Daniel Frishberg declares under penalties of perjury pursuant to Federal law that the facts set forth in this statement are true, and that the exhibits referred to are true and complete copies.

The following is a Timeline of Frishberg, Jordan and Stewart ("FJS" the company referred to by the Receiver as Daniel Frishberg Financial Services, Inc. which is the name under which it was incorporated, but not the name known to the investor customers and the general public).

FJS - ASSETS UNDER MANAGEMENT/FEES FOR FJS

1. 1999 -2000- 1 office in San Antonio.

AUM (Assets under management) grew from 30 million - 50 million; Annual fees earned were $600,000 approximately. The business expenses were financed internally.

2. 2001 – Began operating also in Houston.

AUM of approximately $80 million with fees approximately $1,000,000 annually. Growth of the company was steady and was financed via a credit line maintained through the Jordan family trust and repaid each quarter. Later, the financing was augmented by a bank credit line guaranteed by Kaleta, which for his own reasons discussed below, he structured through Kaleta Capital Management, ("KCM.)

(The receiver implies that there was something wrong with this loan source, for reasons which he does not explain.

3. 2005 – Operating in San Antonio and Houston

AUM had risen to approximately $120 million, with fees of approximately $1.5 million annually.

4. 2006-2008 –now operating in San Antonio, Houston and Dallas

AUM reached approximately $150 million with fees approximately $2.2 million per year.

Jordan, as compliance officer, suggested that Kaleta was using client money to provide financing to the company. See below.

5. 2009 – Operating in San Antonio, Houston, Dallas and had taken on new affiliates in Austin and Denver

AUM were approximately $200 million, with fees approaching $3 million per year.

6. 2009 –

I disclosed to the public in FJS public SEC filing, the fact that Kaleta, now a licensed member of the firm, FJS, was and had been operating a separate company KCM.

7. Late 2009 –

I had been informed by the SEC that based on my disclosures in my form ADV filing, they had decided to look more closely at KCM. I wasn't overly concerned about this, until the SEC informed me that it had found what it considered to be wrong-doing, that there were at least hundreds of thousands and possibly millions of dollars missing, and that the firm, now known as Frishberg, Jordan, and Kaleta, (" FJK") was in debt to KCM for over $1 million.

8. Q4 of 2009 –

The SEC found that Kaleta loaned money improperly to FJK, and demanded repayment or relief defendant status would be imposed by the Commission. Also in this quarter, Fidelity, FJK custodian, notified the company that is would refuse to allow FJK to exercise its trading authority in its client accounts, since FJK was named a relief defendant. This would leave the company without the ability to provide services to the clients. For this quarter and into 2010, finding another custodian became the top priority of the firm, while continuing the attempt to convince the Receiver to allow the swap of KCM notes for stock.

9. H1- 2010 –

During this period, I continued to search for a firm to provide services to our clients. This became the first priority of the firm. Since it was becoming likely that a new custodian would not be found to allow the firm to fulfill its responsibilities, I began to try to arrange a suitable place for the accounts to receive services. Barrington Financial became a leading candidate, since it had a custodian already.

10. 2011 – I settled with the SEC, agree to give up license, fined $65,000

Detailed Narrative

Period 1 - the firm was profitable and self-contained, but used most available internal capital to finance expansion

Period 2 – Period 3 –

To open and maintain its necessary infrastructure, to provide proper accounting and services to its growing client list, FJS firm tapped credit lines with owners serving as guarantors. These included the Jordan family trust, and a bank credit line arranged by Kaleta.

(Claim - The Receiver asserts FJS needed hundreds of thousands of dollars a year to survive)

The company did not need hundreds of thousands of dollars a year to survive. When the company had between $80 and $100 million under management, in the period between 2000 and 2005, financing was tight, and a credit line was required in order to allow the company to expand its business, which it did steadily and successfully. Financing each quarter was accomplished by a credit line with the family trust of stakeholder Jordan, and the bank credit line guaranteed by stakeholder Kaleta. In his deposition Kaleta states that he chose to route the loan through his privately held company KCM, because he felt that gave him more control. FJS had no reason to care whether Kaleta was personal guarantor or he used his wholly owned LLC, which he used interchangeably with himself.

(Claim - The receiver suggests that KCM was an alter ego of me personally, or a shell game, implying that that company was interchangeable with FJS and or me personally.)

In fact, KCM was an alter ego of Kaleta, and he used it interchangeably with his own private business. At no time was the company used interchangeably with FJS, nor did FJS or any other member receive a share of KCM profits. The company, KCM was a totally owned and controlled entity of Kaleta. In his deposition he states:

1. That KCM was a company he owned before his association with me or FJS.
2. That for tax purposes he received his personal income in that entity.
3. He alone chose to use KCM for the bank credit line because he felt that gave him control.
4. He lists the address of KCM always at a Fort Bend County address – his residence – and never at the offices of FJS.
5. In his deposition he is clear that he kept all records at his home, not in the offices of FJS, even though there were clerical people at FJS offices to keep record straight, and it was the policy of FJS not to allow any files to be taken off-site for safety and confidentiality reasons.

I specifically and unequivocally state that I had no connection to the management or operation of KCM and that it was not an alter ego of me or of my company.

(The Receiver confuses the story by equating those early times when FJS had a smaller amount under management and was earning fees that ran between $1 and $1.4 million per year, with later times when the firm was self-sufficient. (See exhibits 10 and 11)

Even in its early stages, the company did not borrow hundreds of thousands of dollars a year. The company had a revolving credit line which it repaid promptly every quarter. It continued to borrow the same credit line every three months, and the amount was never cumulative. The company did not require this capital to survive, as it was always profitable, but invested to expand in order to reach critical mass, which it did later.

During this period the compliance officer was Richard Jordan, who also worked with Kaleta to manage the day to day operations of both FJS and after late 2005, Biz radio.

