S. Trustee known as the J. Alix Protocol, several potential independent managers were identified to serve as independent manager of the Debtors during the Chapter 11 Cases and, ultimately, Marc Beilinson (through his firm, Beilinson Advisory Group) was selected for the appointment. Mr. Beilinson had no prior contact or involvement with Mr. Shapiro or the Debtors.

35. Both Mr. Beilinson and Mr. Perkins have substantial restructuring experience and impeccable credentials. Since founding Beilinson Advisory Group, Mr. Beilinson has served as chief restructuring officer and a director of distressed companies including Westinghouse, Caesar's Acquisition Corp., Fisker Automotive, Eagle Hospitality, Innkeepers USA, and MF

[10] SCP was first contacted by Mr. Shapiro in August 2017, but was not engaged until October 23, 2017 under its terms with Gibson Dunn.

Global Assurance Company. Throughout his career, Mr. Beilinson has been active in the restructuring of complex commercial and retail real estate portfolios throughout the United States and has also specialized in restructuring retail chains. Mr. Perkins has more than 15 years of management consulting and advisory experience restructuring companies.

36. To effect the transfer of authority to the Beilinson Advisory Group, RS Protection Trust created a new subsidiary, WGC Independent Manager. Mr. Shapiro, acting as trustee of RS Protection Trust, exercised RS Protection Trust's ownership rights over certain of the Debtors to execute a written consent removing himself and his affiliates as manager of certain of such Debtors and appointing WGC Independent Manager as replacement manager. Beilinson Advisory Group was appointed the manager of WGC Independent Manager. Following the transition of authority and control to WGC Independent Manager, Beilinson Advisory Group immediately took action to appoint Mr. Perkins as Chief Restructuring Officer of WGC Independent Manager and remove Mr. Shapiro from his capacity as an officer of each entity controlled by WGC Independent Manager.

37. Through these steps, as of December 1, 2017 Mr. Beilinson, Mr. Perkins and WGC Independent Manager, were empowered to oversee and manage all legal, financial, operational, and transactional aspects of the Debtors' business for the duration of the Chapter 11 Cases.

**E. Actions of Independent Management Since Gaining Control of the Debtors**

38. Upon their appointment, independent management caused the Debtors to immediately cease all fundraising activities, which was the primary source of the SEC's concerns relative to Mr. Shapiro (and is the conduct that both of the Trustee Motions predominantly rely upon to argue that a chapter 11 trustee should be appointed).

39. The next business day following their appointment, independent management caused the Debtors to file petitions commencing the Chapter 11 Cases. This allowed the Court to supervise the estates, and provided visibility into the operations of the Debtors to all parties in interest, including the SEC and the Committee.

40. In the First Day Declaration, Mr. Perkins provided comprehensive disclosure of all of the agreements between the Debtors and Mr. Shapiro that permitted independent management to assume control over the Debtors. *See* First Day Decl., ¶¶ 27-38. The disclosure was robust, thereby allowing both the SEC and the U.S. Trustee to raise concerns regarding these agreements at the First Day Hearing. *See* Verified Compl., Ex. G ("First Day Hearing Transcript"), 32:3-33:12; 76:9-14. A true and correct copy of the First Day Hearing Transcript is attached hereto as Exhibit C. True and correct copies of these agreements were attached to the First Day Declaration so that parties in interest would be able to review and satisfy themselves as to the entirety of the contents of these arrangements. *See* First Day Decl., Exs. B-H.

41. As noted above, Mr. Beilinson and Mr. Perkins entered these agreements prepetition to preserve bankruptcy powers afforded to them once the Chapter 11 Cases were commenced. Since the Petition Date, the Debtors have already begun asserting certain of these powers against Mr. Shapiro.

42. For instance, on December 8, 2017, independent management caused the Debtors to send demand letters to Mr. Shapiro and Ms. Pedersen asserting that their emails used to conduct Woodbridge business were property of the Debtors' estates, demanding that they turn over such emails by no later than Tuesday, December 12, and informing them that if they did not comply, the Debtors would request an order from the Bankruptcy Court requiring turnover of the information. *See* Verified Compl., Ex. A (Letter of December 8, 2017 re: Robert Shapiro's

Possession of Estate Property "Shapiro Demand Letter"); Ex. B (Letter of December 8, 2017 re: Nina Pedersen's Possession of Estate Property "Pedersen Demand Letter"). True and correct copies of the Shapiro Demand Letter and the Pedersen Demand Letter are attached as Exhibit D and Exhibit E respectively. Mr. Shapiro and Ms. Pedersen are each currently each cooperating with the Debtors' demands. The Florida Court entered orders on December 19 and 20, 2017, on joint motions approving production protocols for Mr. Shapiro and Ms. Pedersen. *See* Verified Compl., Ex. C (Order Approving Production Protocols for Pedersen Emails); Ex. D (Order Approving Production Protocols for Shapiro Emails).

43. Independent management has also taken steps to preserve the value of the estates' portfolio of real estate, which the Debtors currently estimate to be worth hundreds of millions of dollars and which is at various stages of development and marketing—from vacant lots, tear-down construction, remodeling and extensive marketing to a select buyer pool. To this end, having ceased all fundraising efforts related to notes and units, the Debtors have secured DIP Financing from the DIP Lender, which provides a commitment of $100 million in postpetition financing. The DIP Financing should provide the necessary liquidity to maintain appropriate operations and preserve the value of the Debtors' real estate portfolio for the benefit of their various investor constituencies. Without this liquidity, the Debtors could be forced to hastily liquidate their real estate holdings at fire-sale prices, destroying the profit opportunity with many properties under renovation and construction. At a hearing before this Court just a week before filing this motion, the Committee agreed that the DIP Financing should be approved on an interim basis, with the hope that the Debtors could obtain a similar commitment on better terms. *See* Ex. A at 123:5-16.

44. Typical of most DIP financing arrangements, the DIP Financing has events of defaults relating to the commencement of a receivership action or the appointment of a chapter 11 trustee. Specifically, pursuant to Section 11.1(k)(v) of the DIP Financing Agreement (D.I. 130-1), "[t]he entry of an order appointing an interim or permanent trustee, or an examiner having enlarged powers …" constitutes an Event of Default. Upon the occurrence of that Event of Default, the DIP Lender may "declare any Obligations immediately due and payable," (§ 11.2(a)), may "terminate … any Commitment" (§ 11.2(b)), and may "exercise any other rights or remedies afforded," including taking possession and selling 28 properties that constitute the real estate collateral and which form a significant portion of the estate's value.[11]

45. On December 8, 2017, WGC Independent Manager demanded, and RS Protection Trust agreed, to limit the right of the RS Protection Trust to remove Beilinson Advisory Group as independent manager of WGC Independent Manager only upon a finding of the Court that among other things, "cause" as defined in Section 1112(b)(4) of the Bankruptcy Code (or cases interpreting that section) exists to remove Beilinson Advisory Group as the sole manager of WGC Independent Manager. *See* Supplemental Decl., Ex. A. A true and correct copy of the Supplemental Declaration is attached hereto as Exhibit F.

46. On December 28, approximately one week after the Florida Court made the SEC's specific allegations against Mr. Shapiro public, Debtors' counsel sent a letter (the "O'Quinn Letter") to Ryan O'Quinn, counsel for Mr. Shapiro, informing him of the formal suspension of the Consulting Agreement pending final resolution of the SEC's allegations. In the letter the Debtors reserved all rights and remedies if Mr. Shapiro sought to assert claims against

[11] The occurrence of an Event of Default under the DIP Credit Agreement also "constitutes an event of default" under the second interim order approving the DIP Financing [D.I. 130] ("Second Interim DIP Order"). *See* Second Interim DIP Order § 4.1(b).

the Debtors, including the right to seek equitable subordination of those claims. A true and correct copy of the O'Quinn Letter is attached hereto as Exhibit G.

47. On December 11, 2017, Mr. Shapiro consented to the demand of WGC Independent Manager to turn over control of 10 properties identified as non-Debtor assets, one of which owns an apartment building valued at approximately $20 million. On December 20, 2017, counsel for the Debtors and Mr. Shapiro met in person to prepare and execute the necessary documentation for the transfer of control of 13 entities directly or indirectly owning these 10 properties worth approximately $30 million. Counsel for the Debtors also prepared chapter 11 petitions for the 14 entities[12] associated with these 10 properties.

48. On the same date, however, the SEC forwarded a sealed temporary restraining order to the Debtors, which, among other relief, froze the assets of Robert Shapiro, RS Protection Trust, and each of the non-Debtor Woodbridge Group entities for which the independent management team of the Debtors had provided information to the SEC (the "TRO Asset Freeze Order"). As a result of the TRO Asset Freeze Order, WGC Independent Manager determined not to commence bankruptcy cases for those additional entities. The SEC obtained the TRO Asset Freeze Order without consultation with or notice to the Debtors' current independent management or this Court, which frustrated placing additional valuable assets under this Court's protection.

49. While this Motion is pending, the Debtors' development projects remain in various stages of construction. Some are finished with pending offers, while others are in the midst of important groundwork that must be completed to stabilize the soil and make the site safe

[12] Through the course of the investigation, one entity, a MezzCo, had been included in the December 1st transfer-of-control entities to WGC Independent Manager, but was listed as an inactive entity and was not part of the December 4th bankruptcy filing. Subsequently, this MezzCo was identified as the indirect owner of the apartment building referred to above.

over the long term. The Debtors seek to operate in the ordinary course of business to continue to develop, market, and sell their properties in order to maximize recoveries for all of their stakeholders, conduct a prompt review and re-evaluation of the Debtors' business plan, and modify the business plan as appropriate to maximize value.

50. The Debtors intend to address the substance of all pending investigations, complaints, and litigation related to the Woodbridge Group's past fundraising practices (as further described below) and to negotiate and settle disputes with any investors or regulators, including the SEC, with respect to the Woodbridge Group's past conduct. The Debtors also hope to promptly and consensually (if possible) resolve all issues relating to the defects in perfection of the noteholders' liens.

## II. ARGUMENT

51. Pursuant to section 1104 of the Bankruptcy Code, a trustee may only be appointed (1) "for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor by current management," or (2) if the appointment of a trustee "is in the interests of creditors, any equity security holders, and other interests of the estate." 11 U.S.C. § 1104(a). There is a "strong presumption against appointing an outside trustee." *In re G-I Holdings, Inc.*, 385 F.3d 313, 318 (3d Cir. 2004) (quoting *In re Marvel Entm't Group, Inc.*, 140 F.3d 463, 471 (3d Cir. 1998)).

52. The "for cause" basis for appointment of a trustee in section 1104(a)(1) of the Bankruptcy Code refers to "current management," not the misdeeds of prior management. 11 U.S.C. § 1104(a)(1) (defining "cause" to include "fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor *by current management*, either before or after the commencement of the case" (emphasis added)). Thus, the mere fact that prior management may have been guilty of fraud, dishonesty, incompetence, or gross mismanagement is not grounds for

the appointment of a trustee, as long as the court is satisfied that current management is free from the taint of prior management. *See In re Sharon Steel Corp.*, 871 F.2d 1217, 1217 (3d Cir. 1989). Further, some courts have found that, even when a trustee motion contains allegations of wrongdoing against current management, the appointment of an independent manager after a chapter 11 trustee motion is filed and prior to a hearing on that motion is sufficient to avoid the appointment of a chapter 11 trustee.[13]

53. In analyzing the second basis for appointment of a trustee under section 1104(a)(2)—where such appointment is in the interests of creditors, equity security holders, and other estate interests—courts apply a fact-specific flexible balancing approach. *See, e.g.*, *In re Sharon Steel*, 871 F.2d at 1226 (describing the 1104(a)(2) standard as "flexible," "made on a case-by-case basis," and "emphasiz[ing] the court's discretion"). Though flexible, the 1104(a)(2) standard is difficult to satisfy, as it requires a showing that the appointment of a trustee is in the interests of essentially *all* interested constituencies—i.e., the appointment must benefit the estate generally, and not merely one constituency such as a creditor group. 7 Collier ¶ 1104.02[3][d][i]; *In re Sletteland*, 260 B.R. 657, 672 (S.D.N.Y. 2001) ("[A] creditor group, no matter how dominant, cannot justify the appointment of a trustee or examiner simply by alleging that it would be in its interests. It must show that the appointment is in the interests of all those with a stake in the estate, which in this case would include the Debtor.").

54. Consequently, "[i]t is settled that appointment of a trustee should be the exception, rather than the rule." *In re Sharon Steel*, 871 F.2d at 1225; *see also* 7 Collier on

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[13] *See, e.g.*, *In re Blue Stone Real Estate, Constr. & Dev. Corp.*, 392 B.R. 897, 899-901 (Bankr. M.D. Fla. 2008) (denying trustee motion even though CRO motion was filed *after* trustee motion); *In re Shotwell Landfill, Inc.*, 2014 WL 43777321, at *2 (Bankr. E.D.N.C. 2014) (same); *In re Solyndra, LLC*, 11-12799 (MFW) (Bankr. D. Del. 2011) Dkt Nos. 247, ¶¶ 42, 47; 266 (denying trustee motion despite the fact that the motion to appoint CRO was filed a mere six days prior to hearing on trustee motion).

Bankruptcy ¶ 1104.02[3][b][i] (15th ed. rev. 2011) (noting that "appointment of a trustee in a Chapter 11 case is an extraordinary remedy"). Indeed, "the party seeking the appointment of an outside trustee must face" a "heavy burden of persuasion." *G-I Holdings, Inc.*, 385 F.3d at 318. That burden of persuasion means that the Movants, whether requesting appointment of a trustee under either section 1104(a)(1) or (a)(2), must "prove the need for a trustee under either subsection by clear and convincing evidence." *Id.* at 317-18 (quoting *Marvel Entm't Group,* 140 F.3d at 473) (internal quotations omitted). "Evidence is 'clear and convincing' when: '[it] produces in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct and weighty and convincing as to enable [the factfinder] to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue.'" *In re G-I Holdings, Inc.*, 295 B.R. 502, 507-08 (D.N.J. 2003), *aff'd*, 385 F.3d 313 (3d Cir. 2004) (citing *Matter of Jobes*, 108 N.J. 394, 407 (1987) (quoted in *Cruzan by Cruzan v. Director, Missouri Dept. of Health*, 497 U.S. 261, 285 n.11 (1990))), *see also, In re Fosamax (Alendronate Sodium) Products Liability Litig.*, 852 F.3d 268, 285-86 (3d Cir. 2017) (defining clear and convincing evidence as "evidence indicating that the thing to be proved is highly probable or reasonably certain.").

55. Here, as shown below, the Trustee Motions fail to demonstrate by "clear and convincing evidence" that the appointment of a chapter 11 trustee is warranted either "for cause" or because such appointment is in the best interests of the estate. Instead, the facts and circumstances of this case strongly militate against appointing a chapter 11 trustee.

## A. "Cause" Does Not Exist to Warrant Appointing a Trustee

### i. The Conduct Described in the Motion Demonstrates Current Management is Independent and Has Benefited the Debtors' Estates

56. Mr. Shapiro, the primary subject of the Trustee Motions, was replaced by WGC Independent Manager prior to the Petition Date. Prior to appointment, Mr. Beilinson and Mr. Perkins had no substantial prior contact or involvement with Mr. Shapiro or the Debtors.

57. The SEC requests that this Court find that clear and convincing evidence of Mr. Shapiro's fraud or misconduct exists based on five declarations provided to the Debtors less than one week before the hearing on the Trustee Motions, four by investors and one by a forensic accountant. The four investor declarations purport to show misrepresentations by Shapiro and his management team (mostly focused on solicitations and loans provided prior to April 2017 – Declarations of Jacobson, Sims, and Vandenbos), and never allege any contact with the Debtors after *current* management obtained control of the Debtors (despite the fact that all declarations were executed on the Petition Date or thereafter). *See SEC v. Shapiro*, 17-cv-24624 (MGC) (S.D. Fla. Dec. 20, 2017), Dkt. No. 36, Exs. 6, 84, 106; Declaration of Yakov Sarnov. The forensic accountant declaration purports to provide evidence of the existence of the $1.2 billion Ponzi scheme alleged in the SEC Motion. *SEC v. Shapiro*, 17-cv-24624 (MGC) (S.D. Fla. Dec. 20, 2017), Dkt. No. 36, Ex. 1. The SEC appears to be attempting to prove its allegations against Mr. Shapiro in the securities action in Florida in this contested matter in the Chapter 11 Cases. Whether the SEC satisfies its heavy evidentiary burden relative to Mr. Shapiro based on these affidavits is up to the Court, but the SEC's evidence does not in any way address whether *current* management cannot be independent and cannot perform as effectively as a chapter 11 trustee.

58. The SEC has been gathering evidence for at least 15 months and the Debtors have had only six days to respond to their allegations. Nonetheless, even assuming the Movants could

satisfy their burden to demonstrate by clear and convincing evidence that the unproven allegations in the SEC Complaint and SEC Motion constitute fraud or misconduct on the part of Mr. Shapiro, the Trustee Motions fail to mention that *current* management is solely responsible for removing Mr. Shapiro's authority over the Debtors and causing the Debtors to cease the alleged misconduct. Additionally, current management has done everything in their power to cooperate with and support the SEC in their investigation of such alleged misconduct. This includes (a) contacting the SEC immediately after the Petition Date to offer assistance, (b) multiple meetings with the SEC, and (c) providing detailed information regarding the assets of the Debtors and their non-Debtor affiliates. Of particular note, the current independent management obtained emails from Mr. Shapiro and Nina Pedersen after threatening to file turnover motions for such information with this Court. *See* Verified Compl., Exs. A, B. Obviously, such behavior is completely inconsistent with the notion that the independent management was appointed by Mr. Shapiro to further some nefarious scheme.

59. Despite the Debtors cooperation with the SEC, the Committee contends that Mr. Shapiro still "influence[s] if not technically control[s], every aspect of the business." Committee Motion, at 2-3, 21. This contention is utterly false and unsupported by any evidence at all. The Committee attempts to draw some inference in support of this contention based on four contracts—the Contribution Agreement, the Beilinson Engagement Letter, the Consulting Agreement, and the Forbearance Agreement (the "Agreements"). Notwithstanding the Committee's conclusory allegations, a review of these Agreements, combined with the Debtors' actions since WGC Independent Manager gained control demonstrates the precise opposite—that Mr. Beilinson and Mr. Perkins wrested as much control as possible from Mr. Shapiro prepetition and, postpetition, have effectively leveraged the Debtors' bankruptcy to provide complete

transparency into the Debtors' management structure and to eliminate Mr. Shapiro's involvement in or benefit from the Chapter 11 Cases.

60. The Trustee Motions also attempt to use Mr. Shapiro's invocation of his Fifth Amendment rights as evidence of wrongdoing on the part of current management that would constitute cause to appoint a chapter 11 trustee. *See* Committee Motion at ¶ 100; SEC Motion at ¶ 41. The only case the Committee provides in support of this, *In re Ondova Ltd. Co.*, Case No. 09-34784 (SGJ) (Bankr. N.D. Tex.), involved that debtor's current management's use of the Fifth Amendment. Moreover, the *Ondova* court also court relied on other evidence of current management's prepetition and postpetition misconduct, and not on the invocation of the Fifth Amendment alone.[14]

61. Of interest is a case cited by both Trustee Motions, although not in this context. In the *In re PRS Ins. Grp., Inc.* case, the court stated that it did *not* rely on current management's use of the Fifth Amendment as evidence that cause existed to appoint a trustee. *See* 274 B.R. 381, 387 (Bankr. D. Del. 2001) (stating that "[w]e are not" appointing a chapter 11 trustee based on current management's use of the Fifth Amendment). Instead, the *PRS* court relied on an internal report prepared by the debtor in response to an investigation by a state insurance agency that showed evidence of "significant diversion of assets from [the debtor's subsidiary] through other corporations to [current management] personally" and that this report was "compelling evidence" of misconduct by management. *Id.* at 385. Even if Mr. Shapiro's use of the Fifth Amendment could serve as evidence of management's fraud or misconduct, at most it would

[14] Specifically, the *Ondova* court appointed a trustee primarily due to concerns that the debtor's current management was focused on protecting the personal interests of Mr. Baron, the debtor's principal and head of management. *Id.*, Dkt Nos. 85 (finding that cause exists to appoint a trustee "including debtor mismanagement"), 810 ("At the commencement of the Bankruptcy Case, Baron . . . was acting as management. . . Pursuant to an order of the Bankruptcy Court . . . Baron was removed and the Trustee was appointed" quoting from debtor's Disclosure Statement).

provide limited evidence of prior management's misconduct. Neither Mr. Beilinson nor Mr. Perkins have refused to answer questions regarding the Debtors; in fact, both have worked diligently to provide transparency to the Debtors' operations and have given depositions in advance of the hearing.[15] In the context of the appointment of a chapter 11 trustee, the Movants have not identified one decision where a bankruptcy court, based on the invocation of the Fifth Amendment by current management alone, appointed a chapter 11 trustee. Thus, the invocation of the Fifth Amendment by Mr. Shapiro does not justify the appointment of a chapter 11 trustee, especially given how cooperative current management has been.

62. Recognizing that there are no allegations of fraud or misconduct against Mr. Beilinson and Mr. Perkins, the SEC goes a step further, arguing that the very existence of the Consulting Agreement combined with the fact that Mr. Shapiro retains a limited right to remove WGC Independent Manager makes Mr. Shapiro part of current management. *See* SEC Motion, at ¶ 45. This ignores the fact that, since the Petition Date, the LLC Agreement was amended such that now, Mr. Shapiro must obtain an order of the Court finding cause to authorize such removal.

[15] The Committee fails to note the *Solyndra* case, in which the Committee's current counsel represented the *Solyndra* debtors. *In re Solyndra, LLC*, 11-12799 (MFW) (Bankr. D. Del. 2012). In that case, the U.S. Trustee sought the appointment of a chapter 11 trustee because the debtors' current management was under criminal investigation, and thus the debtor's CEO and CFO invoked the protections of the Fifth Amendment. *Id.*, Dkt. No. 219 at ¶¶ 27-28. Despite that, the debtors filed an objection to the motion to appoint a trustee arguing that the appointment of a CRO (just six days before the chapter 11 trustee motion) was sufficient to obviate the need for a chapter 11 trustee, notwithstanding the fact that the debtor's CFO did not resign and remained a member of *current* management. *Id.*, at ¶ 57 ("The fact that one remaining officer of the Debtors ([the CFO]) has asserted the Fifth Amendment in the context of a Congressional hearing does not come close to satisfying the heightened standard for appointment of a chapter 11 trustee"). The court agreed and entered an order denying the trustee motion without analysis. *Id.*, D.I. 266. In a contemporaneous news report, Judge Walrath was quoted as stating "it's clear that this case does not rise to the level of failure to disclose that would mandate the appointment of a trustee." https://www.reuters.com/article/us-solyndra-trustee/court-refuses-to-replace-solyndra-management-idUSTRE79G72C20111017. Neither the Committee nor the SEC complain of current management's inability—or even reluctance—to disclose, notwithstanding the invocation of the Fifth Amendment by Mr. Shapiro.

Moreover, "cause" for removal mirrors the exacting standards identified in section 1112(b)(4) of the Bankruptcy Code.[16]

63. The SEC Motion further asserts that Mr. Shapiro continues "to have access to the Debtors' computer systems and business records." SEC Motion, at ¶ 40. This is inaccurate. Mr. Shapiro has no access to the Debtors' information. The O'Quinn Letter (i) formally suspended all payments to him and services from him, and (ii) explicitly informed him that he will have no access to the Debtors' documents or information. *See* Ex. G. Accordingly, the SEC Motion's assertion that Mr. Shapiro is part of *current* management is completely false.

**ii. No Negative Inferences Can Be Drawn From The Prepetition Agreements**

64. Before addressing some of the specific contract terms challenged in the Trustee Motions, it is important to understand the Agreements as a whole, the negotiations with Mr. Shapiro leading to the commencement of the Chapter 11 Cases and the leverage provided to independent management as fiduciaries once the Chapter 11 Cases were commenced. These are not secret contracts. To the contrary, the Debtors disclosed each of these Agreements in the First Day Declaration for the careful scrutiny of the U.S. Trustee, the SEC, all parties in interest and

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[16] Even if the LLC Agreement had not been amended, and Mr. Shapiro could remove the Debtors' WGC Independent Manager without cause, that would still not be enough to establish that Mr. Shapiro was a part of management. As the Court suggested at the First Day Hearing, such an action by Mr. Shapiro in these Chapter 11 Cases would be scrutinized closely:

> [MR. BADDLEY (counsel for the SEC):] …. But in the operating agreement that is attached to the first-day affidavit, there is a section in that operating agreement, on Page 121 of ECF 12, that provides Mr. Shapiro's ability to do that. Granted, while this bankruptcy case is pending, his ability to do so requires some sort of form and notice.
>
> THE COURT: His wisdom of doing so also requires further consideration . . . My point is the consequences in a proceeding like this might not be so good for him, if he were to exercise that option. But again, as you say, it's an issue for another day.

Ex. C, at 32:12-33:4.

the Court. *See* First Day Decl. Ex. B (Consulting Agreement), Ex. C (Forbearance Agreement), Ex. F at 129 (Beilinson Engagement Letter); Ex. H (Contribution Agreement). Not surprisingly, at the First Day Hearing, both the SEC and the U.S. Trustee drew the Court's attention to certain contract terms that they argued could affect current management's independence from Mr. Shapiro. *See, e.g.*, Ex. C, at 32:8-17, 76:9-14.

65. All of the Agreements were entered into before the petitions were filed. The Committee alleges that because the WGC Independent Manager did not extract the Committee's preferred contract terms from Mr. Shapiro, the WGC Independent Manager must be "implement[ing] Mr. Shapiro's scheme." Committee Motion, at ¶ 30. While not all of the contract terms are in the WGC Independent Manager's favor, considering the relative bargaining positions of the parties at the time of negotiation, it is impressive that WGC Independent Manager gained the concessions it did. For instance, through the Contribution Agreement, Mr. Beilinson and Mr. Perkins convinced Mr. Shapiro as a condition to their appointment to cede control of and contribute valuable assets to the Debtors that would have otherwise remained under control of Mr. Shapiro. Without securing these assets, the Debtors would have no access to DIP Financing. In addition, as prepetition agreements, they are subject to rejection if supported by the business judgment of the Debtors. And, to the extent claims are asserted by Mr. Shapiro in respect of the Agreements if rejected, such claims would be subject to equitable subordination under 510(c). Finally, prepetition payments made to Mr. Shapiro under the Agreements are also subject to the Debtors' avoidance powers. Accordingly, given all of the protections the Debtors managed to obtain—not the least of which was the power to commence these Chapter 11 Cases, placing the substantial majority of the Woodbridge Group's assets under the protection of the Court—criticism of the Agreements as falling short of being "perfect" ring hollow.

66. When negotiating the Agreements, Mr. Beilinson and Mr. Perkins—both seasoned restructuring professionals—understood the power of this Court. They understood that getting obtaining control of the Debtors, and then subjecting the Debtors to the transparency of the bankruptcy forum, is a powerful way to force additional concessions from Mr. Shapiro. *See* Committee Motion, at ¶ 61 (arguing that "Beilinson and Perkins wanted and expected Mr. Shapiro to be 'under the tent' throughout the bankruptcy process"). Not only would the Agreements be subject to scrutiny by interested parties and amendment by the Court, but if the WGC Independent Manager chooses to break the prepetition executory Agreements to Mr. Shapiro's detriment, Mr. Shapiro cannot enforce the Agreements against the Debtors without presenting his case before this Court and as the Debtors have recently informed him, any alleged damages claim arising from them may be subject to equitable subordination. *See* Ex. A ("The Debtors reserve all legal and equitable rights, including, without limitation, the right to seek equitable subordination of claims" asserted by Mr. Shapiro). Indeed, during the First Day hearing, this Court noted how powerful the bankruptcy process can be in ensuring transparency and independence of current management. *See* Ex. C, at 36:3-5 ("I mean, the other good news for [the SEC] is that this is a forum that generally works on transparency ….").

67. The Committee argues that if the WGC Independent Manager was "truly independent, they would have either (a) insisted that their appointments be unconditional; or (b) sought immediate approval from the Court and the estates interested parties before entering into the foregoing agreements." Committee Motion, at ¶ 3. That is unrealistic considering the relative bargaining positions of the WGC Independent Manager and Mr. Shapiro when entering into the Agreements. Furthermore, it could have resulted in the estates being forced to consider

assumption of these Agreements before all parties has a chance to evaluate these arrangements and form their own views.

68. The Committee's proposed course of action would have imposed unacceptable risks on the Debtors' investors. If WGC Independent Manager refused the Agreements' terms and failed to successfully navigate the Debtors into chapter 11, one of two things would have happened, both of which the Committee has agreed would be deeply harmful to the estate and its creditors: (1) Mr. Shapiro would still be operating Woodbridge while under SEC investigation with millions of additional investor dollars being placed at risk, or (2) the SEC would have had another court appoint a receiver, a process rejected by the Committee as value destructive, which was recently stayed because of the commencement of the Chapter 11 Cases. *See* Committee Motion, at ¶ 8.

69. The prepetition negotiations with Mr. Shapiro resulted in the Contribution Agreement, the Forbearance Agreement, and the Consulting Agreement. By virtue of these agreements, Mr. Beilinson and Mr. Perkins were able to remove the Debtors and hundreds of millions of dollars in assets from Mr. Shapiro's control and provide the Debtors with Court supervision and transparency that would not otherwise have been possible. An apt comparison to these negotiations is a debtor's prepetition negotiation with a prospective postpetition lender. When negotiating postpetition financing, a debtor attempts to gain the best possible terms prepetition, while both parties recognize the debtor must have the financing to preserve or enhance the value of estate assets. Invariably, during the course of the negotiations, it is clear that the financial institution has most of the leverage in the negotiation. Then, a debtor can leverage the bankruptcy process to improve an agreement reached prepetition for the benefit of the estates. This is precisely what occurred here, Mr. Beilinson and Mr. Perkins negotiated a

process that allowed them to wrest control from Mr. Shapiro and file petitions for each of the Debtors. From the Petition Date on, they have worked tirelessly to improve upon this arrangement, including (i) eliminating Mr. Shapiro's involvement with the Debtors entirely and (ii) extracting additional entities and assets from Mr. Shapiro's control that would have provided substantial additional value to the estates if the SEC had not instituted its asset freeze.

70. Not only is the Committee's overarching argument that the Agreements, taken as a whole, indicate fraud under section 1104(a)(1) utterly false, it surely does not provide the "clear and convincing" evidence sufficient to overcome the strong presumption that the Debtors remain in possession. Rather, the facts demonstrate the WGC Independent Manager's effective use of the bankruptcy process to assert complete independence from Mr. Shapiro.

**iii. The Specific Allegations Made Regarding Prepetition Agreements are Misguided and Do Not Prove Misdeeds by Current Management**

71. Similarly, the specific issues raised in the Trustee Motions fail to provide the clear and convincing evidence of fraud or misconduct on the part of current management required to appoint a trustee under section 1104(a)(1).

72. For instance, the Committee Motion repeatedly asserts that the WGC Independent Manager cannot be truly independent, noting that the initial version of the WGC Operating Agreement allowed Mr. Shapiro, through the RS Protection Trust, to remove the WGC Independent Manager upon notice but without cause. *See* Committee Motion, at ¶ 13. Yet the Committee Motion summarily dismisses the WGC Independent Manager's postpetition amendment of the Operating Agreement to explicitly provide that it can now only be removed through the Court finding "cause" under Section 1112(b)(4), an exceedingly high standard.[17] *See*

[17] The Committee's Motion ignores that it is questionable at best whether, even prior to the amendment Mr. Shapiro could have terminated independent management without Court approval, at least not without facing negative consequences from the Court, particularly given the 10 day notice requirement. *See* Ex. C,

Committee Motion at 13 (stating that the amendment "only highlights how malleable and 'accommodate[ing]' Beilinson and Perkins were in the first place because they accepted their 'independent' appointments knowing that they could be terminated by Shapiro for no reason at all"). *Id*. Rather than showing complicity with Mr. Shapiro, WGC Independent Manager's move to amend the Operating Agreement is exactly the kind of action to be expected from experienced bankruptcy professionals using the bankruptcy forum to leverage further concessions from former management.

73. Similarly, the Committee Motion points to alleged obligations to Mr. Shapiro under the Consulting Agreement as evidence of current management's complicity. As a general matter, such agreements are important to retain institutional knowledge early on so that new management could effectively transition. But here, WGC Independent Manager has not made any payment under the Consulting Agreement since the Petition Date. *See* Ex. C., at 52:11-24; 76:10-12. WGC Independent Manager went even further on December 28, 2017, by suspending both services and compensation under the Consulting Agreement indefinitely in light of the allegations in the SEC's complaint, and "neither Mr. Shapiro nor WFS shall have access to any document or information of WGC or any of its affiliated debtor entities." Ex. A.

74. Similarly, the Trustee Motions each allege that independent management has purposefully excluded certain assets from the estate. *See* Committee Motion, at ¶ 30; SEC Motion. These allegations are false, and are belied by the fact that postpetition, but for the SEC's inadvisable actions, WGC Independent Manager would have successfully brought all additional assets, valued at approximately $30 million, under the authority of the Court rather than Mr.

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32:8-33:12 (Noting that, should Mr. Shapiro exercise his power to terminate WGC Independent Manager under the initial contract, doing so would "require[] further consideration" by the Court).

Shapiro for the benefit of the estates and all parties in interest.[18] As explained during the December 21, 2017 hearing before this Court, WGC Independent Manager used the transparency provided by the bankruptcy forum to negotiate with Mr. Shapiro to take custody of those assets and place them into the estate, but on the eve of filing petitions to do so, the SEC took custody through an asset freeze. Ex. A, at 13:11-19. To argue that the Debtors should have done that sooner fundamentally misconstrue Mr. Beilinson's and Mr. Perkins's negotiating position; WGC Independent Manager only has authority over Woodbridge and the other Debtors, and was attempting to bring additional assets into the estate, assets and entities that were under the sole control of Mr. Shapiro. *See* First Day Decl., Ex. A, Schedule A-2. Accordingly, WGC Independent Manager lacked the power to decide to "exclude" anything. The Movants would let their perfect ideal be the enemy of investor protection.

75. The Committee Motion also argues that the fee structure in the Beilinson Engagement Letter incentivizes Beilinson Advisory Group to favor the interests of Mr. Shapiro over those of the Debtors' estates and creditors. *See* Committee Motion, at ¶¶ 4, 43-44. Under the Beilinson Engagement Letter, Beilinson Advisory Group is entitled to (i) a guaranteed fee of $480,000 (the "Guaranteed Fee") and (ii) an unspecified success fee (the "Success Fee") that Beilinson Advisory Group may request from Woodbridge "upon confirmation of a plan of reorganization or upon the occurrence of a significant milestone to be later defined and determined" and "approved and agreed to by [Woodbridge] . . . ***subject to approval by the Bankruptcy Court***." *See* First Day Decl. Ex. F, ¶3 (emphasis added).

76. The Guaranteed Fee is precisely that, guaranteed; it simply provides Mr. Beilinson with a minimum fee if the Success Fee's financial goals are unattainable. It provides

[18] *Supra* at 47-48.

no incentive for Beilinson Advisory Group or Mr. Beilinson to act in the interests of Mr. Shapiro. Indeed, it also provides Mr. Beilinson the appropriate incentive to make all decisions free of an economic interest in them.

77. Regarding the Success Fee, the Committee Motion asserts that "Shapiro's approval is a condition to Beilinson Advisory Group's recovery of any 'success fee.'" This is factually incorrect: the Success Fee is payable only upon approval by both Woodbridge (the entity) and the Court. *See* First Day Decl. Ex F, ¶3. While no one can predict the future, at least as of right now, the prospect of Mr. Shapiro being the head of reorganized Woodbridge after the confirmation of a chapter 11 plan seems, at best, dim. But even if that were not true, post-bankruptcy management of Woodbridge is subject to approval by the Court under section 1129(a).[19] In fact, Mr. Beilinson's best chance of obtaining a Success Fee is achieving confirmation of a chapter 11 plan that provides for robust recoveries for stakeholders.

78. The Trustee Motions repeatedly characterize the agreements summarized above as "concessions" made by Mr. Beilinson and Mr. Perkins to Mr. Shapiro. *See, e.g.*, Committee Motion, at ¶ 64 ("in yet another concession to Shapiro, Beilinson and Perkins inexplicably gave the unidentified tenants the right to terminate either or both of the leases …."); *id.* at 63 (noting that Mr. Shapiro has been given the right to occupy two of the estates' properties during bankruptcy proceeding); SEC Motion at 41 ("once again Shapiro demanded concessions, to which the bankruptcy team agreed"). Again, it bears repeating that terming these agreements as

[19] The Committee concludes that the Debtors intend to install Mr. Shapiro back in control of the Debtors based on nothing more than a statement at the first day hearing that Mr. Shapiro "has no longer a management role with the business for the time being," Committee Motion, at ¶ 44 (quoting First Day Hearing Tr. at 19:18-20), ignoring both independent management's numerous subsequent actions to remove Mr. Shapiro from any involvement with the Debtors and that Court approval would be necessary for Mr. Shapiro to regain control of the Debtors. It also assumes that independent management knew of the SEC's allegations prior to the commencement of the Chapter 11 Cases. Those were only disclosed in late December. Recall that, as late as September 2017, the SEC publicly announced that it had not found that Mr. Shapiro had committed any wrongdoing.

"concessions" on the part of independent management is a misnomer and reflects the Movants' failure to understand how independent management has expertly used the bankruptcy process to the estates' advantage against Mr. Shapiro. Prior to these agreements, Mr. Shapiro enjoyed unfettered control over all of the Debtors' assets; Mr. Beilinson and Mr. Perkins did not have authority to "concede" anything. Since the prepetition agreements were reached granting them authority over the Debtors, Mr. Beilinson and Mr. Perkins have used the Court process to extract dramatic additional concessions from Mr. Shapiro and completely cut off his involvement with the Debtors. None of this would have been possible outside the bankruptcy process.

**iv. There Are No Credible Allegations of Fraud or Misconduct By Current Management, Which Is Completely Independent From Mr. Shapiro**

79. In addition to the Agreements, the Motions rely extensively on SEC allegations of fraudulent activity of Mr. Shapiro before December 1, 2017. *See, e.g.*, Committee Motion at 8-12; SEC Motion at 7-37. These arguments ignore the requirement of section 1104(a)(1) that the fraud be perpetrated by *current management*. *See* 11 U.S.C. § 1104(a)(1) ("fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor *by current management*") (emphasis added); *In re The 1031 Tax Grp. LLC*, 48 B.R. 78, 86 (S.D.N.Y. 2007) ("[T]he fact that the debtor's prior management might have been guilty of fraud, dishonesty, incompetence, or gross mismanagement does not necessarily provide grounds for the appointment of a trustee under § 1104(a)(1), as long as a court is satisfied that the current management is free from the taint of prior management.").

80. Tellingly, all of the cases cited by the Committee in support of appointing a trustee due to prepetition conduct involve allegations where the individuals involved in the prepetition conduct remained as *current management* during the bankruptcy proceedings, or do

not even involve a motion to appoint a trustee.[20] This is equally true of *In re Ondova*, to which the Committee Motion devotes four paragraphs.[21] In stark contrast, in this case, WGC Independent Manager had absolutely no participation in the alleged wrongdoing and ensured that such conduct ceased *immediately* upon obtaining managerial authority, have ensured that Mr. Shapiro cannot remove them without a determination by the Court that "cause" exists to do so, and have ceased all payments to Mr. Shapiro under the Consulting Agreement, so that Mr. Shapiro will not benefit from estate assets without court approval. The Movants conveniently ignore that courts routinely decline to appoint trustees where, as here, the debtor has installed independent management to lead the debtor through reorganization or wind-up.[22] In fact, in many

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[20] *In re Rivermeadows Assocs., Ltd.*, 185 B.R. 615, 617-19 (Bankr. D. Wyo. 1995) (noting courts view a trustee appointment as an "extraordinary step", but appointing a trustee because, among other reasons, current management "showed a pattern of disregard for court orders" and "*cannot even come to [the forum] for fear he will be arrested*") (emphasis added); *In re V. Savino Oil & Heating Co.*, 99 B.R. 518, 527 (Bankr. E.D.N.Y. 1989) (appointing trustee due to current management's "pre-petition conduct, post-petition non-disclosures and misrepresentation, and non-compliance with statutory requirements"); *Euro-American Lodging Corp.*, 365 B.R. 421, 426 (Bankr. S.D.N.Y. 2007) (appointing a trustee due to dishonesty and gross mismanagement of current management); *Okla. Refining Co. v. Blaik (In re Okla. Refining Co.)*, 838 F.2d 1133, 1136 (10th Cir. 1988) (upholding appointment of trustee due to current management's prepetition conduct); *Commodity Futures Trading Comm'n v. Weintraub*, 471 U.S. 343, 355-56, 105 S.Ct. 1986, 85 L.Ed. 2d 372 (1985) (holding that trustee of a corporation in bankruptcy has the power to waive attorney-client privilege); *In re William H. Vaughan & Co.*, 40 B.R. 524, 526 (Bankr. E.D. Pa. 1984) (appointing trustee because the debtor's current president could not be trusted to pursue an avoidance claim for a prepetition transfer the debtor had made to its current president); *In re PRS Ins. Grp., Inc.*, 274 B.R. 381, 391 (Bankr. D. Del. 2001) (appointing trustee due to allegations against current management); *In re Marvel*, 140 F.3d at 471 (appointing a trustee in part because of conflicts of interest due to current management's status as a substantial creditor); *In re Microwave Prods. Of Am., Inc.*, 102 B.R. 666, 668 (Bankr. W.D. Tenn. 1989) (finding cause exists "based on fraud, dishonesty, incompetence and gross mismanagement" by current management); *In re Sunbum5 Enters., LLC*, 2011 WL 4529648 at *25 (M.D. Fla. Sept. 30, 2011) (deciding whether law firm could represent chapter 7 trustee); *In re Ondova Ltd. Co.*, Case No. 09-34784 (SGJ), Dkt. No. 56 (Bankr. N.D. Tex. Sept. 2, 2009) (allegations of prepetition and postpetition misconduct against current management).

[21] *See In re Ondova Ltd. Co.*, Case No. 09-34784 (SGJ) (Bankr. N.D. Tex.); Committee Motion, at ¶¶ 97-100. As discussed above, in *Ondova*, the court appointed a trustee due to concerns that current management was more concerned about protecting the personal interests of its sole owner and manager, rather than invocations of the Fifth Amendment.

[22] *See, e.g., In re The 1031 Tax Grp.*, 48 B.R. at 89-90 (declining to appoint a trustee where "organizational changes have confirm-ed what has been true since the outset of these cases, namely that Okun has effectively insulated current management from his management authority and control"); *In re Tanglewood Farms, Inc.*, Nos. 10-06719-8-JRL, 10-06745-8-JRL, 2011 WL 606820, at *2 (Bankr. E.D.N.C. Feb. 10, 2011) (denying motion for appointment of a trustee in part because a CRO had been appointed and "the broad powers given to the CRO "insure[d] that current operations [were] in compliance with chapter 11"); *In re Appleridge Ret. Cmty., Inc.*,

of the cases, a motion to appoint a trustee was denied even though the allegations of fraud or misconduct were made against the debtor's management in place at the time the motion was filed, and no attempt to appoint independent management was made until *after* the motion to appoint a trustee was filed.[23]

81. The SEC Motion incorporates the Committee Motion's facts and legal arguments to avoid duplication, SEC Motion, at ¶ 46, and adds little additional substance to the argument that "cause" exists. Most notably, the SEC's assertion that current management "allowed the fraudulent sale of securities to continue," SEC Motion at 40, is factually incorrect. Current management caused the Debtors to cease their fundraising efforts immediately upon gaining control—something the SEC was unable to accomplish during its investigation that spanned at least 15 months. The only evidence the SEC Motion provides in support of this allegation is that one investor purchased a note from Woodbridge on November 20, 2017, SEC Motion at n. 11. However, Mr. Beilinson and Mr. Perkins did not gain control over the Debtors until December 1, 2017. On November 20, 2017, Mr. Perkins had been retained only as an advisor to Gibson Dunn

422 B.R. 383, 393 (Bankr. W.D.N.Y. 2010) (noting that the court had denied a motion to appoint a trustee because, "[a]mong [other] reasons . . . a Chief Restructuring Officer was involved in the management of the Debtor"); *In re Blue Stone Real Estate, Constr. & Dev. Corp.*, 392 B.R. 897, 901 (Bankr. M.D. Fla. 2008) (denying motion to appoint trustee after debtor's current President appointed CRO and "agreed to withdraw from all management functions"); *In re Shotwell Landfill, Inc.*, 2014 WL 43777321, at *8 (E.D.N.C. 2014) (denying motion to appoint trustee after CRO was appointed even though management retained authority to operate business); *In re LHC, LLC*, 497 B.R. 281, n. 23 (Bankr. N.D. Ill. 2013) (denying motion to appoint trustee and declining to "place blame on current management for the actions of previous management"); *In re Solyndra, LLC*, 11-12799 (MFW) (Bankr. D. Del. Oct. 24, 2011), Dkt. Nos. 247, 266 (denying motion to appoint trustee after motion to appoint CRO was filed); *In re RNI Wind Down Corp.*, Case No. 06-10110 (Sontchi, J.) (Transcript of September 16, 2006 Hr'g at 77) (denying a motion to appoint a trustee on the basis that the U.S. Trustee failed to meet its burden of establishing cause where there was no showing that the debtor's current management had committed fraud because upon learning of the potential fraud committed by the debtor's sole officer, the debtor's board replaced the officer with an independent interim CEO against whom no such allegations had been made).

[23] *In re Blue Stone Real Estate, Constr. & Dev. Corp.*, 392 B.R. at 899 (CRO motion filed after trustee motion); *In re Shotwell Landfill, Inc.*, 2014 WL 43777321, at *2 (Bankr. E.D.N.C. 2014) (same); *In re Solyndra, LLC*, 11-12799 (MFW) (Bankr. D. Del. Oct. 17, 2011), Dkt. No 247, ¶¶ 42, 47 (Committee's counsel, then representing the debtors, filed a motion to appoint CRO filed six days prior to hearing on trustee motion after two officers invoked the protections of the Fifth Amendment, one of whom remained with the debtor).

and had no control over the Debtors, and Mr. Beilinson had no authority to control WGC Independent Manager or any other affiliated entities until December 1, 2017. This argument is a transparent—and futile—attempt to graft a taint on current management through the alleged wrongdoing of prior management when the evidence reveals the precise opposite, that current management was the only party responsible for ending the Debtors fundraising activities, placing the assets in a forum that fully illuminated the situation and creating an ever-growing wall between the business and the alleged wrongdoers.

82. Furthermore, the new independent management team had no involvement with the Debtors, including any past fundraising operations and alleged securities law violations. The Debtors are in the process of reviewing the involvement of any employees or contractors in prior fundraising, and will act appropriately to ensure that all of the Debtors' employees are complying and cooperating with all regulatory requirements and inquiries. In the course of this review, the Debtors may place certain employees or contractors on administrative leave or take other appropriate actions pending an investigation of their involvement in this activity. Indeed, on January 5, 2017, the Debtors enacted a reduction inforce that terminated the employment of a substantial portion of the Debtors' sales and marketing staff. As demonstrated through the Debtors' actions since the Petition Date, this applies with equal force to Mr. Shapiro in his capacity as a consultant for the Debtors. WGC Management has already suspended all payments under the Consulting Agreement with Mr. Shapiro based on SEC allegations, depriving him of any role in the restructuring process and any future payments until the SEC investigation is resolved. *See* Ex. A.

83. Far from satisfying their burden to demonstrate "cause" by clear and convincing evidence, the Committee has not alleged any wrongdoing whatsoever on the part of current

management, and any evidence in the Motion purporting to show that current management is somehow beholden to Mr. Shapiro is either factually inaccurate or demonstrates the precise opposite—that current management is independent from Mr. Shapiro and has been acting in the interest of the Debtors' estates and their creditors, often to the detriment of Mr. Shapiro. These facts make this case similar to *Blue Stone*, where the court held that the appointment of a CRO, who was "authorized to have sole control of the management of the Debtors without interference" made the appointment of a trustee unnecessary. 392 B.R. at 905.

84. In *Blue Stone*, a motion to appoint a trustee was filed with allegations of fraud and mismanagement both prepetition and postpetition against *current* management, including that the debtor did not account for prepetition transfers that the debtor's principal, Mr. De Maria caused the debtor to make to himself personally, and Mr. DeMaria's failure to disclose certain transfers both in the debtor's statements of financial affairs and in response to direct questioning at the meeting of creditors. *Id.* at 900. Mr. DeMaria did not attempt to retain a CRO until after an emergency motion to appoint a trustee was filed. *Id.* at 899-900. Further, Mr. DeMaria did not agree to withdraw from all management functions until the hearing on the CRO motion in response to an argument that the CRO "would be controlled or directed by Mr. De Maria." *Id.* at 901. Despite this, the court found that:

> [The CRO's] substantial experience with the bankruptcy process, both as a trustee and an authorized professional with various functions or expertise, would be extremely beneficial to these Debtors, especially if the allegations of the Trustee Motion are true. [The CRO] is a respected and 'well known quantity' to the Court …
>
> ***On whole, the contentions that [the CRO] is not or cannot be independent, is not disinterested, and cannot perform as effectively as a Chapter 11 trustee are not credible and border on being frivolous***. These arguments are without any basis in fact or law and are rejected by the Court.

