**289 pages**

**SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY**

| | |
|---|---|
| **In Re:**<br><br>**AMERICAN EAGLE MORTGAGE 100, LLC; AMERICAN EAGLE MORTGAGE 200, LLC; AMERICAN EAGLE MORTGAGE 300, LLC; AMERICAN EAGLE MORTGAGE 400, LLC; AMERICAN EAGLE MORTGAGE 500, LLC; AMERICAN EAGLE MORTGAGE 600, LLC; AMERICAN EAGLE MORTGAGE MEXICO 100, LLC; AMERICAN EAGLE MORTGAGE MEXICO 200, LLC; AMERICAN EAGLE MORTGAGE MEXICO 300, LLC; AMERICAN EAGLE MORTGAGE MEXICO 400, LLC; AMERICAN EAGLE MORTGAGE MEXICO 500, LLC; AMERICAN EAGLE MORTGAGE MEXICO 600, LLC; AMERICAN EAGLE MORTGAGE I, LLC; AMERICAN EAGLE MORTGAGE II, LLC; and AMERICAN EAGLE MORTGAGE SHORT TERM, LLC.** | **Case No. 19-2-01458-06**<br><br>**DECLARATION OF GARY N. HARDIMAN IN SUPPORT OF OBJECTIONS OF ANDERSON CLASS ACTION PLAINTIFFS**<br><br>**Hearing Date: August 18, 2023**<br>**Time: 1:30 pm**<br>**Judge: David E. Gregerson**<br>**Place: Department No. 2** |



**ESLER, STEPHENS & BUCKLEY, LLP**
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I, Gary N. Hardiman, declare as follows:

1. I am Senior Paralegal with Esler Stephens and Buckley LLP, co-counsel for the Anderson Class Action Plaintiffs, and I make this Declaration from my personal knowledge in support of the Anderson Class Action Plaintiffs' Objections to the Receiver's Motion to Approve Settlement Agreements with Pacific Premier Bank and Riverview Bank (the "Banks").

2. Attached as Exhibit 1 are true and correct copies of selected pages of Pacific Premier Bank's Reply in Support of Motion for Summary Judgment. The selected pages are the cover and signatory pages and Section II.C, entitled, "The Court should dismiss all claims against Pacific Premier as a matter of law because the Receiver lacks standing to assert claims owned by the investors."

3. Attached as Exhibit 2 is a true and correct copy of a transcript our office obtained from a certified court reporter of the March 28, 2023, Hearing in this Court on the Receiver's Motions for Summary Judgment, among other matters.

4. Attached as Exhibit 3 is a true and correct copy of the Receiver's "Investor Meeting Summary" of the investor meeting held July 18, 2023, which I downloaded from the Receiver's American Eagle Mortgage Receivership website (https://aeminvestors.com/documents/ ) on July 31, 2023. (The document is not paginated but, for the Court's convenience, the material we cite is on the bottom of the final page.)



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5. Attached as Exhibit 4 is a true and correct copy of the Anderson Class Action Plaintiffs' First Amended Complaint adding Pacific Premier Bank as a defendant, filed on July 20, 2020, in Multnomah County Circuit Court, Case No. 20cv09418.

6. Attached as Exhibit 5 is a true and correct copy of the Anderson Class Plaintiffs' Second Amended Complaint adding Riverview Community Bank as a defendant, filed on March 25, 2023, in the United States District Court in Portland, Case No. 3:20cv01194-AR.

7. Attached as Exhibit 6 is a true and correct copy of a document the Receiver sent to investors and filed with this Court on September 20, 2019, entitled "Notice of Filing of Receiver's Second Update to Investors, September 18, 2019." It too is available on the Receiver's website. At pages 5–6, there is a section entitled "Pursuit of Claims" which states in part:

> **PURSUIT OF CLAIMS**
>
> *Background and Status*
>
> As investors have come to realize that recovery from the Pools is likely to be very low, they have begun to ask questions about the potential for recovery from other parties who may share responsibility for the Pools' failure. We have been receiving many questions…
>
> Before addressing these questions in turn, we note that, as a legal matter, anyone who brings a claim against another party is required to have standing to do so. The Receiver, as the representative of the Pools, has standing to bring only certain kinds of claims. These include collection actions against those who owe money to the Pools, actions against the Management Company and those who operated and controlled AEI and AEMM for mismanagement of the Pools, and,



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potentially, actions against other entities or individuals whose wrongful actions helped cause the inability of the Pools to repay investors. In contrast, only individual investors, who purchased AEM securities in the first place, would have the standing necessary to bring claims for securities fraud.

Table 3 provides an overview of the different categories of claims that might be available, and which party or parties would have legal standing to pursue them.

**Table 3: Types and Holders of Potential Litigation Claims**

| Basis of Claim | Potentially Liable Parties | Holder of Claim | Status |
|---|---|---|---|
| Loans made by the Pools | Borrowers and other recipients of the loan proceeds | Receiver (on behalf of the Pools) | Investigation well underway |
| Mismanagement of Pools/Breach of management agreements; aiding, abetting, or participating in breaches of fiduciary duty, and like claims | AEI, AEMM, Ross Miles, Maureen Wile, and other responsible parties that materially contributed to the mismanagement of the Pools or breach of management agreements | Receiver (on behalf of the Pools) | Investigation well underway |
| Violation of state or federal securities laws | AEI, AEMM, Ross Miles, Maureen Wile, AEI investor representatives, attorneys (including those who prepared offering materials), banks, IRA plan administrators, or others who participated in or materially aided transactions that violated securities laws | Individual investors | Receiver not specifically investigating but willing to share information |

8. Attached as Exhibit 7 is a true and correct copy of a document the Receiver sent to investors and filed with this Court entitled "Notice of Filing of Receiver's Third Update to Investors, February 26, 2020." It too is available on the Receiver's website. On page 9 of this Update to Investors the Receiver has a section entitled "Class Action Lawsuit" in which he refers investors who live in Oregon or invested while living in Oregon to contact



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me or my paralegal colleague Christine Ortez at our firm:

**CLASS ACTION LAWSUIT**

Portland attorneys Chris Kayser and Bridget Donegan (https://lvklaw.com/) and Mike Esler (http://www.eslerstephens.com/) talked with a number of investors last fall in relation to a potential lawsuit against third parties that might be liable for participating or materially aiding the sales of the AEM securities. On February 25, two lawsuits were filed on behalf of AEM investors. One lawsuit, in which class action certification will be sought, concerns investors who currently live in Oregon and whose investments are covered by the Oregon Securities Law because they were offered the security or agreed to purchase the security while in Oregon. The other lawsuit concerns investors who do not currently live in Oregon. Investors who believe they may qualify and would like to participate in these lawsuits, and any investors who were offered or agreed to purchase their security while in Oregon, should contact Christine Ortez or Gary Hardiman at Esler Stephens by calling 503-223-1510.

9. Our firm has handled a number of significant Oregon Securities Law cases. Many are listed on the "News, Highlights and Reported Cases" page on our website: https://eslerstephens.com/news.html. As a consequence, we have experience calculating damages under the Oregon Securities Law using the formula set out in ORS 59.115(2).

10. We have done so in this case as well, preparing a schedule of Oregon Securities Law damages as of August 18, 2023 for those Oregon investors who were determined by the District Court to be members of the Class. In addition, we have calculated the amounts owed to the Beattie Plaintiffs. To prepare the schedule, our firm obtained two spreadsheets from the Receiver: (1) Investor Liability for Claims Analysis – Master; and (2) AEM Pools Balance Sheets.



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11. For each investor, the Investor Liability for Claims Analysis – Master, showed the amount of the "Original Investment Amount" in each AEM Fund. We went through the investor files (from clients and the Receiver) for each of the Oregon investors and determined the dates of purchase ("the date the consideration was paid") and the American Eagle-promised interest rate.

12. Per American Eagle's distribution reinvestment program, some Oregon investors had opted to receive cash distributions of interest earned ("amounts received on the security") on their investment. For each investor, the Investor Liability for Claims Analysis – Master, from the Receiver showed the amounts of those distributions. For those investors we reduced the damages by the amount of interest or other distributions received.