Period 3 and Period 4

When he stopped guaranteeing the bank credit line, Kaleta said he could provide financing through his own company, which was making business loans already. That offer was accepted and KCM began to provide that credit line. As the company grew, and was approaching $150 million under management, the fees were approximately $2.25million per year, which was enough to cover all expenses and earn a substantial profit. As the company was growing, it had the choice to either pay down the credit line – which was not hundreds of thousands of dollars per year, but was the same money borrowed and repaid each quarter – or continue to expand. The company did a combination of the two.

Although the receiver makes it seem as though there was one uniform condition that continued throughout, there were actually three periods. First, the company financed its own modest growth internally. Next, as the company began to grow and needed to add plant, equipment and personnel, the company used a credit line, repaid each quarter. Finally, the company grew to roughly $200 million under management, and was also earning planning fees as well. The company was capable and celebrated the decision to pay down the credit line, and to grow through strategic alliances which did not require additional investment or borrowing. This money was quite adequate to run the company, finance its own growth internally, and it did not need to borrow any money to survive.

Voss road home:

During this time, I had the opportunity to acquire the house I was renting in a relatively distressed sale. I planned to move within the next couple of years, but the offer seemed attractive as an investment. I was personally deferring bonuses from my job in order to use the cash flow to grow Biz Radio, and I approached Al Kaleta as a friend and partner to ask him if he wanted to be part of that real estate deal. In his testimony, Kaleta refers to this as a loan, but that was not the nature of the deal. It was a personal deal between partners, and that accounts for the fact that there was no second lien or anything of the kind put on the property. My job was to take care of all of the additional money for the purchase, and Kaleta's job was to make the down payment.

Within about 18 months, as expected, I had the opportunity to sell the house at a substantial profit. I did so and informed Kaleta. He said, "It isn't going to do me any good right now, hold on to the money." Later, I received a bill from the receiver for about $114,000, which was near the amount of money that Kaleta had coming on that real estate deal, and which I paid to the Receiver. This was not a deal with a company, but a friend and partner, however, I chose not to fight the Receiver on this issue. As discussed above, Kaleta used KCM as interchangeable with himself, in arrangements with me and with FJS/FJK.

Period 4 - Jordan reports Kaleta may be funding the credit line to the company via client money.

(The Receiver claims that I Knew KCM was lending client money to FJS.)

I did not know that Kaleta or KCM were lending client money to the company.

There was nothing inherently wrong with FJS borrowing money from a company that was owned by one of its owners. At one point, however, the compliance officer, Jordan, informed me that he was concerned that Kaleta was lending the company money obtained from clients.

I immediately questioned Kaleta about this. Kaleta assured me that he was not lending the company money obtained from clients, and that he had millions of dollars of money in KCM that were not client money. Kaleta informed me in this questioning, that the money assets of KCM, were held in his KCM bank account. I instructed him to immediately create a new account, so that he could keep client money in one account and non-client money in the other account. The purpose of this was to make sure that money did not get commingled and that there could be no confusion on this issue. He informed the compliance officer about this.

Soon after that, Kaleta showed me that he had made that change, and showed me the two separate accounts. At that time there was over $2 million in the non-client account.

(The Receiver claims that I was negligent in that I was warned about Kaleta dishonesty.)

Kaleta was a decorated war hero, who performed heroically in the Vietnam War, and attained the grade of Full Colonel. In addition to his record of meritorious service to the country, Kaleta actually served as a senior aide to Generals McCaffrey and Abrams, who were in charge of running the Vietnam War. He was promoted to that rank by the generals for his competence and heroism. If the generals trusted him to assist them in command, I also believed it was a prudent choice to do so.

However, there was a good deal of disharmony and distrust among the top executives in Houston, including Kaleta, and those who operated from San Antonio, including Jordan. These high-ranking employees were consistently complaining about each other. Kaleta who worked 10 hour days, was continually disturbed by the fact that Jordan was well paid, but consistently left his office by three or 4 PM. Jordan was aware of these concerns and was resentful of them. There were also some employee complaints about treatment by Jordan. At the same time, Jordan clearly did not like either Kaleta or the sales manager of Biz radio, Warkenthein. He consistently accused both of dishonesty. While I was ill, Jordan was successful in firing Warkenthein, much to the detriment of the company, because advertising sales plummeted and never recovered. He was less successful in being able to displace Kaleta.

I was aware of the jealousy between those executives, and knew they were often complaining about each other. I believed both were important to the company, but when Jordan made a complaint involving compliance I always followed up. On several occasions, I asked Kaleta to explain how he was explaining some of FJS investment decisions to clients, in response to concerns voiced by the compliance officer. When Kaleta's answer seemed to be less than adequate, I retrained Kaleta offering specific verbiage that would be more accurate for these explanations.

Though I checked frequently, I was not able to find any evidence of dishonesty by Kaleta at that time.

(The Receiver Claims that I was negligent in allowing Kaleta to engage in what later turned out to be alleged fraudulent activity in his own firm.)

The receiver apparently relies on Kaleta, even when Kaleta is under tremendous financial pressure to say whatever the receiver wants. He trusts Kaleta so much, in fact, that he makes no effort to even open the boxes full of voluminous records which he seized from FJS and Biz radio, instead relying on Kaleta for his facts and beliefs. At the same time, he suggests that I, and apparently Generals Abrams and McCaffrey and the U.S. Army were negligent to place trust in Kaleta to perform these duties responsibly, and to provide honest and reliable information.

Moreover, Kaleta has proven his willingness to obfuscate facts and tell outright lies when he believes they will further his position. Indeed, a major part of the claims that the Receiver now seeks summary judgment against me on is the failure to discover Kaleta's misrepresentations earlier. In the complaint, the Receiver also asserts, without evidence, that I knew what Kaleta was telling Frishberg, Jordan and Kaleta customers about KCM, but the Receiver has not sought to base summary judgment on that claim, only on the claims that I was negligent and breached a fiduciary duty to customers by not watching over Kaleta more carefully. The Receiver's reliance on a known liar to give honest testimony, to prove that I was negligent by not catching him in other lies leaves an open door for jurors to believe that Kaleta's version of the facts is self-serving, and to dis-believe it.

