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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, vs. TLC INVESTMENTS & TRADE CO., et al. Defendants.	Civil Action No. SACV 00-960-DOC (EEEx) PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S OPPOSITION TO MOTION TO LIFT STAY OR IN THE ALTERNATIVE TO INTERVENE; DECLARATION OF MARIANNE WISNER Date: April 2, 2001 Time: 8:30 a.m. Place: Courtroom 9-D
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Plaintiff Securities and Exchange Commission ("Commission") respectfully submits this memorandum in opposition to the Motion of Applicants For An Order Lifting Stay Order Or, Alternatively, Granting Applicants Leave To Intervene Pursuant To FRCP 24 (the "Brokers' Motion"). For the reasons set forth herein, the motion should be denied.

I. INTRODUCTION

The Commission agrees that the TLC investors should have a voice in these proceedings. The Commission is concerned, however, about whose voice is actually asking to be heard and how it is being funded. While the instant motion to intervene purportedly was filed on behalf of over 700 investors, the group was organized and is being spearheaded by some of the largest brokers and agents who sold TLC investments to these very investors (the "Brokers Group"). These brokers have concerns and interests that are significantly different from those of the investors – the brokers and agents face potential liability to the Receiver for return of commissions and to the investors themselves.

The evidence that the Brokers Group was organized by several large brokers and agents, including defendant Thomas Cloud, Hector Serrano and Patricia Kryder, is not disputed. These and other brokers and agents formed the group supposedly for the purpose of monitoring the Receiver. (Declaration of Marianne Wisner ("Wisner Dec."), ¶ 2, Ex. 1.) The brokers and agents solicited investors, and assured them that the brokers and agents would retain counsel, at their own expense, to represent the Brokers Group. (*Id.*)

The brokers and agents retained Richard Weed to represent the Brokers Group. (*Id.*) Weed and the Brokers Group then attempted to pressure the Receiver to agree to pursue a bizarre scheme whereby investors would release their claims against the TLC defendants in exchange for highly risky annuities issued by an unidentified off-shore insurance company. (*Id.*, ¶ 4.) When the Receiver refused to pursue Weed's annuity scheme, Weed filed the first motion to intervene on behalf of the Brokers Group. (*Id.*, ¶ 4.) After both the Commission and the Receiver filed oppositions to the motion, Weed withdrew it. He then joined Gibson, Dunn & Crutcher (GD&C) as co-counsel and refiled a more elaborate *ex parte* motion to intervene on March 2, 2001. (*Id.*, ¶ 4.){[1] In the March 2, 2001 motion to intervene filed on March 2, 2001, the signature block included both Weed and GD&C. Perhaps in an attempt to distance itself from Weed and his annuity scheme, the Brokers Group has deleted all reference to Weed in the version of the motion to intervene now before the Court.}

Notwithstanding the involvement of new counsel, the brokers and agents remained in control of the Brokers Group and, at least through the March 6, 2001 hearing, directed the actions of its counsel. At the March 6 hearing, counsel for the Brokers Group informed the Commission that their fees were being paid by the brokers and that they obtained direction from Serrano and Kryder. (*Id.*, ¶ 5.) Approximately a half-dozen brokers, including Serrano and Kryder, remain on GD&C's proposed intervenor list. (*Id.*, ¶ 5.) The list also includes Mobile Magic Sales, a company that sold TLC Entity investments and is controlled by Defendant Ernest F. Cossey and James Schneider, a Senior Vice-President of Defendant TLC America, Inc. (*Id.*, Exs. 3, 4).

The Brokers Group's motion should be denied for several reasons. First, unless the Brokers Group can provide assurances to the Court that it truly represents the interests of victimized investors, rather than those of the brokers and agents who have organized and funded the Brokers Group and directed counsel's actions, it should not be allowed to have any role in this litigation. Second, the procedures already approved by this Court concerning judicial review of any disputes between the Receiver and investors regarding the calculation of their claims are more than sufficient to protect the investors' due process rights. Third, the investors are not entitled to intervention under Rule 24 of the Federal Rules of Civil Procedure.

In short, the Court, the Receiver and the Commission have acted with due regard for the rights of the investors throughout this litigation. The Commission revealed the TLC fraud and brought this emergency action to protect against further dissipation of investor funds. The Court granted emergency relief, appointed a Receiver and has closely supervised the receivership to ensure the protection of the investor's rights. The Receiver has openly communicated with investors and has instituted numerous procedures to inform them of the status of these proceedings and the receivership. He has also made arrangements, approved by the Court, to make immediate advances to investor hardship cases. In these circumstances, full-blown intervention is wholly unnecessary to protect investors and is likely only to disrupt these proceedings.