13. Some Oregon investors opted to reinvest distributions in new AEM Fund purchases. From the balance owed to each investor each month as shown in the AEM Pools Balance Sheets from the Receiver, we were able to determine (by tracking the increases in the balances) the amount of those particular distributions, which were a new security purchase, and the date of that purchase. We then calculated interest from the date of this new investment at the greater of 9% per annum or the agreed upon rate per ORS 59.115(2). This compiled information was combined in an Excel worksheet for each Oregon investor and was used to calculate the Oregon Securities Law damages under ORS 59.115(2) for each Oregon investor.



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14. We have calculated the amount owed to the Oregon investors, i.e., the members of the Oregon Class and the Beattie Plaintiffs, as of August 18, 2023:

| | |
|---|---|
| Total Class | $ 27,718,053.02 |
| Beattie Pls. | $ 5,645,342.69 |
| Total Damages | $ 33,363,395.72 |
| | |
| DWT Total | $ 4,500,000 |
| Class Share | $ 3,677,000 |
| Beattie Share | $ 823,000 |
| | |
| Receiver Settlement | $ 45,000 |
| Class Share of $45,000 | $ 36,770 |
| Beattie Share of $45,000 | $ 8,230 |

If the Court so requests, we can provide the amount owed to each Oregon investor.

15. There is a pending settlement with the law firm Davis Wright Tremaine, LLP, in the amount of $4.5 million. Of that amount, $45,000 will go to the Receiver. The remainder will be shared by the Class and the Beattie plaintiffs. After the settlement amounts are reduced for attorney fees and costs, the remainder will be distributed to the Oregon investors. Per ORS 59.115(2), those distributions will reduce the Oregon investors' remaining Oregon Securities Law damages.

16. The most recent SEC Form 10-K for the holding company of Pacific Premier Bank shows shareholder's equity of $2.8 billion. This Form 10-K is available in the SEC's EDGAR database at the following link: https://www.sec.gov/ix?doc=/Archives/edgar/data/1028918/000102891823000015/ppbi-20221231.htm. The SEC Form 10-K for Riverview Community Bank's holding company



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shows shareholder's equity of $155 million. This Form 10-K is available in the SEC's EDGAR database at the following link: https://www.sec.gov/ix?doc=/Archives/edgar/data/0001041368/000093905723000178/rvsb-20230331x10k.htm#CONSOLIDATEDBALANCESHEETS_865640.

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

Dated: August 3rd, 2023, at Portland, Oregon.

s/ Gary N. Hardiman
Gary N. Hardiman



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# EXHIBIT 1

26 Pages
Hon. David E. Gregerson (Dept. 2)
Date of Hearing: March 28, 2023
Time of Hearing: 9:00 a.m.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR CLARK COUNTY

CLYDE A. HAMSTREET & ASSOCIATES, LLC, an Oregon limited liability company, in its capacity as General Receiver for AMERICAN EAGLE MORTGAGE 100, LLC; AMERICAN EAGLE MORTGAGE 200, LLC; AMERICAN EAGLE MORTGAGE 300, LLC; AMERICAN EAGLE MORTGAGE 400, LLC; AMERICAN EAGLE MORTGAGE 500, LLC; AMERICAN EAGLE MORTGAGE 600, LLC; AMERICAN EAGLE MORTGAGE MEXICO 100, LLC; AMERICAN EAGLE MORTGAGE MEXICO 200, LLC; AMERICAN EAGLE MORTGAGE MEXICO 300, LLC; AMERICAN EAGLE MORTGAGE MEXICO 400, LLC; AMERICAN EAGLE MORTGAGE MEXICO 500, LLC; AMERICAN EAGLE MORTGAGE MEXICO 600, LLC; AMERICAN EAGLE MORTGAGE I, LLC; AMERICAN EAGLE MORTGAGE II, LLC; and AMERICAN EAGLE MORTGAGE SHORT TERM, LLC,

Plaintiff,

v.

AMERICAN EQUITIES, INC., a Washington corporation; AMERICAN EAGLE MORTGAGE MANAGEMENT, LLC, a Washington limited liability company; ROSS MILES and BEVERLY MILES, individually and in the marital community property comprised thereof; and MAUREEN WILE and ROBERT WILE, individually and in the marital community property comprised thereof; RIVERVIEW COMMUNITY BANK, a Washington bank corporation; and

Case No. 20-2-00507-06

**DEFENDANT PACIFIC PREMIER BANK'S REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**



HOLLAND & KNIGHT LLP
601 SW Second Ave., Ste. 1800
Portland, OR 97204
Telephone: 503.243.2300

PACIFIC PREMIER BANK, a California chartered bank;

Defendants.

ADJUNCT TO:

In re:

AMERICAN EAGLE MORTGAGE 100, LLC; AMERICAN EAGLE MORTGAGE 200, LLC; AMERICAN EAGLE MORTGAGE 300, LLC; AMERICAN EAGLE MORTGAGE 400, LLC; AMERICAN EAGLE MORTGAGE 500, LLC; AMERICAN EAGLE MORTGAGE 600, LLC; AMERICAN EAGLE MORTGAGE MEXICO 100, LLC; AMERICAN EAGLE MORTGAGE MEXICO 200, LLC; AMERICAN EAGLE MORTGAGE MEXICO 300, LLC; AMERICAN EAGLE MORTGAGE MEXICO 400, LLC; AMERICAN EAGLE MORTGAGE MEXICO 500, LLC; AMERICAN EAGLE MORTGAGE MEXICO 600, LLC; AMERICAN EAGLE MORTGAGE I, LLC; AMERICAN EAGLE MORTGAGE II, LLC; and AMERICAN EAGLE MORTGAGE SHORT TERM, LLC.

Case No. 19-2-01458-06

## I. INTRODUCTION

The Receiver's[1] opposition to summary judgment confirms that its claims against Pacific Premier Bank ("Pacific Premier") should be dismissed as a matter of law. First, the Receiver's claim for aiding and abetting breach of fiduciary duty fails because the Receiver admits Pacific Premier did not have actual knowledge of the Ponzi scheme. Without actual knowledge of the alleged Ponzi scheme, the Receiver's claim that Pacific Premier should be liable for the harm caused by the Ponzi scheme—alleged by the Receiver to be the entire $50.5 million loss of equity of the Pools over an eleven-year period—is legally defective. Similarly, the Receiver's attempt to use Pacific Premier's alleged assistance in a handful of

[1] "Receiver" refers to plaintiff Clyde A. Hamstreet & Associates, LLC that filed this action in its capacity as the general receiver for the fifteen investment funds ("Pools").



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proximate causation.[9] (*See* Pl.'s Resp. at 40–41.) The Receiver's damages expert (Ueltzen) never identifies any damages caused by a specific breach by Pacific Premier of its duty to AEM 600, Mexico 500, and Mexico 600. Specifically, the Receiver admits Ueltzen's opinion is based on damages arising from Pacific Premier "provid[ing] Lines of Credit to AEI," not any breach of duty relating to the deposit accounts for AEM 600, Mexico 500, or Mexico 600. (*Id.* at 40.)[10] And, as explained above, the Receiver's banking expert (Stoley) does not identify any violation of a duty owed to the Pools, so his opinion is also legally irrelevant to proximate causation.

In sum, the Receiver only has speculation and conclusions—not any record evidence—that Pacific Premier's breach of a duty of care to AEM 600, Mexico 500, and Mexico 600 proximately caused harm to those Pools. Accordingly, the Receiver's negligence claim should be dismissed as a matter of law.

### C. The Court should dismiss all claims against Pacific Premier as a matter of law because the Receiver lacks standing to assert claims owned by the investors.

The Receiver lacks standing to bring tort claims against Pacific Premier that belong to the investors because the Receiver "cannot pursue claims owned directly by the creditors." *Isaiah v. JPMorgan Chase Bank*, 960 F.3d 1296, 1306 (11th Cir. 2020). To avoid the holding in *Isaiah*, the Receiver argues that it "seeks to vindicate" the interests of the "defrauded Pool investors" rather than the Pools themselves. (Pl.'s Resp. at 47.) The Receiver is wrong, and its argument confirms that it fails to recognize the legal distinction

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[9] Expert discovery is not complete and Pacific Premier has not had an opportunity to depose the Receiver's experts. Accordingly, to the extent the Court does not dismiss the Receiver's claims at summary judgment, Pacific Premier reserves its rights to exclude those experts' opinions under ER 702.

