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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
LAS VEGAS, NEVADA

3685 SAN FERNANDO LENDERS, LLC,)	
et al.,)	
)	
Plaintiffs,)	
)	
vs.)	Case No.
)	3:07-CV-241-RCJ-VPC
COMPASS USA SPE, LLC, et al.,)	
)	
Defendants.)	
)	
<hr/> In re: USA COMMERCIAL MORTGAGE)	Case No.
COMPANY.)	2:07-CV-892-RCJ-GWF
)	

TRANSCRIPT OF PROCEEDINGS
OF
EVIDENTIARY HEARING
VOLUME 2
P.M. SESSION
BEFORE THE HONORABLE ROBERT C. JONES
UNITED STATES DISTRICT JUDGE

Tuesday, October 2, 2007

Court Recorder: Araceli Catu

Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

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I N D E X

Witness	Direct	Cross	Red.	Rec.	Voir Dire
DONNA CANGELOSI					
(By Mr. Smith)			6		
(By Mr. Herring)			32		
(By Ms. Dakin-Grimm)				47	

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E X H I B I T S

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1 (Court reconvened at 01:22:53 p.m.)

2 THE CLERK: All rise.

3 (Colloquy not on the record.)

4 THE COURT: Thank you. Please be seated.

5 Thank you.

6 (Colloquy not on the record.)

7 THE COURT: Mr. Smith, you may continue.

8 MR. SMITH: Thank you, your Honor.

9 REDIRECT EXAMINATION (Cont.)

10 BY MR. SMITH:

11 Q. Ms. Cangelosi, just before our lunch break, we started
12 talking about the road shows that were mentioned earlier in
13 your testimony this morning. How many locations did you attend
14 in the road shows?

15 A. I attended all eight location -- well, we -- we had I
16 believe it was five locations, eight road shows.

17 Q. Five locations and -- I'm sorry -- what?

18 A. Five locations and -- well, let me think. It was Reno,
19 Las Vegas, Phoenix, L.A., Sacramento, so it was five locations,
20 and we had eight meetings. We had planned the locations to be
21 able to capture about 80 percent of the direct lenders.

22 Q. And who went with you with your group on the road shows?

23 A. There was a team of people. There was loan captains.
24 There was -- there was a team of people on each road show.
25 Some travelled with us, and some went -- some went ahead and

1 travelled. Others were local who drove there. There was a
2 team of people on each road show helping to put it together.

3 Q. And on average in each road show, approximately, how many?
4 What was the size of your team?

5 A. The size of the team was about 15 people.

6 Q. Okay. And what was the attendance like on average in the
7 road shows?

8 A. In some cities, it was overwhelming. It was between 4 and
9 5 -- about 500 attendees and -- in some cities.

10 Q. What was the worst attendance?

11 A. The worst was in -- in San Francisco, the San Francisco
12 area. It was probably about 150 people.

13 Q. 150? Okay. And how long, typically, did the meetings
14 last?

15 A. The meetings lasted between four and six hours.

16 Q. Okay. And what was the substance of them? I mean, what
17 took so long? What went on in the meetings?

18 A. Oh, there was -- there was an initial presentation, and
19 then there was many, many, many questions and answers.

20 Q. Okay. And the questions came from the people in the
21 audience?

22 A. Yes. It was a very open forum.

23 Q. Who answered the questions?

24 A. Usually, myself. A lot of people even in the audience were
25 answering questions if they were already familiar with the

1 program.

2 There were numerous investors that attended more than once
3 to these road shows. As a matter of fact, one investor that
4 I'm aware of, anyway, had gone to the road show in Vegas and
5 then had attended both of those road shows and then drove over
6 to the L.A. and attended that road show, too.

7 Q. And you saw earlier -- I know you've seen in the course of
8 this case the declaration of Ned Homfeld, correct?

9 A. Yes.

10 Q. And you saw Exhibit A that's attached to his declaration?

11 A. Yes.

12 Q. And you saw that that's a number of questions that he
13 raised in connection with the formation of the LLCs, L2L,
14 et cetera?

15 A. Yes, sir.

16 Q. Was that sent to you in the course of his mailing?

17 A. That was sent to me. Yes.

18 Q. Did that spawn further questions after the road shows?

19 A. That was -- there was a series of questions. Whether it
20 created more questions or whether it was just a part of the
21 whole package of questions, what resulted from that was a
22 27-page document answering all the questions that we could
23 possibly answer and then followed by another 8-page document.

24 Q. Now, are those the documents we looked at this morning that
25 Ms. Grimm identified for you?

1 A. No. Ms. Grimm didn't provide those documents.

2 Q. Okay. Over what span of time did the road shows take place
3 and combined with the question-and-answer period concerning the
4 LLCs, L2L, et cetera?

5 A. Well, the road shows took place from May 18th to May 21st,
6 and then the question-and-answer period that followed was
7 probably about 45 days.

8 Q. Okay. You also saw the numerous exhibits that Ms. Grimm
9 identified this morning where people raised questions,
10 specifically, Exhibit 64, 65, 66, 67, 68, 70, 79. Do you
11 remember looking at those this morning?

12 A. Yes, sir.

13 Q. Did you or your group attempt to answer all of those
14 questions?

15 A. We attempted to answer as many as we could. There was
16 hundreds of E-mails at the time, hundreds of E-mails, and what
17 we were doing is aggregating the questions. And where we had
18 the answers, we would provide them. Because this was such an
19 aggressive rollout, some of those answers we had to go research
20 and -- and get the answers to.

21 Q. Now, as far as setting up the LLCs and also the assignments
22 of the deed of trust, did you have a group assisting you in
23 Reno?

24 A. Yes.

25 Q. Where were they located?

1 A. They were located at first in your office.

2 Q. For what --

3 A. We --

4 Q. For what period of time were they located there?

5 A. Well, first, the group started in April for the election to
6 terminate, to consolidate and to record who had provided
7 elections to terminate. That started in mid April, and then
8 that morphed into continuing the process of collecting the
9 subscription and assignment agreements.

10 We had -- as -- as -- as you know, Mr. Smith, we took over
11 a facility in your building, and there was between 15 and 20
12 people that went into that office seven days a week.

13 Q. Were these volunteers?

14 A. They were all volunteers.

15 Q. Were they compensated?

16 A. No, sir.

17 Q. Were they direct lenders?

18 A. They were all direct lenders.

19 Q. Is that group still in existence?

20 A. Yes, sir. I rented an office finally in -- in August. You
21 needed your space back, and I rented an office. From my own
22 expenses, I rented an office.

23 And every day the lenders go there, and they process
24 paperwork. They process death certificates for many people who
25 have died before they've gotten their money back. They

1 process, you know, assignments, deeds of -- you know,
2 assignments of the -- assignment. They process change in -- in
3 title to the accounts. You know, they process change of
4 address.

5 They -- they basically are maintaining an active database,
6 and every day we have I'd say between five and ten volunteers
7 that come into the office to do this.

8 Q. Are you still answering questions by you -- by you, I mean
9 you and your volunteers -- concerning the LLCs, L2L, FDH?

10 A. No. I would say, Mr. Smith, those questions are really
11 quite quiet at this point.

12 Q. Okay. Do you have an estimate of how much time was
13 involved just specifically related to the formation of the LLCs
14 and accumulating the assignments of the deeds of trust?

15 A. Since -- I will say to you that since May 18th, when we
16 rolled this program out, there's probably been no less than 30
17 volunteers working either on phones trying to answer people's
18 questions, on E-mail systems, and/or processing paperwork full
19 time, probably, six days a week --

20 Q. Okay.

21 A. -- since then and until now. We're now going through the
22 board elections, and so the process of processing those
23 election ballots is as much volume as it has been to process
24 all of the other paperwork. We validate everybody's name
25 against their vesting name.

1 Q. Okay.

2 A. We validate their -- if there's a trust, that we have trust
3 papers. We validate everything.

4 Q. Why are you doing that?

5 A. Just to make sure that all the documents are properly --
6 you know, properly signed and properly -- in other words, that
7 the vesting trail follows.

8 One of the reasons that we're doing that is because we are
9 deathly afraid as -- as being lenders. We're -- we're vastly
10 concerned over lender-liability issues, and borrowers are suing
11 lenders. That is happening right now. Shamrock just sued us,
12 the lenders.

13 Q. So when you say us, who did Shamrock sue?

14 A. Well, they've sued Shamrock, LLC.

15 Q. Okay.

16 A. But without the LLC, they would be suing the Shamrock
17 lenders. We want to make sure that the lenders' interest is
18 perfected in title. This way there would be no inconsistencies
19 if that was to be raised.

20 So the lenders that are volunteering are making sure that
21 everybody has -- if they -- if it says ABC Revokable Trust,
22 that any agreements that they sign say ABC Revokable Trust.

23 Q. Was that one of the concerns that was ever expressed to you
24 by direct lenders? That the reason for forming the LLCs was so
25 that they personally would not get involved in lawsuits?

1 A. Mr. -- yes, Mr. Smith. It was a serious concern. On the
2 asset purchase agreement, there's 48 threats of litigation.

3 And we felt that with pressuring tactics or with pressure
4 being applied to take those default interest and late fees on
5 against borrowers who have perceived that they did not cause
6 their defaults we were very concerned over the lender-liability
7 lawsuits, and we still are. We are very concerned.

8 Q. Now, I want to ask you a question, and I'm not sure if you
9 can answer it. But if you were ordered to return all of the
10 assignments of the notes and deeds of trust that were given to
11 the LLCs, do you have the ability to do that?

12 A. Me personally?

13 Q. Well, you personally.

14 A. Well, I've always said that you can move mountains with a
15 teaspoon, but it would take me quite a bit of time to do this.
16 Yes. It would take me quite a bit of time. It would probably
17 take me -- I have -- there's 40 -- there's 40 -- 40 -- 4200
18 assignments.

19 I would have to basically -- or collate each one back into
20 an individual lender pile, and then it would take me some time.
21 It would take me quite a bit of time.

22 Q. Do you have any practical concerns of what would be the
23 result of returning the assignments of the deeds of trust and
24 promissory notes?

25 MS. DAKIN-GRIMM: Objection. 402, 403.

1 THE COURT: Overruled.

2 THE WITNESS: I have some very deep concerns, sir.

3 BY MR. SMITH:

4 Q. Could you express what those are.

5 A. The lender-liability lawsuits.

6 Q. Okay. We talked about that.

7 A. It's our only way to raise litigation money. As I said
8 before, the -- the people do not have money. They have been
9 tapped out. They don't have any income. This was their
10 income.

11 And when we went to raise money for the LPG, it was very,
12 very difficult. It was countless hours on the phone, and
13 people wanting to send money in, and them sending \$20, \$50, you
14 know, \$100, and we can't afford to be able to protect ourselves
15 with that type of contribution.

16 The assignment of interest into the deed of -- the
17 assignment of the deed of trust gives us an asset by which we
18 can borrow the money to be able to fund the protection that we
19 need to get.

20 Q. Okay.

21 A. And that is a very critical part. And without that -- an
22 empty LLC with no asset doesn't give us that ability. All it
23 is is an LLC which is an assignment of membership, and it
24 doesn't give us the ability to raise the money because nobody
25 is going to lend money against the shell company.

1 Q. Okay.

2 A. So that is a very, very keep concern of ours. In addition
3 to that, there are some very real benefits to the LLC for the
4 members of the LLC who have assigned their interest.

5 There are the benefits that we can utilize our lines of
6 credit if we're being -- if we are a second deed of trust, and
7 there's a first foreclosing on us, we can utilize that
8 additional line of credit to be able to attract financing
9 partners and maybe even buy out the first to be able to secure
10 the second.

11 Q. Is that a situation -- I mean, the situation as far as the
12 detective lenders being in second position behind a first that
13 is foreclosing, is that a situation that in reality is
14 occurring?

15 A. In numerous cases, yes.

16 Q. Okay.

17 A. In numerous cases --

18 Q. Is that an action --

19 A. -- yes.

20 Q. Is that a situation which Compass is taking a position to
21 assist the direct lenders?

22 A. No, sir. Compass has taken no position. We have two loans
23 right now. We have Hesperia where the lenders have assigned
24 their interests into the LLC I believe. Almost 70 percent of
25 the lenders have assigned their interests into the LLC.

1 There's a first in front of the second. Hesperia is the
2 second.

3 In this particular instance, we use the LLCs. The first
4 was foreclosing on the second. There is value in this. We
5 actually even have a transaction anticipated that creates value
6 for the lenders.

7 In this particular situation, we used a bankruptcy process
8 to stop the foreclosure on the first -- from the first to be
9 able to give us the proper time to be able to put these plans
10 into action to recapture.

11 And what I said to the first the other day in the 341
12 creditors meeting, I said even if I get five cents back for the
13 lenders, it's five cents more than what they have today.

14 Q. Now, I want to ask you and, in particular, with Hesperia,
15 is that a loan where you asked Compass to take sort of action?

16 A. Well, my understanding, the loan captain, Alex Gassiot --

17 MS. DAKIN-GRIMM: Objection.

18 THE WITNESS: -- did it.

19 MS. DAKIN-GRIMM: Hearsay.

20 THE COURT: Um-h'm.

21 MR. SMITH: I'll withdraw the question.

22 BY MR. SMITH:

23 Q. To your personal knowledge, did you ever request Compass to
24 take any action?

25 A. I didn't.

1 Q. Do you have any knowledge of whether Compass did, in fact,
2 take any action?

3 A. Compass sent us a letter and basically said that they
4 didn't see the value in the property, and they were just going
5 to let it go to foreclosure.

6 Q. Have they sent you letters in other situations where the
7 direct lenders hold second deeds of trust behind first deeds of
8 trust indicating that they will not take action?

9 A. Yes, sir. There was just a letter that was issued this
10 week -- last week. It was for Mountain House. In
11 Mountain House, the -- the lenders hold a first position as
12 well as a second position. The second position is on the
13 business parcel.

14 And this is in a very good part of California. It's in
15 the 580 corridor between San Jose and Sacramento, between,
16 actually, Pleasanton and Sacramento.

17 And in -- in this one, the business parcel is going into
18 foreclosure, and the lenders have a second deed of trust on
19 that, and Compass sent us a letter that basically said that the
20 value of the property was not worth protecting in the first.
21 And if the lenders want to do it, they can basically -- you
22 know, if the lenders want to do it, it was up to them.

23 When we actually look add at it, looked at the value of
24 the property, we got an appraisal quickly. The actual
25 appraisal was \$7,000,000 above what the lender -- what the

1 first trust deed is, and so we're bringing -- we hope to be
2 bringing in through the LLC a financial partner to be able to
3 credit or cash bid this at the auction.

4 Q. Now, when Compass sent you this letter, was it accompanied
5 by an appraisal that they had done?

6 A. No, sir. We've asked for appraisals over and over again.
7 We don't get any appraisals.

8 Q. Was there any support? In other words, was there any
9 background or analysis or supporting documents with that letter
10 indicating why Compass made that decision?

11 A. No. There's just a one-line statement that says in our
12 view. It doesn't say that -- I don't mean to paraphrase, but
13 I -- and I should not do that. My impression or the way I read
14 it, okay, is that they said that their -- they have determined
15 that there is no value.

16 Q. Okay. How many --

17 A. And that's all we get.

18 Q. How many loans are there where the direct lenders are in
19 the second position?

20 A. Well, there's probably I would say to you about 20 to 25
21 percent of the portfolio is that way.

22 Q. Okay. And, yeah, if you know --

23 A. That's an estimate. That's only an estimate.

24 Q. If you know of that 20 to 25 percent of the portfolio, how
25 many involved first deeds of trust that are in default?

1 A. I don't believe that there's a deed of trust that's not in
2 default now.

3 Q. Now, I want to back up a little bit and ask you about
4 the -- when we were talking about forming the LLCs, you
5 indicated that had happened very rapidly and started sometime
6 in early May I think was your testimony.

7 A. It happened very rapidly.

8 Q. Were there reasons that caused the timing of the formation
9 of the LLCs in early May?

10 A. Yes, there was. The first -- the -- let me refresh my
11 memory.

12 Q. Okay.

13 A. The first -- the first event that happened was there was a
14 company by the name of Debt Acquisition Corporation, DACA, and
15 they sought to terminate Compass on a loan by the name of
16 Fiesta Oak Valley. DACA had solicited from the investors the
17 right to take over the loan servicing.

18 And DACA had followed the prescribed process within the
19 bankruptcy estate. They were terminating for what we call
20 surviving Section 3 rights was -- in other words, prebankruptcy
21 breaches, and so they were terminating for that behalf -- on
22 that behalf.

23 Well, there was something that -- during that period of
24 time, first off, I want to, if I could -- Mr. Smith, if I could
25 have a little latitude here? When DACA went to terminate and

1 to take over the servicing rights, nobody raised the issue of
2 being in contempt to take Compass' servicing, so I want --

3 MS. DAKIN-GRIMM: Objection. Hearsay. Beyond the
4 witness' personal knowledge.

5 MR. SMITH: I --

6 MS. DAKIN-GRIMM: Move to strike.

7 THE COURT: Well, it's just not responsive. Let's --

8 MR. SMITH: Yeah.

9 THE COURT: -- go to a question --

10 MR. SMITH: So --

11 THE COURT: -- please.

12 BY MR. SMITH:

13 Q. So go ahead --

14 A. Okay. So --

15 Q. -- and move on. I was asking you what were the events
16 that led you --

17 A. All right.

18 Q. -- in early May to speed up --

19 A. All right.

20 Q. -- this process.

21 A. DACA's -- DACA's -- DACA's term -- attempted termination of
22 Compass and Compass' actions that they took as a result of
23 that. That was number one.

24 Q. Okay. What's number two?

25 A. Number two was that Compass withdrew their license in

1 Nevada. They did withdraw their license in Nevada, their
2 licensing application. I'm sorry.

3 Number three is that they closed their door. Oh, I'm
4 sorry. That was just about concurrent with the DACA from a
5 date wise.

6 Q. Okay.

7 A. Number three was we were in -- we had a draft agreement for
8 taking over the servicing by Silver Point Capital. We were in
9 the 19th or 23rd hour of putting an agreement together.

10 And Silver Point Capital was our hope that we were going
11 to be able to -- they were the only candidate that we had
12 approached, and we had a nationwide search for servicers. They
13 were the only candidate that we had approached that said that,
14 yes, we have a stomach for this litigation that's in front of
15 us.

16 And on May 1st, they said we will not go forward. We
17 can't do this. We -- there's too much litigation. It's not
18 worth the proposition. It's not worth the financial
19 proposition versus the litigation, and so they withdrew from
20 the -- from the -- from the action to service us, so that was
21 the third event.

22 And then Compass basically ceased and desisted operating
23 in Nevada. They actually moved their offices, and you have to
24 understand a lot of these lenders live in Las Vegas, were going
25 to the Compass office or were at least driving by the Compass

1 office.

2 MS. DAKIN-GRIMM: Objection. Hearsay. Beyond the
3 scope of the witness' personal knowledge and nonresponsive.

4 THE COURT: No. I'm going to overrule it.

5 THE WITNESS: So many investors were concerned over
6 Compass because Compass had closed their doors. I was
7 concerned. E-mails were bouncing. Telephone calls --
8 telephone -- the -- we had -- you know, the number you have
9 called -- contacted has been disconnected, you know, those
10 types of things.

11 The investors were screaming. They were -- and there was
12 numerous breaches. There's was now Fox Hills 216 with the
13 breach and Eagle Meadows. There was numerous more -- many more
14 breaches that were happening.