II. ARGUMENT

A. The Stay May Remain In Place And Investors Continue To Be Given A Voice

The Brokers Group argue that the stay should be lifted to direct the Receiver to comply with Local Rule 25 so that investors may be afforded a voice in these proceedings as they would in bankruptcy. The Commission recommends that the investors' role in these proceedings be shaped by the court to best effect the "orderly and efficient administration of the receivership for the benefit of creditors" rather than lifting the stay. CFTC v. Topworth Int'l, Ltd., 205 F.3d 1107, 1114 (9th Cir. 1999), citing SEC v. Hardy, 803 F.2d 1034, 1037-38 (9th Cir. 1986)(denial of motion to intervene to change receivership procedures not abuse of discretion) and SEC v. Wencke, 783 F.3d 829, 837, n. 9 (9th Cir. 1986) (summary procedures may be used).

The "meat" of Local Rule 25 is Local Rule 25.8. Local Rule 25.8 provides: "Except as otherwise ordered by the Court, a receiver shall administer the estate as nearly as possible in accordance with the practice in the administration of estates in bankruptcy." (Emphasis added.) Local Rule 25.8 does not require the Court to direct the Receiver to follow the administrative practices used in bankruptcy proceedings. Instead, the rule permits the Court to follow Ninth Circuit case law which accords broad deference to the court's supervisory role and generally upholds "reasonable procedures instituted by the district court that serve the purpose of orderly and efficient administration of the receivership for the

benefit of creditors." CFTC v. Topworth Intl. Ltd., 205 F.2d at 1114. Such procedures may include procedures that avoid formalities that would slow down the resolution of creditor disputes. See SEC v. Hardy, 803 F.2d at 1040.

The Brokers Group cannot articulate why the procedures that have already been used in this action fail to protect investor rights or are insufficient under Local Rule 25.8. The Court has already approved procedures for judicial review of any significant property sales (over \$250,000) by the Receiver, as well as any claims disputes between the Receiver and investors. The Receiver has provided investors with ample information concerning the Receivership, conducted town meetings, and posted his reports on his website. The Court afforded investors notice and an opportunity to be heard on the Receiver's last report. Local Rule 25 requires, and intervention by the investors in this action would accomplish, little more.

B. The Brokers Failed To Establish That The Stay Order Should Be Lifted

The Brokers Group has failed to satisfy the test established by the Ninth Circuit to lift this stay. The elements of the test are: (1) whether refusing to lift the stay genuinely preserves the status quo or whether the moving party will suffer substantial injury if not permitted to proceed; (2) the time in the course of the receivership at which the motion for relief from the stay is made; and (3) the merit of the moving party's underlying claims. SEC v. Universal Financial, 760 F.2d 1034, 1038 (9th Cir. 1985), quoting SEC v. Wencke, 742 F.2d 1230, 1231 (9th Cir. 1984). In deciding to lift the stay, the Court must balance the interests of the Receiver and the moving party. SEC v. Universal Financial, 760 F.2d at 1038. The interests of the Receiver are very broad and include not only protection of the receivership res, but also protection of defrauded investors and considerations of judicial economy. Id.

The Brokers Group fails to show how the investors will be injured if the stay is not lifted. As discussed earlier, the investors' interests are well protected by the procedures already instituted by the Court and the Receiver. The Brokers Group has not put forth any kind of plan to demonstrate that its participation would improve the investors' financial position. Because of the Brokers Group's conflict of interest, it cannot demonstrate that its claims have merit. Indeed it appears that there may be a genuine danger that the Broker's Group camouflages wolves in "investors'" clothing who want nothing more than to protect themselves from potential liability. See generally SEC v. Wencke, 622 F.2d 1363, 1373 (9th Cir. 1980) (stay need not be lifted if danger that claim is continuation of original fraudulent scheme).

1. The Brokers Group's Motion Fails to Satisfy the Conditions for Intervention

The Brokers Group has the burden to demonstrate that the conditions for intervention are satisfied. See Petrol Stops Northwest v. Continental Oil Co., 647 F.2d 1005, 1010 n. 5 (9th Cir.), cert. denied, 454 U.S. 1098, 102 S.Ct. 672, 70 L.Ed.2d 639 (1981). The majority of circuit courts that have considered intervention as of right in analogous circumstances have denied intervention. See CFTC v. Chilcott Portfolio Management, Inc., 725 F.2d 584, 586 (10th Cir. 1984); CFTC v. Heritage Capital Advisory Servs., 736 F.2d 384, 386-87 (7th Cir. 1984); SEC v. Everest Management, 475 F.2d 1236, 1239-40 (2d Cir. 1972); SEC v. Charles Plohn & Co., 448 F.2d 546 549 (2d Cir. 1971)).