(The receiver claims I considered Biz radio a loss leader, and that FJK borrowed money from BIzradio.)

It is very misleading for Tom Taylor III to say in his pleading that FJK borrowed money from Bizradio. The two companies, because of ERISA benefit rules, and because of shared space, storage, and expenses, etc. had a close relationship, in which they separated the common bills, paid them, and then the bookkeepers from each company would get together and reconcile. This was a system put into place by Kaleta and Jordan when Bizradio was formed, and it started with the need to have common health insurance and payroll administration by an outside employee benefits vendor, Administaff. In 2005, I was active in the design of the relationship and operations of the new company, BIzradio. Adminstaff, in a meeting with me and the operations managers, Jordan and Kaleta, pointed out that aggregating payroll and benefits would create economies of scale for both companies, and there was an ERISA requirement of maintaining the same benefits anyway.

Later that system was modified, but by that time, my duties had expanded, and I was not involved in the day to day accounting, payroll or operations.

The Receiver states that I always considered Bizradio a "Loss leader" –

I state unequivocally that Biz radio was not operated as a "loss leader."

This phrase came from disgruntled, fired radio producer Peggy Tuck, who distorted what I said to her. FJS, as described above, was paying $15,000 a month for its programming time starting in year three or 2007. Prior to that, my presence there was for the benefit of Biz radio, since I had the audience already, from my time on CBS radio and my work on TV. Biz radio did not have anything to offer but a future. However, in year three, the company had added listeners to the point where it did have a respectable audience, and it was proper for FJS to begin to produce and pay for its own programming. Of course, that paid programming was designed to be an indirect marketing tool for FJS.

I told my producer, that the radio show, "the moneyman report," was a loss leader to attract clients. It was necessary to tell her that, because the program was never overtly sales oriented, but was for information purposes. That guidance was to help her select strategic guests. It was totally proper for FJS, just like the other customers of Biz radio, to use its exposure to attract potential clients. Radio and TV are advertising media and exist for that purpose alone.

Period 4-5

All owners got together in a meeting to discuss the future of the company, when FJS reached the milestone of over $150 million under management. A new strategy was developed to stop opening new offices which required investment in plant, equipment and personnel, and to grow through partnerships with established advisors in other cities who had already expressed the desire to partner with our company, since we were proficient at attracting business, via effective marketing and media strategies.

Here, this dovetailed with my strategy for the growth of Biz radio. Biz radio needed critical mass in order to be profitable, and the company decided to syndicate its programs. This would allow the company to charge additional fees to existing programmers for placing their programs in other markets, and would also provide additional revenue directly to Biz radio for placing its own internal programs. I designed this strategy to allow both Biz radio and FJS to continue growing without the need for additional capital investment, and to leverage the intellectual property that had already been developed. This intellectual property, such as programming, was another asset, similar to equity ownership in other companies, which the receiver fails to count when he discusses the profitability of Biz radio.

In fact, in the last three years, I had no idea that the company, FJS, was borrowing any money, because it had no need to do so, and because that fact was purposely hidden by Kaleta, who it now appears was allegedly using his position to generate fees for himself.

In fact, there was a company party held in honor of the firm reaching $150 million under management. During the toast I specifically mentioned, and it was toasted by the other owners, that finally outside financing was not required. This was considered a landmark to be celebrated.

My job at that time was to manage the stocks and bonds of the $200 million of assets under management, to travel to Chicago and New York every week to appear on television on behalf of the company, and to compose, write and perform a two-hour daily radio show. I did not see clients or perform any sales at that time, and was not involved in the day to day personnel and accounting functions. During 2008 and 2009, I was very ill with a digestive infection, lost approximately 30 pounds, and was having trouble getting around to do even my most important functions. I had a gall bladder removal, but the condition persisted and it was beginning to appear that I had cancer, though the Doctors were not finding anything wrong. My weight loss and weakness persisted. The day-to-day operations were managed by Kaleta, and David Wallace agreed to serve as temporary CEO.

Exhibit L shows a large number of KCM notes to his creditors, which showed KCM as the maker, all signed by Kaleta, and showing his home address as the address of KCM. There is no sign of any participation by me. The notes were signed by Kaleta, using a signature stamp, which demonstrates that that was a method that Kaleta used to sign the notes. This is relevant because, in the notes that the receiver claims were signed by me, and show that I was a willing participant in borrowing money, my signature is made through a stamp also.

see frishberg exhibit 13 which is also Receiver Exhibit M.

I state unequivocally that

1. I did not know that these notes were being made,
2. that I did not sign them, and
3. that I did not authorize anyone to create a stamp of my signature.

During that time, Kaleta began, while he was in charge of day-to-day operations, to make unnecessary and frivolous purchases, such as granite countertops and other built-ins in a leased space that the company did not own and was planning to move out of.

When questioned about these purchases, Kaleta told me he had acquired them for “almost nothing.” He told me my new desk had been purchased damaged, and that he had had it repaired for almost nothing, and that his expensive new desk was bought by him and lent to the firm. These are among the assets he later charged the company for as he paid himself, hiding this from me. The checks he paid to himself were signed by Kaleta himself.

He was also questioned about artwork that appeared on the walls, apparently originals. When questioned about those, he told me that they actually belonged to him, and that he was lending them to the company. The statements were untrue, and later, without telling me, Kaleta invoiced the company for these expensive and profligate purchases, and paid himself. He also paid the senior employees approximately double what they were worth.

I had no idea that this was happening.

<u>EXHORBITANT expenses and salaries referred to in my deposition:</u> From my deposition, I am quoted as referring to unnecessarily high salaries for employees, and exorbitant and unnecessary expenditures that accounted for the debt. This is again knowingly confusing different time periods. During the time that FJS was growing from $0 assets under management to approximately $2 million under management, the company was managed carefully and frugally.