15 And so the -- the investors were screaming at us
16 terminate, terminate, terminate, terminate, terminate, and so
17 we were left with the requirement by the investors to
18 terminate, and I had no servicing solution. I had no servicing
19 solution. Nobody wanted to touch us, so --

20 BY MR. SMITH:

21 Q. Now, as far as forming your own servicing solution, is it
22 just you led as a servicing solution?

23 A. No. I mean, it's -- it's -- ultimately, when this company
24 becomes a company, if it ever did, there are numerous lenders
25 that are going to be participating in this.

1 We have lenders that are CPAs. We have lenders that are
2 mortgage-broker specialists. We have a variety of lenders that
3 have a lot of strengths that been contributed time that
4 actually want to go to work for the lenders.

5 Q. Are they doing the work now?

6 A. They're doing work as a volunteer. They're doing
7 accounting as volunteers. They're --

8 Q. Are --

9 A. They're volunteers.

10 Q. Are these volunteers accumulating information about the
11 specific assets that are the subject of the loans?

12 A. We've been very cautious about that, Mr. Smith, because of
13 the -- we did not want anything to be misinterpreted in terms
14 of what we were doing, so most of our accumulation of knowledge
15 is not being gotten from the borrower.

16 It's being gotten through other ways in terms of, you
17 know, driving out to properties, talking to appraisers, talking
18 to real estate specialists, talking to other developers in the
19 area.

20 So there is a fair knowledge that was being gathered and
21 continues to be gathered by the direct lenders, as a matter of
22 fact, because they're interested in their projects. They're
23 interested in understanding when they're going to get their
24 money back.

25 Q. Okay. And at this point, you've heard -- if I say this

1 correctly -- Mr. Honikman's testimony the other day. Did he
2 ever request a return of his assignment of the deed of trust?

3 A. Mr. Smith, Mr. Honikman has never contacted me. I reviewed
4 my E-mails again after I saw his declaration, and I have never
5 had an E-mail from Mr. Honikman either to request a return of
6 his agreements or even to ask me a question.

7 Q. Has anyone requested a return of their assignments of deed
8 of trust, and --

9 A. Yes. Yes.

10 Q. Approximately, how many?

11 A. It would be difficult for me to say because I'm not
12 involved in that day-to-day action, but I would say -- I would
13 say to you that probably of the 4,200 assignments of deed of
14 trust we've probably returned about 20.

15 Q. Okay. Are they returned --

16 A. I may be wrong.

17 Q. Are they returned without question? I mean, if they ask,
18 do you give them back?

19 A. We always ask why. We always ask why because there's -- if
20 there's -- if there's something that we can do to help them to
21 understand something, we would like to do that, but we give
22 them back without question.

23 Q. Now, I want to ask you a few questions about L2L. You
24 testified earlier that L2L was formed, approximately, at the
25 same time as the LLCs that we've been discussing, correct?

1 A. Yes, sir.

2 Q. Who owns L2L?

3 A. Currently, I'm the only member of L2L.

4 Q. And what is your intent with regard to the ownership of
5 L2L?

6 A. Well --

7 MS. DAKIN-GRIMM: Objection. 402, 403.

8 THE COURT: I'll let her tell us what her intent is.

9 THE WITNESS: The intent of L2L -- first off, one of
10 the reasons that the only -- one of the reasons that I'm the
11 only member, currently, of L2L is it was always anticipated
12 that Compass would sue L2L, and I did not want to bring that
13 litigation on other people.

14 BY MR. SMITH:

15 Q. Well --

16 A. Yeah.

17 Q. -- let me --

18 A. But --

19 Q. -- ask you this. Does ever L2L ever come into existence
20 or operation unless Compass is terminated --

21 A. No, sir.

22 Q. -- from the loan?

23 A. No, sir.

24 Q. Okay. And if it does come into existence, then who
25 populates L2L?

1 A. Who will be the employees of the L2L or the members of L2L?

2 Q. Who will be the members and who will be the employees?

3 A. Okay. Members will be various industry experts and various
4 lenders that have the expertise to be able to come into the
5 company.

6 Q. Are there people in place now ready to go?

7 A. They -- they're -- they're ready to go. They're not in
8 place.

9 Q. Okay. Is there a license in place for L2L?

10 A. There's a 645B license that is -- we had conditions. We
11 had conditions to satisfy. Those conditions to satisfy were
12 that we have to provide copies of our lease, copies of our tax
13 licenses, and whatnot. We provided all of those conditions.

14 I've asked the Nevada Mortgage Lending, so the -- all the
15 conditions have been met. I've asked the Nevada Mortgage
16 Lending Division to please waive one condition in order to be
17 able to permit us to start -- I shouldn't say waive one
18 condition.

19 We have a -- our licensed employee is currently employed
20 someplace else. Because this litigation has been going --
21 ongoing, I could not in good conscience ask him to resign his
22 position and to move into Lender 2 Lender without having any
23 source of income. He has -- he has obligations, family
24 obligations, that he has to he meet, and he needs -- he's -- he
25 is not an old man or a young --

1 Q. Is he --

2 A. He's --

3 Q. -- prepared to move --

4 A. He's prepared, yes.

5 Q. -- to L2L?

6 A. His -- he -- he is our qualified licensee.

7 So the Nevada Mortgage Lending Division has approved me
8 for a license, a 645B license. They've approved me for a 645B
9 license, and they have given me within 24 hours of him
10 submitting his resignation which his resignation is all ready
11 to go.

12 I've even talked to his employer. Okay? His employer
13 understands what's happening. And so within 24 hours of us
14 submitting his resignation, the license will become active.

15 Q. How quickly can L2L come into operation?

16 A. We can be into operation very quickly.

17 Q. What can L2L do that Compass can't?

18 A. Well, L2L is -- it's a company for lenders and by lenders,
19 ultimately. What we can do that Compass can't -- our profit --
20 we don't have a profit motivation first, Mr. Smith. I think
21 it's important that that be understood. We don't have a profit
22 motivation. Profits that come into L2L go back to the lenders,
23 ultimately.

24 While we have said that we're going to take 50 percent of
25 the default and late fees if collected from the borrower, if

1 collected from the borrower, we have always anticipated that,
2 A, we have to create a reserve for Compass' fees through
3 termination, and even those fees that they are -- that we --
4 even those fees that we debate which is the default fees and
5 late fees, those would be as for until the Court determined how
6 those fees were allocated.

7 Q. Okay. Now, that's a good question. You have accrued
8 servicing fees, accrued late fees, assuming Compass is
9 terminated, and accrued default interest. Under the Court
10 order, would you agree that that belongs to Compass?

11 A. Under -- I'm sorry. Under the Court order?

12 Q. Does that belong -- does the Court order that all accrued
13 fees -- you testified earlier you reviewed the confirmation
14 order, correct?

15 A. Yes, sir.

16 Q. And does the confirmation order provide that no -- it
17 provides for the event of a substitute servicer, correct?

18 A. Yes, it does.

19 Q. And does it also provide what that substitute servicer must
20 do?

21 A. It provides that the substitute servicer must collect those
22 fees and pay those fees to Compass; however, we have an issue
23 that we have a contract dispute here.

24 Q. Okay.

25 A. And that contract dispute is if those fees are collected

1 from the borrower. I think that that is really, in essence,
2 what the whole contract dispute is about.

3 In other words, is Compass entitled to collect default
4 fees and late fees from lenders' principal or interest or only
5 from the borrower? Our loan-service agreement says from the
6 borrower.

7 However, but because through termination we felt that this
8 was a requirement that the Court basically clarify for us, we
9 sought declaratory relief, and our agreements and our
10 disclosures to the lenders have always anticipated that we
11 would put that whole pool of money into escrow until the Court
12 clarified for us. It was never an intent to take that money.

13 Q. In other words, my question is is there any intent to
14 violate any order of the Court --

15 A. No, sir.

16 Q. -- with regard to that money?

17 A. No. We -- we -- we filed concurrently with Compass'
18 termination. We filed a request for declaratory relief
19 regarding exactly this purpose. There was never an intent to
20 take that money.

21 Q. Has any direct lender ever asked you to disband L2L?

22 A. No.

23 Q. Has anyone asked you to take any action to take apart L2L
24 or not use L2L?

25 A. No.

1 Q. Okay.

2 A. Well, I --

3 Q. Okay. Other than present company excepted. Okay. Other
4 than the May 28th (sic) letter -- or I'm sorry -- May 18th
5 letter which was the letter -- we probably looked at that
6 earlier -- the letter sent to Compass terminating Compass as
7 servicer, and you recall there was a letter at the same time,
8 approximately, sent to the borrowers advising them not to pay.

9 A. Yes.

10 Q. Have you to your knowledge ever told any borrower not to
11 pay Compass?

12 A. No.

13 Q. To your knowledge, has any other direct lender told any
14 borrower not to pay Compass?

15 A. I can't answer that positively, but I do not believe any
16 detective lender has told Compass -- or has told the borrower
17 do not pay Compass.

18 Q. Okay.

19 A. As a matter of fact, Mr. Smith, I've always told the
20 borrowers if they pay according to their agreements in full,
21 then we don't have a problem. Compass gets their fees, and the
22 direct lenders get theirs, their return of principal and
23 interest.

24 Q. Ms. Cangelosi, are you familiar with the term "accredited
25 investor"?

1 A. Yes, sir. Yes.

2 Q. First of all, let me ask you. Were you the one as opposed
3 to your husband that negotiated the investments with USA
4 Commercial Mortgage?

5 A. Yes.

6 Q. Okay.

7 A. Yes.

8 Q. And in connection with your contacts with USA Commercial
9 Mortgage, were you ever asked to sign a letter concerning
10 whether or not you're an accredited investor?

11 A. I -- that was part of the package, the initial -- that was
12 part of the initial enrollment package into USA is you have to
13 sign a letter that basically provided what the minimum net
14 worth and/or a minimum annual income.

15 Q. What was that? Do you recall?

16 A. I believe that the net worth was -- it was either 600,000
17 or higher. I'm not sure, but 600,000 sticks in my mind or it
18 was income in the range of 200,000 annually.

19 Q. Do you know whether other direct lenders signed also
20 letters whether or not they were accredited?

21 A. Mr. Smith, I was -- I -- I signed the standard package when
22 I became a lender to USA Capital, and I've been told by other
23 lenders that they did sign accredited-investor forms.

24 MR. SMITH: Okay. If I could have just one moment,
25 your Honor --

1 THE COURT: Um-h'm.

2 MR. SMITH: -- I think I'm done.

3 (Colloquy not on the record.)

4 MR. SMITH: Thank you, your Honor. That's all I have
5 on --

6 THE COURT: Thank you.

7 MR. SMITH: -- redirect.

8 THE COURT: Other questions.

9 (Colloquy not on the record.)

10 MR. HERRING: I have a few, your Honor.

11 (Colloquy not on the record.)

12 MR. HERRING: I'll try my best not to reread.

13 REDIRECT EXAMINATION

14 BY MR. HERRING:

15 Q. Ms. Cangelosi, picking up on the topic that Mr. Smith just
16 ended on, you signed an accredited investor. Was it your
17 understanding that all people who participate in the USACM
18 investing signed a similar form?

19 MS. DAKIN-GRIMM: Objection. Asked and answered and
20 beyond the scope of the witness' knowledge.

21 THE COURT: I'll let you ask.

22 THE WITNESS: My understanding was that everybody --
23 I've talked to my broker about this, and everybody signed the
24 same package.

25 MS. DAKIN-GRIMM: Objection. Hearsay. Move to

1 strike.

2 THE COURT: Limited to your knowledge, ma'am. What
3 are you aware of?

4 THE WITNESS: I'm aware that I signed a standard
5 package.

6 BY MR. HERRING:

7 Q. Was it your understanding when you sent out the material to
8 the other direct lenders during that May time period where the
9 LLCs were being formed, that they had all signed accredited
10 investor --

11 MS. DAKIN-GRIMM: Objection. Lack of foundation.

12 THE COURT: She would know based upon what we've
13 heard so far.

14 Overruled.

15 THE WITNESS: It was my understanding that we all
16 signed the same package.

17 BY MR. HERRING:

18 Q. So your understanding was that you --

19 THE COURT: We're talking about a package she
20 prepared or caused to be prepared.

21 MR. HERRING: Well, the accredited-investor package
22 from USACM.

23 THE COURT: Oh, some years back.

24 MR. HERRING: Yes.

25 MS. DAKIN-GRIMM: That's my objection to 402, 403,

1 your Honor, was because of that issue that you just raised.

2 THE COURT: Thank you.

3 BY MR. HERRING:

4 Q. Did you answer the question?

5 A. Could you repeat the question? I'm sorry, Mr. Herring.

6 Q. Well, when you sent out the package, your understanding --
7 I'm not asking -- your understanding --

8 THE COURT: She didn't send out the package. You're
9 talking about --

10 MR. HERRING: No. When she --

11 THE COURT: -- several years back.

12 MR. HERRING: No. When she sent out her package in
13 May for the LLCs --

14 THE COURT: That's what I was asking.

15 MR. HERRING: -- formation.

16 THE COURT: Are you talking about the package she
17 prepared or caused to be prepared?

18 MR. HERRING: Yes. Now I'm talking about the package
19 that she prepared.

20 THE COURT: Okay.

21 BY MR. HERRING:

22 Q. When she sent that out, did you believe that you were
23 sending that package to accredited investors that were all
24 members --

25 MS. DAKIN-GRIMM: Objection.

1 BY MR. HERRING:

2 Q. -- of the LLCs?

3 MS. DAKIN-GRIMM: Objection. Lack of foundation and
4 402, 403 as to anything they thought they signed years earlier.

5 THE COURT: You mean based upon what she signed
6 earlier.

7 MR. HERRING: Yes.

8 THE COURT: I'll sustain it.

9 MR. HERRING: Okay. All right.

10 BY MR. HERRING:

11 Q. You discussed with Mr. Smith the formation of L2L and why
12 L2L was needed because no one else had come forward to say
13 we'll be the servicer. Did you ever consider Consolidated?
14 Compass found them.

15 A. We did consider Consolidated, but we did not approach
16 Consolidated, and the reason we didn't is because Consolidated
17 employs as an officer one of the former USA Capital principals.

18 Q. And who was that?

19 A. Paul Hamilton, and we did not feel that the investors
20 wanted to be delivered back to a USA Capital principal again.
21 In fact, many had expressed -- at the auction, Mr. Herring,
22 many had expressed -- Judge Riegle had made it a condition
23 if -- if Desert Capital slash Consolidated Mortgage was going
24 to be the successful bidder, Mr. Hamilton had to resign.

25 Q. And as you're aware, is Mr. Hamilton still an officer of

1 consolidated?

2 A. I believe so, yes.

3 Q. In the discussion of why the LLCs became an urgent issue,
4 we talked about the DACA hearing, the Silver Point saying they
5 wouldn't do it, anymore. The terminations were going on. Was
6 there any concern about what Compass was doing at the time as
7 far as their default interest and late fees were amassing?

8 A. Mr. Herring, we -- we have a lot of accountants in our
9 group, CPAs, and they have independently done the calculations
10 on how much default fees and late fees Compass is accruing a
11 month.

12 MS. DAKIN-GRIMM: Objection. Hearsay. Materials not
13 produced in discovery.

14 THE COURT: Overruled.

15 MS. DAKIN-GRIMM: Lack of foundation.

16 THE COURT: Overruled.

17 THE WITNESS: Continue?

18 THE COURT: You may.

19 BY MR. HERRING:

20 Q. You can answer.

21 THE COURT: Answer the question, please.

22 THE WITNESS: They have done many calculations, and
23 Compass is currently approving default fees and late fees in --
24 in somewhere in the ballpark of a minimum of \$10,000,000 per
25 month, and so there was a -- there was a concern if Compass was

1 going to get that money out first.

2 At the rate of \$10,000,000 per month, that's 10 -- in --
3 in a distressed-asset portfolio which is what we have -- we
4 have a portfolio of fully-defaulted loans -- that \$10,000,000 a
5 month is eating away at our capital at a very capricious rate.

6 BY MR. HERRING:

7 Q. In the as you titled them the road shows that you conducted
8 in mid May, were only direct lenders invited to those shows?

9 A. Only direct lenders were admitted into those shows.

10 Q. And how did you ensure that only direct lenders were
11 admitted?

12 A. Well, as I said to Mr. Smith, we had a staff of people.
13 And at the door, the loan captains -- first off, we had a
14 roster of every lender.

15 And at the door, the loan -- the loan captains and other
16 volunteers were at the door taking identification of those
17 people. And if your vesting name was different than your name
18 on your driver's license, for example, you had to bring a copy
19 of your statement.

20 Q. The direct lenders who came to that, were they only invited
21 to join the particular LLC in which they had an interest?

22 A. That's the only LLC they could join.

23 Q. And did the loan captains for each one of those LLCs then
24 follow up with those particular direct lenders about that
25 particular loan?

1 A. Yes. Each loan captain was only concerned over the issues
2 within their particular loan LLC. So, for example, if
3 Ms. Naylon was in La Hacienda, for example, she only discussed
4 with her lenders La Hacienda.

5 Q. Does any LLC, any of the, approximately, 50, have more than
6 500 members?

7 A. Not one.

8 Q. And at the road show, I believe it was Exhibit 135 was the
9 PowerPoint presentation of the slide show. Can you turn to
10 that. Did you advise people to seek legal advice?

11 A. Oh, yes. Yes. I don't have to --

12 Q. In fact, it is in the --

13 A. -- refer to the --

14 Q. It is in the PowerPoint, is it not, that Ms. Grimm asked
15 you about, the fourth page from the back?

16 A. After the agreements, yes.

17 Q. In boldface, it says, "Please seek legal advice." Did you
18 read that correctly?

19 A. I haven't turned there, yet, but yes.

20 Q. And at the road show, did you, indeed, tell everyone who
21 attended that they needed to seek legal advice?

22 A. Yes. And there was actually -- many of the investors are
23 lawyers, also. They weren't advising people, but the
24 lawyers -- almost all of the lawyers that were there signed up
25 right there.

1 Q. And, indeed, if you look to Exhibit 72 which Ms. Grimm
2 talked to you about, that's the Lender Protection Group
3 package, if you turn to page 6. Are you there --

4 A. Yes.

5 Q. -- Exhibit 72, page 6? There about two-thirds of the way
6 down in boldface, "We recommend that you seek advice of legal
7 counsel in reviewing these documents."

8 A. Yes.

9 Q. And then again on page 7, the third paragraph from the
10 bottom, "Seek legal advice."

11 A. Yes.

12 Q. "While the agreements have been written in English, they
13 still have been written by lawyers." Did I read that
14 correctly?

15 A. Yes, sir.

16 Q. Has any member of an LLC told you that they think you made
17 a material misrepresentation or omission during this process?

18 A. There was a discrepancy between the road show and the
19 ultimate -- and the documents that were initially produced. We
20 corrected those discrepancies.

21 Q. Since those discrepancies were corrected, has anyone said
22 that they believe you made a misrepresentation or an omission?

23 A. No.

24 Q. Have you been sued by any direct lender?

25 A. No, sir.

1 Q. -- not just for anything, but for securities fraud?

2 A. No, sir.

3 Q. Let's talk about the LLCs. The board, how are they
4 elected?

5 A. The board is elected -- anybody who's in that particular
6 loan can appoint themselves to the -- can nominate themselves
7 to the board. They had a form to fill out. Basically, each
8 lender -- each loan LLC had a section or, if you will, a Web
9 site that all of the board candidates are on.