*Id*. at 901-02 (emphasis added). Like in *Blue Stone*, the SEC's and the Committee's contentions that Mr. Beilinson and Mr. Perkins are not or cannot be independent are not credible and border

on being frivolous. Accordingly, this Court should make the same finding based on the facts in this case, and, for that reason, determine that cause does not exist to appoint a trustee under section 1104(a)(1) of the Bankruptcy Code.

**B. Appointing a Trustee Is Not in The Best Interests of Creditors or Any Other Interests of the Debtors' Estates and Will Harm the Interests of the Majority of Investors**

85. As stated above, trustee appointment under section 1104(a)(2) of the Bankruptcy Code requires that the appointment be "in the interests of creditors, any equity security holders, and other interests of the estate." 11 U.S.C. § 1104(a)(2). Section 1102(a)(2) is a difficult standard to satisfy, as it requires a showing that a trustee appointment is in the interests of essentially all interested constituencies—i.e., the appointment must benefit the estate generally, and not merely one constituency such as a creditor group. *See* 7 Collier ¶ 1104.02[3][d][i] (section 1104(a)(2) "requires a finding that the appointment of a trustee would be in the interest of essentially all interested constituencies"); *In re Sletteland*, 260 B.R. at 672 ("[A] creditor group, no matter how dominant, cannot justify the appointment of a trustee or examiner simply by alleging that it would be in its interests. It must show that the appointment is in the interests of all those with a stake in the estate, which in this case would include the Debtor.").[24]

86. The Movants propose similar arguments under the "best interests" standard of section 1104(a)(2) as they did arguing satisfaction of "cause" under section 1104(a)(1). *See* Committee Motion, at ¶ 36; SEC Motion, at ¶ 49. As explained above, the Agreements and SEC allegations that form the basis of the Movants' arguments actually indicate the WGC Independent Manager's independence. Besides the Agreements openly disclosed and scrutinized

[24] Contrary to a parenthetical citation included in the Committee Motion, Section 1104(a)(2) is not a "lesser" standard than Section 1104(a)(1). Both are exceedingly difficult to satisfy. *See In re Five Rivers Petroleum LLC*, No. 11–25202–JAD, 2013 WL 656026, at *8 (Bankr. W.D. Pa. Feb. 22, 2013) (explaining that trustee appointment under Section 1104(a)(2)'s "best interests" standard is still an "extraordinary remedy which should not be granted lightly") (citation omitted).

during the First Day Hearing and Debtors' efforts to bring 13 entities under control of the estate (only to be thwarted by the SEC's own asset freeze), the Movants do not identify a single specific "material conflict of interest" or "questionable transaction" by current management during the restructuring process. *See* Committee Motion at ¶¶ 36-38, 23. The cases cited in the Motions are therefore all distinguishable, including *Ondova Limited*, discussed above.[25]

87. Nor do the Movants provide a single declaration or example in support of their argument that unidentified "creditors" lack confidence in the Debtors. *See* Committee Motion, at ¶ 38-39; SEC Motion, at ¶ 23. First, the Committee, which consists of the only two noteholders known to have waived their liens and one trade creditor, is not in a position to opine on the best interests of all parties. As far as the Debtors are aware, of the thousands of noteholders in the Chapter 11 Cases, the Committee represents the interests of the only two willing to waive their liens. Additionally, the total value of the unsecured claims represented by the Committee is approximately $9 million without these two noteholders, compared to unitholders' estimated interests of $226 million and noteholders' estimated claims of $750 million. First Day Decl. ¶¶ 17-18; D.I. 85, at 12. Moreover, several ad hoc noteholder and unitholder groups, holding vastly more claims than those creditors on the Committee, strongly believe that the Committee does not represent their respective constituents interests and have moved for separate official representation. *See* D.I. 85, at 2 (arguing that the "Official Committee of Unsecured Creditors (the 'UCC') appointed at the Formation is structured to be directly adverse to the interests of the Noteholders"); D.I. 198, at 1 ("[N]oteholders do not see the Creditors' Committee as representing their interests."); D.I. 144 (notice of appearance of Unitholders Group).

[25] *See also In re PRS Ins. Grp., Inc.*, 274 B.R. at 391 (appointing trustee due to allegations against current management); *In re Microwave Prods. Of Am., Inc.*, 102 B.R. at 668 (finding cause exists "based on fraud, dishonesty, incompetence and gross mismanagement" by current management); *In re L.S. Good & Co.*, 8 B.R. 312, 315 (Bankr. N.D. W. Va. 1980) (current management alleged to have been involved in over a million suspect inter-company transfers).

88. Similarly, the SEC is poorly positioned to determine what is in the best interests of creditors given their value destructive actions in the Chapter 11 Cases to date. These include (i) commencing the Receivership Action, which could cause a default under the Debtors' DIP Financing Agreement and has been roundly criticized by all the estate's creditors (including the Committee) as value destructive, and (ii) obtaining the TRO Asset Freeze Order which prevented assets worth approximately $30 million from becoming part of the Debtors' estates. The SEC Motion, which fails to even mention that appointment of a trustee would cause a default under the Debtors' DIP Financing Agreement, is further evidence that the SEC has failed to consider the implications of its actions on the Debtors' estates, creditors, and other parties in interest.

89. More importantly, the current facts indicate that creditors are comfortable doing business with the WGC Independent Manager, as creditor-contractors continue work on major projects while two seasoned bankruptcy professionals continue to guide Debtors through the chapter 11 process. Moving forward, once the Debtors' business plan is finalized and their real estate assets stabilized, the WGC Independent Manager will investigate Debtors' prepetition transactions in accordance with its fiduciary duties and aggressively seek to preserve (or pursue) any and all litigation claims the estates may have.

**i. Appointment of a Trustee Will Cause the Debtors to Default Under the DIP Financing Agreement**

90. Appointing a trustee would jeopardize the DIP Financing that is, in the Committee's own words, "required … to continue construction, to maximize value." Ex. A, at 123:5-7. Pursuant to section 11.1(k)(v) of the DIP Financing Agreement (D.I. 130-1), "[t]he entry of an order appointing an interim or permanent trustee, or an examiner having enlarged powers …" constitutes an Event of Default. Upon the occurrence of that Event of Default, the DIP Lender may "declare any Obligations immediately due and payable," (§ 11.2(a)), may

"terminate … any Commitment" (§ 11.2(b)), and may "exercise any other rights or remedies afforded," including taking possession and selling 28 properties that constitute the real estate collateral and which form a significant portion of the estate's value. The occurrence of an Event of Default under the DIP Credit Agreement also "constitutes an event of default under" the Second Interim DIP Order. *See* Second Interim DIP Order § 4.1(b).

91. On more than one occasion, the Bankruptcy Court for the Southern District of New York has severely criticized motions to appoint a trustee when such appointment would result in default under a DIP agreement. *See, e.g.*, *In re Adelphia Commc'ns Corp.*, 441 B.R. 6, 20 (Bankr. S.D.N.Y. 2010) (denouncing a "motion to appoint a chapter 11 trustee . . . when that would result in a default under the DIP financing facility"); *In re DBSD N. Am., Inc.*, 421 B.R. 133, 141 (Bankr. S.D.N.Y. 2009) (describing as "disgraceful," a group of investors' motion to appoint a trustee, "knowing that such would cause a default on the Debtors' DIP financing facility and a default on the sale of the company upon which all of the creditors' recoveries would rest").[26]

92. As even the Committee acknowledges, the DIP Financing is necessary to preserve the value of the Debtors' real estate assets. *See* Ex. A, at 123:5-16. Given that fact, it cannot be in the best interests of creditors to appoint a chapter 11 trustee, which would jeopardize the Debtors access to that liquidity.

[26] It is particularly reckless that the Committee has moved for a chapter 11 trustee on an emergency basis, so that it would be heard on what was going to be the Debtors' standard "Second Day" hearing. It is not credible that the Committee has gotten access to facts and information in the first three weeks of its existence to justify jeopardizing the DIP Financing. Regrettably, however, the filing and prosecuting of the Committee's trustee motion was a fait accompli. The Committee has repeatedly rebuffed the Debtors' management's offers to meet with them in person to discuss issues in the Chapter 11 Cases and familiarize the Committee with the Debtors and their operations.

**ii. The Best Interests of All Creditors Are Served by Allowing WGC Independent Manager to Continue Oversight of the Restructuring Process**

93. Appointing a trustee would also interrupt the progress that the WGC Independent Manager has made in continuing construction to maximize value. The nature of the Debtor's business requires an intimate working knowledge of properties under construction, the steps needed to get those properties into saleable condition, and the key relationships to continue work on those properties including developers, contractors and architects. The WGC Independent Manager has already come up to speed, cemented relationships, and taken crucial steps to maximize estate value. As just one example, it has worked closely with Plus Development to undertake a preliminary analysis of properties under construction. If construction was ceased or even delayed in order to accommodate a trustee, contractors would sit idle or walk away from projects, buyers would move on other properties, and the rainy season would wreck properties' grounds. Appointing a trustee at this stage would thus destroy the value of Debtor's key assets and sap the goodwill that the WGC Independent Contractor has established.

94. The importance of allowing current management to continue its course cannot be overstated, and Congress indicated as much when it explained that "very often the creditors will be benefitted by continuation of the debtor in possession, both because the expense of a trustee will not be required, and the debtor, who is familiar with his business, will be better able to operate it during the reorganization case." H.R.Rep. No. 595, 95th Cong., 1st Sess. 233 (1977), reprinted in 1978 U.S. Code Cong. & Admin. News 5787, 5963, 6192; *see also Schuster v. Dragone*, 266 B.R. 268, 271 (D. Conn. 2001) ("[T]he process of rehabilitation is generally most effective under current management who are familiar with the operation of the business involved.") (citation omitted); *In re F. A. Potts & Co., Inc.*, 20 B.R. 3, 7 (E.D. Pa. 1981)

(declining to appoint a trustee where, in a "complex" industry, "Mr. Goos is experienced, competent, has built up good will, and has able associates in management positions").

95. In a preliminary opposition to the Assumption Motion that is not currently before the Court, the Committee raises concerns about the terms of the Assumed Contracts. D.I. 135 at 3-4. It now attempts to leverage those concerns in support of its current motion. *See* Committee Motion at ¶ 3, 35. Importantly, the Committee recognizes the import of such contracts in that it contends that the Debtors should instead seek relief under a critical vendor motion over a month into the case. The Committee is effectively, and unrealistically, recommending that the Debtors assume 90% of the trade claims through a critical vendor motion instead of assuming certain contracts. The appropriate venue to pursue such concerns are directly with the Debtors and, if necessary, through the standard motion process. Further, the Debtors have withdrawn the Assumption Motion, which renders this argument moot. In any event, it is clear that the Debtors' decision whether to assume or reject executory contracts is a decision subject to the Debtors business judgment and bankruptcy court approval. *See, e.g.*, *In re Pinnacle Brands, Inc.*, 259 B.R. 46, 53-54 (Bankr. D. Del. 2001) ("The Debtor's decision to assume or reject an executory contract is based upon its business judgment."); *In re Dura Automotive Systems, Inc.*, 2007 WL 7728109, at *97 (Bankr. D. Del. Aug. 15, 2007) (approving debtors' decision to assume agreements and stating that, under the business judgment standard, "a court should approve a debtor's business decision unless that decision is the product of bad faith or a gross abuse of discretion"). While the Committee is free to contest the Debtors' business judgment if and when another assumption or rejection motion is filed, the fact that the Debtors filed a motion to assume certain contracts to protect relationships with key contractors that they determined were critical to the completion of construction projects is not evidence to appoint a trustee.

96. In determining what is in the best interests of creditors, this Court should consider the consequences of appointing a trustee or trustees. It is important to recognize that these estates include 279 separate debtors with some separate and some overlapping creditor constituencies. Upon entry of an order appointing a trustee, the Committee or any other party in interest could, within 30 days, request that a trustee be elected by the creditors. 11 U.S.C. § 1104(b)(1). There is little doubt that in these cases, numerous such requests would be made. Upon such a request, the United States trustee is required to "convene a meeting of creditors for the purpose of electing one disinterested person to serve as trustee" and such election shall be conducted as provided by section 702 of the Bankruptcy Code. *Id*. Section 702(a)(1) provides that only an "allowable, undisputed, fixed liquidated, unsecured claim" may vote in such an election. 11 U.S.C. § 702(a)(1). This may lead to disputes over whether the noteholders that have not waived their liens would be able to vote and whether other claims are disputed, which could delay the election process and lead to uncertainty over who will be managing the Debtors and their estates. Moreover, it places the estates in the very position they currently reside, where approximately 99% of the creditor constituency are not currently considered unsecured, but are the primary parties whose interests are at stake in these cases. This potential for uncertainty and delay may threaten the Debtors' ability to successfully reorganize and is not in the best interests of creditors or the estates.

97. Finally, Debtors have a limited number of assets from which to satisfy their debt. Every dollar administering the estates is a dollar taken out of the hands of creditors. The SEC is already investigating the prepetition conduct of the Debtors and their prior management. The Debtors have unequivocally stated that an independent investigation would be conducted, upon consultation with the other creditor constituencies and after the business operations are

stabilized. Appointing a chapter 11 trustee will only serve to delay the business stabilization and duplicate the SEC and other efforts to investigate the prepetition conduct. *See In re Bayou Grp., LLC*, 564 F.3d 541, 546-47 (2d Cir. 2009) (quotation marks and citations omitted) ("In determining whether a § 1104 appointment is warranted or in the best interests of creditors, the bankruptcy court must bear in mind that the appointment of a trustee may impose a substantial financial burden on a hard pressed debtor seeking relief under the Bankruptcy Code, by incurring the expenditure of substantial administrative expenses…."); *In re Anchorage Boat Sales, Inc.*, 4 B.R. 635, 644 (Bankr. E.D.N.Y. 1980) ("[T]he Court may utilize its broad equity powers to engage in a cost-benefit analysis in order to determine whether the appointment of a trustee would be in the interests of creditors, equity security holders, and other interests of the estate."); *In re Liberal Market, Inc.*, 11 B.R. 742, 744 (Bankr. S.D. Ohio 1981) ("Since the economic and financial conditions are so desperate and critical, it is obvious that the appointment of a statutory trustee with full powers, authority and duties would be ill-advised, if not foolhardy, because of the consequent, overwhelming drain on assets for the nonproductive, administrative expenses of a trustee….").

## CONCLUSION

The Debtors therefore respectfully request that the Court deny the Trustee Motions in their entirety.

Dated: January 8, 2018
Wilmington, Delaware

*/s/ Sean M. Beach*

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**EXHIBIT A**

**December 21 Hearing Transcript**

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

| | | |
|---|---|---|
| IN RE: | . | Chapter 11 |
| WOODBRIDGE GROUP OF COMPANIES, LLC, *et al.*, | . | Case No. 17-12560 (KJC) |
| | . | Courtroom No. 5 |
| | . | 824 Market Street |
| | . | Wilmington, Delaware 19801 |
| | . | December 21, 2017 |
| Debtors. | . | 9:00 A.M. |

TRANSCRIPT OF HEARING
BEFORE HONORABLE KEVIN J. CAREY
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

| | |
|---|---|
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| | |
|---|---|
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(Proceedings commence at 9:00 a.m.)

(Call to order of the Court)

THE COURT OFFICER: You may be seated.

THE COURT: Good morning, everyone.

COUNSEL: Good morning. Good morning, Your Honor. Good morning, Your Honor.

MR. BEACH: Good morning, Your Honor. May it please the Court, Sean Beach from Young, Conaway, Stargatt & Taylor, on behalf of the debtors.

Your Honor, just a few quick housekeeping matters. We did file a revised version of the thirteen-week cash flow budget last night. It was sent over to your chambers this morning, but given the hour, I just want to make sure it got to you, and if not, I can hand up a copy of that document.

THE COURT: I have it, and I've read it.

MR. BEACH: Thank you, Your Honor.

In addition, I know you're -- you asked us to submit some names for fee examiners. We did that late last night, as well. So, if there's any follow-up, in terms of an order, I just wanted to ask Your Honor what procedure you wanted to follow and --

THE COURT: I saw the email today. I haven't made my decision of who yet.

MR. BEACH: Okay. Thank you, Your Honor.

With that, Your Honor, I'll cede the podium to Sam

Newman.

THE COURT: I have a couple of housekeeping things before we get started. First of all, the -- whatever we hear on January 10th will be at one o'clock, not at ten o'clock in the morning.

MR. BEACH: Okay, Your Honor.

THE COURT: I have a schedule change that required that change.

The other thing I wanted to note was I did receive a communication from counsel saying we understand there were some letters sent to chambers, a couple -- one by Mr. Shaw (phonetic), one by Mr. Carli -- two by Mr. Carli, and I didn't have them docketed on purpose. Because there are so many individual investors here, what I wanted to say up front is I don't want to receive letters. So, if there's anyone who wants the Court to take an action, a motion must be filed with the Clerk's Office, according to the proper procedure and rules. And I wanted to discourage a letter-writing campaign as early in the case as I could. I understand people may wish to be heard, people may want the Court to do things, but it's not going to be through letters to chambers, so I wanted to pass that along. And with that, my housekeeping matters are finished.

MR. BEACH: Thank you, Your Honor. Just one clarification on that point. If counsel, debtors' counsel,

gets letters similar to the ones your chambers received, would those be letters that you would want us to identify on agendas, or not include those in agendas?

THE COURT: I think the thing to do, at least initially with those, is to advise the letter-writer, if the letter-writer is asking for some kind of relief from the Court, is to tell them what I just told you. If it's a request for information from you or the company, you'll address them accordingly and appropriately, I presume.

MR. BEACH: Thank you, Your Honor.

THE COURT: All right.

MR. KORTANEK: Your Honor? Briefly, Your Honor. Steve Kortanek with Drinker Biddle. Just a suggestion on that. Since we're -- on behalf of the Ad Hoc Committee of Noteholders.

We're seeing that a lot of people are actually looking at the docket via the Clerk's Office -- or excuse me -- the claims and noticing agent's website. So we'd be happy to submit an order and work with the debtors, just a procedural order that lays out what Your Honor just said.

THE COURT: That might be helpful, Mr. Kortanek. Thank you.

MR. KORTANEK: Thank you, Your Honor.

MR. NEWMAN: Good morning, Your Honor. Thank you for your time. Sam Newman of Gibson, Dunn & Crutcher, on

behalf of the debtors.

I want to note for Your Honor a couple of things. First, I want to thank Mr. Fox of the U.S. Trustee's Office, who has worked with us to resolve, I think, the open items from their objection. Obviously, they'll speak for themselves, but we appreciate his time and attention to this.

I want to note for Your Honor that, both Larry Perkins, the CRO of the debtor, and Mr. Marc Beilinson, the independent manager of the debtors, are in the courtroom today, as well as Fred Chin with Province, Inc., who will be available to testify with respect to valuation issues on the adequate protection issue with respect to the debtor-in-possession financing motion, which will take up, I think, the majority of the time today.

Before we do, I'd just like to give the Court a brief update on matters that have occurred since we were here two -- about two weeks ago. As Your Honor will recall, we appeared before you and outlined the intense challenges facing Woodbridge, the threats facing the valuable assets in Woodbridge's care and custody, and the steps being taken by the newly appointed independent management team to safeguard the investors' interests in the company and its assets. And while we still face enormous challenges, we're pleased to report that we've been making substantial progress over the last two weeks, and continue to work towards making progress

to preserve and protect the value of those assets.

In consultation with the real estate professionals that have been retained by the estate, the independent management team is continuing to take the necessary steps to protect the estate and maximize the value of the assets, and to create a business plan that the various constituents can have confidence in that will maximize the value of the assets for all concerned.

As you recall, about December 4th, these cases were filed, immediately following the appointment of an independent management team, appointed to protect the interests of investors, and with broad authority to manage these estates in the best interest of the investors and the creditors. Mr. Beilinson and Mr. Perkins, who have experience in independent management roles, have been getting up to speed, and have been meeting with constituents to continue to develop the world-class assets that Woodbridge maintains for the benefits of its investors.

As you know, we've negotiated with Hankey Capital a hundred-million-dollar debtor-in-possession financing facility, to ensure that the company has adequate liquidity to be able to fund necessary construction in furtherance of that business plan. And we're here today to follow up on our interim request for a twenty-five-million-dollar availability. And we have worked closely with the Securities

and Exchange Commission and the United States Trustee's Office to advise them of the sources and uses of those funds, as well as the committee, and have been in communication with the Ad Hoc Committee. We've tried to maintain an open, transparent process, so that all interested constituents are aware of the needs this estate has, and how we intend to address them.

Our first order of business has been to secure the assets to continue production, and to avoid the disruption that would be caused by a liquidity shock to the system. We have a 138 properties, primarily in Southern California and Colorado, that are in various stages of development, as well as other assets and properties throughout the United States.

We are moving to work with contractors, to keep them working, keep them on the job, satisfy pre-petition obligations to them, either through the use of critical vendors funds approved by this Court, or through the assumption of the agreements with them, which, in the debtors' business judgment may be necessary to continue that production process. And a motion has already been filed with three of our most critical vendors to assure them that they will have access to the debtors. And these projects will continue at least for so long as the debtors believe that they are necessary.

Our ongoing review of the business plan is a top

priority, and we are working with the committee and the Ad Hoc Committee, and intend to continue to communicate with them regarding our intentions for developing these assets and the use of estate funds.

Our goal is to evaluate our business plan with an eye towards maximizing the return to investors. And to this end, we have met with contractors, vendors, constituents, and are moving also before Your Honor to retain a nationally recognized investment bank with experience in similar situations, to help us evaluate the assets and the business plan. Moelis is the proposed investment banker, and Your Honor has, I think, received an application, or if not, will shortly.

We have, with our advisors, visited the sites, reviewed projections, construction costs, and expect to provide for the parties to review in the near future a revised business plan and forecast that will allow all parties to have visibility in the transparency of this process towards maximizing the value of these properties that are currently in Woodbridge's care.

We continue to value other proposals for maintaining liquidity. We have had some conversations with other constituents and parties that have other ideas about how to maintain the liquidity in this case. Obviously, one of the big challenges we've talked about is the fact that

much of the value of the assets must be reserved as adequate protection for the time being, to protect the interests of noteholders and investors, while we assess what those interests are, and what the best interest of the estates provide with respect to them.

And that's one of the reasons you'll hear we need to have the continued access to the debtor-in-possession financing, to provide unencumbered liquidity, to allow us to maintain the construction process, and avoid shutdowns of construction activity, and the extensive and extreme re-mobilization costs that would be entailed if contractors started walking off the jobs, and that's been a primary focus.

Meanwhile, though, we're not solely working on the first phase of the case, which is this stabilization effort. We are also starting to look towards the second and third phases of the case: The second phase of developing and implementing a business plan, which I've described; and the third phase, which will be assessing the intercompany and inter-party claims that need to be resolved, in order to come up with a fair and balanced plan of reorganization, pursue or preserve litigation rights, and ultimately, resolve the various claims that are going to exist amongst the players in this case.

To that end, we have met with the Securities and

Exchange Commission, both in person and by telephone, since the filing of this case on December 4th. And in connection with that, we have received demands from them regarding noncompliance by Robert Shapiro, the principal of the business prior to the appointment of the independent management team, and the sole equity owner of the vast majority of the debtors' businesses, and also regarding other assets, which were disclosed in detail in the first-day motion, but that had not been filed, and were retained under the custody of Mr. Shapiro.

We have worked both with the Securities and Exchange Commission and with Mr. Shapiro to resolve those issues. We have made demand upon Mr. Shapiro and other employees that all information in their possession which constitutes property of the estate, including certain private emails, be turned over and made available to the Securities and Exchange Commission. And I believe an order is being entered today at a hearing in Florida, which is putting in place a protocol to provide for the turnover of that information in the near future. And we continue to monitor that situation and take seriously the estate's obligation to cooperate with the Securities and Exchange Commission, in their ongoing investigation.

We believe that we have made substantial progress in furthering the cooperation of that investigation in the

past two weeks, and continue to be willing -- ready, willing, and able to assist the SEC in their investigation, as they make additional demands on us.

We also provided promptly to the SEC, at their request, a list of properties that were identified in the first-day declaration as not under the estate control, but of which we were aware. Since that time, we have negotiated with Mr. Shapiro and were poised to take custody of those assets, and in fact, are still poised, or let's just say willing to take custody of those assets.

However, last night, the Securities and Exchange Commission apparently, it appears to us, based in part on the information that we provided them, and I'm sure their own investigation, took custody through an asset freeze of 23 property-related entities, including the RS Protection Trust and a variety of entities holding properties of substantial value, which had been identified to them by us, and which we intend to discuss with them the appropriate administration of. And any way in which we can help them in that administration, we're happy to do. And those conversation, we expect, will occur today, and we look forward to them.

We also, through our ongoing investigation, have identified one additional property, which we were poised to take control of last night. The asset freeze, we believe, restricts our ability to do that, and we look forward to

talking to the SEC about how we can either transfer ownership of that, ownership and control of that asset to them, or provide for its administration in the bankruptcy case.

We feel like, after the year-long investigation that the SEC has been incurring, that it is encouraging that that investigation and our ability to cooperate with it is bearing fruit, in the ability of both the SEC and the estate and the independent management team to secure the various assets in the Woodbridge Group for the benefit of investors. And we look forward to cooperating with them and the other constituents in that regard.

But meanwhile, we also prepare for the ultimate litigation that we expect will ensue if there's not a more rapidly developed settlement. And so we are -- we have asked one of my partners, who is a former Assistant U.S. Attorney for the Central District of Florida, and a Deputy Chief in the Major Fraud Division in that office, to take a leadership role in structuring an investigation in intercompany claims and claims against insiders and others, and that investigation is moving forward. We are coordinating with, both Boies Schiller, the estate's -- I'm sorry -- the estate's securities litigation counsel, who has been handling the lead on document retention and preservation analysis, as well as FTI, who's been retained by the committee to provide financial advice to them, to create a document preservation

regime, and move towards a fundamental, top-down review of the estate's documents and records, in order to assess, prepare, and as needed, pursue claims in favor of the estate against third parties, for the benefit of its investors.

As Your Honor, I'm sure, knows, that, since the last time we were here, an Official Committee of Unsecured Creditors has been appointed. Three members were chosen. Your Honor has seen, I think, in the pleadings there is some controversy over how that occurred, and whether or not that group is appropriately representative of the creditor constituency; in particular, the noteholder constituency.

We are extremely concerned and focused to make sure that the creditor constituency, which is the larger creditor constituency in this case, is appropriately represented. We've read the pleadings. We appreciate Your Honor's decision to give the parties a couple of weeks to think about an appropriate path to move forward. And we intend to continue to engage with the constituents, in order to find the best path forward, to ensure that, both the small community of trade creditors and unsecured creditor are appropriately represented, and that the large community of noteholders are also represented. And obviously, the various issues, which Your Honor has seen briefing on, regarding the potential claims and avoidability of certain of the claims of the noteholders will weigh into that.

THE COURT: Yeah. I'll just comment that the situation is unique, really. It's not that there aren't cases that come with many divergent stakeholder interests, and this is certainly one of those. But to the adequate representation point, the only comment I'll make is probably something that's obviously to all concerned here, and that is, to the extent that there is a credible, organized voice for the many investors -- and not to exclude other stakeholders -- it will actually end up, as tough as negotiations or litigation might be, being better for everybody. And I'll just leave it at that. And that's not to be considered, in any way, a prejudgment on what will be up for the 10th.

MR. NEWMAN: Your Honor, I appreciate that comment, we think it's helpful and constructive. And honestly, it's very consistent with the way the debtors had been looking at the situation. And so we will take that to heart, and we'll continue to work with the parties to try to find an appropriate balance between the costs to be incurred for that representation, but -- and also, the serious benefits that that representation will provide to the estate, in terms of the efficiency of this process. So thank you.

We note that neither committee is entirely happy with everything that the debtors have done, but that's to be expected. And I think Your Honor will hear from us today

that, at least with respect to the debtor-in-possession financing, we think this is the best way to move forward. And we think that Mr. Wise and my partner Ms. Conn will be able to provide evidence, particularly from Mr. Chin and Mr. Perkins, in order to comfort Your Honor and the Court and creditors that appropriate steps are being taken to preserve the interests of the noteholders while we proceed through this case and work with the constituents to come up with a plan that we can execute in order to get them the most value as quickly as possible.

THE COURT: Yeah, I'll just comment on that, and it's -- this is generally not a place where people come to be happy.

(Laughter)

THE COURT: But it is a place, hopefully, where people can come to resolve disputes amicably, hopefully, for the most part. If not, I'll make whatever decisions are required.

MR. NEWMAN: And we will work hard to try and bring as few things in front of Your Honor as we can. But we do appreciate the extreme willingness Your Honor and the other members of your staff have taken to be accommodating, when those decisions are needed.

With that, I think there -- you know, you will see a number of things. And I don’t think any of them are on for

today, but I know, just because people will call me if they aren't happy, before they come call you -- which I appreciate -- you know, the committee and the Ad Hoc Committee has concerns about what the appropriate structure and governance. There has been suggestions about whether a trustee would be a better governance solution. We think not.

We think that the shock to the system that would come, were a trustee appointed, or a receiver appointed, and the loss of the liquidity afforded by the debtor-in-possession financing would be an extreme problem for the value of these assets. But we obviously will continue to do our part to preserve and protect the value of the assets, assuming that parties will be able to resolve their disputes amicably.

THE COURT: Well, I assume, without knowing -- and you needn't respond -- that the reorganization, I'll say, of governance, which occurred prior to the filing, might have been primarily designed to avoid having to face such a motion. And I'm sure that, as the debtor proceeds, it knows that that cloud is still looming over its head.

MR. NEWMAN: We do, Your Honor. And in fact, you know, a point to make on that topic is Your Honor, I think, expressed concern with respect to, for example, the ability of Mr. Shapiro to exercise control and/or dismiss the independent management team. And in response to that, we

demanded and received, as I think you've seen on the docket, a change in the governance documentation, providing that, other than for cause and the cause standard commensurate with the cause for appointment of a trustee, the independent management team cannot be removed by Mr. Shapiro, going forward. And we feel like that's a significant item of progress that should comfort the constituents, that the management team is, in fact, independent, and is not being controlled by Mr. Shapiro, in any way.

And it's also true that we will continue to work to provide transparency in the process, and the decision-making process to the constituents. However, you know, the debtors' independent management team are fiduciaries for this estate as a whole, and cannot accede to the control or demands of every individual creditor. And we will continue to exercise our best business judgment and, as Your Honor indicated, when necessary, bring matters before the Court.

With that said, there are also a number of business items that will be coming up at the next hearing, including assumption of certain contracts that I understand will raise some controversy, and otherwise investigate [sic]. And the best we can do is make our determinations the best we can, and move forward.

The last item -- and I apologize, Your Honor, I think I am not repeating myself -- is that there was a

significant development last night with respect to the SEC's action in taking an action to freeze assets involving Mr. Shapiro, his trust, and the -- certain of the property entities.

One thing that that has made clear to us -- and we have not seen the complaint upon which this order was based, and look forward to reviewing it carefully, to make sure we understand the state of affairs, as they see it and set it forth in court papers. But one thing that it has made clear to us is that, at this point, we need to reserve on any payments to Mr. Shapiro, including the transition services payment that's been discussed previously.

And so the management team has decided and communicated to the U.S. Trustee and others that, for the time being, we don't intend to make that payment. And that resolves, I think, the primary objection the United States Trustee had. We will revisit the issue, as appropriate, once the facts are known, after the court hearing in the asset freeze case, which I believe was scheduled for December 29th. I will, of course, inform the Court, prior to taking any further action in that regard.

THE COURT: So has any payment been made to Mr. Shapiro under the transition services agreement?

MR. NEWMAN: Yes, Your Honor. Pre-petition, one payment was made.

THE COURT: All right.

MR. NEWMAN: No payment has been made post-petition. And we committed to Your Honor and to the U.S. Trustee that no payment will be made out of DIP funds, at least until the further hearing today, and now we are further committing that no payment will be made, at least until the final hearing. And we will inform the Court if there is any further information brought to our attention, once we've had a chance to review the pleadings.

THE COURT: Thank you.

MR. NEWMAN: If there are no other questions, I'll turn the podium over to my partner Eric Wise, who will present the facts and argument with respect to the debtor-in-possession financing.

THE COURT: Very well.

MR. NEWMAN: Thank you, Your Honor.

MR. WISE: Good morning, Your Honor. Eric Wise, Gibson, Dunn & Crutcher, for the debtor.

When we were last here on December 5, the Court approved $6 million of borrowing under the debtors' DIP credit agreement. And today, in furtherance of the DIP -- the debtors' motion to obtain post-petition financing and use cash collateral and grant adequate protection in connection therewith, and granting related relief, we're asking the Court for approval of a second interim order to --

authorizing the debtors to borrow an additional $19 million of DIP credit, to support the operations of the company and the administrative costs of the case through the final hearing, to be held on January 10.

I propose that, in terms of the order of the DIP matters, that we proceed with a brief summary of where we are on the DIP matters, then an examination of witnesses as evidentiary support for some of the issues raised by the DIP and the adequate protection, and then a discussion of the objections that have been raised and how they've been resolved, or what our reply is to those objections, followed by a discussion of the changes to the order, which are relatively limited from what was filed, and to proceed in that order, if that's --

THE COURT: I would like to know, before the witness examination, in any event, what are the open remaining objections. You needn't fully discuss every objection, but I want to know, before I hear the testimony, what the open issues still are.

MR. WISE: So, right now, I believe that the U.S. Trustee is concerned with the cash needs with respect to the 25 million, between now and the final hearing. I think the principal focus of that is with respect to the amount that's being escrowed as adequate protection for cash interest payments to the notes. I think I've characterized that

correctly.

And there's a reservation of rights by the homeowners association, which we think we can adequately address their concern about the payment of fees and a difference in what they believe they're owed, and what the debtors believe they're owed. There's a reservation of rights with the unsecured creditors' committee. We proposed language to resolve that. I believe the unsecured creditors' committee has accepted that language.

And then with respect to the Ad Hoc Committee of Noteholders, there are -- as a matter of things that are open, there are questions about -- in the order, the way the adequate protection lien, in respect of the 28 core properties, is subordinated, and the subordination language there. And there's a -- some questions with respect to providing adequate protection to the noteholders in the form of interest reserve payments.

And I'm just trying to make sure I'm raising the ones that are still ... and a question with respect to the notice provided to the noteholders, a large group.

There are two other -- or maybe three other pieces of paper, I've seen at least two of them. Based on your comments earlier, the question is: Do you want me to address those letters? I am prepared to address what's raised, to the extent that I'm able to, in the various letters that were

submitted --

THE COURT: Afterward. Afterward, if you please.

MR. WISE: Okay. I think that's it.

THE COURT: I have read them.

MR. WISE: So, with that, I'll proceed.

On December 5, we discussed the process by which the debtor solicited the DIP financing, and we summarized some of the key terms into the record before the Court, and we discussed some of the adequate protection. Today, we'll be putting on evidence to support, and to further support, to the extent already supported in the proffer and the testimony provided on December 5, additional evidentiary information.

There are new parties in the room and on the phone. Would you like me to go through the same description of the DIP that I did on December 5, or would you rather move on directly into the evidentiary support?

THE COURT: Let's hear the evidence, first.

MR. WISE: Okay. One thing that I -- before we do that, I want to make -- point out is that, in the order, we've added additional adequate protection properties to the order. So, from 6 that were included in the order, there are now 12. And what we intend to show is that the adequate protection value on those 6 -- I'm sorry -- 12 adequate protection properties that are serving with a junior replacement lien, supporting the diminution in value of any

noteholder who -- or any party that might be primed by the DIP, we intend to show that that's not less than approximately $80 million in value. And we propose to present an additional factual foundational, establishing that the process of obtaining the DIP was thorough and appropriate and met the standards, and that the DIP is fair and reasonable under the circumstances.

To make that showing, we propose to call Fred Chin of Province, Inc., who has conducted an appraisal of the 12 properties, which are serving as adequate protection properties, which are separate from the 28 core properties that are the actual properties that are primed by the DIP.

We also intend to call Larry Perkins, the Chief Restructuring Officer of Woodbridge Group Properties. And he will provide testimony in support of the residual equity value of those 12 adequate protection properties, after giving effect to mortgage financing against those properties, because Fred Chin is going to speak to the value of those properties. And so Larry will provide the information as to the residual value after the mortgage of debt financing. And then Larry will also -- Mr. Perkins will also speak to the process utilized to obtain the DIP financing, in furtherance of obtaining the best financing terms and the liquidity needs of the debtor through the final hearing.

With that, I will turn over the dias to my partner

Jennifer Conn.

THE COURT: Thank you.

This is Judge Carey. I hear sounds coming from the telephone line. Everyone's phone should be on mute.

MS. CONN: Good morning, Your Honor. Jennifer Conn from Gibson, Dunn & Crutcher, on behalf of the debtors.

On behalf of the debtors, we would like to call to the stand Mr. Frederick Chin.

THE COURT: All right.

(Witness summoned)

THE COURT OFFICER: Please remain standing. Raise your right hand, and place your left hand on the Bible.

FREDERICK CHIN, WITNESS FOR THE DEBTORS, SWORN.

THE COURT OFFICER: Please be stated.

THE WITNESS: Thank you.

THE COURT OFFICER: State your full name for the record, and spell your last name.

THE WITNESS: Frederick Elliot Chin, C-h-i-n.

THE COURT OFFICER: Thank you, sir.

THE WITNESS: Thank you

DIRECT EXAMINATION

BY MS. CONN:

Q Good morning, Mr. Chin. Thank you for being here with us today. I'll let you take a sip of your water before we begin.

A Good morning.
Q Mr. Chin, where are you currently employed?
A I'm employed by Province, Inc.
Q And what's the business of Province, Inc.?
A Province is a national firm that deals with creditor advisory, general consulting, and trustee fiduciary services.
Q Where is Province's offices located?
A Province's offices are in Las Vegas, Nevada; Los Angeles, California; Miami, Florida; and New York, New York.
Q And does Province focus its business operations on any particular geographic areas in the United States?
A We cover public and private companies all across the country, involved in a variety of industries, as well as in real estate.
Q And what is your position with Province?
A I am a senior director.
Q And what are your responsibilities as a Senior Director of Province?
A I am the real estate specialist in the group. There's a number of other parties that are also real estate experts in the company. But I generally deal with any sort of real estate type of disputes or valuations, anything involving feasibility, mergers or acquisitions, or also turnaround management.
Q Do you have any other professional responsibilities at

Province?

A Basically, just the general I support our other teams on creditor advisory. If there's -- we've had a lot of retail bankruptcies where we've been committee counsel. They deal with real estate, they deal with leases. I've been called to evaluate and critique and also provide opinions with respect to those leases.

Q Where were you employed before you were employed with Province?

A Before this, I was -- had my own firm called "CPG Advisors." That was based in Las Vegas, as well as in Los Angeles.

Q And how long were you employed -- have you been employed by Province?

A About a year.

Q Okay. And so, before that, you said you were at CPG Advisors.

A Correct.

Q And can you tell us the business of CPG Advisors?

A CPG was a turnaround management and also a general real estate consulting firm, providing services to lawyers involved in potential litigation, or just general clients that are requiring some sort of strategic planning or business advice or valuation advice.

Q Do you have any specific experience with respect to

residential homebuilding?
A I do.
Q And what is that experience?
A I was the COO, and then later the CEO of a private homebuilding company based in Las Vegas. We had holdings in Arizona, Nevada, and New Mexico. Basically, we were a land developer, as well as a homebuilder. We were building, during my tenure, approximately a thousand homes. They were mostly tract homes, generally priced between 200,000 to a little over a million, in that particular -- in those particular markets. And I oversaw all the aspects of homebuilding and ran the company, raised financing for the company, and created business plans, created strategic plans for the direction of the company.
Q You also stated a few minutes ago that, at Province, you do work on real estate valuation. Can you describe what kind of work you do on real estate valuations?
A Certainly. Some of the engagements involve damage estimates or valuations at various points in time, relating to certain type of litigation matters. There has been various disputes, contractual disputes or breach of fiduciary duty issues that deal with valuation, deal with damages. And I'm the valuation expert for those types of cases.
In other cases, we are on the creditors' committee. And there have been instances where there's been

environmentally tainted properties. I have -- basically, have provided the real estate expertise, and also the consultation to our team regarding the real estate and environmental contamination, and how it may affect the overall plan of reorganization.

Q Do you have any experience with respect to valuations of residential properties in Southern California?

A I do.

Q And what is that experience?

A Specific to this particular group, as we get into it, both in Los Angeles -- in the Los Angeles area, recently, I was the valuation expert and also designed alternative business plans for an owner of property, which is approximately 157 acres just north of the Beverly Hills area. It is the largest vacant developable piece that has a Beverly Hills Post Office, called "The Vineyards." It was designed for six luxury, single-family homes, approximately 50,000 square feet each. And there was a dispute, and there is an ongoing dispute. It's the former Herbalife heir, Mark Hughes, and he had owned the property.

But in any event, there were plans for the property, there was litigation, there was a bankruptcy filing, and there was valuation expertise necessary, as well as I was assisting the family evaluate their ownership alternatives as to the liquidity of that particular piece of property.

Q And in the manner you just described, are you acting as an expert witness in a dispute?
A Yes.
Q Okay. Do you have any other experience in valuations of residential properties in Southern California?
A I do.
Q What is that experience.
A I'm sorry.
Q That's okay. Go ahead.
A There's another property, which is very proximate to an area that's part of the 12 properties, called "Hidden Hills." Adjacent to it is a three-thousand-acre parcel of land, a pretty valuable part, called the Ahmanson Ranch, a long-time family that had owned it in Los Angeles. It was planned for approximately 3,000 homes, rolling hillsides. It's directly adjacent to Hidden Hills. I was the valuation specialist, reporting directly to the board of directors of, at that time, Washington Mutual Bank. They were the owners of the property, had contemplated the development of it. And I was involved in the feasability, the positioning of the project, the pricing, the valuation of that entire development. That property, because of a lot of environmental and regulatory issues, ended up being purchased by a conservancy group and not developed.
Q Okay. I don’t want to spend too much time on this. But

without getting into the details, do you have other experiences, aside from what you described, valuating -- I'm sorry -- valuing residential properties in Southern California?

A I do.

Q Okay.

A Over my career, I had -- was responsible for overseeing -- we were the pension fund consultant to CalPERS, the largest pension fund in the country. I was the -- one of the consultant team members. We were responsible, and I was responsible for reviewing the valuations of all their real estate holdings, which are done on a quarterly basis. Their -- CalPERS basically looks at their valuations every quarter, to establish their returns, and to evaluate their advisors that are advising them on their real estate ownership. I did that continuously for, I believe, three years.

And we were also, as part of that, calculating the incentive compensation for the advisors that were managing various assets. A number of those assets were all sorts of properties, residential, industrial, office. They were investing and -- through -- all through the property-type spectrum. And basically, I think they were probably a low of $10 million to over a billion dollars of asset size. And I did that on a quarterly basis for that three-year period.

Q Thank you.

Have you, personally, ever owned property in California?

A Yes.

Q What property do you own in California?

A I currently own a residence in Malibu, California.

Q And have you ever lived in California --

A Yes, I have.

Q -- full time?

A Yes.

Q And when was that?

A I started -- I moved to California in 1988, so continuously from 2008 to -- I'm sorry -- 1988 to 2004, I was full time in Los Angeles. Then I was running companies in Las Vegas, up until 2010.

And then, in 2010, I was part of the executive management team that took over a public office REIT. It was a four-billion-dollar office REIT. I was in the CRO, initially, and then, eventually, the COO. And it was a problem company, it was on the verge of filing bankruptcy. And over the next three-year period, I was in Los Angeles full time.

We, basically, reorganized the company. We averted a Chapter 11 filing. We de-leveraged the balance sheet. And we, ultimately, did a merger a Brookfield, I think it was like a two-and-a-half-billion-dollar merger with them, after

the activities that we had done to basically help improve the balance sheet.

Q So, just to go back to the time line, you no longer live in California full time. Is that right?

A Correct.

Q Okay. But you have a -- you still maintain a property in Malibu.

A I do.

Q And when is the last time you lived in California, at least on a full-time basis?

A Last year.

Q Okay. Thank you.

What educational degrees do you hold?

A I have a bachelor -- I believe a Bachelor of Arts Degree -- it's been so long ago -- in Real Estate and Finance, at the University of Arizona.

Q Okay. And do you hold any professional certifications?

A I do.

Q What are those certifications?

A I am an MAI, a Member of the Appraisal Institute, since 1987. I hold a CIRA designation, Certified Insolvency Restructuring Advisor title. And also, I am a CRE, which is a member of the Counselors of Real Estate.

Q What is the "Appraisal Institute"?

A Is the professional body that basically --

THE COURT: You needn't cover that for me.

MS. CONN: Okay. Do we need to cover the Counselors of Real Estate or --

THE COURT: No.

MS. CONN: Okay. Thank you, Your Honor.

THE WITNESS: Thank you, Your Honor.

BY MS. CONN:

Q And you still hold those designations that you just described.

A I do.

Q Okay. And do you perform continuing education requirements or other requirements to maintain those designations today?

A Yes, I do.

Q You mentioned earlier that you had at least one experience as an expert witness. Do you have other experience as an expert witness?

A I have. I have testified in many cases over my career, across the country, including those in California.

Q Approximately how many times do you think you've acted as an expert witness in disputes?

A Over 50.

Q Okay. On what topics have you opined, in the past, as an expert witness?

A A number of instances have been on valuation, others

have been related to bankruptcy and plan feasibility, and others have been in contractual disputes and damages related to real estate ownership, and lastly, condemnation, inverse condemnation actions.

Q Has there ever been an occasion when you provided an expert opinion in a matter, and that opinion was not accepted by the Court in that matter?

A No.

Q Now the debtors here have engaged you to perform appraisal services. How much are you being paid for those services?

A I -- we are billed out on our hourly rates. There is a sliding scale, depending on the individual involved. My rate is $550 per hour. My teammates are, basically, I think, around 395 to 450 per hour.

Q Okay. And is your compensation, or your colleagues' compensation, affected in any way by the outcome of your analysis?

A No, it's not.

MS. CONN: Okay. Your Honor, we ask that the Court qualify Mr. Chin as an expert in real estate valuation appraisal.

THE COURT: Is there any objection?

UNIDENTIFIED: No objection, Your Honor. Thank you.

THE COURT: Then you may proceed accordingly.

MS. CONN: Thank you, Your Honor.

BY MS. CONN:

Q Mr. Chin, what work were you retained to perform in this case?

A I was asked to prepare market value estimates for 12 properties that are generally located in the Los Angeles area.

Q And have you memorialized your opinions in a written report?

A I have.

Q Okay. I am going to hand you a document which also appears --

MS. CONN: And Your Honor, if I may approach, and give you, also, a hard copy of the document.

THE COURT: Yes. Do you have a copy for my law clerk, as well?

MS. CONN: There are additional copies.

(Participants confer)

MS. CONN: And we have additional copies.

THE COURT: Thank you.

BY MS. CONN:

Q So, Mr. Chin, if you could take a moment and just take a look at the document I've just handed to you. Is that the written report you just referred to?

A Yes, it is.

Q Okay. And did you prepare this document?

A I did.

Q And this report sets forth your opinions and conclusions in this case?

A That's correct.

MS. CONN: Your Honor, we'd like to move this report into evidence as Debtors' Exhibit 1.

THE COURT: Is there any objection?

MR. KORTANEK: Your Honor, we object to -- Your Honor, Steve Kortanek from Drinker Biddle, on behalf of the Ad Hoc Committee.

We received a copy of the report last night, which we appreciate the debtors sending it to us ahead of time. This is, essentially, a second first-day hearing. Ordinarily, we would expect an opportunity to review the report with advisors that the committee has been consulting, and have some independent feedback, other than sort of going on the fly. I do intend to ask cross questions of Mr. Chin, and Your Honor would say that may be my recourse today.

We would oppose having it admitted for all purposes in the cases because, ordinarily, we would have those opportunities to have some discovery of Mr. Chin, who, obviously, is highly credentialed, and we appreciate the opening questions. But for today's purposes, Your Honor, we

would either have it limited for today, and ask for it to be limited in that manner, so the committee has a fulsome opportunity to investigate and consult with our own experts. We think, frankly, it should be considered as sort of what a declarant would do at a first-day hearing, and nothing more than that.

THE COURT: Does anyone else wish to be heard?

(No verbal response)

THE COURT: All right. I hear no further response.

I'll admit the appraisal, which I've marked as D-1, for purposes of today's hearing.

MS. CONN: Thank you, Your Honor.

(Debtors' Exhibit 1 received in evidence)

BY MS. CONN:

Q Mr. Chin, did anyone assist you in the preparation of the report you have before you?

A Yes, two members of the Province Company had assisted me in the preparation of this report.

Q And who are they?

A One is Mark Kemper, and the other is Jin Dong, J-i-n and D-o-n-g.

Q And was that work that they performed done at your direction?

A Correct.