[10] It is undisputed that AEM 600, Mexico 500, and Mexico 600 opened their deposit accounts with Pacific Premier in July 2009, March 2009, and December 2010, respectively. (2/28/2023 Armstrong Decl., Ex. 4 at 6.) Thus, it is unclear how Pacific Premier could be responsible for equity losses beginning in March 2008 that pre-date its deposit relationship with those Pools by over a year.



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between claims that belong to the receivership entities as opposed to those that belong to the investors.

As the *Isaiah* court explained, a receiver is "limited to bringing only those actions previously owned by the party in receivership" because a receiver is "not the class representative for creditors." 960 F.3d at 1306. For example, the receiver has standing to bring fraudulent transfer claims because when the assets of a corporation are fraudulently transferred, the corporation itself is harmed. *Id.* A receiver, however, lacks standing to pursue "common law tort claims against third parties to recover damages for the fraud perpetrated by the corporation's own insiders." *Id.* That is because the receiver "stands in the shoes of the corporation," and if the corporation was alleged to entirely be a house of cards, or a "zombie of the corporate insiders," it "cannot be said to have suffered injury from the scheme it perpetrated." *Id.* at 1306–07.

The cases the Receiver cites to establish its standing, which were all decided before *Isaiah*, either do not address standing or hold that receivers have standing to bring fraudulent transfer claims, which is consistent with *Isaiah*. *See F.D.I.C. v. O'Melveny & Myers*, 61 F.3d 17, 19 (9th Cir. 1995) (addressing whether the unclean hands defense can be brought against a receiver); *Donnell v. Kowell*, 533 F.3d 762, 767 (9th Cir. 2008) (allowing a receiver to bring fraudulent transfer claim); *Scholes v. Lehman*, 56 F.3d 750, 753 (7th Cir. 1995) (same); *Klein v. Michelle Turpin & Assoc., P.C.*, No. 2:14-cv-00302, 2016 WL 3661226, at *4–5 (D. Utah July 5, 2016) (same); *Smith v. Arthur Anderson LLP*, 421 F.3d 989, 1002–03 (9th Cir. 2005) (allowing bankruptcy trustee to bring a variety of claims on behalf of the bankrupt entity, which was not accused of being a Ponzi scheme).

Here, rather than asserting fraudulent transfer claims to redress injuries to the Pools themselves, the Receiver asserts common law tort claims. The Receiver argues that the Pools are analogous to "where a company's whole business is built like a house of cards on a fraudulent enterprise." (Pl.'s Resp. at 35.) If true, *Isaiah* confirms that the Pools cannot "be



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said to have suffered injury from the scheme [they perpetrated]." 960 F.3d at 1306. Instead, "the individual customers," or the investors here, are the ones "who suffered injury as a result of the Ponzi scheme, and who may have rights to pursue claims against third parties that allegedly aided and abetted that scheme." *Id.* at 1307. The Receiver therefore lacks standing to bring its remaining tort claims as a matter of law and they should be dismissed.[11]

**D. The Court should dismiss all claims against Pacific Premier as a matter of law because it had a right to rely on the Pool Managers' authority.**

The Receiver's opposition confirms that its claims assert that Pacific Premier improperly honored transactions that the Pool Managers expressly authorized. (*See* Pl.'s Resp. at 33.) Pacific Premier cannot be liable for those transactions as a matter of law because Pacific Premier was "under no further obligation to inquire into the agent's actual authority." *W.L. Feely Lumber Co. v. Bookstaver-Burns Lumber Co.*, 181 Wn. 503, 508–09, 43 P.2d 953 (1935); *see also Rice v. People's Sav. Bank*, 140 Wn. 20, 26, 247 P. 1009 (1926) ("Although the depositor is drawing checks which the bank may surmise or suspect are for his personal benefit, [the bank] is bound to presume, in the absence of adequate notice to the contrary, that they are properly and lawfully drawn.").

The Receiver does not dispute Pacific Premier's right to rely on the Pool Managers' apparent authority, but argues that it should still be held liable because it "knowingly assisted the Pool Managers in structuring transactions and concealing their conduct to the detriment of the Pools." (Pl.'s Resp. at 49.) That is factually incorrect as set forth above. In addition, when a bank does not actually know its customer was carrying out a Ponzi scheme (like here), the fact that the Ponzi scheme's leader was fully authorized to act on the entity's behalf "foreclose[d] the possibility that [the bank] was responsible for" the leader's alleged wrongdoing. *O'Halloran v. First Union Nat. Bank of Fla.*, 350 F.3d 1197, 1206 (11th Cir.

[11] The investors in the Pools have already filed two separate lawsuits, including a putative class action, against Miles, Wile, Pacific Premier, and Riverview relating to the same alleged Ponzi scheme, and that litigation remains pending.



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Dated this 23rd day of March, 2023 HOLLAND & KNIGHT LLP

By: *s/ Kristin Asai*

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Attorneys for Pacific Premier Bank

# EXHIBIT 2

IN THE MATTER OF:

**Clyde A. Hamstreet & Associates, LLC; et al.**

**vs.**

**American Equities, Inc; et al.**

March 28, 2023

Case No.: 20-2-00507-06

SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY

CLYDE A. HAMSTREET & ASSOCIATES, LLC, an Oregon limited liability company, in its capacity as General Receiver for AMERICAN EAGLE MORTGAGE 100, LLC; AMERICAN EAGLE MORTGAGE 200, LLC; AMERICAN EAGLE MORTGAGE 300, LLC; AMERICAN EAGLE MORTGAGE 400, LLC; AMERICAN EAGLE MORTGAGE 500, LLC; AMERICAN EAGLE MORTGAGE 600, LLC; AMERICAN EAGLE MORTGAGE MEXICO 100, LLC; AMERICAN EAGLE MORTGAGE MEXICO 200, LLC; AMERICAN EAGLE MORTGAGE MEXICO 300, LLC; AMERICAN EAGLE MORTGAGE MEXICO 400, LLC; AMERICAN EAGLE MORTGAGE MEXICO 500, LLC; AMERICAN EAGLE MORTGAGE MEXICO 600, LLC; AMERICAN EAGLE MORTGAGE I, LLC; AMERICAN EAGLE MORTGAGE II, LLC; and AMERICAN EAGLE MORTGAGE SHORT TERM, LLC,

Plaintiffs,

VS.

AMERICAN EQUITIES, INC., a Washington corporation; AMERICAN EAGLE MORTGAGE MANAGEMENT, LLC, a Washington limited liability company; ROSS MILES and BEVERLY MILES, individually and the marital community property comprised thereof; MAUREEN WILE and ROBERT WILE, individually and the marital community property comprised thereof; RIVERVIEW COMMUNITY BANK, a Washington bank corporation; and PACIFIC PREMIER BANK, a California chartered bank,

Defendants.

Case No.20-2-00507-06

ADJUNCT TO:

.
In re:

AMERICAN EAGLE MORTGAGE 100, LLC: AMERICAN EAGLE MORTGAGE 200, LLC; AMERICAN EAGLE MORTGAGE 300, LLC; AMERICAN EAGLE MORTGAGE 400, LLC; AMERICAN EAGLE MORTGAGE 500, LLC: AMERICAN EAGLE MORTGAGE 600, LLC; AMERICAN EAGLE MORTGAGE MEXICO 100, LLC; AMERICAN EAGLE MORTGAGE MEXICO 200, LLC; AMERICAN EAGLE MORTGAGE MEXICO 300, LLC; AMERICAN EAGLE MORTGAGE MEXICO 400, LLC; AMERICAN EAGLE MORTGAGE MEXICO 500, LLC; AMERICAN EAGLE MORTGAGE MEXICO 600, LLC; AMERICAN EAGLE MORTGAGE I, LLC; AMERICAN EAGLE MORTGAGE 11, LLC; and AMERICAN EAGLE MORTGAGE SHORT TERM, LLC.

TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE DAVID E. GREGERSON

MARCH 28, 2023

APPEARANCES

Appearing on behalf of Plaintiff:
Joseph Vance, Esq.
K. Michael Fandel, Esq. (via telephone)
Miller Nash LLP
500 E. Broadway, Ste 400
Vancouver, WA 98660

Appearing on behalf of Defendant Riverview Community Bank
Charles J. Paternoster, Esq.
Parsons Farnell & Grein LLP
1030 SW Morrison Street
Portland, OR 97205

Appearing on behalf of Defendant Pacific Premier Bank:
J. Matthew Donohue, Esq.
Kristin Asai, Esq.
Shannon Lea Armstrong, Esq.
Holland & Knight LLP
601 SW Second Avenue, Suite 1800
Portland, OR 97204

APPEARANCES (continued)

On behalf of Defendants Ross Miles, American Equities, Inc., and American Eagle Mortgage Management, LLC:

Colin H. Hunter, Esq.
Angeli Law Group LLC
121 SW Morrison Street, Suite 400
Portland, OR 97204

Leslie S. Johnson, Esq.
Appearing on behalf of Defendant Maureen Wile
Samuels Yoelin Kantor LLP
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P R O C E E D I N G S

THE COURT: Please be seated. And good morning. We're on the record here in the Hamstreet versus American Equities, et. al. Cause Number 20-2-00507-06. We're on for multiple motions this morning, as I understand it, then.

For the benefit of the clerk, let's just have identification, then, of all counsel who are here, then, in the courtroom. First of all, on behalf of Plaintiff Clyde Hamstreet and Associates, the Receiver, Joseph Vance. Sorry, didn't mean to steal your thunder.

MR. VANCE: Oh, no. Thank you, Your Honor. Joseph Vance with Miller Nash on behalf of the Receiver.

THE COURT: All right, then.

MR. PATERNOSTER: Charles Paternoster on behalf of Riverview Bank.

THE COURT: Mr. Paternoster on behalf of Riverview Bank.

MR. DONOHUE: Good morning, Judge. Matt Donohue with Holland and Knight on behalf of Pacific Premiere Bank. And I have with me

Shannon Armstrong and Christian Asai.

THE COURT: Okay, Miss Asai has -- has her name to most of the recent pleadings. And is arguing multiple -- who's arguing the motion this motion this morning, then, for Pacific Premier?

MR. DONOHUE: I will be arguing the summary judgment motions, Judge.

THE COURT: All right. And, sorry, again, your last name is?

MR. DONOHUE: Donohue. D-O-N-O-H-U-E.

THE COURT: All right, very good. And do we have Mr. Hawkes here or somebody from Mr. Hawkes' office?

MR. HUNTER: Your Honor, Colin Hunter, Angeli Law Group for American Equities and American Eagle Mortgage Management.

THE COURT: Mr. Hunter for Mr. Hawkes' office on behalf American Equities and American Eagle Management. Okay.

MR. VANCE: And then on the -- the -- my partner Mike Fandel is on there and will be arguing the disqualification motion. He's on the --

THE COURT: What's the last name there?

MR. VANCE: Fandel.

THE COURT: How do you spell that?

MR. HUNTER: Mike, do you want to --

MR. FANDEL: It's -- yeah. Good morning, Your Honor. This is Michael Fandel from Miller Nash. The last name is spelled F like Frank, A-N-D-E-L.

THE COURT: All right. And I don't know if you're able to turn your video on.

MR. FANDEL: I'm trying. The host has stopped it.

THE COURT: We -- we've got you now. Thank you. Good morning, sir. And, then, counsel for Miss Wile?

MS. JOHNSON: Leslie Johnson, Your Honor, for Ms. Wile. I won't be participating in the argument.

THE COURT: And is the counsel for Mr. Wiles here? Maybe not.

Okay, so we've got multiple motions then. I was trying in my mind to sort out how we're going to handle this and in what order. I suppose the motion to disqualify Miller Nash is kind of a game changer because that would get us out of home plate and we don’t get to first

base. So why don't we take Mr. Hunter's motion to disqualify joined in by Pacific Premier as I understand. Did Riverview join in that motion as well?

MR. PATERNOSTER: We did not, Judge. And so I may just clear out and give Mr. --

THE COURT: That's incredibly gracious. Appreciate that.

So Mr. Hunter, then, this is your motion to disqualify the Miller Nash firm based on this complex. I promise I reviewed your motion, sir, so I don't need a whole regurgitation of the contents therein.

MR. HUNTER: And I will keep it brief, Your Honor. Allow me to just get my computer up here.

Thank you, Your Honor, and good morning, and with that preface, I think I will keep it especially brief, knowing that the briefing here was lengthy and that Your Honor has read it all.

THE COURT: Mr. Fandel, are you able to hear that okay?

MR. FANDEL: Yes, I can. Thank you, Your Honor.

THE COURT: We -- we have some goofy --

we're in the process of upgrading our 30-year-old audio-visual equipment here in the courtroom. Counsel if you're -- it would actually maybe you better if you just be seated.

Mr. HUNTER: Sure.

THE COURT: The (inaudible) has sort of cone and if you're within the cone, then we catch you -- maybe a catcher's mitt is a better metaphor. So go ahead and argue while seated. That's probably best.

MR. HUNTER: Happy to do it. Thank you, Your Honor. So I'll focus, I think, just on a couple of very key points; in particular, ones that are brought into relief by the reply brief that we filed just yesterday.

So, really, the easiest, most straightforward and I would say most undisputed portion of our motion that Your Honor could decide in the most straightforward manner is the hot potato doctrine. Now, we briefed that. That is the doctrine that applies Rule 1.7 with respect to the current clients rather than Rule 1.9 with respect to former clients. And it applies a more exacting standard for that reason. When, as here, a firm representing a

client makes plans to drop one client in favor of another client in -- in this case, as in many cases, that is prompted by a desire, perhaps, for a more lucrative representation of the second, the later client.

This issue is really critical here because the facts show that that's exactly what Miller Nash was doing back in that February/March 2019 time frame. And it's equally critical, I think, because it went essentially unaddressed in the Receiver's response to our motion. They have not accepted the premise or even addressed the premise that this is a current conflict between current clients as the hot potato doctrine clearly holds.

That is the appropriate framework here because the record shows, and this includes the deposition testimony that was just obtained in January of this year, and it also includes some of those critical emails that were just produced at the close of fact discovery in February of this year. The record shows that while still representing the managers, Miller Nash was planning to drop them as clients in favor of representing the Receiver, knowing that it would

then bring claims against the managers on the pool's behalf. That's a current conflict between current clients, not a former client conflict that can be waived.

And so, the pages and pages of briefing that I think the Receiver has dedicated to arguing that the waiver was appropriate, that it was informed consent, that Mr. Miles ought to have done more perhaps to seek informed consent, those all fall flat because they are proceeding under the wrong framework. Now, even under that framework, the facts show that the informed consent wasn't valid because it wasn't informed. They didn't disclose all the material facts that they knew at the time. And, in fact, concealed some very important facts. Downplayed the risk that the subsequent representation would, in fact, be adverse to the managers, which they knew full well at the time. They described, I think in their conflict waiver, a minimal risk. In fact, it was -- it was a present risk. It was a known risk. It was a real risk.

So whether we proceed under the stricter hot potato standard, which is the 1.7 standard that applies to current clients, or even the

more forgiving standard for former clients, Your Honor, what we have here is an unwaivable conflict in the former case, the hot potato doctrine, and a conflict that was not validly waived. And that has allowed the Receiver to, essentially, parlay a former client relationship, what is now a former client relationship, into a representation that uses that knowledge, that -- that confidential information, that insight gained during the representation of the managers against the managers.

And for that reason, Your Honor, I think -- and I will keep it very brief here, the motion to disqualify should be granted.

THE COURT: One brief question of counsel, then. To what extent can or should the three-year delay in bringing this motion to this Court factor into the Court's analysis and ultimate conclusion regarding a requested disqualification?

MR. HUNTER: Not at all, Your Honor. And I think that's true for two reasons. The first reason, as we point out in the briefing is that the critical facts, some of the critical facts,

at least, and this is evidence in the motion, were not discovered until January/February of this year. So the managers brought this motion within two months of the deposition of Mr. Foraker and within a month or so, perhaps a little bit over a month, of receiving some of the very important documents relevant to this motion. Those were produced on February 10 in many cases, those documents, which was the close of fact discovery. So I don't think that the Receiver should be heard to say you delayed in bringing this motion when there is this inexplicable continuing three-year-long concealment of many of those same material facts.

