Aaron David Frishberg declares under penalties of perjury pursuant to federal law as follows;

1. I am the attorney for Daniel Frishberg and Elisea Frishberg.
2. I have personal knowledge of the facts set forth herein, one of which is that Daniel Frishberg has always celebrated his birthday based on having been born on August 14, 1945, a fact which bears on the point made in the brief for Defendant Daniel Frishberg that he was approaching or at retirement age when he agreed to give up his license as a Registered Investment Advisor, and pay a fine of sixty-five thousand dollars, less than he would have had to spent in litigation with the SEC to contest the issues which he agreed to settle without admitting liability. In contrast, the Receiver's most important witnesses, Albert Fase Kaleta and Richard Wallace have each entered into settlements with the SEC obligating them personally for millions of dollars.
3. Filed herewith is a list of documents, which with the exception of documents numbered 5 and 7, are being produced as Exhibits as part of Defendants Daniel Frishberg and Elisea Frishberg's opposition to the Receiver's motion for summary judgment.
4. I first noticed the Receiver's deposition for the date in October, 2012 which fell on Columbus Day. After being informed by Peter Stanton, who was representing defendants Barrington Financial Services and William Heath, that he could not make it on that date, I sought and received assurances by e-mail from Gene Besen, who had recently appeared as co-counsel with Andrew Goforth for the Reciever, that my defense of Elisea Frishberg at her deposition could be arranged so that I could

accomplish this and my intended deposition of the Receiver with a single trip to Houston. I did not learn from him at that time that there was any objection to producing the Receiver.

5. Following an unsuccessful motion filed to dismiss the claim for failure to meet the US Supreme Court's test of a "plausable" pleading, I promulgated document requests.
6. I qualified each request for documents allegedly proving claims against my client with the phrase "which the Receiver contends" meaning to make clear that I was not admitting that the documents to be produced would have the probative value attached to them by the Receiver. Nonetheless, the documents requested were described using the language of the Receiver's allegations.
7. Following my filing a motion with respect to the Receiver's failure to provide meaningful initial disclosures, the Court correctly criticized me for my failure to follow Local Rules and the Court's individual practices in seeking adequately to confer with opposing counsel, and to raise the discovery issue, if necessary, in a letter, not a motion.
8. In the course of the colloquy at the telephone conference for me, and in person conference for co-counsel, I referred to my document requests as asking for what the Receiver contended were probative documents.
9. The Court informed me sharply that it was too early for "contention" discovery.
10. Taking advantage of the Court's comments about document requests it had not seen, opposing counsel objected to production of any document, stating, in addition to the boilerplate objections that they were not limited in time, and were

unduly burdensome, that they prematurely sought the contentions of the Receiver, even though it was plain from a fair reading of the documents that I had sought specific documents, not the Receiver's contentions.

11. I then re-promulgated the identical requests, this time limiting the time frame to the period in the complaint, and eliminating the phrase "which the Receiver contends".

12. In essence, the response was that the Receiver had no evidence which he had examined, but only two large boxes of papers which were unsorted and unexamined in a warehouse, and that it would be unduly burdensome for the Receiver to examine the evidence which might or might not support his case.

13. I meanwhile began to discuss with Gene Besen the possibility of reaching a settlement. At his suggestion, we suspended discovery pending the outcome of a settlement negotiation, and, I believe, requested an extension from the Court to do so.

14. After it had become apparent that no settlement was forthcoming, since the Receiver wanted nothing less than a judgment in an amount which Daniel Frishberg could never expect to settle, and the right to file it publicly, rather than under seal, ostensibly so that he could keep an eye out for Daniel Frishberg's non-existent assets and attachable income, we resumed discussion of discovery.

15. Among other issues, I raised the desire to have the Receiver's testimony.

16. I did not press that issue as long as there was a glimmer of hope for a settlement, sensing that this would be a personal sore point for Thomas Taylor III which might obstruct settlement discussions.

17. The last discussions I had with Gene Besen on this subject included his request that I explain why I wanted the Receiver's deposition, so that he could attempt to convince his client.

18. When I related to him that I had been informed that the Receiver was responsible for blocking a deal which could have rescued the Receivership entities which had belonged to Daniel Frishberg and his partners from failing, he got back to me with the assertion that the Receiver had been unwilling to allow the continuation of the fraud. This begged the question of how the Receiver convinced himself that the offers were not in good faith and bona fide, which bore directly on the allegations made in conclusory fashion in the Complaint.

19. When I saw absolutely no discovery from the Receiver, I came to believe that there was not likely to be a dispositive motion.

20. Meanwhile, about a month before I had a scheduled trip out of continental United States for a lawyers' conference, I received, in response to other long-outstanding discovery requests, two flash drives, together with a letter from Andrew Goforth which stated that the Receiver had decided that the resources of the estate were best preserved by not going to conference and seeking judicial intervention concerning this requested production. This was in response to a request for records of Daniel Frishberg Financial Services which had been seized, along with the computers they were on, by the Receiver.

21. The volume of material contained in numerous programs on these flash drives required two full days of work of my computer administrator to open the various programs and copy them onto a hard drive so that a second copy could be made

for my clients.

22. I also was compelled to subpoena from the SEC the testimony of Albert Kaleta, since I was unable to procure it from the Receiver.

23. Although I did not record or memorialize my initial conversation with Gene Besen, it was my impression that he had told me that the deposition was not in the possession of the Receiver, and in any case, that it had only been taken to determine the whereabouts of Al Kaleta's possible assets..

24. In response to my subpoena, the SEC objected on the ground that the deposition, which had been taken at the behest of the Receiver, could be obtained from him.

25. Upon my seeking clarification from Gene Besen, he did produce the deposition, and it became apparent that I could not trust his characterization of documents to have no interest to me, since there was a great deal in the deposition of Al Kaleta which was not about his assets but about the history of the matters that are the subject of this suit.

26. While seeking an opportunity to review the masses of materials which had been produced by the Receiver, and to see how they bore on my need to take his deposition, I allowed the extended deadline for discovery to expire. However, I viewed an outstanding request which had not been complied with for a year as ample ground to pursue compliance outside the discovery period.

27. On the precise last day to do so, I received service of the motion for summary judgment, literally within a fes days of my planned trip. I sought a two week extension of my time to respond from Mr. Goforth, and was initially told that the

Receiver wanted to discuss settlement before he would consent to it.

28. I responded, explaining my view of the likely futlity of settlement, and stating that if I had to work on the summary judgment motion during my trip, so be it.

29. I then received a response from the Receiver personally, granting consent not for the two week extension which would have allowed me precisely the same number of work days upon my return from eleven days on the road and three days of being host to another person who was attending the same conference before returning to San Diego. Instead, the Receiver consented to a ten day extension, depriving me of the weekend to complete my brief. I took what I could get and applied to the Court for the extension on consent, noting in my letter that it was without prejudice to raising the issue of discovery pursuant to Rule 56 (d).

30. The reasons for my belief that the Receiver never had a right to refuse to be deposed, and that he possesses material information, are set out in the body of the brief. The within explanation of the timing of my raising of the issue of the need for additional discovery is set forth above.

Respectfully submitted,

Aaron David Frishberg

/s/

Aaron Davif Frishberg