Q Okay. Approximately how much time did you spend doing the analysis that's reflected in this report?
A We have approximately 300 hours in this -- in -- for preparation of this report and all the analyses that have gone on. My time has been approximately 90 hours, up to this morning.
Q Okay. And that includes, you said, the preparation of the report, as well.
A Correct.
Q Okay. And does this report, along with the testimony you're giving today, constitute your appraisal of these 12 properties?
A It does.
Q Okay. I'm going to ask to turn to slide -- we covered what's on Slide 2, which is your background. If you'll turn to Slide 3, please. And we're not going to read through the report, but this slide discusses the purpose and scope of your engagement. Can you tell the Court what the scope of your engagement by the debtors was?
A My scope was to estimate the market value of these 12 properties on a fee simple basis, using the market value definition standard.
Q Okay. You said the "market value," using the definition. What's your -- I see there's a definition in this report. Can you tell the Court what your definition of

"market value" is, for purposes of this report?
A Certainly. Willing buyer, willing seller, each acting knowledgeably, without duress. Basically, their interests are independently aligned and -- or independent of each other, and they come together to formulate the price of the property. And it also presumes a reasonable exposure time in the marketplace; again, no duress, in terms of the valuation.
Q You also stated that you evaluated based on a "fee simple" interest. What did you mean by that?
A Basically, without any leasehold or leased fee interest, or partial interest in the real estate. It's the full bundle and rights of the property.
Q It states in this third slide of your presentation that the date of the valuation is December 18th, 2017. Did you, aside from preparing the report, do any work on the valuation of these properties after that date?
A Yes, I did. I was inspecting the properties at the time of December 18th, and then was formulating my analyses and valuation conclusions subsequent to that date.
Q Okay. But when you say -- what do you mean when you say the "date of valuation" is December 18?
A The as of date, if you will. It's the date that the valuations are prepared for.
Q Okay. I turn your attention to the next page of your presentation, Page 4. And you state in your report that the

properties have been categorized into two groups. Can you describe those two groups?

A The 12 properties have been grouped into two buckets, if you will:

Group 1 encompasses real estate -- residential real estate that is currently under construction, that will be completed in the near term. And I categorize those three properties as "Group 1."

Group 2 includes properties that construction activities are almost complete, and the properties in this particular case are ready for sale; or properties that are being contemplated for certain site of -- type of development activities, yet no construction has occurred.

Q Okay. Did you select the 12 properties that you valued?

A No. I was provided the 12 properties.

Q What about the two groups? Were you asked to divide the 12 properties into the groups, as you've divided them, as described in Page 4 of your report?

A I set up general groupings, but I was not asked to, basically, divide them into the two groups.

Q Okay. I want to talk about the information that you considered in preparing your valuation. Further down on Page 4, you state that you gathered, reviewed, and analyzed a number of different pieces of information relating to the properties. I don’t want to take the Court's time in going

through all of them, but just highlight a few, if you can describe them for the Court.

You indicate that you considered previous appraisals. What did you mean by that?

A For a number of the properties -- actually, I'm thinking for almost all the properties, and there were 12, there had been prior appraisals that had been done, usually during the acquisition process. In some cases, there may have been a current appraisal, but those were current properties. But there had been appraisals on most of the properties.

Q Okay. You also state that you considered offers. What did you mean by "offers"?

A In some cases, there were offers regarding the original acquisition; or, in other cases, there were some offers for -- to purchase the property at a subsequent time, after the ownership acquired the property.

Q You also state you considered purchase agreements. Were those the purchase agreements where the debtors purchased these properties?

A That's correct.

Q Okay. Any other purchase agreements?

A Not that I can recall.

Q Okay. You also state you considered project management reports. What does that refer to?

A For those properties that are under construction, and

undergoing construction activities, there was a project construction manager called "Plus Development" that was overseeing and -- overseeing the general contractor activities, and basically tracking what their activities were, and also ensuring that certain time lines and deadlines were being made. They were also the one, I believe, that were responsible for approving the sign-offs and the invoices that were prepared by the subcontractors of the general contractors, for payment for services for certain properties.

Q Okay. The next bullet, you say you interviewed project management team members, including a listing broker and project manager. Who were those individuals that you interviewed?

A At project -- the project manager was the Plus Development, I believe -- I'm sorry, I don't remember last names. One was Tyrone and one was Neil, one was Chris. They were involved in the project oversight and construction management of the properties. And then there was -- again, I'm sorry, I don't remember last names --

Q It's okay.

A -- but Adam and Kyle at Mercer Vine, which was the listing broker for the properties.

Q Okay. And what did you discuss with the individuals from Plus during those interviews?

A I wanted to understand the background of the properties,

as well as their process for managing the construction project, keeping subcontractors and general contractors on time; also, the way that the invoicing and the processing of payments worked, and how they were processing permits for development and redevelopment of the properties. I wanted to understand what activities they employ when certain properties are going through the construction process.

Q You also stated that you spoke to individuals from the brokerage Mercer Vine. What did you discuss with those individuals?

A We discussed the general site selection criteria, when they had acquired certain properties; their handling of the properties; their working with Plus Development to understand how -- if it's a renovation and an addition, versus a new construction, where it would be optimally placed, in terms of marketability for resale.

They provided, also, information regarding activities that were in the area. There's been lots of information and sales, and also rumors of -- of possible sales that had happened in a number of these areas; namely, in the Holmby Hills and Bel Air areas. But they were providing the information to me regarding market activity, what's going on with the properties, the marketing process, if you will, and then, basically, their knowledge of the marketplace.

Q You also state in your report that you collected certain

types of market data relevant to the property. Can you describe the market data that you collected and considered?

A Certainly. I like to understand, generally, what's going on in the marketplace, besides soliciting opinions of various people. There are a number of market studies, our market source of vendors that exist, some are the brokerage firms. The Agency Report is one, which is a brokerage firm that basically provides data on various submarkets within he Los Angeles area. They talk about price trends, price volumes, changes that are occurring in the marketplace; they do that for the entire Los Angeles area.

There is also other services and other providers of data, either brokerage firms or otherwise, that provide overviews, in terms of what activities are going on. That sort of information does inform me, in terms of what, basically, is going on in the marketplace, and I can take that in consideration with other market data.

Q You also state that you conducted onsite inspections of the properties. Is that right?

A I did.

Q Did you, physically, visit all 12 properties?

A I did.

Q And what did you do when you went to visit each property?

A Well, as I'm approaching the property, I'm looking at

the neighborhood and seeing what sorts of other types of properties are there. When I arrive at the property, I'm looking at the conformity and the adjacencies of other properties to the property that's in question or the property being appraised.

As I'm walking on the property, I'm looking at the topography of the site. I'm looking at its layout, its general shape, where the house is positioned. I'm also cognizant, and looking, in this particular instance, of the type of parades that exist, in terms of site slopes or hillsides, that might affect some of these properties. A number of these properties are located in more hilly areas that offer views of Los Angeles, and there's an additional type of site work that's required.

I'm paying attention to the views, if there are any, that might exist for the properties. A number of these properties have -- which is exception for the Los Angeles area. It rises above a general level of Los Angeles. They have views of the ocean, the city, sometimes the downtown area, sometimes of adjacent hillsides, and sometimes all of it. Those are premiums for the Los Angeles area because, by and large, it's somewhat of a basin. And above, basically, Sunset Boulevard, is an area where the mountains basically start to form, and it creates hillside and views of the entire city.

Then I -- I walk the property. I look at ths substructure. I look at the stage of construction. I look at the construction quality. I look at what sort of -- what sort of stage of construction they're in. And looking at the -- assessing, kind of qualitatively, the overall quality and feel of the house, relative to what my knowledge is.

Q Did you consider any macroeconomic factors in your analysis?

A It's -- yes, I do.

Q What factors?

A The general performance of what's happening in Los Angeles, what's happening in the marketplace, what are some of the drivers there. I mean, we've got a pretty stable economy in Los Angeles, driven by entertainment, finance. Now it's becoming the Silicon Beach area, so it's taking some of the Silicon and the high tech that's been in the Silicon Valley, and it's coming down to Los Angeles. I look at those as key economic drivers that help generally drive a lot of the growth in the Los Angeles area. And as well as we have a huge population base, I think it's over 14 million people, where the normal services are there.

I'm also aware of the challenges the city has, which is ground transportation, some of the new initiatives that are going on, which may affect the overall demand for real estate, over time.

Q Did you take into account the impact of the tax bill that just passed Congress in your analysis?
A I'm aware of it. I -- I'm not sure how to evaluate the full impact.
THE COURT: I'm not sure anybody is.
(Laughter)
MS. CONN: I was just asking for personal, yeah.
THE WITNESS: Yeah, I -- I would be speculating if I did. But it certainly affects -- it could affect home buyers. But I would say, for this grouping of 12 properties, this is a unique -- in many regards, very unique properties. They are at the high end, they're unique type of buyers. They're not the typical home buyer that may be affected by some of the tax impacts; they may be benefitted. But these are individuals who own multiple houses around the world, very high-net, high-worth people that may own corporations, they own all sorts of businesses, they're celebrities, they're actors.
It's -- I would say we -- this category, when we go through the locations, are very unique properties, with unique buyers. So, to the effect, I'm not sure what -- the Tax Reform Act might affect them. I don’t know.
BY MS. CONN:
Q Okay. So that wasn't a consideration in your analysis.
A It was a consideration, but I don’t know how to quantify

it.

Q Okay. Did you consider -- and this may be answered because, in your report, you say you considered geological soil and topographic surveys. But just to clarify, did you consider whether any of the properties were close to an earthquake fault line, considering it's California?

A Yes. So each of the properties have, basically, a natural hazards report, and that addresses locations in fire zone areas or flood zone areas, or what's called in Los Angeles (indiscernible) areas, which are basically identified fault lines in the Los Angeles basin, and areas adjacent to fault lines. And as I looked through all the 12 properties, they are not located in an identified area of earthquake faults.

MS. CONN: Okay. Can you move to the next slide? Sorry. I just scratched that one. Okay. Do you know how to do that? My apologies. I did that.

(Participants confer)

BY MS. CONN:

Q On the next slide, you discuss different ways to value properties, and you list three different types. Can you walk those through with us? The first is a cost approach. What is that approach to value?

A It's one of the three --

THE COURT: You need not explain this to me.

MS. CONN: Okay.

THE WITNESS: Okay.

MS. CONN: Great.

BY MS. CONN:

Q Can you at least tell the Court what approach you used for valuation of the properties?

A I relied on the market sales, or sales comparison approach, as well as consideration of the cost approach for those properties that are under construction.

Q Let's turn to the next slide, Slide 6. In this slide, did you pick the location of the 12 properties? And you have a number of pieces of information, including the purchase price. Can you tell us what the "purchase price" in this slide refers to?

A This refers to the acquisition, the original acquisition price of the properties and the date those properties were acquired.

Q When you say the "acquisition price," you mean the acquisition price the debtors paid for these properties.

A Correct.

Q Okay. And then you also have a valuation group at the far end, in the last column, Group 1 and 2. Do those refer to the groupings that you discussed a few moments ago, dividing the properties by state of completion?

A Yes. Group 1 are those ones that are currently under

construction. Group 2 are pretty much ready to sell, or no construction activities.

Q Okay. I'm going to move this along. If we turn to the next slide -- we can probably skip this slide and go to Slide 8. Mr. Chin, all of the properties are depicted on this map, the location of properties?

A Yes. These are in the center part of Los Angeles. And basically, a majority of them are around the ULCA area, and a bit north and to the east. The Hidden Hills properties are located further to the northwest of this location, in an area called, generally, "North of Calabasas." So it's somewhat over the hill, in kind of the San Fernando Valley, but also in its own little suburb there, called "Hidden Hills."

Q Okay. Let's move to the next slide, 9. Here, you've indicated the physical status of each project. You've previously testified that you had discussions with Plus Development. Did Plus Development provide the information in this slide, with respect to the development time frame?

A Correct. The information did come from Plus, and this is based upon their status of construction of each project. They do a weekly evaluation report as to status of each property.

Q Okay. So the information in the development time frame, anticipated completion, and project status and permit issued, that all came from Plus Development?

A That's correct.
Q Okay. But you -- as you stated, you physically inspected the properties, as well. Is that right?
A I did.
Q Okay. Turning to the next slide, 10. The next few slides, which we can go through quickly, are the various areas where the properties are located. What were you trying to depict in these slides?
A Essentially, a majority of the properties are located in this -- they call it the "Platinum Triangle," which is, generally, around Bel Air, Beverly Hills, and an area called "Holmby Hills." This is the most prestigious area in Los Angeles. They're, in some regards, in the Holmby Hills area, estate type of properties, larger lots, generally two acres or so, mansions on those, houses. Some of the highest-priced homes in Los Angeles, and in the world, are located in this area.

North of that area is Bel Air. That's a very exclusive area, as well. Very many homes that are priced over $25 million in this area. These are at a higher elevation. These are the ones I had spoken about that some have views of the Los Angeles area, the city lights, the ocean, downtown. And again, another area of some higher-priced homes there.

Further, as you go to the right side of the map, if you will, that's West Hollywood, and portions of Beverly Hills

adjacent. That's where some of the properties are located. Again, as you're looking north of the Sunset Strip, if you see on the map there, you generally have view properties. The Properties Number 9 and Number 7 and Number 3 are generally located in flatter areas, and those are part of the 12 properties.

Q Okay. We can flip through the next slide. Anything you want to add about the Hidden Hills area and what's depicted on this slide?

A The Hidden Hills area is unique. It's a suburb, if you will, of Los Angeles. It has been predominantly actor- and celebrity-owned. These are more equestrian type of lots that generally have homes that are 10,000 square feet or more. And it's a very private area, there's a guard gate. I think the celebrities like it because there's no paparazzi that can get in there. But you have -- I'm not a celebrity person, but the Kardashians are there, the -- I think the Jenners, sports figures, and music artist are all kind of collected in this area, and it's a very unique area for Los Angeles. Besides, you can have horses there, too.

Q Okay. And then the next slide is the Platinum Triangle and adjacent. Anything unique about this area of Los Angeles?

A Well, as I was mentioning about the higher-priced homes that are in this particular area, this particular graphic on

Page 12 basically will provide you kind of an idea of the volume of transactions that are over $15 million. This goes, generally, between 15 million to over $100 million in transactions. And there's quite a volume of this -- these type of homes.

These are very affluent individuals purchasing these homes. It's very common to have a twenty-, thirty-million-dollar home sell in this region. In particular, in the Holmby Hills area and Beverly Hills area, you're seeing home prices up to, as I mentioned, $100 million.

So what I wanted to do on this particular graphic is give a characterization of the type of price homes that are in this particular area. And it's -- you know, it's pretty exceptional because we're talking some pretty high-dollar-value homes.

Q Okay. We'll turn to the next slide, where you've presented some comparable sales data and analysis, and you've listed, by general location, various data points. Where did you get the sales data that's depicted on Slide 13?

A The sales came from a number of different sources. So the multiple listing service provides information. There are title companies that basically handle transactions that are not through sales of multiple listing. They give you indications and valuations -- or not valuations, but recorded sales date and prices. There's other, Redfin and Zillow,

that may give leads and data that might be helpful, that's not included in MLS or the title companies. And basically, I took all those data sources, combined them together to create a database that I thought was representative and as comprehensive as possible for the properties being appraised.

Q Okay. And from the table on Slide 13, it shows ranges of price per square foot, and then ranges of square feet and lot size. Did any of the properties at issue here fall outside of those ranges that are depicted on Page 13?

A Yes. So, first, this basically characterizes the approximate pricing of homes and the type of houses and the type of sized lots that those are located on. So, for the different areas, you look at Holmby Hills, it has the highest prices per square foot, larger lot sizes, if you look at that lot size area. And you can characterize different areas in these general price ranges.

However, the one property which is exceptional is the Owlwood property, it's known as "Owlwood." It is on ten acres, it's in Holmby Hills. It is the largest private landholding in Holmby Hills. It's adjacent to Los Angeles Golf Course -- Country Club Golf Course. So it has great open space. It's unique for those type of mansions. Most of the homes that have sold in that area are on two acres, generally ten to 20,000 square feet; whereas, Owlwood is a little smaller home, but it's located on ten acres.

To give you a frame of reference, the Playboy Mansion just sold, it was located in Holmby Hills. It sold for $100 million. It was on a two -- I think two-and-a-half-acre site. Our site is four times as large, doesn't necessarily have the same celebrity ownership, although Sonny and Cher did own it, and Tony Curtis was there, as well, on the Owlwood property. But just as a frame of reference, that Playboy Mansion is a recent sale in that exact area, just around the corner from Owlwood.

Q Okay. And were sales like the Playboy Mansion sales that you considered in your appraisal?

A It is.

Q Okay. And then you say, under the table, that the sales data that's depicted was compared to each property, and adjustments were made for various differences. What kind of adjustments did you make?

A So, as we look at any particular area, there are some homes -- like in the Beverly Hills Flats areas, there are homes that are basically existing structures that were built from the '20s and the '50s. Some have been slightly renovated; others have been fully renovated and modernized; others have been demolished and razed and then rebuilt. There are different prices for those type of structures. Obviously, unrenovated would have a lower end of the range. A fully renovated and completed property would be at the

higher end of the range in the Beverly Hills Flats.

In the particular areas in Bel Air, you'll see some land, properties that have what are called "promontories." They're basically on points set at elevated levels, which basically offers that particular site tremendous views of the Los Angeles area. Those type of locations are of higher value than, let's say, a flat property, or a property that may only have a slight view of a hillside or of a downtown area.

So those are all little refinements and adjustments, dependent onsite location, site topography, number of acres, whether the house has been renovated or not. Those are all drivers of where valuations lie.

Q Okay. And then you also indicate information about what you consider to be the typical buyer for some of these homes. Where did that information come from?

A Just through interview, and then looking at some of the ownerships, that I understand who owns what. I'm not familiar with most of these people, they're out of my ZIP code, but they are pretty wealthy folks.

Q Okay. And then the last paragraph of Page 13, you indicate that, for the Group 1 properties under construction, you did an analysis based on estimates less construction costs. Can you describe how you went about valuing those under constructions projects?

A Those -- for those properties under construction, I estimated the value as if it were complete, and then I deducted the cost of construction, as well as considered the time to basically finish the construction, as well as the time to market the properties, and then to come up with its current as-is value.

Q Okay. Did you use any assumptions in your analysis? Were you asked -- let me ask a different question.

Were you asked by the debtors or counsel to make any assumptions when doing your analysis?

A I was asked to, basically, estimate the market value of each individual property, and then aggregate the value.

Q Okay. And we can turn to the last slide on Page 14. And you provide an aggregate value of the properties. Why did you provide the value on an aggregate basis?

A Well, I was asked to.

Q Okay. And how did you determine the aggregate value? This may be an obvious question.

A The individual property values, I estimated the individual property values, and then summed them.

Q Okay. And your conclusion is that the total value is as depicted on Slide 14?

A Correct. $242,650,000.

MS. CONN: Okay. Your Honor, I have no further questions for Mr. Chin, subject to any redirect based on

cross-examination.

THE COURT: All right. We'll take a ten-minute break, reconvene at 10:30 --

MS. CONN: Thank you, Your Honor.

THE COURT: -- and we'll begin with cross-examination then. Stand in recess.

UNIDENTIFIED: Thank you, Your Honor.

(Recess taken at 10:20 a.m.)

(Proceedings resumed at 10:31 a.m.)

(Call to order of the court)

**Josh** THE COURT: Everybody take your seats, please. Thank you.

I was advised during the break that somebody's taking photographs in the courtroom. You might have noticed when you got off the elevators, there were signs indicating that photography in the courtroom is not allowed. So, standing there is a court security officer, who, if I see or hear of any such thing again, will confiscate either a phone or a camera, whatever's being used to take photographs.

Now, if there's anyone in the courtroom who doesn't understand that instruction, please let me know now.

(No verbal response)

THE COURT: All right. Thank you.

Mr. Kortanek?

MR. KORTANEK: Thank you, Your Honor.

Do you want to address the Court?

MR. SANDLER: I get the floor right now.

Your Honor, very briefly, I think I'll be shorter than Mr. Kortanek, so ...

THE COURT: Probably for the rest of your life.

(Laughter)

MR. SANDLER: You're -- at least vertically, Your Honor.

(Laughter)

MR. SANDLER: For the record, Your Honor, Brad Sandler, Pachulski Stang Ziehl & Jones, on behalf of the official committee of unsecured creditors.

CROSS-EXAMINATION

BY MR. SANDLER:

Q Mr. Chin, you had mentioned that to determine values of the properties you spoke with, I think it was Plus Development, as well as Mercer Vine; is that correct?

A Yes, it is.

Q And Mercer Vine is the listing agent for the properties; is that right?

A Yes.

Q And listing agents typically get paid as properties are sold?

A Generally, yes.

Q Generally speaking. And do you know if Mercer Vine is

the debtors' only listing agent?

A I don't know that for a fact.

Q Okay. Do you know how many homes that Mercer Vine does list for the debtors?

A I don't.

Q Were they the listing agents for the properties that you appraised?

A I believe they were, yes.

Q Okay. And do you know that -- let me rephrase that -- you are aware that Mr. Shapiro is the majority owner of Mercer Vine, correct?

A I am aware of that, yes.

Q Great. Thank you.

MR. SANDLER: That's all I have, Your Honor.

THE COURT: All right. Thank you.

MR. KORTANEK: Your Honor, Steve Kortanek from Drinker Biddle, on behalf of the ad hoc committee.

CROSS-EXAMINATION

BY MR. KORTANEK:

Q Good morning, Mr. Chin.

A Good morning.

Q How are you?

A Very well.

How are you?

Q Good. Thank you.

A Good.

Q I'm well. Thanks.

I wanted to address what I'll call "the bridge" in your report going from the comp set to your valuation. First off, though, let me ask you a few questions about confidentiality and concerns that -- is there a confidentiality concern in terms of disclosing property-by-property values in a public way in this case?

MR. NEWMAN: I object, or maybe that's too strong a word, but the appraisal is not involving these confidentiality concerns; these are the debtors' concerns. So, I'd be happy to discuss ways in which we could discuss that information in private. I don't think it's an appropriate question for the witness, although, obviously --

MR. KORTANEK: And that's fine, Your Honor. Your Honor, I essentially wanted to raise the issue because, of course, we want to be sensitive to it, as well. I think all parties and stakeholders in the case are. So, that's fine, Your Honor. I intend to address questions that bear in mind what I believe to be some confidentiality concerns on the part of the companies.

THE COURT: Very well.

BY MR. KORTANEK:

Q So, are you familiar with the term of a bridge getting from a comp set to your actual valuations?

A Yes.
Q And did you perform a bridge analysis here to get from your comp set to your valuation?
A Yeah, I didn't call it a "bridge analysis" but, yes.
Q Okay. And just describe, briefly, sort of how you did that, doing from your comp set. I know you testified about a number of different factors -- subjective, property by property, a number of factors -- but can you give us a little more flavor of how you did that bridge from your comp set to your valuations.
A Certainly. I had a database of approximately, I think it was over 300 sales that were collected basically between 2015 and 2017. I looked at those sales. I categorized them and basically segregated them into various locations; namely, the Holmby Hills, Bel Air, Beverly Hills, Beverly Crest, Beverly Glen, Hollywood Hills areas. I then looked at those sales and then determined which ones were essentially most comparable to the properties I was appraising, either in terms of time of sale proximate to the date of my valuation, also, whether they had been renovated or not.

And I have looked at those comp set, looked at them, and then tried to compare them to my subject properties and then estimated the value for each property.
Q Did you come up with a -- is your testimony that you did a separate bridge or comp to actual valuation for each of

the individual 12 properties, here?
A Yes, sir.
Q Okay. Is it true, to some extent, sir, that the macrofactors you testified about, such as trends in the local and national market, might already be priced into some of your comp set?
A I think that's a fair assessment. I mean there's always -- because they're timely relative to the date of appraisal, they would consider the economic environment that it's in.
Q Do you have any -- can you provide us any sort of estimate of the extent to which what I'll call the "macrofactors" were additive to numbers you derived from your comp set?
A I'm not sure how to address that. I mean it's integral as a part of the whole value equation, supply and demand, and economic drivers and specific locations. It's certainly an element of all properties being in at the Los Angeles region.
Q Let me ask you a set of questions about, are you familiar with the term of a "sensitivity analysis"?
A Yes.
Q Did you do a sensitivity analysis in terms of how you bridge from comps to your valuations?
A Sure. I would call it a sensitivity analysis, but I was looking at certain ranges of per-square-foot values that

would be applicable to the property and then ended up with a most probable price or per-square-foot value or price for that prospect, which equated back to a certain per-square-foot price.

Q So, if I'm understanding correctly, you don't end up with a high/low for a property. You try to pick a single, most probable price per square foot?

A My financial conclusion is the most probable price based upon, essentially, in this case, for certain properties, I would look at a price per square foot and I select two that it would be falling in that range and then from that, it would be indicated values and then I would select that value and then it could be converted back into a price per square foot.

Q Mr. Chin, if you were engaged by the debtors and the mandate were to convince a new-money DIP lender that there was sufficient collateral in these 12 properties to use as collateral for a new-money DIP, your valuation and methodology and conclusions wouldn't be any different, would they?

A I would -- well, I don't know the nature of my valuations. I am looking at it as free and clear, unencumbered, irrespective of -- or regardless of whatever financing structure is being contemplated.

Q Okay. So, in other words, if -- you're familiar here

with the idea that Hankey is a proposed new-money DIP lender looking for collateral; do you have that general understanding?

A I have that general understanding.

Q And so if, for example, hypothetical, if your mandate was to try to convince Hankey or any other DIP lender that there was sufficient value in the 12 subject properties to be collateral for new-money financing, your valuation would be the same as we have today, right?

A My valuation is whatever use it's going to be for, it's my opinion of value for these particular properties.

Q Okay.

MR. KORTANEK: No further questions. Thank you, Your Honor.

THE COURT: Thank you. Does the U.S. Trustee have any questions?

MR. FOX: Not for this witness, Your Honor. Thank you.

THE COURT: Okay. Now, ordinarily I would limit the ability to cross-examine to those who've actually filed responses to motions, but in this case, because of the importance of this governmental entity in this case, I'll ask the SEC if it wishes to cross-examine this witness.

MR. JACOBSON: Your Honor, Neal Jacobson, on behalf of the SEC. No, Your Honor. I appreciate your

invitation.

THE COURT: All right. Is there anyone else who wishes to cross-examine this witness?

(No verbal response)

THE COURT: I hear no further response.

Is there any redirect?

MS. CONN: No, Your Honor. Thank you.

THE COURT: Thank you, sir. You may step down.

THE WITNESS: Thank you, Your Honor.

(Witness excused)

MS. CONN: Your Honor, the debtors would like to call as their next witness, Mr. Larry Perkins.

THE COURT: All right. Thank you.

And while Mr. Perkins is coming forward, I just wanted to add something about the photographing. I order and direct that those photos taken not be shared either electronically or on any social media and -- well, I'll let it state that -- or in any other form or way with others.

Go ahead, Al.

THE CLERK: Raise your right hand and place your left hand on the bible.

LAWRENCE RUSSELL PERKINS, WITNESS FOR THE DEBTORS, SWORN.

THE CLERK: State your full name for the record, spell your last.

THE WITNESS: Lawrence Russell Perkins, P-E-R-K-I-

N-S.

THE COURT: I'll just add one note before you begin your examination. I have an internal meeting here at around noon and another hearing scheduled for 1:30. If we do not conclude our hearing by then, we'll recess at about noon and reconvene at 2:00.

MS. CONN: Thank you, Your Honor. And we'll be brief with this witness.

THE COURT: Okay.

MS. CONN: And in light of that, Your Honor, what I was going to propose is we already filed a declaration by Mr. Perkins on December 4th and Mr. Perkins previously testified on December 5th. I was going to propose that in lieu of direct testimony on his background and position at the debtors, that we offer that as a proofer in lieu of direct testimony. I'm happy to hand up another copy if the Court does not have a copy of his declaration in hand.

THE COURT: Is there any objection to proceeding in that fashion?

UNIDENTIFIED: No objection.

UNIDENTIFIED: No objection.

THE COURT: All right. That's fine.

DIRECT EXAMINATION

BY MS. CONN:

Q Good morning, Mr. Perkins.

A Good morning.
Q Can you just remind the Court what your position is with respect to the debtors.
A I'm the chief restructuring officer of the debtor.
Q Thank you. You heard a few minutes ago that Mr. Chin testified about his opinion on the appraised values of 12 properties which are being offered in form of replacement liens, as adequate protection to noteholders?
A Yes.
Q Okay. Did you have an opportunity to review his report and his conclusions?
A I did.
Q Okay. And you considered his conclusion with respect to the aggregate value of those properties?
A I do.
Q Okay. And do you recall the aggregate value of the properties?
A Two hundred and forty-two million, I think, six hundred-and-fifty-thousand dollars.
Q Very good. Can you tell us what the debt is associated with those 12 properties on aggregate basis?
A One hundred and sixty-nine million, three hundred-and-thirty-five-thousand dollars.
Q Okay. And not to challenge you with any math without a calculator in front of you, can you also tell us what the net

equity would be on those 12 properties subtracting the debt?
A Eighty million and one hundred and fifty-four dollars -- $80,154,000.
Q And I don't have a collateral in front of me. I wanted to address a few other topics with you today and one of them is new cash flow projections that you have prepared.
MS. CONN: Your Honor, Mr. Beach mentioned this morning that we just filed revised cash forecasts. I have another copy if Your Honor would like me to hand that up and I'd like to hand one to the witness.
THE COURT: Very good. Is it your intention to introduce it into evidence?
MS. CONN: It's already been filed, but I can introduce it into evidence if Your Honor would prefer.
THE COURT: I'm just asking because if you want to do that, give me a clean copy.
MS. CONN: Okay. I was not planning to do that since it's already in the record.
THE COURT: Very well. Thank you.
BY MS. CONN:
Q Mr. Perkins, take a moment and take a look at that document I just placed before you. Have you seen that document before?
A I have.
Q Okay. And I'm referring to the attachment, not the

notice that's attached to it.

What is that document?

A That is our forecast of cash flow for the next 13 weeks --

Q Okay.

A -- for the Woodbridge Group of Companies.

Q Did you prepare this document?

A I and my team did, yes.

Q Okay. I'd just like to walk through some of the elements of this document.

MS. CONN: And we have extra copies if people need us to pass them around.

BY MS. CONN:

Q Starting with the top of the document, you start with an operating cash beginning book balance. And just for purposes of this discussion, I'd like to direct you to Week 2, ending in 12/29 so that we're looking at the same information.

How do you derive that operating cash beginning book balance?

A That is effectively -- at the beginning of Week 2, that is our estimated total cash in the bank across the debtor bank accounts.

Q And does that amount assume that you receive the $19 million that you're seeking today?

A It does not.
Q Then underneath that line I see a total net property sales non-collateral, what does that refer to?
A So, there are currently a certain number of assets that are pledged as collateral for the debtor in possession loan and then there are other assets that are not pledged as collateral for the debtor in possession loan. So, the line titled "total net property sales, non-collateral" reflects the anticipated sales of properties that are not pledged as collateral for the debtor in possession loan.
Q Okay. And what happens if those sales close, what happens to the proceeds of those property sales?
A When the sales of those properties happens, they get deposited into a segregated debtor account that is being held for the -- until a later date; basically, being set aside and not being used for cash for operations.
Q Okay. And across that line, now looking beyond Week 2, I see several entries on the property sales line. Are those all properties that are in contract for sale?
A No.
Q So the amounts that you've included in here, those are just estimates, assuming that there will be a closed sale?
A Yes.
Q Okay. And you made a distinction between the collateral and non-collateral property sales. What happens

with the proceeds of any sale of collateral properties?
A When a sale of the collateral property is completed, the balance of the transaction or the dollars that come in from that sale are applied against the debtor in possession loan to pay down the loan and then there would be an additional availability, based on the formula in the debtor in possession loan, after that is applied.
Q And then you have a line for total inflows; that's just the total of the property sales?
A Yes.
Q And then if there were other inflows, I see that would be included as well?
A Yep.
Q After that, you have a section on disbursements. Generally, can you describe the kinds of disbursements that you've been making on behalf of the debtors?
A Yes, by and large, the disbursements are in the continuance of the development of these properties. The largest line item there is the general contractor costs, which are the people who are actively working on the properties on a day-to-day basis. There's other costs in here that -- the total Plus Development costs, that's our project management firm that we use. The maintenance cost is the maintenance of the properties along the way -- mowing the lawns, security services, things like that. The marketing

costs are the costs of marketing these assets, the actual brochures and other things required to market these assets. And those are the primary things that we've been spending our money on.

Q Okay. What are the soft cost and design?

A Soft cost and design would be construction-related costs that don't involve physical work. It is the work associated with design, engineering, entitlement, the construction costs before construction happens.

Q Okay. With respect to the construction costs and the costs associated with developing the properties, have you or your team done an independent assessment of those costs and a value of those expenditures?

A We are in the process of completing a fulsome analysis on each one of the properties. We have a third-party project management firm that we have relied on to date to advise us on the work that needs to be done on these property. They have proven to be very accurate so far and we continue to use them until the analysis is complete.

Q And who is that third --

A Plus Development.

Q And so the numbers that are indicated here, just taking as an example, Week 2, of general contractor costs of $2,039,000 is that something that you're in the process of assessing?

A Yes, so the way that two million thirty-nine is derived is taking the total contract value on a line-by-line basis and then dividing it by the duration left on that contract. So it's an estimate of what we are required, under our contractual obligations.

We're currently undergoing a more complete and more specific analysis of the timing of those payment along the way so we can get some more precision around that, but to date, this has been a fairly accurate way to gauge it.

Q Okay. But in addition to considering whether or not the amounts are accurate, are you doing any assessment of whether it's appropriate to make these expenditures in light of the debtors' status?

A Yes, absolutely. So, we are evaluating the properties that these are going to and in the meantime -- and as we're doing that, we want to ensure that we're maximizing value to the estate by completing these properties and that is certainly the top consideration before any expenditures are made.

Q Okay. Thank you.

So, looking further down this list of disbursements, there is a line item for total funds interest payments. What does that refer to?

A That reflects payments that are anticipated to be made to the noteholders. The number itself is reflective of the

last time the noteholder payments were paid, which is the November payment, and we have included in the cash flow, as a set aside until there's a decision as to whether or not we can pay those things.

Q Okay. So, if I'm reading this correctly, there are no payments expected until Week 3; is that right?

A Yes, they're typically due on the 1st of the month.

Q Okay. Then going further down, some of this is self-explanatory, and I don't want to burden the Court with all of these obvious questions, but getting down to the last third of this document, we see an entry for payments to advances from loan of a negative seventeen five seventy-five million dollars; do you see that?

A I do.

Q And what does that refer to?

A That reflects -- it's two numbers, really, combined -- but that reflects a draw of $19 million under the debtor-in-possession loan offset by a sale of $1,425,000, which is an anticipated closing of the collateral property. So the best way I think about it is, if we get $19 million on Monday and then you sell one property for $1.4 million on Friday, the sum -- the net of those two numbers is the seventeen million dollars five seventy-five that is shown there.

Q Okay. So, that assumes you receive the 19 million after today and also that this property closes, as reflected

at the top of the chart?
A Yes.
Q Okay. And then you have net cash flow underneath that -- actually, before we get to that, I see there's a line for loan interest and there's nothing that appears until Week 3. Can you tell me what that represents.
A Loan interest is calculated and paid on a monthly basis, so it reflects the balance outstanding at any given time to be paid. So of the $87,000 -- $87,000 reflected in Week 3 would be based on the $6 million that has been drawn, plus the 19 million for the appropriate period of time.
Q Okay. So, again, that assumes that you draw another 19 million after today?
A Correct.
Q Okay. And then there's nothing entered for any of the weeks for loan fees. What does that represent?
A The origination -- the original -- the origination fee due on the loan was off -- was paid out of the original six-million-dollar draw, so those fees have already been incurred so they're not in the forecast.
Q Okay. So if you receive additional financing, there won't be an additional fee; is that right?
A Correct.
Q And then you have a net cash flow from all activities of eighteen million two seventy-six. How do you get to that

number?

A That is the -- the net cash flow from all activities is the sum of the -- is the inflows, less the disbursements, plus any financing. So in this particular case, it would be inflows of $3.7 less outflows of $700,000 -- $701,000, plus net advances from loan of $17.6 million.

Q Okay. And then I see you have an ending book balance of thirty-six million two ninety-six?

A Yes.

Q And what does that account?

A That reflects the book balance of cash that's available or anticipated to be available at the end of next week, plus the draw of the net $17.5 million.

Q Okay. And then underneath that you have total proceeds from property sales of sixteen seven thirty-three. Does that include both collateral and non-collateral properties?

A No, that just includes the non-collateral properties.

Q Okay. And I think you just testified the amounts -- any amount that you receive on the non-collateral properties will be placed in a segregated account so that's not available operating cash; is that right?

A Correct.

Q Okay. And then I see you have listed an ending balance -- again, I'm still on Week 2 -- of twenty-three million five seventy-five. And how do you arrive at that number?

A Six million plus 19 million, less 1.4 million.
Q Assume that property sale you just discussed?
A Yes.
Q So if you don't receive the 19 million that the debtors are seeking today, what would be your net operating cash ending book balance by the end of Week 2, which ends in 12/29?
A Negative -- approximately negative $2.5 million.
Q Okay. What's your best estimate, based on your analysis of the forecasts and disbursements and the operating cash as to how much longer the debtors can operate without any additional financing?
A Without any additional financing we're going to be negative cash next week.
Q Okay. I wanted to turn to one other topic briefly. In your first day declaration that we filed on December 4th you stated that Hankey, LLC has agreed to provide debtor-in-possession financing; is that right?
A Yes.
Q Okay. What efforts were made to obtain that financing?
A We selected -- we had talked to the various internal constituents, including our counsel and our independent manager, or what is now our independent manager, and we contacted 14 different firms that were targeted to be specific around this asset class. Of those 14 firms, 11

signed nondisclosure agreements. We did it on a no-name basis at first, of course.

Eleven signed nondisclosure agreements. We provided them a package of information that highlighted the opportunity for the debtor in possession loan. Of those 11, we got termsheets from five different firms. Of those five different firms, we, what I would call "cherry-picked" the best terms out of the various different termsheets and tried to conform them -- or not tried to -- but did conform them to a uniform termsheet and told the various parties to bid against that termsheet with, effectively, not to exceed terms.

Of the five that were given the form termsheet, four responded to the termsheet; one dropped out and ultimately, Hankey was the best termsheet we received.

Q Okay. Let me take a step back. You mentioned that you initially contacted 14 potential lenders. How were those lenders selected?

A It's a unique loan. We needed people with deep real estate experience. We had a bias towards people that were familiar with the geography, because it is unique, but that did not limit us as far as where we went. We went that way and then expanded from there.

And then we had people that could move quickly that were experienced with doing debtor-in-possession financing

and, frankly, had the capital available to do a loan of this size.

Q Okay. And were you personally involved in the process?

A Yes.

Q Who else was involved in the process?

A Members of my team providing data and, otherwise, but I was the primary person.

Q Okay. Were there any hurdles you experienced in obtaining interest from lenders to provide the financing?

A Yes.

Q What were those hurdles?

A Given the nature of the asset being single-family homes, there's not a lot of people that typically loan against things like this; that was probably the primary one. Also, the speed that we were moving at to get to a close was another hurdle, but the asset class underlying it and the specific liquidity of that asset class was probably the biggest limiting factor.

Q Okay. Any other conversations that were expressed to you by potential lenders in their decision to make a bid or not?

A Certainly, the environment around this company between the investigations and other things complicated things substantially, as well as the underlying asset class.

Q Okay. Can you describe in general terms the financing

that you were able to obtain from Hankey?
A Sure. The loan is a prime plus five loan, so, effectively, think of it as a 9.5 percent loan. There are -- there's an all-in 3 percent fee; 1 and a half is earned at origination and the other is at the end, at the exit. There are very nominal covenants associated with it. There is no unused line fee associated with it and those are the primary terms.
Q Okay. And why was Hankey selected over other lenders?
A Ultimately, it came down to cost. They were the lowest-priced lender that was out there. I think the secondary factor, because at the end when we had the three termsheets that were really close, there was a factor associated with our vendor base or our contractor base has a familiarity with Hankey as they also have a home building division in Southern California, so it gave them some credibility beyond another person, but ultimately it came down to cost.
Q Okay. And does Hankey does also agree to consider providing exit financing to the debtors?
A Yes, absolutely. They've expressed that and it was in their original termsheet, but when we did the conformed termsheet, we removed that as part of the process, but they have certainly expressed interest in doing that.
Q Okay. And what's the security for the Hankey

financing?

A Twenty-eight individual debtor-in-possession properties.

Q Okay. Based on the efforts that you and your team undertook to obtain financing, do you believe the selection of Hankey was in the best interests of the estate?

A Yes.

Q Okay. Thank you.

MS. CONN: Your Honor, subject to any redirect, I don't have any further questions for Mr. Perkins at this time. Thank you.

THE COURT: Thank you. Does the unsecured creditors' committee have any questions?

MR. SANDLER: Briefly, Your Honor. For the record, Your Honor, Brad Sandler with Pachulski Stang Ziehl & Jones, on behalf of official committee of unsecured creditors.

CROSS-EXAMINATION

BY MR. SANDLER:

Q Sir, is there anything in this loan that would prevent the debtor from paying it off at or before the final DIP hearing, which is scheduled for January 10th of 2018?

A I'm not sure I understand your question. Are you saying is there anything that prevents us from paying the loan off?

Q Correct.
A Not that I'm aware of.
Q And if somebody were to come along, a lender were to come along on better terms than the current loan, the debtor would be interested in talking to that person, correct?
A Absolutely, yes.
Q And the other terms might be a lower rate, correct?
A That would be one, yes.
Q Lower fees?
A Yes.
Q All right. Non-priming?
A Certainly.
Q Would you be surprised that the committee was contacted by three separate parties that were interested in providing financing in this case?
A No.
Q Okay.

MR. SANDLER: That's all I have. Thank you, Your Honor.

THE COURT: Okay. Ad hoc committee?

MR. KORTANEK: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. KORTANEK:
Q Good morning, Mr. Perkins.
A Good morning.

Q I'd like to talk a little bit about the DIP process. You've testified a little bit about the shopping process that you undertook or oversaw. Is it a fair characterization, sir, that that was a very brief process that you had to actually shop the DIP here?
A I'm not sure what "brief" means.
Q Do you recall when you started the process?
A At approximately the beginning of November.
Q Do you recall the day or date range?
A No -- first week.
Q What sort of timing constraints were there to your understanding and why, in terms of the period that you had to shop a DIP?
A Ultimately, liquidity was driving the decision-making.
Q Do you recall when the Hankey proposal came in?
A No.
Q If I represent to you based on the termsheet the debtors produced to us, that it was November 17th, would that --
A Yeah, I think there was two -- the reason I can't recall is there were actually two. There was one that was relatively early that we subsequently conformed into the form termsheet and then there was another series of termsheets that came in around the 17th or the 19th, right around there.
Q Okay. Great. Thank you.

You mentioned a package that went out initially, sort of a teaser, I guess you'd say or an information memorandum; is that right?

A Yes.

Q Was there also a data room set up for potential lenders?

A Yes.

Q Okay. And how would you characterize the contents of that data room and how complete it was an how thorough in your view?

A It was -- again, I can't quite describe completeness, but there was a lot of information that was provided to them based on the requests from every different lender. We provided the same data to every single lender.

Q Okay. And, just generally, can you describe what was in the data room?

A Cash flow information, property information, any reports we had around the property, title report, things like that.

Q Okay. Did Mr. Shapiro see any of the DIP proposals, to your knowledge?

A I don't believe he saw any of the DIP proposals, no.

Q How about anyone advising Mr. Shapiro or working with him or representatives?

A They were shared with his counsel.

Q Okay. And did feedback come from Mr. Shapiro or his counsel?

MR. NEWMAN: Objection, Your Honor. I'm going to instruct the witness not to answer to the extent that it would implicate any privileged communication with yourself or Mr. Shapiro, which you're aware of.

THE COURT: No, that question isn't the objectionable one, it's the next one. So, if you're able, you may answer that question yes or no.

THE WITNESS: Can you repeat the question?

BY MR. KORTANEK:

Q Sure. Did Mr. Shapiro or anyone advising or working with Mr. Shapiro provide any comments back to you or to the company with respect to DIP proposals?

A No.

Q How many of the original 11 prospective lenders with whom the debtor entered confidentiality agreements indicated an interest in a plan exit to these cases?

A I can't recall the of the original 11, but of the -- so, I can't recall the original 11.

Q Do you have any sense? Was it more than just Hankey?

A Yeah, I know of the five, virtually all of them had an interest in the plan exit.

Q Okay. Now, let's turn for a minute to the process of sizing this DIP and how you went about calculating that.

It's true, is it not, that a key part of your sizing is looking at 13-week revenues, right, sort of the top line item?

THE COURT: You need to answer aloud.

THE WITNESS: Yes. I'm sorry, Your Honor, I didn't hear the question.

BY MR. KORTANEK:

Q When you first came to the Woodbridge situation on or about October 23, as you testified in your first day declaration, is it true that part of the debtors' cash inflow were the sales of notes to individuals?

A Yes.

Q Okay. And would it surprise you to know that notes may have been sold to individuals as late as November 22?

A Was the question, would it surprise me?

Q Yes.

A No.

Q Do you have any knowledge of whether notes were sold as late as November 22?

A Nothing, really.

Q Okay. So, as you went about the process of analyzing the debtors' cash flow and formulating projections for the DIP, what steps did you take as far as looking at the note-sale part of the debtors' historical revenue?

A I'm not sure I understand the question.

Q Did you make any assumptions that there would be any continued note sales or any other fundraising?
A No.
Q Okay. I guess, generally, then to get to the projections that underline this deal, what steps were taken to, since October 23, to change that revenue stream, as far as note sales versus just collateral sales?
A Well, ultimately, the revenue stream is really the sale of the homes and the other assets that are part of the company, so that's the only revenue stream outstanding. There's no additional note sales or unit sales or anything else.
Q Right. And I understand that's in the DIP, the 13-week model, but what steps or assumptions were taken as you were formulating that model, as far as changing from that historical note-sale platform that you just testified to, to one that we have now where there's no note sales; what steps were taken to make those changes?
A I'm sorry, I'm still not understanding the question. What steps, as it relates to from a business standpoint or from a modeling standpoint?
Q Well, you can answer as to each one. So, from a business standpoint, when you got to the company October 23rd, there were still note sales going on, right?
A Yes, when -- yes.

Q Okay. So, to change the debtors' cash flow from the actual that you encountered when you first came to the companies to what's happening now or what's in your projections, what steps did you undertake or the company undertake to change that revenue stream?
A They curtailed the sale of notes.
Q Okay. And how -- part of that, what's your understanding of how the company undertook that?
A I wasn't involved in that part. I came in really -- that was not part of my engagement, so I was -- I came in after the note sales were terminated.
Q Okay. By the way, I should ask, did you receive any projections that the company had after October 23 that did include estimated or projected note sales going forward?
A Is the question, did we receive any projections from the company?
Q Yes.
A No.
Q Okay. Do you have your first day declaration with you on the -- in your binder?
A Yes.
Q All right. So the top of the ECF header that reads "Page 7 of 157" -- I don't recall the document number, but I'm getting to the end of Paragraph 16, do you have that?
A I do.

Q All right. Would you read that last sentence of Paragraph 16, please, starting with "The funds ...," so it's the top of Page 7 of 157.

A Sure. You're asking me to read it? So, okay.

The funds were historically controlled by -- that one?

Q The funds have raised money ...

A Okay. Thank you.

Q This is Docket Number 12.

A Yeah, I got it here:

"The funds that raised money from thousands of retail investors by selling investments referred to as units (the units) and notes (the notes)."

Q Okay. Thank you.

And that's still your testimony today, correct?

A Yes.

Q Okay. Let's turn then to the question of priming. In any of the efforts on your part to secure DIP financing, evaluating proposals you looked at, did you or the company make any attempt to obtain financing on a non-priming basis for the --

A Yes.

Q Okay. And can you describe those efforts, as summarized as for the Court.

A We asked if they would do the -- do a loan on a subordinated basis and they said no.

Q Does that make sense to you from a market standpoint and potential DIP lender standpoint, given Mr. Chin's expert testimony?

MS. CONN: Objection.

MR. NEWMAN: Objection.

MS. CONN: The witness is not an expert and may not understand the basis of that question.

THE COURT: Any response, Mr. Kortanek?

MR. KORTANEK: Well, I'm not asking for an expert opinion. I'm asking for Mr. Perkins' view as the CRO attempting to obtain DIP financing.

THE COURT: Sustained.

BY MR. KORTANEK:

Q So Mr. Chin's expert testimony provides that there's an equity cushion of approximately how much for the 12 property?

A Eighty million.

Q Okay. And have you looked at the equity cushion, if any, on the remainder of the properties that are -- that the DIP is seeking liens in?

A I have not.

Q Okay. Is there -- do you know if the company has done any analysis of equity cushion in those properties?

A We have along the way. I don't recall it right now.

Q So, if you're unsure about any equity cushion beyond the 80 million -- let me strike that.

Do you believe there's any equity cushion in any of the other PropCos other than the 80 million for these 12 properties?

A Yes.

Q Okay. Do you have an idea or an understanding of what that other equity cushion might be in the aggregate?

A No.

Q Any idea of a range?

A Not -- I'm not ready to do that. We're working on that analysis. That's a key part of it.

Q Do you have any view whether that equity cushion, the combined equity cushion, the 80 million on the 12 properties that Mr. Chin testified about and the rest of the PropCos would be -- should be sufficient to support a DIP that's non-priming?

MS. CONN: Objection.

MR. NEWMAN: Objection, Your Honor. That calls for expert testimony.

THE COURT: All right. Counsel, you've got to decide. Who wants to stand up here for the debtors and if you need a minute to talk about it outside of my presence, I'll give you that time.

MR. NEWMAN: Thank you. My apologies, Your Honor.

THE COURT: Any response to either objection, Mr. Kortanek?