The receiver claims that "there was a pattern that existed over many years of profligate spending," and presents my testimony in the deposition as evidence of this. This is exactly the opposite of what I was saying in his deposition. After years of frugal management, only in period 4 and 5, Kaleta had the opportunity to run the day-to-day operations of the company due to my health problems and the fact that I was traveling and occupied with the work of increasing the revenues and value of Biz radio. He was, at that time, supervised only by Wallace, who was serving as temporary CEO while I tried to solve my health problems and continued with the duties only I could perform, such as TV and radio appearances and stock and bond management. Wallace's lack of knowledge of the system gave Kaleta leeway. My testimony referred to this later period, when the financials of the company show that no borrowing was necessary and when the company had already adopted a clear policy of expanding the company through means other than investment in infrastructure. **<u>(see my exhibits 10 and 11)</u>**

My pay was based on the sales, and my contract was not increased as the pay of the other senior people were increased. Between overpaying the employees far more than was necessary, because they all would have agreed to much lower compensation, and the unnecessary purchase of built-in furniture and other such items, Kaleta ran up a big bill to himself, which was my point in the deposition.

<u>It was unknown to me, but he was charging the company 14% per year for these loans, and taking a 3% spread for himself. This apparently provided him an incentive to trump up and build up these loans. Again to emphasize, there was no need for this money to allow FJS to exist, or to operate comfortably. I myself received approximately 15% of sales, as per my contract with the company, and there was plenty of money to run the company. I had no way to know that Kaleta was running up a big bill to himself and receiving these large fees for doing so. No one in FJS shared in any of the profits earned by KCM at any time, even though</u>

my contract with the company provided for me to receive 20% of all gross fees generated through my marketing efforts. The number was adjusted and actually came to around 15% because some fees were excluded, for various reasons.

The Wallace Bajali Real Estate Partnership (WB) which some of FJS accredited clients invested in, was approved for investment by me. Not only was it approved for conventional investing, but also it was approved by Fidelity as an investment for retirement plans administered by Fidelity. I did not use my discretion for this, because it was not liquid. Instead, I instructed our client Representatives to allow the clients to read the documents, obtain whatever assistance they wanted from their own legal advisors, and decide for themselves if they felt it was appropriate for them. However, beginning in late 2007, and into 2008, the economy was slowing and financing became difficult. Also the real estate development and renting was going more slowly than anticipated, because of the slowing economy. At one point WB became an investor in Biz radio.

(The receiver implies that there is something wrong with WB investing in Biz radio.)

I made a presentation to WB just like to anyone else, on behalf of Biz radio. I presented the idea that the company, Biz radio, presents economics similar to a real estate project in which a building is acquired then rented. Once a project is rented, the value is calculated based on a multiple of the rental profit, which generally results in a higher value for the building, leading to eventually, a profitable sale.

My point in the presentation to Wallace was that acquiring a radio station which has no particular special value, and then populating it with unique intellectual property and generating substantial earnings would lead the radio station to be worth more money, analogous to the rental real estate. A common method valuing income producing assets is called “Capitalized Value Method” and involves calculating the amount of assets that would generate that income via Treasury Bond interest. Wallace invested in Biz radio on the basis of that idea.

In doing due diligence on the WB partnership, one of the factors that led me to approve it was not only its quality management and quality concept, but the fact that investment in any project was limited to 15% of capital providing important diversification and therefore additional safety above the safety of any particular asset.

Wallace presented the proposal to offer notes as interim financing for WB operations, until the company gained profitability by renting or disposing profitably of assets. I suggested that a reasonable interest rate for such financing would be 11%, and that I would expect that there would be strict limits on loan-to-value. They agreed on a maximum of 60% loan-to-value for an 11% note, and 70% loan-to-value for a 12% note. In the term sheet, (Exhibit 8) it was clearly stated that “Each Individual Investor in the Lender Pool shall share, on a pari pasu basis, in all collateral rights, including the rights in the Bank Account, of all Individual Investors.” These were also the terms presented to me by Wallace, when he proposed the loans to me in a meeting in my office.

Based on this term sheet, I did not use my discretion to allocate investor funds to these loans. Instead, I granted Wallace access to clients for meetings with them, which Wallace held in his office or in other places, but not in my office with me present. I was careful not to allow the clients to perceive this as something I was asking them to do. They were only to make their own decisions based on documentation. Clearly, I had the right to fund these notes using my discretion under my limited power of attorney, but chose not to do so, and instructed the account representatives to inform each client of this, instructing them to consider the terms, read the documents, obtain legal counsel if needed. That was never necessary when I made investments for them under my trading authority.

Later, a client asked to meet with me, and at that meeting, the client brought up the fact that he had a Wallace note and that it was not paying on time. When he showed the note to me, it was clear that the terms of Wallace’s termsheet had not been observed. Wallace had assigned the client’s money to a particular asset and wrote a promissory note agreement in which the client’s money was secured only by a single asset, in that case Biz radio. He had allowed his bookkeeper, not a principal, to capriciously assign any asset she wanted to any creditor. Upon following up with other clients, I found that Wallace had switched the terms on all of them, giving each of them security only collateralized by one asset, which Wallace and his bookkeeper chose, thereby allowing them to choose assets after the fact. It was also learned at that time that Wallace had not provided the paperwork for these notes to the client at the time of funding as is required in Texas. Instead he sent them the paperwork weeks later, after they had funded his loans. It was also noted that he had styled himself the agent, even though many of the loans were to his own entities.

Had the terms been presented as loans secured only by Biz radio assets or any one asset, I would not have allowed access to my clients and would have advised against the loan.

When I learned that Wallace had not observed the provisions of the term sheet, but had switched to some other terms, I contacted Wallace and also contacted all the clients involved in those notes to inform them of this switch. I met personally with Wallace to inform him that this would not stand, and encouraged him to change the terms of the notes to reflect the pools value of all WB partnership assets, as had been provided for in the meeting I had had with Wallace. (See term sheet exhibit 8.)