THE COURT: Your argument is that there is a fatal error at an issue from the beginning and that the -- let's see, we'll say the antiquity of an error does not justify its perpetuity.

MR. HUNTER: That would be a good way of putting it, Your Honor. And that's my second point, which is that it's irrelevant in any event because the three years, that's three years in which the Receiver and counsel Miller Nash should have themselves come to the

conclusion that this was an impermissible conflict and that they needed to discontinue the representation. The entire structure of the RPCs, the Rules of Professional Conduct, is that they apply to the professionals in question. They bind the lawyers. And they require lawyers to cease the representation either to the client taken on in the first instance or to cease the representation if there is an impermissible, non-waivable conflict such as the one we have here. So that three-year period is equally applicable to the Receiver, to Miller Nash, for their failure to disclose and withdraw as they should have done.

But in addition, I think, the -- the belated production and the belated deposition which was taken only over -- with the Receiver's objections with Mr. Foraker, are highly material to the motion. And for those reasons the delay is of no moment.

THE COURT: All right. Mr. Donohue, any additional material to add other -- or, yeah, counsel.

MS. ARMSTRONG: Yes. Miss Armstrong will be arguing this. Thank you, Your Honor.

THE COURT: Thank you.

MS. ARMSTRONG: I just have three additional points to make quickly for the Court's consideration.

The first is there's an additional legal basis for the Court's consideration of this motion. Under RCW 7.60.180, which is the Washington statute by which this Court approved Miller Nash's appointment under the receivership to appear on behalf of the Receiver. And in doing so, the Court relied on the declaration of Miller Nash, which said that it did not have any conflict. And the standard here is important under the RCW because it requires that there be no actual conflicts or no inappropriate appearance of conflicts for any professional that the Receiver hires to assist it in the Court-supervised receivership. And the Court relied on Miller Nash's declaration that it did not have any conflicts in approving Miller Nash's appointment here on behalf of the Receiver. And that information that the Court had at that time was incomplete.

First on the issue of the current client conflict under 1.7, that conflict was never

disclosed to the Court and, thus, the appointment was not based on material information that was available -- that was not made available to the Court. Miller Nash said nothing in its declaration to this Court about the current client conflict it had.

Now, that client conflict has Miller Nash -- the Receiver has attempted to explain away that current client conflict by (inaudible) scope of the representation of the pools and the pool managers was so limited that there was actually no adversity. But that's undermined by the actual facts in this case.

The first is Mr. Foraker's testimony, which we all heard for the first time in January of this year, that he identified claims of potential mismanagement of the pools in February; that is, during the joint representation. And his testimony is he knew it was an issue. In his words, Your Honor, he punted. That is impermissible under the Rules. And under 1.7 Comment 29 to RPC 1.7 specifically addresses this risk in a joint representation. And the comment says, "In considering whether to represent multiple clients in the same matter, a

lawyer should be mindful that if the common representation fails because the potentially adverse interests cannot be reconciled, the result can be additional cost, embarrassment, and recrimination. Ordinarily, the lawyer will be forced to withdraw from representing all the clients if the common representation fails. In some situations, the risk of failure is so great that multiple representation is plainly impossible." And then this is the important piece, Your Honor. "For example, a lawyer cannot undertake common representation of clients where contentious litigation or negotiations between them are imminent or contemplated."

And based on the undisputed facts in this record, Mr. Foraker identified in February that a claim was possible. And in explaining how he did give informed consent or give -- did give full information to Mr. Miles, he described a global resolution with the devil you know or the devil you -- you don't. That was during the common representation thus establishing that Mr. Foraker and Miller Nash knew at the time he sent the conflict waiver to the pool managers of

potential negotiations or litigation. At that point, he was required -- Miller Nash was required to withdraw from the representation. Instead, Miller Nash continued to send privileged emails between American Equities and Miller Nash to Mr. Hamstreet before he was ever appointed as Receiver in this case. Waiving the privilege on behalf of American Equities.

Mr. Foraker continued to advise the pools and American Equities that they should enter into a voluntary receivership. That receivership is the whole reason all of us are here today. Without that receivership, there would be no Receiver bringing claims against American Equities because American Equities was the pool manager of the pools. The receivership was the actual legal mechanism that allowed the pools to make claims against American Equities. And that was based on Mr. Foraker's advice at Miller Nash. So his scope of his representation is directly tied to the conflict. He had identified claims that could be brought by the pool managers. He then gave advice that took the pool managers out of their position as manager pools, installed the Receiver and then

those claims were made against -- were made against the pool managers. Those -- that direct chain of causation is due to the legal advice that Miller Nash gave to the pools in American Equities that then led us to where we are today. And that was conflicted advice. And under RCW 7.60.180, Miller Nash has an actual or inappropriate appearance of a conflict here and cannot proceed.

The final point, Your Honor, that I would like to draw the Court's attention to is the declaration that Mr. Hamstreet submitted in connection with the opposition. And this is related to the Columbia Bank issue. So what we now know from the briefing that's undisputed is that Miller Nash represents Columbia Bank. We know that Miller Nash cannot bring claims against Columbia Bank in this litigation because they have a conflict. There's been no waiver. And Mr. Hamstreet in his declaration, specifically said that we investigated, meaning the Receiver, investigated claims around the banks, which included Columbia Bank, we didn't need Miller Nash's advice on that. And that, Your Honor, is incredible because it is

inconsistent with Mr. Hamstreet's prior deposition testimony and Ms. Schmidt the corporate representative for the Receiver's prior deposition testimony on a few critical points.

The first is he testified in his deposition, Mr. Hamstreet, that he personally did not review information related to the banks and that Ms. Schmidt did that. Ms. Schmidt then testified that she did not have one conversation with Mr. Hamstreet about Columbia Bank. Ms. Schmidt also testified that she was unaware of any conflict, she was unaware of Miller Nash representing Columbia Bank, and she repeatedly testified that she didn't investigate Columbia Bank and that she didn't know why. When asked repeated questions about this, she said, "I don't know," "I can't answer that," "I don't know."

So Mr. Hamstreet's testimony or Mr. Hamstreet's declaration that there was an investigation of Columbia Bank is undermined by both his prior deposition testimony and Ms. Schmidt's prior deposition testimony, which also leads at the very least, Your Honor, to the

appearance of a conflict of interest that -- subpoenas were sent to all the other banks, Your Honor. The undisputed facts in this record are that the subpoenas were sent to all the other banks that are involved. No subpoena sent to Columbia Bank. That -- that fact, in and of itself, demonstrates that the Receiver is receiving conflicted representation in this manner because they cannot explore a full investigation of the facts, which is what they were appointed to do in this case.

THE COURT: All right, thank you. Mr. Fandel. Got you muted, sir.

MR. FANDEL: Yeah, thank you. Sorry about that. Again, I'm Michael Fandel from Miller Nash on behalf of the Receiver.

In evaluating whether there are compelling circumstances to justify the drastic remedy of removing our firm from representing the Receiver at this late date, I want -- I want to first talk about the elephant in the room, which is where is Ross Miles? The person who allegedly did not provide informed consent to -- to waive this conflict, the former client conflict, has not submitted a declaration in support of this

motion. AEI set up this -- this whole motion to prevent us from confronting our alleged accuser. But what -- who has consented to the waiver and under what circumstances is relevant to a determination of -- of whether or not we've satisfied the rules?

Under Comment 6 to Rule 1.6 discusses informed consent. And in the comment, this is the Washington comment, says in part, "In determining whether the information and explanation provided are reasonably adequate, relevant factors include whether the client or other person is experienced in legal matters generally, and in making decisions of the type involved, and whether the client or other person is independently represented by another lawyer in giving the consent. Normally, such persons need less information and explanation than others, and generally, a client or other person who is independently represented by another lawyer in giving the consent should be assumed to have given informed consent."

But here, how do you address this issue in the face of Mr. Miles' persistent silence? This motion is based solely on attorneys' say so.