(Laughter)

MR. NEWMAN: Just for the record, Your Honor, if I may state the objection, it calls for expert testimony which this witness is not qualified and there's no foundation for it.

THE COURT: Any response?

MR. KORTANEK: Well, Your Honor, Mr. Perkins, to my understanding, is in the business of turnarounds and shopping DIPs, so this is his daily bread.

THE COURT: Overruled.

MR. KORTANEK: Thank you, Your Honor.

BY MR. KORTANEK:

Q Do you need me to repeat the question?

A Yes, please.

Q I will try my best and we'll see how many objections we get.

All right. So taking the entirety of the equity cushion that Mr. Chin's $80 million for the 12 properties and what you believe the equity cushion is for the remaining properties, do you believe that's sufficient to go to the market and obtain DIP financing on a non-priming basis?

A Since I cannot articulate how much equity cushion is there, I don't think the rest of the market could articulate how much equity cushion is there, so the market clearly spoke and said no.

Q Thank you. Have you raised with any of the prospective lenders or with Hankey, the idea of making priming subject to the final hearing in these cases; in other words, non-priming for the interim in a much lesser amount than priming reserved for the final hearing?
A We raised the issue of priming and it was a nonstarter.
Q But you didn't raise it on an interim final basis, as I asked, did you?
A I have not, personally, no.
Q Do you know if anyone else has on behalf be of the company?
A Not aware of it.
Q Okay. Would you be willing to make that request?
A Sure.
Q Can you describe for the Court the process, if any, since you became involved in Woodbridge, of analyzing the liens granted to noteholders in these cases?
A That's -- the point on that has been by our legal counsel. The majority of the work on that has been run by our legal counsel.
Q Understood. From a financial and CRO standpoint, have you done any analysis of one might call a "waterfall analysis" for noteholders on a fund-by-fund basis?
A It's underway, but we haven't completed that yet.
Q Okay. And what evaluation, if any, has been done on

the adverse effect on noteholders of priming?
A I can't speak to any evaluation that's been done on that.
Q Okay. So you can't testify today whether noteholders would be impaired by priming or not?
A Well, what I can testify to is that without liquidity to complete the properties, then the noteholders will be impacted more than what I believe the value of the -- that would be added by completing the properties.
Q But you're not a real estate expert today, though, are you?
A I'm not.
Q Okay. Isn't it possible, sir, that selling an uncompleted property in Holmby Hills with a (indiscernible) as Mr. Chin testified to, could yield a -- strike that.
MS. CONN: Objection. We've established that he's not a real estate expert.
THE COURT: He's withdrawn the question.
MR. KORTANEK: (Indiscernible). I figured I'd have a couple objections, so I thought I'd withdraw it.
UNIDENTIFIED: (Indiscernible) like that, sir.
(Laughter)
BY MR. KORTANEK:
Q I want to talk about process on the adequate protection front. Mr. Perkins, have you considered or thought through

what exactly happens if adequate protection is -- needs to be called upon under this DIP, an adequate protection package? Have you done any modeling, for example, of how the adequate protection mechanism in this DIP would be actually carried out if there's a DIP defaults and there's a sequence of events that require the adequate protection payments to be invoked?

A We've contemplated it.

Q And describe what that process would involve, vis-a-vis, the noteholders who are in that adequate protection bucket.

A We would -- so, vis-a-vis, the noteholders in the adequate protection bucket. So, we would seek to monetize the assets to a third-party buyer to liquidate them and turn them into cash that we could use for adequate protection.

Q So, where do the noteholders sit? How do you allocate noteholders in particular adequate protection buckets, is it just a complete aggregation of all noteholders across the board and you throw them into the 12 properties and it's just a big mix or how's that actually done?

A We're still working on that. We don't -- I don't have clarity on that right now.

Q Okay. So, isn't it true that there's actually no real design to how that, of this very adequate protection mechanism that the debtors are proposing, would actually get

carried out and done in a feasible way; is that right?
A I don't believe that to be the case.
Q Well, I don't want to put words in your mouth any more than I should on cross, but what exactly is the mechanism by which approximately 6,900 noteholders can be accounted for, all of which are in different funds, as against 12 properties that you are proposing be the adequate protection bucket, how does that work?
A We would convert the property into cash and we can go through the books and records of the company, identify how to pay off the noteholders and the adequate protection bucket.
Q Noteholders -- your understanding, sir, is that the noteholders have liens sitting here today; is that right?
A That's --
MS. CONN: Objection; to the extent you're calling for his opinion.
THE COURT: Sustained. Sustained.
MR. KORTANEK: I'm sorry. I asked his understanding, Your Honor, but that's okay.
THE COURT: It's still sustained.
MR. KORTANEK: Thank you.
BY MR. KORTANEK:
Q Now, sir, do you understand that part of the contention in the debtors' DIP motion does relate to the debtors' expressed effort to avoid -- to seek to avoid the noteholder

lien claims?

A Yes.

Q So, in your view, that somehow factor into the case or the argument that the company is making for priming and adequate protection?

MS. CONN: Objection. I'm just going to caution the witness not to divulge any communications with your counsel on this issue.

THE COURT: So, let me remind debtors' counsel that the only instructions to the witness that matters in this courtroom is mine.

MS. CONN: Sorry, Your Honor.

THE COURT: So, if you have a request, make it to the Court, please.

You may proceed, Mr. Kortanek.

Do you remember the question?

THE WITNESS: No.

MR. KORTANEK: I'll try to rephrase better with a second chance. Thank you, Your Honor.

BY MR. KORTANEK:

Q All right. Bear with me for one second.

So, with respect to the debtors' adequate protection and priming arguments, is it your understanding, sir, that that factors into the argument the company's making in support of priming the noteholders?

MS. CONN: Objection, Your Honor.

THE COURT: Sustained.

MR. KORTANEK: I strike that. Bear with me for one second.

BY MR. KORTANEK:

Q Sir, if the -- have you given any consideration to who stands to benefit in the waterfall analysis or otherwise if liens are avoided -- noteholders' liens are avoided?

A I'm not sure I entirely understand your question. Is the question -- can you rephrase it somehow?

Q Sure. Let me unpack that.

The debtors have contended, have they not, that they intend to seek to avoid liens of all 6,900 noteholders' notes; is that correct?

A I don't think that's clear yet.

Q Okay. To the extent the debtors are considering seeking to void the noteholders' liens, has the debtor -- has the debtors or have you given any consideration to who benefits from such avoidance and why the avoidance would be undertaken?

MS. CONN: (Indiscernible) objects to the extent it calls for privileged information.

THE COURT: It's -- I'll sustain the objection, but for the reason that this line is not very helpful to me. I understand the point you're trying to make, Mr. Kortanek.

MR. KORTANEK: Thank you, Your Honor.

BY MR. KORTANEK:

Q Mr. Perkins, you oversaw the preparation of both budgets that the Court has seen; the original budget with the initial DIP as well as the one that was just testified to?

A Yes.

Q Now, there was no variance analysis provided, though, as between the first day budget and today's budget, correct?

A Correct.

Q But, yet, there have been some pretty substantial changes; isn't that right?

A Yeah.

Q So, in fact, one of those changes is that just in two weeks these cases have been pending, your revenue item projected in the 13-week budget has dropped about 30 percent from 116.9 million to 81.8; isn't that correct?

A I'd have to look at the variance between the two, but it doesn't contemplate a couple inflows of cash that already have happened, so I don't think it's that broad of a change. It's a different time period, so it's apples and pears.

Q Okay. Now, is it true, sir, that you've also increased the professional line item in the revised budget?

A Yes.

Q And that's gone up from approximately 4.6 million to 5.4, about a 20 percent increase?

A Yes.
Q Okay. But that change wasn't disclosed in your testimony or the budget today, right?
A It's in the budget, so I think that's wrong. Yeah, we -- it's in the budget.
Q Sure. I'm sorry.

But what I meant was there's been no variance or a showing of the changes from the prior budget?
A Again, it's a different period, so it's apples and donkeys.
Q Sir, as part of your DIP sizing model here, assuming that the debtors need $50 million of cash on hand at any given time --
A Yeah, at the outset of doing the DIP-sizing model, it was really at the beginning of trying to understand what all was there and what all wasn't. So, it wasn't necessarily sized to have 50 million of cash on hand at any time, but it was certainly sized for the unknowns that were very apparent at the beginning of the case for all of the things we didn't know.

Also, it was originally predicated on us being able to use the asset sales as part of the cash, which has subsequently been changed. So there's a number of different factor that went from the original sizing to where we are right now.

Q Okay. Now, what sort of cash on hand minimum are you targeting at this point?

A A company of this size, I would typically like to have at least two to three weeks of operating cash on hand based on disbursements.

Q And approximately --

A So, on (indiscernible), depending on the week and depending on payroll, that would be between six and $10 million.

Q Now, you testified on your direct that there's no unused line fee for this facility; did I hear that correctly?

A Correct.

Q So, why is it that the company is borrowing to be able to escrow money for a noteholder interest at a higher rate than the actual noteholder interest; in other words, why don't -- why doesn't the company just have a block for potential obligations to noteholders, rather than borrow the money and pay the higher interest in escrow?

A It's a particular question that I think when we originally set this forth, we wanted to pay the money to the noteholders in that period.

Q Okay. Has there been any analysis done to date on liquidating real properties on an as-is basis; in other words, ones that are in process selling as-is, without completion?

A Some analysis has been done, but the majority of the analysis has yet to be completed.

MR. KORTANEK: Your Honor, may I consult?

THE COURT: Certainly.

(Pause)

MR. KORTANEK: No further questions, Your Honor. Thank you.

THE COURT: Thank you. Does the U.S. Trustee wish to cross-examine this witness?

MR. FOX: Just briefly, Your Honor.

THE COURT: All right.

CROSS-EXAMINATION

BY MR. FOX:

Q Good morning, Mr. Perkins.

A Good morning.

Q Tim Fox, on behalf of the United States Trustee. I have one general question and then some specific questions about the disbursements block of the updated budget, if that's all right?

A Sure.

Q First, counsel has already represented on the record that the consulting fee payment to Mr. Shapiro will not be paid prior to the January 10th hearing. In the revised budget that was presented for the Court today, where would that line item fall?

A It falls in the legal and consulting fees line item and just light in the timing of everything yesterday, it was included when this was prepared, but it's subsequently been removed.

Q So that thirty number would drop down by $175,000?

A Which thirty number?

Q In legal and consulting fees for period of Week 1, 12/22?

A Yes.

Q Okay.

A (Indiscernible) Week 3, excuse me.

Q It would be in Week 3?

A Yeah. So, there's an accrual line item there -- it's called total accrued admin costs -- and it's included in that line. So, three six four seven in the week of Week 3; it's included in that number. So the net operating cash would have -- would be higher by $175,000.

Q Okay. I was looking at the wrong line item. I appreciate that clarity.

A Okay.

Q And then with respect to disbursements, going up to Week 4, if you take a look at the various line items, the only line item that appears to change from week-to-week is the total operating overhead line. Could you explain why that line changes from week-to-week versus the other items

being a fixed amount?

A Sure. The total operating overhead reflects day-to-day payments that are required in the company. So, certain bills come due at certain different points in the month.

Was the other part of the question why the other ones are the same at the top?

Q Yes, please.

A Okay. So the way that the general contractor costs and Plus Development costs and maintenance costs were derived for purposes of forecasting, was to take the outstanding costs on a monthly basis and divide them by the number of weeks in the month. So you'll see that they change slightly in other weeks, depending on what is due.

We've done that on a line-by-line basis, based on each asset that we have out there. Our team is currently working on an analysis to identify what the more specific and accurate timelines of these costs would be; for example, if they're pouring concrete one day and doing windows the next day, there would be a different amount of cost that we're working on more precision on, but that would be in the next rollout or case subsequent rollout of the cash flow forecast.

Q With respect to the line item for contingency, that is an item that is affixed 175 throughout the entire period of the budget. Can you explain the underlying detail of that line item?

A Yeah, there's not a lot of underlying detail to it. What we identified when we got to the company is that the books and records were not typically of a standard of a company of this size. So this is to represent the things that we don't know about that seem to come up from time to time. This could be the security. This could be other services that are required that we don't know about, some fees that come up in the ordinary course of business, one-time things that come up on property. So it's just a catchall for everything else that we don't know.

Q In terms of the other numbers that are listed in the disbursements for these first four weeks, would any of them include amounts that provide additional cushion to the debtors' expenses for this four-week period or does that contingency period provide all potential overestimates or unexpected expenses?

A The contingency is the only cushion built into this.

MR. FOX: I think that's all I have, Your Honor. Thank you.

THE COURT: Thank you. Does the SEC have any questions for this witness?

MR. JACOBSON: Your Honor, Neal Jacobson, on behalf of the SEC. We have no questions for the witness; however, we do have an update that we believe we should provide to the Court and to the parties regarding recent

events.

Unfortunately, it involves non-public information, so we would request if the Court would -- so, would like if we would be able to provide this information in camera with counsel to the parties. It could be now or after redirect, if the debtor wants to redirect with this witness.

But we think it's information that's probably relevant to this proceeding that the parties should know.

THE COURT: Okay. And I assume you took -- the Court should know before I make a ruling; is that the point?

MR. JACOBSON: Correct.

THE COURT: All right. Let's finish the examination of this witness first and then we'll go from there, but thank you.

MR. JACOBSON: Thank you, Your Honor.

THE COURT: All right. Does anyone else wish to cross-examine this witness?

(No verbal response)

THE COURT: Is there any redirect?

MS. CONN: No, Your Honor. Thank you.

THE COURT: Thank you, sir. You may step down.

(Witness excused)

THE COURT: Does the debtor have any further evidence in support of the relief that it's requested?

MS. CONN: No further evidence, Your Honor.

THE COURT: All right. Do any of the parties who have responded to the motion have any evidence they wish to present to the Court?

MR. KORTANEK: No, Your Honor.

THE COURT: Okay. Unfortunately, the room to which we would normally repair is being prepared for our monthly judges' meeting, so I can't send you there. So what I think we'll do is we'll break now. I'll have you come back -- counsel to come back into chambers and we'll just have to stand.

All right. We'll stand in recess.

(Recess taken at 11:41 a.m.)

(Proceedings resumed at 12:22 p.m.)

(Call to order of the Court)

THE COURT: Please be seated.

All right. Let me just state for the record the SEC had requested an in-camera conference to discuss certain confidential matters which will remain, at least, for the time being confidential concerning the asset freeze and related matters. Beyond that I will say nothing more.

As I understand, the evidentiary record now has been concluded. I will hear brief argument with respect to the motion that’s before me.

MR. WISE: Eric Wise, counsel for the debtors, Gibson, Dunn & Crutcher.

Would you like me to go through -- I prepared a grid of the various objections and to go through the points on those as part of closing. Would you like me to do that? I can hand you a copy of the grid that I'm looking at.

THE COURT: That would be helpful. Yes. Thank you.

Do you have another copy for my law clerk?

MR. WISE: So going through the objections, Your Honor, at docket number 87 we have the objection of the U.S. Trustee which objected to payments to Robert Shapiro and the necessity of interim DIP amounts. In response to that there are no payments that are going to be made to Mr. Shapiro prior to the final hearing and I believe that my colleague, Sam Newman, addressed that initially.

And with respect to the necessity of the interim DIP amount I think the issue of contention is the segregation of funds for adequate protection to create an interest reserve. So part of the adequate protection package is, obviously, to make sure that there's cash available should parties be found to have an interest in collateral that's not avoidable or avoided; that cash interest would be there as adequate protection. So that's the purpose of escrowing that.

With respect to docket 93, the Homeowner's Association of Aspen Glen has made a reservation of rights

with respect to budgeted amounts for payments of their homeowner's association dues. I think they cited discrepancy between what they think that they are owed and what's been budgeted. I think it's not an issue that's before the court today as to whether that's the correct amount or not. And, obviously, the debtors will seek to resolve any dispute with the homeowner's association about those amounts.

Docket 109 is a reservation of rights for the official committee of unsecured creditors. They asked for a modification of the order to include language with respect to the reservation of rights. We have included, in the order, language to effect that that they agreed to last night. I can read that to you or I can bring that up.

THE COURT: Bring it up at the conclusion of the argument.

MR. WISE: Sure.

And so we've included that in the order and I think that resolves their concerns.

At docket 113, the objection of the ad hoc committee of noteholders of the Woodbridge funds. They objected to the payments to Mr. Shapiro which I addressed earlier. They also objected to the necessity of the amount of the DIP's drawn. And that is also something that I addressed earlier with response to the U.S. Trustee's objection.

They have objected to the failure to take into account the good faith argument that the noteholders have perfected. I think that's not an issue for today. What we have tried to do is provide adequate protection to the extent that the parties were to have an interest in collateral and it were not avoided. The purpose of all that adequate protection is conditional so that it's there if that issue were resolved later, but it's not before the court today.

Fourth, they've objected to the failure to provide adequate notice to approximately 2,000 noteholders. Your Honor, we think the issue there that they were raising has to do with the fact that there are holders of multiple notes and so they only received one notice so that the disparity of the number of notices and the number of notes is reconciled there. And we also have the affidavit of Garden City Group which was filed with the court with respect to the provision of notice.

The noteholders also objected to the complexity of the DIP financing proposal and the priming arrangement. I think what was done here is we had the 28 properties and you heard testimony from Mr. Perkins about the extent of the solicitation around these 28 properties, etc., for DIP financing. So the arrangement that came out of that solicitation was the priming lien on the 28 properties and then providing adequate protection so that to the extent

there were any diminution in value of a noteholder that noteholder would have sufficient value in the adequate protection from the adequate protection properties, also from the interest reserve and also from a junior replacement lien on the 28 properties that were really focused on the value in those 12 adequate protection properties which well exceeds the amount of financing that's to be approved here.

So if there were a diminution in value resulting from that to any particular noteholder it could be identified and allocated to that noteholder and the value there would support them so that that diminution, should they be found to have an interest that was not avoided, be protected by that adequate protection. And we think the evidence has shown that there is a large amount of value in those 12 adequate protection properties to provide that without even taking into account the cash interest reserve and the replacement lien on the 28 properties.

Next, they objected to providing the adequate protection payment to the noteholders in the form of the reserved interest payments. I mentioned that earlier. We think that's an important part of the package, the reason why it's segregated and drawn, even if there is some element of some negative arbitrage to that that cash will be there. If they are found to have an interest in collateral that is not avoided that money being segregated will be an important

protection for them, we think.

They also made the objection in their objection to certain terms in the order. In one case they objected to the characterization of the priming as including the priming of claims, interests, liens and rights. In the blackline that I will hand up we've struck the word rights because it seemed not to be entirely consistent with the concept of priming and the DIP lenders have agreed to that.

The second objection was that with respect to the adequate protection lien on the 28 properties there's an articulation of the terms of subordination which essentially says that that lien would be silent and that they would have the right to receive the residual value in those DIP properties, in terms of that adequate protection lien on the 28 properties. That was a requirement of the DIP lender.

Now I've seen, in different orders, it articulated differently. Sometimes you see it articulated as subordinate in all respects. Looking at it I see the specificity as actually a clarification on the point for the future because I see -- when I read all respects I think that to mean all as being all encompassing. So it's a pretty complete subordination. When you see an order that says we provided a junior adequate protection lien that's subordinate in all respects.

So I think the specificity is not problematic in

the sense that the ad hoc committee has raised. And it's also a requirement of our DIP lender. We discussed it with them and that's important to them. Again, I just want to clarify that that particular provision is with respect to the 28 DIP properties which are the collateral for the DIP lender and language with respect to that.

And then the final argument is a lack of a record of evidence to support the second DIP order. And, obviously, we put on evidence today, substantial evidence, from Mr. Chin and Mr. Perkins; and we believe the evidence shows that the DIP is supported, that its fair and reasonable, that the debtors made the appropriate effort to solicit and get the terms, and that the adequate protection is sufficient to cover any diminution in value for the additional 19 million or the aggregate of 25 million that is to be borrowed through the final hearing date.

Now at the bottom of the chart there are two informal, we can call them, objections or inquiries from noteholders which I'll address if you would like me to address.

One is from a Dana Stoddard (phonetic) and she objected to the DIP receiving money before the noteholders. I think to form that question, I think what its saying is that it objects, basically, to the priming character --

THE COURT: That's how I read it.

MR. WISE: -- which is addressed by the adequate protection.

Then, finally, I have the objection of Richard Carli who raised the issue of notice which I mentioned earlier and, I think, is addressed by the affidavit of Garden City and our belief that the notice issues that were raised were related to holders of multiple notes.

In addition, there was a question in Mr. Carli's notes that he was told not to file a proof of claim. I don't think the debtor is advising any noteholders not to file a proof of claim. I think at a later date there will be a motion to set a bar date and appropriate procedures, and those will outline that. Everybody will have the opportunity to understand those procedures and they will be thought through at that time.

Let me just see if there were any other issues that I should address in his letter.

Mr. Carli raised the issue of whether there were a complete set of the DIP documents in the filings. So the credit agreement was attached to the DIP motion and I think it contains all the material terms of the DIP in addition to the summary that's provided in the DIP motion. And there are a handful of other ancillary documents, as there always are in these transactions, but we don't think that they add anything.

If the court would like us to file those as well we have no problem with filing them. We just -- pardon me -- in accordance with customary practice we filed that because we think the most user-friendly thing is to look at the DIP credit agreement which provides, together with the order, all the terms of the DIP, but we would file other papers if that's appropriate.

THE COURT: You know, it's -- my response is really based on, I think, a dynamic that needs to apply in this case and that is there has to be as much available information and transparency as there can be especially when there is so many individual investors here who will have an interest in what's going on. So to that end I would say yes, go ahead and file them.

Tell me what's been done or is planned to be done with respect to setting up a website either through the claim's agent or the debtor that people can access for public information about what's going on? The committee may be working on something, but I'd be interested to know where the parties stand with that at the moment.

MR. WISE: Absolutely. I'm going to cede the podium to my partner, Sam Newman, because he probably knows that issue better then I.

MR. NEWMAN: If it's all right, Your Honor, I'll be brief and certainly happy to answer questions. The debtor

has both engaged Garden City Group, as you're aware, which has set up a typical docket, access website on its site. We have also retained a PR firm on an ordinary course basis called prosect (phonetic) and they have established a website, they have reviewed the existing debtors' website to make sure that it has accurate information, deactivated certain portions of it that had to do with the fundraising.

We've established a call center with a phone number where someone can reach a live human being to ask questions. We've created a detailed set of frequently asked questions, excuse me, in correspondence directed towards the most often asked questions by both investors and customers. And those are updated from time to time with new information. That has all been done in coordination with both the independent management team and counsel to ensure that the information is accurate and, you know, technically correct in both instances.

Obviously, as with respect to this letter, in some instances there may be misunderstandings and we'll certainly follow-up. We keep a detailed -- prosect keeps a detailed call log so they know which calls have been received and information has been raised so we can respond to things.

THE COURT: Thank you.

MR. NEWMAN: Thank you.

MR. SANDLER: Your Honor, just on that one point -

- for the record Brad Sandler, Pachulski Stang Ziehl & Jones, on behalf of the committee.

We are receiving a lot of calls as well, as you might imagine. We to are looking at how to handle all the calls that are coming in and whether we should have some type of internal website -- obviously, free of charge -- for the noteholders and how to handle all those calls. We'll coordinate with the debtors on that.

MR. JACKSON: And, Your Honor, not to add to the mix too much -- Patrick Jackson, Drinker Biddle, on behalf of the ad hoc committee.

As you might imagine we're getting a lot of inbounds as well. We also did have a concern, which we raised in the pleading that's currently scheduled for January 10th, about some of the content. There are some FAQ's upon the informational page that the debtors are maintaining that have questions such as I have a note, do I have a secured claim. And it says no, you don't.

I think there is some problematic information. We definitely appreciate collaborating with everybody on what exactly the content of the message is going to be as well. So I would invite, you know, the parties all to put their heads together on that because that is a problem.

THE COURT: The point would be to eliminate confusion rather than to create it.

All right. Does the debtor have anything further in support of the relief it's requested?

MR. WISE: Just a quick statement that what we've designed here, in terms of the 25 million, we believe is -- and the evidence shows that its protected by non-speculative value in the 12 adequate protection properties as well as the other adequate protection. We believe that the process was fair and reasonable, and the evidence shows that and we ask the court to approve the second interim order.

THE COURT: Thank you.

Does the unsecured creditors committee wish to be heard?

MR. SANDLER: For the record Brad Sandler, Pachulski Stang Ziehl & Jones, on behalf of the official committee of unsecured creditors, Your Honor.

The committee -- the official committee was formed less than a week ago today and there have been a lot of concerns that the committee has had in this case. Those concerns are continuing. The committee is attempting to be as thoughtful as possible.

Obviously, this case from the committee's perspective and I think, frankly, from everybody's perspective is a fragile case. There are issues with the SEC that we heard about earlier today. There are management and governance issues. We have approached the debtors with some

solutions, but generally our view is that Mr. Shapiro has to go. Whether, you know, he intentionally or unintentionally caused this debacle we have no clue at this point. I will say that things don't look very good, but from our perspective he has got to go. And that is another area that needs a lot of addressing in this case.

We heard Mr. Newman and, actually, Mr. Perkins testify about the business plan. There is no business plan at this point. Inertia is not the way to proceed. And to some degree it seems like the debtors are using inertia, just continuing down this path.

One of the things that they did, without any notice to us, was they filed a motion to assume a bunch of contracts that potentially could burden the estate with tens of millions. It could be up to a hundred million dollars of admin claims rather then, for example, creating a robust critical vendor program. All of these things need to be thought out carefully. And, you know, in the absence of going down a very careful path that we all agree is going to lead, frankly, to a trustee that I think you'll find on your desk.

On that one motion, on the motion to assume, we intend to continue that. We'll be filing a motion which should be filed very shortly in that regard.

It seems to me that this case, as many fragile

cases, can go down, really, one of two paths; the path of cooperation where the case constituents work cooperatively together to maximize value or it can go down a suicidal path and that, in all likelihood, would lead to a trustee motion.

All of that said, Your Honor, we think that the DIP is -- the interim DIP is required for the next few weeks to continue construction, to maximize value. We do think that the noteholders have adequate protection. We support the DIP for this interim time period. You may have gathered, from the questions I asked Mr. Perkins, the committee has been approached by no less than three parties. We will be exploring those other financing opportunities with the debtor, which will, hopefully, provide even more value to the estates.

At this point, Your Honor, the committee supports the entry of the interim DIP order.

THE COURT: Thank you. Ad Hoc committee.

MR. KORTANEK: Thank you, Your Honor, Steven Kortanek, Drinker Biddle, on behalf of the Ad Hoc committee.

Your Honor, no one in our client group or, we believe, our constituency supports the DIP as currently structured.

THE COURT: How many parties do you represent, Mr. Kortanek?

MR. KORTANEK: We filed an amended 2019 this

morning. It's going to be amended again, but it has twenty-four individuals as noteholders. As of this morning, 9.9 million in total Promissory note face value.

These were all, to our understanding, original individuals who purchased these notes and calls are come in every day.

And, Your Honor, in the little time we have -- I understand Your Honor has time constraints -- we want to focus one thing. We don't leave behind any of our objections in our pleading. But it's on the priming consideration, especially between now and the final. It's a Hippocratic oath sort of objection, Your Honor. First, do no harm.

We all know -- I think everybody in this room agrees that we've got 6,900 individuals who have been misled, at best, and, in all likelihood, defrauded in a very material way. And now what we have is a situation where -- this is not a commercial bankruptcy case in that sense and Your Honor showed a lot of sensitivity toward that in comments the courts already made.

THE COURT: Well, let's talk about the do no harm thing. Grant it what's been proposed is a priming lien. But we're talking about a cushion here for the interim period that seems, to me, to be well in the range of providing adequate protection to your twenty-four clients and whoever else might hop on board the boat.

It's really, it seems to me, on that issue, it's the final hearing where you may run a risk. And I understand why you filed your objection. But it doesn't seem to me that, at least for today, that's the key factor, given the adequate protection package that's being offered.

MR. KORTANEK: Right, right. Understood, Your Honor.

This is a -- you can see it both ways, because the same argument, logically, that we're making about the fashion being sufficient for a market DIP can, of course, as Your Honor said, also be argued to be sufficient for the noteholders. But here's the key to sanction, I think, is the mechanics of it and is it adequate when one works through what actually happens if the adequate protection regime is called upon.

You know, we deal with these things all the time where it only matters when it matters if and when there's a meltdown in these cases, how does that get administered. And I'm pretty sure I heard Mr. Perkins say that hasn't been thought through.

THE COURT: Well and I'll emphasize something I emphasize routinely in interim hearings. It's an interim order and that's all it is.

MR. KORTANEK: Right, understood, Your Honor. I thank you for that.

So, again, we just think the records been made for the need for financing. We understand that. We're trying to be targeted in what we're objecting to.

We think on a notice basis -- again recognize it's interim; notice based on our client group was only physically received last week by the noteholders with whom we've spoken. So, there really hasn't been -- I realize this is a second interim hasn't been sufficient notice of that priming.

And, so, when the debtors say they haven't actually made the effort, like any effort, to seek if the DIP lender would lend on an interim basis, taking the interim on the other side of the coin, without priming.

THE COURT: Mr. Kortanek, I would tend to think that such a request would violate the ruckus laughter rule that is never propose anything that's likely to elicit ruckus laughter. I think that would be it.

MR. KORTANEK: All right.

Well, Your Honor, again, we think the case has unique circumstances. These individuals essentially for them to -- but for the formation of the ad hoc committee, frankly, these individuals don't have the ability to come and raise these issues.

THE COURT: And I share that concern.

MR. KORTANEK: Your Honor, otherwise, you know, we'll stand on our objections as far as the other issues

raised and we'll reserve rights to the final.

THE COURT: All right, thank you.

MR. KORTANEK: Thank you, Your Honor.

THE COURT: U.S. Trustee.

MR. FOX: Good afternoon, Your Honor, may I please the court, Tim Fox on behalf of the United States Trustee.

I rise to indicate that although the first prong of our objection is muted for today's purposes, we are still very concerned with the compensation and other benefits that were disclosed to go to Mr. Shapira in a first day declaration and would have a continuing objection to those amounts in these cases unless they are approved by a separate motion to this court.

THE COURT: I tend, without getting into a long explanation of why; I tend to agree with the U.S. Trustee's position on that point.

MR. FOX: Thank you, Your Honor.

So, making that clear, I'll focus today solely on the issue that is still pending, which is the right size of the DIP financing for this second interim draw in these cases.

While we appreciate the additional clarity that was put onto the record by Mr. Perkins' testimony today, we still believe that it's an ongoing concern that the creation of new liens that will encumber certain property of the

estate will be superior to the interest of other parties in interest, many of which may be viewed in some large fashion as victims of the debtors' own prepetition conduct.

And our concern is that those victims and creditors of the various estates are not prejudiced by anything that occurs in this interim period. We leave the debtors to their burden and request that there be no monies extended in excess of those amounts necessary to preserve the status quo. And that is essentially our position.

I can't identify any line items in particular that may be reduced. The testimony that Mr. Perkins responded with to my questions indicated that there is potentially $700,000 dollars-worth of cushion in these four weeks. We understand the need for some cushion, but in addition to the $175,000 consulting fee, I'm not sure where else can be cut, but that is our issue is making sure that there's no sure outlay that is greater than necessary.

We understand the concept of potentially escrowing some funds away for line items down the road, but also, on the flip side of that, we don't anticipate their being any need to disperse those funds until after January 10th, so those could be some additional funds that can be carved out of the $19 million that's requested today.

But that is the substance of our remaining objection for today. If Your Honor has any questions, I'd be

happy to answer those now.

THE COURT: I do not. Thank you.

MR. FOX: Thank you.

THE COURT: Does the SEC wish to be heard?

MR. JACOBSON: Your Honor, Neil Jacobson on behalf of the SEC.

Not on this motion, however, I would like to update the court that the SEC's action has been unsealed in the Southern District of Florida and the action is SEC the Shapira *et al*. The case number is 17-24624 in the Southern District of Florida. Thank you.

THE COURT: Okay. Thank you.

Do the Homeowner's Association at Aspen Glen wish to be heard?

(No verbal response)

THE COURT: I hear no response. Does Dana Stoddard wish to be heard?

(No verbal response)

THE COURT: I hear no response.

Does Mr. Carli wish to be heard?

MR. CARLI: Your Honor, you mentioned my name at the beginning of the hearing. It was not my intention to not use an attorney or to -- I intended fully to respond and object to the interim motion.

THE COURT: Mr. Carli, so that we're clear, I

don't mean to suggest in any way that you're filing or your submission was ill-motivated.

MR. CARLI: Thank you, Your Honor.

I do wish to make a couple of comments, if I can.

THE COURT: Yes, briefly.

MR. CARLI: Yes. I do question whether or not the interim motion or the final motion should (indiscernible - voice cuts off) which is described Woodbridge's plan and intended time frame for paying existing noteholders.

My reading of the document showed that there was no commentary at all regarding their intent to or the intended time frame to pay existing noteholders.

I also heard testimony today that notes were accepted right up until the filing of the declaration of bankruptcy. I personally loaned Woodbridge $75,000 dollars and received promissory note on agreement on November 20th, just two weeks before the declaration of bankruptcy. And it seems questionable to accept funds when bankruptcy was imminent. And I'd like to make that point. Thank you.

THE COURT: All right thank you.

Now that's, as far as the agenda reflects, all of those who have responded to the debtors' interim financing request. Based on the record that's been made, I'm prepared to grant the relief that's been requested and I'll tell you why.

Mr. Perkins testified about the process that debtor went through in determining and obtaining a DIP lender. I'm convinced that the debtor exercised its business judgment soundly in the way it conducted the process and in the way it ended up, not to say there might not be more competition with respect to further DIP arrangements.

I am convinced that financing was not then available and today is not available on more favorable terms. I'd be happy to be proved wrong at the final hearing.

Mr. Perkins, I think, offered sufficient support for the budget. And that in combination with the testimony of Mr. Chin, which I'll go over in just a minute, I'm convinced that the adequate protection package is sufficient, at least for the interim period, with respect to the protection of the interest that are entitled to adequate protection arguably.

Mr. Chin was clearly qualified to give the opinion that he did. He's experienced, knowledgeable in the area particularly. His testimony was very credible and his opinion was based upon well accepted methodologies. And, at least, again, for the interim relief that's been requested here, I'm satisfied that he's offered sufficient support for the value of the cushion, so-called, that's offered as adequate protection.

And to the further point, certainly, at least, at

this point I saw and heard no evidence that someone would be willing to make a loan on a non-priming basis. It's rarely the case. It's not that it never happens, but it's rarely the case.

So, I'll consider the proposed form of order now if you'd like to walk me through a blackline.

MR. WISE: Thank you, Your Honor. Let me just. . .let me make sure these are both correct, so. . .

So, I have two here that are against what was filed and also the cumulative, would you like both or just what was against what was filed?

THE COURT: Give me a cumulative.

MR. WISE: Okay.

THE COURT: We only need to focus on material changes. All right, thank you.

MR. WISE: Okay. Looking at the blackline, I don't believe there are any material changes on the first page or the second page. Simply on the second page identifying the substantive change that the committee has been appointed.

On the fifth page, there's identification of the corrected order.

The balance of the changes on the sixth page are all immaterial other than the identification that the approved amount is $25 million for the balance of the interim

period.

Then on page 10 in Section 3.1.1 regarding liens, as I mentioned earlier we struck, towards the top of the page, the word rights in the definition of funds liens.

THE COURT: We're looking at two different drafts. Thank you.

MR. WISE: So the top of page 10, the word rights was struck. That was in response to the ad hoc noteholder's concern.

THE COURT: I see that.

MR. WISE: And the next substantive change appears on page 20, towards the bottom of the page in 6.7, which is a reservation of rights.

THE COURT: I see that. You also need to, at least, handwrite a change for the time of the final hearing on January 10th to one o'clock in the afternoon.

MR. WISE: Yes, you mentioned that, Your Honor. We'll do that.

THE COURT: Okay.

MR. WISE: And then the final substantive change is Exhibit D, now includes twelve properties, so six new addresses. So, we ordered them in the same way that they were ordered in the initial order and then added the six properties, Your Honor.

THE COURT: All right, that's fine. All right, do

you have a clean copy for me?

And while you're looking that over, let me just add with respect to the notice issue that I will encourage the debtors quickly as its able as Mr. Newman did indicate earlier that it worked through the issues of complete notice to all of the noteholders and to sit through the overlap issue and make sure everyone who's entitled to notice gets it.

MR. WISE: Yes, Your Honor, we're in the process and thank you.

MR. MORTON: And, Your Honor, for the record, Edmon Morton from Young Conaway.

We've made the interlineated change you asked. And you brought up a notice provision, which is important in two respects. One, and obviously Your Honor is not ruling on this today, we have filed a motion that we hope will address some of the more omnibus notice issues in this case and help streamline that a little bit. It will be set for a hearing on the 10th, but we wanted to make sure Your Honor knew those concerns were important to us.

The second is this order still has the requirement to serve out notice of its entry. Certainly, that's appropriate. We want to make sure over-noticing at this stage of the case is appropriate. However, the one thing we wanted to do was to make sure we set expectations, and

certainly if the court has a different view, take that in.

The entirety of the documents were served out in the initial service. The cost was upwards of $70,000 dollars to the parties. And, certainly, as Your Honor has pointed out as we identify people that weren't on that initial list, they will receive the whole packet. It was the debtors' intention and the order is drafted to indicate that simply notice of the entry of this order with a reference to the fact that they've already been served with the voluminous materials will -- and, obviously, a link to the website for the claims agent so they can still access them again.

That was our intent to save on the cost. And we wanted to make sure everyone was aware of that before we just simply executed on it.

THE COURT: That's fine with me for the time being and, at least, it's not Takata, right?

MR. MORTON: Fair point, Your Honor.

If I may approach?

THE COURT: You may.

That order has been signed.

Is there anything else we need to talk about today?

MR. BEACH: No, Your Honor, thank you.

THE COURT: Thank you all very much. That concludes this hearing. Court will stand in recess.

ALL: Thank you, Your Honor.

(Proceedings conclude at 12:22 p.m.)

CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/Mary Zajaczkowski December 22, 2017
Mary Zajaczkowski, CET**D-531

/s/William J. Garling December 22, 2017
William J. Garling, CE/T 543

/s/ Coleen Rand December 22, 2017
Coleen Rand

**EXHIBIT B**

**September 21 Press Release**

U.S. Securities and Exchange Commission

**U.S. SECURITIES AND EXCHANGE COMMISSION**

**Litigation Release No. 23939 / September 21, 2017**

***Securities and Exchange Commission v. Woodbridge Group of Companies LLC*, No. 17-mc-22665 (S.D. Fla., filed July 17, 2017)**

**Court Orders Woodbridge Group of Companies LLC to Produce Documents to SEC**

The Securities and Exchange Commission has obtained an order requiring the Woodbridge Group of Companies LLC, of Sherman Oaks, California, to produce the corporate documents of several company executives and employees, including Woodbridge's President and CEO.

According to the SEC's application and supporting papers filed in federal court in Miami on July 17, 2017, the agency is investigating whether Woodbridge and others have violated or are violating the antifraud, broker-dealer, and securities registration provisions of the federal securities laws in connection with Woodbridge's receipt of more than $1 billion of investor funds from thousands of investors nationwide. As part of the SEC's ongoing investigation, on January 31, 2017, agency staff in the Miami Regional Office served Woodbridge with a subpoena seeking, among other documents, the production of electronic communications that the company maintained relating to Woodbridge's business operations. The SEC's application alleges that although Woodbridge was required to produce these documents to the SEC, Woodbridge has failed to produce any relevant communications in response to the subpoena, including those of three high-level Woodbridge officials.

The court's order requires Woodbridge to produce the documents subject to the SEC's application beginning October 2, 2017.

The SEC is continuing its fact-finding investigation and to date has not concluded that any individual or entity has violated the federal securities laws.

- Order
- Application

*https://www.sec.gov/litigation/litreleases/2017/lr23939.htm*

**Exhibit C**

**First Day Hearing Transcript**
**(December 5, 2017)**

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

| | | |
|---|---|---|
| IN RE: | . | Chapter 11 |
| WOODBRIDGE GROUP OF COMPANIES, LLC, *et al.*, | . | Case No. 17-12560 (KJC) |
| | . | Courtroom No. 5 |
| | . | 824 Market Street |
| | . | Wilmington, Delaware 19801 |
| Debtors. | . | December 5, 2017 |
| . . . . . | . | 3:00 P.M. |

TRANSCRIPT OF HEARING
BEFORE HONORABLE KEVIN J. CAREY
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

| | |
|---|---|
| For the Debtors: | Sean Beach, Esquire<br>Allison Mielke, Esquire<br>Ian Bambrick, Esquire<br>Ed Morton, Esquire<br>YOUNG CONAWAY STARGATT & TAYLOR<br>1000 North King Street<br>Wilmington, Delaware 19801<br><br>Samuel Newman, Esquire<br>Daniel Denny, Esquire<br>GIBSON DUNN & CRUTCHER, LLP<br>333 South Grand Avenue<br>Los Angeles, California 90071<br><br>- and -<br><br>J. Eric Wise, Esquire<br>Matthew Porcelli, Esquire<br>200 Park Avenue<br>New York, New York 10166 |
| ECRO: | AL LUGANO |
| Transcription Service: | Reliable<br>1007 N. Orange Street<br>Wilmington, Delaware 19801<br>Telephone: (302) 654-8080<br>E-Mail: gmatthews@reliable-co.com |

Proceedings recorded by electronic sound recording: transcript produced by transcription service.

APPEARANCES (Cont'd):

| | |
|---|---|
| For U.S. Trustee: | Timothy Fox, Esquire<br>OFFICE OF U.S. TRUSTEE<br>844 King Street<br>Wilmington, Delaware 19801 |

TELEPHONIC APPEARANCE:

| | |
|---|---|
| For U.S. Securities & Exchange Commission: | David Baddley, Esquire |

INDEX

Debtors' Motion for Entry of an Order (A) Authorizing Payment of Certain Prepetition Workforce Claims, Including Wages, Salaries, and Other Compensation; (B) Authorizing Payment of Certain Employee Benefits and Confirming Right to Continue Employee Benefits on Postpetition Basis; (C) Authorizing Reimbursement to Employees for Expenses Incurred Prepetition; (D) Authorizing Payment of Withholding and Payroll Related Taxes; (E) Authorizing Payment of Workers' Compensation Obligations; and (F) Authorizing Payment of Prepetition Claims Owing to Administrators and Third Party Providers [Docket No. 10]

Debtors' Motion for an Order Authorizing (A) the Maintenance of Cash Management System; (B) Maintenance of the Existing Bank Accounts; (C) Continued Use of Existing Business Forms; and (D) Continued Performance of Intercompany Transactions in the Ordinary Course of Business and Grant of Administrative Expense Status for Postpetition Intercompany Claims [Docket No. 11, 12/4/17]

Debtors' Motion for Interim and Final Orders (I) Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364, 507, and 552 Authorizing Debtors to (A) Obtain Postpetition Secured Financing, (B) Use Cash Collateral, (C) Grant Adequate Protection to Prepetition Secured Parties; (II) Modifying the Automatic Stay; (III) Scheduling a Final Hearing Pursuant to Bankruptcy Rules 4001(b) and 4001(c); and (IV) Granting Related Relief [Docket No. 22, 12/4/17]

(Proceedings commence at 3:10 p.m.)

THE COURT OFFICER: Be seated, please.

THE COURT: Good afternoon, everyone.

COUNSEL: Good afternoon, Your Honor. Good afternoon, Your Honor. Good afternoon.

MR. BEACH: Good afternoon, Your Honor. May it please the Court, Sean Beach from Young, Conaway, Stargatt & Taylor, on behalf of the Woodbridge Group of Companies and 278 of their affiliated entities, who are debtors in these bankruptcy cases.

Your Honor, first of all, we thank you, both for giving us some additional time, we think it was useful to complete our conversations with the Office of the U.S. Trustee; and we also appreciate you hearing us on an expedited basis in these matters.

Your Honor, I also would like to take a moment and thank the Clerk of the Court, who was very accommodating, in terms of the logistics of filing these cases, who was a huge help to us, and we really appreciate it.

And in addition, Your Honor, Ms. Leamy and Mr. Fox were very accommodating in working through the many first-day pleadings we had and trying to negotiate appropriate resolutions for the pleadings. I am pleased to say that I believe we have, other than some representations on the record, and walking through some modified orders, I believe

we have a resolution on all of the first-day relief with the Office of the United States Trustee.

Your Honor, in terms of just some initial introductions, and then I'll turn it over, and we'll give a presentation to give Your Honor a better sense of the company's operations, and then run through the first-day relief.

But Your Honor, Marc Beilinson is the independent manager that's been appointed in these companies. He works through his independent manager LLC entity. I believe he is on the phone, at least he was trying to get a CourtCall set up. So I did want to introduce him.

Also, in the courtroom with us today is Lawrence Perkins, who is the Chief Restructuring Officer of the debtors in the first row there, Your Honor. And Mr. Perkins is the CEO and founder of SierraConstellation Partners, who has been working on the operational side of the company over the last couple of weeks.

Then, Your Honor, I'd like to introduce the -- at least a portion of the Gibson Dunn team, who has played a leading role in getting these companies prepared for these Chapter 11 filings. Your Honor, to my right is Mr. Sam Newman, who has been kind of leading the team at Gibson Dunn; his colleague Eric Wise, Jen Cohen, Matt Porcelli, Daniel Denny.

And then there are, I think, several on the phone, including Matthew Kelsey, who was a big part of the team. He is at home, so if you hear crying babies, it's because he had triplets within the last couple of days, so he's --

THE COURT: He should be crying.

MR. BEACH: -- as you might imagine --

(Laughter)

MR. BEACH: And with that, Your Honor, unless you have any preliminary questions for me, I would cede the podium to Sam Newman.

THE COURT: I do not.

MR. BEACH: Thank you.

MR. NEWMAN: Thank you, Your Honor. I also want to personally extend my thanks to Ms. Abuela (phonetic) in the Clerk's Office. I understand she rose before the daylight hours to help us get these 200 plus debtors on file.

THE COURT: Well, the rules -- the bankruptcy rules have always provided that the Clerk's Office is always open. But since electronic filing, it's never really had to be open at night.

(Laughter)

MR. NEWMAN: Well, she was able to pivot back into the stone age on this one, at an amazing rate of speed.

And I also want to thank Sean Beach, Ed Morton, and their team at Young Conaway, who have shouldered amazing

loads, in trying to get this case prepared, so my thanks to them, as well.

I also think Oscar Garza and Dennis Arnold, from my office, are appearing by phone.

So, Your Honor, as you can see from the slide show -- and I hope it's okay, Your Honor. We've loaded a presentation to kind of help walk you through a couple of things that I think will be helpful to see in color. This is a bit of a complicated case, but there are some fundamental truths about that we want to help make sure that you and our investment community, in particular, understand:

One is there are giant, valuable pieces of real estate in this company, pieces of real estate that will realize millions and millions and millions of dollars that will go to support, not only the constituents, the employees, but also the investors, who have entrusted their hard-earned savings with this company.

We're going to walk through, I think, if it's helpful to you -- and please feel free to interrupt at any time, or to tell me that I'm wasting your time. But we want to walk through the background of, you know, what this company does, who it is, how we got here. Then I'll turn it back over to Mr. Beach and his team for the first-day orders on an administrative basis, and then Mr. Wise will carry the debtor-in-possession financing proposal.

THE COURT: Very well.

MR. NEWMAN: And as I think Mr. Beach indicated, thanks to the weekend and yeoman's work of Ms. Leamy and Mr. Fox, we have, I think, ironed out most of the issues, and are proceeding today on an acceptable proposal.

THE COURT: Shocking. Government employees working on the weekend. How about that?

(Laughter)

MR. NEWMAN: I got to tell you, they were up before me and after me, from what I can tell from the email trains, so my hat is off to them.

So, today, the intention is that the Woodbridge Group of Companies is going to take a major step forward towards placing itself on a sound financial footing that we facilitate a recapitalization of its capital structure and ensure its transition to an institutional financial basis.

For 35 years, the Woodbridge Group of Companies has been involved in real estate lending, development, and a variety of real estate finance activities, including real estate brokerage, a financing business, structured financing, and the like.

However, at the core of this business has been a retail fund-raising operation that, over the last 5 years, has raised a significant amount of money -- and I think the current estimate is in the seven-hundred-and-fifty-million-

to-eight-hundred-and-fifty-million-dollar range -- from retail investors. And these are, you know, individuals, noninstitutional investors, that have raised -- that have given money, including retirement accounts and savings accounts, to be invested in these property, asset, and the related business.

Over the last year and a half, this financing operation has drawn increased scrutiny from the SEC and 25 state regulatory agencies, as well as many, many others who have asked questions about whether appropriate representations were made. We're not here today to delve into those issues, although I think those issues will be raised and have to be addressed in the course of this case.

We are here today to deal with the fact that this gathering storm of regulatory and litigation costs and publicity has made it impossible for the business to continue with the retail fund-raising operation that it has, heretofore, relied on, in order to feed the lifeblood of this business, which is building and developing these homes that we'll show you some pictures of, but that you can imagine are extremely expensive.

And in order to continue to finish those properties, deliver those properties to market, and realize on the investment that both the company and its investors have made, it's essential that there continue to be an

ability to raise money, and to spend the money, and to operate the construction projects that we have.