10 We have lenders who are not computer literate, so,
11 therefore, we also sent those election packages to the lenders
12 in those -- their loan LLC. They complete a ballot. The
13 ballot basically votes for five board members.

14 The manager was allowed to put two members on the -- on
15 the board, but we actually backed off that. We said you elect
16 all five board members, and so five board -- or in some of the
17 cases, we have 15 candidates, 10 candidates.

18 In -- in all cases, my -- my -- and it was at the request
19 of the lenders. In all cases, my -- my candidacy is on there.

20 Q. And how does the board -- is it majority, three or five,
21 four or five? Do you have to have unanimous decisions?

22 A. In -- in some cases, it's three or five. And in some
23 cases, it's a supermajority of four or five.

24 Q. And what is the manager entitled to do in your LLCs?

25 A. The manager in the LLC is really only there to act at the

1 direction of the LLC -- LLC board and LLC membership. The
2 manager's actions are restricted to that.

3 The only autonomy that the manager has is in the
4 litigation issues regarding termination of servicing rights and
5 any other types of actions that were resulting from prior
6 servicing activities.

7 Q. And why is that important that the manager have that
8 autonomy for litigation purposes?

9 A. Well, the reason it's important, Mr. -- Mr. Herring, is
10 because we have many, many lenders, and we have many, many
11 different ways to go and many opinions. And from a standpoint
12 of aggregating and consolidating a legal strategy, it's just
13 more effective and more efficient.

14 I don't mean to be disrespectful. But at fees of 5- to
15 \$600 an hour, if you have to talk to every lender about their
16 idea and about -- we'll never get to the real -- the -- the
17 real purpose of this.

18 Q. So --

19 A. The real purpose of this is to basically move these
20 proceedings forward.

21 Q. So as Mr. Honikman and Compass has implied in this hearing,
22 can you take the one percent and go to Mexico?

23 A. No, sir. No, sir. And, frankly, Mr. Herring, I'm
24 concerned that one percent is even -- even enough based upon
25 what's happening.

1 Q. Now, you have with Mr. Smith talked about the number of
2 hours that you personally have put into this --

3 A. Yes.

4 Q. -- and the number of hours that the other direct lenders
5 have put into this.

6 A. Yes.

7 Q. Have you personally contributed funds to this effort --

8 A. Yes, sir.

9 Q. -- beginning in April of 2006 when the bankruptcy
10 occurred?

11 A. Beginning in April of 2006, I attended the meetings. I
12 attended the meetings at my own expenses. There are some
13 people who sent me. They -- they said to me, here, Donna, we
14 want to be part of the process. Here's \$25. Here's \$10. You
15 know, they sent me that.

16 I -- I took that money, and we basically rolled that money
17 into our legal fund. You know, they sent me a couple of
18 thousand bucks to cover my expenses to go to the -- to go to
19 the hearings.

20 Q. Prior to setting up the LLCs, do you have an estimate of
21 the number of personal funds, not your time, just your personal
22 funds that you have invested in this process?

23 A. Probably, about 30- to \$40,000 of just my personal funds in
24 the process, yes.

25 Q. And then the LLCs, have you personally funded that effort?

1 A. Yes, sir.

2 Q. And how much money have you personally funded as far as the
3 filing fees, the lawyer fees, et cetera, to go into forming the
4 LLCs and L2L?

5 A. It's been hundreds of thousands of dollars. I don't even
6 want to -- I haven't -- I haven't added it up. I just keep
7 writing checks.

8 Q. And have people offered to help you defray that significant
9 cost?

10 A. About a week ago, Mr. Herring -- I'm sorry -- I got an
11 E-mail from a woman who's sitting in this room offering me
12 \$10,000 or \$12,000 to do with at my discretion, Ms. Gale Ebert,
13 and she said we can't lose our -- you're going -- we can't lose
14 our leader. We need you.

15 And she offered me money, and I sent her back an E-mail,
16 and I said thank you. I mean, her offer is just so
17 overwhelmingly generous to me.

18 And she -- she even went through her whole financial
19 status, and I was overwhelmed with -- with her offer, and I
20 sent her back a letter, and I said thank you so much I said,
21 but I can't accept that offer. It was very kind.

22 Q. Mr. Smith discussed with you that you have personally
23 invested 2.6 million dollars in the LLCs loans, you and your
24 husband and family.

25 A. In -- in --

1 Q. Do you recall?

2 A. Yes, sir.

3 Q. How many loans are you personally involved in or you or
4 your husband and family?

5 A. Well, to -- really, Mr. Herring, I can't even say. I -- I
6 have not focussed on my portfolio. I mean, I -- we have
7 20-some-odd loans that we're in. I hold powers of attorneys
8 for another I believe 6 to 10 loans, so, you know --

9 Q. So you are personally involved in 25 to 30 of the loans.

10 A. Yes, sir. And I could have --

11 Q. Ms. Grimm --

12 A. I -- I'm sorry.

13 Q. Well, Ms. Grimm had pointed out and discussed with you a
14 number of E-mails from Tito Castillo and others, and I'm sure
15 you recall that line of questioning on her part --

16 A. Yes, sir.

17 Q. -- that occurred after, immediately after, the road shows
18 had begun in that month and a half period. Did Tito Castillo
19 join the LLCs?

20 A. Yes, he is.

21 Q. Did they show you a single E-mail from an individual that
22 had not joined the LLCs?

23 A. I don't believe so.

24 Q. Donald Hess did join, but he asked for his membership back,
25 correct?

1 A. Yes, he did.

2 Q. Now, he signed a declaration supporting us in this action.

3 He --

4 A. Yes, he did.

5 Q. And when Donald Hess asked for his interest in the LLC
6 back, did you give it to him?

7 A. Immediately.

8 Q. There's been some discussion about supplanting Compass'
9 servicing fees. Was it your intention by setting up the LLCs
10 and/or by having L2L to supplant Compass their ability to
11 recover servicing fees?

12 A. No, sir.

13 Q. Okay.

14 A. No, sir.

15 Q. And why do you say that?

16 A. Well, we always disclosed to the lenders, and the
17 loan-management agreement provides for the escrowing of that
18 money, through to escrows -- escrowing of the default fees,
19 late fees, and the servicing fees due Compass through closing
20 at -- or through termination -- I'm sorry -- through their
21 termination date.

22 Now, in addition to that, Mr. Herring, we asked the Courts
23 for declaratory relief. I don't -- I -- I don't know where we
24 are in that process at this point because everything -- we
25 asked for the Court to provide this concurrent with terminating

1 Compass. We filed a complaint against Compass alleging
2 breaches, and we also asked for declaratory relief.

3 It's always been my position and I believe the position of
4 all the lenders that there's no intention to supplant Compass.
5 There's just an intention to stop this \$10,000,000 or more per
6 month accruing in default fees and late fees that would cause
7 lender-liability lawsuits and are preventing the return of our
8 capital.

9 Q. And I know you've discussed the lender-liability suits, but
10 there has been at least -- well, there have been several
11 lawsuits filed, but, most recently, Shamrock in Texas, correct?

12 A. Yes, sir.

13 Q. And is it your understanding based upon your review that
14 what the Shamrock borrowers are complaining of is the
15 actions --

16 MS. DAKIN-GRIMM: Objection. Leading.

17 BY MR. HERRING:

18 Q. -- of Compass?

19 MS. DAKIN-GRIMM: And already covered by Mr. Smith.

20 THE COURT: Overruled. I'll let him ask it.

21 THE WITNESS: Mr. Herring, would you repeat the
22 question?

23 BY MR. HERRING:

24 Q. Well, what is your understanding of what the borrower in
25 Shamrock is complaining of?

1 A. Well, Shamrock is complaining about actions caused by
2 Compass.

3 Q. And since the LLC was formed in May of 2006 (sic), is it
4 your understanding -- I mean 2007. Excuse me. Is it your
5 understanding that the LLC will shield the members from the
6 actions of Compass on or after that date?

7 MS. DAKIN-GRIMM: Objection. Calls for a legal
8 conclusion beyond the witness' knowledge.

9 THE COURT: Sustained.

10 BY MR. HERRING:

11 Q. Finally -- and I should have asked you this before,
12 Ms. Cangelosi -- under the terms of the LLC, can the board
13 and/or the direct lenders themselves remove L2L and name
14 whatever servicer they want?

15 A. Yes, they can.

16 MR. HERRING: No further questions.

17 THE COURT: Thank you.

18 Thank you.

19 RE-CROSS-EXAMINATION

20 BY MS. DAKIN-GRIMM:

21 Q. Ms. Cangelosi, you've now said a couple times that you have
22 2.6 million at issue in these loans, but that's not true, is
23 it?

24 A. At the time of the bankruptcy, that is true. Yes.

25 Q. Isn't it true, ma'am, that you personally have an interest

1 in eight loans for a total value of 515,000?

2 A. There are also loans that are also with USA Commercial in
3 the liquidation trust.

4 Q. Right. Those aren't at issue in these proceedings, are
5 they?

6 A. We've talked about my total portfolio at USA Capital on the
7 onset.

8 Q. And you didn't mean to suggest to the direct lenders that
9 you had 2.6 million dollars in interest in the loans that are
10 being handled by Compass, did you?

11 A. No, Ms. Grimm. At the onset, me and my family had
12 2.6 million dollars in USA Capital, yes.

13 Q. Your husband, ma'am -- and by the way, my last name is
14 Dakin-Grimm for the record.

15 A. I'm sorry.

16 Q. Your husband has \$1,000,000 in his separate property at
17 issue in the loans in these proceedings, in 11 loans, but some
18 of those are duplicate of the ones that you're in, too, right?

19 A. Some of them paid down by -- prior to Compass taking --
20 coming on-board. Yes.

21 Q. So in combination, you and your husband have about a
22 million-and-a-half dollars at issue in the proceedings, not
23 2.6, right?

24 A. With Compass, yes.

25 Q. Right. Now, you were asked about the package of materials

1 that you sent out as the solicitation to join the LLC and
2 whether you thought everybody was accredited at that time.
3 Mr. Herring just asked you that. Do you remember those
4 questions?

5 A. Yes.

6 Q. Okay. Now, you didn't send out any kind of questionnaire
7 to find out whether the investors were accredited yourself, did
8 you?

9 A. No.

10 Q. And if I understood you right, you were saying that you
11 thought maybe they were accredited because they had filled out
12 some kind of form like you did years prior; is that right?

13 A. No. I said that I filled out the form years prior.

14 Q. Sure. Because you've told us repeatedly now that you got
15 call after call from direct lenders who hadn't had any income
16 in a year, and they could barely afford meals. You didn't
17 think those people were accredited investors, did you, ma'am?

18 A. At the time that they entered USA Capital, perhaps, they
19 were. There's been many market conditions that have taken
20 people sideways.

21 Q. Sure. And at the time that you invited them to join the
22 LLCs, you didn't think they were accredited, did you?

23 A. I don't -- I can't answer that, Ms. Grimm --
24 Ms. Dakin-Grimm. I'm sorry.

25 Q. Thank you. Now, I'm going to ask you to look at the

1 operating agreement that is contained in the binder there at
2 Exhibit 72. It starts at Bates page 3793, and I'm going to ask
3 you a couple of questions about page 3795.

4 This was in the package of materials that we identified
5 that contains the frequently-asked questions. Do you have
6 that?

7 A. Yes.

8 Q. Okay. If you could turn to Article 7, leveraging the
9 beneficial interests, please. That's on page 3795.

10 A. Yes.

11 Q. This provision says, "The manager may elect to leverage the
12 beneficial interests of the company by obtaining a
13 revolving-credit facility from a third-party lender. This
14 credit facility would be used primarily, but not exclusively,
15 to fund," and then it gives a number of items, including
16 borrower-litigation advances and other property-related
17 expenses, et cetera. That was something that you included,
18 right?

19 A. Yes.

20 Q. That's not just the one percent, right?

21 A. No.

22 Q. And then it goes on to say, "In addition, manager" -- and
23 that's you, right --

24 A. Yes.

25 Q. -- "may elect to leverage the beneficial interests of the

1 company in order to pursue litigation against the prior
2 administrator and affiliated parties." That's not the one
3 percent, either, is it?

4 A. No.

5 Q. And then it goes on to say, "All of the company's
6 beneficial interests may be pledged as security for this credit
7 facility," and it says, "The total amount outstanding under the
8 credit facility will not at any time exceed ten percent of the
9 total beneficial interests without going back to the members."

10 Isn't that, in fact, the limitations on your ability to
11 borrow against the principal of these direct lenders?

12 A. That is the -- yes, but there is board and individual
13 membership control. It's earlier in the agreement that fairly
14 limits any spending on that money. We --

15 Q. If you could look at Exhibit 113, please, which was your
16 addendum to this operating agreement. The first addendum
17 starts at page LLC 5066.

18 In Section 2.2(b), that's the provision where one percent
19 of the members' capital contribution would be issued to FDH
20 Management in the form of the class B membership units, right?

21 A. That's correct.

22 Q. And that one percent was going to be used in your
23 discretion in pursuit of or in defense of legal action relating
24 to servicing activities, right?

25 A. Yes.

1 Q. Okay. And then if you could turn the page to 5067 under
2 3.4, removal of manager, that's the provision that says if you
3 are removed as manager, you get to keep the one percent. But
4 under the operating agreement that we looked at in Exhibit 72,
5 your successor could still borrow to pursue litigation up to
6 ten percent, right?

7 A. I -- I'm not sure I understand your question. My successor
8 in terms of the manager of --

9 Q. Yes.

10 A. The manager can pursue a credit limit that would basically
11 be up to ten percent.

12 Q. Okay. And I believe in the examination you were asked
13 whether anybody complained about this, and isn't it true that a
14 lot of people complained about it?

15 A. I don't believe I said that nobody complained about it.

16 Q. Okay. Well, isn't it true, ma'am, that even your loan
17 captains were astonished to find out that you took this one
18 percent and got to keep it yourself?

19 A. What the loan captains did not understand, initially, and
20 since have understood is that that was the one percent that we
21 always represented would go to the litigation fund to pursue
22 the servicing-activity issues, and --

23 Q. Ma'am, would you look at Exhibit 122. Now, this document
24 was produced to us. It's an E-mail to you just two weeks
25 before your deposition in this case from C.M. Worf (phonetic)

1 to Donna Cangelosi and L2L Questions, and the person, a direct
2 lender, has questions about this amendment to the agreement
3 still complaining in the first paragraph, "We still do not know
4 the makeup of L2L and FDH."

5 And then look in the third paragraph from the bottom,
6 "Where did the need to issue A and B stock become a part of the
7 program? I gave you the right to all of my stock provided that
8 there was to be stock issued on a one-to-one basis of the loan
9 value," and that was in the first documents provided. This was
10 just a couple of weeks before you were deposed, ma'am, wasn't
11 it?

12 A. It was a month before I was deposed.

13 Q. Well, weren't you deposed in the third week of August?

14 A. No. I was deposed I believe September 8th.

15 Q. And isn't it true, ma'am, that Aimee Kearns, one of your
16 loan captains, also was appalled at the one percent that
17 suddenly appeared as class B stock in the addendum?

18 A. Ms. Kearns, ultimately, understood that. She's here if you
19 want to question her about it.

20 Q. Would you look at Exhibit 130, ma'am. Exhibit 130 is dated
21 Sunday, August 12th, 2007, from Ms. Kearns to you. In the
22 second paragraph, "Also, I do not consent to the first
23 addendum. I will not be bound to this agreement," and then in
24 the two paragraphs down, "The addendum proposes taking away one
25 percent of my capital contribution and issuing that one percent

1 to FDH Management."

2 Ms. Kearns was quite upset to learn that you anticipated
3 taking one percent of everyone's interest for yourself, wasn't
4 she?

5 A. Ms. Kearns was upset, initially. And when we explained it,
6 she was fully satisfied by our explanation as many lenders
7 were.

8 Q. And Exhibit 129 if you will. This is a couple days in
9 vicinity to the prior. This is Mr. Hess, August 11th, 2007.
10 You received this and produced it to us, did you not, ma'am?

11 A. Yes, I did.

12 Q. And this is Mr. Hess writing to the direct lenders
13 including Steve Younge -- we saw a reference to him when I
14 examined you earlier -- outlining problems with the addendum.

15 And, specifically, under 2, point No. 2 on the first page,
16 he writes, "With the creation of B shares, the purpose seems
17 blurred by the word 'issued' to FDH Management." Isn't it
18 true, ma'am, that many direct lenders still to this day do not
19 understand that one percent of their interest has been taken by
20 you?

21 A. That's not correct I don't believe, Ms. Dakin-Grimm.

22 Q. Would you look at Exhibit 123, please. Exhibit 123 is a
23 letter to you sent as an E-mail on August 13th from Mr. Hess.
24 This constitutes Mr. Hess' demand based on the one-percent
25 issue that you return his interest.

1 Did you return the interest to all of the members of the
2 loan as to which Mr. Hess was loan captain?

3 A. I'm sorry. I don't understand your question.

4 Q. Well, you saw a moment ago Mr. Hess writing to all the Fox
5 Hills investors as to which he was loan captain advising them
6 of the one-percent issue. And in Exhibit 123, Mr. Hess is
7 asking for his interest back, and I believe on Mr. Herring's
8 exam you said you gave it to him immediately, right?

9 A. Yes.

10 Q. Did you return the trust deeds to all of the members of the
11 loans for which Mr. Hess was loan captain?

12 A. Mr. Hess was only loan captain for Fox Hills and
13 Charlie Boy. Yes, we did.

14 Q. You unwound those LLCs entirely? You gave back --

15 A. No.

16 Q. -- the consideration?

17 A. We gave Mr. Hess back his consideration.

18 Q. Did you give back the interests to all the members of those
19 LLCs?

20 A. They did not request it.

21 Q. Is the answer no?

22 A. The answer's no. They did not request it.

23 Q. And I believe Mr. Herring asked you about whether people
24 had complaints about you being on the board of directors for
25 every loan LLC. Could you look at Exhibit 116, please.

1 This is from another direct lender, Michael Ricci, and you
2 produced this to us just in August saying, "Fellow Lenders, I
3 don't want to be a rebel, nor do I need to be, but isn't
4 Donna Cangelosi running for LLC director in every loan a
5 conflict of interest?"

6 And a little bit further down, he says, "The management
7 company Donna set up will profit from this endeavor. Her also
8 being on the board of directors may create conflict of
9 interests?"

10 You received complaints about you acting on every single
11 loan, even though you weren't a member of those loans, didn't
12 you, ma'am?

13 A. No. I -- this was the only complaint I received that I
14 recall.

15 Q. And Mr. Ricci actually says, "I submitted my resume to be
16 available and for inclusion into the choices to be available as
17 a candidate. It is not listed in any of the loans I'm involved
18 in." Isn't it true, ma'am, that you picked and chose directors
19 who you were willing to put on the ballot?

20 A. No, ma'am. As a matter of fact, Mr. Ricci had said when he
21 submitted his candidacy I am ill. I have cancer. I would
22 consider serving on this loan as a backup candidate if you
23 don't have sufficient board members. Please hold my resume in
24 the backup, and we had sufficient board members for this
25 particular loan. It was Lerin Hills.

1 Q. Ms. Cangelosi, would you look at Exhibit 119, please.
2 Exhibit 119 is an exchange of E-mails produced in this case by
3 Lender 2 Lender, LLC, August 8th.