And with due respect, the counsel for -- for the bank and for the managers have suspect motivations. There is no case cited by AEI or the bank or that I have been able to find where a firm that obtained a waiver was disqualified without the signature of that waiver claiming that his consent was not informed.

Mr. -- and what of Mr. Hawkes? He represented Mr. Miles at the time Mr. Miles signed the waiver. He received the draft letter. We posed the rhetorical question in our brief of whether Mr. Hawkes understood the risks and advised Mr. Miles of them. And, again, our accuser remains silent. He's not even in the court today to address the issue. The only reasonable conclusion is that both Mr. Miles and Mr. Hawkes fully understood exactly what they were consenting to. Including the fact that AEI could face claims from the Receiver for its mismanagement.

Mr. Foraker did things the right way. First of all, he limited the scope of the joint representation in February of 2019. We definitely do dispute that there was a conflict under RPC 1.7 because of the way in -- in which

Mr. Foraker circumscribed the scope of the representation. He avoided the conflict these parties incorrectly assert that we have acknowledged. The limited scope is relevant to whether or not there was some conflict between the parties. Because Mr. Foraker said he was going to evaluate strategies for dealing with the economic issues facing these entities. He was not going to be involved in any litigation or asserting claims or evaluating claims between the parties. He quickly upon receiving just basic information, realized that there were some potential issues between the parties, but he did not advise the parties about those issues. To the contrary, he advised those parties -- he advised Mr. Miles and AEI to get their own counsel. There was -- there was a claim brought against the managers two days after the engagement was signed. There was no secret about the fact that there had been potential mismanagement between the managers and the pools, but that was not anything within the scope of Miller Nash's representation at that time.

There was no conflict. Certainly, no

conflict that is unwaivable under Rule 1.7 that counsel here continues -- repeatedly referred to an unwaivable conflict, but hasn't explained at all how under Rule 1.7 in this limited representation there was some claim directly against another client in the same tribunal. It just -- it just didn't happen.

And the fact that AEI advanced funds and -- and misappropriated funds or -- or mixed the funds is not confidential. Mr. Miles freely shared that information with -- with Mr. Hamstreet. You look at Exhibit D to Mr. Decker's -- Mr. Decker's declaration. On February 14, Mr. Miles writes to Hamstreet and -- and talks about wanting to develop the most advantageous strategy that we can implement for the benefit of our client. He, at that time, was working toward trying to figure out a way to do what was best for his investors. And in doing that, he was evaluating the options including receivership. Miller Nash was not advising him about claims. Miller Nash was avoiding advising him about any of those claims.

Second, Mr. Foraker advised Miles and the managers to obtain independent counsel to decide

for himself whether what he had shared about AEI was confidential. Now these motions have been very carefully drafted to suggest that Miller Nash indicated that there was a minimal risk of the Receiver proceeding against Mr. Miles or the managers. That's not what the letter says. What the letter says is there's -- there's minimal risk of confidential information having been used. It doesn't say there's a minimal risk of a claim. It says actually that there very well might be a claim. The -- the moving parties here have deliberately tried to obfuscate the distinction between those two.

And Mr. Miles did retain counsel before he signed. It's reasonable to conclude under those circumstances that he also believed that he had not -- there was not a risk of -- of confidential information being used.

Third, Mr. Foraker explained the pros and cons of consenting and confirmed that in writing. Mr. Foraker's testimony is that he had a separate conversation with Mr. Miles about what he -- exactly he meant when he said there may well be some claims against the managers. He told them that they were likely going to be -

- either going to be some issues that would be settled between them because of the funds advanced or there would be -- there would be a claim. That testimony is uncontroverted and should be considered a vary for the purposes of this motion.

And one thing I -- just has an aside, because the fact that -- that the -- the counsel for Holland and Knight spent so much of that argument -- so much more time arguing this than did counsel for AEI, I think underscores the real moving force behind this motion. We suspect this thing was ghostwritten by Holland and Knight. And the reason that is important is that the risk management practices that Miller Nash used in this case were taught to us by Peter Jarvis of the Holland and Knight firm. Mr. Jarvis was our outside counsel for more than a decade. I was general counsel, had him on my hotline. I would talk to him about -- about issues and advice regularly. When we limited the scope of our -- of our representation -- the joint representation in February 2019, that was something -- that was a practice that our firm implemented in -- upon the advice of Mr. Jarvis.

Not this specific decision, but the practice of limiting the scope and identifying what you were and were not going to do.

Getting informed consent, the part about explaining the pros and cons in our letter. That's language that came directly from Mr. Jarvis of Holland and Knight. When we advised the other party to obtain counsel before he consents, that's advice that we got and language that we included directly from Mr. Jarvis of Holland and Knight. When we tell them they do not need to consent, that came from Peter Jarvis. When we advised the former client to not just take our word for our conclusion that we wouldn't be using confidential information, but to consider that and make their own decision, that advice came directly from Peter Jarvis.

Now, these counsel -- I brought this up and they say, well, in 2021 Peter Jarvis called you and told you all of a sudden that he was no longer representing Miller Nash. I don't recall that -- that discussion, but the fact remains, if that happened, it happened after Holland and Knight undertook this representation. And just

a -- after a decade or more of representing our clients to be dropped like that. If there's a hot potato in this case, it's Miller Nash. It's not the managers.

Now, I -- I -- I don't want to -- I don't want to under -- understate the -- the strategic aspect here. The failure to -- to file this motion within -- with reasonable prompt -- promptness. There's -- there's no merit to the idea that this is something that just came up in the last second. First of all, we obtained a waiver in 2019. We explained this -- this potential conflict and the former client conflict and the potential for claims back in 2019. The idea that Miller Nash secretly plotted and kept this information from Mr. Miles and from the parties is absurd. We were very upfront about it.

These parties waived four years. And it's not just the four years. It's even most recently. It was September of last year that Mr. Hawkes first raised this issue about Miller Nash withdrawing. And it took the deposition of Mr. Foraker in early January. They -- they continue to refer to these documents produced in

February as if that was something that was being withheld from production prior to that. Mr. -- Mr. Vance can explain this better than I can, but my understanding is the reason those -- those things came to light in February is because the Holland and Knight firm and their -- and their counsel asked for some additional search terms to be used. That's why those documents were produced in February. Not because they had been requested before and not produced.

The purpose of this motion 12 weeks before trial and four weeks into this lawsuit is simply to throw a skunk in the jury box. And it shouldn't be allowed. Miller Nash limited its scope of the joint representation under 1.7, did not have an unwaivable conflict, it properly obtained a former client conflict waiver under Rule 1.9 and there's no basis for the drastic remedy of a disqualification at this point. Thank you.

THE COURT: I'll give, well, a brief rebuttal. I prefer to just have one attorney provide that rebuttal and (inaudible). Mr. Hunter or Miss Armstrong?

MR. HUNTER: Sure. Very briefly, Your Honor. So I think if I could respond with one general point. We're not going to resolve the motion that is before the Court today with a lot of finger pointing at parties who aren't here, at empty chairs and such. This is a question about Miller Nash's obligations. Did they satisfy those obligations? Did they perform those obligations as required under the RPCs?

Argument -- argument about what Mr. Miles should have done or what Mr. Hawkes should have done or what Mr. Jarvis did isn't relevant to deciding the motion because this is about an obligation imposed by our profession on Miller Nash. And the facts here shows Miller Nash failed to satisfy that obligation. It's that simple. Pointing fingers, as the Receiver's counsel is now doing, is not going to solve the problem or get us any closer to a resolution. Neither is it going to undo the harm that has already been done to the managers.

I think just to correct a couple of factual points. There is suggestion that anything Mr. Miles could say would change the analysis is wrong. It's not necessary to have his testimony

because it's not relevant for two reasons. First of all, you cannot waive the conflict that exists in the hot potato scenario as we've already discussed. There's nothing that Mr. Miles could have done to waive that current conflict. And you have in the record emails where the managers' counsel is sending emails on which Mr. Miles is not included, planning to get more aggressive with them to convince them to agree to the receivership while they know that they will then ask counsel for the Receiver bring claims against the managers. There's nothing that Mr. Miles can say that would solve that problem or eliminate it or obviate the fact that it’s a violation of their obligations under the RPCs.