To obtain an order granting intervention as of right, the application must (1) be timely; (2) assert an interest relating to the subject property; (3) demonstrate that without intervention the disposition may, as a practical matter, impair or impede the applicant's ability to protect that interest; and (4) demonstrate that the existing parties will not adequately represent the applicant. See United States ex rel McGough v. Covington Technologies, 967 F.2d 1391, 1394 (9th Cir. 1992). Failure to satisfy any one of these elements constitutes sufficient grounds to deny an intervention application. See United States v. New York, 820 F.2d 554, 556 (2d Cir. 1987).

2. The Brokers' Motion Is Untimely

In evaluating the timeliness of the proposed application to intervene, the Court must consider the stage of the proceeding, prejudice to the parties, and the reason for and length of the delay in seeking to intervene. See Idaho Farm Bureau Federation v. Babbitt, 58 F.3d 1392, 1397 (9th Cir. 1995)(upholding determination that intervention was timely where it was sought prior to the hearing on the motion for preliminary injunction); United States v. Covington Technologies Co., 967 F.2d 1391, 1394 (9th Cir. 1992); County of Orange v. Air California, 799 F.2d 535, 537 (9th Cir. 1986), cert. denied sub nom. City of Irvine v. Orange County, 480 U.S.

946, 107 S. Ct. 1605, 94 L. Ed. 2d 791. The timeliness determination is committed to the discretion of the district court. McGough, 967 F.2d at 1394.

Although early in the course of the entire litigation, the Brokers Group's Motion appears untimely. Through intervention, the brokers seek to direct how real property assets will be liquidated several months after the Court approved the plan of liquidation. The Receiver proposed a plan of asset liquidation in his second report filed on November 9, 2000 and made available on his website. The Court approved the plan with some minor changes and the Receiver has proceeded accordingly. In particular, the Receiver has obtained the Court's approval to expend funds to appraise the real property, maintain and upgrade real property, trade some of the properties for more easily saleable properties, sell properties and purchase a parcel of land adjacent to the Marina Coves Project to increase the value of the Marina Coves Project.

The Brokers Group waited approximately three months to formally oppose that plan, then withdrew its first motion to intervene, and are now taking another swipe at intervention five months after the Court approved the plan. The intervention, if permitted, would disrupt the ongoing Court-approved liquidation process and cause the receivership to incur extra expense and delay. Should the Brokers Group be allowed to intervene and cause the Receiver to engage in time-consuming procedures that delay the sale of property, all investors' returns, not just those identified in the brokers' papers, could be impaired.

3. **The Brokers Group Motion Fails To Demonstrate That The Commission And The Receiver Will Not Adequately Represent Investors**

In evaluating whether there already exists a party who will adequately represent the proposed intervenors' interests, the Court must consider three factors: (1) whether the interests of a present party to the suit are such that it will undoubtedly make all of the intervenors' arguments; (2) whether the present party is able and willing to make such arguments; and (3) whether the intervenors would offer any necessary element to the proceedings that the other parties would neglect. See United States v. Stringfellow, 783 F.2d 821, 827 (9th Cir. 1986).

When an applicant for intervention and an existing party "have the same ultimate objective, a presumption of adequacy of representation arises." Northwest Forest Resource Council v. Glickman, 82 F.3d 825, 838 (9th Cir. 1996) (upholding denial of intervention of environmental group where it alleged only minor differences in opinion with the Defendant Secretaries of the Interior and Agriculture in interpreting statute at issue). Minor differences of opinion and differing strategies in pursuing the litigation will not overcome this presumption. Id.