4 A lender, Jack Rankin, asks whether he can call on the
5 phone to Lender 2 Lender and ask some questions, and the L2L
6 response is, "Hi, Jack. We do not have a central phone number
7 at this time. Please E-mail us your phone number, and we will
8 have someone who can answer your questions contact you." Isn't
9 it true that just in August you didn't even have phones set up
10 for Lender 2 Lender?

11 A. In the beginning of August, we were just moving into your
12 own facility which I've rented, and that we did not have phones
13 set up at the beginning of August. They are fully established
14 now. There's phones, computer systems, and there's fax
15 machines.

16 Q. And isn't it true, ma'am, that you in conducting telephone
17 calls about the issue of setting up the LLCs disconnected
18 people that tried to ask questions?

19 A. We've never disconnected anyone.

20 Q. Would you look at Exhibit 78, please. Exhibit 78 is an
21 E-mail to you from Ron Colton, June 13th, 2007. Just read the
22 top paragraph if you will.

23 He writes, "Donna, many times, I've been on the LPG
24 bad-boy list for asking a few questions such as being kicked
25 off the captains' calls due to questioning Catherine Garland as

1 to the just-mark-it-no and return it to Compass.

2 I simply ask should we not at least read it first to
3 ascertain whether the offer is reasonable or not. And like the
4 old Hee Haw Show, boom, I was gone."

5 Isn't that what your practice was in dealing with
6 questions and challenges from direct lenders, ma'am?

7 A. Not at all, Ms. Dakin-Grimm, not at all. I respect the
8 direct lenders. I am a fellow direct lender, and I have always
9 treated them with respect.

10 In this particular regard, Mr. Colton had resigned as a
11 loan captain, and we had asked him to remove himself. We were
12 having problems with information going back to Compass.

13 And anybody that didn't want to be part of the
14 loan-captain program, we requested them to remove themselves.
15 We had a confidential issue that we had to maintain.

16 Q. Would you look at Exhibit 90, please, ma'am.

17 A. And if you'll see Ms. -- Ms. -- Ms. Dakin-Grimm, by the
18 way --

19 Q. There is no question pending, ma'am.

20 A. I just --

21 Q. Could you look at Exhibit 90 --

22 A. I just wanted to point out the date --

23 Q. -- please.

24 A. -- on that. It was prior to -- it was prior -- it was --
25 all right. I'm sorry.

1 Q. Exhibit 90, please. Annie Omaye, another direct lender,
2 right? This is the bottom half, if you will. Is Annie Omaye
3 another direct lender, ma'am?

4 A. I believe so.

5 Q. Okay. And in this E-mail that she wrote to Carol -- that's
6 one of the loan captains, correct?

7 A. That is correct.

8 Q. And then Carol forwarded it on to you, right?

9 A. Yes.

10 Q. And Ms. Omaye says, "Hi, Carol. This is a complete shock
11 to me. I sent in my membership form with the understanding
12 that an LLC will be formed as a last resort," and then she goes
13 on, "The latest news I heard is L2L could not get the license
14 it needed to service loans, so the loan-management agreement is
15 irrelevant."

16 Isn't it true, ma'am, that many lenders did not know what
17 they were sending in these LLC forms for?

18 A. In this particular instance, Ms. Dakin-Grimm, this was
19 regarding Placer Vineyards. Placer Vineyards is a loan that
20 was retained by USA Liquidation Trust. We were not planning to
21 form an LLC regarding the Placer Vineyards loan.

22 But then we decided to move forward and to form an LLC for
23 that for the reasons that there was some issues that, perhaps,
24 the lenders required to be able to raise capital.

25 It was unclear whether the liquidation trust was going to

1 be able to pay the taxes and the association fees that were
2 required in order to protect that asset. There was a lot of
3 debate going on at the time within the USA Capital Liquidation
4 Trust as to whether they would fund those fees.

5 And the lenders were deeply concerned over their ability
6 to be able to gather that money together. The LLC again was a
7 financing arm to be able to get the money to pay those taxes
8 and to pay those fees.

9 It was not anticipated, originally, that we would have a
10 Placer LLC, and that's to which she is referring.

11 Q. Ma'am, you were asked repeatedly questions by the direct
12 lenders about what's going to happen to this one percent if we
13 don't need to use it, right?

14 A. I had a few questions, yes.

15 Q. Right. And you didn't ever tell the lenders, well, I get
16 to decide, it's mine, did you?

17 A. No. Because that's not my position. My position is if
18 there's any money left over, it will certainly go back to the
19 direct lenders.

20 Q. Well, let's look at Exhibit 120. Exhibit 120 is an E-mail
21 from Alan Markus to L2L questions. In August, August 8th of
22 2007, he writes, "In the event Compass pulls up their tent
23 stakes and goes home, what then will the legal fund one percent
24 be used for? Will unused funds be returned to the lenders?"

25 And then there's a response, and then he asked you again,

1 "If FDH after exhausting all legal avenues does not use all the
2 moneys in the war chest, what happens to the moneys? Will it
3 be returned or will it not be returned?"

4 And let's look at your answer, Ms. Cangelosi. It's on the
5 next page. You write, "Hi, Alan. Well, we do expect that
6 there will not be much in the way of funds left over. Any
7 remaining funds will be distributed at the discretion of FDH
8 Management." That's you, isn't it, ma'am?

9 A. It will be distributed, Ms. Dakin-Grimm --

10 Q. In your discretion.

11 A. In my discretion --

12 Q. Thank you.

13 A. -- because I don't want to promise the direct lenders that
14 they're going to get money back if there's no money left over.

15 MS. DAKIN-GRIMM: That's all I have --

16 MR. SMITH: I'm just going to object, your Honor --

17 MS. DAKIN-GRIMM: -- your Honor.

18 MR. SMITH: -- to the implication that this an E-mail
19 from Ms. Cangelosi because it doesn't appear that it is.

20 THE COURT: I'll take note of it.

21 MS. DAKIN-GRIMM: That's all I have, your Honor.

22 THE COURT: Thank you.

23 Anything further?

24 MR. SMITH: No, your Honor.

25 THE COURT: Thank you, ma'am. That's all. You may

1 step down.

2 THE WITNESS: Thank you, sir.

3 (Colloquy not on the record.)

4 MR. SMITH: Your Honor, we don't have any further
5 witnesses, other than the declarations that we've already
6 submitted.

7 (Colloquy not on the record.)

8 THE COURT: Does counsel want to cross-examine on --
9 I've indicated my intent to accept those declarations. Did you
10 want to cross-examine on any of those declarants?

11 MS. DAKIN-GRIMM: I'm sorry. I was talking to
12 Mr. Moore, and I didn't hear what --

13 THE COURT: He --

14 MS. DAKIN-GRIMM: -- Mr. Smith said.

15 THE COURT: He said that he has no further witnesses,
16 other than the declarations, and I've said I've already
17 indicated my intent to accept -- thank you, ma'am. That's
18 all -- accept the declarations into evidence. Did you want to
19 cross-examine on any of those declarants?

20 MS. DAKIN-GRIMM: Your Honor, we do want to
21 cross-examine those witnesses, but only on the issues that I
22 believe relate to the termination. For purposes of this
23 hearing as it's now been defined this morning --

24 THE COURT: Okay.

25 MS. DAKIN-GRIMM: -- we do not need to cross-examine

1 the declarants.

2 MR. HERRING: Your Honor, Ms. Grimm did read several
3 E-mails from Aimee Kearns who is here today. They are welcome
4 to cross-examine Aimee Kearns on those E-mails. She's not on
5 witness list, but --

6 THE COURT: Is she a declarant?

7 MR. HERRING: She is a declarant.

8 MS. DAKIN-GRIMM: There are --

9 THE COURT: Okay.

10 MS. DAKIN-GRIMM: There are many more E-mails from
11 Ms. Kearns we did not bring prepared to cross-examine her, and
12 we'll cross-examine her in the context of the termination
13 issues.

14 THE COURT: Okay.

15 (Colloquy not on the record.)

16 MR. SMITH: Your Honor, I just realized I made a huge
17 mistake. I mentioned earlier I had to take a break at 2:00
18 o'clock.

19 THE COURT: Right.

20 MR. SMITH: I --

21 (Colloquy not on the record.)

22 MR. SMITH: I got caught up in this testimony, and I
23 now missed my phone appearance in court, so --

24 THE COURT: Oh, dear.

25 MR. SMITH: Yeah.

1 THE COURT: Let's recess for ten minutes.

2 MR. SMITH: It's --

3 THE COURT: You don't have further witnesses.

4 (Colloquy not on the record.)

5 THE COURT: And, Counsel, do you have further
6 witnesses?

7 MS. DAKIN-GRIMM: Well --

8 (Colloquy not on the record.)

9 MS. DAKIN-GRIMM: Well --

10 MR. HERRING: No, your Honor.

11 THE COURT: Okay. Do you have rebuttal witnesses?

12 MS. DAKIN-GRIMM: We do not, your Honor.

13 THE COURT: Okay. Thank you. Ten minutes, and then
14 I'll take your comment.

15 (Colloquy not on the record.)

16 THE CLERK: All rise.

17 (Recess at 02:35:32 p.m.)

18 (Court reconvened at 02:51:58 p.m.)

19 THE CLERK: All rise.

20 (Colloquy not on the record.)

21 THE COURT: Thank you. Please be seated.

22 You may make final comment, please.

23 MS. DAKIN-GRIMM: Shall I start, your Honor?

24 THE COURT: You may, please.

25 MS. DAKIN-GRIMM: Thank you.

1 MR. HERRING: May we have a few housekeeping matters
2 before we start that, your Honor?

3 THE COURT: Uh-huh.

4 MR. HERRING: First, there's been no -- Mr. Homfeld
5 never showed up, so we would move to strike his declaration.
6 We had asked for him to be here, he cannot be, so we ask to
7 move to strike that declaration.

8 (Colloquy not on the record.)

9 MR. HERRING: He was the individual who they started
10 and said he couldn't. They had asked for him to be here. He
11 wasn't here yesterday. They said they were going to put him at
12 the end of the case. He never appeared. So as a result, I
13 think his declaration under our rules of engagement should be
14 stricken.

15 MS. DAKIN-GRIMM: Your Honor, I actually don't
16 disagree with that, but I was operating under the presumption
17 today that you said all you wanted to hear at the beginning of
18 the day was Ms. Cangelosi.

19 As a result, we didn't put Mr. Hansen's testimony on,
20 either. And if his cross is not admitted, then his declaration
21 should be stricken as well, so I think both should be stricken
22 or neither.

23 THE COURT: What in Mr. Homfeld's declaration do you
24 need for purposes of your argument?

25 MS. DAKIN-GRIMM: Mr. Homfeld, his declaration is

1 quite similar to the declaration from Mr. Honikman. His
2 testimony is as a direct lender. He did not understand and was
3 repeatedly asking questions.

4 THE COURT: Uh-huh.

5 MS. DAKIN-GRIMM: There are --

6 THE COURT: I --

7 MS. DAKIN-GRIMM: -- exhibits that I used.

8 THE COURT: I'm going to deny the request, but I'll
9 let you state an offer of proof that, in essence, you would
10 hope from the cross-examination to show the same things you
11 concluded from our other live witness here.

12 MR. HERRING: Okay. And then I was unclear if
13 Mr. Smith had actually moved for admission of the declarations.
14 I thought he had, but they are --

15 THE COURT: He did.

16 MR. HERRING: Okay.

17 THE COURT: And I admitted them.

18 MS. DAKIN-GRIMM: Your Honor, I did move for the
19 admission of the exhibits in the white binder? Have they been
20 admitted?

21 THE COURT: I don't think you did.

22 MS. DAKIN-GRIMM: I would like to make that motion.

23 MR. HERRING: With the understanding that they are
24 not all admitted for the truth of the matters asserted, we have
25 no objection.

1 THE COURT: I'll admit all of the exhibits.

2 (Compass Exhibit Binder was received
3 into evidence.)

4 MS. DAKIN-GRIMM: Thank you, your Honor.

5 Is that it?

6 MR. HERRING: That's it.

7 MS. DAKIN-GRIMM: I forgot. I apologize, your Honor.
8 It's just been recently that I've had to do this.

9 Good afternoon, your Honor. Again, Linda Dakin-Grimm for
10 Compass Partners. Thank you for paying attention to the
11 witnesses and the testimony over the last two days.

12 We were here presenting evidence to you on what we
13 believed to be two issues, Ms. Cangelosi's actions in violation
14 of various Court orders from Judge Riegle and, in addition, her
15 violation of state trade regulation and federal securities laws
16 in soliciting from direct lenders to purchase their interests,
17 their fractionalized interests, in loans.

18 I'm going to talk first about the law, and then I'll
19 address how I believe the facts fit in, and I promise I'll be
20 brief on both.

21 The issue here whether the sale of the membership
22 interests, the sale of these membership interests in exchange
23 for the fractionalized loan interests, are securities, I
24 believe there really is no dispute.

25 I've heard both counsel say, yes, they are securities, and

1 I don't believe there can be any dispute under the Howie
2 (phonetic) case which is the seminal case on point.

3 The case within this district and, in fact, emanating from
4 this court, although not your Honor -- it was from Judge Dawson
5 in -- I'm sorry -- 2006 -- is called Securities and Exchange
6 Commission versus Global Express Capital Real Estate Investment
7 Fund from the U.S. District Court for the District of Nevada,
8 and, oh, the citation on this -- I will get you the citation on
9 that case, but I suspect your Honor's familiar with it.

10 That case deals with just the kind of issues presented
11 here, an entity that was among other things buying
12 fractionalized loan interests like those here and putting them
13 into an LLC.

14 And under the Howie decision, the Court analyzed the three
15 Howie factors, whether investors made an investment in a common
16 enterprise, whether the investors were depending upon the
17 efforts of another for their profits, and the investors'
18 return. I guess that's the third element.

19 And in that case, the Court found that those
20 fractionalized interests being put into an LLC did constitute
21 the solicitation of a security.

22 In that case, the Court also analyzed the standards of
23 material that met misrepresentations and omissions of fact in
24 conducting that activity.

25 The Court concluded under the applicable cases from the

1 Ninth Circuit that a person or entity engaging in offering or
2 selling securities in that fashion has a duty to disclose
3 material facts that are necessary to make disclosed statements
4 whether mandatory or volunteered not misleading, and the duty
5 is a general one that arises whenever a disclosed statement
6 would be misleading in the absence of the disclosure of
7 additional material facts needed to make this disclosed
8 statement not misleading.

9 I believe your Honor acknowledged in the beginning of the
10 proceedings or at some point during the proceedings that there
11 does not appear to be an applicable exemption from securities
12 registration, and it is undisputed that the LLCs were not
13 registered as securities with the SEC.

14 There are really I think only two exemptions that might
15 even arguably have come into play, one being the in-trust state
16 exemption -- but as we saw, the securities were marketed in at
17 least three states -- and the private-placement exemption that
18 Mr. Herring alluded to earlier.

19 And that exemption is embodied as your Honor noted in
20 Section 4(2) of the 1933 Act which gives an exemption for
21 offers and sales of securities that do not constitute a public
22 offering.

23 But as your Honor also noted, Rule 10(b)(5) applies even
24 if that exemption doesn't apply which would mean that the
25 offering still cannot be made with material misrepresentations

1 or omissions.

2 In order for a Reg D Rule 501 private-placement exemption
3 to apply, a party selling securities is required under the law
4 to make extensive disclosure about the nature and business of
5 the LLCs, including financial statements, qualifications of the
6 manager, and so forth, the terms of the members' interests.

7 They cannot make a general solicitation as in the kind of
8 blast E-mails and mailings that we saw here, and there can be
9 no more than 35 nonaccredited investors.

10 Now, the evidence that we saw in this case I think makes
11 it abundantly clear that there simply is no private-placement
12 exemption available to these LLCs.

13 There was no effort as we heard from Ms. Cangelosi ever to
14 determine whether the investors were accredited or not. And to
15 the contrary, Ms. Cangelosi repeatedly told us that many of the
16 investors were destitute and were sending her, you know, \$1 in
17 an envelope, and so forth.

18 But there is simply no evidence that the disclosure
19 requirements, the solicitation, general solicitation,
20 prohibition of the accredited-investor prongs are available for
21 a private-placement exemption.

22 In terms of Nevada trade law, your Honor, I would refer
23 you to Nevada Revised Statutes under the 598
24 deceptive-trade-practices concept.

25 It was our conclusion after hearing your Honor's remarks

1 about potential violations of state trade law that we should
2 look at these Nevada regulations.

3 And those provisions include among other things the
4 specifics of when a person engages in deceptive trade
5 practices, and they include among other things if in the course
6 of a business or occupation a person or entity knowingly makes
7 any false representation in a transaction. That's
8 NRS 598.0915(15).

9 NRS 598.0925 says that a person engages in a deceptive
10 trade practice when in the course of business or occupation he
11 advertises or offers an opportunity for investment and among
12 other things makes untrue statements of a material fact or
13 omits to state a material fact which is necessary to make
14 another true or fails to comply with any law or regulation for
15 the marketing of securities or other investments.

16 And, your Honor, we believe that the evidence is
17 abundantly clear here that whether you believe Ms. Cangelosi
18 had good intentions and was operating for what she perceived to
19 be the good of the people or whether she was motivated by
20 greed, either way, she has violated both state trade
21 regulations and the federal securities laws.

22 In that regard, your Honor, what I believe the evidence
23 established is that Ms. Cangelosi unilaterally decided that she
24 was not happy with what Judge Riegler did in the bankruptcy and
25 went out and stirred up a hornet's nest, and she made a number

1 of accusations and statements, many of which were demonstrably
2 and demonstratedly false about Compass to really prey on a
3 population that she herself acknowledged she very early on
4 recognized was vulnerable and did not understand clearly what
5 was going on.

6 Ms. Cangelosi made representations to those lenders about
7 what she could accomplish, for example, telling them that she
8 would take their money and file a lawsuit against the chief
9 restructuring officer who had, in fact, been released in the
10 plan.

11 She made representations to those direct lenders that she
12 could terminate Compass for cause. Ms. Cangelosi began
13 discussions with alternate loan servicers.

14 Even before Compass took over as servicer, she had plainly
15 made up her mind that she was going to take the servicing
16 rights that Compass paid for, even before Compass began acting
17 in these proceedings.

18 And Ms. Cangelosi then began to interfere with Compass'
19 ability to perform its obligations. I will reserve my remarks
20 in that regard until we get to the issues on particular loans
21 in a later proceeding.

22 But for purposes of Ms. Cangelosi's contempt and violation
23 of federal and state law, I think the evidence is undisputed
24 that through the loan captains who viewed Ms. Cangelosi as
25 their leader she solicited proxies to terminate Compass without

1 ever demonstrating cause based upon the representation that
2 Compass could be terminated without cause under the Nevada
3 statute, even though Ms. Cangelosi had not raised that argument
4 as she would have had to before Judge Riegler in the bankruptcy
5 court.

6 She obtained those proxies telling the direct lenders that
7 they would not be used until some point in the future, but she
8 never went back to the direct lenders to determine whether she
9 still had their proxy or whether she had their permission to
10 use them to terminate Compass.

11 I think, your Honor, that the evidence established that
12 Ms. Cangelosi became frustrated. She told us today that it was
13 difficult for her to raise money to pursue lawsuits like she
14 had envisioned against the Mesirow company and against Compass
15 and others.

16 And the contributions, the voluntary contributions, from
17 direct lenders were not flowing into her, so she engaged in a
18 scheme, really, to take their money.