The solution that we have proposed, in order to shelter the communities from this storm, include an operational overhaul and management over haul that has placed independent management at the help of this operation; a debtor-in-possession financing proposal that will be the first step in providing institutional money in order to finance the continued construction of these projects; and at least a nascent plan of how we'll proceed through this case, in order to ensure that the value of these completed and delivered properties is distributed appropriately to the investor community, according to their rights under the various documents and agreements they've made with the company. So, if that's okay, I would like to start just by flipping through a little bit about the business of Woodbridge.

Woodbridge takes properties, many of which it builds, either under construction or as vacant lots, proceeds to take them through an intensive architectural and structural redesign process, using the best architects and contractors that can be found, and produce finished homes that are sold in all the -- in the highest-end markets in the country: Beverly Hills, Bel Air, Aspen, and throughout the country. These are luxury homes, they are expensive to

build, they are expensive to buy. And they require an ongoing infusion of cash, in order to be able to deliver them.

I'll just flip through a couple examples of some of the finished homes. You've got One Electric Court in Los Angeles. You've got 9212 Nightingale Drive in Los Angeles. You've got Trousedale Place in Beverly Hills. These are some of the finished homes that will go for, in some cases, tens of millions of dollars.

You also have some outdated and demolished homes like Loma Vista Drive in Beverly Hills, also worth many millions of dollars, that is going to be renovated and constructed. And you've got empty lots like Hidden Ridge Road in Hidden Ridge [sic], California.

And I show you these slides, Your Honor, both for yourself and for the investor community because you will hear things in the coming days that may cast the company in an unfavorable light. But the independent management team and myself want you and the investor community to be aware and to be comforted that these investments and the large amounts of money that we're looking at as being owed by this company are backed by real assets that have been placed under the control of the independent management team, and that we intend to develop and deliver in order to realize the maximum amount possible for the investors.

The intention of this Chapter 11 case is to stop the expense and distraction for the litigation, to maximize the value of these assets, and to reorganize the company, so that it can continue to develop and deliver these properties, without relying on the noninstitutional fund raising that has been problematic to date.

If you don't mind, I'm going to turn you to the next side. The first step of this process is to reorganize and restructure the institutional corporate organization, in order to place Mr. Beilinson and Mr. Perkins solidly in control of the valuable assets, and in a position to oversee the continued development, the cash flow, and the delivery of these homes.

The organization of the Woodbridge Group of Companies basically falls into three principal silos. There's a lot of boxes here, but I'll tell you it's three principal silos:

To the extreme left, you have a tier of Carbondale Doocy, Woodbridge Group of Companies, and some other affiliate subsidiaries. That's, effectively, what one would think about as the, quote, "OpCo" in this business. It's where the bank accounts are, it's where the employees are, it's where a number of the relationships exist that allow for the development.

You then have a second silo, which is really where

the value is. The next two boxes which you see, collateral filers and non-collateral filers in a mezz and HoldCo -- PropCo/MezzCo structure. Those four boxes basically represent the engine of this business. These are the -- these are the -- these real properties I've shown you before and hundreds of others.

And the way this structure is developed, there's a third -- there's a third bucket, which is topped by WF Management, Inc., which, as you can see, flows down to these entities called Woodbridge Mortgage Investment Fund I through IV, and Woodbridge Commercial Bridge Loan Fund. If the PropCo and MezzCo is the engine, this is the fuel. This is where the retail fund-raising operation comes in.

And the way this process is funded -- the yellow boxes exist, but are non-filers. And as we've disclosed in our first-day declaration, to the extent we are aware they contain material assets, we've disclosed it. And to the extent that we are unaware of any additional material assets in those boxes, we are in the process of investigating, to make sure that all assets related to this business, we have accounted for and know where they know, and what value can be realized for creditors from those assets.

So, going back to the retail fund-raising operation, each property that is purchased is funded by one or more loans from one of the seven Woodbridge Funds.

Roughly speaking -- and it's a large enough structure that I can't ever say "every" or "all" in any circumstances. But basically, the way to think about it is, when a property is purchased by an entity that's entitled "PropCo" on this chart, a mortgage is originated in favor of the Fund. So the Fund gives the cash out of the cash that's been raised from the retail investors to buy the property, and the PropCo makes a promise to repay that cash and pledges a deed of trust in California, or a mortgage note in other jurisdictions, to secure that promise.

Then there is, generally speaking, a second lien note placed on the property, which is intended to fund construction costs of the property. And so, again, more money is spent by the Fund, and a deed of trust and note is given to secure repayment of that money. And then, in many cases, what we call a "mezz loan," or a loan issued by the MezzCo, the parent of the PropCo, is made, also in order to fund additional costs.

Typically, about 80 percent of the value of the purchase is secured by the first deed of trust, running from the PropCo to the Fund. The construction costs are some percentage, depending on the state of the building when purchased. And 20 percent of the acquisition cost gets funded by the MezzCo to the Fund.

Where did the money come from, one might ask.

Well, the money came from the retail fund-raising operation, which, basically, has resulted in the funds having two principal sets of interest holders. We'll call them, in the papers "noteholders" and "unit holders."

The noteholders have lent money to the Fund, and those -- that money is represented by a note issued by the Fund to the noteholder. And the Fund, in most cases, pledges its interest in the note that it received from the PropCo to secure repayment of that investor's "investor note," I tend to call it. Most of the properties in the PropCo structure have been financed in this way, and those noteholders have been tracked relating to the properties. And in many instances, a recording has been made in the real property records relating to that transaction.

The next tier of Woodbridge Mortgage Investment Fund interest holders is the unit holders. And they are represented by language in the operating agreements of each of the seven funds that says that, upon repayment of available proceeds, the unit holder will receive a cash distribution of an interest rate, sort of a four and a half to thirteen percent interest rate; return of its capital in most cases, although the documentation is not entirely consistent; and a fifty percent profit participation in the profits of the Fund.

At this point, we have kind of the principal

players laid out. And the question is: Once that retail money stops -- which it has, in part because of the bad publicity over the company's fund-raising practices, and then, once the independent management team took over because they weren't prepared to participate in that activity anymore. The mortgages stand, as they are they today, owed from the PropCos to the MezzCos, and money is owed out to the retail investor community.

So, in order to restructure -- I'm sorry, I should note on the next slide, before we restructure, Mr. Shapiro was the manager of all of these entities, and exercised control throughout the structure. Pardon me, Your Honor.

There were some -- if you look at the next slide, there were some transactions Mr. Shapiro engaged in prior to the restructuring, prior to giving over control of the assets to the independent manager. These transactions are disclosed at some length in the first-day declaration. And it will be an urgent matter of discussion with the committee, to make sure they understand them, and have enough opportunity to weigh in on whether any actions should be taken with respect to those transactions.

I will say, on behalf of the independent management team, that two things are true: One is, in the aggregate, it was the independent management team's view that the best interest of creditors was served by causing this

organization to come under independent control. We think that will avoid ongoing litigation costs and disruption caused by the regulatory investigations. We think it removes a cloud over the business and provides shelter for the assets, and gives the company breathing space, in order to continue to develop these properties. It's also probably the only way that the institutional financing that is allowing this process to continue could be obtained.

We also think that the process of running this case will be better if there are -- there's less litigation and more cooperative work to maximize the value of the assets, and an opportunity for consensual negotiation over what the relative values are. That said, you know, the only bad part of boxing is the other guy's punches, and we don't know, until we get further on and have other parties have notice, whether this will proceed in a consensual or non-consensual matter.

In the world of a consensual deal, we think, by and large, Mr. Shapiro has made a great concession to the investors by setting up this structure and allowing independent management to take over. And he insisted on certain compensation from the company in that regard. Any individual accommodation, obviously, one could look at and question. But in the aggregate, we think it's the best deal available to the interested parties in this business.

Going to step two, which is more technical. But basically, at that point, RS Protection Trust, which is Mr. Shapiro's trust, and of which he's the trustee, took action to create a new subsidiary, which is all the way on the right, in the little yellow box, WGC Independent Management Co., which is owned -- which is managed by the Beilinson Advisory Group, which is owned by Mr. Marc Beilinson. That entity then becomes, if you look at the next slide, the control party for all of the other entities, both debtor and non-debtor, that are identified and reflected in the first-day affidavit.

This structure allows Mr. Beilinson, and with the assistance of Mr. Perkins, who he has appointed as Chief Restructuring Officer, the sole officer of WGC Independent Management, LLC, and SierraConstellation Partners, which has been appointed as financial advisor to each of the entities on -- the debtor entities in the org chart, to exercise operational control, to the exclusion of Mr. Shapiro. He has no longer a management role with the business for the time being. And he has agreed to provide certain consulting services to Mr. Shapiro [sic] and Mr. Beilinson because they believe that that is the best way to capture his institutional knowledge about the properties and the development of the properties.

Obviously, as I indicated, that's one of the many

topics for conversation with the committee, once formed, with Your Honor, and with the United States Trustee, as this case develops.

Once he has appointed WGS as the operator, he has then -- the independent manager adopted certain limited liability company resolutions, in order to organize the business, eliminate limitations on the transferability of the interests, and to basically give effect to the intent of filing bankruptcy, including by authorizing the filing for the entities that are indicated in the graph.

I will note that although WGC Independent Management continues to be the sole manager of all of these entities, we have not changed the economics at this point. The RS Protection Trust is ultimately, entitled to the residual benefits of equity in these properties, if and when any is available. But until that time, he has ceded management control to the independent management team.

And if you look at Slide 5, resulting in the appointment of the restructuring officer and retention of the other folks, entering into certain of the transition services and other arrangements with Mr. Shapiro that were entered by the independent management team.

I'll note there are sort of two tranches of transactions with the company involving Mr. Shapiro. One occurred before the independent management team took over,

those are noted on the previous slide, and a couple were actually approved by the independent management team, including the transition services agreement and forbearance right.

And now you get to step six, which is where we are now. Step six is the blue slides indicate the entities that are going to be borrowers on and pledge their collateral in the case of the Prop and MezzCos to secure the debtor-in-possession loan. You'll notice that Mr. Shapiro, through his trust, has contributed the equity in the management entity under the Woodbridge Group of Companies. This is so that we can all feel comfortable that, if and when funds from the DIP are spent, preserving the properties that are owned by the trust, but that secure the mortgages to the funds, that there is a benefit running in favor of Woodbridge Group of Companies, which is the entity that will be borrowing the money and spending the money on maintaining the operations.

So the idea here is to just make sure that, as the money is spent, improving the value of the fund assets, which are the mortgages, because they are maintaining the collateral for those mortgages, that the benefit of spending that money is going back to Woodbridge Group of Companies. And the intention is that, as the money is spent, there will be complicated -- to my mind, easy to Mr. Perkins, I take it -- intercompany accounting done, so that, at any point, he

could allocate the values that are owed from one company to the other post-petition. I can't guarantee that that knot can be unsorted as easily pre-petition, but we are at least going to make things no more complicated going forward.

So that brings us to the debtor-in-possession financing, unless Your Honor has any questions about the structure.

THE COURT: I don't. I did read the declaration.

MR. NEWMAN: Thank you, Your Honor. And if I'm going into too much detail, please feel free to move me along.

Mr. Wise will make a more detailed presentation of debtor-in-possession financing, but I just want to make a couple of points clear. This financing is necessary, in order to be able to continue to operate and deliver the properties that we showed you at the beginning of the participation. The issue that we have is, having gone out to the market and looked for funding, people were unwilling to participate in the structure without a bankruptcy filing, due to the issues involving the retail fund-raising operation, and they were unwilling to provide junior financing; they only would lend in the bankruptcy under a prime debtor-in-possession financing.

That leads us to an issue that we will be raising, and I'm sure hearing more about in this case, which is that

we selected 28 properties -- they are listed for you there -- worth about $215 million, that's an as-is value, based on Mr. Shapiro -- I'm sorry -- Mr. Perkins' analysis. And you know, as with any value, we expect that, as we develop and finish the properties, they will improve. But for now, that's what we think the aggregate value is. We have noteholders at each fund level with interest in the mortgage notes that have been issued by the PropCos.

Now we can get in, and we will get in, I'm sure, in the future, into a relatively complicated UCC argument that we believe, at the end of the day, the right analysis is, that those notes are unperfected, with respect to the mortgages because they're just -- the mortgage notes because of the unit holders not taking possession of the notes and/or filing financing statements.

However, the point to understand today is that we have provided anybody who actually, in fact, does have an interest in the property with replacement liens on a separate pool of collateral, not these 28 properties, but a separate pool of collateral with, I think, $45 million worth of equity value the we discussed in the debtor-in-possession financing. I believe that, if you look, for example, at one of the collateral properties is the Owl Wood Estate (phonetic). That property alone has equity value in tens of millions of dollars. I think the total package is $45 million.

And so the effort has been to borrow the minimum amount of money we can to get through this initial period; to protect any rights that the investor community may have, if and when it's determined that they have rights, through the granting of direct liens on the real estate, as a collateral enhancement to any collateral they already have; and to then revisit this Court in a couple of weeks with a further presentation on the asset values and the adequate protection.

We believe, in discussion with the United States Trustee, that's the best way to proceed, in order to get the money the company currently needs urgently, in order to continue to operate, and to give the constituents comfort that they will be able to continue to operate, while still protecting the interests of the investor community as this process unfolds, with the goal of, hopefully, eventually, being able to make a maximum possible return, and if possible, full return to the investor community.

With that said, again, I want to thank Your Honor for hearing us on an emergency basis. I'm certainly happy to answer any questions Your Honor has regarding the case, the assets, the structure, or the proposed path forward.

THE COURT: Not at the moment. Thank you.

MR. NEWMAN: Thank you, Your Honor. With that, I'll turn it back over to Mr. Beach to discuss the first-day arrangements.

THE COURT: Very well.

MR. BEACH: For the record, Your Honor, Sean Beach from Young Conaway, on behalf of the debtors.

Your Honor, if you would indulge us, we have a number of people that would like to present the first-day pleadings today. So, from my office, Allison Mielke will be presenting a few of the motions; Ian Bambrick, a few additional motions; Matt Porcelli from Gibson Dunn, and Daniel Denny from Gibson Dunn, as well as myself, and then Mr. Wise for the DIP. With that, Your Honor, I would cede the podium to Allison Mielke.

THE COURT: Very well.

MS. MIELKE: Good afternoon, Your Honor.

(Pause in proceedings)

MS. MIELKE: Your Honor, first, I don't want to belabor the point, but we would like to thank the U.S. Trustee's Office, again, for reviewing our pleadings ahead of time. Hopefully, that will make this process run as smoothly as possible.

Before we get started with the motions, we have a few housekeeping matters to take care of. First, if I may approach, we have clean copies of the orders for the Court, and a few black-lines that we may be referencing going forward.

THE COURT: Very well.

(Pause in proceedings)

THE COURT: Thank you.

MS. MIELKE: Second, Your Honor, as Mr. Beach indicated earlier, the Chief Restructuring Officer is in the courtroom today. He is the declarant with respect to the first-day declaration. We will be relying on the first-day declaration as the factual basis for our motions, and he will be available in the courtroom for cross-examination as we go through each respective motion. So, respectfully, we would request to move that into evidence at this time. It is currently identified as Docket Number 12, and I have a copy for Your Honor if you need it.

THE COURT: I have a copy.

Does anyone have any objection to the admission of the Perkins declaration?

(No verbal response)

THE COURT: I hear no response. It's admitted without objection.

(Perkins Declaration received in evidence)

MS. MIELKE: Thank you.

With that, Your Honor I will present the debtors' joint administration motion, which is Number 3 on the agenda.

This motion seeks authority under Local Rule 1015-1 to jointly administer the debtors' cases. Should Your Honor grant the motion, the lead debtor in this case would be

Woodbridge Group of Companies, LLC. Joint administration is warranted in this case for two reasons:

First, as the thickness of the order itself will illustrate, the sheer number of entities in this case, 279, requires measures to be taken to promote administrative efficiency. Second, the debtors' operations share many of the same creditors and other parties-in-interest. Given those relationships, joint administration is appropriate, without harming the substantive rights of any party-in-interest. Accordingly, unless the Court has any questions, the debtors request that the Court enter the order to jointly administer the cases.

THE COURT: I don't.

Does anyone else wish to be heard in connection with joint administration?

(No verbal response)

THE COURT: I hear no response.

MS. MIELKE: Next up, Your Honor, is -- Your Honor, is Agenda Number 4. This is an application for an order appointment Garden City Group. This motion seeks authority, under 28 U.S.C. 156(c) and Local Rule 2002-1, to appoint Garden City as the claims and noticing agent in this case.

Before selecting GCG, the debtors reviewed and compared engagement proposals from three other claims and

noticing agents. The debtors submit that, based on the review of those proposals, that GCG's rates are both competitive and reasonable.

The number of filing entities makes it impractical for the debtors and/or the Clerk's Office in this case to serve the required notices and pleadings. And we respectfully request that the Court order -- excuse me -- enter the order appointing Garden City.

We did, Your Honor, receive a few limited comments from the UST with respect to language in the engagement letter that related to bank accounts. We have worked with the UST this morning, and we have resolved those issues; that black-line has been given to Your Honor.

THE COURT: I see it.

Does anyone else wish to be heard in connection with the claims agent application?

(No verbal response)

THE COURT: I hear no response. I don't have any questions.

MS. MIELKE: This, Your Honor, is Agenda Number 5. It's a motion for entry of an order authorizing, but not directing the debtors to pay taxes and fees.

With respect to this motion, the debtors operate in several jurisdictions where they are required by taxing authorities to pay real and personal property taxes. They

typically pay these in the ordinary course of business, either on a monthly, quarterly, or annual basis. The debtors estimate that, as of the petition date, they will owe approximately $1,035,000 in pre-petition property taxes, and those will accrue either before or on December 10th.

Similarly, the debtors also pay fees in several jurisdictions. That's with respect to building permits and land fees. These are related to appraisals, inspections, and permitting. The debtors estimate that there is no more than $825,000 in fees outstanding.

Your Honor, payment of these fees is necessary in this case. The potential for damages to the debtors' relationships with these taxing authorities could be problematic in the reorganization process, particularly because the debtors' core business is in the building and development of these properties. Should we not pay any of these taxes or fees, it could result in liens on the properties, liability against the debtors; it could be costly, and it could cause delay. So, for those reasons, we would ask the Court to enter the order.

We did have a few comments, I believe, from the UST with respect to this motion, but those were resolved prior to filing.

THE COURT: All right. Thank you.

Would anyone else like to be heard in connection

with the tax motion?

MR. BADDLEY: (Via telephone) Yes, Your Honor. This is David Baddley appearing on behalf of the United States Securities and Exchange Commission. May I be heard?

THE COURT: Yes.

MR. BADDLEY: Thank you.

So I think we're starting to get into the meat of the agenda a little bit, where the orders are contemplating payment authorizations. And my comments are likely to apply to many of these orders, and I will also have some other concerns with respect to the interim motion. And if it would please the Court, I would like to give a little bit of background on the SEC's interest in this case, to help put our concerns into context.

THE COURT: Go ahead.

MR. BADDLEY: Okay. So, as the Court is aware, and as debtors' counsel has mentioned, there is an ongoing SEC investigation. I will talk about now, largely, what has been disclosed publicly in filings made by the SEC in Florida District Courts.

The SEC's investigation is into certain debtors, as well as non-debtors, and it began a little over a year ago. It was, initially, an informal investigation and converted into a formal investigation, and it is still active and ongoing.

The investigation relates to the debtors' receipt of over $1 billion in investor funds, and whether the company is operating a fraud on those investors. Specifically, the SEC is investigating the offer and sale of unregistered securities; the sales of securities by unregistered brokers; as well as the commission of fraud in connection with the offer, purchase, and sale of securities.

The debtors who are under investigation -- who are under investigation have not been cooperating with the SEC's investigation. After several months of back-and-forth and accommodations made by the SEC, the limit and target request, the SEC was forced to file two separate subpoena enforcement actions in Federal Court. One of those actions now has a pending motion for contempt. Yesterday, the debtors filed suggestions of bankruptcy in both of those District Court actions, without any reference to the applicability of the police and regulatory stay exception, which may delay rulings on matters that are currently before the judges in those cases. So that's kind of where the investigation is in the proceedings.

You know, we are not here today to litigate whether these debtors have operated as a massive fraud, and we're not here to feud over whether the business description that was just stated to the Court is correct or is consistent with what investors were told. But there will likely be a

day, at some point, where that will be brought out, you know, in more detail.

One overall comment I would like to make about the concept of the independent management. We -- it -- I think the debtors did appear to structure, at least on paper, an independent manager that was -- it looks like it was an entity that was formed shortly before the bankruptcy.

One concern we have with this structure is that Mr. Shapiro, who owned and controlled the debtors before the bankruptcy, still has the authority to remove the independent manager for cause or for no cause. I didn't really see that spelled out in the motion. But in the operating agreement that is attached to the first-day affidavit, there is a section in that operating agreement, on Page 121 of ECF 12, that provides Mr. Shapiro's ability to do that. Granted, while this bankruptcy case is pending, his ability to do so requires some sort of form and notice.

THE COURT: His wisdom of doing so also requires further consideration.

MR. BADDLEY: Okay. Fair. That's -- yeah, as far as the -- I'm not sure what the Bankruptcy Court standard would be, but just looking at the document, it does appear to give him the ability to do it for no cause, but it is --

THE COURT: My point --

MR. BADDLEY: -- encouraging to hear that.

THE COURT: My point is the consequences in a proceeding like this might not be so good for him, if he were to exercise that option. But again, as you say, it's an issue for another day.

MR. BADDLEY: Okay. We're also -- you know, Mr. Shapiro is still not completely out of the picture. There was some sort of disclosure about him getting paid $175,000 a month for transition services, which amounts to more than $2 million a year. And it does appear that his intention is to resume control of these debtors as soon as the cases are over. And who knows what the status of the investors will be?

One other thing I would like to point out is that Mr. Shapiro has refused to turn over documents, and his -- has involved his Fifth Amendment right against criminal prosecution and is refusing to comply with the investigation, both testimony and documents, including emails. And several other key employees at the debtors have, likewise, invoked their Fifth Amendment as part of the SEC investigation. So that's a little bit of a background on where we are from that standpoint.

I guess my overall view on this is, you know, I understand the bankruptcy realities of wanting to preserve assets and -- but the reality is, is that this is not a typical Chapter 11 Debtor. There are no real revenues.

According to the budget, the only inflows into these debtors over the next 13 weeks is from asset sales; there's no income. And it seems, you know, that the truth is that they -- the debtors have just been purchasing properties to show off as collateral, to entice more investors, who are told that they will get first liens on the property.

Another point I would like to make is that the debtors' website, as of today, is still advertising these investments. It makes no mention of the bankruptcy. And it is still representing that the investments are first-position commercial mortgages, even though the debtors have now taken the position in court that those investments may, in fact, become unsecured.

So I think what we would like to happen here is, frankly, as little as needs to happen here today. The only thing that we would like to get approved is whatever payments are absolutely critical to preserve the value of the assets. We completely understand that we cannot ask the Court to hold these cases in that position forever, and we will need to make some decisions rather quickly on how we want to proceed with our investigation.

We have been talking with the U.S. Trustee's Office. But you know, we are extremely concerned about this bankruptcy. I have serious questions on whether or not it will be in the best interests of the investors. And in

essence, what we're looking for, again, is just the bare minimum to happen, perhaps for two weeks, to where we could come back on maybe further interim hearings, you know, if the Court is not yet in a position to be able to hold final hearings on any of these matters.

So, short of the DIP financing motion, I guess what we would be looking for is something that scales it down and limits the payments only to those that are deemed necessary and critical to preserve the value of assets, with some sort of disclosure in filing of what payments were actually made, with an explanation of necessity.

THE COURT: All right. Well, as you articulated, that's actually, usually, the general goal at first-day hearings, and I'm sure the debtor would agree with that.

The other thing I'm sure you're aware of is, once the first-days are through, there's a lot of, well, activity, which will ensue, including, presumably, appointment of a creditors' committee.

Is there a formation date set, by the way? I'll ask the U.S. Trustee.

MR. FOX: Good afternoon, Your Honor. Tim Fox on behalf of the United States Trustee.

Yes, we've settled on December the 14th, at 10 a.m., at the Double Tree Hotel here in Wilmington for the formation meeting. And we have a number of questionnaires

already out via email and posted to our website.

THE COURT: Okay. Thank you.

I mean, the other good news for you, Mr. Baddley, is that this is a forum that generally works on transparency, so it actually may end up being better for the SEC.

MR. BADDLEY: Yes. There is some -- you know, I think the debtors are a little bit more limited in what can happen. So, at least for the time being, this is not necessarily a bad place for things to be right. I -- like I said, we still have serious concerns about the long-term plans here.

And insofar as the payments that are contemplated, things like the property taxes and whatnot I imagine are, as the Court mentioned, limited to critical under the -- you know, the critical vendor rules and doctrine of necessity.

I think there are some questions on items such as the employee wages. You know, they are -- apparently, there are still about 150 employees. And you know, most -- our understanding is most of them were salespeople and administrative staff for salespeople. So, while not pertinent to Agenda Item 5, which is currently before the Court, there may be some of the future items that might benefit from some sort of fine tuning in the order to maybe limit the scope of it.

THE COURT: All right. Well, let me ask you to do

this. As individual motions are offered, you are welcome to make comment on each of them.

Okay. So this was on the tax motion. Let me ask if anyone else wishes to be heard in connection with the tax motion.

(No verbal response)

THE COURT: I hear no further response.

So, Mr. Baddley, at least at this stage, I take it there's no objection to the -- the SEC has no objection to the entry of the order on the tax motion.

MR. BADDLEY: Subject to these being taxes that I guess are necessary to preserve the value of the assets, no objection.

THE COURT: All right. I have no questions and will grant the relief that's been requested.

MS. MIELKE: Thank you, Your Honor.

At this time, Your Honor, I'll cede the podium to co-counsel Daniel Denny with Gibbs Dunn. He'll be presenting Matter Number 6 on the agenda, the critical vendors motion.

THE COURT: Very well.

MR. DENNY: Good afternoon, Your Honor. Daniel Denny with Gibson, Dunn & Crutcher, LLP, proposed counsel for the debtors.

This motion, which is Item Number 6 on the agenda, seeks authority to pay trade creditors that are essential to

the operations of the debtors' business, and necessary to the preservation of value for the estates. Our request for relief is made pursuant to Bankruptcy Code Sections 105(a), 363(b), 503(b)(9), 1107(a), and 1108.

In order to -- the basis for this motion is that, in order to prevent the commencement of these case from causing unexpected or inopportune interruption in the business operations, the debtors are thinking -- seeking authority to pay, but not direction to pay critical vendors claims in the aggregate amount of $1,500,000. That would be on a final basis. As we are here today, we are seeking authority to pay up to $500,000 on an interim basis, pending a final hearing.

These critical vendors are parties that provide building supplies and services relating to property development, including landscaping, construction, design, and architecture. As you saw from the opening remarks and pictures, properties are at various stages of development, various stages of renovation, from empty lots to, you know, putting on spec homes for showing. And these are high-end, luxury residential properties, for the most part. And so having vendors with relationships that may be unique, that may be difficult to replace, is critical for this business to continue, and to maximize values for the estate.

So, if the delivery of products or provision of

services from these critical vendors is stopped or delayed unnecessarily, the debtors do -- could not continue to maintain the construction and development schedules necessary to preserve values.

So we are not talking about everyone, of course. We've narrowed critical vendors to who we truly think are significant and, in fact, necessary to make payments to them, in order to continue to provide services or supplies. And so the criteria that we have set forth in the motion as a basis for the order are threefold:

One is that critical vendors that are identified would -- they supply quality specifications for customer expectations that would prevent the debtors from maintaining their schedule and performance, and so would need to -- would need to be paid for that purpose.

And also -- and these threefold are combined, by the way. Also, they would be difficult to replace. If they are not a single-source provider, at the very least, the disruption in replacing them would be so significant as to create a material delay or disruption to the business.

And number three, as a concession to this request for relief, we would require vendors, who would enter into -- who would agree to accepting payments in order to continue providing services or supplies, to agree, on a go forward basis, to enter into terms that are commercially reasonable

on -- that are consistent with the prior practice and in the field; and that, if necessary, they would enter into a written agreement, to the extent they haven't already or the terms have changed.

So I would also like to note, in conclusion, in filing this motion, we have received comments from the U.S. Trustee, and also in conformance with practice with the U.S. Trustee's Office, that we would provide monthly reporting of any critical vendor payments that are made. And we also have agreed that the debtors' authority to use these funds is intended only for emergencies, as I've described, and truly are essential for the operations and necessary to preserve value.

So, for these reasons, Your Honor, we respectfully request that you enter the relief requested.

THE COURT: Thank you.

Would anyone else like to be heard in connection with the critical vendor motion?

(No verbal response)

THE COURT: I hear no response.

I note that the details of the debtors' critical vendor analysis appears in Paragraphs 5 and 6 of the motion, but supported by the declaration that's been admitted into evidence. The request for interim relief is modest, so I'm prepared to grant the relief that's been requested.

MR. DENNY: Thank you, Your Honor.

I now, with Your Honor's permission, would like to cede the podium to my colleague Matthew Porcelli, who will discuss the next motion on the agenda.

THE COURT: All right. Let me just -- okay. I have it here. Thank you. Go ahead. I'll note that the final order -- the final hearing on this motion will be set for January 10th at ten o'clock. Objections are due by January 3rd, at 4 in the afternoon. And for all of the interim relief orders, that's what the final hearing date will be, just for the record.

MR. PORCELLI: Good afternoon, Your Honor. Matthew Porcelli from Gibson, Dunn & Crutcher, proposed counsel for the debtors and debtors in possession.

Your Honor, I'm presenting Item 7 on the agenda, which is our utilities motion. Our motion is seeking authority, pursuant to Sections 105(a) and 366 of the Bankruptcy Code to prohibit utility providers from altering, refusing, or discontinuing services to the debtors. The motion also seeks approval to provide adequate assurance of payment for pre-petition services of utility providers.

The debtors receive traditional utility services for, among other things, electricity, water, gas, and other similar services. The debtors paid an average of approximately $77,000 per month on account of all utility

services during the current calendar year. We understand the debtors are current on their utilities payments.

In order to maintain these utility services uninterrupted, the debtors are requesting authority to deposit, within 20 days of the petition date, an amount equal to the estimated cost for two weeks of utility services, or approximately $38,000, into a segregated bank account designated for the adequate assurance deposit. This amount is based on a historical analysis over the past year.

Your Honor, any discontinuation of the debtors' utilities at this point would disrupt the debtors' operations, including their ability to maintain and develop their properties. Because the debtors' receipt of uninterrupted utility services is vital to the continued business operations, and consequently, to the success of these Chapter 11 cases, the relief requested in the utility motion is necessary and in the best interest of the debtors, their estates, and creditors.

Your Honor, with respect to scheduling, we have asked that the request for entry of the final order be set for the hearing scheduled for January 10th, 2018. We recognize that that's outside the thirty-day period set in the statute, but we believe that the utilities' interests are adequately protected by the procedures that we set forth in the motion. So, unless the Court has any questions, for

these reasons, we'd ask that the Court enter the proposed interim order.

THE COURT: I do not.

I'll ask if anyone else wishes to be heard in connection with the utility motion?

(No verbal response)

THE COURT: I hear no response. And I will grant that relief. That order has been signed.

MR. PORCELLI: Thank you, Your Honor.

I will now cede the podium to my colleague Ian Bambrick.

THE COURT: Very well.

MR. BAMBRICK: Good morning, Your Honor. Ian Bambrick from Young, Conaway, Stargatt & Taylor, representing the debtors and debtors in possession.

Your Honor, I have the pleasure of presenting to you two motions: The insurance motion and the homeowners association fees motion, very exciting motions.

THE COURT: Well, wait until we're done before you tell me what a pleasure it is.

(Laughter)

MR. BAMBRICK: Your Honor, for the insurance motion, the first of the two, pursuant to Sections 365(b) and 105(a), the debtors seek authority to pay pre-petition amounts due under insurance policies, and to continue such

policies after the petition date. Excuse me.

The debtors incur approximately $2.4 million in the aggregate in annual premiums and other obligations, including brokers' fees, related to the insurance policies. The insurance policies are included on the exhibit to the motion, and include property, commercial, building renovation, and personal liability coverage.

Your Honor, the good news as to the insurance is that the debtors do not believe that, as of the filing date, there were any amounts outstanding. What we were concerned with in this motion is amounts that may have been paid, but for example, checks had not been cashed. So it's a relatively small universe that we're concerned about here. In light of that, given the importance of the debtors' insurance coverage, the debtors seek approval to pay any such pre-petition obligations out of an abundance of caution.

In addition, the debtors are effectively required to maintain insurance pursuant to Section eleven eleven two -- sorry -- 1112(b)(4)(C), as failure to maintain adequate insurance is cause for conversion to Chapter 7, as well as by the guidelines established by the Office of the United States Trustee.

Further, the relief requested is proper, given that insurance coverage is essential for preserving the value of the debtors' assets, and in many instances required by

various regulations, laws, and contracts, that govern the debtors' business operations.

Your Honor, as with the other motions, prior to filing the motion, the U.S. Trustee's Office requested certain additional information, which we provided and, it is my understanding, resolved the U.S. Trustee's concerns. As such, unless the Court has any questions, the debtors request that the Court enter the order authorizing the debtors to pay any pre-petition amounts due under the insurance policies.

THE COURT: All right. Thank you.

Does anyone else wish to be heard in connection with the insurance motion?

(No verbal response)

THE COURT: I hear no response. I don't have any questions.

MR. BAMBRICK: Thank you, Your Honor.

Turning to the homeowners associations fees motion, Your Honor, pursuant to Section 363(b), the necessity of payment doctrine, and Section 105(a) of the Bankruptcy Code, the debtors seek authority to pay pre-petition obligations owed on residential properties owned by the debtors to homeowners associations, condominium associations, and other similar community organizations.

As part of the debtors' business, as you heard, the debtors typically incorporate nonprofit homeowners or

condominium associations, in conjunction with certain of their residential developments. These associations are managed pursuant to recorded governing documents that meet the requirements of applicable local laws. And until the debtors sell the residential properties in question, they are required to fund any deficit in the association's operation budget, as well as pay association obligations for the unsold units the debtors own and hold in their inventory.

If the debtors fail to pay association obligations, the associations are able to assert liens on those properties. Any such liens would prevent the debtors from conveying clean title to the properties in question, which would be to the detriment of the debtors' business and the reorganizational [sic] efforts.

As of the petition date, the debtors believe that there is no more than 107,000 of pre-petition association obligations outstanding. Prior to filing, as with the other motion, the U.S. Trustee's Office had some questions regarding the relief of this motion, which we we've addressed and I believe we've resolved.

Given the importance of satisfying these obligations to the debtors' business and reorganizational efforts, unless the Court has any questions, again, we would request the Court enter this order.

**Mary** THE COURT: Does anyone wish to be heard in

connection with this motion?

(No verbal response)

THE COURT: I hear no response. I don't have any questions.

MR. BAMBRICK: Thank you very much, Your Honor. I'll turn the podium over to my colleague, Sean Beach.

MR. BEACH: Your Honor, for the record, again, Sean Beach from Young Conaway Stargatt & Taylor on behalf of the debtors.

**#10** Your Honor, the next pleading on the agenda is the wages and employee benefit's motion. Your Honor, as you've seen in the pleading, there are approximately 200-thousand in accrued and unpaid wages that we seek to pay. We're not aware of any amounts that are over the $12,850-dollar cap. No commissions will be paid in an amount above that.

As of the petition date, there are also contract workers that we're seeking to pay in the unpaid amounts owed to those contract workers; again, under the cap amount, as well as to the payroll administrator. There are a number of contracts the company has, approximately twenty-seven, and they are important workers to the company, so we do want to make sure that those amounts are satisfied as well in addition to a 135 full-time employees.

Your Honor, out of the total number approximately 160 employees, there are approximately 30 employees that were

employed in connection with the retail investing arm. As counsel indicated earlier that arm has been shut down, but those employees weren't terminated prior to the petition date for a number of reasons, not least of which is that they're owed severance and we didn't see any financial impasse to severing at prepetition, as well as we thought it was important to have discussions with those employees and to understand that business arm better.

So, to address the SEC's question in that regard, it certainly is not the vast majority of the employees. It is a subset of them. And, you know, the company is considering those issues as the case unfolds.

Your Honor, in addition, we're asking to reimburse employees for reasonable expenses that were incurred in connection with their work with the business and we believe those obligations in an amount less than $25,000 dollars. In addition, we're looking to honor the accrued paid time off, to the extent that those obligations come due.

One good thing, I will note, that has changed based on certain inquiries from the office of the United States Trustee given the number of entities with the company and then two entities or two brokerage entities that were determined not to, at least at this time, be debtors in the Chapter 11 case. We learned that the four employees that we sought to pay severance up to $10,000 dollars in connection

with this motion are employees are -- well, I think both of those non-debtor brokerage entities, I think, some are in one entity and some are in the other. So, we removed the request and made a note in the revised form of order that we are not requesting payment for those non-debtor employees.

And just as a general comment, and I think this was another agreement that we have with the U.S. Trustee that we would make clear to Your Honor, the debtors are not seeking to make any payments to non-debtor employees. Those will be the responsibilities of those debtor entities.

Now, there are certain situations in terms of the employee benefits and how the payroll works where the debtors will need to seek payment up front and then will make a payment in connection with an overall benefits plan premium or in connection with funding payroll, but will not pay any of those funds unless the company is first reimbursed from that non-debtor entity.

So, there will be no monies that leave the estate without first receiving prepayment from those non-debtor entities. I say that and that's only an interim solution, Your Honor. We do intend to enter into or to negotiate a shared services agreement with those non-debtor entities and then bring that before the court for court approval.

But just so it's clear, the debtors will not be funding any money for non-debtor entities unless that payment

is prepaid to the debtors.

And with that, Your Honor, one other thing I would note for the court is that we are asking for this to be a final motion in connection with the employee wages motion. We think it's routine. We think it's important given the nature of this case that the employees have the comfort that they will receive their payments and benefits.

And with that, Your Honor, I would ask if you have any questions for me?

THE COURT: Mr. Beach, what's the aggregate amount to be paid out under the authorization sought by this motion?

MR. BEACH: Your Honor, I would have to add it up, but the paid time off is the biggest slug in there which is $450,000 dollar, but as Your Honor knows, we do not believe that those amounts would accrue. Only some portion of those amounts would accrue at the time.

If I may just confer with Mr. Perkins for a moment, I might be able to get a better aggregate number than trying to do math on the podium.

THE COURT: You may.

MR. BEACH: Your Honor, as I indicated the paid time off is about $450,000, so we are asking to be able to honor those obligations, although we don't believe all of them will need to be paid. And we believe the outstanding amount is unpaid accrued and unpaid wages is approximately

$200,000. And then additional amounts are the $25,000 for the reimbursable expenses $6,000 for the payroll administrator.

So, let me just make sure I'm not missing a category.

Your Honor, it looks like the aggregate amount would be approximately $750,000 with the $200, the $450 paid time off. There's certain contract parties, the payroll administrator and the expense deduction -- the employee expenses.

Your Honor, I'm told it's 681.

THE COURT: Thank you. Does anyone else wish to be heard in connection with the wage motion?

MR. BADDLEY: Your Honor, this is David Baddley, again, with the SEC.

No one wants to be the one to oppose employees getting paid. My concern, you know, pretty early out of the gate here is the continued employment of sales people. The thirteen-week budget shows that the debtors will have zero incoming money on fundraising, which I'm certainly not opposing. I think that's a good thing.

But there certainly is questions about the continued need for a sale staff, as well as the administration of the sales people. I understand counsel stated that there was some, perhaps, early need for it, but

it is a concern not knowing how these cases are going to end up and what money is going to be available for potentially what will be shown to be victims of a fraud that that money is going out the door.

It sounds based on the estimates that, and if I could just get confirmation that there will not be any outstanding commissions paid. I know on the top thirty list of creditors, about a third of those creditors, some in fairly large amounts, health commission claims, but I'm assuming based on the 681 that they are not included.

We also would like confirmation -- and I'm sorry I just not being able to read all these documents clearly, this probably is not contemplated, but I would just want confirmation that nothing in this motion or order authorizes the payment under the transition services agreement to Mr. Shapiro's entity.

And regarding the paid time off, I would request is there a way that that aspect could be pushed, at least, to a final hearing?

THE COURT: Debtor wish to respond?

MR. BEACH: Yes, Your Honor.

First of all, there is no authorization in this motion to approve any of the payments under the transition services agreement.

Your Honor, in terms of the release sought in this

motion, we do believe that this is critical relief that will help avoid immediate and irreparable harm for the company. We do think that the magnitude of the request, which is a maximum amount of approximately $700,000 dollars is a relatively small amount in connection with the assets of this company and the overall credit of this company.

So, Your Honor, we would ask that we be able to satisfy these obligations to the employees and make sure that we get these cases off to a solid footing at the beginning of the case.

**Ruling 10** THE COURT: All right, let me just say this. The request is, indeed, a modest one as things go. So that you're clear Mr. Baddley, the nature of this relief is for permission to pay prepetition obligations or obligations which were incurred prepetition. So, it does not authorize in and of itself the ongoing employment of anybody.

It does limit any recoveries to what under priorities provided by the Bankruptcy Code couldn't be exceeded. So, for those reasons and to avoid disruption, I'm prepared to grant the relief that's been requested.

With respect to the paid time off that, as I understand it, if it's the usual situation is are funds which would be expended for things like paid vacation or other rights for paid leave, which would only be paid in the ordinary course of business. It's not any kind of a catch-

up, is it Mr. Beach?

MR. BEACH: That's exactly right, Your Honor.

THE COURT: Okay. So, with that understanding, I'm prepared to grant that relief.

MR. BEACH: Thank you, Your Honor.

**#11** Which brings us to the cash management motion, Your Honor. The company had a number of bank accounts that Comerica Bank prior to the bankruptcy case. Upon the replacement of Mr. Shapiro with the independent manager and the CRO, new bank accounts were opened on that very same day.

There were four bank accounts opened in the Woodbridge Group of companies. The four bank accounts are an operating account; a payroll account where payroll will be funded into and/ adequate assurance account, which as Mr. Porcelli indicated earlier is where the security deposit for the utilities will be held; and an alternative account, Your Honor, which is currently contemplated to hold interest payments for noteholders in that segregated account or other adequate protection amounts that need to be held in that account in connection with the financing.

So, Your Honor, there may be additional accounts that are opened up. These accounts are in United Bank, which has a UDA. And I think the U.S. Trustee's office wanted to check on a few things, but we don't believe that there will be any issues with United bank and those accounts. To the

extent that any additional accounts are opened, we'll certainly notify the U.S. Trustee's office of that.

We are in the process of closing all of the other accounts. The funds have been all transferred to these bank accounts upon the replacement of management. I believe that the majority of the funds were transferred on that day and there were some lagging funds that were transferred, I believe, on Monday to the United Bank accounts.

These accounts are set up in a system that the CRO believes will be easily trackable and will allow for the CRO to track various intercompany claims and payments. There are certain intercompany payments that are made. These are often times advanced payments that are for construction projects that result in secured claims and increased in the mortgage amount for the payment advancement for construction projects.

If there are not secured claims or in that status, we are asking that the intercompany claims, and these are all with debtors, Your Honor. These aren't intercompany claims with non-debtors. We're asking that they be accorded administrative expense status under 503(b).

And with that, Your Honor, I think there was one representation that I needed to make. That, Your Honor, is just simply that we had closed the Comerica accounts. Last, I heard, Your Honor, there was a problem closing the final set of accounts at Comerica because there was an overdraft of

about $8,000 dollars. So, we are in the process of getting that bank account closed. To the extent we need additional relief from the court to make sure that happens, we'll do it. But we are in the process of making that happen.

So, Your Honor, we would ask that you approve the newly implemented cash management system that's in place now with these four accounts. I should note, we do have or will establish a DIP account for the sole purposes when the DIP is drawn the funds would go into that account prior to moving to one of these other accounts at United Bank.

And with that, Your Honor, we would ask that you approve the relief we've requested under the cash management motion, but I would ask if you have any further questions from me on these.

THE COURT: Does Mr. Shapiro retain any signature other authority over estate assets at this point?

MR. BEACH: No, certainly not with respect to these accounts, Your Honor. And if I may just check on that.

Your Honor, he may have signature authority on the Comerica accounts, which are in the process of being closed and have no funds in them. All of those funds have been transferred.

THE COURT: All right. Thank you.

Does anyone else wish to be heard in connection with this motion?

(No verbal response)

**RULE 11** THE COURT: I hear no response. I don't have any questions. That order has been signed.

MR. BEACH: Thank you, Your Honor.

Your Honor, I believe that brings us to final request for relief today which is the debtor in possession financing. I would yield the podium to Eric Wise from Gibson Dunn to address that motion.

THE COURT: Very well.

**12** MR. WISE: Good afternoon, Your Honor, Eric Wise, Gibson Dunn & Crutcher for the debtors and debtors in possession.

I'm going to present to you the debtor's motion for interim and final orders pursuant to Sections 105, 361, 362, 362, 364, 507 and 552 authorizing the debtors to obtain post-petition secured financing, use cash collateral, grant adequate protection to prepetition secured parties, modifying the automatic stay and scheduling a final and an interim hearing pursuant to Bankruptcy Rules 4001(b) and 4001(c) and granting related relief.

Your Honor, we're seeking to the authorization of a DIP financing initially in the amount of six million dollars for an interim period to last fourteen days, upon which there would be second interim hearing before there would be any further drawing under the debtor-in-possession

facility.

And then the additional authorization at that second interim hearing would be through the final hearing date. We're seeking authorization as well to execute and deliver the DIP credit agreement, authorization as well to grant the security interest -- the priming security interest for the lien on certain possible noteholder interest and a priming lien on mortgage notes that have security in the real property, a junior lien in other existing prior liens, and the superpriority administrative expense claim.

We're also seeking authorization on 363 for the use of cash collateral and modifying the automatic stay for relief with respect to the DIP financing and certain circumstances and scheduling the hearings as mentioned.

Your Honor, this DIP process was an extensive one. It was led by our financial advisors, SierraConstellation LLC. In that process, we solicited fourteen potential sources of financing. We received in that process eleven expressions of interest. Five of those expressions of interest were ultimately reduced to either a term sheet or a specific proposal for our consideration.

In connection with those five proposals, we prepared a composite counterbid term sheet, which we presented to all of the potential DIP lenders, all of whom had proposed priming financing. None of them proposed

unsecured financing or junior lien financing.

From that process, we selected Hankey Capital as our lender based on several factors. One was the superiority of their terms, both in interest rate and the fees that would be charged in connection with the facility and also because Hankey Capital was familiar with these types of real estates assets and these particular assets, as well. And, so, having an advantage with respect to those assets in consideration of the DIP financing.

And we also chose Hankey Capital because Hankey had expressed some interest in potentially providing exit financing. And, as was mentioned in the opening remarks that the purpose of the case is to move towards a more permanent institutionally capital structure, Hankey is part of the step down that road. With that said on the process, I'd like to talk a little bit about the terms of the DIP.

The DIP aggregate amount is for $100-million-dollars. We are seeking authority as mentioned to borrow six million dollars under it now on a 14-day basis to a second interim hearing where some of the issues presented may be considered at that hearing as well. And the proceeds of that would be used for the necessary expenses in connection with the administration of the estates.

MR. FOX: Good afternoon, Your Honor, Tim Fox on behalf of the United States Trustee again. I rise briefly

just to indicate that the initial ask by the debtors on the interim DIP financing was $25-million. In consultation with our office and after extensive negotiations, we agreed not to object to the relief today based on the debtors taking only a six-million draw and setting a second interim hearing.

Counsel was outlining that we just wanted to make it clear that that was an improvement from the terms that were originally proffered with the motion. In addition, I believe the debtors will make some additional representations on the record in recognition of the resolution we reached on this motion. But we just wanted to --

THE COURT: Okay. And that's not reflected in the blackline?

MR. FOX: Yes, I --

MR. WISE: When I was done, I was going to hand up a hand-marked order that will reflect the reduction from $25-million to six. We'll also, what I mentioned with respect to a second interim hearing and final hearing.

If you'd like me to bring that up now, I can do that and go through the revised order.

THE COURT: I would

MR. WISE: Okay. I'll be happy to do that. May I approach the bench?

THE COURT: Yes.

MR. FOX: Your Honor, Tim Fox on behalf of the

United States Trustee again. We were concerned about preserving the status quo and felt that another interim hearing after a committee has a chance to be appointed would be more fruitful then the initial January 10th final hearing for the DIP.

THE COURT: Okay, so, we weren't consulted -- this is not a criticism -- about a date for that, so we'll talk about that once we get through the suggested changes.

MR. WISE: Yes.

THE COURT: So you want to walk me through the order?

MR. WISE: Sure. You have in front of you a blackline from what was filed. And the first change appears on page 2 which is merely striking a reference to Chapter 11 cases that wasn't using the proper --

THE COURT: Material change is all we need to focus on.

MR. WISE: Okay. Sure.

So, if you move to page 4 in paragraph six, while there's a fair amount of blacklining, it's essentially an elaboration of what we were already saying which identified the collateral as in 28 specific core properties.

THE COURT: I see that.

MR. WISE: In seven with respect to the priming adequate protection, there's clarification around the

language with respect to investors and noteholders. And noteholders because of the way the term was used was redefined to make clear that those are noteholders that assert a lien.

With respect to the issues of adequate protection and priming. If you turn the page from there to Section 1.2 on page 6, we've hand-marked the reduction from the maximum amount that had been reduced at one point reflecting interim negotiations $15-million to six million for the period commencing on the petition date through the date of the hearing set forth in paragraph 6.8, which would be the new interim period, which is the shorter date, whichever would be there. And then provided that the court would consider on that date the ability to draw the full $25-million dollars at such hearing.