The Receiver claims that KCM and FJS can be considered as unified because Kaleta used FJS employees for his own personal use.

Kaleta was not authorized to use company employees for his personal work or his personal business. He maintained his office elsewhere, as documented in his KCM paperwork. He had his own accounting and his books were maintained at his office, not in FJS office. Later, when the company was being drawn into Kaleta's problems with the SEC and millions of dollars were turning up missing, I authorized Bizradio bookkeeper, Sykes to try to unravel KCM mistakes. It was appropriate at that time for Sykes to help because Kaleta's situation was beginning to present a problem for the company.

Richard Reilly, a client and supporter of Biz radio, and a top executive, contacted me to complain about the note being forced on his aged mother by Kaleta. (See Exhibit 15) The letter in the exhibit clearly demonstrates that Reilly knew that I did not know and had nothing to do with Kaleta loaning activities. Reilly worked with me on his newsletter, and his daughter was an employee in the office, so he understood how our company was structured. He specifically was happy for FJK to manage his mother's stocks and bonds, but claimed to have specifically told Kaleta not to get his mother involved with his financing activities. When I learned of this through the letter in the exhibit, I began to fear that Kaleta might have been having a nervous breakdown because it was impossible to see how he could have expected to get away with this. I also learned about other loans he had made, one to a person with a very small net worth, who had cancer. It had never been my impression that Kaleta was reckless. When I learned about these situations, I cut off all connection with Kaleta and KCM even though that would mean the end of Bizradio operations.

At that time, I brought my family together and informed them of what was happening. I told them that the company, Bizradio was cut off from its financing, and that it would not be possible to raise more money since the company was being soiled by its connection to Kaleta, whose problems had become very public.

I told my children that it would be a family decision, but that I felt the only thing we could do would be to keep Bizradio alive, while we did our best to conclude the sale to Salem Broadcasting of station assets, to allow the companies' plan to be put into effect. My children unanimously said "We expect you to do the best you know how, we'll be all right, will earn scholarships, and we have faith in you."

I began, in the absence of any source of financing, to pay the payroll, legal fees and other operating expenses out of my personal assets and did so until they were depleted.

(The Receiver claims the Fingold Affidavit proves I did something wrong.)

see Exhibit 3 Fingold .

In Fingold's Affidavit, he at no time suggests that he knew me or that I was involved in any meeting or contact he had at any time. I did not know him and was unaware of any transaction he was involved in.

Fingold states that he was solicited for contributions to KCM by Sonya Joao, a FJS employee. Joao was Kaleta's assistant in his service to FJS, not KCM, which he ran from another address, as he clearly states in his deposition and as is clear from the many exhibits of KCM documents, which list a Fort Bend county address as the office of KCM. Also KCM did not contribute to the pay of any FJS employee, or compensate FJS in any way for misappropriation of employee work-time. This was not an authorized activity by any member of the firm, KCM was not an approved investment, recommended by the firm, and I had no way to know Kaleta was having his staff make sales calls on his behalf, that FJS did not profit from.

Normal standards of corporate behavior make this clearly an improper activity by Kaleta, though clerical employees would not be expected to question instructions from their superiors.

In Fingold's Affidavit., he says he contacted FJS, because he was interested in investing in the alternate investments, in particular the Wallace Bajali Partnership. He places this time in late 2008 to early 2009, by saying he had been through the crash which occurred in September/October 2008. He was specifically seeking alternate investments, such as WB. I did due diligence on WB and its methods at that time, and their disclosure documents and presentation included specifics of their investments. It is therefore not possible that he knew about any of the investments by WB without being informed of its interest in BizRadio. (It makes sense for him to l tell the story differently here, since he is hoping to be repaid for his legitimate investments with proper disclosure by confusing them with KCM, which allegedly failed to make proper disclosures. This is more obfuscation by the receiver, trying to lump KCM without proper disclosures, with WB partnership with had a professionally prepared memorandum and frequently updated financials and disclosures about their projects.

Fingold claims he was routinely contacted by Joao to make loans to KCM, after he made his FJS approved investment in WB. (It is important to emphasize here another obfuscation by receiver. He tries to equate and confuse WB with KCM. WB had proper disclosures and was an approved investment, which was accounted for as an investment on FJS Client balance sheets and reports. KCM was not a part of the investments approved by FJS in its financial plans, and FJS had no information about it. .

If Fingold was solicited by a member of Kaleta's staff as senior employee of FJS, this is disturbing, but is not something I personally could have known about, when Kaleta was being careful to keep these activities invisible. It is not evidence of failure to exercise the proper level of care. A trusted employee can get greedy and for a time, hide his activities if he is willing the lie and cheat. **Eventually, because the system worked, he was caught. The fact that he temporarily got away with it for a time, means nothing. Until he did something wrong, there was nothing to catch.**

Kaleta had been an exemplary employee, who worked for the company 10 hours a day, for many years before he embarked on this path. Note that KCM was Kaleta's private business already operating when he joined FJS. Throughout the time, he made loans and leased airplanes and other activities and these activities did not seem to interfere with his duties.

(The Receiver asserts that FJS junior clerical employees being misappropriated by Kaleta proves KCM and FJS were one or should be considered as one.)

In my deposition, the point is made by Gene Besen that two of the FJS employees, Sonia Joao, and Warren Gunn worked on KCM contract with Kaleta.

I had the job of traveling to N.Y., and Chicago every week to appear on TV, which was important in giving credibility to Bizradio and FJS. I was responsible, as chief investment officer, for managing a $200 million portfolio of stocks and bonds at that time, and also had a serious digestive problem, which caused me to have gall bladder removed, painful catheter inserted, lost 30 pounds over the year 2007, 2008.

I had no way to know and did not know that Gunn and Joao were being misused for Kaleta's private purposes.

Lynda Sykes was not working for Kaleta or for KCM, though Kaleta was her supervisor in her Bizradio job, nor was she authorized to work for him. KCM had its own accountant, and its books were maintained in Kaleta's home.