19 And she says that it's with the direct lenders'
20 permission. That Ms. Cangelosi has not made the requisite
21 disclosures that would be necessary for her to argue that she
22 has their permission to take their money and use it to fund
23 those lawsuits.

24 Ms. Cangelosi's materials never included a curriculum
25 vitae. She never explained to the direct lenders that she had

1 no experience in handling loans like those at issue here.

2 She never provided the direct lenders with information
3 about her academic background and, specifically, the fact that
4 she does not even have a college degree, although she admitted
5 to lying about that under oath in her deposition.

6 She never provided the direct lenders with any information
7 about her employment history, other than to make broad
8 statements, including that she had a real estate broker's
9 license which turns out to be false.

10 Ms. Cangelosi did not explain to the direct lenders that
11 the companies she was forming, FDH and L2L, were completely
12 within her control.

13 We saw the charts that she prepared and distributed, and
14 we heard about the statements at the "road shows", her term,
15 that she gave to 500 and more people in different locations,
16 and she admitted that she did not make any of those disclosures
17 in those meetings or in her written presentations.

18 Your Honor, we believe that the evidence before you -- and
19 I'm not going to belabor this point, but that the evidence
20 before you overwhelmingly establishes that Ms. Cangelosi has
21 violated state and federal law.

22 And whether your Honor believes that she is
23 well-intentioned or not, there are consequences for those kinds
24 of conduct.

25 Your Honor, respectfully, I believe that there has not

1 been a groundswell of people asking for their one percent back,
2 although we did show you document after document of people
3 being confused because the direct lenders still to this day
4 have not been told what they did.

5 Therefore, we believe that the tentative ruling that
6 your Honor outlined at the beginning of the day is the
7 appropriate ruling with respect to Ms. Cangelosi.

8 And, furthermore, that in the Court's discretion, a
9 referral should be made to the U.S. Attorney's Office and the
10 SEC for these obvious violations of state and federal law.

11 Thank you.

12 THE COURT: Thank you.

13 MR. HERRING: (Indiscernible), your Honor. Again
14 based on Compass' closing statement, I don't think they
15 understand and continued not to focus on their activities.

16 They contend that there was a unilateral decision by
17 Donna Cangelosi to try to terminate Compass as some of her
18 doing. I think the evidence has been clear throughout the
19 declarations and throughout the last day and a half that
20 Donna Cangelosi is not the issue here. Compass is the issue.

21 There is a groundswell of people as Ms. Cangelosi said.
22 People are coming up out of the ground to try and do something
23 about their problems with Compass.

24 Ms. Cangelosi happened to take the bull by the horns.
25 Ms. Cangelosi, if you're familiar with the story of Horton and

1 the Who (sic), she is Horton.

2 She heard the shouts of the many, of the small, of the
3 unheard. And despite public ridicule, she tried to protect the
4 small and unheard.

5 And, eventually, I believe this Court's going to see her
6 as a courageous individual. We may not like her. You may not
7 like her personality, her individually, but she is a courageous
8 person who sacrificed her personal wealth and her time and
9 effort not just to save her own assets which she is personally
10 invested in, but the assets of many. For that, I believe at
11 the end of this litigation we will applaud her for that.

12 Now, I'm curious how Compass has morphed this hearing away
13 from a discussion of whether she -- which I thought was their
14 initial motion.

15 It was a motion to find her in contempt of violating the
16 bankruptcy orders to now it's morphed into, well, you need to
17 find her in contempt for violating securities law, and you need
18 to find her in contempt of violating consumer law, and you
19 should turn her into the appropriate authorities for that.
20 That's not their motion.

21 Their motion was did she violate the bankruptcy orders,
22 and they failed totally in putting on any credible proof that
23 she violated a bankruptcy order.

24 What is there in evidence? We went through the L2L, and I
25 understand the Court has a concern about the formation of the

1 LLCs and L2L or that was some issue.

2 But I believe as Ms. Cangelosi has pointed out today the
3 decision to form the LLCs was not made until well after Compass
4 had evidenced its self-interest and intent to harm the direct
5 lenders.

6 The decision to form L2L was not done until there was no
7 other option. Silver Point, others, had refused to do it, so
8 there was no intent by Donna Cangelosi or any member of the
9 LPG, the amorphous LPG, or any direct lender to supplant or to
10 obstruct the bankruptcy orders, so we believe, your Honor, the
11 evidence is clear that from Compass' motion standpoint it
12 should be denied in all respects.

13 Now, I would like to take the opportunity to talk about
14 the Court's request about the securities-law issues. Over the
15 last day and a half, we've seen evidence that there was a
16 spirited discussion about the formation of the LLCs and the
17 L2Ls, very spirited. No one was drinking the Donna Cangelosi
18 Kool-Aid, so to speak.

19 There was a number of informed debates about the LLCs and
20 the L2Ls, so we believe that it's really untrue that there was
21 any statement of material fact or omission, and we believe that
22 there are exemptions.

23 But, most importantly, we believe that there is no action
24 brought by a direct lender. Compass does not have standing to
25 bring this action. There's no action brought by a direct

1 lender that has complained of these facts.

2 Now, let me take you from a -- this is a court of equity,
3 and Compass is seeking equitable relief. As a result, I think
4 we need to look at what the equities are of the LLC actions
5 sending the interest back to the direct lenders, individually.

6 First off and foremost, that as Ms. Cangelosi has said
7 does, indeed, kill the funding for any legal battle. Compass
8 is well-aware of that.

9 That's why they are focussed solely on this issue now
10 because they realize if they can cut off the funding source,
11 they win, and sending back the LLCs' interest to the direct
12 lenders will cut off the funding source.

13 Second, from an equitable standpoint, the direct lenders
14 will be sued individually, including in the recent case of
15 Shamrock in Texas that was filed. They are no longer going to
16 have any protection of the LLCs.

17 And all Compass' actions that have been done since the
18 formation of the LLCs will now be on the individuals.
19 Equitably, that's a harsh result.

20 Third, from an equitable standpoint, there's a huge
21 administrative issue here. We heard from Ms. Cangelosi about
22 how many hours it took to build these LLCs and to set them up.

23 To send them back and to rerequest that the interest can
24 be put back in, the administrative issue of that will be --
25 there will be hundreds of hours involved in that, hundreds of

1 hours for people who have already given hundreds of hours of
2 their free time to try to set these up.

3 Finally, I believe that providing the -- if the Court is
4 inclined to send back or require the LLCs to send back the
5 interest from an equitable standpoint, the terminations
6 hearings that we are going to have become very problematic.

7 I can tell you just briefly from after the last hearing
8 when we approached the direct lenders -- there is thousands of
9 them -- we were inundated with hundreds of E-mails discussing,
10 well, Mr. Herring, I need a term sheet from you. What are your
11 fees? If I'm going to hire you individually, Mr. Herring, do I
12 have to have an individual engagement letter with you?

13 The administration of that makes it virtually impossible
14 for the LLCs and/or the direct lenders to mount any, any legal
15 action to terminate the LSAs.

16 And I believe as all our declarations have shown, Compass
17 has violated these LSAs and needs to be terminated. They need
18 to be terminated three months ago when the initial terminations
19 went out.

20 They are amassing tens of millions of dollars a month in
21 default interest and in late fees that they are now going to
22 claim a pari passu interest in. That is extremely problematic
23 for us.

24 So we believe that the Court should not require the
25 retransfer of the interest back to the direct lenders. We

1 believe the Court should not do that.

2 If the Court is inclined to do that, I think we need to
3 seek a middle ground, an equitable ground, that satisfies the
4 Court's concerns.

5 First, I think we should be allowed to brief the
6 securities issue, a week here, allowing us a week to brief that
7 issue. It's going to take a month or more to get these LLC
8 issues reconveyed, et cetera, so a week isn't going to hurt it
9 that much, so we would like the opportunity to brief that one
10 more time.

11 And, second, there should be some other middle ground such
12 as a letter to the direct lenders saying if you want your
13 interest back let us know, and we will send it back to you;
14 otherwise, they are reconstituted and can go forward.

15 (Colloquy not on the record.)

16 MR. HERRING: That would be our proposal. We would
17 request that the Court consider those issues. We would request
18 that the Court find in our favor on those issues.

19 And, finally, your Honor, there are a number of other
20 issues that I understand from Mr. Parry that the Court has
21 invited motions for reconsideration on. I believe we will be
22 addressing several of those in the future.

23 Thank you.

24 THE COURT: Mr. Smith.

25 MR. SMITH: Your Honor, the issue I want to address

1 is the sanctions as to Ms. Cangelosi, personally, which is why
2 we're here.

3 I heard Ms. Dakin-Grimm state that she stirred up a
4 hornet's nest. I think it's quite the opposite. I think the
5 hornet's nest was stirred up by Compass.

6 Had Compass been forthright, honest, had they fulfilled
7 their fiduciary duty, we probably would have had a lot of happy
8 direct lenders who really didn't want to be involved in all of
9 this and would be satisfied that their loans were being
10 properly serviced, that their interests would be truly taken to
11 heart, and all of this could have been avoided, so I think it's
12 quite offensive for Compass to stand here and say Ms. Cangelosi
13 did it. No. Compass did it.

14 Number two, we're looking at did Ms. Cangelosi violate a
15 court order. I listened very carefully to Ms. Dakin-Grimm.
16 There was no mention of any Court order being violated, and
17 there wasn't a Court order being violated.

18 The Court order that we're talking about is a confirmation
19 order. The confirmation order at least as it relates to this
20 proceeding says that the parties shall abide with the
21 loan-servicing agreement.

22 And I think we've come to the conclusion that this is
23 primarily at this point a contract dispute. Compass has
24 closed. That was provided for in the confirmation order. We
25 now have a bunch of people who are parties, some maybe not

1 parties, to a loan servicing agreement.

2 It does not prevent any party from terminating it
3 according to its terms. It does not prevent another party from
4 becoming a loan servicer.

5 In fact, a confirmation order itself contemplates that
6 there may be a substitute loan servicer when it says if there's
7 a substitute loan servicer, that substitute loan servicer shall
8 abide by the terms of this order, and the rights that Compass
9 has earned or accrued to the date a substitute servicer takes
10 place shall be honored.

11 THE COURT: Well, there's several provisions of
12 violation of orders that they contend for. One is the
13 confirmation order.

14 MR. SMITH: Right.

15 THE COURT: There's cited -- I'm trying to find it --
16 cited in their brief at page 24, a response. Its a provision
17 that "neither the direct lenders nor any replacement servicer
18 selected by such a lender, a direct lender, shall have the
19 right or ability to compromise, subordinate, or impair in any
20 respect any rights, claims, or interest purchased by Compass
21 from the estates for default interest, accrued servicing fees,
22 late charges, success fees, or other amounts under the
23 loan-servicing agreement."

24 MR. SMITH: Right.

25 THE COURT: So they've, of course, alleged a

1 violation of that part of the order. That her attempt here was
2 to, in essence, take over title to those same provisions for
3 default interest, accrued servicing fees, late charges,
4 et cetera.

5 MR. SMITH: Yeah. And I understand that, your Honor,
6 but the way I read that order is completely different. I read
7 that order as not being any sort of guarantee that Compass is
8 going to get this forever.

9 They're not going to get servicing fees forever. They're
10 not going to get late fees forever. They're not going to get
11 default interest forever.

12 But up to the point where Compass is terminated and
13 assuming that Compass is terminated properly, they have those
14 rights. Whatever they've accrued, whatever they're entitled
15 to, they get, and so there's not a guarantee that there not be
16 an attempt to terminate Compass or a new loan servicer.

17 THE COURT: No. But they're alleging that she
18 violated. She's contempt of the order because she, in fact,
19 attempted to acquire those accrued rights.

20 MR. SMITH: Yes.

21 MS. DAKIN-GRIMM: Your Honor, it's at --

22 MR. SMITH: I don't think --

23 MS. DAKIN-GRIMM: -- page 929.

24 MR. SMITH: -- there's any evidence, your Honor, that
25 she attempted to -- in fact, there is no evidence that she

1 attempted to acquire any rights that Compass had already
2 earned.

3 In fact, I asked her that specific question. Do you
4 intend to honor the bankruptcy court's confirmation order with
5 respect to the accrued of Compass, and her answer was yes, and
6 there's no evidence otherwise that she didn't intend to do so,
7 your Honor.

8 And the fact that she becomes a new servicer is no
9 different than Silver Point or anyone else. It's not a
10 violation of the Court order to have a new servicer.

11 Now, if she became a new servicer and started taking
12 accrued default interest or accrued interest or accrued late
13 fees that Compass was entitled to, then we got a whole nother
14 problem, but that is not before you, and there's no evidence to
15 that effect before you today.

16 So, really, what we're saying is did the fact that
17 Ms. Cangelosi attempt to form a servicing company that would
18 replace Compass only after Compass was properly terminated
19 violate any Court order at all, and I submit, your Honor, that
20 it doesn't.

21 The evidence that you've heard -- first of all, we started
22 out with this concept that -- and this goes back several
23 hearings.

24 Ms. Cangelosi had this designed all along. That this was
25 some sort of game that she was playing setting up Compass,

1 always designing to, always intending to, violate the Court
2 order, sucker somehow Compass into going ahead with this
3 purchase knowing full well that she was going to step up and
4 take over these servicing rights. Well, there's no evidence at
5 all of that. And, in fact, it's just the opposite. That
6 didn't exist at all.

7 You heard that the servicing company was formed out of
8 necessity. It was formed because Compass left the state of
9 Nevada, moved to New York. Their servicing ability in Nevada
10 was terminated.

11 Silver Point who was the first choice for a replacement
12 backed out the first part of May, and Compass had received a
13 letter or was receiving a letter terminating them as the
14 servicing company.

15 Somebody had to step up and do this. Multiple people was
16 the testimony asked Ms. Cangelosi to do so, to set it up, to
17 get it going, and she did. Now, whether or not that's a
18 violation of securities law, I don't know at this point.

19 THE COURT: Now, there's a couple of other violations
20 of orders that they contend for. As a side point before we get
21 to those, the confirmation order at page 6 talks about this
22 30-day prior-written-notice right.

23 MR. SMITH: Your Honor -- okay.

24 THE COURT: And this is a side point because I want
25 to get to the orders they contend were violated. And in

1 paragraph 14 specifying transfer of the acquired assets free
2 and clear of liens, et cetera, and beginning on page 6, line 5,
3 "Provided, however, that in connection with any attempted
4 postclosing exercise of a surviving Section 3 right, the direct
5 lenders must provide Compass at least 30-days' prior written
6 notice of the intended exercise of such right," so I have to
7 correct myself.

8 The 30-day notice is only provided with respect to the
9 exercise of a Section 3 carryover right. That's prepetition
10 violations of the servicing agreement as I understand it, so,
11 apparently, there is no 30-day prohibition --

12 (Colloquy not on the record.)

13 THE COURT: -- on postpetition exercises of rights
14 under the LSA.

15 MR. SMITH: I agree.

16 THE COURT: Is that a --

17 MR. SMITH: I agree with that, your Honor. That's
18 the way --

19 THE COURT: Uh-huh.

20 MR. SMITH: -- we've always read it as well.

21 MS. DAKIN-GRIMM: Your Honor, the 30-day
22 requirement --

23 MR. SMITH: And --

24 MS. DAKIN-GRIMM: -- is in the loan-service agreement
25 itself.

1 MR. SMITH: No. That's incorrect.

2 THE COURT: Oh.

3 MS. DAKIN-GRIMM: It is in the loan-service
4 agreement, and --

5 THE COURT: Can you give me an example --

6 MR. SMITH: Section 8, your Honor --

7 THE COURT: -- from an exhibit?

8 MR. SMITH: -- of the loan-servicing agreement
9 provides that --

10 THE COURT: Do we have an --

11 MR. SMITH: -- if an individual --

12 THE COURT: -- example here, for example, the one
13 that Ms. Cangelosi --

14 MS. DAKIN-GRIMM: It is in the white book.

15 THE COURT: -- signed?

16 MS. DAKIN-GRIMM: I'll find it, your Honor.

17 (Colloquy not on the record.)

18 MS. DAKIN-GRIMM: Can you find the exhibit number?

19 THE COURT: Which exhibit number was it that
20 Ms. Cangelosi signed?

21 MR. SMITH: I think that was 112, your Honor.

22 (Colloquy not on the record.)

23 MR. SMITH: 112 is hers, and --

24 (Colloquy not on the record.)

25 THE COURT: And you're saying --

1 MR. SMITH: And 111 is the form.

2 THE COURT: -- Section --

3 MR. SMITH: Section 8 is the --

4 THE COURT: 8 is integration clause. 6 is
5 termination.

6 (Colloquy not on the record.)

7 MR. SMITH: It's 6 in her agreement. It's 8 in the
8 other agreements, and then what that is when an individual
9 lender --

10 THE COURT: Well, here's what hers says,
11 "Termination, lender may by 30-days' written notice to USA
12 terminate this agreement and the power of attorney granted" --

13 (Colloquy not on the record.)

14 THE COURT: -- if one is granted" --

15 MR. SMITH: Right.

16 THE COURT: -- under Section 9 of this agreement if
17 USA fails to perform its obligations hereunder."

18 MS. DAKIN-GRIMM: And, your Honor, the paragraph I
19 think you were referring earlier to in the confirmation order
20 is at page 9 of 29, lines 26 through 28.

21 THE COURT: I found that.

22 MS. DAKIN-GRIMM: Okay.

23 THE COURT: Uh-huh.

24 (Colloquy not on the record.)

25 MR. SMITH: And --

1 THE COURT: So --

2 (Colloquy not on the record.)

3 MR. SMITH: May --

4 THE COURT: So the only thing --

5 MR. SMITH: Can I --

6 THE COURT: -- the confirmation order does is -- and,
7 again, this is a side point -- is that it imposes a 30-day
8 notice provision for Section 3 carryover rights.

9 MR. SMITH: Right.

10 THE COURT: It is Section 3.

11 (Colloquy not on the record.)

12 THE COURT: Maybe we're talking about Section 3 in a
13 different form of --

14 MR. SMITH: Well, it's actually --

15 THE COURT: -- (indiscernible).

16 MR. SMITH: -- 2-F in the Cangelosi loan-servicing
17 agreement. It's Section 3 in the other servicing agreements
18 and which provides that 51 percent or more in the event that
19 the servicer has not acted on behalf of the beneficial
20 interests of record can terminate, and that's really what we've
21 been talking about.

22 THE COURT: Right.

23 MR. SMITH: And within the context of the loan
24 servicing --

25 THE COURT: So there's a 30-day provision either

1 under the LSA going forward or under the LSA and the
2 confirmation order with respect to carryover Section 3 rights.

3 MR. SMITH: Right.

4 THE COURT: Okay.

5 MR. SMITH: But the --

6 THE COURT: Now, they also allege violation of some
7 of Judge Riegler's subsequent orders.

8 (Colloquy not on the record.)

9 MR. SMITH: August 1st order which we've addressed,
10 and that --

11 THE COURT: First, the June 20th order.

12 MR. SMITH: Right.

13 THE COURT: And Judge Riegler stated, "Borrowers were
14 not to be contacted by any statements that no payments should
15 be made to Compass."

16 (Colloquy not on the record.)

17 THE COURT: They were embodied in an order entered
18 August 1st stating, "No direct lender shall initiate contact
19 with the borrower in any loan which, one, undermines Compass'
20 exclusive authority to act on behalf of the direct lender as
21 loan servicer or, two, purports that an entity other than
22 Compass is authorized to negotiate with the borrower on behalf
23 of the direct lenders in such loan." That's the second one
24 that they contend she violated.