With respect to the change on page 7, that simply a clarification that the creditor asked for with respect to against whom the loan documents constitute binding evidence.

On page 8, we've included provisions with respect to the objections to fees.

THE COURT: Let me ask you to pause there for a moment.

MR. WISE: Sure.

THE COURT: With respect to Section 1.3.

MR. WISE: Yes.

THE COURT: I will require that any material modification be court approved, even in the absence of objection.

MR. WISE: Okay.

THE COURT: And you may continue when you're ready.

MR. WISE: We will make an adjustment to that.

I discussed 1.4 on page 8. We've included language with respect to challenges to the lenders, invoices submitted by the lenders.

And then on page 9, we have further clarified the 28 parcels by specifying them as indicated in the schedule in the loan agreement.

Page 10 are immaterial changes.

Page 11 is also an immaterial change. The change on page 11 at the bottom to 3.1.2.3 that limits the claims of the 507(b) claims to the claims against the obligors.

In Section 3.1.3, again, the distinction that's being included here is the distinction between the fund liens which are the funds, hold the mortgage notes, which were then pledged as security for the investors. And that's the clarification intended there.

And then there's a minor clarification, 3.14 with respect to control of deposit accounts in that paragraph continuing on page 13. Again, the changes to the

superpriority claim and the carve-out are simply conforming defined terms, again through the balance of that carve-out discussion.

And flipping ahead, I think the next material change is the further interim hearing on the final page, which is going to be the new paragraph 6.8, which describes a further interim hearing and a date to be determined by this court. And it says,

"The court will hold a further interim hearing to consider the relief granted in this interim order on December blank, 2017 at a time unspecified in the blank. Any objections to the interim order will be filed on or before December 2017 at 4:00 p.m. Eastern time. And the debtors should provide notice in the same manner as set forth."

THE COURT: All right, well let's talk about a date. Committee presumably will be formed on the 14th. I like to give them at least a week, if we can. I'm sure nobody wants to come here on the 22nd. Well, I'm pretty sure anyway.

So, why don't we set something for say nine o'clock on Thursday the 21st, how's that?

MR. BADDLEY: Your Honor, may I be heard on the timing?

THE COURT: Yes.

MR. BADDLEY: Thank you. Again, this is Dave Baddley for the SEC.

We certainly appreciate the reduction in the interim financing and the effort to sort of bifurcate the interim process. You know, the concern here, you know looking at the budget, it doesn't seem that, at least, over the next two weeks that there should be a need for any financing. The budget shows roughly $14.8 million dollars in cash to pay about $9.5 million in projected disbursements.

So, in considering that even a relatively small amount of interim financing is at issue here. The bottom-line is that it's still priming these investors, these noteholders who are individuals who did not receive notice of the motion, who did not receive notice of the hearing today, and there may be concerns over the value of the adequate protection package.

And what would be ideal from our standpoint if the debtors can survive one week, ten days just with cash on hand and put the next interim hearing up to a point to where they project they will need to start to tap into the financing. And then the final hearing can be after the committee appointment. That would be, I think what would be the most fair, considering the circumstances.

There are a lot of questions about this priming issue. And, again, I don't think I can state too much none of

these investors have received any notice of this. Even if they did, they wouldn't know what it means. And they're not able to be heard before potentially what they were told time and time again was going to be a secured investment is now either going to be treated as unsecured or offered a suspect adequate protection package that I don't think can be valued today.

So, if there is any way that this next interim hearing could be moved to a point without any interim approval of financing today, and if it means it has to be next week or whenever, but, again, based on the budget it does seem that we have, at least, two weeks with quite a variance in the projected disbursements. That would be our preference.

Also to the extent there is going to be any sort of interim financing approved, we'd have questions about the associated fees, the closing fees. There's a $1.5-million-dollar closing fee and a $1.25-million-dollar exit fee making sure that those are not triggered from a small interim financing being approved.

One other point is there are, I guess, some concerns, and this is a broader question on the budget is that if only 27 debtors are pledging collateral, it looks from the budget that about $28-million-dollars of the budget are going to contractor cost. And it's not clear whether and

how much of the projected disbursements over the next thirteen-weeks benefit only the debtors that are pledging collateral versus the entire bucket of debtor entities.

So, the point being I think that there is still a lot that needs to be looked at. And, frankly, we're not seeing the urgency why any amount needs to be authorized in the next ten days. And if we could do a second interim hearing that would then allow the opportunity for there to be an initial necessary draw, if needed, before a subsequent final approval after a committee is formed. We think that would be best in addition to deal with the notice concerns.

THE COURT: All right. Thank you.

Does anyone else wish to be heard in connection with financing?

MR. WISE: There's one other issue that I want to --

THE COURT: I just want to hear that first.

Do you have a separate copy of the budget you can hand up? All right, thank you.

All right, counsel, you may continue.

MR. WISE: So I wanted to address the question of adequate protection. One of the things that we wanted to do in this package is the -- there were two or several elements of the adequate protection package.

The first was the replacement lien on the 28

properties that are the specific real property collateral that's being primed.

The second is a cash reserve of interest to be set aside and segregated and to be available to the note holders that are being primed to pay their interest, should it be determined that they have a valid enforceable and avoidable lien.

And then the third piece of it is a replacement lien on additional property. Initially, the thought had been that that would be one additional property. The Owlwood property which you saw on the slides, which is that historic property which has a very high value.

And we've modified that or we'd like to modify that to have six total properties, so five additional properties so that the total value of the adequate protection from the additional properties that are not part of the collateral pool. So, it's the residual value in six additional properties that are separate and apart from this group of debtors that is borrowing and the collateral is being primed to make that available. The approximate value of that is about $45-million-dollars.

We think at the least valuation, I have a proffer of testimony for Mr. Perkins, which I'd like to offer in support of that. And he's available in the courtroom to be cross-examined on that proffer.

THE COURT: Go ahead.

**Lauren** MR. WISE: Mr. Perkins, who is here in the courtroom today, is the chief restructuring officer of WGC, independent manager, the sole manager of debtor Woodbridge Group Companies, LLC and an affiliate of each of the debtors and the debtor-in-possession in these Chapter 11 cases.

If Mr. Perkins were called to testify he would testify that the debtors, following extensive negotiations with the DIP lender, agreed to provide a conditional adequate protection for the interest of the noteholders in the DIP collateral and that the proposed debtor-in-possession financing, for which the debtors today seek authorization, constitutes the result of these negotiations.

The adequate protection property includes the Owlwood Estate Historic Mansion located in Holmby Hills, Los Angeles, California. The Owlwood Estate is one of California's most iconic and historically significant properties designed by the world-renowned architect Robert D. Farquhar. The estate includes an Italian renaissance villa along with modern details added over the years by many notable former owners.

The debtors purchased the Owlwood Estate for approximately $90 million dollars in November of 2016 and have invested approximately an additional 22 million in maintaining the property and preparing the property for

further development. I believe that these investments should add to the value of the property because, among other things, the property is being divided into parcels; five parcels for sale.

The debtors obtained an appraisal of the property which was valued at approximately 125 million and this valuation on the pre-improvement property does not take account of the for-mentioned expenses incurred in connection with the sub-division.

Mr. Perkins has spoken with the brokers responsible for marketing the property. The brokers have reported significant interest in the property which has been listed for sale at $180 million dollars since July of 2017. There have been over twenty-five showings of the property to various individuals at the price of $180 million dollars with three individuals having made multiple visits to the property. Two of the three potential purchasers are cash buyers that would not need to raise financing to acquire the property. The third would likely need to raise financing.

While the potential purchasers have not yet submitted formal offers on the property, according to the broker, they have discussed offers in the $150 million to $160 million-dollar range. The brokers continue to show the property at approximately two times per week to the qualified buyers. This value is subject to existing prepetition liens

of approximately 112 million resulting in an approximate value net of as much as 48 million and not less than 25 million.

In addition to the Owlwood property six properties would be included as adequate protection. Based on the methodologies customarily used by Woodbridge for it's as is values the total value aggregate of these five additional properties if 24.9 million. And so that the aggregate amount exceeds 45 million for the value of the Owlwood and the other five properties.

In light of these facts and circumstances Mr. Perkins would testify that he believes the proposed adequate protections significantly exceeds the total balance of the interim amount drawn under the DIP facility and that it is more than sufficient to cover any potential diminution in value and the noteholders interest in the DIP collateral.

In conclusion Mr. Perkins would testify that the adequate protection associated with the proposed DIP facility provides appropriate protection for the noteholders, potential interest in the collateral and that the court should approve the debtors' request for interim financing in the proposed interim order that's been submitted to the court.

THE COURT: All right. I'd like to ask Mr. Perkins to come and be sworn in.

LAWRENCE RUSSELL PERKINS, WITNESS, SWORN

THE CLERK: Please be seated. State your full name for the record and spell your last.

THE WITNESS: Lawrence Russell Perkins, P-E-R-K-I-N-S,

THE CLERK: Thank you, sir.

THE COURT: Thank you.

Mr. Perkins, I'll accept the proffer as your direct testimony.

I do have one question for you. The SEC says based upon its review of the budget that there's no need for use of $6 million dollars, at least, between now and two weeks from now. What is the -- please explain to me why you think, obviously, to the contrary?

THE WITNESS: Most specifically the budget contemplates the sale of a certain asset over the next couple of weeks that contributes to the overall balance. If you actually look at the cash flow -- and actually if I could have a copy brought in front of me.

THE COURT: Yes, you may.

THE WITNESS: I apologize in advance for trying to walk you through a spreadsheet without being able to point numbers out, but I would direct yourself to column number three, week ended 12/22 which is two weeks from now.

THE COURT: I see it.

THE WITNESS: Okay. If I look at the line called operating cash ending book balance at the bottom it demonstrates that there's $25.5 million dollars. Now, obviously, this budget was contemplated with a $25 million dollar drop at the outset. If you look at the 25 million and reduce that number from the 25.5 that would contemplate that there would be $512,000 dollars of operating cash at that point. That in and of itself, you know, $512,000 dollars is greater than zero; that's okay.

Then I would go to column two and the second line from the top, the one that says total net property sales non-collateral 2.351 million.

THE COURT: I see it.

THE WITNESS: That contemplates the sale of two actual properties that are for sale right now. We think they're for sale -- we think that they will close because they're in the budget, but with all the noise around the bankruptcy it's safe to say that the buyers are a little bit nervous about purchasing an asset out of bankruptcy. So, we're concerned that that 2.351 million would not come in.

If you take that 2.351 million away from my 512,000 that would, obviously, be less than zero. So, we need something. The question relates to whether we need the exact amount associated with that number if there's something else.

You know, I was appointed on Friday and it's safe to say that there is a lot of clean-up to do with the company in a number of different fronts including the accounts payable department and how checks are managed and other things. So, we are continuing to uncover that there are payables and other things outstanding.

My goal over this overall case is to make sure that we, you know, continue improving these properties. The last thing I want to have happen is to have a $20 million-dollar house, have the workers walk off-site and not be able to complete the house because it's worth a lot less if its half done then it would be when it's done or even before it was started. And for our investor's sake and otherwise I want to make sure that we continue that process.

So, I'm putting myself a little cushion here; call it $2 million dollars of cushion because I just don't everything that will come up. And given the size and scale of the development budget that we have I feel like $2 million dollars on that is relatively low.

THE COURT: All right. Thank you.

Mr. Baddley, I do not permit examination by telephone so I'm not going to give you the opportunity to cross-examine Mr. Perkins at this point. And that's a practice I've always had in the years I've been on the bench. I find that process to be unwieldy, but I will ask for anyone

in the courtroom -- does anyone else wish to cross-examine Mr. Perkins?

(No verbal response)

THE COURT: I hear no response.

Would you like to conduct any redirect as a result of the questions that I had asked?

MR. WISE: We don't, Your Honor.

THE COURT: All right. Thank you, sir. You may step down.

(Witness excused)

THE COURT: Does the debtor have anything further in support of its request for financing?

MR. WISE: No. I think that concludes what I intended to say in support of the motion.

THE COURT: All right. Thank you.

Does anyone else wish to be heard? I'll hear from the U.S. Trustee.

Mr. Baddley, I will give you another opportunity to comment, but let me go through the folks in the courtroom first. Okay.

MR. BADDLEY: That's fine. Thank you.

MR. FOX: Good evening, Your Honor. Tim Fox on behalf of the United States Trustee.

Apologies, again, for interrupting earlier. I just wanted to kind of get to the punchline so we could have

this discussion now.

My office had some serious concerns about the DIP financing as originally proposed. And our concern going forward has been maintaining the status quo for the parties in interest in this case as best as we can while also allowing the debtors to preserve value for the estate.

We feel that the compromise that the debtors have put forward and with an additional hearing on a further interim draw best preserves that status quo and we also understand from the debtors that no payments will be made to Mr. Shapiro as part of the transition services agreement during that further interim period, also preserving the status quo and keeping everyone's powder dry as it relates to that issue.

I'll turn the podium over now to anyone else wishing to comment.

THE COURT: All right. Does anyone else wish to be heard?

(No verbal response)

THE COURT: I hear no further response from the courtroom.

Mr. Baddley.

MR. BADDLEY: Yes, Your Honor. I appreciate the court's questions and I understand the restrictions on examining witnesses over the phone.

I would just like to point out though on the issue of the budget that while Mr. Perkins did elude that there may not be the revenue coming in from the collateral sale of 2.3 million I think that some of the expenses that were pointed out would also not be happening; in particular the loan interest and fees of $1.4 million dollars this week or, at least, I'm hopeful that those would not be paid in light of the question that I had regarding the -- you know, with the reduced amount whether or not those fees would be payable up front.

Again, you know, maybe we were going out too far going into the third week. I mean, you know, even sending something over to next Friday at the end of week two that would be ten days from today. That would give -- you know, I don't think that there's a real risk on the debtor running out of money at that point based on even taking away the sale and it would give an opportunity for, perhaps, some of these noteholders who are -- who may not have even learned of this bankruptcy yet and certainly didn't receive notice of it perhaps an opportunity to appear and have their rights heard, and be in a better position to present some of the evidence that might bring some of these items and give the court a better -- you know, to be in a better position to make these determinations.

Again, I understand we cannot ask Your Honor to

just, kind of, hold things off and go on this basis. The SEC will move as quickly as possible to do what we need to do to make our investigation proceed in the right way so that we can do what we think is best to preserve our enforcement interest as well as to protect investors.

THE COURT: Thank you.

Does anyone else wish to be heard?

(No verbal response)

THE COURT: All right. Look, to the extent the SEC is raising an objection to the revised proposal I will overrule it and I will tell you why.

Frankly, next Friday would be too soon for the investors that expressed -- the SEC expresses concern about as does the debtor. To get a hold it certainly would not be sufficient time for the committee. And I would expect the committee will want to weigh-in on this and many other issues between now and the next even interim hearing. It's important to the court that it have full input from the committee.

Now that having been said I'll take a little side step here for the benefit of the SEC and say I have had experience in matters in which besides the committee there may be governmental regulatory or enforcement agencies also involved in, well not to put too fine a point on it, chasing the debtor for alleged wrongdoing of one kind or another.

And if the estate if forced to, say, address things in a piecemeal fashion that, frankly, will end up eroding whatever value that everyone, I think, hopes will be preserved for the investors and all the stakeholders.

So, I'm inclined to think that a two-week delay is a good one for another interim hearing. I think it's also appropriate to give the committee time. I also think that under the circumstances, as Mr. Perkins has explained credibly, that the debtor be given a cushion. In the grand scheme of things while I acknowledge and have always believed that every dollar counts the request here is a relatively modest one under the circumstances and given the business realities here. So, I'm prepared to approve that.

Now, I will also add, again, to the extent the SEC and the committee can cooperate in, I'll just say, its activities that's all the better. I also understand, based on experience, that the committee and the SEC may have somewhat different goals and they have somewhat different ways of accomplishing those goals. And I understand that there may be times when there may be a departure, but to -- my encouragement is that whatever cooperation can be fostered will actually be more economical for everyone and will preserve whatever value there is to be preserved.

Frankly, Mr. Baddley, with the U.S. Trustee's participation here, frankly, I think it's a win and I think

it's a good result at least on an interim basis.

So, what I'll ask the debtor to do now is to mark up a final copy of the order and I'll give you back what you handed me, if you'd like.

MR. WISE: Yes. Thank you.

THE COURT: And I'll wait in Chambers for you to do that, but what I want you to do is once you've made the mark-ups give the opportunity for everyone here to examine the mark-ups and also, I'll ask if Mr. Baddley wants to remain on the phone to be satisfied that he understands each of the mark-ups that will be made to the final form of order. Okay.

MR. BADDLEY: Yes. I would appreciate that, Your Honor. And if anything can be emailed I also have access to that as well if there's a version I can be sent.

THE COURT: Well, given the time of day probably not because I'm assuming everyone would like this order docketed today.

MR. WISE: Thank you, Your Honor. We'll do that quickly.

MR. MORTON: Your Honor, if I may, just briefly. Ed Morton from Young Conaway.

We have given everybody a chance to look at the mark-up. We'll certainly go over it telephonically with Mr. Baddley.

The one small thing we would need to get from you beforehand so the mark-up is full and done is we have December 21st at nine o'clock.

THE COURT: I was thinking the 20th at noon.

MR. MORTON: 20th at noon?

THE COURT: I know it's after the time that agenda and binders are due, but I'd like to give the committee as much time as possible and others who might be interested to be able to respond.

MR. MORTON: Certainly, Your Honor. Thank you.

THE COURT: Notice how I read your mind.

(Laughter)

MR. MORTON: I have a simple mind. It doesn't take a lot of effort.

THE COURT: Is there anything else we need to talk about before I recess?

MR. WISE: No, I don't think so. Thank you, Your Honor.

THE COURT: All right. Well, unless there's a reason to bring me back on the bench we'll call this an end for the day. I'll await submission of the marked-up order.

Thank you all very much. That concludes this hearing. Court will stand adjourned.

ALL: Thank you, Your Honor.

(Proceedings concluded at 5:02 p.m.)

CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/Mary Zajaczkowski December 6, 2017
Mary Zajaczkowski, CET**D-531

/s/ Coleen Rand December 6, 2017
Coleen Rand

**EXHIBIT D**

**Demand Letter to R. Shapiro re Estate Property 12.08.2017**
**(Redacted)**

HOMER BONNER JACOBS

1200 FOUR SEASONS TOWER
1441 BRICKELL AVENUE
MIAMI FLORIDA 33131

YANIV ADAR *
RAYDA ALEMAN
GEORGE BEFELER
LUIS E. DELGADO
HOWARD S. GOLDFARB
CARA J. GRAND
ANTONIO M. HERNANDEZ, JR.
GREGORY W. HOMER ****
PETER W. HOMER **
KEVIN P. JACOBS
PRISCILLA JIMENEZ
CHRISTOPHER J. KING
ADAM L. SCHWARTZ *
GREGORY J. TRASK ***
ANDREW VITALI, III ***

R. LAWRENCE BONNER
(1956 - 2007)

December 8, 2017

PHONE: (305) 350-5100
FAX: (305) 372-2738
WEBSITE: www.homerbonner.com

* Also licensed in New York
** Also licensed in Maryland and Washington
*** Also licensed in District of Columbia
**** Licensed only in District of Columbia

SENDER'S DIRECT PHONE: (305) 350-5116
SENDER'S DIRECT FAX: (305) 982-0079
SENDER'S DIRECT EMAIL: aschwartz@homerbonner.com

**VIA EMAIL**

Ryan O'Quinn
DLA Piper LLP
200 S. Biscayne Blvd., Suite 2500
Miami, Florida 33131
Email: ryan.oquinn@dlapiper.com

Re: Robert Shapiro's Possession of Estate Property

Dear Ryan:

We are proposed special litigation counsel for Chapter 11 Debtor Woodbridge Group of Companies, LLC and its related affiliates (collectively "Woodbridge"). We understand that your client, Robert Shapiro, used his America Online email address, [redacted] (the "AOL account"), to conduct Woodbridge business during his tenure as President/Manager of Woodbridge. As a result, those emails relating to Woodbridge business that Mr. Shapiro sent from or received at the AOL account are estate property and must be returned to the estate pursuant to 11 U.S.C. § 542(a).

As you know, Woodbridge is under court order to produce to the SEC Mr. Shapiro's Woodbridge-related emails from his AOL account. *See SEC v. Woodbridge Group of Companies, LLC*, No. 17-MC-22665-CIV-Altonaga, ECF No. 25 (S.D. Fla. Sept. 20, 2017) (the "Order"). On September 26, 2017, Woodbridge counsel advised Mr. Shapiro of the Order and requested that he grant Woodbridge access to his AOL account to obtain and produce the documents pursuant to the Order. Mr. Shapiro declined to do so.

Mr. Shapiro's refusal to produce company property—i.e., Woodbridge-related emails from his AOL account—has not only exposed Woodbridge to SEC contempt proceedings for failure to comply with the Order, but it has also hampered the Independent Manager and Chief Restructuring Officer's management of the bankruptcy estate.

In light of the foregoing, Woodbridge demands that **by no later than 5:00 p.m. on Monday, December 11, 2017**, Mr. Shapiro turn over, in the format requested by the SEC,[1] all documents responsive to the Order—i.e., all emails from January 1, 2012 through the September 20, 2017 that were sent to, sent from or received by Mr. Shapiro though his AOL account that contain any of the keywords identified in Exhibits A and B of the Order.[2] With the production, Mr. Shapiro must also include a detailed explanation of the steps taken to produce the records, advise if any responsive documents are being withheld, and identify the basis of the withholding. Moreover, if any responsive emails have been deleted, Mr. Shapiro must provide an explanation.[3]

If Mr. Shapiro fails to comply with this demand, Woodbridge is prepared to immediately request an order from the United States Bankruptcy Court for the District of Delaware requiring the turnover of the subject information.

Very truly yours,

Adam L. Schwartz

Enclosures

cc: Marc Beilinson [redacted]
Lawrence Perkins [redacted]
Sam Newman [redacted]
Oscar Garza [redacted]

[1] Copies of the Order and the SEC's Subpoena are enclosed.

[2] In light of the urgent need for the documents responsive to the SEC's subpoena and the Court's Order, Woodbridge will make separate arrangements for Mr. Shapiro to turn over any remaining Woodbridge-related emails in Mr. Shapiro's possession.

[3] Given the fact that Mr. Shapiro was advised more than a year ago of the year of the SEC's subpoena and the need to preserve all corporate records, Woodbridge would be alarmed if any responsive emails have been deleted.

# ORDER

**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF FLORIDA**

**CASE NO. 17-MC-22665-CIV-ALTONAGA**

**SECURITIES AND EXCHANGE COMMISSION,**

Plaintiff,

v.

**WOODBRIDGE GROUP OF COMPANIES, LLC,**

Defendant.
_____/

**ORDER ON SEC'S APPLICATION TO ENFORCE AN ADMINISTRATIVE SUBPOENA AGAINST WOODBRIDGE GROUP OF COMPANIES, LLC**

**THIS CAUSE** came before the Court on the Securities and Exchange Commission's Application for an Order Enforcing an Administrative Subpoena [ECF No. 1].

Having considered the relevant pleadings, having heard argument at the September 18, 2017 hearing [ECF No. 23], and being fully advised, it is

**ORDERED AND ADJUDGED** that the requested relief is **GRANTED** as follows. Pertaining to the SEC's January 31, 2017 Subpoena, Attachment C, 21–46 [ECF No. 1-2]] Defendant, Woodbridge Group of Companies, LLC, shall:

A. On or before **October 2, 2017**, produce to the SEC all non-privileged emails for the time period of January 1, 2012 to the date of this Order which were sent to, sent from, or received by:

(1) Robert Shapiro (through his aol.com account(s) and/or Woodbridge e-mail account(s));

(2) Dayne Roseman; and

(3) Nina Pederson (through her aol.com account(s) and/or Woodbridge e-mail account(s));

limited by the 23 search terms identified in Exhibit A attached hereto. Woodbridge shall also produce a log of any e-mails withheld on the basis of privilege.

**B.** On or before **October 16, 2017**, produce to the SEC all non-privileged e-mails for the time period of January 1, 2012 to the date of this Order which were sent to, sent from, or received by:

(1) Robert Shapiro (through his aol.com account(s) and/or Woodbridge e-mail account(s));

(2) Dayne Roseman; and

(3) Nina Pederson (through her aol.com account(s) and/or Woodbridge e-mail account(s));

limited by the 30 search terms identified in Exhibit B attached hereto. Woodbridge shall also produce a log of any e-mails withheld on the basis of privilege.

**C.** On or before **October 30, 2017**, produce to the SEC all non-privileged e-mails for the time period of January 1, 2012 to the date of this Order which were sent to, sent from, or received by:

(1) Diana Balayan;

(2) Rick Salvato;

(3) Matthew Schwartz;

(4) Scott Schwartz;

(5) Joe Hughis;

(6) David Goldman;

(7) Donovan Knowles;

(8) Brook Church-Koegel;

(9) Ronald Diez; and

(10) Alan Shvarts;

limited by the 23 search terms identified in Exhibit A attached hereto. Woodbridge shall also produce a log of any e-mails withheld on the basis of privilege.

**D.** On or before **November 13, 2017**, produce to the SEC all non-privileged e-mails for the time period of January 1, 2012 to the date of this Order which were sent to, sent from, or received by:

(1) Diana Balayan;

(2) Rick Salvato;

(3) Matthew Schwartz;

(4) Scott Schwartz;

(5) Joe Hughis;

(6) David Goldman;

(7) Donovan Knowles;

(8) Brook Church-Koegel;

(9) Ronald Diez; and

(10) Alan Shvarts;

limited by the 30 search terms identified in Exhibit B attached hereto. Woodbridge shall also produce a log of any e-mails withheld on the basis of privilege.

**E.** On or before **November 27, 2017**, Woodbridge shall produce any and all remaining documents it intends to produce pursuant to the Subpoena, along with a log of documents withheld on the basis of privilege.

The Clerk is to mark this case as **CLOSED**. However, the Court reserves jurisdiction to enter any and all further orders to enforce the Subpoena and the rulings made herein.

**DONE and ORDERED** in Miami, Florida this 19th day of September, 2017.

Cecilia M. Altonaga

**CECILIA M. ALTONAGA**
**UNITED STATES DISTRICT JUDGE**

cc: counsel of record

**EXHIBIT A**

1. Account
2. Accredited
3. Asset
4. Balance
5. Bonus
6. Budget
7. Commission
8. Default
9. Fund
10. Income
11. Investment
12. Ledger
13. Liability
14. Minutes
15. Offering
16. Private Placement
17. PPM
18. Quarterly
19. Rate
20. Return
21. Revenue
22. Shapiro
23. Subscription

**EXHIBIT B**

Investor
2. Lender
3. Loan
4. "First position commercial mortgage"
5. FPCM
6. Bridge
7. Construction
8. Lottery
9. Structured
10. Settlement
11. Presentation
12. Sales agent
13. Financial planner
14. Advisor
15. Paid
16. Pay
17. Payment
18. Interest
19. Principal
20. Refund
21. Bobshap1@aol.com
22. Mortgage
23. Commission
24. Fee
25. Override
26. Roseman
27. Dayne
28. Nina
29. Pederson
30. Bob

# SUBPOENA

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
MIAMI REGIONAL OFFICE
801 BRICKELL AVENUE
SUITE 1800
MIAMI, FLORIDA 33131
MAIN NUMBER: 305.982.6300

DIVISION OF
ENFORCEMENT

SCOTT A. LOWRY
SENIOR COUNSEL
DIRECT DIAL: 305.982.6387
EMAIL: LOWRYS@SEC.GOV

January 31, 2017

**VIA OVERNIGHT DELIVERY**

Woodbridge Group of Companies, LLC
c/o David Nelson. Esq.
Boies, Schiller & Flexner LLP
401 East Las Olas Boulevard, Suite 200
Fort Lauderdale, FL 33301-22

Re: Woodbridge Mortgage Investment Fund III, LLC (FL-04024)

Dear Mr. Nelson:

I write to follow up on our informal requests of November 30, 2016 and December 8, 2016 for the voluntary production of certain documents from Woodbridge. As of the date of this letter, we have not received production of the requested documents. Enclosed find a subpoena formally requesting production of these documents by **Wednesday, February 15, 2017**. Please send the documents to the following address:

ENF-CPU
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Also attached please find subpoenas for testimony directed to [redacted], [redacted] and [redacted]. Please confirm that you represent these individuals.

Please carefully read the subpoena attachment, which contains, among other things, important instructions related to the manner of producing documents. In particular, if your client prefers to send us copies of original documents, **the staff requests that you scan and produce hard copy documents, as well as electronic documents, in an electronic format consistent with the SEC Data Delivery Standards attached hereto. All electronic documents responsive to the document subpoena, including all metadata, should also be produced in their native software format.** If you have any questions concerning the production of documents in an electronic format, please contact me as soon as possible and in any event before producing documents.

In your cover letter(s) accompanying the production of responsive documents, please enclose a list briefly describing each item you send. The list should state to which paragraph(s) in the subpoena attachment each item responds. Please also state in the cover letter(s) whether you believe your client has met its obligations under the subpoena by searching carefully and thoroughly for everything called for by the subpoena, and sending it all to us.

Please also provide a narrative description describing what was done to identify and collect documents responsive to the subpoena. At a minimum, the narrative should describe:

- who searched for documents;
- who reviewed documents found to determine whether they were responsive;
- which custodians were searched;
- what sources were searched (e.g., computer files, CDs, DVDs, thumb drives, flash drives, online storage media, hard copy files, diaries, datebooks, planners, filing cabinets, storage facilities, home offices, work offices, voice mails, home email, webmail, work email, backup tapes or other media);
- what search terms, if any, were employed to identify responsive documents;
- what firms and/or persons, if any, assisted in analyzing the data collected;
- what third parties, if any, were contacted to obtain responsive documents (e.g., phone companies for phone records, brokerage firms for brokerage records); and
- where the original electronic and hardcopy documents are maintained and by whom.

In addition, for any documents that qualify as records of regularly conducted activities under Federal Rule of Evidence 902(11), please have the appropriate representative(s) of your client complete a business records certification and return it with the document production.

Please note that, in any matter in which enforcement action is ultimately deemed to be warranted, the Division of Enforcement will not recommend any settlement to the Commission unless the party wishing to settle certifies, under penalty of perjury, that all documents responsive to Commission subpoenas and formal and informal document requests in this matter have been produced.

This investigation is a non-public, fact-finding inquiry. We are trying to determine whether there have been any violations of the federal securities laws. The investigation and the subpoena do not mean that we have concluded that your client or anyone else has violated the law. Also, the investigation does not mean that we have a negative opinion of any person, entity or security. Enclosed are copies of the Commission's Form 1662 entitled "Supplemental Information for Persons Requested to Supply Information Voluntarily or Directed to Supply Information Pursuant to a Commission Subpoena." Form 1662 explains how we may use the information your client provides to the Commission and has other important information. Please provide a copy of this form to your client.

If you have any questions or would like to discuss this matter, you may call me at (305) 982-6387 or Linda S. Schmidt, Senior Counsel, at (305) 982-6315.

Sincerely,

Scott A. Lowry
Senior Counsel
Division of Enforcement

Enclosures: Subpoena
Subpoena Attachment
SEC Form 1662
Data Delivery Standards

# SUBPOENA

# UNITED STATES OF AMERICA
## SECURITIES AND EXCHANGE COMMISSION

**Woodbridge Mortgage Investment Fund III, LLC (FL-04024)**

To: Woodbridge Group of Companies, LLC
c/o David Nelson, Esq.
Boies, Schiller & Flexner LLP
401 East Las Olas Boulevard, Suite 200
Fort Lauderdale, FL 33301-22

☒ **YOU MUST PRODUCE** everything specified in the Attachment to this subpoena to officers of the Securities and Exchange Commission, at the place, date and time specified below:

ENF-CPU, U.S. Securities and Exchange Commission, 100 F Street, NE,
Washington, DC 20549, no later than **Wednesday, February 15, 2017**.

☐ **YOU MUST TESTIFY** before officers of the Securities and Exchange Commission, at the place, date and time specified below:

**FEDERAL LAW REQUIRES YOU TO COMPLY WITH THIS SUBPOENA.**
Failure to comply may subject you to a fine and/or imprisonment.

By: _____ Date: January 31, 2017
Scott A. Lowry, Senior Counsel

I am an officer of the U.S. Securities and Exchange Commission authorized to issue subpoenas in this matter. The Securities and Exchange Commission has issued a formal order authorizing this investigation under Section 21(a) of the Securities Exchange Act of 1934 and Section 20(a) of the Securities Act of 1933.

**SUBPOENA ATTACHMENT FOR WOODBRIDGE**
**JANUARY 31, 2017**

**A. Definitions**

As used in this document request, the words and phrases listed below shall have the following meanings:

1. "Woodbridge" means the entity doing business under the name "Woodbridge Group of Companies, LLC," including parents, subsidiaries, affiliates, predecessors, successors, officers, directors, employees, agents, general partners, limited partners, partnerships and aliases, code names, or trade or business names used by any of the foregoing.

2. "Person" means a natural person, firm, association, organization, partnership, business, trust, corporation, bank or any other private or public entity.

3. A "Representative" of a Person means any present or former family members, officers, executives, partners, joint-venturers, directors, trustees, employees, consultants, accountants, attorneys, agents, or any other representative acting or purporting to act on behalf of the Person.

4. "Offering" means any and all Woodbridge offerings to investors or lenders, including but not limited to, private placement, First Position Commercial Mortgage, bridge loans, construction loans, lottery or structured settlements.

5. "Investor" means any and all Persons solicited to provide, or actually providing, funds or assets for any Offering.

6. "Document" shall include, but is not limited to, any written, printed, or typed matter including, but not limited to all drafts and copies bearing notations or marks not found in the original, letters and correspondence, interoffice communications, slips, tickets, records, worksheets, financial records, accounting documents, bookkeeping documents, memoranda, reports, manuals, telephone logs, telegrams, facsimiles, messages of any type, telephone messages, voice mails, tape recordings, notices, instructions, minutes, summaries, notes of meetings, file folder markings, and any other organizational indicia, purchase orders, information recorded by photographic process, including microfilm and microfiche, computer printouts, spreadsheets, and other electronically stored information, including but not limited to writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations that are stored in any medium from which information can be retrieved, obtained, manipulated, or translated.

7. "Financial Document" shall include all Documents concerning Woodbridge's financial records, whether internally or externally distributed, including but not limited to, all audited or unaudited financial statements, financial reports, general ledgers, balance sheets, tax returns, income statements, cash flow statements, and

accompanying footnotes and supplementary schedules.

8. "Communication" means any correspondence, contact, discussion, e-mail, instant message, or any other kind of oral or written exchange or transmission of information (in the form of facts, ideas, inquiries, or otherwise) and any response thereto between two or more Persons or entities, including, without limitation, all telephone conversations, face-to-face meetings or conversations, internal or external discussions, or exchanges of a Document or Documents.

9. "Concerning" means directly or indirectly, in whole or in part, describing, constituting, evidencing, recording, evaluating, substantiating, concerning, referring to, alluding to, in connection with, commenting on, relating to, regarding, discussing, showing, describing, analyzing or reflecting.

10. The term "you" and "your" means the Person or entity to whom this request was issued.

11. To the extent necessary to bring within the scope of this request any information or Documents that might otherwise be construed to be outside its scope:

    a. the word "or" means "and/or";
    b. the word "and" means "and/or";
    c. the functional words "each," "every" "any" and "all" shall each be deemed to include each of the other functional words;
    d. the masculine gender includes the female gender and the female gender includes the masculine gender; and
    e. the singular includes the plural and the plural includes the singular.

**B. Instructions**

1. Unless otherwise specified, the Document request calls for production of the original Documents and all copies and drafts of same. Documents responsive to this request may be in electronic or paper form. Electronic Documents such as email should be produced in accordance with the attached document entitled SEC Data Delivery Standards. All electronic Documents responsive to the Document request, including all metadata, should also be produced in their native software format.

2. For Documents in paper format, you may send the originals, or, if you prefer, you may send copies of the originals. The Commission cannot reimburse you for the copying costs. If you are sending copies, we request that you scan (rather than photocopy) hard copy Documents and produce them in an electronic format consistent with the SEC Data Delivery Standards. Alternatively, you may send us photocopies of the Documents in paper format. If you choose to send copies, you must secure and retain the originals and store them in a safe place. We may later request or require that you produce the originals.

3. Whether you scan or photocopy Documents, the copies must be identical to the originals, including even faint marks or print. Also, please note that if copies of a

Document differ in any way, they are considered separate Documents and you must send each one. For example, if you have two copies of the same letter, but only one of them has handwritten notes on it, you must send both the clean copy and the one with notes.

4. In producing a photocopy of an original Document that contains post-it(s), notation flag(s), or other removable markings or attachments which may conceal all or a portion of the markings contained in the original Document, photocopies of the original Document both with and without the relevant post-it(s), notation flag(s), or removable markings or attachments should be produced.

5. Documents should be produced as they are kept in the ordinary course of business or be organized and labeled to correspond with the categories in this request. In that regard, Documents should be produced in a unitized manner, *i.e.*, delineated with staples or paper clips to identify the Document boundaries.

6. Documents should be labeled with sequential numbering (bates-stamped).

7. The scope of any given request should not be limited or narrowed based on the fact that it calls for Documents that are responsive to another request.

8. You are not required to produce exact duplicates of any Documents that have been previously produced to the Securities and Exchange Commission staff **in connection with this matter**. If you are not producing Documents based upon a prior production, please identify the responsive Documents that were previously produced.

9. For any Documents that qualify as records of regularly conducted activities under Federal Rule of Evidence 902(11), please have the appropriate representative(s) of your firm complete a business records certification (a sample of which is enclosed) and return it with the Document production.

10. **If the Document production contains Bank Secrecy Act materials, please segregate and label those materials within the production.**

11. This request covers all Documents in or subject to your possession, custody or control, including all Documents that are not in your immediate possession but that you have the effective ability to obtain, that are responsive, in whole or in part, to any of the individual requests set forth below. If, for any reason – including a claim of attorney-client privilege – you do not produce something called for by the request, you should submit a list of what it is not producing. The list should describe each item separately, noting:

    a. its author(s);
    b. its date;
    c. its subject matter;
    d. the name of the Person who has the item now, or the last Person known to have it;

e. the names of everyone who ever had the item or a copy of it, and the names of everyone who was told the item's contents;
f. the basis upon which you are not producing the responsive Document;
g. the specific request in the request to which the Document relates;
h. the attorney(s) and the client(s) involved; and
i. in the case of the work product doctrine, the litigation for which the Document was prepared in anticipation.

12. If Documents responsive to this request no longer exist because they have been lost, discarded, or otherwise destroyed, you should identify such Documents and give the date on which they were lost, discarded or destroyed.

## C. Documents to be Produced

For the time-period January 1, 2012 to the date of your response, please produce:

1. Documents concerning Woodbridge's Offerings, including, but not limited to:

a. the subscription begin and end dates;
b. the amounts raised;
c. the name, contact information and a description of all Investors, including but not limited to, the date(s) of investment, amount(s) of investment and return(s) on investment;
d. the stated use of Investor funds;
e. the actual use of Investor funds;
f. the promised rates of return;
g. whether and how the promised returns were achieved;
h. the names and contact information for all sales agents (or other Persons soliciting Investors);
i. all documents reflecting compensation (including all commissions, referral or marketing fees) paid by or on behalf of Woodbridge to sales agents (or other Persons soliciting Investors), whether internally or externally distributed;
j. all documents, including but not limited to, training materials, provided to sales agents (or other Persons soliciting Investors);
k. correspondence, including e-mail, between Woodbridge and Investors;
l. correspondence, including e-mail, between sales agents (or other Persons soliciting Investors) and Investors;
m. correspondence, including e-mail, between Woodbridge and sales agents (or other Persons soliciting Investors);
n. default rate of FPCM borrowers;
o. the number and/or percentage of Investors that rolled-over their returns and re-invested funds into any other Offering;
p. whether funds raised through any Woodbridge Offering were used to pay Investors in any other Woodbridge Offering;
q. documents reflecting the revenue or fees earned for each Offering;
r. Offering materials, including all prospectuses, advertisements and solicitation materials;
s. whether and how Woodbridge, either directly or indirectly, verified the status of accredited Investors;

t. budget reports for Woodbridge construction projects;
u. Investor complaints and/or legal correspondence or court filings; and
v. minutes of all meetings of the Woodbridge Board of Directors.

2. Woodbridge's Financial Documents, including but not limited to:

a. the names and contact information for all Persons and Representatives involved with Woodbridge's accounting, auditing and/or financial recordkeeping;
b. the engagement of any external accounting, auditing or recordkeeping Persons or Representatives;
c. management performance reports;
d. identification of all programs and software used to prepare Woodbridge's accounting, auditing and/or financial recordkeeping;
e. identification of all domestic and foreign bank, brokerage or other financial accounts held by or on behalf of Woodbridge;
f. quarterly and annual financial statements or records;
g. charts of accounts and general ledgers for the quarterly and annual fiscal periods in native format; and
h. all documents concerning any forensic audit, review, investigation, inquiry, analysis or examination concerning Woodbridge's financial statements or records.

# SUBPOENA

# UNITED STATES OF AMERICA
## SECURITIES AND EXCHANGE COMMISSION

**Woodbridge Mortgage Investment Fund III, LLC (FL-04024)**

To: [redacted]
c/o David Nelson, Esq.
Boies, Schiller & Flexner LLP
401 East Las Olas Boulevard, Suite 200
Fort Lauderdale, FL 33301-22

☐ **YOU MUST PRODUCE** everything specified in the Attachment to this subpoena to officers of the Securities and Exchange Commission, at the place, date and time specified below:

☒ **YOU MUST TESTIFY** before officers of the Securities and Exchange Commission, at the place, date and time specified below: 801 Brickell Avenue, Suite 1800, Miami, FL 33131 at **10:00 a.m. on Wednesday, February 15, 2017.**

**FEDERAL LAW REQUIRES YOU TO COMPLY WITH THIS SUBPOENA.**
Failure to comply may subject you to a fine and/or imprisonment.

By: _____ Date: January 31, 2017
Scott A. Lowry, Senior Counsel

I am an officer of the U.S. Securities and Exchange Commission authorized to issue subpoenas in this matter. The Securities and Exchange Commission has issued a formal order authorizing this investigation under Section 21(a) of the Securities Exchange Act of 1934 and Section 20(a) of the Securities Act of 1933.

# SUBPOENA

# UNITED STATES OF AMERICA
## SECURITIES AND EXCHANGE COMMISSION

**Woodbridge Mortgage Investment Fund III, LLC (FL-04024)**

To: [redacted]
c/o David Nelson, Esq.
Boies, Schiller & Flexner LLP
401 East Las Olas Boulevard, Suite 200
Fort Lauderdale, FL 33301-22

☐ **YOU MUST PRODUCE** everything specified in the Attachment to this subpoena to officers of the Securities and Exchange Commission, at the place, date and time specified below:

☒ **YOU MUST TESTIFY** before officers of the Securities and Exchange Commission, at the place, date and time specified below: 801 Brickell Avenue, Suite 1800, Miami, FL 33131 at **10:00 a.m. on Wednesday, February 22, 2017.**

**FEDERAL LAW REQUIRES YOU TO COMPLY WITH THIS SUBPOENA.**
Failure to comply may subject you to a fine and/or imprisonment.

By: _____ Date: January 31, 2017
Scott A. Lowry, Senior Counsel

I am an officer of the U.S. Securities and Exchange Commission authorized to issue subpoenas in this matter. The Securities and Exchange Commission has issued a formal order authorizing this investigation under Section 21(a) of the Securities Exchange Act of 1934 and Section 20(a) of the Securities Act of 1933.

# SUBPOENA

# UNITED STATES OF AMERICA
## SECURITIES AND EXCHANGE COMMISSION

**Woodbridge Mortgage Investment Fund III, LLC (FL-04024)**

To: [redacted]
c/o David Nelson, Esq.
Boies, Schiller & Flexner LLP
401 East Las Olas Boulevard, Suite 200
Fort Lauderdale, FL 33301-22

☐ **YOU MUST PRODUCE** everything specified in the Attachment to this subpoena to officers of the Securities and Exchange Commission, at the place, date and time specified below:

☒ **YOU MUST TESTIFY** before officers of the Securities and Exchange Commission, at the place, date and time specified below: 801 Brickell Avenue, Suite 1800, Miami, FL 33131 at **10:00 a.m. on Wednesday, March 1, 2017.**

**FEDERAL LAW REQUIRES YOU TO COMPLY WITH THIS SUBPOENA.**
Failure to comply may subject you to a fine and/or imprisonment.

By: _____ Date: January 31, 2017
Scott A. Lowry, Senior Counsel

I am an officer of the U.S. Securities and Exchange Commission authorized to issue subpoenas in this matter. The Securities and Exchange Commission has issued a formal order authorizing this investigation under Section 21(a) of the Securities Exchange Act of 1934 and Section 20(a) of the Securities Act of 1933.

# SECURITIES AND EXCHANGE COMMISSION
## Washington, D.C. 20549

## Supplemental Information for Persons Requested to Supply Information Voluntarily or Directed to Supply Information Pursuant to a Commission Subpoena

**A. False Statements and Documents**

Section 1001 of Title 18 of the United States Code provides that fines and terms of imprisonment may be imposed upon:

> [W]hoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully--
> (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
> (2) makes any materially false, fictitious, or fraudulent statement or representation; or
> (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry.

Section 1519 of Title 18 of the United States Code provides that fines and terms of imprisonment may be imposed upon:

> Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States . . ., or in relation to or contemplation of any such matter.

**B. Testimony**

If your testimony is taken, you should be aware of the following:

1. *Record.* Your testimony will be transcribed by a reporter. If you desire to go off the record, please indicate this to the Commission employee taking your testimony, who will determine whether to grant your request. The reporter will not go off the record at your, or your counsel's, direction.

2. *Counsel.* You have the right to be accompanied, represented and advised by counsel of your choice. Your counsel may advise you before, during and after your testimony; question you briefly at the conclusion of your testimony to clarify any of the answers you give during testimony; and make summary notes during your testimony solely for your use. If you are accompanied by counsel, you may consult privately.

If you are not accompanied by counsel, please advise the Commission employee taking your testimony if, during the testimony, you desire to be accompanied, represented and advised by counsel. Your testimony will be adjourned once to afford you the opportunity to arrange to be so accompanied, represented or advised.

You may be represented by counsel who also represents other persons involved in the Commission's investigation. This multiple representation, however, presents a potential conflict of interest if one client's interests are or may be adverse to another's. If you are represented by counsel who also represents other persons involved in the investigation, the Commission will assume that you and counsel have discussed and resolved all issues concerning possible conflicts of interest. The choice of counsel, and the responsibility for that choice, is yours.

3. *Transcript Availability.* Rule 6 of the Commission's Rules Relating to Investigations, 17 CFR 203.6, states:

> A person who has submitted documentary evidence or testimony in a formal investigative proceeding shall be entitled, upon written request, to procure a copy of his documentary evidence or a transcript of his testimony on payment of the appropriate fees: *Provided, however*, That in a nonpublic formal investigative proceeding the Commission may for good cause deny such request. In any event, any witness, upon proper identification, shall have the right to inspect the official transcript of the witness' own testimony.

If you wish to purchase a copy of the transcript of your testimony, the reporter will provide you with a copy of the appropriate form. Persons requested to supply information voluntarily will be allowed the rights provided by this rule.

4. *Perjury.* Section 1621 of Title 18 of the United States Code provides that fines and terms of imprisonment may be imposed upon:

> Whoever--
>
> (1) having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify

> truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true; or
>
> (2) in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true.

5. *Fifth Amendment and Voluntary Testimony.* Information you give may be used against you in any federal, state, local or foreign administrative, civil or criminal proceeding brought by the Commission or any other agency.

You may refuse, in accordance with the rights guaranteed to you by the Fifth Amendment to the Constitution of the United States, to give any information that may tend to incriminate you.

If your testimony is not pursuant to subpoena, your appearance to testify is voluntary, you need not answer any question, and you may leave whenever you wish. Your cooperation is, however, appreciated.

6. *Formal Order Availability.* If the Commission has issued a formal order of investigation, it will be shown to you during your testimony, at your request. If you desire a copy of the formal order, please make your request in writing.

**C. Submissions and Settlements**

Rule 5(c) of the Commission's Rules on Informal and Other Procedures, 17 CFR 202.5(c), states:

> Persons who become involved in . . . investigations may, on their own initiative, submit a written statement to the Commission setting forth their interests and position in regard to the subject matter of the investigation. Upon request, the staff, in its discretion, may advise such persons of the general nature of the investigation, including the indicated violations as they pertain to them, and the amount of time that may be available for preparing and submitting a statement prior to the presentation of a staff recommendation to the Commission for the commencement of an administrative or injunction proceeding. Submissions by interested persons should be forwarded to the appropriate Division Director or Regional Director with a copy to the staff members conducting the investigation and should be clearly referenced to the specific investigation to which they relate. In the event a recommendation for the commencement of an enforcement proceeding is presented by the staff, any submissions by interested persons will be forwarded to the Commission in conjunction with the staff memorandum.

The staff of the Commission routinely seeks to introduce submissions made pursuant to Rule 5(c) as evidence in Commission enforcement proceedings, when the staff deems appropriate.