The Commission and the Receiver undoubtedly share the brokers' purported ultimate objective -- to maximize investor distributions. The Commission exposed this fraud and brought an emergency action to halt further dissipation of investors' assets. The Commission is "statutorily commissioned to represent the interests of individual investors in the public at large." SEC v. Qualified Pensions, Inc., 1998 U.S. Dist. Lexis 942, *11 (D.D.C. 1998), citing S.Rep. No. 94-75, at 74. The Receiver, under the Court's watchful eye, is similarly acting for the benefit of investors by maximizing investor distributions through the orderly sale of the estate's assets and frugal management of the estate. See SEC v. Wencke (Wencke II), 783 F.2d 829, 837, n. 9 (9th Cir. 1986) (primary purpose of equity receiverships is to promote orderly and efficient administration of the estate by the district court); SEC v. Elliott, 953 F.2d 1560, 1577 (11th Cir. 1992) ("Even though Receiver may at times take adverse positions to certain claimants, the Receiver acts under supervision of the court; for the court must independently approve the Receiver's legal and factual findings.").

The primary reason the Brokers Group asserts to support its contention that the Receiver does not represent investors' interests and there is a corresponding need to intervene is that it dislikes the Receiver's "secretive" sale procedures. (Motion, 16:23.) However, any "secretive" sales procedures were undertaken by the Court to prevent buyers of property from taking undue advantage of this desperate situation. The only people who appear to actually dispute this Court-approved procedure to liquidate assets are the brokers who funded this motion.

Furthermore, the Brokers Group admits that it, the Receiver, and the Commission seek goals that do not conflict: increasing distributions to investors. (Motion 18:18.) The Brokers Group admits that its proposed action "will rely on the same or similar evidence and legal arguments [as] set forth by the SEC." (Motion, 18:2-

3.) Finally, the Court's continued close oversight of this case will ensure that the Receiver and the Commission do not "bargain away" the investors' interests. The investors' interests are not adverse to those of the Commission, nor the Receiver. See Stringfellow, 783 F.2d at 828, n. 6. The fact that neither the Court, the Commission, the Receiver, the Brokers Group, nor the investors will likely have the ability to provide investors a full recovery is no reason to permit the Brokers Group leave to intervene. Certainly, the brokers who contributed to investor losses have not demonstrated that they can do a better job than the Court and the Receiver at maximizing investor distributions. The Brokers Group has not carried its "minimal burden" to show that it will represent investors' interests better than the Commission and the Receiver. Accordingly, there is a presumption of adequacy of representation. See Northwest Forest Resource Council, 82 F.3d at 838.

4. **Section 21(g) of the Securities Exchange Act of 1934 Bars The Brokers' Intervention**

Section 21(g) of the Exchange Act, 15 U.S.C. § 78u(g), provides:

Notwithstanding the provisions of section 1407(a) of Title 28, United States Code, or any other provision of law, no action for equitable relief instituted by the Commission pursuant to the securities laws shall be consolidated or coordinated with other actions not brought by the Commission, even though such other actions may involve common questions of fact, unless such consideration is consented to by the Commission.

In Parklane Hosiery Co. v. Shore, 439 U.S. 322, 332, n. 17, 99 S.Ct. 645, 58 L.Ed. 2d 552 (1979), the Supreme Court stated that "consolidation of a private action with one brought by the SEC without its consent is prohibited by statute." The Brokers Group's motion to intervene in this action was made without the consent of the Commission.

Courts, including the Central District of California, that have considered Section 21(g) generally have rigidly enforced Section 21(g). See Wisner Dec., Ex. 5, attaching SEC v. Whitworth Energy Resources, Ltd., CV-97-6980 CAS (SHx)(C.D. Cal., Sept. 27, 1999) (when Commission had not granted request to intervene, intervention appeared "inappropriate" under Section 21(g)). See SEC v. Wozniak, 1993 WL 34702 (N.D. Ill.) (investors are "blocked from entering [the] lawsuit by an impenetrable wall, [the] Securities Exchange Act of 1934. . ."). See also, SEC v. Homa, 2000 U.S. Dist. LEXIS 14582, *7 (N.D. Ill. Sept. 29, 2000) (plain language of Section 21(g) clearly bars intervenor from joining the SEC's enforcement action as a party); SEC v. Egan, 821 F. Supp. 1274 (N.D. Ill).

Section 21(g) is based on sound policy. In Aaron v. SEC, Justice Blackmun explained that "Commission enforcement actions and private suits for damages, though both civil in nature, 'are very different,' and [the Senate Committee in charge of the Section 21(g) legislation has] explained that private suits involve complications that are not present when the Commission seeks injunctive relief." Aaron v. SEC, 446 U.S. 680, 717, n. 9 (1980) (Blackmun, J. concurring in part, dissenting in part). Justice Blackmun quoted the Senate Committee Report on Section 21(g): "Private actions frequently will involve more parties and more issues than the Commission's enforcement action, thus greatly increasing the need for extensive pretrial discovery. S. Rep. No. 94-75, p. 76 (1975)." Id. Justice Blackmun thus concluded that "[i]n reliance on the different purposes of Commission enforcement proceedings and private actions, Congress enacted section 21(g) of the Act . . . which provides that absent consent from the Commission, private actions may not be consolidated with Commission proceedings." Id.