25 MR. SMITH: Okay.

1 THE COURT: It's not okay. I'm asking is that not
2 true.

3 MR. SMITH: Well, I guess, your Honor, we were sort
4 of -- I'm prepared to go through each one. But as I stood up
5 just now, I thought we were talking about the securities issue.
6 But if you want --

7 THE COURT: No. We're talking about the securities
8 issue, too. I --

9 MR. SMITH: Okay.

10 THE COURT: I said I was not going to --

11 MR. SMITH: Well --

12 THE COURT: Go ahead.

13 MR. SMITH: -- let me just address each one that
14 you've mentioned. First of all, as to the loan-servicing
15 agreements, Section 3 in most of them, Section 2-F in
16 Ms. Cangelosi's, provide that 51 percent can act.

17 It does not have a 30-day requirement at all, so the
18 30-day requirement only arises in Section 6 of Ms. Cangelosi's
19 and Section 8 of the other servicing --

20 THE COURT: 2-F is pursuant to NAC 645B --

21 MR. SMITH: Right.

22 THE COURT: -- point 073, "In the event of default,
23 foreclosure, or other matters that require direction, if for
24 any reason the mortgage broker fails to act on lender's behalf
25 as authorized herein, then the lenders in the loan may with

1 approval of 51 percent or more of them act on behalf of all the
2 holders of beneficial interest of record.

3 These actions may include, but are not limited to, for
4 example, designation of a mortgage broker or servicing agent to
5 act on their behalf or, two, sale, encumbrance, or lease of
6 real property owned by the holders resulting from a
7 foreclosure."

8 MR. SMITH: Right. And that's the basis upon which
9 the May 18th letters were sent out, but, your Honor, there's
10 also another section that is Section 6 in the Cangelosi
11 loan-servicing agreement. Identical sections in other
12 loan-servicing agreements are under paragraph 8.

13 And that provides for an individual direct lender to
14 terminate his loan-servicing agreement, and that does require a
15 30-days' notice, and that is not what's before you today
16 because that's not what we're asserting.

17 This is an issue where 51 percent of a loan and in excess
18 of 51 percent of a loan acted to terminate Compass for cause,
19 to replace Compass for cause, and that was the basis of the May
20 18th letter. Now, as to --

21 THE COURT: So you're contending that -- we have an
22 event of -- with respect to each of those, we have an event of
23 default, foreclosure, or other matter that requires direction,
24 and that the lender is not acting on behalf of the -- I'm
25 sorry. The servicer or mortgage broker is not acting on the

1 lenders' behalf.

2 MR. SMITH: That's exactly correct.

3 THE COURT: Um-h'm.

4 MR. SMITH: That is exactly our contention, and that
5 is exactly the basis for the May 18th letter.

6 And, secondly, your Honor, you mentioned the August 1st
7 order from Judge Riegler which required a letter to be sent out
8 within three days of the entry of an order. I'm not sure if
9 you had the chance to read Mr. Darby's declaration.

10 That was solely within my law firm's province. It was not
11 Ms. Cangelosi, and we --

12 MS. DAKIN-GRIMM: Objection, your Honor.

13 MR. SMITH: If you --

14 MS. DAKIN-GRIMM: If counsel --

15 MR. SMITH: If you --

16 MS. DAKIN-GRIMM: -- is going to raise --

17 MR. SMITH: I --

18 MS. DAKIN-GRIMM: -- an advice-of-counsel defense at
19 this point, we should have been provided with full access --

20 THE COURT: Well, I'll overrule the objection. You,
21 of course, may argue --

22 MR. SMITH: Well, your Honor --

23 THE COURT: -- contrary.

24 MR. SMITH: -- you have the declaration of Mr. Darby,
25 already. It clearly spells out what happened there, and I

1 think it's really important to know what happened. The judge
2 ordered that a letter go out to direct lenders.

3 THE COURT: Right.

4 MR. SMITH: She ordered that as soon as this order is
5 entered you will attach it to a letter and send it out to all
6 direct lenders. And if you'll see from Mr. --

7 THE COURT: She ordered a letter to direct lenders,
8 and she ordered letters to the borrowers.

9 MR. SMITH: Right.

10 THE COURT: Right.

11 MR. SMITH: You'll see that and according to
12 Mr. Darby and as attached in his declaration that I think we
13 waited more than two weeks.

14 Compass was ordered to prepare that order. We waited
15 nearly two weeks for the first draft. To complain about any
16 delay on our part I think is disingenuous, then when we
17 commented on the --

18 THE COURT: Why do you say that? You were ordered to
19 send the letter. They --

20 MR. SMITH: Right.

21 THE COURT: They had the right to approve it.

22 MR. SMITH: No. But we were ordered to attach that
23 order to our letter, so we couldn't send out the letter until
24 the order was entered.

25 THE COURT: Well, that's true.

1 MR. SMITH: So my problem is that --

2 THE COURT: But you were the one who were supposed to
3 do the letter.

4 MR. SMITH: Right. So the sequence of events is we
5 waited for Compass to prepare the order, and Mr. Darby had
6 multiple conversations as he says in his declaration. I mean,
7 your Honor, we didn't let this slide. There were discussions
8 about the order.

9 THE COURT: The order was issued, right?

10 MR. SMITH: The order, what ultimately happened is it
11 took several weeks to get the first draft.

12 THE COURT: Uh-huh.

13 MR. SMITH: Then we were advised by Compass there
14 would be another draft, and then Mr. Darby had a conversation
15 with Mr. Lomazow as set forth in his declaration --

16 THE COURT: Okay.

17 MR. SMITH: -- that we would talk tomorrow about this
18 draft of the order.

19 THE COURT: Okay.

20 MR. SMITH: And, instead --

21 MR. MOORE: Your Honor --

22 MR. SMITH: -- the next day -- this is in evidence,
23 your Honor, I really don't appreciate being interrupted
24 constantly.

25 (Colloquy not on the record.)

1 THE COURT: Well, only for a valid objection, he has
2 the right to interrupt you.

3 MR. MOORE: I --

4 THE COURT: Did you have some objection?

5 MR. MOORE: Yes. I have an objection in that I
6 believe now that we're hearing a lot testimony about something
7 in my view that is not presented --

8 (Colloquy not on the record.)

9 THE COURT: Overruled.

10 MR. MOORE: -- in the evidence here.

11 (Colloquy not on the record.)

12 THE COURT: Overruled.

13 Go ahead.

14 MR. SMITH: Maybe I should read the declaration,
15 your Honor. It might be helpful.

16 (Colloquy not on the record.)

17 MR. SMITH: I don't want to paraphrase it and be
18 accused of anything --

19 THE COURT: No.

20 MR. SMITH: -- it is --

21 THE COURT: He's --

22 MR. SMITH: -- in evidence.

23 THE COURT: I overruled his objection.

24 MR. SMITH: Okay.

25 THE COURT: You have to suffer --

1 MR. SMITH: Okay. Here --

2 THE COURT: -- interference --

3 MR. SMITH: Here's what --

4 THE COURT: -- for --

5 MR. SMITH: Here --

6 THE COURT: -- a valid objection.

7 MR. SMITH: The order said --

8 THE COURT: It wasn't a valid objection.

9 MR. SMITH: Here --

10 THE COURT: Here's --

11 MR. SMITH: The bottom line --

12 THE COURT: Here's the --

13 MR. SMITH: -- is this.

14 THE COURT: -- the bottom line. The bottom line is
15 the order was issued. Why didn't the letter go out?

16 MR. SMITH: It did. The order went out. The order,
17 we pushed for the order. The enter wasn't entered. All right?
18 It required that the letter be sent out with the order
19 attached, and maybe Mr. Darby should address this. All right?

20 Then the next day we got the motion from Compass for
21 sanctions because we hadn't complied with the Court order
22 because we hadn't sent out the letter which we thought was
23 ridiculous because the order hadn't been entered, yet, and --

24 THE COURT: What was the date of the entry of the
25 order?

1 MR. SMITH: It was entered after we sent out our
2 letter --

3 (Colloquy not on the record.)

4 MR. SMITH: -- because we were put in an awkward
5 situation because of the motion for sanctions of being required
6 to send out a letter before the order was done.

7 THE COURT: So what was the date of the entry of the
8 order?

9 MR. SMITH: No.

10 (Colloquy not on the record.)

11 MR. SMITH: August 1st.

12 (Colloquy not on the record.)

13 THE COURT: And what was the date of your letter that
14 you sent out?

15 MR. SMITH: July 26th --

16 (Colloquy not on the record.)

17 MR. SMITH: -- and August 6th.

18 (Colloquy not on the record.)

19 THE COURT: And did you comply --

20 MR. SMITH: They're exhibits --

21 THE COURT: -- with the order to the effect of
22 advising them that there was an order, and, number two, that
23 they wouldn't --

24 (Colloquy not on the record.)

25 MR. SMITH: 100 percent.

1 THE COURT: Uh-huh. Okay. All right.

2 MR. SMITH: And that was us as set forth in
3 Mr. Darby's declaration.

4 THE COURT: Us? That was what?

5 MR. SMITH: That was our firm's responsibility as set
6 forth in Mr. --

7 THE COURT: No. It's Ms. Cangelosi's obligation --

8 MR. SMITH: That's fine.

9 THE COURT: -- and your obligation.

10 MR. SMITH: That's fine, but I just want you to know
11 that we oversaw it, and we were extremely careful about it.

12 THE COURT: Um-h'm.

13 MR. SMITH: Now, as to the last comment you made
14 which is page 9 of the confirmation order which was exhibit --

15 (Colloquy not on the record.)

16 MR. SMITH: -- 109 --

17 THE COURT: Right.

18 (Colloquy not on the record.)

19 MR. SMITH: -- which was --

20 THE COURT: Following the closing.

21 MR. SMITH: Right.

22 THE COURT: "No holder of an interest in the sellers
23 shall interfere with the asset-purchaser's title to" --

24 MR. SMITH: Right.

25 THE COURT: -- "or use and enjoyment of the acquired

1 assets based on or related to such interest or any actions that
2 the sellers may take in their Chapter 11 cases."

3 MR. SMITH: Your Honor, if you read that sentence, it
4 is within this paragraph dealing with a sale free and clear of
5 interest.

6 It has to do with the interest of other people, not
7 parties to the contract interfering with the contract. This
8 was a sale free and clear of interest.

9 THE COURT: Right.

10 MR. SMITH: And it was not and is not and does not
11 mean that parties to a contract cannot exercise their contract
12 rights. It was repeatedly stated by Judge Riegler that the
13 parties to the contract --

14 THE COURT: Oh, I think that's clear.

15 MR. SMITH: So --

16 THE COURT: But the attempt, certainly, of any holder
17 of an interest in the sellers was forbade, was enjoined --

18 MR. SMITH: Sure.

19 THE COURT: -- from interfering with the
20 asset-purchaser's title.

21 MR. SMITH: Right.

22 THE COURT: It certainly doesn't stop --

23 MR. SMITH: Parties to the --

24 THE COURT: -- a contractee from terminating under
25 their rights in the contract, but it certainly does stop any

1 such from attempting to usurp or take over the
2 asset-purchaser's title.

3 MR. SMITH: Well, I don't believe -- I think this is
4 a standard sale free and clear of interest, so what happened is
5 all interest that existed at the time of the sale it was free
6 and clear of that.

7 Now, if somebody took over after close of escrow
8 servicing, I don't believe there's anything in this order that
9 could possibly prevent that.

10 (Colloquy not on the record.)

11 MR. SMITH: Silver Point could do it assuming Compass
12 was properly terminated. DACA could do it assuming Compass was
13 properly terminated.

14 And the mere fact that it's an entity formed by
15 Donna Cangelosi does not change the fact that anybody, if
16 Compass is properly terminated under the terms of the contract,
17 could take over and do those servicing rights. Sure. They're
18 bound by the order. They have to respect the rights of Compass
19 as to accrued fees.

20 (Colloquy not on the record.)

21 MR. SMITH: They have to respect the bankruptcy court
22 order that provided for a set-aside for these prepaid-interest
23 issues.

24 But as far as actual servicing prospectively and moving
25 forward, it's not prohibited by the order. That's the way I

1 read it.

2 (Colloquy not on the record.)

3 MR. SMITH: I don't read this section as creating any
4 additional right, other than what was repeatedly stated in
5 bankruptcy court, and that is that the contracts were
6 unchanged.

7 In here, it says an interest in the sellers. Well, the
8 direct lenders were not the sellers here. They were talking
9 about the interest in the sellers.

10 The debtors were the sellers, so they were talking about
11 the interest in the debtors that this sale be free and clear of
12 any claim against the debtors that might interfere with the
13 sale which is normal language in a sale free and clear of
14 interest.

15 I mean, if somebody had some sort of a claim or a levy or
16 a judgment or something of that sort that might be asserted
17 against these contracts, that would be an interest in the
18 sellers that this is free and clear of.

19 But the direct lenders were simply parties to the contract
20 and in my opinion are not in any way affected by this language
21 at the bottom of page 9.

22 (Colloquy not on the record.)

23 MR. SMITH: So that's why, your Honor, the conclusion
24 that I would propose this Court reach is that there has been no
25 violation of a Court order.

1 And I think to reach the conclusion that there's a
2 violation of a Court order is a drastic remedy. It has to be
3 clear and convincing.

4 And as I said when we started this yesterday, the order
5 has to be identified, the specific provision identified, and
6 the specific conduct identified.

7 I've already addressed the fact that terminating Compass
8 is a contract issue. Forming a new servicing entity is a
9 contract issue.

10 This section is a sale-free-and-clear-of-interest issue.
11 Sending out the letter under the terms of the August 1st order
12 was complied with.

13 There has been no violation of any Court order, and I'm
14 prepared to go into further detail if you'd like, your Honor on
15 that.

16 But I'd like to just finish up by addressing the
17 securities-law issue because I thought we kind of had got --
18 when you made your tentative ruling earlier today, I thought we
19 were done with those issues as to violation of a Court order.

20 And, apparently, we're not, so I don't want to give that
21 any shortchange. So if there's any further questions you have
22 on that, I'd like to address it now.

23 THE COURT: Are you asking is there any further
24 intent on my part to declare --

25 MR. SMITH: Any other order that --

1 THE COURT: -- a violation of the order?

2 MR. SMITH: Any other order that you feel
3 Ms. Cangelosi may have violated.

4 THE COURT: Well, those two orders, yes.

5 MR. SMITH: Okay. All right. As to the violation of
6 the securities-law issue, your Honor, I submit that that is not
7 sanctionable.

8 Even if it existed, it's not a violation of a Court order,
9 and I'm not even sure it exists at this point. I'm not an
10 expert in securities law.

11 But, I mean, everyone has to admit this is not a normal
12 situation and not a situation where an individual simply goes
13 out in the public and starts soliciting membership interests in
14 an LLC.

15 It's a peculiar situation. It is a specific situation.
16 It's a specific situation in the sense that each person who had
17 a fractional interest in that loan became a member of the LLC
18 to the extent of that full fractional interest and controlled
19 that LLC.

20 And if it needs to be briefed further, it may need to be
21 briefed further because, I mean, I'm not a securities expert,
22 but I think the facts that you've heard is that there was no
23 motive of Ms. Cangelosi to violate any law. That the actions
24 she took were really out of necessity in an attempt to protect
25 the direct lenders.

1 I think her motives were sincere, and all you have to do
2 is look at the creditor support. You don't have any direct
3 lenders complaining about this situation today.

4 No direct lender has stood up and said we want out. This
5 is ridiculous. No one sued Ms. Cangelosi. In fact, it's quite
6 the opposite. All the direct lenders have expressed their
7 100-percent support.

8 Now, if it is a violation of securities law, I think
9 that's going to depend on what the research says is a
10 violation.

11 I mean, I'm concerned about the seriousness of that
12 matter, and the fact that it never has been brought by a motion
13 before the Court. We've simply been talking about it.

14 My concern is that I -- you had mentioned earlier that
15 these LLCs -- first, we talked about disbanding the LLCs, and
16 then we talked about returning the assignment of the deeds of
17 trust and the promissory notes.

18 And you've heard today that that is a serious remedy, and
19 it doesn't punish Donna Cangelosi. It punishes a whole bunch
20 of people who have money invested, and it offers a benefit to
21 Compass and creates a situation that may be unworkable.

22 And I am not sure what the remedy is in the event we were
23 to even reach a finding that there's a violation of securities
24 law. There may be a remedy as simple as maybe they need to be
25 registered or maybe there needs to be some additional

1 disclosure that goes out to the members saying here is the
2 disclosure. You have your right to get out if you want, but we
3 provide this additional disclosure to you and give you the
4 right.

5 But I don't think that Ms. Cangelosi should be sanctioned
6 for that, and I think if that is going to be a further concern
7 of the Court, that we should seriously consider what is the
8 appropriate remedy because Ms. Cangelosi isn't any more guilty
9 than, probably, I don't know how many other people who jointly
10 determined what the best procedure was to protect their
11 lifesavings which is really what they were doing.

12 I think also, your Honor, it's very important to recognize
13 that as Mr. Herring stated Compass kind of just jumped on the
14 bandwagon on this securities issue.

15 You raised it. Compass didn't raise it. There has never
16 ever been a motion filed for sanctions for a violation of any
17 securities law.

18 And it's pretty clear that Compass has an ulterior motive
19 in this. Compass really doesn't care about whether there's
20 been a securities violation or not.

21 Compass wants to retain control of these assets, prevent
22 the direct lenders from terminating them, prevent the direct
23 lenders from hiring a substitute servicer.

24 And so in short, I think in considering Compass'
25 arguments, you should consider the source and the fact that

1 they never were a moving party.

2 I don't think that Compass has a position in this matter.
3 Remember, that the only way that L2L comes into being is if
4 Compass is properly terminated, and you've already ruled of a
5 mechanism of where that occurs.

6 So let's say that that occurs. Compass is properly
7 terminated. L2L becomes a new servicer. What complaint does
8 Compass have? I mean, they're gone. What standing do they
9 have to complain about it? I think the important thing to look
10 at is do the direct lenders have some complaint about that.

11 So, your Honor, I think I've addressed every Court order.
12 I understand the Court's concerns. The actions were
13 necessitated by the circumstances.

14 Ms. Cangelosi has a good heart. I think you have to
15 consider that. She's contributed a great deal of her own
16 effort and money. And if it was different, you'd hear
17 differently.

18 There's 47 declarations supporting Ms. Cangelosi. People
19 are behind her. They believe in her, and she takes her
20 position seriously.

21 She's been put by de facto in a situation that has
22 completely disrupted her personal life only to try and help
23 various people, everybody, including herself.

24 And I think to sanction her for those efforts that she has
25 undertaken that are not in violation of any Court order would

1 be inappropriate.

2 THE COURT: Thank you.

3 MS. DAKIN-GRIMM: Your Honor, may I give you the
4 citation to the case?

5 THE COURT: You may reply. You have the right of a
6 final reply.

7 MS. DAKIN-GRIMM: Thank you.

8 (Colloquy not on the record.)

9 MS. DAKIN-GRIMM: The citation to the case that I was
10 referring to from this district under Howie, the SEC versus
11 Global Express is 2006, U.S. District, Lexis 96477 (phonetic),
12 District of Nevada, March 28th, 2006.

13 And in that case, among other things, your Honor, the
14 Court addresses the standard under Howie concerning intent to
15 violate the securities law which we just heard Mr. Smith saying
16 his client had a good heart. It's really irrelevant.