Later, when under investigation, the SEC found that 1.5 million dollars was missing and the books were not in order, for the good of the company, Sykes was assigned by me to try to get KCM accounts in order. This does not mean the companies were unified. **Clearly, if the SEC investigation had suggested I was a party to KCM operations in any way, they would have held me responsible for that debt. They did not consider this after a full year of investigation of the relationships.**

In all the Kaleta document exhibits, Kaleta signs as President of KCM, and lists the KCM address as Waterview Court, his residence in Ft. Bend County

The Receiver claims that I was negligent because I trusted Kaleta

Kaleta earned an MBA after he served in the U.S. Army and attained the rank of full Colonel, the rank that puts people in command of a regiment or a battleship. Aside from command experience, Kaleta had experience as senior aid to Generals McCaffrey and Abrams, who ran the Viet Nam War. Trusting him as senior aid was no more negligent by me than by Generals McCaffrey and Abrams.

Kaleta used his own money to have his own legal and accounting firm for KCM, never used FJS documents or lawyers and accountants, and kept all records at home, rather than on premises, in order to make sure his activities were not known to the company or to me personally. Because it was not part of our operation, I considered this proper, and did not consider it an attempt to hide his activities at the time.

The 70 pages of notes with my signature forged on them with an unauthorized stamp show the length Kaleta was willing to go, to avoid me knowing what he was doing. This was clearly risking not being repaid, and would not have made sense if he could have obtained my signature. (See Exhibit 13)

(It makes no sense to forge documents if I knew the loans were necessary and authorized them. It makes no sense for the compliance officer to create a forgery tool for the company, which would make it impossible to know what the CEO was actually authorizing. Using the stamp would only weaken KCM's ability to collect on the notes, and since I was in the office at least 1 day a week, there was no reason to use a stamp, when the signatures could have been obtained every week. This forgery was not some special emergency case. Rather, it was done every week over a period of years. This was exactly the period when there was no logical reason or need for FJS to borrow money, since it had grown to roughly $3 million in fees per year, which was more than adequate to fund operations and have substantial profit.) See financial statements in Exhibits 10 and 11.

Any resourceful and intelligent, trusted insider can find a way to cheat, no matter how diligent the CEO, if he is willing to go to great lengths. Kaleta's activities were found by the system, which demonstrates that the system I put in place was redundant and able to identify problems. I included what I knew about Kaleta's outside activities in my normal annual disclosures to the public and the SEC, and his transgressions were uncovered in due course. This is because Kaleta was obviously afraid to lie and present forged documents to the SEC, as he did to FJS. **This actually shows that the system worked, and the redundant security measures put in place by me uncovered improper activity.**

The Receiver claims Kaleta was made compliance officer improperly, because he was unqualified for the job and constituted the "fox being put in charge of the henhouse."

Kaleta was appointed compliance officer because he was a retired colonel in the army, decorated for extreme heroism and **worked for years as a senior compliance officer and investigator of Army aviation violations, where he presided over multimillion dollar investigations of complicated compliance issues.**

In fact, there was no reason to doubt his integrity or loyalty to the company, or to perceive him as the fox. This is an attempt to confuse what is known now with what was knowable back then.

Kaleta was the senior person in the company at that time, had recently completed study and passed an exam on compliance to qualify for series 65, so its rules were fresh in his mind.

Management for profit.

In 2008, I asked a group of experienced private equity people, who were investors in Biz radio, to look at all the operations and make recommendations on how the company could be brought to profitability more quickly, and the value optimized. That group was headed by Douglas Shaffer. They presented their analysis, suggesting that it would be difficult to make Biz radio profitable on its own, but that a holding company could be created, which would own both Biz radio and

FJS, and that that company, combining the financials of the two companies would be immediately profitable. In order to do that it would be necessary for the owners of DFFS to sell stock, on favorable terms to the holding company, most likely with much of that payment coming in the form of Biz radio or holding company stock. I agreed to do this, and this was at the heart of my attempt to reorganize the company, selling some of the station hardware and the Houston radio station to Salem Broadcasting by separate agreement that would allow the company to continue, profitable. (see Exhibits 9 and 14.)

In fact, at that time, Salem took over the operation of the Houston radio station at its own expense, pending the completion of the sale.

While I was ill and Wallace was acting as temporary chief operating officer, when the note securing the purchase of the station KTRK was repaid, instead of making a clear title, as he was supposed to, he took advantage of his position of trust, and put liens on the property in favor of his company.

He put these liens on in Maryland, where they would not be discovered until he wanted to interrupt the operation.

As described previously, the receiver was informed of the deal with Salem, and at the time, Bizradio was not part of the receivership estate. **The receiver said that because of issues of liability with Wallace, he would be able to secure a release of lien from Wallace, and because he had the resources to fight this issue, which was a fraudulent action by Wallace, in the interest of preserving the company, the company, Bizradio was voluntarily placed into the receivership estate.**

As soon as he took possession of the company, even though Salem had already taken over managing the station pending the closing of this deal, the receiver made an about face, with no warning and now refused to go along with the negotiated sale of the station to Salem.

The majority of the beneficiaries of his estate, including the note holders of KCM called him and requested he not stand in the way of this very viable deal to continue the operation and make the company whole.

It was not possible to create a valid offering document, since that is costly and investors would not be able to take action, no matter how much they approved of the idea, until they knew it would be able to happen.

We now see that the receiver only objected to that deal, because the new company that would be formed would not be in the receivership estate, and he would not be part of it.

At the same time, he was happy to make a very small settlement, over the objections of his beneficiaries, with Wallace, because in that case the assets were made a part of the receivership estate.

In the end, he sold the station to Salem for 1 million dollars, instead of $800,000 in seed money, and almost 2 million dollars in programming nationally, which would revitalize the combined company.

As negotiated, the company would have been able to start fresh with adequate capital for the new startup, would have very low expenses, and a good business plan, programming enough to carry the company for at least 3 years, giving it time to attain critical mass. This proposal was shown to the SEC, who said they do not "bless" plans in advance but that they would make no move to prevent this arrangement and had no objections they could voice at the time.