Here, the Brokers Group's complaint includes federal securities law claims such as rescission and control person liability; state law claims such as rescission and breach of contract; and common law fraud, negligent misrepresentation and rescission claims. The Brokers Group also seeks punitive damages. All of these claims require additional or different proof than the Commission's charges. Intervention in these circumstances is tantamount to consolidating this action with a private civil action. Accordingly, granting intervention will permit and likely involve extensive discovery that will prolong and protract this litigation – the very reason Congress gave the Commission the discretion to deny intervention.

Notwithstanding extensive case law and the strong policy reasons for denying intervention in a Commission enforcement action, a Northern District of California court found investor intervention appropriate

in SEC v. Navin, 166 F.R.D. 435 (N.D. Cal. 1995). The Navin court, however, never explicitly considered Section 21(g). Moreover, while Navin is outside this jurisdiction, at least one court in this district has denied intervention on Section 21(g) grounds. Accordingly, the Commission requests that the Court find that Section 21(g) bars the brokers' intervention.

C. Permissive Intervention Should Be Denied

The decision to deny permissive intervention is committed to the sound discretion of the district court. See Donnelly v. Glickman, 159 F.3d 405, 412 (9th Cir. 1998) (district court has discretion to deny permissive intervention even if an applicant satisfies threshold requirements). Permitting the brokers to intervene is unnecessary, would disrupt these proceedings and would cause prejudice to the investors.

The Brokers Group asserts, without support, that there will be no undue delay or prejudice if its motion is granted. The Brokers Group is wrong. Contrary to its unsupported assertion, the Brokers Group admits that it wants to revise (without saying how) the Court-approved liquidation procedures. Any motions brought to revise the liquidation procedures will take time and hinder the process at a time when the real estate market could quickly worsen with the rest of the economy. Such motions serve only to undermine the efficiency of the Receiver's progress and unfairly delay distributions to the elderly, poor and infirm investors who need their money returned immediately. In other words, any delay is a prejudicial delay to these investors.

It is also likely that if the motion to intervene is granted, the intervenors will try to delay the proceedings by seeking to continue the fast-approaching June 1, 2001 discovery cut-off date and November 9, 2001 trial dates so that they may "get up to speed" with the materials filed in this case and discovery that has already been conducted. The Brokers Group would also take its own, likely extensive, discovery. Such delays will further postpone the eventual distribution of funds to needy investors. Permissive intervention should be denied.

D. Attorneys Fees Incurred By The Brokers Group Cannot Be Paid From Disgorged Assets

Whether or not the Court permits the Brokers Group to intervene, its attorney's fees and costs cannot be paid from the receivership estate. The funds that the Receiver will ultimately hold after liquidation of the assets of the TLC Entities will constitute disgorgement. Section 20(f) of the Securities Act of 1933, 15 U.S.C. § 77t(f) and Section 21(d)(4) of the Exchange Act, 15 U.S.C. § 78u(d)(4), prohibit the payment of private attorney's fees from disgorgement absent the Commission's motion requesting those fees.

{[2] Section 20(f) of the Securities Act of 1933, 15 U.S.C. § 77t(f), states:

PROHIBITION OF ATTORNEYS' FEES PAID FROM COMMISSION DISGORGEMENT FUNDS - Except as otherwise ordered by the court upon motion by the Commission, or, in the case of administrative action, as otherwise ordered by the Commission, funds disgorged as the result of an action brought by the Commission in Federal court, or as a result of any Commission administrative action, shall not be distributed as payment for attorneys' fees or expenses incurred by private parties seeking distribution of disgorged funds.

Similarly, Section 21(d)(4) of the Exchange Act, 15 U.S.C. § 78u(d)(4), states:

PROHIBITION OF ATTORNEYS' FEES PAID FROM COMMISSION DISGORGEMENT FUNDS- Except as otherwise ordered by the court upon motion by the Commission, or, in the case of an administrative action, as otherwise ordered by the Commission, funds disgorged as the result of an action brought by the Commission in Federal court, or as a result of any Commission administrative action, shall not be distributed as payment for attorneys' fees or expenses incurred by private parties seeking distribution of the disgorged funds. }

See SEC v. Sterling Foster & Co., 2000 U.S. Dist. Lexis 7237 (S.D.N.Y. 2000) (Congress preempted application of the common-fund doctrine, citing Section 20(f) of the Securities Act and Section 21(d)(4) of the Exchange Act and improper to pay attorneys' fees of brokers who acted to prevent investor distributions). See also In re Ivan F. Boesky Sec. Litigation, 888 F. Supp. 551, 558 (S.D.N.Y. 1995) (class action plaintiffs' attorneys granted fees from funds collected through class litigation but denied fees from disgorgement funds). The Commission does not intend to make such a motion, particularly given that the Receivership estate is most likely insolvent.