17 The issue of intent to violate the securities laws in the
18 Ninth Circuit may be made by a showing of recklessness, and
19 recklessness is established by demonstrating a defendant's
20 possible motive to engage in securities fraud, red flags
21 casting doubt, for example, the E-mail that Mr. Hess sent to
22 her saying I think you're engaging in securities fraud and
23 misrepresentations, those sorts of things.

24 There is no requirement that your Honor find that
25 Ms. Cangelosi didn't have a good heart nor is there a

1 good-heart exemption to the securities law. That's simply not
2 relevant.

3 I didn't raise the issue about the failure of
4 Ms. Cangelosi to abide by Judge Riegler's order to send letters.
5 But as the Court is aware, she didn't send the letter, although
6 she was ordered to do.

7 And, eventually, she sent a letter that the Court was
8 quite offended by that essentially said, well, we're going to
9 terminate Compass imminently. We didn't terminate them right,
10 yet.

11 But the real answer to why she didn't send the letter
12 contrary to what was suggested by Mr. Smith is contained in
13 Exhibit 105 in the binder up there which your Honor admitted,
14 and that's in an E-mail on Saturday, July 8th, 2007, an
15 exchange between direct lender Revelle Taylor writing to the
16 L2L E-mail, and Ms. Taylor asks, "Why did you not follow the
17 instructions of the prior hearing and send the right kind of
18 letter to these borrowers that would have satisfied the judge?"

19 And the answer, "We are anticipating a favorable ruling on
20 August 6th" -- that would be the first hearing with your Honor
21 -- "which could render the letters completely unnecessary," so
22 Ms. Cangelosi was ignoring Judge Riegler's order in the hope
23 that she could get a different Court to relieve her --

24 MR. SMITH: I'm going to have to object to that --

25 MS. DAKIN-GRIMM: -- of the obligation.

1 MR. SMITH: -- because that is not Ms. Cangelosi's
2 writing, and I have a problem again with trying to attribute
3 someone else's comments to her.

4 THE COURT: I'm sorry. The objection is this isn't
5 from --

6 MS. DAKIN-GRIMM: This --

7 THE COURT: -- Donna Cangelosi?

8 (Colloquy not on the record.)

9 MS. DAKIN-GRIMM: This is a document from L2L, and
10 Ms. Cangelosi testified that she was the only managing
11 member --

12 (Colloquy not on the record.)

13 MS. DAKIN-GRIMM: -- the only employee of L2L. There
14 were no other managers, and we saw numerous other E-mails in
15 which Ms. Cangelosi --

16 THE COURT: Well --

17 MS. DAKIN-GRIMM: -- responded.

18 THE COURT: -- I'll take the objection to the extent
19 that it's just simply --

20 (Colloquy not on the record.)

21 THE COURT: It's signed by L2L --

22 MS. DAKIN-GRIMM: Thank you.

23 THE COURT: -- to that extent. Of course, it's an
24 admitted exhibit.

25 (Colloquy not on the record.)

1 MS. DAKIN-GRIMM: And then, your Honor, finally,
2 Exhibit 125 in the same binder on the issue of Ms. Cangelosi's
3 good heart and intent and whether she was reckless, page 2 of
4 Exhibit 125 is an E-mail that Ms. Cangelosi sent back to
5 Mr. Hess after he had warned her.

6 And in the last paragraph of her E-mail on page 2 -- this
7 is May 29th, 2007 -- Ms. Cangelosi writes, "Sorry, Don. I
8 think it's a great plan. I hope we make a lot of money because
9 that will mean we did a great job. And if we do a great job,
10 no one should tell us what we're entitled to make. This is not
11 a union. This is the American way."

12 I don't think there's any doubt that Ms. Cangelosi was in
13 this for her own benefit, but, your Honor, that's not a
14 decision you have to make.

15 You simply need to make the determination as to whether
16 she violated Judge Riegle's orders and the applicable laws in
17 this state and country.

18 Thank you.

19 (Colloquy not on the record.)

20 THE COURT: Thank you.

21 Objection.

22 MR. HERRING: May I briefly address those last two
23 exhibits that Ms. Dakin-Grimm discussed?

24 THE COURT: You may. She's got the right of the
25 final reply.

1 MR. HERRING: Okay.

2 THE COURT: But to the extent, you just want to argue
3 those two last --

4 MR. HERRING: I just want to make two --

5 THE COURT: -- exhibits?

6 MR. HERRING: -- two quick points.

7 THE COURT: All right. Relative to what she just
8 raised.

9 MR. HERRING: Yes. The first one, I thought she
10 agreed that the evidence or the documents are being submitted
11 not for the truth of the matter asserted when it wasn't from
12 Donna Cangelosi.

13 That's an E-mail from someone who is L2L. There is no
14 evidence that Donna Cangelosi wrote that; yet, she seemed to me
15 to be using that for the truth of the matter asserted.

16 THE COURT: L2L wrote it.

17 MR. HERRING: Yeah. But not Donna Cangelosi, but she
18 was using it as the truth of the matter asserted. It's not
19 Donna Cangelosi was her statement.

20 THE COURT: Overruled.

21 MR. HERRING: The second issue was that she takes the
22 context, takes a paragraph of an E-mail about how I hope we all
23 make a lot of money, I'm sure Donna Cangelosi did want to make
24 a lot of money because if she makes a lot of money, the direct
25 lenders -- I'm sorry. If the L2L does a good job, they do make

1 a lot of money. It is --

2 THE COURT: That's just argument, not objection.

3 MR. HERRING: I --

4 THE COURT: Overruled.

5 MR. HERRING: I understand.

6 THE COURT: All right. This is what I'm going to do.
7 I appreciate your evidence and comments. I'm going to do
8 several things both with respect to the pending order to be
9 entered from the prior hearing as well as an order in response
10 to the questions you've presented to me today.

11 First, as to jurisdiction, I have jurisdiction of the
12 parties. There are three cases. You tell me if I have more.
13 There's 0892, in re Commercial, et cetera. I believe that's
14 the removed case from Judge Riegle's court in which she entered
15 the preliminary order and recast it as an adversary proceeding.

16 And I have jurisdiction over Compass pursuant to that
17 removed adversary, and I have jurisdiction over the parties
18 that it sought to enjoin by virtue of that motion.

19 I have jurisdiction in the case of 1133, Compass versus
20 Eagle, Judge George's case reassigned to me, over the parties
21 in that case.

22 And I have jurisdiction over the parties pursuant to 0894,
23 Judge Reed's original case reassigned to me, 3685, et cetera,
24 versus Compass, so I have jurisdiction over the parties.

25 I'm going to ask pursuant thereto -- and I think I have

1 jurisdiction over the questions relative to the universe of
2 loans. I believe the universe of loans is some 50-some-odd
3 loans you keep referring to.

4 Unless I'm incorrect, I believe the allegations of the
5 complaint give me jurisdiction, in essence, over all 50 of
6 those loans in the various ownership -- not ownership of the
7 loans, but in the various ownership of the servicing rights to
8 such loans as alleged in the complaints. I have jurisdiction
9 over the parties relative to those servicing rights.

10 I am going to require a consolidation of those three cases
11 if there's another one. Is there another case?

12 MR. DARBY: Yes, your Honor.

13 THE COURT: What's the other one?

14 MR. DARBY: It's 241. Actually, 894 and 892 are the
15 same cases removed up here twice, and so the complaint that was
16 filed up in Reno is actually Case 241.

17 THE COURT: It's actually 892 and 894 --

18 (Colloquy not on the record.)

19 MR. DARBY: Correct.

20 THE COURT: -- we have on our docket, but 241 is
21 what? That's --

22 MR. DARBY: That is --

23 THE COURT: -- the one --

24 MR. DARBY: That is the complaint that was filed by
25 the various direct-lender LLCs against Compass and --

1 THE COURT: That's --

2 MR. DARBY: -- some other parties.

3 THE COURT: -- Judge Reed's case?

4 MR. DARBY: Correct. That was transferred.

5 THE COURT: And what's 1133, Compass versus Eagle?

6 That's Judge George's.

7 MS. DAKIN-GRIMM: Right.

8 THE COURT: And 894 you're saying is 241 as well.

9 MR. DARBY: No. 894 was the same thing as 892
10 because what happened is Judge Riegler entered her June 20th or
11 July 24th --

12 (Colloquy not on the record.)

13 THE COURT: And we gave it --

14 MR. DARBY: -- which --

15 THE COURT: -- two numbers. It --

16 MR. DARBY: Correct.

17 THE COURT: That's both the bankruptcy court's
18 removed, and 241 is the one that came from Reno --

19 MR. DARBY: Correct.

20 THE COURT: -- Judge Reed's case. Okay.

21 MS. DAKIN-GRIMM: Your Honor, 1133 is Compass versus
22 Eagle Partners, the one that was filed with Judge George and
23 got moved here.

24 THE COURT: Right.

25 MS. DAKIN-GRIMM: Compass doesn't object. That's a

1 loan in an entity that's not controlled by the parties here.
2 We don't object, obviously, to having that roped in or
3 consolidated, but that party isn't here today. They don't come
4 to all the proceedings, so it may be appropriate to ask them.

5 THE COURT: Very good. I have jurisdiction under all
6 four of those actions, and I'm going to enter an order subject
7 to motions for reconsideration consolidating all of those
8 cases.

9 With respect to the present pending order that I've asked
10 the parties to incorporate into a new form of order, I'm going
11 to ask in addition that we attach a list of two exhibits, a
12 list of all of the loans, the universe of loans that, in
13 essence, I've declared I have jurisdiction over the parties
14 relative to, and a second exhibit since Compass has asked for a
15 stay of any action against servicing rights relative to loans.

16 And it appears from these proceedings that you may have
17 objection to some, and there may be some to which you have no
18 objection.

19 For example, we had testimony about some that you believed
20 or advised the direct lenders was underwater, if you will, and
21 you intended to take no action vis-a-vis the borrower.

22 If that's the case, then I should have an Exhibit A, the
23 universe of loans of which I'm declaring I have jurisdiction
24 and, B, those actual loans only that Compass is presenting to
25 me requesting a stay order of any termination.

1 So it's clear that the stay, the preliminary injunction
2 that I'm entering, is the result of these series of hearings
3 applies to any conduct to terminate rights relative to
4 Exhibit B.

5 Exhibit A is the universe of loans. Exhibit B, it's clear
6 these are the only ones that I'm staying. I'll require those
7 changes to the pending order, in addition to one other one I'll
8 talk about in a minute.

9 Now, as to the matters that you've presented to me here, I
10 do find that Ms. Cangelosi is in contempt of several of the
11 orders, and that there in soliciting the various limited
12 interests there were violations of securities laws. I'm not
13 going to order the return of those interests, but I'll tell you
14 what action I am going to take.

15 What I'm going to do is order that I will not -- in
16 contradicting Compass' complaint to stop you from exercising
17 those termination rights, I'm not going to recognize any
18 termination requests presented on behalf of L2L or the LLCs
19 formed.

20 And I'm doing that because this request is made in equity,
21 and she comes into court in responding to that with unclean
22 hands because of the contempt and because of securities
23 violations. Let me spell that out.

24 First, as to the securities violations, I believe there is
25 probable success on the merits of alleging securities

1 violations.

2 First, I'm determining as a matter of law that there is a
3 probability of success on a determination of law that these are
4 securities subject to the registration requirements.

5 That there are no apparent exceptions available, and,
6 therefore, there's a violation of securities laws in obtaining
7 these securities without registration.

8 Also, in a second manner that whether or not they're
9 exempt, they're still subject to 10(b)(5), and that there are
10 misrepresentations and omissions of appropriate representations
11 with respect to the issuance.

12 Just to be clear, I am not critical of Ms. Cangelosi's
13 efforts at all in all of the preliminary matters that she
14 engaged in, including attempting to organize the lenders, in
15 attempting to organize the lenders or soliciting their votes
16 for termination, in attempting to solicit people's combined
17 interest into an LLC in order to protect their interests, nor
18 am I criticizing any of the E-mail solicitations or the
19 attempts to communicate or provide a forum for communication as
20 I've already delineated, or any of the false statements or
21 allegedly false statements about Compass.

22 What I am criticizing is that she went over the border of
23 securities violation and misrepresentations when she solicited
24 securities to the extent that she would take over the servicing
25 rights, and she would take over the one-percent interest, and

1 she would have the right freely to compensate herself.

2 In essence, she was violating this Court and the
3 bankruptcy court's orders to not interfere with those rights.
4 She was usurping.

5 She was not a bidder, although she contemplated being a
6 bidder at the auction sale. The bid was closed and fairly
7 conducted. That order as far as I'm concerned is res judicata.

8 It may be subject to appeal, and it protected the
9 purchaser's right of title. It's a bankruptcy court order
10 transferring title. It's as good or better than a warranty
11 deed.

12 (Colloquy not on the record.)

13 THE COURT: And she attempted to usurp those rights.
14 She crossed the border in that respect. In so doing, she
15 violated securities laws or at least there's probable success
16 on the merits of so asserting, and she also violated those
17 Court orders.

18 Again, no criticism for organization efforts nor is there
19 even a criticism in her attempting to organize the direct
20 lenders in LLCs.

21 The violation was when those LLCs, a portion of the
22 motivation, was to usurp the purchaser's rights here. To that
23 extent, she violated securities laws and engaged in contempt.

24 With respect to the contempt, there are several orders
25 alleged. One is the confirmation order and the sale order

1 which is incorporated therein, specifically, the provisions on
2 page 9, quote, "Following the closing, no holder of an interest
3 in the seller shall interfere with the asset purchaser's title
4 to or use and enjoyment of the acquired assets based on or
5 related to such interest or any actions that the seller may
6 take in their Chapter 11 cases."

7 She was forbidden just like anybody else participating in
8 the case from attacking title to those interests which I
9 believe includes the obligation that she not interfere with
10 that title or attempt to usurp it, and that's what I'm finding
11 she intended to do.

12 Now, she had a lot of good motives, no doubt about that,
13 but she had some apparent motives here, too, and that is to
14 usurp the title to those assets.

15 It's very clear from the documentation that she sent.
16 It's very clear that she intended to take over, either she or
17 through her affiliates, to take over the servicing rights.

18 Again, along with participating direct lenders, she had
19 the right to organize together to terminate the rights, to
20 designate another alternate servicer, and even to organize the
21 lenders to become their own servicing agent which they could.
22 They could do that under state law.

23 What she didn't have the right to do was organize those
24 lenders, so that she and her affiliates could take over those
25 lending rights. That clearly crossed the line.

1 So this like most cases is a case of mixed motives, and
2 even her altruistic motives on behalf of the lenders in loans
3 in which she's not a party are suspect.

4 She's not a party to those loans, and that further
5 convinces the Court that especially with respect to those loans
6 in which she's not an interested holder she's basically doing
7 those transactions -- at least one prohibited motive -- to
8 acquire a benefit for herself, and that is the contract rights
9 that were sold to Compass.

10 With respect to the contempt, then she's violated that
11 provision of the sale order. She's violated the provisions on
12 page 6 with respect to the flow-through rights, the
13 preconfirmation rights, and let's see.

14 There's also language on page 6, "In the event of a proper
15 exercise of remedies under Section 3 of the loan-servicing
16 agreement, neither the direct lenders nor any replacement
17 servicer selected by such direct lender shall have the right or
18 ability to compromise, subordinate, or impair in any respect
19 any rights, claims, or interest purchased by Compass from the
20 estates for default interest, accrued servicing fees, late
21 charges, success fees, or other amounts under the
22 loan-servicing agreement, and this confirmation order shall be
23 binding upon such replacement servicer."

24 To the extent that she was attempting to acquire those
25 rights for herself, she was violating the language of this

1 order.

2 And she was violating the order of Judge Riegle to send
3 out letters that clearly contemplated readvising the direct
4 lenders to stop or to -- as she directed advice to the direct
5 lenders and also advice to the borrowers that the prior
6 direction was incorrect, that they should continue to pay
7 Compass. That's the finding.

8 The remedy is I'm not going to order any sanctions at this
9 time. If there's any proof at ultimate trial that there was
10 any legal consequence or detriment or prejudice monetary or
11 otherwise to Compass, then, of course, they'll make that part
12 of the trial in asking for a monetary sanction.

13 The remedy here is I'm not going to order the return or
14 disgorgement of those security interests for all of the reasons
15 that counsel have argued here why I should not.

16 But I am going to refuse to recognize any termination
17 exercised on behalf of the Lender 2 Lender or on behalf of the
18 LLCs.

19 Finally, with respect to a couple of other amendments that
20 I'm going to suggest as the result of these hearings to the
21 preliminary injunction, the preliminary injunction as we've
22 already talked about is going to enjoin people. It's going to
23 stop people with respect to that Exhibit B from taking other
24 actions to interfere with termination or cause termination.

25 With respect to the group that's not on Exhibit B, of

1 course, I'm, in essence, yielding up. I'm not enjoining
2 anything with respect to that.

3 Compass is, in essence, consenting that I'm not enjoining
4 anything with respect to that. They probably have no care
5 because it's excluded from Exhibit B.

6 And it's clear to all parties that I'm saying nothing
7 about the termination to the extent that the LLCs or any direct
8 lenders want me to declare, in fact, that the termination has
9 occurred because you filed a declaratory-relief action here as
10 well, and I'm willing to give such an order.

11 And I'm assuming by virtue of it being excluded from
12 Exhibit B that Compass has no objection, so that, in essence,
13 it's clear that L2L or LLC can proceed to protect their
14 interest as they may see fit on those loans which Compass
15 doesn't care about and is not willing to take further action
16 on.

17 So I am willing to give an interim declaration before
18 trial that rights have been terminated with respect to certain
19 loans, so that you can proceed.

20 Finally, with respect to the order, a couple of things.
21 I'm going to require in addition to this preliminary injunction
22 that we've already discussed two provisions.

23 One, Compass will not further transfer. You are
24 prohibited from transferring, encumbering, subordinating your
25 interest in any respect liquidating or transferring these

1 rights, other than in two respects.

2 We already are aware of -- we don't know the nature of,
3 but the potential that you've encumbered these rights to Silus
4 (sic). And, of course, that's not --

5 MS. DAKIN-GRIMM: It's Silar.

6 THE COURT: Silar. That's not prohibited because
7 you've notified us that that has occurred and, number two, to
8 your sublicensee here for servicing rights.

9 But you're going to be prohibited, so that I'm confident
10 that you're not going to waltz out of this court and file a
11 bankruptcy and attempt to play forum games.

12 I'm declaring in Exhibit A that I have jurisdiction over
13 the following loans, and I'm just going to make sure that
14 you're prohibited and enjoined from further transferring those
15 loans, so that paragraph should be added.

16 The last paragraph, I'm a little bit quizzical about, and
17 I'll let you enter objection. I think we need to add a
18 provision that requires an accounting by Compass relative to
19 each of the loans.

20 I don't know that I can impose a time limit. It can't be
21 too short because you've already told me that the books that
22 you got are in pretty bad shape, and I can't impose upon you,
23 necessarily, the cost of recreating those books and records.

24 But I do think at a minimum I'm going to require in this
25 order that as equity, return of equity, for my issuance of the

1 injunction you're going to have to do an accounting of several
2 things, one, what you received. That is here's the following
3 notes. They're listed on Exhibit A.

4 We received the servicing rights, and we give you or
5 you're required to give me an accounting of what you've
6 collected and what you've paid out per loan and a further
7 descriptive or narrative accounting of any critical
8 negotiation. That is to the extent you've conceded rights or
9 negotiated or yielded rights.