Secondly, even if it could be waived, the waiver is invalid. And, again, those facts do not depend on what Mr. Miles has to say. Their point is, I think, perhaps he could subjectively testify, well, I believed I did or I believed I didn’t make that conflict. But where they have failed to disclose the material facts necessary to give inform consent, whether the client waives the conflict is irrelevant. And counsel

suggested that there is no case that he could find where a firm that obtained a waiver was disqualified on the basis of an insufficient waiver. That's not true. There is a case cited in our briefs and that's the Woolley case. And this is on page 4 of our reply brief and the citation is Woolley v Sweeney 2003 West Law 21488411. And that's a case of the Northern District of Texas.

Where the waiver fails to mention the specific known conflict to obtain the client's consent to that specific conflict, it is insufficient. And on that point, I want to highlight I think one other factual inaccuracy which is that counsel suggests that the characterization in the conflict waiver of the risks being, quote, "minimal or non-existent" related only to the possibility that confidences or secrets would be disclosed. That's incorrect. And if you look at Exhibit 17 to Mr. Hawkes' declaration, you could look at the language yourself, Your Honor. It says after describing the risk that confidences or secrets may be used adversely to the client, it also describes the risk that the client will -- the

work being done for the new client will unfairly or inappropriately undercut the work that the lawyer previously did for the former client. And then the waiver sentence says, "In the present context, I believe that these risks," plural, "are minimal or non-existent." So the conflict waiver is downplayed. The known risks as, quote, "minimal or non-existent." They were existent. They existed. They were known. In fact, they were being discussed. And Mr. Foraker's testimony confirms that. And emails in the record, which again, were just produced last month, show that they knew those risks full well. They didn't disclose them to Mr. Miles. He could not waive a conflict when he didn't have all the material information to do so. And I think that's it for me, Your Honor.

THE COURT: All right. Thank you, counsel. It's an interesting issue. The motion here joined in -- brought by the managers, but joined in by Pacific Premier Bank would be for a request that the Court disqualify counsel for the Receiver at this stage in the proceedings. Although the timing of the motion is not by itself dispositive, I think it does bake into

the Court's analysis in terms of how to exercise its sound discretion under these circumstances.

At the end of the day, based upon the motion presented, I think there's some flavor of this on the Court's behalf that there's, to some extent, maybe some (inaudible) or hindsight being 20/20, but the Court is not satisfied at this time that there's sufficient grounds to disqualify counsel for the Receiver. I think the signed conflict waiver, at least at this point, this Court determines to have been sufficient to comply with the Rules of Professional Conduct. At least so far as continued representation in these proceedings.

Now, there's, of course, other remedies. A remedy would be professional discipline, but in terms of disqualification in this particular case, the Court's going to deny the motion. Excuse me.

MR. FANDEL: Your Honor. Thank you. Since this is my only role today, may I -- may I be excused?

THE COURT: If that’s it for you Mr. Fandel, certainly. Thank you.

MR. FANDEL: Thank you, Your Honor.

MR. VANCE: I'll just state for the record I'm offended that he didn't want to hear me argue, but that's (inaudible).

MR. FANDEL: (Inaudible).

THE COURT: Offense noted. In some jest, I assume.

All right. Now we're ready to take up the summary judgment motions. Obviously, there's some overlap between counsel on the motions. I don't know if you've discussed how to appropriate -- I will say I read Riverview's first. Not that that should control the order of how the case is argued, but I'll leave it to counsel if you've discussed how to proceed.

MR. DONOHUE: We did. With your permission, we would start on behalf of Pacific Premier.

THE COURT: Very good, Mr. Donohue.

MR. DONOHUE: Thank you.

MR. PATERNOSTER: And, Your Honor, just additionally, given the overlap of many of the claims, our intention is to focus then on the fraudulent transfer issue and pilot, perhaps, any differences between the bank's position before Mr. Vance argues, so that the full

package is kind of in front of Mr. Vance for a response, if that's all right.

THE COURT: I appreciate the professionalism of counsel, so that we don't plow the same field twice. I assumed -- quality of representation in the case so far has been -- been very good and I've tried to work with counsel to message to -- to appreciate that kind of efficiency. So thank you so much.

MR. PATERNOSTER: Thank you.

MR. DONOHUE: Your Honor, I do have a demonstrative and some case law that, with your permission, I'll hand up. And providing a copy to Mr. Vance. Your Honor, I'll continue to sit for the microphone --

THE COURT: Please.

MR. DONOHUE: -- if that's the Court's preference.

If it pleases the Court, I would like to address both claims that the Receiver has brought against Pacific Premier Bank, the aiding and abetting breaches of fiduciary duty and negligence. And then, more briefly, touch on the issues of standing and joint and several liability.

And I -- in addressing the claims for aiding and abetting and negligence, I'd like to start where Pacific Premier started which is reviewing the complaint and then the amended complaint because those allegations against Pacific Premier with respect to aiding and abetting were very sparse. It literally alleged that Pacific Premier Bank aided and abetted breaches of fiduciary duty.

And so the challenge was to figure out through discovery what does that mean. And it can only mean two things in a case where a Ponzi scheme is alleged. It could mean that Pacific Premier Bank aided and alleged breaches of fiduciary duty and therefore is liable for the Ponzi scheme damages, or alternatively, the Receiver was alleging Pacific Premier Bank aided and abetted alleged -- excuse me. Aided and abetted specific breaches of fiduciary duty that caused harm to the pools on a specific basis. And that was important because the law, and if you -- I'm referring now to page 2 of the demonstrative, the law on what the Receiver would have to prove if we're talking about that first theory, aiding and abetting against

Pacific Premier arising from the Ponzi scheme, the case law is very clear that Pacific Premier would had to have actual knowledge of the Ponzi scheme in order -- in order for Pacific Premier to have substantially assisted a breach of fiduciary duty that caused Ponzi scheme damages.

And so I want to spend one moment, Your Honor, because I think these cases are so important with respect to this issue. And these two cases are part of the package I handed to the Court.

In re Consolidated Meridian Funds, which is a 2013 case from the United States Bankruptcy Court Western District of Washington. That was an adversary proceeding that arose from a massive Ponzi scheme. And the trustee in that case represented individual investor plaintiffs and brought claims against Commerce Bank for aiding and abetting breach of fiduciary duty and fraud under Washington law. And the complaint -- the complaint in that case alleged that the bank knew about the Ponzi scheme and substantially assisted the Ponzi scheme. And that was by opening bank accounts, allowing transfers, failure to review financial activity,

etcetera. Very similar to what the Receiver has alleged here.

And the Court on a motion to dismiss granted and dismissed the aiding and abetting breach of fiduciary duty claim, writing that a conclusory allegation that Commerce Bank knew of the Ponzi scheme is not enough because the complaint failed to allege facts to put bank on notice regarding what, when and how the bank could have known about the Ponzi scheme. So the focus was did the bank know about the Ponzi scheme. And it concludes the allegations in that case not enough.

Now, the next case that we've handed up is Norton v U.S. Bank. And the reason that we supplied that to you, which is a Washington Court of Appeals case from 2017 is at summary judgment, the issue in Norton, again a Ponzi scheme case, was whether there was direct or circumstantial evidence that the bank, U.S. Bank, had actual knowledge of the Ponzi scheme to support the aiding and abetting claim. And their investors had alleged that the architect of the Ponzi scheme, Mr. Nino de Guzman, had enlisted bank employees to help recruit

investors. He deposited large amounts of money from investors in the U.S. Bank. Bank employees violated bank policies. Lowered risk scores on accounts so they would receive less scrutiny. And the Court on summary judgment there held that was insufficient record evidence to make out actual knowledge -- the bank had actual knowledge of the Ponzi scheme. And the Court wrote, quote, "In the absence of evidence that the manager," this is the U.S. Bank manager, "altered forms for the purpose," for the purpose, "of assisting Nino de Guzman and," and this is the critical part, "with knowledge of his scheme, the managers conduct does not create liability for the bank." And that, Your Honor, if you're looking for the -- that cite, it's at 2017 West Law 67991 at page 5.