E. A Representative Creditor's Committee To Be Determined By A Poll

If the Court is inclined to appoint a committee of investor-intervenors to advise the Court and/or the Receiver, the Commission suggests that the Court appoint a representative sample of investors rather than the seven largest creditors, as usually done in bankruptcy. See § 1102. For example, the Committee could include some investors with a minimal investment representing all or a large percentage of their life savings; investors who participated in the hardship plan; and investors with larger investments. This "mix" would likely balance out those interests who want to liquidate as fast as possible with those interests who want a slower sale to achieve a presumably higher price.

Further, the Commission would request prospective investor committee members be polled to determine their interest in participating as members of the investors' committee; anticipated level of participation in the committee; biases, if any, toward the brokers, law enforcement, and the Receiver; level of financial sophistication; and access to, and facility with, e-mail. Such a poll may help determine which investors may appear to be the better investor-intervenor representatives.

III. CONCLUSION

For the foregoing reasons, the Commission respectfully requests that the Court deny the Brokers' Motion, or in the alternative, modify the relief sought to ensure investors', not broker's, interests are represented.

Dated: March 21, 2001

<SIGNED>

MARIANNE WISNER
Attorney for Plaintiff
Securities and Exchange Commission

DECLARATION OF MARIANNE WISNER

I, Marianne Wisner, declare pursuant to 28 U.S.C. § 1746 as follows:

1. I am one of the attorneys representing Plaintiff Securities and Exchange Commission ("Commission") in this action. I have personal knowledge of the following facts, and, if called as a witness, could and would testify competently thereto.
2. Defendant Thomas Cloud, Hector Serrano and Patricia Kryder and other brokers and agents formed a group supposedly for the purpose of monitoring the Receiver. The brokers and agents solicited investors, and assured them that the brokers and agents would retain counsel, at their own expense, to represent the Brokers Group. The brokers and agents then retained Richard Weed to represent the Brokers Group.
3. Attached hereto as Exhibit 1 is a true and correct copy of three letters addressed to investors from Defendant Cloud And Associates Consulting, Inc., Janice Engele, and Eagle Planning the Commission received from an investor and the Receiver in the course of this litigation.
4. Weed and the Brokers Group then attempted to pressure the Receiver to agree to pursue a scheme whereby investors would release their claims against the TLC defendants in exchange for annuities issued by an unidentified off-shore insurance company. When the Receiver refused Weed's annuity scheme, Weed filed the first motion to intervene on behalf of the Brokers Group. After both the Commission and the Receiver filed oppositions to the motion, Weed withdrew it.

5. Weed then joined Gibson, Dunn & Crutcher (GD&C) as co-counsel and refiled a more elaborate *ex parte* motion to intervene on March 2, 2001. Attached hereto as Exhibit 2 is a letter I received on or about February 16, 2001 from Rick Weed, Esq.
6. On or about February 14, 2001, I appeared for the Commission at the deposition of Deanna K. Pahlke. Attached hereto as Exhibit 3 is a true and correct copy of an excerpt from the deposition of Deanna K. Pahlke authenticating an exhibit that lists Jim Schneider as an executive of defendant TLC America, Inc.
7. Attached hereto as Exhibit 4 is a true and correct copy of list of TLC Entity brokers. Three-quarters of the way down on the second page, Jim Schneider is listed as an agent for Mobile Magic Sales, Inc.
8. Attached hereto as Exhibit 5 is a true and correct copy of an order entered in Securities and Exchange Commission v. Whitworth Energy Resources, Ltd., CV-97-6980 CAS (SHx) (C.D. Cal. Sept. 27, 1999).
9. Attached hereto as Exhibit 6 is a true and correct copy of an excerpt from a brief, Gibson, Dunn & Crutcher provided to the Commission on or about March 5, 2001.

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

Executed in Los Angeles, California on March 21, 2001.

<SIGNED>

Marianne Wisner