10 So, for example, you're going to need to tell me in that.
11 With respect to loan A, B, C, you're going to need to tell me
12 we compromised this loan at 80 percent. We, in addition,
13 received the following servicing fees or default-interest fees
14 X dollars.

15 So that's what's going to be required in what I would
16 propose to be an additional paragraph. You'll provide an
17 accounting within a certain specified period.

18 And, again, it should be clear I'm not asking you to
19 reconstruct the records with respect to all the prior payouts
20 or collections before the date that you acquired it, but from
21 the date that you acquired it forward what you've collected,
22 what you've paid out, what fees you've received and/or applied,
23 what default interest or other charges you've collected whether
24 extension fees or otherwise.

25 (Colloquy not on the record.)

1 THE COURT: I think that's the entirety of the order
2 and orders revision to present order and new order I would
3 intend to issue here.

4 (Colloquy not on the record.)

5 THE COURT: Clarifications.

6 MR. HERRING: Yes, your Honor. I have a few. The
7 default interest, late fees, exit fees for each of these loans,
8 I assume you want that on a line-item basis, not just a
9 one-lump-sum here's a total default. We --

10 THE COURT: Per loan.

11 MR. HERRING: Per loan.

12 THE COURT: An accounting per loan.

13 MR. HERRING: Line items are default, late fees, exit
14 fees, et cetera.

15 THE COURT: Right.

16 MR. HERRING: Thank you. And I'm unclear about the
17 termination issue. As I understood the Court's earlier ruling,
18 the lawsuit has served as a notice for the termination, so
19 those loans that will be on Exhibit B we can still approach the
20 Court and have those hearings that we discussed about
21 terminating those loan --

22 (Colloquy not on the record.)

23 THE COURT: Yes, you can. And, of course, if you
24 gave notice, previously, that we're terminating, that serves as
25 a notice, certainly, too.

1 They've said we want a hearing; therefore, I'm enjoining
2 the termination until that hearing can be held. That's the
3 language that we already talked about pending further order.
4 You're enjoined from effecting, effectuating, the termination.

5 And the last thing I said is I'm not going to take a --
6 although it may serve as an order on a notice of termination on
7 a interim basis, I'm not going to accept in the hearing on any
8 particular loan the termination to the extent it comes from LLC
9 or Lender 2 Lender.

10 MR. HERRING: And --

11 THE COURT: In other words, I'm folding in what I
12 previously said. And in the preliminary ruling, you're going
13 to have to ask for a reiteration.

14 If you say that -- you can present to me, of course, 51
15 out of 100 individual, separate direct-lender requests we want
16 termination.

17 Or if you intend to hand me just one from Lender 2 Lender
18 or from an LLC saying we're exercising the rights on behalf of
19 the direct lenders, I'm not going to accept that unless there's
20 a reiteration of a power of attorney --

21 MR. HERRING: The --

22 THE COURT: -- and for the reasons that I've stated
23 before.

24 MR. HERRING: Okay. L2L has no power to do that.
25 Lender 2 Lender that was just the servicer, so it's the LLCs

1 that we need to do that.

2 MR. SMITH: My --

3 MR. HERRING: Thank you, your Honor.

4 MR. SMITH: My question is along those lines,
5 your Honor. Can the LLCs be the moving party assuming that we
6 have the supporting documentation or do we have to bring in all
7 these individuals?

8 THE COURT: No. I've told you that they can be the
9 moving party, but I'm not going to accept their --

10 MR. SMITH: Assignments.

11 THE COURT: -- assignments as a basis to issue
12 their --

13 MR. SMITH: Okay.

14 THE COURT: -- termination.

15 MR. SMITH: Now, we have separate elections to
16 terminate that are unrelated to the assignments. Will you
17 consider those? I mean, they're separate documents.

18 THE COURT: That's problematic because --

19 MR. SMITH: Okay.

20 THE COURT: -- if you got the terminations as part
21 and parcel of the issuance of these securities --

22 MR. SMITH: But it didn't have --

23 THE COURT: In other words, sign this separate
24 document, please, along with the document that assigns, then
25 that's problematic.

1 MR. SMITH: But, your Honor, the evidence was that it
2 did not happen that way at all. If you recall, the elections
3 to terminate occurred in early March and were accumulating
4 during that time period. The LLCs were formed in May. We
5 already had all of the elections to terminate Compass prior to
6 that time.

7 THE COURT: I think what you're saying is properly
8 right.

9 MR. SMITH: Okay.

10 THE COURT: But do those separate documents give you
11 power of attorney?

12 MS. DAKIN-GRIMM: No.

13 MR. SMITH: They constitute elections by 51
14 percent --

15 THE COURT: Right.

16 MR. SMITH: -- of the members of a single loan --

17 THE COURT: Right.

18 MR. SMITH: -- to terminate Compass.

19 (Colloquy not on the record.)

20 MR. SMITH: So we're not talking about a power of
21 attorney.

22 THE COURT: So it's not a power of attorney to stand
23 up here in court and represent their interests. You can't do
24 that. But as the movant, and if you have an interest yourself,
25 LLC --

1 (Colloquy not on the record.)

2 THE COURT: -- then I don't know why you can't
3 present other fellow or nonparty direct-lenders' termination
4 election as support for relief from this preliminary
5 injunction --

6 MR. SMITH: Okay.

7 THE COURT: -- and/or a declaration that --

8 MR. SMITH: So you want --

9 THE COURT: -- the rights have been terminated.

10 (Colloquy not on the record.)

11 MR. SMITH: So you want one person that has an
12 interest in the loan to be present and say I want to
13 terminate --

14 THE COURT: At a --

15 MR. SMITH: -- it.

16 THE COURT: At a minimum, I have to have one person
17 who has an interest in the loan --

18 MR. SMITH: Okay.

19 THE COURT: -- who's a party to this case.

20 (Colloquy not on the record.)

21 MR. SMITH: Okay.

22 MR. PARRY: Well, see, now I'm confused. Are you
23 going to want the lenders to interfere in the case, then, as
24 individuals because, otherwise, we get a real dispute --

25 MR. MOORE: Your Honor --

1 MR. PARRY: -- as to who the parties are --

2 THE COURT: I wasn't asking --

3 MR. PARRY: -- at that point.

4 THE COURT: -- for that at all.

5 MR. PARRY: Okay.

6 MR. MOORE: Your Honor, if I can just clarify --

7 MR. PARRY: Yeah. Because that's the concern --

8 MR. MOORE: -- this that --

9 MR. PARRY: -- I would have that they have to come
10 in.

11 THE COURT: There's no reason for doubt --

12 (Colloquy not on the record.)

13 THE COURT: -- or need for a clarification. That's
14 why I started --

15 MR. PARRY: Okay.

16 THE COURT: -- with a statement of jurisdiction at
17 the beginning of my decision.

18 MR. PARRY: They just need to reiterate to the LLC
19 that the LLC has the power --

20 THE COURT: I have jurisdiction --

21 MR. PARRY: -- to go forward on (indiscernible).

22 THE COURT: -- over the parties here. If a
23 particular party is sought to be enjoined from causing a
24 termination or if a particular party is seeking a declaration
25 that the rights of Compass had been terminated, I've said I

1 have jurisdiction over those parties that are named.

2 (Colloquy not on the record.)

3 MR. MOORE: Your --

4 MR. SMITH: So --

5 THE COURT: When we get to the merits whether for
6 cause or not for cause, obviously, even if it's under the not
7 for cause -- I think it has cause provisions in it.

8 But even under the provision that Mr. Smith says is a not
9 for-cause provision, you have to show that 51 percent whether a
10 party here or not elected to terminate.

11 MR. SMITH: Right. But the --

12 THE COURT: So all I'm telling you is when we get to
13 those merits, I'm not going to accept an election to terminate
14 on behalf LLC.

15 MR. MOORE: Your --

16 MR. SMITH: Okay.

17 MR. MOORE: Your Honor, if I may clarify --

18 MR. SMITH: Okay. I understand that now.

19 MR. MOORE: -- it's Exhibit --

20 MR. SMITH: Thank you, your Honor.

21 MR. MOORE: It's Exhibit 60, and the termination
22 notice is for every -- all 50 of the loans were executed by
23 Donna Cangelosi, manager of FDH Management Company, LLC --

24 THE COURT: Right.

25 MR. MOORE: -- manager of the LLC, so it is herself

1 as the manager that terminated, and I think --

2 THE COURT: And I think I made clear --

3 MR. MOORE: Yeah.

4 THE COURT: -- I'm not going to accept that.

5 MR. MOORE: And what I would suggest we do is when we
6 get this order finalized and entered, that should be mailed to
7 all of the LLC members as well as the borrowers. And if --

8 THE COURT: I'm sure it should be.

9 MR. MOORE: And if you want to solicit a new, you
10 know, power of attorney, you would do it in that context.

11 THE COURT: Right. But his question -- and I think
12 nothing wrong with what you said. His question is how about if
13 we have a separate election to terminate by a direct lender,
14 and I told him it's problematic if it was solicited in
15 connection with the solicitation of a security interest. He
16 said it wasn't. It was separate.

17 (Colloquy not on the record.)

18 THE COURT: And assuming that he so proves and shows
19 me which, of course, is his burden --

20 MR. MOORE: Right.

21 THE COURT: -- then I said there's no reason why you
22 can't present that on the merits. In other words, if I have at
23 least one direct lender who's a party here --

24 (Colloquy not on the record.)

25 THE COURT: -- or who appears here or LLC showing me

1 here's a new reiterated power of attorney, so that we can stand
2 for here on behalf of a direct lender, then there's no reason
3 on the merits why he should not be able to present the election
4 to terminate of nonparties to this lawsuit --

5 MR. MOORE: We --

6 THE COURT: -- constituting --

7 MR. MOORE: We --

8 THE COURT: -- 51 percent or more.

9 MR. MOORE: We understand that. I was just pointing
10 out the ones we now have were only through Donna Cangelosi.
11 You're right.

12 If they reiterate they own 51 percent and get a new power
13 of attorney or if they aggregate nonmembers and members
14 totalling 51 percent, we understand that that's the ruling of
15 the Court.

16 MR. PARRY: But they meaning the LLC because that's
17 the party here. The LLC will be the party coming back to the
18 Court.

19 UNIDENTIFIED SPEAKER: Right.

20 MR. PARRY: Right. Okay. So just so we're clear.
21 That's (indiscernible).

22 MR. HERRING: And --

23 THE COURT: You are a party here.

24 MR. HERRING: And, your Honor, are you --

25 THE COURT: And, therefore, of course, you will be

1 heard.

2 MR. PARRY: Yeah.

3 THE COURT: But on the merits, I'm not going to let
4 you show me that 51 percent of the interests have elected to
5 terminate by virtue of LLCs' --

6 MR. SMITH: Got it.

7 MR. PARRY: Right.

8 THE COURT: -- election to terminate.

9 MR. PARRY: You want a separate election. You want
10 some separate document showing that --

11 THE COURT: I sure do.

12 MR. SMITH: I understand what you're saying --

13 MR. PARRY: Okay.

14 MR. SMITH: -- your Honor. I wanted also to ask you
15 because, previously, you said you would hear these matters on
16 shortened time. Is that still the order of the Court that
17 you'll --

18 THE COURT: Right.

19 MR. PARRY: Now, the order that Mr. Moore and I
20 talked about had a ten-day provision. In other words, we give
21 a ten-day notice, then they file their response three days --

22 THE COURT: That's a procedure --

23 MR. PARRY: -- before the hearing.

24 THE COURT: -- within this case.

25 MR. PARRY: Yes.

1 THE COURT: So as far as I'm concerned, the 30-days'
2 notice has been given.

3 MR. PARRY: Right.

4 THE COURT: The procedure in this case is you may ask
5 for an emergency hearing on ten-days' notice.

6 MR. PARRY: Right. And then they have to respond
7 three days before the hearing, and the Court will setting the
8 hearing. I get it.

9 THE COURT: Right.

10 MR. PARRY: Okay.

11 THE COURT: Further questions.

12 MR. HERRING: Two issues. First, Judge Riegle's
13 order did require an escrow of the funds. I understand your
14 order says that they can't --

15 THE COURT: I think counsel agreed.

16 (Colloquy not on the record.)

17 THE COURT: Does the pending order --

18 MR. HERRING: (Indiscernible) make sure it does.

19 THE COURT: -- fold in that provision?

20 MR. MOORE: Yes, it does. I mean, to the extent
21 we're holding moneys now, we will not disburse any of that
22 money --

23 THE COURT: Right.

24 MR. MOORE: -- until this Court --

25 THE COURT: If you have disagreement --

1 MR. MOORE: -- enters an order.

2 THE COURT: -- on the segregation-of-funds provision,
3 make sure you pass it by and agree or tell me what the dispute
4 is.

5 MR. HERRING: And it's not just funds they're holding
6 now. But if loans resolve during this period, those will also
7 be held --

8 MR. MOORE: If --

9 MR. HERRING: -- in escrow.

10 (Colloquy not on the record.)

11 MR. MOORE: If we receive payment in full, we will
12 disburse that out. Payment in full meaning --

13 MR. HERRING: Sure.

14 MR. MOORE: -- everything is paid.

15 MR. HERRING: Sure.

16 MR. MOORE: If it is less than that, it requires
17 100-percent consent. And as far as that consent, we will
18 arrive not only at the conclusion as to the discounted payout,
19 but how it will be distributed, so the parties will -- we will
20 never hold funds without knowing how to distribute them.

21 THE COURT: Right.

22 MR. HERRING: Okay.

23 THE COURT: Or, for example, if you can't agree, but
24 you all agree we need to take this payoff --

25 MR. MOORE: Right.

1 THE COURT: -- even though it's at 80 percent, we
2 just can't agree who gets it --

3 (Colloquy not on the record.)

4 THE COURT: -- you may, of course, agree with
5 100-percent consent that you'll segregate --

6 MR. MOORE: Sure.

7 THE COURT: -- the funds.

8 MR. MOORE: Sure. Sure.

9 THE COURT: So you have authority to do that as long
10 as 100 percent say you have the right to take the 80 percent --

11 MR. MOORE: That would absolutely be acceptable.

12 THE COURT: -- but we want you to segregate.

13 MS. DAKIN-GRIMM: Right.

14 MR. MOORE: Right.

15 MR. SMITH: The previous ruling of the Court,
16 your Honor, regarding the pari passu default interest, it
17 appears to me that that now changes in light of the fact that
18 Compass has really a contractual interest, not an interest
19 coupled with a property right, but are we just --

20 THE COURT: I've clarified --

21 MR. SMITH: -- going to leave that for another day?

22 THE COURT: -- my legal ruling on that.

23 MR. SMITH: You what?

24 (Colloquy not on the record.)

25 THE COURT: I clarified my legal ruling on that.

1 MR. MOORE: Yeah. I --

2 MR. SMITH: Okay.

3 MR. MOORE: I think where we are on that one we have
4 an offer of evidence. Some of your rights we do believe are
5 ownership rights that would be pari passu. Some may be
6 contract rights under the Court's ruling.

7 I don't think we need to deal with that at all in the
8 order because we will have an agreement as to disbursement
9 mechanisms or we will reserve subject to a Court order --

10 THE COURT: Right.

11 MR. MOORE: -- and we'll litigate.

12 THE COURT: Either for a further hearing or trial.

13 MR. HERRING: Finally, your Honor, this is my second
14 concern was -- and I don't know if we can address this issue or
15 not. I just throw it out there.

16 If we, indeed, terminate and hire a new loan servicer,
17 Silver Point Capital or people who are approaching us all the
18 time, there's still a concern about are we going to be sued or
19 brought into this lawsuit. Can we fashion any remedy in this
20 order --

21 THE COURT: Well, sure.

22 MR. HERRING: -- to address --

23 THE COURT: You've asked --

24 MR. HERRING: -- that issue?

25 THE COURT: You've asked for a declaration by this

1 Court that the rights are terminated, so I don't know what
2 other assurance to give them.

3 I can't assure them that they won't be sued, but you can
4 assure them predicate to your taking the rights as servicer
5 we'll give you a federal district court order that Compass'
6 rights have been terminated.

7 MR. MOORE: Yeah. I would do this as we will have an
8 option at that point. The order becomes final, and we're
9 terminated, and we can't sue them for something the Court's
10 ordered.

11 THE COURT: Right.

12 MR. MOORE: Or if we appeal it, presumably, we'll
13 have to bond or do something to protect the interests of
14 everyone involved.

15 MR. HERRING: Fair enough.

16 MR. MOORE: That will be our option.

17 THE COURT: Okay.

18 MR. HERRING: Fair enough.

19 THE COURT: This is a preliminary injunction and a
20 revision to a previously -- as far as I'm concerned, we have a
21 preliminary injunction, and this is part of the findings here
22 on the record, and we also have an order for contempt and a
23 remedy, an interim remedy, and the findings are here on the
24 record.

25 We do need an order, of course. I'll need a simple order

1 reciting the findings here in the court. I'm not asking for a
2 separate specification in writing of the findings, but I need a
3 simple order, please, within the next ten days embodying the
4 ruling --

5 (Colloquy not on the record.)

6 THE COURT: -- and the remedy and incorporating or
7 folding in the findings of the Court, so we need two orders.

8 We need the pending order on the preliminary injunction as
9 revised, and we need the order the result of today's hearing,
10 the contempt issue.

11 MR. MOORE: And --

12 (Colloquy not on the record.)

13 MR. MOORE: And, your Honor, the only question I'd
14 ask -- and I don't know if those in the courtroom can help us,
15 but --

16 THE COURT: Yeah.

17 MR. MOORE: -- we will need a transcript --

18 THE COURT: Right.

19 MR. MOORE: -- from today, and that's the only
20 timing --

21 THE COURT: You'll --

22 MR. MOORE: -- factor.

23 THE COURT: You'll give her your card and order the
24 transcript.

25 MR. MOORE: And I don't know if we want to have a

1 holding time or date for a follow-up hearing in ten days or
2 not, but it might be worth having something at least on the
3 calendar.

4 THE COURT: And solicit it jointly from --

5 MR. MOORE: Yes.

6 THE COURT: -- the calendar clerk.

7 MR. MOORE: We'll do.

8 MR. HERRING: Yeah. Is there any way we could just
9 get this -- really, we just need the last 45 minutes
10 transcribed --

11 THE COURT: Right.

12 MR. HERRING: -- for our purposes.

13 THE COURT: I'll order that you can either obtain an
14 expedited transcript of the last portion or you can obtain a
15 CD.

16 (Colloquy not on the record.)

17 THE COURT: Now, that doesn't authorize you to make
18 an official transcript from the CD. You understand that.

19 MS. DAKIN-GRIMM: Yes.

20 THE COURT: The --

21 MR. MOORE: Yeah.

22 THE COURT: The official transcript can only be
23 produced from the official transcription service, but you can
24 ask for and obtain a CD to use in drafting the order.

25 MR. HERRING: We understand, your Honor.

1 THE COURT: Okay. Thank you --

2 MS. DAKIN-GRIMM: Thank you --

3 THE COURT: -- very much.

4 MS. DAKIN-GRIMM: -- your Honor.

5 MR. MOORE: Thank you, your Honor.

6 THE CLERK: All rise.

7 (Court concluded at 04:29:37 p.m.)

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1 I certify that the foregoing is a correct transcript from
2 the electronic sound recording of the proceedings in the
3 above-entitled matter.

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/s/ Michele Phelps
Michele Phelps, Transcriptionist

10/08/07
Date