(See the agreement that was pending with Salem and the proformas or projections of financial performance for the operation that would continue. Exhibits 9 and 14.)

In order to make this formal offering, the next step was to create an offering memorandum of the new company, but this entire arrangement was blocked by the Receiver, as soon as he gained control of Biz radio, even though he had led the company to believe he would be a willing part of it before it was made part of the receivership estate.

(See exhibit 14, offer from Salem that made this work.) However, it was important to disclose to Salem the ongoing potential difficulties which at that time involved KCM being put in receivership, and Biz radio owing notes. Salem made the offer which would have saved the company, with the agreement in Exhibit 14 as their offer, but this offer was contingent on being able to have no interference by the receiver and the SEC. The commission said they do not approve deals in advance, but they would do nothing to prevent this, but check with the receiver.

The receiver, told Biz radio attorneys, not only that he would support the arrangement, but that he would be able to secure a release of lien from Wallace, because he had serious claims against Wallace. Based on his ability to secure the release of lien from Wallace which was necessary to this deal, I was later advised by Biz radio attorneys to allow the company to be placed into the receivership estate, since the company no longer had the resources to fight Wallace over the lien. The attorneys were convinced that Wallace's lien would not hold up, but it was a question of resources. The receiver had them, and of course had the responsibility to do everything possible to make his beneficiaries whole. As soon as he assumed control of Biz radio however, the receiver blocked this deal in favor of a much less beneficial deal, but which had the receivership as a principal. Under the proposed agreement originally, the creditors of KCM and Biz radio would be offered stock in the new holding company. This would have had the potential to be beneficial for the beneficiaries of the receivership, but unfortunately, would not have generated profits for the receiver, so he blocked this deal and made a much less profitable arrangement with Salem, which did include him.

Exhibit 18 shows possible future revenues of the combined companies as proposed to Salem broadcasting and to the receiver, however the document describing the risks could not be created, and therefore, no formal complete plan could be accepted by the clients. They did, however, approve of the idea, when the plan was discussed informally. Informally, the plan which had been initially developed by the investors, was shown to many of the other investors and noteholders of KCM. Although the details of who owns what, and disclosures of risk, etc. were not formalized into a bona fide offer, all involved responded positively to this plan, and many of them specifically called the receiver instructing him to allow the plan to be developed, rather than killing the company and leaving everyone with nothing except him.

There could be no guarantee these results would be generated with no setbacks, the company had a good chance to be successful. This possibility was blocked capriciously by the Receiver, to support his claim that the company had no value and was only a scam.

Again, once the receiver got control of Biz radio he immediately blocked this plan, and finally settled for a sale of KTEK on terms valued at approximately 25% of the holding company plan described here.

Summary of this plan is that

1. The creation of this asset was an important function of the CEO.
2. This development, combined with an important innovative planning on how to monetize Biz radio and its intellectual property was how I was occupied, during the time that Kaleta was handling the day-to-day operations, aided and supervised by Wallace.
3. The receiver implies that the company was worthless and that it has no possibility of profitability.

In addition to BizRadio's current advertising revenues, the company negotiated, in return for broadcast services, a 25% stake in the LFW Partnership, which was merged by WB into the Wallace Bajali Limited Partnership. This share had a value in the millions of dollars. The documents proving this ownership are among the documents in possession of the Receiver, however, though he was informed of this equity ownership by Bizradio, he has not turned over that document in Discovery, nor has he acted in any way to monetize this valuable asset for Bizradio.

This is part of a continuing pattern of trying to make the company worthless, for whatever his motivations. It can only be lack of competence or the desire to render the company worthless.

In addition, Bizradio was also granted, though its valuable services, a stake in the office/retail building on the Sam Houston Tollway.

<u>See Exhibit 6.</u>

Again, this asset has been ignored by the Receiver, even though he has been informed of the valuable asset by Frishberg and his attorneys numerous times.

In calculating the value of Bizradio and the growth of its value, these assets must be calculated, The Receiver has an appraisal of the assets of the Wallace Bajali

Partnership, but has refused to pursue the value of these assets on behalf of Bizradio owners and creditors.

Period 9 –

When I became aware of the KCM notes, and was told by the SEC that FJS was required to repay the receiver of KCM, the amount in excess of $1.2 million. If the company was unable to pay that amount, it would be listed as a relief defendant on the suit against Kaleta and KCM.

Note again, that the SEC never suggested that FJS should be responsible for any way for the missing monies they found at KCM.

When Kaleta's trouble with the SEC became known to the public, I was contacted by several of his investors, informing me that they were holding these KCM notes, and did not want to be caught in a receivership in which they suspected they would not be repaid. Some of the larger investors were involved in the consultation which resulted in the recommendation to combine the media company with the investment advisory firm under a holding company. **<u>See Exhibit 9.</u>** Those investors expressed the desire to trade their notes for equity in FJK. I expressed his willingness and offered to trade those notes for $1.5 in company stock, thereby satisfying his indebtedness to KCM. The investors agreed to this swap readily, and I through my attorneys contacted the SEC to make sure this agreement would be honored.

The SEC said that they had no problem with this swap arrangement, but they instructed me to run it by the receiver when he took over at the end of 2009. At the first meeting with me personally in FJS office, the Receiver refused to allow the swap.

When questioned, he said it wouldn't be fair to the investors. I, on behalf of FJK said that I would make the swap available to all KCM creditors, and would be willing to exclude those who did not wish to be part of the swap. **<u>The receiver still refused, even though these assurances clearly satisfied his concerns about fairness.</u>**

ALLEGED TRANSFER OF ASSETS TO BARRINGTON..