Rule 5(f) of the Commission's Rules on Informal and Other Procedures, 17 CFR 202.5(f), states:

> In the course of the Commission's investigations, civil lawsuits, and administrative proceedings, the staff, with appropriate authorization, may discuss with persons involved the disposition of such matters by consent, by settlement, or in some other manner. It is the policy of the Commission, however, that the disposition of any such matter may not, expressly or impliedly, extend to any criminal charges that have been, or may be, brought against any such person or any recommendation with respect thereto. Accordingly, any person involved in an enforcement matter before the Commission who consents, or agrees to consent, to any judgment or order does so solely for the purpose of resolving the claims against him in that investigative, civil, or administrative matter and not for the purpose of resolving any criminal charges that have been, or might be, brought against him. This policy reflects the fact that neither the Commission nor its staff has the authority or responsibility for instituting, conducting, settling, or otherwise disposing of criminal proceedings. That authority and responsibility are vested in the Attorney General and representatives of the Department of Justice.

**D. Freedom of Information Act**

The Freedom of Information Act, 5 U.S.C. 552 (the "FOIA"), generally provides for disclosure of information to the public. Rule 83 of the Commission's Rules on Information and Requests, 17 CFR 200.83, provides a procedure by which a person can make a written request that information submitted to the Commission not be disclosed under the FOIA. That rule states that no determination as to the validity of such a request will be made until a request for disclosure of the information under the FOIA is received. Accordingly, no response to a request that information not be disclosed under the FOIA is necessary or will be given until a request for disclosure under the FOIA is received. If you desire an acknowledgment of receipt of your written request that information not be disclosed under the FOIA, please provide a duplicate request, together with a stamped, self-addressed envelope.

**E. Authority for Solicitation of Information**

*Persons Directed to Supply Information Pursuant to Subpoena.* The authority for requiring production of information is set forth in the subpoena. Disclosure of the information to the Commission is mandatory, subject to the valid assertion of any legal right or privilege you might have.

*Persons Requested to Supply Information Voluntarily.* One or more of the following provisions authorizes the Commission to solicit the information requested: Sections 19 and/or 20 of the Securities Act of 1933; Section 21 of the Securities Exchange Act of 1934; Section 321 of the Trust Indenture Act of 1939; Section 42 of the Investment Company Act of 1940; Section 209 of the Investment Advisers Act of 1940; and 17 CFR 202.5. Disclosure of the requested information to the Commission is voluntary on your part.

**F. Effect of Not Supplying Information**

*Persons Directed to Supply Information Pursuant to Subpoena.* If you fail to comply with the subpoena, the Commission may seek a court order requiring you to do so. If such an order is obtained and you thereafter fail to supply the information, you may be subject to civil and/or criminal sanctions for contempt of court. In addition, Section 21(c) of the Securities Exchange Act of 1934, Section 42(c) of the Investment Company Act of 1940, and Section 209(c) of the Investment Advisers Act of 1940 provide that fines and terms of imprisonment may be imposed upon any person who shall, without just cause, fail or refuse to attend and testify or to answer any lawful inquiry, or to produce books, papers, correspondence, memoranda, and other records in compliance with the subpoena.

*Persons Requested to Supply Information Voluntarily.* There are no direct sanctions and thus no direct effects for failing to provide all or any part of the requested information.

**G. Principal Uses of Information**

The Commission's principal purpose in soliciting the information is to gather facts in order to determine whether any person has violated, is violating, or is about to violate any provision of the federal securities laws or rules for which the Commission has enforcement authority, such as rules of securities exchanges and the rules of the Municipal Securities Rulemaking Board. Facts developed may, however, constitute violations of other laws or rules. Information provided may be used in Commission and other agency enforcement proceedings. Unless the Commission or its staff explicitly agrees to the contrary in writing, you should not assume that the Commission or its staff acquiesces in, accedes to, or concurs or agrees with, any position, condition, request, reservation of right, understanding, or any other statement that purports, or may be deemed, to be or to reflect a limitation upon the Commission's receipt, use, disposition, transfer, or retention, in accordance with applicable law, of information provided.

**H. Routine Uses of Information**

The Commission often makes its files available to other governmental agencies, particularly United States Attorneys and state prosecutors. There is a likelihood that information supplied by you will be made available to such agencies where appropriate. Whether or not the Commission makes its files available to other governmental agencies is, in general, a confidential matter between the Commission and such other governmental agencies.

Set forth below is a list of the routine uses which may be made of the information furnished.

1. To appropriate agencies, entities, and persons when (a) it is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the SEC has determined that, as a result of the suspected or confirmed compromise, there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the SEC or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the SEC's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

2. To other federal, state, local, or foreign law enforcement agencies; securities self-regulatory organizations; and foreign financial regulatory authorities to assist in or coordinate regulatory or law enforcement activities with the SEC.

3. To national securities exchanges and national securities associations that are registered with the SEC, the Municipal Securities Rulemaking Board; the Securities Investor Protection Corporation; the Public Company Accounting Oversight Board; the federal banking authorities, including, but not limited to, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation; state securities regulatory agencies or organizations; or regulatory authorities of a foreign government in connection with their regulatory or enforcement responsibilities.

4. By SEC personnel for purposes of investigating possible violations of, or to conduct investigations authorized by, the federal securities laws.

5. In any proceeding where the federal securities laws are in issue or in which the Commission, or past or present members of its staff, is a party or otherwise involved in an official capacity.

6. In connection with proceedings by the Commission pursuant to Rule 102(e) of its Rules of Practice, 17 CFR 201.102(e).

7. To a bar association, state accountancy board, or other federal, state, local, or foreign licensing or oversight authority; or professional association or self-regulatory authority to the extent that it performs similar functions (including the Public Company Accounting Oversight Board) for investigations or possible disciplinary action.

8. To a federal, state, local, tribal, foreign, or international agency, if necessary to obtain information relevant to the SEC's decision concerning the hiring or retention of an employee; the issuance of a security clearance; the letting of a contract; or the issuance of a license, grant, or other benefit.

9. To a federal, state, local, tribal, foreign, or international agency in response to its request for information concerning the hiring or retention of an employee; the issuance of a security clearance; the reporting of an investigation of an employee; the letting of a contract; or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

10. To produce summary descriptive statistics and analytical studies, as a data source for management information, in support of the function for which the records are collected and maintained or for related personnel management functions or manpower studies; may also be used to respond to general requests for statistical information (without personal identification of individuals) under the Freedom of Information Act.

11. To any trustee, receiver, master, special counsel, or other individual or entity that is appointed by a court of competent jurisdiction, or as a result of an agreement between the parties in connection with litigation or administrative proceedings involving allegations of violations of the federal securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47)) or pursuant to the Commission's Rules of Practice, 17 CFR 201.100 – 900 or the Commission's Rules of Fair Fund and Disgorgement Plans, 17 CFR 201.1100-1106, or otherwise, where such trustee, receiver, master, special counsel, or other individual or entity is specifically designated to perform particular functions with respect to, or as a result of, the pending action or proceeding or in connection with the administration and enforcement by the Commission of the federal securities laws or the Commission's Rules of Practice or the Rules of Fair Fund and Disgorgement Plans.

12. To any persons during the course of any inquiry, examination, or investigation conducted by the SEC's staff, or in connection with civil litigation, if the staff has reason to believe that the person to whom the record is disclosed may have further information about the matters related therein, and those matters appeared to be relevant at the time to the subject matter of the inquiry.

13. To interns, grantees, experts, contractors, and others who have been engaged by the Commission to assist in the performance of a service related to this system of records and who need access to the records for the purpose of assisting the Commission in the efficient administration of its programs, including by performing clerical, stenographic, or data analysis functions, or by reproduction of records by electronic or other means. Recipients of these records shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

14. In reports published by the Commission pursuant to authority granted in the federal securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47)), which authority shall include, but not be limited to, section 21(a) of the Securities Exchange Act of 1934, 15 U.S.C. 78u(a)).

15. To members of advisory committees that are created by the Commission or by Congress to render advice and recommendations to the Commission or to Congress, to be used solely in connection with their official designated functions.

16. To any person who is or has agreed to be subject to the Commission's Rules of Conduct, 17 CFR 200.735-1 to 200.735-18, and who assists in the investigation by the Commission of possible violations of the federal securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47)), in the preparation or conduct of enforcement actions brought by the Commission for such violations, or otherwise in connection with the Commission's enforcement or regulatory functions under the federal securities laws.

17. To a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

18. To members of Congress, the press, and the public in response to inquiries relating to particular Registrants and their activities, and other matters under the Commission's jurisdiction.

19. To prepare and publish information relating to violations of the federal securities laws as provided in 15 U.S.C. 78c(a)(47)), as amended.

20. To respond to subpoenas in any litigation or other proceeding.

21. To a trustee in bankruptcy.

22. To any governmental agency, governmental or private collection agent, consumer reporting agency or commercial reporting agency, governmental or private employer of a debtor, or any other person, for collection, including collection by administrative offset, federal salary offset, tax refund offset, or administrative wage garnishment, of amounts owed as a result of Commission civil or administrative proceedings.

* * * * *

*Small Business Owners*: The SEC always welcomes comments on how it can better assist small businesses. If you would like more information, or have questions or comments about federal securities regulations as they affect small businesses, please contact the Office of Small Business Policy, in the SEC's Division of Corporation Finance, at 202-551-3460. If you would prefer to comment to someone outside of the SEC, you can contact the Small Business Regulatory Enforcement Ombudsman at http://www.sba.gov/ombudsman or toll free at 888-REG-FAIR. The Ombudsman's office receives comments from small businesses and annually evaluates federal agency enforcement activities for their responsiveness to the special needs of small business.

# U.S. Securities and Exchange Commission

## Data Delivery Standards

This document describes the technical requirements for paper and electronic document productions to the U.S. Securities and Exchange Commission (SEC). ***Any questions or proposed file formats other than those described below must be discussed with the legal and technical staff of the SEC Division of Enforcement prior to submission.***



### General Instructions

Electronic files must be produced in their native format, i.e. the format in which they are ordinarily used and maintained during the normal course of business. For example, an MS Excel file must be produced as an MS Excel file rather than an image of a spreadsheet. ***(Note: An Adobe PDF file is not considered a native file unless the document was initially created as a PDF.)***

In the event produced files require the use of proprietary software not commonly found in the workplace, the SEC will explore other format options with the producing party.

The proposed use of file de-duplication methodologies or *computer-assisted review* or *technology-assisted review* (TAR) during the processing of documents must be discussed with and approved by the legal and technical staff of the Division of Enforcement (ENF). If your production will be de-duplicated it is vital that you 1) preserve any unique metadata associated with the duplicate files, for example, custodian name, and, 2) make that unique metadata part of your production to the SEC.

General requirements for **ALL** document productions are:

1. A cover letter should be included with each production and include the following:
   a. A list of each piece of media included in the production with its unique production volume number
   b. A list of custodians, identifying the Bates range for each custodian.
   c. The time zone in which the emails were standardized during conversion.
2. Data can be produced on CD, DVD, thumb drive, etc., using the media requiring the least number of deliverables and labeled with the following:
   a. Case number
   b. Production date
   c. Producing party
   d. Bates range
3. All submissions must be organized by **custodian** unless otherwise instructed.
4. All document family groups, i.e. email attachments, embedded files, etc., should be produced together and children files should follow parent files sequentially in the Bates numbering.
5. All load-ready collections should include only one data load file and one image pointer file.
6. All load-ready text must be produced as separate text files.
7. All load-ready collections should account for custodians in the custodian field.
8. Audio files should be separated from data files if both are included in the production.
9. Only alphanumeric characters and the underscore character are permitted in file names and folder names. Special characters are not permitted.
10. All electronic productions submitted on media must be produced using industry standard self-extracting encryption software.
11. Electronic productions may be submitted via Secure File Transfer. The SEC **cannot** accept productions made using file sharing sites.
12. Productions containing BSA or SARs material must be delivered on encrypted physical media. The SEC **cannot** accept electronic transmission of BSA or SARs material. Any BSA or SARs material produced should be segregated and appropriately marked as BSA or SARs material, or should be produced separately from other case related material.
13. Passwords for electronic documents, files, compressed archives and encrypted media must be provided separately either via email or in a separate cover letter from the media.
14. All electronic productions should be produced free of computer viruses.
15. Additional technical descriptions can be found in the addendum to this document.

*Please note that productions sent to the SEC via United States Postal Service are subject to Mail Irradiation, and as a result electronic productions may be damaged.*

**Delivery Formats**

**I. *Concordance*® Imaged Productions**

The SEC prefers that all documents and data be produced in a structured format prepared for Concordance. All scanned paper and electronic file collections should be converted to TIFF files, Bates numbered, and include fully searchable text files.

**1. Images**

a. Black and white images must be 300 DPI Group IV single-page TIFF files.
b. Color images must be produced in JPEG format.
c. File names cannot contain embedded spaces or special characters (including the comma).
d. Folder names cannot contain embedded spaces or special characters (including the comma).
e. All TIFF image files must have a unique file name, i.e. Bates number.
f. Images must be endorsed with sequential Bates numbers in the lower right corner of each image.
g. The number of TIFF files per folder should not exceed 500 files.
h. Excel spreadsheets should have a placeholder image named by the Bates number of the file.
i. AUTOCAD/photograph files should be produced as a single page JPEG file.

2. ***Concordance Image*® OR Opticon Cross-Reference File**
The image cross-reference file (.LOG or .OPT) links the images to the database records. It should be a comma-delimited file consisting of seven fields per line with a line in the cross-reference file for every image in the database with the following format:
*ImageID,VolumeLabel,ImageFilePath,DocumentBreak,FolderBreak,BoxBreak,PageCount*

3. ***Concordance*® Data File**
The data file (.DAT) contains all of the fielded information that will be loaded into the *Concordance*® database.

a. The first line of the .DAT file must be a header row identifying the field names.
b. The .DAT file must use the following *Concordance*® default delimiters:
Comma ¶ ASCII character (020)
Quote þ ASCII character (254)
c. Date fields should be provided in the format: mm/dd/yyyy
d. Date and time fields must be two separate fields.
e. If the production includes imaged emails and attachments, the attachment fields must be included to preserve the parent/child relationship between an email and its attachments.
f. An OCRPATH field must be included to provide the file path and name of the extracted text file on the produced storage media. The text file must be named after the FIRSTBATES. Do not include the text in the .DAT file.
g. For productions with native files, a LINK field must be included to provide the file path and name of the native file on the produced storage media. The native file must be named after the FIRSTBATES.
h. BEGATTACH and ENDATTACH fields must be two separate fields.
i. A complete list of metadata fields is available in **Addendum A** to this document.

4. **Text**
Text must be produced as separate text files, not as fields within the .DAT file. The full path to the text file (OCRPATH) should be included in the .DAT file. We require document level ANSI text files, named per the FIRSTBATES/Image Key. Please note in the cover letter if any non-ANSI text files are included in the production. Extracted text files must be in a separate folder, and the number of text files per folder should not exceed 1,000 files. There should be no special characters (including commas in the folder names). For redacted documents, provide the full text for the redacted version.

5. **Linked Native Files**
Copies of original email and native file documents/attachments must be included for all electronic productions.
a. Native file documents must be named per the FIRSTBATES number.
b. The full path of the native file must be provided in the .DAT file for the LINK field.
c. The number of native files per folder should not exceed 1,000 files.

## II. Native File Production without Load Files

With prior approval, native files may be produced without load files. The native files must be produced as they are maintained in the normal course of business and organized by custodian-named file folders. When approved, Outlook (.PST) and Lotus Notes (.NSF) email files may be produced in native file format. A separate folder should be provided for each custodian.

## III. Adobe PDF File Production

With prior approval, Adobe PDF files may be produced in native file format.
1. PDF files should be produced in separate folders named by the custodian. The folders should not contain any special characters (including commas).
2. All PDFs must be unitized at the document level, i.e., each PDF must represent a discrete document.
3. All PDF files must contain embedded text that includes all discernible words within the document, not selected text or image only. This requires all layers of the PDF to be flattened first.
4. If PDF files are Bates endorsed, the PDF files must be named by the Bates range.

**IV. Audio Files**

Audio files from telephone recording systems must be produced in a format that is playable using Microsoft Windows Media Player™. Additionally, the call information (metadata) related to each audio recording MUST be provided. The metadata file must be produced in a delimited text format. Field names must be included in the first row of the text file. The metadata must include, at a minimum, the following fields:

| | |
|---|---|
| 1) Caller Name: | Caller's name or account/identification number |
| 2) Originating Number: | Caller's phone number |
| 3) Called Party Name: | Called party's name |
| 4) Terminating Number: | Called party's phone number |
| 5) Date: | Date of call |
| 6) Time: | Time of call |
| 7) Filename: | Filename of audio file |

**V. Video Files**

Video files must be produced in a format that is playable using Microsoft Windows Media Player™.

**VI. Electronic Trade and Bank Records**

When producing electronic trade and bank records, provide the files in one of the following formats:

1. MS Excel spreadsheet with header information detailing the field structure. If any special codes exist in the dataset, a separate document must be provided that details all such codes. If details of the field structure do not fit in the header, a separate document must be provided that includes such details.

2. Delimited text file with header information detailing the field structure. The preferred delimiter is a vertical bar "|". If any special codes exist in the dataset, a separate document must be provided that details all such codes. If details of the field structure do not fit in the header, a separate document must be provided that includes such details.

**VII. Electronic Phone Records**

When producing electronic phone records, provide the files in the following format:

1. MS Excel spreadsheet with header information detailing the field structure. If any special codes exist in the dataset, a separate document must be provided that details all such codes. If details of the field structure do not fit in the header, a separate document must be provided that includes such details. Data must be formatted in its native format (i.e. dates in a date format, numbers in an appropriate numerical format, and numbers with leading zeroes as text).
    a. The metadata that must be included is outlined in **Addendum B** of this document. Each field of data must be loaded into a separate column. For example, Date and Start_Time must be produced in separate columns and not combined into a single column containing both pieces of information. Any fields of data that are provided in addition to those listed in **Addendum B** must also be loaded into separate columns.

**VIII. Audit Workpapers**

The SEC prefers for workpapers to be produced in two formats: (1) With Bates numbers in accordance with the SEC Data Delivery Standards; and (2) in native format or if proprietary software was used, on a standalone laptop with the appropriate software loaded so that the workpapers may be reviewed as they would have been maintained in the ordinary course of business. When possible, the laptop should be configured to enable a Virtual Machine (VM) environment.

# ADDENDUM A

The metadata of electronic document collections should be extracted and provided in a .DAT file using the field definition and formatting described below:

| Field Name | Sample Data | Description |
|---|---|---|
| FIRSTBATES | EDC0000001 | First Bates number of native file document/email |
| LASTBATES | EDC0000001 | Last Bates number of native file document/email<br>**The LASTBATES field should be populated for single page documents/emails. |
| ATTACHRANGE | EDC0000001 - EDC0000015 | Bates number of the first page of the parent document to the Bates number of the last page of the last attachment "child" document |
| BEGATTACH | EDC0000001 | First Bates number of attachment range |
| ENDATTACH | EDC0000015 | Last Bates number of attachment range |
| PARENT_BATES | EDC0000001 | First Bates number of parent document/Email<br>**This PARENT_BATES field should be populated in each record representing an attachment "child" document |
| CHILD_BATES | EDC0000002; EDC0000014 | First Bates number of "child" attachment(s); can be more than one Bates number listed depending on the number of attachments<br>**The CHILD_BATES field should be populated in each record representing a "parent" document |
| CUSTODIAN | Smith, John | Email: Mailbox where the email resided<br>Native: Name of the individual or department from whose files the document originated |
| FROM | John Smith | Email: Sender<br>Native: Author(s) of document<br>**semi-colon should be used to separate multiple entries |
| TO | Coffman, Janice; LeeW [mailto:LeeW@MSN.com] | Recipient(s)<br>**semi-colon should be used to separate multiple entries |
| CC | Frank Thompson [mailto: frank_Thompson@cdt.com] | Carbon copy recipient(s)<br>**semi-colon should be used to separate multiple entries |
| BCC | John Cain | Blind carbon copy recipient(s)<br>**semi-colon should be used to separate multiple entries |
| SUBJECT | Board Meeting Minutes | Email: Subject line of the email<br>Native: Title of document (if available) |
| FILE_NAME | BoardMeetingMinutes.docx | Native: Name of the original native file, including extension |
| DATE_SENT | 10/12/2010 | Email: Date the email was sent<br>Native: (empty) |
| TIME_SENT/TIME_ZONE | 07:05 PM GMT | Email: Time the email was sent/ Time zone in which the emails were standardized during conversion.<br>Native: (empty)<br>**This data must be a separate field and cannot be combined with the DATE_SENT field |
| TIME_ZONE | GMT | The time zone in which the emails were standardized during conversion.<br>Email: Time zone<br>Native: (empty) |

| | | |
|---|---|---|
| LINK | D:\001\EDC0000001.msg | Hyperlink to the email or native file document<br>**The linked file must be named per the FIRSTBATES number |
| MIME_TYPE | MSG | The content type of an Email or native file document as identified/extracted from the header |
| FILE_EXTEN | MSG | The file type extension representing the Email or native file document; will vary depending on the email format |
| AUTHOR | John Smith | Email: (empty)<br>Native: Author of the document |
| DATE_CREATED | 10/10/2010 | Email: (empty)<br>Native: Date the document was created |
| TIME_CREATED | 10:25 AM | Email: (empty)<br>Native: Time the document was created<br>**This data must be a separate field and cannot be combined with the DATE_CREATED field |
| DATE_MOD | 10/12/2010 | Email: (empty)<br>Native: Date the document was last modified |
| TIME_MOD | 07:00 PM | Email: (empty)<br>Native: Time the document was last modified<br>**This data must be a separate field and cannot be combined with the DATE_MOD field |
| DATE_ACCESSD | 10/12/2010 | Email: (empty)<br>Native: Date the document was last accessed |
| TIME_ACCESSD | 07:00 PM | Email: (empty)<br>Native: Time the document was last accessed<br>**This data must be a separate field and cannot be combined with the DATE_ACCESSD field |
| PRINTED_DATE | 10/12/2010 | Email: (empty)<br>Native: Date the document was last printed |
| FILE_SIZE | 5,952 | Size of native file document/email in KB |
| PGCOUNT | 1 | Number of pages in native file document/email |
| PATH | J:\Shared\SmithJ\October Agenda.doc | Email: (empty)<br>Native: Path where native file document was stored including original file name. |
| INTFILEPATH | Personal Folders\Deleted Items\Board Meeting Minutes.msg | Email: original location of email including original file name.<br>Native: (empty) |
| INTMSGID | <000805c2c71b$75977050$cb8306d1@MSN> | Email: Unique Message ID<br>Native: (empty) |
| MD5HASH | d131dd02c5e6eec4693d9a0698aff95c2fcab58712467eab4004583eb8fb7f89 | MD5 Hash value of the document. |
| OCRPATH | TEXT/001/EDC0000001.txt | Path to extracted text of the native file |

Sample Image Cross-Reference File:

```
IMG0000001,,E:\001\IMG0000001.TIF,Y,,,
IMG0000002,,E:\001\IMG0000002.TIF,,,,
IMG0000003,,E:\001\IMG0000003.TIF,,,,
IMG0000004,,E:\001\IMG0000004.TIF,Y,,,
IMG0000005,,E:\001\IMG0000005.TIF,Y,,,
IMG0000006,,E:\001\IMG0000006.TIF,,,,
```

## ADDENDUM B

For Electronic Phone Records, include the following fields in separate columns:

For Calls:

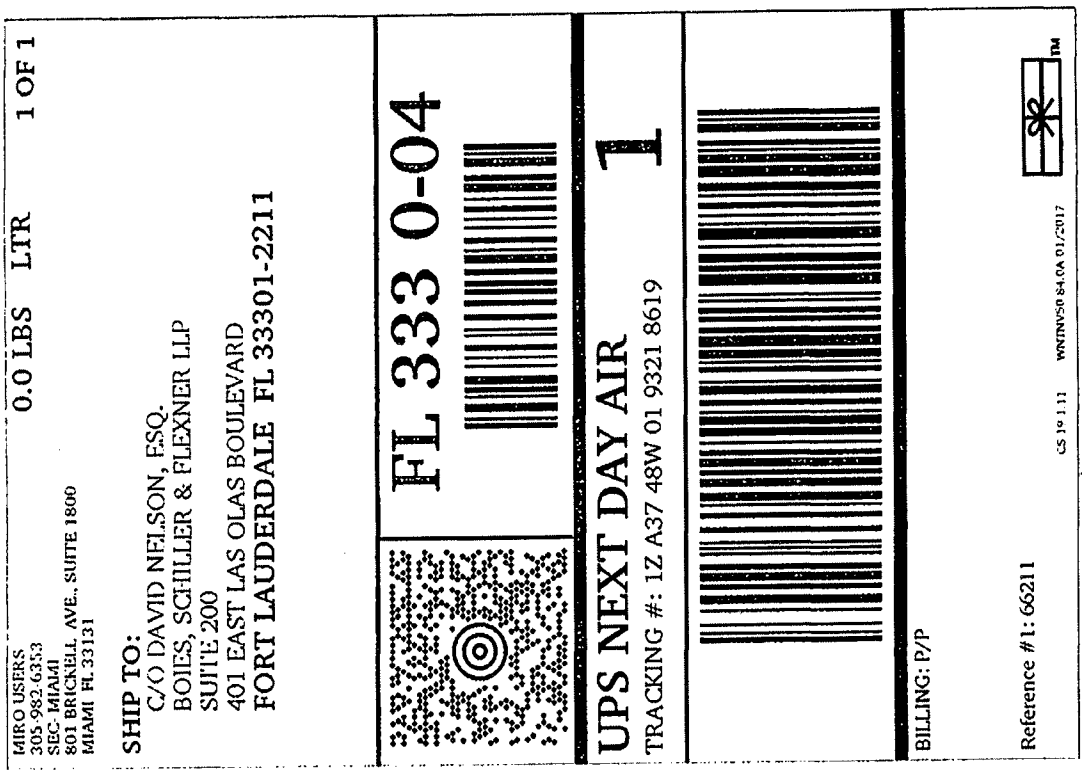
1) Account Number
2) Connection Date – Date the call was received or made
3) Connection Time – Time call was received or made
4) Seizure Time – Time it took for the call to be placed in seconds
5) Originating Number – Phone that placed the call
6) Terminating Number – Phone that received the call
7) Elapsed Time – The length of time the call lasted, preferably in seconds
8) End Time – The time the call ended
9) Number Dialed – Actual number dialed
10) IMEI Originating – Unique id to phone used to make call
11) IMEI Terminating– Unique id to phone used to receive call
12) IMSI Originating – Unique id to phone used to make call
13) IMSI Terminating- Unique id to phone used to receive call
14) Call Codes – Identify call direction or other routing information
15) Time Zone – Time Zone in which the call was received or placed, if applicable

For Text messages:

1) Account Number
2) Connection Date – Date the text was received or made
3) Connection Time – Time text was received or made
4) Originating Number – Who placed the text
5) Terminating Number – Who received the text
6) IMEI Originating – Unique id to phone used to make text
7) IMEI Terminating– Unique id to phone used to receive text
8) IMSI Originating - Unique id to phone used to make text
9) IMSI Terminating- Unique id to phone used to receive text
10) Text Code – Identify text direction, or other text routing information
11) Text Type Code – Type of text message (sent SMS, MMS, or other)
12) Time Zone – Time Zone in which the call was received or placed, if applicable

For Mobile Data Usage:

1) Account Number
2) Connection Date – Date the data was received or made
3) Connection Time – Time data was received or made
4) Originating number – Number that used data
5) IMEI Originating – Unique id of phone that used data
6) IMSI Originating - Unique id of phone that used data
7) Data or Data codes – Identify data direction, or other data routing information
8) Time Zone – Time Zone in which the call was received or placed, if applicable



MIRO USERS
305 982 6353
SEC. MIAMI
801 BRICKELL AVE., SUITE 1800
MIAMI FL 33131

0.0 LBS LTR 1 OF 1

SHIP TO:
C/O DAVID NELSON, ESQ.
BOIES, SCHILLER & FLEXNER LLP
SUITE 200
401 EAST LAS OLAS BOULEVARD
FORT LAUDERDALE FL 33301-2211

FL 333 0-04

UPS NEXT DAY AIR 1

TRACKING #: 1Z A37 48W 01 9321 8619

BILLING: P/P

Reference #1: 66211

**EXHIBIT E**

**Demand Letter to N. Pedersen re Estate Property 12.08.2017**
**(Redacted)**

HOMER BONNER JACOBS

1200 FOUR SEASONS TOWER
1441 BRICKELL AVENUE
MIAMI FLORIDA 33131

YANIV ADAR *
RAYDA ALEMAN
GEORGE BEFELER
LUIS E. DELGADO
HOWARD S. GOLDFARB
CARA J. GRAND
ANTONIO M. HERNANDEZ, JR.
GREGORY W. HOMER ****
PETER W. HOMER **
KEVIN P. JACOBS
PRISCILLA JIMENEZ
CHRISTOPHER J. KING
ADAM L. SCHWARTZ *
GREGORY J. TRASK ***
ANDREW VITALI, III ***

R. LAWRENCE BONNER
(1956 – 2007)

December 8, 2017

PHONE: (305) 350-5100
FAX: (305) 372-2738
WEBSITE: www.homerbonner.com

* Also licensed in New York
** Also licensed in Maryland and Washington
*** Also licensed in District of Columbia
**** Licensed only in District of Columbia

SENDER'S DIRECT PHONE: (305) 350-5116
SENDER'S DIRECT FAX: (305) 982-0079
SENDER'S DIRECT EMAIL: aschwartz@homerbonner.com

**VIA EMAIL**

Bruce Reinhart
250 S. Australian Ave., Suite 1400
West Palm Beach, Florida 33401
Email: breinhart@brucereinhartlaw.com

Re: Nina Pedersen's Possession of Estate Property

Dear Bruce:

We are proposed special litigation counsel for Chapter 11 Debtor Woodbridge Group of Companies, LLC and its related affiliates (collectively "Woodbridge"). We understand that your client, Nina Pedersen, uses or has used her America Online email accounts (her "AOL accounts"), to conduct Woodbridge business.[1] As a result, those emails relating to Woodbridge business that Ms. Pedersen sent from or received at the AOL account are estate property and must be returned to the estate pursuant to 11 U.S.C. § 542(a).

As you know, Woodbridge is under court order to produce to the SEC Mr. Shapiro's Woodbridge-related emails from his AOL account. *See SEC v. Woodbridge Group of Companies, LLC*, No. 17-MC-22665-CIV-Altonaga, ECF No. 25 (S.D. Fla. Sept. 20, 2017) (the "Order"). On September 26, 2017, Woodbridge counsel advised Ms. Pedersen of the Order and requested that she grant Woodbridge access to her AOL accounts to obtain and produce the documents pursuant to the Order. Ms. Pedersen declined to do so.

[1] Ms. Pedersen's use of her AOL accounts for Woodbridge-related business must cease forthwith.

Ms. Pedersen's refusal to produce company property—i.e., Woodbridge-related emails from her AOL accounts—has not only exposed Woodbridge to SEC contempt proceedings for failure to comply with the Order, but it has also hampered the Independent Manager and Chief Restructuring Officer's management of the bankruptcy estate.

In light of the foregoing, Woodbridge demands that **by no later than 5:00 p.m. on Tuesday, December 12, 2017**, Ms. Pedersen turn over, in the format requested by the SEC,[2] all documents responsive to the Order—i.e., all emails from January 1, 2012 through the September 20, 2017 that were sent to, sent from or received by Ms. Pedersen though her AOL accounts that contain any of the keywords identified in Exhibits A and B of the Order.[3] With the production, Ms. Pedersen must also include a detailed explanation of the steps taken to produce the records, advise if any responsive documents are being withheld, and identify the basis of the withholding. Moreover, if any responsive emails have been deleted, Ms. Pedersen must provide an explanation.[4]

If Ms. Pedersen fails to comply with this demand, Woodbridge is prepared to immediately request an order from the United States Bankruptcy Court for the District of Delaware requiring turnover of the subject information.

Very truly yours,

Adam L. Schwartz

Enclosures

cc: Marc Beilinson [redacted]
Lawrence Perkins [redacted]
Sam Newman [redacted]
Oscar Garza [redacted]

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[2] Copies of the Order and the SEC's Subpoena are enclosed.

[3] In light of the urgent need for the documents responsive to the SEC's subpoena and the Court's Order, Woodbridge will make separate arrangements for Ms. Pedersen to turn over any remaining Woodbridge-related emails in Ms. Pedersen's possession.

[4] Given the fact that Ms. Pedersen was advised more than a year ago of the year of the SEC's subpoena and the need to preserve all corporate records, Woodbridge would be alarmed if any responsive emails have been deleted.

# ORDER

**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF FLORIDA**

**CASE NO. 17-MC-22665-CIV-ALTONAGA**

**SECURITIES AND EXCHANGE COMMISSION,**

Plaintiff,

v.

**WOODBRIDGE GROUP OF COMPANIES, LLC,**

Defendant.
_____/

**ORDER ON SEC'S APPLICATION TO ENFORCE AN ADMINISTRATIVE SUBPOENA AGAINST WOODBRIDGE GROUP OF COMPANIES, LLC**

**THIS CAUSE** came before the Court on the Securities and Exchange Commission's Application for an Order Enforcing an Administrative Subpoena [ECF No. 1].

Having considered the relevant pleadings, having heard argument at the September 18, 2017 hearing [ECF No. 23], and being fully advised, it is

**ORDERED AND ADJUDGED** that the requested relief is **GRANTED** as follows. Pertaining to the SEC's January 31, 2017 Subpoena, Attachment C, 21–46 [ECF No. 1-2]] Defendant, Woodbridge Group of Companies, LLC, shall:

A. On or before **October 2, 2017**, produce to the SEC all non-privileged emails for the time period of January 1, 2012 to the date of this Order which were sent to, sent from, or received by:

(1) Robert Shapiro (through his aol.com account(s) and/or Woodbridge e-mail account(s));

(2) Dayne Roseman; and

(3) Nina Pederson (through her aol.com account(s) and/or Woodbridge e-mail account(s));

limited by the 23 search terms identified in Exhibit A attached hereto. Woodbridge shall also produce a log of any e-mails withheld on the basis of privilege.

**B.** On or before **October 16, 2017**, produce to the SEC all non-privileged e-mails for the time period of January 1, 2012 to the date of this Order which were sent to, sent from, or received by:

(1) Robert Shapiro (through his aol.com account(s) and/or Woodbridge e-mail account(s));

(2) Dayne Roseman; and

(3) Nina Pederson (through her aol.com account(s) and/or Woodbridge e-mail account(s));

limited by the 30 search terms identified in Exhibit B attached hereto. Woodbridge shall also produce a log of any e-mails withheld on the basis of privilege.

**C.** On or before **October 30, 2017**, produce to the SEC all non-privileged e-mails for the time period of January 1, 2012 to the date of this Order which were sent to, sent from, or received by:

(1) Diana Balayan;

(2) Rick Salvato;

(3) Matthew Schwartz;

(4) Scott Schwartz;

(5) Joe Hughis;

(6) David Goldman;

(7) Donovan Knowles;

(8) Brook Church-Koegel;

(9) Ronald Diez; and

(10) Alan Shvarts;

limited by the 23 search terms identified in Exhibit A attached hereto. Woodbridge shall also produce a log of any e-mails withheld on the basis of privilege.

**D.** On or before **November 13, 2017**, produce to the SEC all non-privileged e-mails for the time period of January 1, 2012 to the date of this Order which were sent to, sent from, or received by:

(1) Diana Balayan;

(2) Rick Salvato;

(3) Matthew Schwartz;

(4) Scott Schwartz;

(5) Joe Hughis;

(6) David Goldman;

(7) Donovan Knowles;

(8) Brook Church-Koegel;

(9) Ronald Diez; and

(10) Alan Shvarts;

limited by the 30 search terms identified in Exhibit B attached hereto. Woodbridge shall also produce a log of any e-mails withheld on the basis of privilege.

**E.** On or before **November 27, 2017**, Woodbridge shall produce any and all remaining documents it intends to produce pursuant to the Subpoena, along with a log of documents withheld on the basis of privilege.

The Clerk is to mark this case as **CLOSED**. However, the Court reserves jurisdiction to enter any and all further orders to enforce the Subpoena and the rulings made herein.

**DONE and ORDERED** in Miami, Florida this 19th day of September, 2017.

Cecilia M. Altonaga

**CECILIA M. ALTONAGA**
**UNITED STATES DISTRICT JUDGE**

cc: counsel of record

**EXHIBIT A**

1. Account
2. Accredited
3. Asset
4. Balance
5. Bonus
6. Budget
7. Commission
8. Default
9. Fund
10. Income
11. Investment
12. Ledger
13. Liability
14. Minutes
15. Offering
16. Private Placement
17. PPM
18. Quarterly
19. Rate
20. Return
21. Revenue
22. Shapiro
23. Subscription

**EXHIBIT B**

Investor
2. Lender
3. Loan
4. "First position commercial mortgage"
5. FPCM
6. Bridge
7. Construction
8. Lottery
9. Structured
10. Settlement
11. Presentation
12. Sales agent
13. Financial planner
14. Advisor
15. Paid
16. Pay
17. Payment
18. Interest
19. Principal
20. Refund
21. Bobshap1@aol.com
22. Mortgage
23. Commission
24. Fee
25. Override
26. Roseman
27. Dayne
28. Nina
29. Pederson
30. Bob

# SUBPOENA

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
MIAMI REGIONAL OFFICE
801 BRICKELL AVENUE
SUITE 1800
MIAMI, FLORIDA 33131
MAIN NUMBER: 305.982.6300

DIVISION OF
ENFORCEMENT

SCOTT A. LOWRY
SENIOR COUNSEL
DIRECT DIAL: 305.982.6387
EMAIL: LOWRYS@SEC.GOV

January 31, 2017

**VIA OVERNIGHT DELIVERY**

Woodbridge Group of Companies, LLC
c/o David Nelson. Esq.
Boies, Schiller & Flexner LLP
401 East Las Olas Boulevard, Suite 200
Fort Lauderdale, FL 33301-22

Re: Woodbridge Mortgage Investment Fund III, LLC (FL-04024)

Dear Mr. Nelson:

I write to follow up on our informal requests of November 30, 2016 and December 8, 2016 for the voluntary production of certain documents from Woodbridge. As of the date of this letter, we have not received production of the requested documents. Enclosed find a subpoena formally requesting production of these documents by **Wednesday, February 15, 2017**. Please send the documents to the following address:

ENF-CPU
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Also attached please find subpoenas for testimony directed to [redacted], [redacted] and [redacted]. Please confirm that you represent these individuals.

Please carefully read the subpoena attachment, which contains, among other things, important instructions related to the manner of producing documents. In particular, if your client prefers to send us copies of original documents, **the staff requests that you scan and produce hard copy documents, as well as electronic documents, in an electronic format consistent with the SEC Data Delivery Standards attached hereto. All electronic documents responsive to the document subpoena, including all metadata, should also be produced in their native software format.** If you have any questions concerning the production of documents in an electronic format, please contact me as soon as possible and in any event before producing documents.

In your cover letter(s) accompanying the production of responsive documents, please enclose a list briefly describing each item you send. The list should state to which paragraph(s) in the subpoena attachment each item responds. Please also state in the cover letter(s) whether you believe your client has met its obligations under the subpoena by searching carefully and thoroughly for everything called for by the subpoena, and sending it all to us.

Please also provide a narrative description describing what was done to identify and collect documents responsive to the subpoena. At a minimum, the narrative should describe:

- who searched for documents;
- who reviewed documents found to determine whether they were responsive;
- which custodians were searched;
- what sources were searched (e.g., computer files, CDs, DVDs, thumb drives, flash drives, online storage media, hard copy files, diaries, datebooks, planners, filing cabinets, storage facilities, home offices, work offices, voice mails, home email, webmail, work email, backup tapes or other media);
- what search terms, if any, were employed to identify responsive documents;
- what firms and/or persons, if any, assisted in analyzing the data collected;
- what third parties, if any, were contacted to obtain responsive documents (e.g., phone companies for phone records, brokerage firms for brokerage records); and
- where the original electronic and hardcopy documents are maintained and by whom.

In addition, for any documents that qualify as records of regularly conducted activities under Federal Rule of Evidence 902(11), please have the appropriate representative(s) of your client complete a business records certification and return it with the document production.

Please note that, in any matter in which enforcement action is ultimately deemed to be warranted, the Division of Enforcement will not recommend any settlement to the Commission unless the party wishing to settle certifies, under penalty of perjury, that all documents responsive to Commission subpoenas and formal and informal document requests in this matter have been produced.

This investigation is a non-public, fact-finding inquiry. We are trying to determine whether there have been any violations of the federal securities laws. The investigation and the subpoena do not mean that we have concluded that your client or anyone else has violated the law. Also, the investigation does not mean that we have a negative opinion of any person, entity or security. Enclosed are copies of the Commission's Form 1662 entitled "Supplemental Information for Persons Requested to Supply Information Voluntarily or Directed to Supply Information Pursuant to a Commission Subpoena." Form 1662 explains how we may use the information your client provides to the Commission and has other important information. Please provide a copy of this form to your client.

If you have any questions or would like to discuss this matter, you may call me at (305) 982-6387 or Linda S. Schmidt, Senior Counsel, at (305) 982-6315.

Sincerely,

Scott A. Lowry
Senior Counsel
Division of Enforcement

Enclosures: Subpoena
Subpoena Attachment
SEC Form 1662
Data Delivery Standards

# SUBPOENA

# UNITED STATES OF AMERICA
## SECURITIES AND EXCHANGE COMMISSION

**Woodbridge Mortgage Investment Fund III, LLC (FL-04024)**

To: Woodbridge Group of Companies, LLC
c/o David Nelson, Esq.
Boies, Schiller & Flexner LLP
401 East Las Olas Boulevard, Suite 200
Fort Lauderdale, FL 33301-22

☒ **YOU MUST PRODUCE** everything specified in the Attachment to this subpoena to officers of the Securities and Exchange Commission, at the place, date and time specified below:

ENF-CPU, U.S. Securities and Exchange Commission, 100 F Street, NE,
Washington, DC 20549, no later than **Wednesday, February 15, 2017**.

☐ **YOU MUST TESTIFY** before officers of the Securities and Exchange Commission, at the place, date and time specified below:

**FEDERAL LAW REQUIRES YOU TO COMPLY WITH THIS SUBPOENA.**
Failure to comply may subject you to a fine and/or imprisonment.

By: _____ Date: January 31, 2017
Scott A. Lowry, Senior Counsel

I am an officer of the U.S. Securities and Exchange Commission authorized to issue subpoenas in this matter. The Securities and Exchange Commission has issued a formal order authorizing this investigation under Section 21(a) of the Securities Exchange Act of 1934 and Section 20(a) of the Securities Act of 1933.

**SUBPOENA ATTACHMENT FOR WOODBRIDGE**
**JANUARY 31, 2017**

## A. Definitions

As used in this document request, the words and phrases listed below shall have the following meanings:

1. "Woodbridge" means the entity doing business under the name "Woodbridge Group of Companies, LLC," including parents, subsidiaries, affiliates, predecessors, successors, officers, directors, employees, agents, general partners, limited partners, partnerships and aliases, code names, or trade or business names used by any of the foregoing.

2. "Person" means a natural person, firm, association, organization, partnership, business, trust, corporation, bank or any other private or public entity.

3. A "Representative" of a Person means any present or former family members, officers, executives, partners, joint-venturers, directors, trustees, employees, consultants, accountants, attorneys, agents, or any other representative acting or purporting to act on behalf of the Person.

4. "Offering" means any and all Woodbridge offerings to investors or lenders, including but not limited to, private placement, First Position Commercial Mortgage, bridge loans, construction loans, lottery or structured settlements.

5. "Investor" means any and all Persons solicited to provide, or actually providing, funds or assets for any Offering.

6. "Document" shall include, but is not limited to, any written, printed, or typed matter including, but not limited to all drafts and copies bearing notations or marks not found in the original, letters and correspondence, interoffice communications, slips, tickets, records, worksheets, financial records, accounting documents, bookkeeping documents, memoranda, reports, manuals, telephone logs, telegrams, facsimiles, messages of any type, telephone messages, voice mails, tape recordings, notices, instructions, minutes, summaries, notes of meetings, file folder markings, and any other organizational indicia, purchase orders, information recorded by photographic process, including microfilm and microfiche, computer printouts, spreadsheets, and other electronically stored information, including but not limited to writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations that are stored in any medium from which information can be retrieved, obtained, manipulated, or translated.

7. "Financial Document" shall include all Documents concerning Woodbridge's financial records, whether internally or externally distributed, including but not limited to, all audited or unaudited financial statements, financial reports, general ledgers, balance sheets, tax returns, income statements, cash flow statements, and

accompanying footnotes and supplementary schedules.

8. "Communication" means any correspondence, contact, discussion, e-mail, instant message, or any other kind of oral or written exchange or transmission of information (in the form of facts, ideas, inquiries, or otherwise) and any response thereto between two or more Persons or entities, including, without limitation, all telephone conversations, face-to-face meetings or conversations, internal or external discussions, or exchanges of a Document or Documents.

9. "Concerning" means directly or indirectly, in whole or in part, describing, constituting, evidencing, recording, evaluating, substantiating, concerning, referring to, alluding to, in connection with, commenting on, relating to, regarding, discussing, showing, describing, analyzing or reflecting.

10. The term "you" and "your" means the Person or entity to whom this request was issued.

11. To the extent necessary to bring within the scope of this request any information or Documents that might otherwise be construed to be outside its scope:

    a. the word "or" means "and/or";
    b. the word "and" means "and/or";
    c. the functional words "each," "every" "any" and "all" shall each be deemed to include each of the other functional words;
    d. the masculine gender includes the female gender and the female gender includes the masculine gender; and
    e. the singular includes the plural and the plural includes the singular.

**B. Instructions**

1. Unless otherwise specified, the Document request calls for production of the original Documents and all copies and drafts of same. Documents responsive to this request may be in electronic or paper form. Electronic Documents such as email should be produced in accordance with the attached document entitled SEC Data Delivery Standards. All electronic Documents responsive to the Document request, including all metadata, should also be produced in their native software format.

2. For Documents in paper format, you may send the originals, or, if you prefer, you may send copies of the originals. The Commission cannot reimburse you for the copying costs. If you are sending copies, we request that you scan (rather than photocopy) hard copy Documents and produce them in an electronic format consistent with the SEC Data Delivery Standards. Alternatively, you may send us photocopies of the Documents in paper format. If you choose to send copies, you must secure and retain the originals and store them in a safe place. We may later request or require that you produce the originals.

3. Whether you scan or photocopy Documents, the copies must be identical to the originals, including even faint marks or print. Also, please note that if copies of a

Document differ in any way, they are considered separate Documents and you must send each one. For example, if you have two copies of the same letter, but only one of them has handwritten notes on it, you must send both the clean copy and the one with notes.

4. In producing a photocopy of an original Document that contains post-it(s), notation flag(s), or other removable markings or attachments which may conceal all or a portion of the markings contained in the original Document, photocopies of the original Document both with and without the relevant post-it(s), notation flag(s), or removable markings or attachments should be produced.

5. Documents should be produced as they are kept in the ordinary course of business or be organized and labeled to correspond with the categories in this request. In that regard, Documents should be produced in a unitized manner, *i.e.*, delineated with staples or paper clips to identify the Document boundaries.

6. Documents should be labeled with sequential numbering (bates-stamped).

7. The scope of any given request should not be limited or narrowed based on the fact that it calls for Documents that are responsive to another request.

8. You are not required to produce exact duplicates of any Documents that have been previously produced to the Securities and Exchange Commission staff **in connection with this matter**. If you are not producing Documents based upon a prior production, please identify the responsive Documents that were previously produced.

9. For any Documents that qualify as records of regularly conducted activities under Federal Rule of Evidence 902(11), please have the appropriate representative(s) of your firm complete a business records certification (a sample of which is enclosed) and return it with the Document production.

10. **If the Document production contains Bank Secrecy Act materials, please segregate and label those materials within the production.**

11. This request covers all Documents in or subject to your possession, custody or control, including all Documents that are not in your immediate possession but that you have the effective ability to obtain, that are responsive, in whole or in part, to any of the individual requests set forth below. If, for any reason – including a claim of attorney-client privilege – you do not produce something called for by the request, you should submit a list of what it is not producing. The list should describe each item separately, noting:

    a. its author(s);
    b. its date;
    c. its subject matter;
    d. the name of the Person who has the item now, or the last Person known to have it;

e. the names of everyone who ever had the item or a copy of it, and the names of everyone who was told the item's contents;
f. the basis upon which you are not producing the responsive Document;
g. the specific request in the request to which the Document relates;
h. the attorney(s) and the client(s) involved; and
i. in the case of the work product doctrine, the litigation for which the Document was prepared in anticipation.

12. If Documents responsive to this request no longer exist because they have been lost, discarded, or otherwise destroyed, you should identify such Documents and give the date on which they were lost, discarded or destroyed.

