

**In the United States District Court  
for the Southern District of Texas  
Houston Division**

**THOMAS L. TAYLOR, III, etc..** )  
**et al.** )  
 )  
**Plaintiffs** )  
 )  
**v.** )  
 )  
**DANIEL S. FRISHBERG, et al.** )  
 )  
**Defendants** )  
 )

**Civil Action No. 4:12-cv-01491**

**Defendants Daniel Frishberg and Elisea Frishberg’s response to Receiver’s motion to be relieved of mediation or, alternatively, to extend the deadline for mediation.**

**Comes now Aaron David Frishberg, counsel for Daniel Frishberg and Elisea Frishberg, filing a response to the Receiver’s motion. The Receiver has correctly represented that Defendants Daniel Frishberg and Elisea Frishberg have consented to the relief of extending the deadline for mediation.**

**The Receiver has also stated correctly that on behalf of Daniel Frishberg and Elisea Frishberg, I oppose at this time the motion to be relieved of the obligation to mediate. I write to inform the Court of the reasoning which leads me to oppose the relief at this time from the obligation to mediate.**

**As this Court is aware, opposition to the Receiver’s motion is due on November 15, 2013.**

**The Receiver’s counsel correctly states that in all the negotiation that has occurred to date the Receiver and his counsel have clung to the notion that they can**

prove that Daniel Frishberg was responsible personally for the failure to supervise Albert Fase Kaleta's actions, since Kaleta, in addition to being the principal of Kaleta Capital Management, was an employee of the investment advisory firm known at one time as "Frishberg, Jordan and Stewart" and at the time of many of the acts in the complaint, as "Frishberg, Jordan, and Kaleta." The Receiver has consistently referred to the entity as Daniel Frishberg Financial Services.

I advised the Receiver's counsel that, since the Receiver and his counsel had not seen my response to the Receiver's motion for summary judgment, the Receiver had no way of assessing the evidence and arguments which I would be advancing in support of the contention that Albert Fase Kaleta was engaged in a deliberate course of covering up the acts which he was engaging in through his own independent company, including the solicitation of Frishberg, Jordan and Kaleta clients to withdraw their money from investment with Frishberg, Jordan and Kaleta, and to invest the money instead with Kaleta Capital Management "KCM."

The Receiver's arguments that Daniel Frishberg, as chief executive officer had an obligation to be aware of Albert Kaleta's actions on behalf of Kaleta Capital Management, and is personally liable to the investors who placed their money with KCM, would be sufficient in a strict liability case. Since the Receiver has not been exposed to the evidence or arguments which undermine his position, he has attempted to negotiate on the basis that he is certain to win at trial on at least a negligence theory, and that therefore, a seven-figure publicly disclosed settlement is the only basis for negotiation.

I have submitted to the Receiver, and now respectfully submit to this Court,

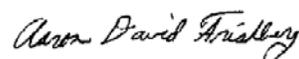
that until the Receiver has seen the evidence and arguments which undercut his certainty that he can prove Daniel Frishberg's negligence, he is not in a position to rationally determine whether the interests of the Receivership entities are served by adhering to the demand he has inflexibly made.

I also suggested to the Receiver that if it appeared after the Receiver had seen my opposition papers that the parties were still too far apart to benefit from mediation, without expending the resources of the parties in fruitless mediation, we could, at that time, apply to the Court for relief from mediation.

I therefore submit to the Court that while an extension of the deadline for mediation is entirely appropriate, a determination that mediation would simply be a waste of resources is premature.

Respectfully submitted,

/s/



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I, Aaron David Frishberg, declare under penalties of perjury pursuant to federal law that a true copy of this filing is being served electronically via ecf upon all counsel and parties who are on the Court's ecf list for service in this matter.

*Aaron David Frishberg*

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