Originally, it was my intent to sell the business to Barrington financial, Heath's investment advisory firm. Bill attended a meeting with my attorneys, but without his attorney, regarding the terms for such an agreement. Heath did not bring an attorney to that meeting, since he was clear that no deal would be made in that meeting. Sometime after that meeting, without the assistance of any attorneys, the draft of an agreement was created. In the draft, it clearly said, and this was articulated verbally during the negotiation, that this agreement would be submitted to attorneys and made into a legal agreement, when and if the parties were ready to agree.

The agreement was never submitted to attorneys, and no agreement was signed, nor was any verbal agreement made, based on the sale of the business or the clients. The reason for this was that Heath could see that FJS, or FJK as it was known as at that time, could not exist or function on its own, because it could not secure a custodian to safely hold client money. The bottom line was, that once it was impossible to have a custodian, FJK and I had nothing to sell and no bargaining position.

I owed a fiduciary responsibility to FJK clients to try to create a safe place for them. This responsibility clearly overrode any fiduciary responsibility to the company to hold onto the clients to their detriment. There was no way to provide the services they needed, and the best thing I could do would be to help provide some continuity so that Barrington would be able to provide advisory services as seamlessly as possible.

I agreed to act as an advisor to Barrington, but was only able to negotiate an at will agreement, which provided for compensation to me as long as I performed advisory services, but did not bind Barrington to continue using my services. Barrington was unwilling to submit to any binding agreement, obligating it to continue to employ me in any capacity. I communicated to FJS clients that I felt that Barrington would provide a safe place for them, but I had nothing to sell, nor did I have any way to obligate clients to hire Barrington for anything. I provided advisory services and was compensated for doing that, and when my settlement agreement with the SEC no longer allowed me to provide those advisory services, that employment and compensation ended. If there was a sale, Barrington would have been obligated to continue making those payments to me without regard to me providing advisory services.

Less than half of the assets under management actually chose to go with Barrington.

Barrington hired Elisea Frishberg at a very modest pay, providing her a desk in a closet. In 2011 Barrington chose to terminate Mrs. Frishbergs employment, and did so with impunity. Again, if there had actually been anything resembling a sale, Barrington would have been obligated to continue her compensation, but he did not have to do that.

Following that, Mrs. Frishberg's production company and I personally continued to provide advertising for Barrington on the radio show she produced, and we continued to write and produce advertising and commercials, write newsletters, and produce other materials for marketing. See Exhibit 17. Kaleta paid via retainer, and Invoices were provided to Barrington for all services. The above describes all compensation paid by Barrington to either Daniel or Mrs. Frishberg. As payment in kind, to partially defray the fees described above, Barrington provided me with an automobile purchased from the receiver. Barrington had clear title to that car and I accepted as payment.

CONFUSION OF THE TERM GOODWILL

Goodwill:

There are actually two definitions of the term, and the receiver is confusing the uses of that term.

In accounting there is a specific definition, shown below. The more common definition, and the one I was going by when discussing this with Gene Besen and with Bill Heath, is the fact that people like you. FJK did not have goodwill as an asset to keep, because it was unable to perform its services. The fact that people liked me, and liked the services the firm had provided to them, could not be monetized by FJK, because we had no of ability to have a custodian for the assets, so there was no asset with financial value to transfer to anyone. The receiver was at least partially responsible for the state of affairs, since he knowingly destroyed the firm by blocking the swap of KCM notes for FJK stock, which the major KCM note holders were eager to do, and which the SEC said they had no objection to.

Only the receiver refused to allow this, even though he was informed by my attorneys numerous times that the firm would not be able to continue if it lost its custodian and was unable to replace that custodian.

Referring to the common, nonfinancial meaning of goodwill, Heath's strategy was to have the customers like his firm because it was associated with me. The clients liked me personally, but had no interest in a firm, FJK, that could not provide services for them. I was unable to preserve the value of the firm and to use the fact that the people liked me to prop up the firm, because there was no custodian and the firm could not manage their money without taking possession of it.

> ## Investopedia explains 'Goodwill'
> Goodwill is seen as an intangible asset on the balance sheet because it is not a physical asset like buildings or equipment. Goodwill typically reflects the value of intangible assets such as a strong brand name, good customer relations, good employee relations and any patents or proprietary technology.

Later, when I was no longer consulting on the investment of the assets, in order for Barrington to attract and keep customers, it was necessary for them to do a great deal of media and PR. Again, the fees they paid for that work were normal and not excessive fees for that volume and quality of work. It is normal in an ongoing marketing service relationship to be paid via a retainer or for specific production. I also had to hire other skilled performers to do some of that work. In no case was Barrington willing to pay any more than the market for work of that volume and quality. There is no way that anyone can say that this was absentee fake work. It wasn't.

As is clear from the small sample of work in Exhibit 17, this was important and skilled work, to assist the business in its growth plans. These are only small examples of the voluminous writing and producing for Barrington, including writing scripts, producing programs. Also did an "inner circle video magazine" for Barrington, called the INNER CIRCLE. It was subscribed to and earned thousands of subscription dollars for Barrington. In 2010/2011 Barrington earned all the subscription fees. Numerous luncheons, seminars, radio spots etc. were also produced for Barrington.

Prior to giving up the license, I advised Bill Heath and his trader Ghokali and acted as senior investment strategist. For that I was paid normally, not more than any other person at that level would be paid for performing the same services based on the assets under management, as is traditional. If there is any question what the value of the advisory and consulting services are provided until I was unable to do so, you only have to look at what happened to the firm and its assets under management when I could no longer work with them. Those assets declined steeply in value at that time.

In 2011, after giving up my license as RIA, I was contacted by clients who were unsatisfied with the management of their investment accounts at Barrington. These clients had been satisfied at FJS. I learned that Barrington had failed to inform the clients that I was no longer providing management, and they believed I was still managing their accounts. When I informed them that I was no longer practicing and no longer associated with Barrington, many of them informed me that they were terminating their relationship with Barrington because of unsatisfactory performance.

Of the $80 million of former FJK clients, Heath lost at least $50 million of them within the year after my services were terminated.

Daniel Frishberg November 15, 2013

Daniel Frishberg 11/15/2013