## C. Documents to be Produced

For the time-period January 1, 2012 to the date of your response, please produce:

1. Documents concerning Woodbridge's Offerings, including, but not limited to:

a. the subscription begin and end dates;
b. the amounts raised;
c. the name, contact information and a description of all Investors, including but not limited to, the date(s) of investment, amount(s) of investment and return(s) on investment;
d. the stated use of Investor funds;
e. the actual use of Investor funds;
f. the promised rates of return;
g. whether and how the promised returns were achieved;
h. the names and contact information for all sales agents (or other Persons soliciting Investors);
i. all documents reflecting compensation (including all commissions, referral or marketing fees) paid by or on behalf of Woodbridge to sales agents (or other Persons soliciting Investors), whether internally or externally distributed;
j. all documents, including but not limited to, training materials, provided to sales agents (or other Persons soliciting Investors);
k. correspondence, including e-mail, between Woodbridge and Investors;
l. correspondence, including e-mail, between sales agents (or other Persons soliciting Investors) and Investors;
m. correspondence, including e-mail, between Woodbridge and sales agents (or other Persons soliciting Investors);
n. default rate of FPCM borrowers;
o. the number and/or percentage of Investors that rolled-over their returns and re-invested funds into any other Offering;
p. whether funds raised through any Woodbridge Offering were used to pay Investors in any other Woodbridge Offering;
q. documents reflecting the revenue or fees earned for each Offering;
r. Offering materials, including all prospectuses, advertisements and solicitation materials;
s. whether and how Woodbridge, either directly or indirectly, verified the status of accredited Investors;

t. budget reports for Woodbridge construction projects;
u. Investor complaints and/or legal correspondence or court filings; and
v. minutes of all meetings of the Woodbridge Board of Directors.

2. Woodbridge's Financial Documents, including but not limited to:

a. the names and contact information for all Persons and Representatives involved with Woodbridge's accounting, auditing and/or financial recordkeeping;
b. the engagement of any external accounting, auditing or recordkeeping Persons or Representatives;
c. management performance reports;
d. identification of all programs and software used to prepare Woodbridge's accounting, auditing and/or financial recordkeeping;
e. identification of all domestic and foreign bank, brokerage or other financial accounts held by or on behalf of Woodbridge;
f. quarterly and annual financial statements or records;
g. charts of accounts and general ledgers for the quarterly and annual fiscal periods in native format; and
h. all documents concerning any forensic audit, review, investigation, inquiry, analysis or examination concerning Woodbridge's financial statements or records.

# SUBPOENA

# UNITED STATES OF AMERICA
## SECURITIES AND EXCHANGE COMMISSION

**Woodbridge Mortgage Investment Fund III, LLC (FL-04024)**

To: [redacted]
c/o David Nelson, Esq.
Boies, Schiller & Flexner LLP
401 East Las Olas Boulevard, Suite 200
Fort Lauderdale, FL 33301-22

☐ **YOU MUST PRODUCE** everything specified in the Attachment to this subpoena to officers of the Securities and Exchange Commission, at the place, date and time specified below:

☒ **YOU MUST TESTIFY** before officers of the Securities and Exchange Commission, at the place, date and time specified below: 801 Brickell Avenue, Suite 1800, Miami, FL 33131 at **10:00 a.m. on Wednesday, February 15, 2017.**

**FEDERAL LAW REQUIRES YOU TO COMPLY WITH THIS SUBPOENA.**
Failure to comply may subject you to a fine and/or imprisonment.

By: _____ Date: January 31, 2017
Scott A. Lowry, Senior Counsel

I am an officer of the U.S. Securities and Exchange Commission authorized to issue subpoenas in this matter. The Securities and Exchange Commission has issued a formal order authorizing this investigation under Section 21(a) of the Securities Exchange Act of 1934 and Section 20(a) of the Securities Act of 1933.

# SUBPOENA

# UNITED STATES OF AMERICA
## SECURITIES AND EXCHANGE COMMISSION

**Woodbridge Mortgage Investment Fund III, LLC (FL-04024)**

To: [redacted]
c/o David Nelson, Esq.
Boies, Schiller & Flexner LLP
401 East Las Olas Boulevard, Suite 200
Fort Lauderdale, FL 33301-22

☐ **YOU MUST PRODUCE** everything specified in the Attachment to this subpoena to officers of the Securities and Exchange Commission, at the place, date and time specified below:

☒ **YOU MUST TESTIFY** before officers of the Securities and Exchange Commission, at the place, date and time specified below: 801 Brickell Avenue, Suite 1800, Miami, FL 33131 at **10:00 a.m. on Wednesday, February 22, 2017.**

**FEDERAL LAW REQUIRES YOU TO COMPLY WITH THIS SUBPOENA.**
Failure to comply may subject you to a fine and/or imprisonment.

By: _____ Date: January 31, 2017
Scott A. Lowry, Senior Counsel

I am an officer of the U.S. Securities and Exchange Commission authorized to issue subpoenas in this matter. The Securities and Exchange Commission has issued a formal order authorizing this investigation under Section 21(a) of the Securities Exchange Act of 1934 and Section 20(a) of the Securities Act of 1933.

# SUBPOENA

# UNITED STATES OF AMERICA
## SECURITIES AND EXCHANGE COMMISSION

**Woodbridge Mortgage Investment Fund III, LLC (FL-04024)**

To: [redacted]
c/o David Nelson, Esq.
Boies, Schiller & Flexner LLP
401 East Las Olas Boulevard, Suite 200
Fort Lauderdale, FL 33301-22

☐ **YOU MUST PRODUCE** everything specified in the Attachment to this subpoena to officers of the Securities and Exchange Commission, at the place, date and time specified below:

☒ **YOU MUST TESTIFY** before officers of the Securities and Exchange Commission, at the place, date and time specified below: 801 Brickell Avenue, Suite 1800, Miami, FL 33131 at **10:00 a.m. on Wednesday, March 1, 2017.**

**FEDERAL LAW REQUIRES YOU TO COMPLY WITH THIS SUBPOENA.**
Failure to comply may subject you to a fine and/or imprisonment.

By: _____ Date: January 31, 2017
Scott A. Lowry, Senior Counsel

I am an officer of the U.S. Securities and Exchange Commission authorized to issue subpoenas in this matter. The Securities and Exchange Commission has issued a formal order authorizing this investigation under Section 21(a) of the Securities Exchange Act of 1934 and Section 20(a) of the Securities Act of 1933.

# SECURITIES AND EXCHANGE COMMISSION
## Washington, D.C. 20549

## Supplemental Information for Persons Requested to Supply Information Voluntarily or Directed to Supply Information Pursuant to a Commission Subpoena

**A. False Statements and Documents**

Section 1001 of Title 18 of the United States Code provides that fines and terms of imprisonment may be imposed upon:

> [W]hoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully--
> (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
> (2) makes any materially false, fictitious, or fraudulent statement or representation; or
> (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry.

Section 1519 of Title 18 of the United States Code provides that fines and terms of imprisonment may be imposed upon:

> Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States . . ., or in relation to or contemplation of any such matter.

**B. Testimony**

If your testimony is taken, you should be aware of the following:

1. *Record.* Your testimony will be transcribed by a reporter. If you desire to go off the record, please indicate this to the Commission employee taking your testimony, who will determine whether to grant your request. The reporter will not go off the record at your, or your counsel's, direction.

2. *Counsel.* You have the right to be accompanied, represented and advised by counsel of your choice. Your counsel may advise you before, during and after your testimony; question you briefly at the conclusion of your testimony to clarify any of the answers you give during testimony; and make summary notes during your testimony solely for your use. If you are accompanied by counsel, you may consult privately.

If you are not accompanied by counsel, please advise the Commission employee taking your testimony if, during the testimony, you desire to be accompanied, represented and advised by counsel. Your testimony will be adjourned once to afford you the opportunity to arrange to be so accompanied, represented or advised.

You may be represented by counsel who also represents other persons involved in the Commission's investigation. This multiple representation, however, presents a potential conflict of interest if one client's interests are or may be adverse to another's. If you are represented by counsel who also represents other persons involved in the investigation, the Commission will assume that you and counsel have discussed and resolved all issues concerning possible conflicts of interest. The choice of counsel, and the responsibility for that choice, is yours.

3. *Transcript Availability.* Rule 6 of the Commission's Rules Relating to Investigations, 17 CFR 203.6, states:

> A person who has submitted documentary evidence or testimony in a formal investigative proceeding shall be entitled, upon written request, to procure a copy of his documentary evidence or a transcript of his testimony on payment of the appropriate fees: *Provided, however*, That in a nonpublic formal investigative proceeding the Commission may for good cause deny such request. In any event, any witness, upon proper identification, shall have the right to inspect the official transcript of the witness' own testimony.

If you wish to purchase a copy of the transcript of your testimony, the reporter will provide you with a copy of the appropriate form. Persons requested to supply information voluntarily will be allowed the rights provided by this rule.

4. *Perjury.* Section 1621 of Title 18 of the United States Code provides that fines and terms of imprisonment may be imposed upon:

> Whoever--
>
> (1) having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify

> truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true; or
>
> (2) in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true.

5. *Fifth Amendment and Voluntary Testimony.* Information you give may be used against you in any federal, state, local or foreign administrative, civil or criminal proceeding brought by the Commission or any other agency.

You may refuse, in accordance with the rights guaranteed to you by the Fifth Amendment to the Constitution of the United States, to give any information that may tend to incriminate you.

If your testimony is not pursuant to subpoena, your appearance to testify is voluntary, you need not answer any question, and you may leave whenever you wish. Your cooperation is, however, appreciated.

6. *Formal Order Availability.* If the Commission has issued a formal order of investigation, it will be shown to you during your testimony, at your request. If you desire a copy of the formal order, please make your request in writing.

**C. Submissions and Settlements**

Rule 5(c) of the Commission's Rules on Informal and Other Procedures, 17 CFR 202.5(c), states:

> Persons who become involved in . . . investigations may, on their own initiative, submit a written statement to the Commission setting forth their interests and position in regard to the subject matter of the investigation. Upon request, the staff, in its discretion, may advise such persons of the general nature of the investigation, including the indicated violations as they pertain to them, and the amount of time that may be available for preparing and submitting a statement prior to the presentation of a staff recommendation to the Commission for the commencement of an administrative or injunction proceeding. Submissions by interested persons should be forwarded to the appropriate Division Director or Regional Director with a copy to the staff members conducting the investigation and should be clearly referenced to the specific investigation to which they relate. In the event a recommendation for the commencement of an enforcement proceeding is presented by the staff, any submissions by interested persons will be forwarded to the Commission in conjunction with the staff memorandum.

The staff of the Commission routinely seeks to introduce submissions made pursuant to Rule 5(c) as evidence in Commission enforcement proceedings, when the staff deems appropriate.

Rule 5(f) of the Commission's Rules on Informal and Other Procedures, 17 CFR 202.5(f), states:

> In the course of the Commission's investigations, civil lawsuits, and administrative proceedings, the staff, with appropriate authorization, may discuss with persons involved the disposition of such matters by consent, by settlement, or in some other manner. It is the policy of the Commission, however, that the disposition of any such matter may not, expressly or impliedly, extend to any criminal charges that have been, or may be, brought against any such person or any recommendation with respect thereto. Accordingly, any person involved in an enforcement matter before the Commission who consents, or agrees to consent, to any judgment or order does so solely for the purpose of resolving the claims against him in that investigative, civil, or administrative matter and not for the purpose of resolving any criminal charges that have been, or might be, brought against him. This policy reflects the fact that neither the Commission nor its staff has the authority or responsibility for instituting, conducting, settling, or otherwise disposing of criminal proceedings. That authority and responsibility are vested in the Attorney General and representatives of the Department of Justice.

**D. Freedom of Information Act**

The Freedom of Information Act, 5 U.S.C. 552 (the "FOIA"), generally provides for disclosure of information to the public. Rule 83 of the Commission's Rules on Information and Requests, 17 CFR 200.83, provides a procedure by which a person can make a written request that information submitted to the Commission not be disclosed under the FOIA. That rule states that no determination as to the validity of such a request will be made until a request for disclosure of the information under the FOIA is received. Accordingly, no response to a request that information not be disclosed under the FOIA is necessary or will be given until a request for disclosure under the FOIA is received. If you desire an acknowledgment of receipt of your written request that information not be disclosed under the FOIA, please provide a duplicate request, together with a stamped, self-addressed envelope.

**E. Authority for Solicitation of Information**

*Persons Directed to Supply Information Pursuant to Subpoena.* The authority for requiring production of information is set forth in the subpoena. Disclosure of the information to the Commission is mandatory, subject to the valid assertion of any legal right or privilege you might have.

*Persons Requested to Supply Information Voluntarily.* One or more of the following provisions authorizes the Commission to solicit the information requested: Sections 19 and/or 20 of the Securities Act of 1933; Section 21 of the Securities Exchange Act of 1934; Section 321 of the Trust Indenture Act of 1939; Section 42 of the Investment Company Act of 1940; Section 209 of the Investment Advisers Act of 1940; and 17 CFR 202.5. Disclosure of the requested information to the Commission is voluntary on your part.

**F. Effect of Not Supplying Information**

*Persons Directed to Supply Information Pursuant to Subpoena.* If you fail to comply with the subpoena, the Commission may seek a court order requiring you to do so. If such an order is obtained and you thereafter fail to supply the information, you may be subject to civil and/or criminal sanctions for contempt of court. In addition, Section 21(c) of the Securities Exchange Act of 1934, Section 42(c) of the Investment Company Act of 1940, and Section 209(c) of the Investment Advisers Act of 1940 provide that fines and terms of imprisonment may be imposed upon any person who shall, without just cause, fail or refuse to attend and testify or to answer any lawful inquiry, or to produce books, papers, correspondence, memoranda, and other records in compliance with the subpoena.

*Persons Requested to Supply Information Voluntarily.* There are no direct sanctions and thus no direct effects for failing to provide all or any part of the requested information.

**G. Principal Uses of Information**

The Commission's principal purpose in soliciting the information is to gather facts in order to determine whether any person has violated, is violating, or is about to violate any provision of the federal securities laws or rules for which the Commission has enforcement authority, such as rules of securities exchanges and the rules of the Municipal Securities Rulemaking Board. Facts developed may, however, constitute violations of other laws or rules. Information provided may be used in Commission and other agency enforcement proceedings. Unless the Commission or its staff explicitly agrees to the contrary in writing, you should not assume that the Commission or its staff acquiesces in, accedes to, or concurs or agrees with, any position, condition, request, reservation of right, understanding, or any other statement that purports, or may be deemed, to be or to reflect a limitation upon the Commission's receipt, use, disposition, transfer, or retention, in accordance with applicable law, of information provided.

**H. Routine Uses of Information**

The Commission often makes its files available to other governmental agencies, particularly United States Attorneys and state prosecutors. There is a likelihood that information supplied by you will be made available to such agencies where appropriate. Whether or not the Commission makes its files available to other governmental agencies is, in general, a confidential matter between the Commission and such other governmental agencies.

Set forth below is a list of the routine uses which may be made of the information furnished.

1. To appropriate agencies, entities, and persons when (a) it is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the SEC has determined that, as a result of the suspected or confirmed compromise, there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the SEC or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the SEC's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

2. To other federal, state, local, or foreign law enforcement agencies; securities self-regulatory organizations; and foreign financial regulatory authorities to assist in or coordinate regulatory or law enforcement activities with the SEC.

3. To national securities exchanges and national securities associations that are registered with the SEC, the Municipal Securities Rulemaking Board; the Securities Investor Protection Corporation; the Public Company Accounting Oversight Board; the federal banking authorities, including, but not limited to, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation; state securities regulatory agencies or organizations; or regulatory authorities of a foreign government in connection with their regulatory or enforcement responsibilities.

4. By SEC personnel for purposes of investigating possible violations of, or to conduct investigations authorized by, the federal securities laws.

5. In any proceeding where the federal securities laws are in issue or in which the Commission, or past or present members of its staff, is a party or otherwise involved in an official capacity.

6. In connection with proceedings by the Commission pursuant to Rule 102(e) of its Rules of Practice, 17 CFR 201.102(e).

7. To a bar association, state accountancy board, or other federal, state, local, or foreign licensing or oversight authority; or professional association or self-regulatory authority to the extent that it performs similar functions (including the Public Company Accounting Oversight Board) for investigations or possible disciplinary action.

8. To a federal, state, local, tribal, foreign, or international agency, if necessary to obtain information relevant to the SEC's decision concerning the hiring or retention of an employee; the issuance of a security clearance; the letting of a contract; or the issuance of a license, grant, or other benefit.

9. To a federal, state, local, tribal, foreign, or international agency in response to its request for information concerning the hiring or retention of an employee; the issuance of a security clearance; the reporting of an investigation of an employee; the letting of a contract; or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

10. To produce summary descriptive statistics and analytical studies, as a data source for management information, in support of the function for which the records are collected and maintained or for related personnel management functions or manpower studies; may also be used to respond to general requests for statistical information (without personal identification of individuals) under the Freedom of Information Act.

11. To any trustee, receiver, master, special counsel, or other individual or entity that is appointed by a court of competent jurisdiction, or as a result of an agreement between the parties in connection with litigation or administrative proceedings involving allegations of violations of the federal securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47)) or pursuant to the Commission's Rules of Practice, 17 CFR 201.100 – 900 or the Commission's Rules of Fair Fund and Disgorgement Plans, 17 CFR 201.1100-1106, or otherwise, where such trustee, receiver, master, special counsel, or other individual or entity is specifically designated to perform particular functions with respect to, or as a result of, the pending action or proceeding or in connection with the administration and enforcement by the Commission of the federal securities laws or the Commission's Rules of Practice or the Rules of Fair Fund and Disgorgement Plans.

12. To any persons during the course of any inquiry, examination, or investigation conducted by the SEC's staff, or in connection with civil litigation, if the staff has reason to believe that the person to whom the record is disclosed may have further information about the matters related therein, and those matters appeared to be relevant at the time to the subject matter of the inquiry.

13. To interns, grantees, experts, contractors, and others who have been engaged by the Commission to assist in the performance of a service related to this system of records and who need access to the records for the purpose of assisting the Commission in the efficient administration of its programs, including by performing clerical, stenographic, or data analysis functions, or by reproduction of records by electronic or other means. Recipients of these records shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

14. In reports published by the Commission pursuant to authority granted in the federal securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47)), which authority shall include, but not be limited to, section 21(a) of the Securities Exchange Act of 1934, 15 U.S.C. 78u(a)).

15. To members of advisory committees that are created by the Commission or by Congress to render advice and recommendations to the Commission or to Congress, to be used solely in connection with their official designated functions.

16. To any person who is or has agreed to be subject to the Commission's Rules of Conduct, 17 CFR 200.735-1 to 200.735-18, and who assists in the investigation by the Commission of possible violations of the federal securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47)), in the preparation or conduct of enforcement actions brought by the Commission for such violations, or otherwise in connection with the Commission's enforcement or regulatory functions under the federal securities laws.

17. To a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

18. To members of Congress, the press, and the public in response to inquiries relating to particular Registrants and their activities, and other matters under the Commission's jurisdiction.

19. To prepare and publish information relating to violations of the federal securities laws as provided in 15 U.S.C. 78c(a)(47)), as amended.

20. To respond to subpoenas in any litigation or other proceeding.

21. To a trustee in bankruptcy.

22. To any governmental agency, governmental or private collection agent, consumer reporting agency or commercial reporting agency, governmental or private employer of a debtor, or any other person, for collection, including collection by administrative offset, federal salary offset, tax refund offset, or administrative wage garnishment, of amounts owed as a result of Commission civil or administrative proceedings.

* * * * *

*Small Business Owners*: The SEC always welcomes comments on how it can better assist small businesses. If you would like more information, or have questions or comments about federal securities regulations as they affect small businesses, please contact the Office of Small Business Policy, in the SEC's Division of Corporation Finance, at 202-551-3460. If you would prefer to comment to someone outside of the SEC, you can contact the Small Business Regulatory Enforcement Ombudsman at http://www.sba.gov/ombudsman or toll free at 888-REG-FAIR. The Ombudsman's office receives comments from small businesses and annually evaluates federal agency enforcement activities for their responsiveness to the special needs of small business.

# U.S. Securities and Exchange Commission

## Data Delivery Standards

This document describes the technical requirements for paper and electronic document productions to the U.S. Securities and Exchange Commission (SEC). ***Any questions or proposed file formats other than those described below must be discussed with the legal and technical staff of the SEC Division of Enforcement prior to submission.***



### General Instructions

Electronic files must be produced in their native format, i.e. the format in which they are ordinarily used and maintained during the normal course of business. For example, an MS Excel file must be produced as an MS Excel file rather than an image of a spreadsheet. ***(Note: An Adobe PDF file is not considered a native file unless the document was initially created as a PDF.)***

In the event produced files require the use of proprietary software not commonly found in the workplace, the SEC will explore other format options with the producing party.

The proposed use of file de-duplication methodologies or *computer-assisted review* or *technology-assisted review* (TAR) during the processing of documents must be discussed with and approved by the legal and technical staff of the Division of Enforcement (ENF). If your production will be de-duplicated it is vital that you 1) preserve any unique metadata associated with the duplicate files, for example, custodian name, and, 2) make that unique metadata part of your production to the SEC.

General requirements for **ALL** document productions are:

1. A cover letter should be included with each production and include the following:
   a. A list of each piece of media included in the production with its unique production volume number
   b. A list of custodians, identifying the Bates range for each custodian.
   c. The time zone in which the emails were standardized during conversion.
2. Data can be produced on CD, DVD, thumb drive, etc., using the media requiring the least number of deliverables and labeled with the following:
   a. Case number
   b. Production date
   c. Producing party
   d. Bates range
3. All submissions must be organized by **custodian** unless otherwise instructed.
4. All document family groups, i.e. email attachments, embedded files, etc., should be produced together and children files should follow parent files sequentially in the Bates numbering.
5. All load-ready collections should include only one data load file and one image pointer file.
6. All load-ready text must be produced as separate text files.
7. All load-ready collections should account for custodians in the custodian field.
8. Audio files should be separated from data files if both are included in the production.
9. Only alphanumeric characters and the underscore character are permitted in file names and folder names. Special characters are not permitted.
10. All electronic productions submitted on media must be produced using industry standard self-extracting encryption software.
11. Electronic productions may be submitted via Secure File Transfer. The SEC **cannot** accept productions made using file sharing sites.
12. Productions containing BSA or SARs material must be delivered on encrypted physical media. The SEC **cannot** accept electronic transmission of BSA or SARs material. Any BSA or SARs material produced should be segregated and appropriately marked as BSA or SARs material, or should be produced separately from other case related material.
13. Passwords for electronic documents, files, compressed archives and encrypted media must be provided separately either via email or in a separate cover letter from the media.
14. All electronic productions should be produced free of computer viruses.
15. Additional technical descriptions can be found in the addendum to this document.

*Please note that productions sent to the SEC via United States Postal Service are subject to Mail Irradiation, and as a result electronic productions may be damaged.*

**Delivery Formats**

**I. *Concordance*® Imaged Productions**

The SEC prefers that all documents and data be produced in a structured format prepared for Concordance. All scanned paper and electronic file collections should be converted to TIFF files, Bates numbered, and include fully searchable text files.

**1. Images**

a. Black and white images must be 300 DPI Group IV single-page TIFF files.
b. Color images must be produced in JPEG format.
c. File names cannot contain embedded spaces or special characters (including the comma).
d. Folder names cannot contain embedded spaces or special characters (including the comma).
e. All TIFF image files must have a unique file name, i.e. Bates number.
f. Images must be endorsed with sequential Bates numbers in the lower right corner of each image.
g. The number of TIFF files per folder should not exceed 500 files.
h. Excel spreadsheets should have a placeholder image named by the Bates number of the file.
i. AUTOCAD/photograph files should be produced as a single page JPEG file.

2. ***Concordance Image*® OR Opticon Cross-Reference File**
The image cross-reference file (.LOG or .OPT) links the images to the database records. It should be a comma-delimited file consisting of seven fields per line with a line in the cross-reference file for every image in the database with the following format:
*ImageID,VolumeLabel,ImageFilePath,DocumentBreak,FolderBreak,BoxBreak,PageCount*

3. ***Concordance*® Data File**
The data file (.DAT) contains all of the fielded information that will be loaded into the *Concordance*® database.

a. The first line of the .DAT file must be a header row identifying the field names.
b. The .DAT file must use the following *Concordance*® default delimiters:
Comma ¶ ASCII character (020)
Quote þ ASCII character (254)
c. Date fields should be provided in the format: mm/dd/yyyy
d. Date and time fields must be two separate fields.
e. If the production includes imaged emails and attachments, the attachment fields must be included to preserve the parent/child relationship between an email and its attachments.
f. An OCRPATH field must be included to provide the file path and name of the extracted text file on the produced storage media. The text file must be named after the FIRSTBATES. Do not include the text in the .DAT file.
g. For productions with native files, a LINK field must be included to provide the file path and name of the native file on the produced storage media. The native file must be named after the FIRSTBATES.
h. BEGATTACH and ENDATTACH fields must be two separate fields.
i. A complete list of metadata fields is available in **Addendum A** to this document.

4. **Text**
Text must be produced as separate text files, not as fields within the .DAT file. The full path to the text file (OCRPATH) should be included in the .DAT file. We require document level ANSI text files, named per the FIRSTBATES/Image Key. Please note in the cover letter if any non-ANSI text files are included in the production. Extracted text files must be in a separate folder, and the number of text files per folder should not exceed 1,000 files. There should be no special characters (including commas in the folder names). For redacted documents, provide the full text for the redacted version.

5. **Linked Native Files**
Copies of original email and native file documents/attachments must be included for all electronic productions.
a. Native file documents must be named per the FIRSTBATES number.
b. The full path of the native file must be provided in the .DAT file for the LINK field.
c. The number of native files per folder should not exceed 1,000 files.

## II. Native File Production without Load Files

With prior approval, native files may be produced without load files. The native files must be produced as they are maintained in the normal course of business and organized by custodian-named file folders. When approved, Outlook (.PST) and Lotus Notes (.NSF) email files may be produced in native file format. A separate folder should be provided for each custodian.

## III. Adobe PDF File Production

With prior approval, Adobe PDF files may be produced in native file format.
1. PDF files should be produced in separate folders named by the custodian. The folders should not contain any special characters (including commas).
2. All PDFs must be unitized at the document level, i.e., each PDF must represent a discrete document.
3. All PDF files must contain embedded text that includes all discernible words within the document, not selected text or image only. This requires all layers of the PDF to be flattened first.
4. If PDF files are Bates endorsed, the PDF files must be named by the Bates range.

**IV. Audio Files**

Audio files from telephone recording systems must be produced in a format that is playable using Microsoft Windows Media Player™. Additionally, the call information (metadata) related to each audio recording MUST be provided. The metadata file must be produced in a delimited text format. Field names must be included in the first row of the text file. The metadata must include, at a minimum, the following fields:

| | |
|---|---|
| 1) Caller Name: | Caller's name or account/identification number |
| 2) Originating Number: | Caller's phone number |
| 3) Called Party Name: | Called party's name |
| 4) Terminating Number: | Called party's phone number |
| 5) Date: | Date of call |
| 6) Time: | Time of call |
| 7) Filename: | Filename of audio file |

**V. Video Files**

Video files must be produced in a format that is playable using Microsoft Windows Media Player™.

**VI. Electronic Trade and Bank Records**

When producing electronic trade and bank records, provide the files in one of the following formats:

1. MS Excel spreadsheet with header information detailing the field structure. If any special codes exist in the dataset, a separate document must be provided that details all such codes. If details of the field structure do not fit in the header, a separate document must be provided that includes such details.

2. Delimited text file with header information detailing the field structure. The preferred delimiter is a vertical bar "|". If any special codes exist in the dataset, a separate document must be provided that details all such codes. If details of the field structure do not fit in the header, a separate document must be provided that includes such details.

**VII. Electronic Phone Records**

When producing electronic phone records, provide the files in the following format:

1. MS Excel spreadsheet with header information detailing the field structure. If any special codes exist in the dataset, a separate document must be provided that details all such codes. If details of the field structure do not fit in the header, a separate document must be provided that includes such details. Data must be formatted in its native format (i.e. dates in a date format, numbers in an appropriate numerical format, and numbers with leading zeroes as text).
    a. The metadata that must be included is outlined in **Addendum B** of this document. Each field of data must be loaded into a separate column. For example, Date and Start_Time must be produced in separate columns and not combined into a single column containing both pieces of information. Any fields of data that are provided in addition to those listed in **Addendum B** must also be loaded into separate columns.

**VIII. Audit Workpapers**

The SEC prefers for workpapers to be produced in two formats: (1) With Bates numbers in accordance with the SEC Data Delivery Standards; and (2) in native format or if proprietary software was used, on a standalone laptop with the appropriate software loaded so that the workpapers may be reviewed as they would have been maintained in the ordinary course of business. When possible, the laptop should be configured to enable a Virtual Machine (VM) environment.

## ADDENDUM A

The metadata of electronic document collections should be extracted and provided in a .DAT file using the field definition and formatting described below:

| Field Name | Sample Data | Description |
|---|---|---|
| FIRSTBATES | EDC0000001 | First Bates number of native file document/email |
| LASTBATES | EDC0000001 | Last Bates number of native file document/email<br>**The LASTBATES field should be populated for single page documents/emails. |
| ATTACHRANGE | EDC0000001 - EDC0000015 | Bates number of the first page of the parent document to the Bates number of the last page of the last attachment "child" document |
| BEGATTACH | EDC0000001 | First Bates number of attachment range |
| ENDATTACH | EDC0000015 | Last Bates number of attachment range |
| PARENT_BATES | EDC0000001 | First Bates number of parent document/Email<br>**This PARENT_BATES field should be populated in each record representing an attachment "child" document |
| CHILD_BATES | EDC0000002; EDC0000014 | First Bates number of "child" attachment(s); can be more than one Bates number listed depending on the number of attachments<br>**The CHILD_BATES field should be populated in each record representing a "parent" document |
| CUSTODIAN | Smith, John | Email: Mailbox where the email resided<br>Native: Name of the individual or department from whose files the document originated |
| FROM | John Smith | Email: Sender<br>Native: Author(s) of document<br>**semi-colon should be used to separate multiple entries |
| TO | Coffman, Janice; LeeW [mailto:LeeW@MSN.com] | Recipient(s)<br>**semi-colon should be used to separate multiple entries |
| CC | Frank Thompson [mailto: frank_Thompson@cdt.com] | Carbon copy recipient(s)<br>**semi-colon should be used to separate multiple entries |
| BCC | John Cain | Blind carbon copy recipient(s)<br>**semi-colon should be used to separate multiple entries |
| SUBJECT | Board Meeting Minutes | Email: Subject line of the email<br>Native: Title of document (if available) |
| FILE_NAME | BoardMeetingMinutes.docx | Native: Name of the original native file, including extension |
| DATE_SENT | 10/12/2010 | Email: Date the email was sent<br>Native: (empty) |
| TIME_SENT/TIME_ZONE | 07:05 PM GMT | Email: Time the email was sent/ Time zone in which the emails were standardized during conversion.<br>Native: (empty)<br>**This data must be a separate field and cannot be combined with the DATE_SENT field |
| TIME_ZONE | GMT | The time zone in which the emails were standardized during conversion.<br>Email: Time zone<br>Native: (empty) |

| | | |
|---|---|---|
| LINK | D:\001\EDC0000001.msg | Hyperlink to the email or native file document<br>**The linked file must be named per the FIRSTBATES number |
| MIME_TYPE | MSG | The content type of an Email or native file document as identified/extracted from the header |
| FILE_EXTEN | MSG | The file type extension representing the Email or native file document; will vary depending on the email format |
| AUTHOR | John Smith | Email: (empty)<br>Native: Author of the document |
| DATE_CREATED | 10/10/2010 | Email: (empty)<br>Native: Date the document was created |
| TIME_CREATED | 10:25 AM | Email: (empty)<br>Native: Time the document was created<br>**This data must be a separate field and cannot be combined with the DATE_CREATED field |
| DATE_MOD | 10/12/2010 | Email: (empty)<br>Native: Date the document was last modified |
| TIME_MOD | 07:00 PM | Email: (empty)<br>Native: Time the document was last modified<br>**This data must be a separate field and cannot be combined with the DATE_MOD field |
| DATE_ACCESSD | 10/12/2010 | Email: (empty)<br>Native: Date the document was last accessed |
| TIME_ACCESSD | 07:00 PM | Email: (empty)<br>Native: Time the document was last accessed<br>**This data must be a separate field and cannot be combined with the DATE_ACCESSD field |
| PRINTED_DATE | 10/12/2010 | Email: (empty)<br>Native: Date the document was last printed |
| FILE_SIZE | 5,952 | Size of native file document/email in KB |
| PGCOUNT | 1 | Number of pages in native file document/email |
| PATH | J:\Shared\SmithJ\October Agenda.doc | Email: (empty)<br>Native: Path where native file document was stored including original file name. |
| INTFILEPATH | Personal Folders\Deleted Items\Board Meeting Minutes.msg | Email: original location of email including original file name.<br>Native: (empty) |
| INTMSGID | <000805c2c71b$75977050$cb8306d1@MSN> | Email: Unique Message ID<br>Native: (empty) |
| MD5HASH | d131dd02c5e6eec4693d9a0698aff95c2fcab58712467eab4004583eb8fb7f89 | MD5 Hash value of the document. |
| OCRPATH | TEXT/001/EDC0000001.txt | Path to extracted text of the native file |

Sample Image Cross-Reference File:

```
IMG0000001,,E:\001\IMG0000001.TIF,Y,,,
IMG0000002,,E:\001\IMG0000002.TIF,,,,
IMG0000003,,E:\001\IMG0000003.TIF,,,,
IMG0000004,,E:\001\IMG0000004.TIF,Y,,,
IMG0000005,,E:\001\IMG0000005.TIF,Y,,,
IMG0000006,,E:\001\IMG0000006.TIF,,,,
```

## ADDENDUM B

For Electronic Phone Records, include the following fields in separate columns:

For Calls:

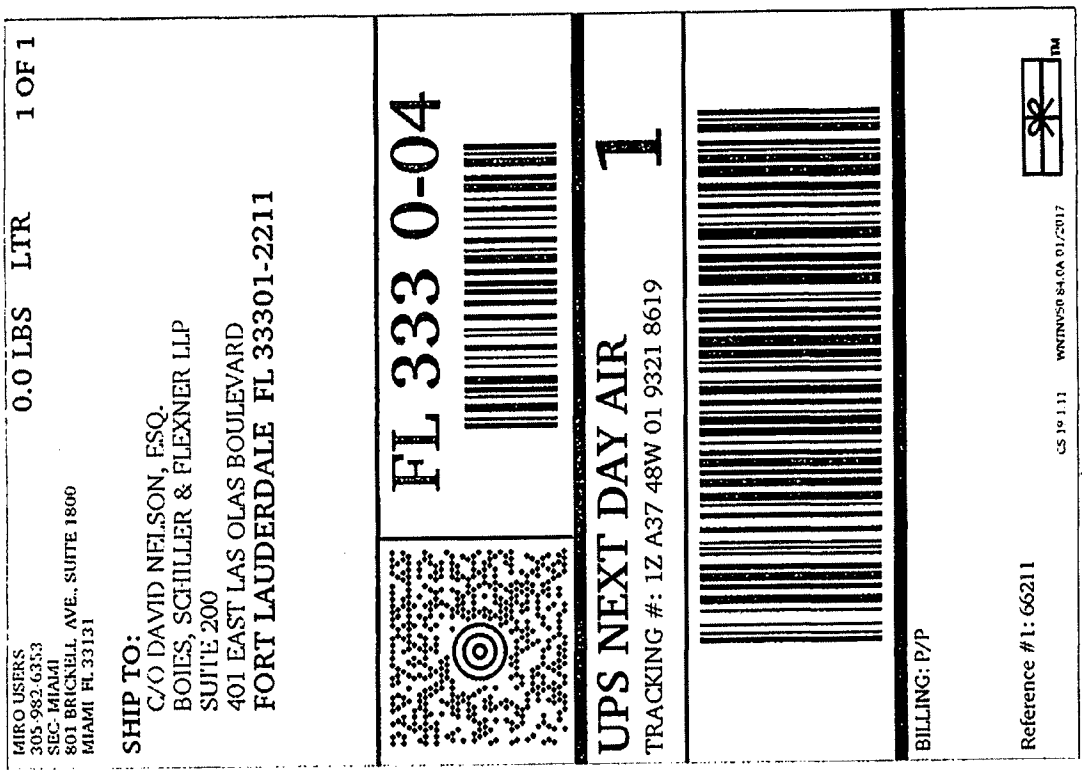
1) Account Number
2) Connection Date – Date the call was received or made
3) Connection Time – Time call was received or made
4) Seizure Time – Time it took for the call to be placed in seconds
5) Originating Number – Phone that placed the call
6) Terminating Number – Phone that received the call
7) Elapsed Time – The length of time the call lasted, preferably in seconds
8) End Time – The time the call ended
9) Number Dialed – Actual number dialed
10) IMEI Originating – Unique id to phone used to make call
11) IMEI Terminating– Unique id to phone used to receive call
12) IMSI Originating – Unique id to phone used to make call
13) IMSI Terminating- Unique id to phone used to receive call
14) Call Codes – Identify call direction or other routing information
15) Time Zone – Time Zone in which the call was received or placed, if applicable

For Text messages:

1) Account Number
2) Connection Date – Date the text was received or made
3) Connection Time – Time text was received or made
4) Originating Number – Who placed the text
5) Terminating Number – Who received the text
6) IMEI Originating – Unique id to phone used to make text
7) IMEI Terminating– Unique id to phone used to receive text
8) IMSI Originating - Unique id to phone used to make text
9) IMSI Terminating- Unique id to phone used to receive text
10) Text Code – Identify text direction, or other text routing information
11) Text Type Code – Type of text message (sent SMS, MMS, or other)
12) Time Zone – Time Zone in which the call was received or placed, if applicable

For Mobile Data Usage:

1) Account Number
2) Connection Date – Date the data was received or made
3) Connection Time – Time data was received or made
4) Originating number – Number that used data
5) IMEI Originating – Unique id of phone that used data
6) IMSI Originating - Unique id of phone that used data
7) Data or Data codes – Identify data direction, or other data routing information
8) Time Zone – Time Zone in which the call was received or placed, if applicable



MIRO USERS
305 982 6353
SEC MIAMI
801 BRICKELL AVE., SUITE 1800
MIAMI FL 33131

0.0 LBS LTR 1 OF 1

SHIP TO:
C/O DAVID NELSON, ESQ.
BOIES, SCHILLER & FLEXNER LLP
SUITE 200
401 EAST LAS OLAS BOULEVARD
FORT LAUDERDALE FL 33301-2211

FL 333 0-04

UPS NEXT DAY AIR 1

TRACKING #: 1Z A37 48W 01 9321 8619

BILLING: P/P

Reference #1: 66211

**EXHIBIT F**

**Supplemental Declaration**

**IN THE UNITED STATES BANKRUPTCY COURT**
**FOR THE DISTRICT OF DELAWARE**

| | |
|---|---|
| In re:<br><br>WOODBRIDGE GROUP OF COMPANIES LLC, *et al*.,[1]<br><br>Debtors. | Chapter 11<br><br>Case No. 17-12560 (KJC)<br><br>**(Jointly Administered)** |

**SUPPLEMENTAL DECLARATION OF LAWRENCE R. PERKINS**

I, Lawrence R. Perkins, hereby declare under penalty of perjury, pursuant to section 1746 of title 28 of the United States Code, as follows:

1. I am CEO and Founder of SierraConstellation Partners, LLC ("SCP"), headquartered at 400 South Hope Street, Suite 1050, Los Angeles, California, 90071, and the Chief Restructuring Officer of WGC Independent Manager LLC, a Delaware limited liability company ("WGC Independent Manager"), which is the sole manager of debtor Woodbridge Group of Companies, LLC, a Delaware limited liability company and an affiliate of each of the above-captioned debtors and debtors in possession (each, a "Debtor" and collectively, the "Debtors"). The sole manager of WGC Independent Manager is Beilinson Advisory Group, LLC, a Delaware limited liability company (the "Independent Manager"). The Debtors' management structure is further described in the *Declaration of Lawrence R. Perkins in Support*

[1] The last four digits of Woodbridge Group of Companies, LLC's federal tax identification number are 3603. The mailing address for Woodbridge Group of Companies, LLC is 14225 Ventura Boulevard #100, Sherman Oaks, California 91423. Due to the large number of debtors in these cases, for which the Debtors have requested joint administration, a complete list of the Debtors, the last four digits of their federal tax identification numbers, and their addresses are not provided herein. A complete list of such information may be obtained on the website of the Debtors' proposed noticing and claims agent at www.gardencitygroup.com/cases/WGC, or by contacting the proposed counsel for the Debtors.

*of the Debtors' Chapter 11 Petitions and Requests First Day Relief* (the "First Day Declaration") (ECF No. 12).[2]

2. I submit this supplemental declaration (this "Supplemental Declaration") to update the Bankruptcy Court and interested parties regarding a recent amendment to the operating agreement of WGC Independent Manager, which amendment provides that the Independent Manager may only be removed upon a finding of cause by the Bankruptcy Court. All facts set forth in this Supplemental Declaration are based upon my personal knowledge of the Debtors' operations, information learned from my review of relevant documents, and consultation with the Independent Manager and the Debtors' professional advisors. I am authorized to submit this Supplemental Declaration on behalf of the Debtors and, if called upon to testify, I could and would testify competently to the facts set forth herein.

3. As further described in the First Day Declaration, on December 1, 2017, pursuant to the Management Consent, Robert Shapiro, as Trustee of RS Protection Trust, removed himself and his affiliates as manager of certain of the Debtors and appointed the Independent Manager as replacement manager. *See* First Day Declaration, Ex. F, ECF 12 at 91. In connection with the execution of the Management Consent, Mr. Shapiro and the Independent Manager executed that certain Limited Liability Company Agreement of WGC Independent Manager LLC (the "Operating Agreement"). *Id.* at 118 (Ex. A to Management Consent). Section 15(b) of the Operating Agreement provided that RS Protection Trust could remove the Independent Manager without cause on at least ten business days' prior notice to the Bankruptcy Court. *Id.* at 121.

4. At the December 5, 2017 hearing before the Bankruptcy Court at which the Bankruptcy Court considered the Debtors' requests for first-day relief (the "First Day Hearing"),

[2] Capitalized terms used but not defined herein shall have the meanings assigned to such terms in the First Day Declaration.

the United States Securities and Exchange Commission ("SEC") raised concerns regarding the provision of the Operating Agreement purportedly allowing Mr. Shapiro to remove the Independent Manager without cause. The Debtors had contacted the SEC on the Petition Date, seeking to arrange a meeting to apprise them of the contemplated restructuring and to address any concerns. After the First Day Hearing, the SEC agreed to meet with certain of the Debtors' advisors on December 7, 2017 to discuss the SEC's concerns. Following this meeting, the Independent Manager demanded that Mr. Shapiro amend the Operating Agreement to eliminate any purported right to remove the Independent Manager without a showing of cause and an order of the Bankruptcy Court. Mr. Shapiro agreed.

5. Accordingly, on December 8, 2017, WGC Independent Manager and RS Protection Trust entered into that certain Amendment No. 1 to the Limited Liability Company Agreement of WGC Independent Manager LLC (the "First Amendment"). A true and correct copy of the First Amendment is attached hereto as Exhibit A. The First Amendment amends section 15(b) of the Operating Agreement, providing that notwithstanding anything to the contrary therein, until the occurrence of a Termination Event (as defined therein), the Independent Manager may only be removed at the request of RS Protection Trust following a finding by the Bankruptcy Court that, "among other things, 'cause,' as defined in Section 1112(b)(4) of the Bankruptcy Code or cases interpreting that section, exists to remove the Manager."

6. I believe that the changes made through the First Amendment have further bolstered the independence of the Independent Manager. The Debtors remain committed to addressing outstanding concerns of all of the Debtors' constituents to implement a successful reorganization that is in the best interests of all the Debtors' stakeholders.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Dated: December 15, 2017

Lawrence R. Perkins
CEO & Founder
SierraConstellation Partners LLC

**Exhibit A**

**First Amendment to WGC Independent Manager LLC Operating Agreement**

AMENDMENT NO. 1 TO

LIMITED LIABILITY COMPANY AGREEMENT

OF

WGC INDEPENDENT MANAGER LLC

This AMENDMENT NO. 1 TO LIMITED LIABILITY COMPANY AGREEMENT (this "Amendment") of WGC Independent Manager LLC, a Delaware limited liability company (the "Company"), dated as of December 8, 2017, is made and entered into by RS Protection Trust as the sole member of the Company (the "Member), and amends that certain Limited Liability Company Agreement of the Company, dated as of December 1, 2017 (the "Operating Agreement"). Unless otherwise provided, capitalized terms used herein but not defined herein shall have the meanings assigned to such terms in the Operating Agreement.

RECITALS

WHEREAS, the Member, being the sole owner of the membership interests of the Company, desires to amend the Operating Agreement on the terms and conditions set forth herein;

WHEREAS, pursuant to Section 27 of the Operating Agreement, the Operating Agreement may be amended by a written instrument specifically designated as an amendment and executed and delivered by the Member;

WHEREAS, certain Managed Affiliates filed a voluntary petition for relief under the provisions of chapter 11 of the Bankruptcy Code on December 4, 2017, and accordingly the Member is in the Restricted Period; and

WHEREAS, pursuant to Section 27 of the Operating Agreement, during the Restricted Period, Section 15 of the Operating Agreement shall not be amended without the written consent of the Manager.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned states as follows:

1. Amendment. Section 15(b) of the Operating Agreement is hereby amended and restated in its entirety as follows:

> (b) Notwithstanding anything to the contrary herein, from the filing of a voluntary petition for relief under the provisions of chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") by any of the Managed Affiliates until a Termination Event (the "Restricted Period"), the Manager may only be removed at the request of the Member following a finding by the United States Bankruptcy Court that, among other things, "cause," as defined in Section 1112(b)(4) of the Bankruptcy Code or cases interpreting that section, exists to remove the Manager. "Termination Event" means (i) the confirmation of a chapter 11 plan involving such Managed Affiliates, (ii) appointment of a chapter 11 trustee or a receiver for such Managed Affiliates, (iii) conversion of the bankruptcy cases of such Managed Affiliates to a case under chapter 7

of the Bankruptcy Code, (iv) dismissal of the bankruptcy cases of such Managed Affiliates, or (v) a settlement or dismissal of all enforcement actions commenced by the United States Securities and Exchange Commission against Robert Shapiro.

2. Limited Effect. Except as amended hereby, the Operating Agreement shall continue in full force and effect in accordance with its terms. By executing this Amendment below, the Member certifies that this Amendment has been executed and delivered in compliance with Section 27 of the Operating Agreement. Reference to this Amendment need not be made in the Operating Agreement or any other instrument or document executed in connection therewith, or in any certificate, letter or communication issued or made pursuant to, or with respect to, the Operating Agreement, any reference in any of such items to the Operating Agreement being sufficient to refer to the Operating Agreement as amended hereby.

3. Amendments. This Amendment may be amended, supplemented or changed, any provision hereof can be waived, only by written instrument making specific reference to this Amendment signed by the Member with the written consent of the Manager.

4. Binding Effect. This Amendment shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.

5. Jurisdiction; Governing Law. This Amendment shall be governed by, and construed under, the laws of the State of Delaware, all rights and remedies being governed by said laws.

6. Counterparts. This Amendment may be executed in two or more counterparts, each of which will be deemed to be an original copy of this Amendment and all of which, when taken together, will be deemed to constitute one and the same instrument. The exchange of a fully executed Amendment (in counterparts or otherwise) by electronic mail in "portable document format" (".pdf") form or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, shall be sufficient to bind the Member to the terms and conditions of this Amendment.

[*Signature page follows.*]

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, has duly executed this Amendment No. 1 to Limited Liability Company Agreement as of the date first above written.

**RS PROTECTION TRUST**

By: _____
Name: Robert Shapiro
Title: Trustee

ACKNOWLEDGED AND CONSENTED:

**MANAGER:**

**BEILINSON ADVISORY GROUP LLC**

By: _____
Name: Marc Beilinson
Title: Manager

**EXHIBIT G**

**O'Quinn Letter dated December 28, 2017**

GIBSON DUNN

Gibson, Dunn & Crutcher LLP

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Client: 98743-00028

December 28, 2017

VIA ELECTRONIC MAIL

Ryan O'Quinn
DLA Piper LLP
200 South Biscayne Boulevard Suite 2500
Miami, Florida 33131-5341
Email: ryanoquinn@dlapiper.com

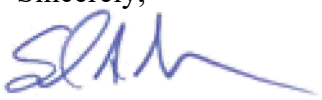
Re: Suspension of Services and Compensation under Transition Services Agreement

Dear Mr. O'Quinn:

I am writing to inform you and your client, Mr. Robert Shapiro, that, in light of the allegations in the action filed by the Securities and Exchange Commission on December 20, 2017, in the United States District Court for the Southern District of Florida, captioned *Securities and Exchange Commission v. Robert Shapiro et al.*, Case No. 17-cv-24624-MGC, the Woodbridge Group of Companies, LLC ("WGC") is administratively suspending the Transition Services Agreement, dated as of December 1, 2017 (the "TSA"), pending final resolution of these allegations.

Accordingly, effective immediately, all work and services performed by WFS Holding Co LLC ("WFS") as consultant or otherwise to WGC is hereby suspended. Moreover, all work by Mr. Shapiro in his individual capacity in any managerial role is hereby suspended. While the suspension is in place, neither Mr. Shapiro nor WFS shall have access to any documents or information of WGC or any of its affiliated debtor entities (the "Debtors"). During the suspension of the TSA, Mr. Shapiro nor WFS will not receive any compensation thereunder. The Debtors reserve all legal and equitable rights, including, without limitation, the right to seek equitable subordination of claims under the TSA, if any claims against the Debtors are asserted as result of this suspension.

Sincerely,



Samuel A. Newman

SAN/kal
cc: Marc Beilinson (Email: *mbeilinson@beilinsonpartners.com*)
Lawrence Perkins (Email: *lperkins@scpllc.com*)
Eric Goldberg (Email: *eric.goldberg@dlapiper.com*)