So with that law in mind, I'll refer the Court to page 3 of the demonstrative. And here the Receiver cannot prove aiding and abetting against Pacific Premier arising from the Ponzi scheme because we know now through discovery two things. One, when we, Pacific Premier, asked the bank in an interrogatory -- excuse me, asked the Receiver in an interrogatory, tell us all

the facts that Pacific Premier Bank knew about the Ponzi scheme, the Receiver responded that it, quote, "Never alleged Pacific Premier Bank knew or aware that the pools were operated by the AEI defendants as a (inaudible) of a Ponzi scheme." And we supplied that to you in the record.

So the Receiver never even alleged that Pacific Premier Bank knew that there was a Ponzi scheme. And then Pacific Premier Bank confirmed that in depositions of the Receiver. And we supplied that to the Court as well. The Receiver admitted in deposition that Pacific Premier didn't have knowledge of the Ponzi scheme.

And so that is important, Your Honor, because without actual knowledge of the Ponzi scheme, Pacific Premier Bank cannot be liable for substantially assisting any breaches of fiduciary duty that caused Ponzi scheme damages. In other words, Pacific Premier, if it didn't actually know about the Ponzi scheme, it cannot be liable under Washington law for the damages caused by the Ponzi scheme. The damages that the AEI defendants in running a Ponzi scheme are

alleged to have caused, and I'll get to that in a minute, Pacific Premier cannot be held liable on that.

The Receiver in responding to the summary judgment motion, mixes and matches. The Receiver says Pacific Premier Bank didn't actually know of a Ponzi scheme, but it still substantially assisted the Ponzi scheme. And those two things cannot go together. And that is referring now to page 4. Page 4 of the demonstrative shows that the Receiver cannot prove aiding and abetting against Pacific Premier arising from the Ponzi scheme because also there is insufficient evidence in this record that Pacific Premier substantially assisted and proximately caused the Ponzi scheme damages. And that’s the key to understanding substantial assistance. And the case law is very clear that in order to be liable for aiding and abetting, the substantial assistance has to have proximately caused the harm.

And In re Consolidated Meridian Funds, it also talks about that at 485 BR page 625. The Court in In re Consolidated Meridian Funds said, quote, "without allegations it's how the loss

was proximately caused by the bank's alleged participation in the transfers. The bank cannot adequately prepare a defense."

Which leads us to the Receiver's argument here with respect to damages. And the Receiver points to its damages expert Mr. Yeltsin (phonetic). And that's at -- we provided a copy of the report of Ms. Armstrong's Declaration Exhibit 9. And the Court sees that what Mr. Yeltsin has done is remarkable in the sense that he has not done a traditional damages analysis. What Mr. Yeltsin has done is something called avoidable losses. What he has calculated is every loss of equity that the 15 pools sustained from 2008 to 2019. Every loss is the damages theory that the Receiver is now applying to the damages for Pacific Premier's aiding and abetting claim. In other words, the Receiver, despite admitting that Pacific Premier did not actually know about the Ponzi scheme, has alleged and argued in a summary judgment motion that Pacific Premier is liable for every loss the pools suffered from 2008 to 2019.

So in other words, the Receiver's contention is that Pacific Premier would be

liable for losses to the pools that Pacific Premier could not and did not proximately cause. The reason I say that is because the Receiver has already admitted that within the calculation of loss that Mr. Yeltsin did for every pool, there are losses calculated that Pacific Premier had nothing to do with. For example, there are related parting transactions that the AEI defendants are alleged to have engaged in that caused loss -- losses to the pools. Pacific Premier had absolutely nothing to do with the related party transactions. We're (inaudible).

There are losses in Mr. Yeltsin's calculation that purport to account for every defendants' action in this case. So every action that the AEI defendants took that caused harm to the pool, that's mixed into the 50.5 million. Every action that Riverview is alleged to have taken that caused damage to the pool. That's mixed into the 50.5 -- 50.5 million dollars.

It's not even just that that Mr. Yeltsin has calculated because losses to pools don't account for other causes like a bad economy, like bad business decisions that weren't

breaches of fiduciary duty, but just happened to cause a loss to the pool. There are a myriad of causes for the loss of the pool, none of which are addressed by Mr. Yeltsin. Mr. Yeltsin and the Receiver simply refuse to calculate alleged damages to the pools that were just caused by the Ponzi scheme, damages that were just caused on a claim-by-claim basis for damages that were just caused by each defendant. They did not do that. They simply assert, remarkably, that each defendant in this case, including Pacific Premier, is liable for 50.5 million dollars in damages related to all the claims in the case. It's not separated them out at all.

Now, with respect to the theory of avoidable losses, there's no court that has ever sanctioned avoidable losses as a theory, a viable theory, to prove causation and damages for claims. And if the Court accepts Mr. Yeltsin's avoidable losses theory, this will be the first time a court has ever blessed avoidable losses to prove damages for claims. And there's a good reason that no court has ever adopted this theory. And it's because it eradicates -- it completely eradicates the need

for the Receiver to prove proximate causation.

We've cited to you on page 23 and 24 of our motion for summary judgment the deposition testimony that confirms the Receiver didn't do any analysis as to the harm that Pacific Premier caused to the pools. It simply is a conclusory argument that Pacific Premier Bank allowed -- allowed the Ponzi scheme to continue and is, therefore, liable for all the losses to the pools. And that's not enough under Washington law. Pacific Premier can only be liable for injury to the pools that is a direct or reasonably foreseeable result of Pacific Premier's conduct. And that is Black Letter Restatement Second of Torts, Section 876B. And I highlight that, Your Honor, the Restatement Second of Torts in that section because courts around the country look to that Restatement Second of Torts Section 876B for this proximate cause issue. And the Receiver's theory, this theory that as a whole, Pacific Premier substantially assisted the Ponzi scheme, this theory that if Pacific Premier would have stopped lending, the Ponzi scheme would have collapsed. It doesn't work legally and it

doesn't work factually. And I'd like to talk specifically to the Court about why that should be rejected.

I've handed the Court the case El Camino Resources v Huntington National Bank. And this case is important, Your Honor, because it directly addresses the fallacy of the argument that if a bank stops lending, that in and of itself, would have stopped the Ponzi scheme. And in El Camino Resources, the Court looked at this exact argument and said substantial assistance in aiding and abetting (inaudible) means more -- it means more than merely providing routine professional services that aid the tortfeasor in remaining in business, but do not proximately cause the plaintiffs harm.

So in the banking area, courts generally hold the bank does not aid and abet its customers' wrongdoing by merely providing routine services to a customer. So the routine extension of a loan, that cannot -- that cannot amount to substantial assistance. General maintenance of bank accounts cannot amount to substantial assistance. Wire transfers involving stolen funds, they cannot amount to

substantial assistance.

So what can? What is it that can amount to substantial assistance? And here's the key. And this is on page 911 of the El Camino Resources cases. So 722 F. Supp. 2nd 911. Ordinary bank transactions can meet the substantial assistance element of aiding and abetting only if the bank actually knew that those transactions were assisting the customer in creating a specific tort.

UNIDENTIFIED FEMALE: Just for a -- excuse me, just a minute.

THE COURT: Stand by. The recording system -- even though the -- the red light is usually the gold standard that our recording system is working, occasionally there's an incongruity, so stand by while we get that (inaudible).

UNIDENTIFIED FEMALE: We're good.

THE COURT: We're good now.

MR. DONAHUE: Thank you, Your Honor. So going back to that El Camino Resources case. Ordinary bank transactions can only be substantial -- meet the substantial assistant element, and here is the key, quote "if the bank actually knew the transactions were assisting

the customer in committing a specific tort," end quote.

Now, here, the Receiver doesn't tie any pool loss over an 11-year period to Pacific Premier's conduct in aiding and abetting breaches of fiduciary duty. Here's what the Receiver's do (inaudible). And it's on page 40 of the Receiver's response, so I want to address it directly because it's critical. What Mr. Yeltsin is relying on is Pacific Premier's lending to the pool managers generally. He asserts, quote, "Pacific Premier provided lines of credit to AEI that enabled the creation and continuation of the Ponzi scheme because it provides funds to AEI that AEI then used for inappropriate purposes." That is the Receiver's theory about what Pacific Premier did to substantially assist the Ponzi scheme.

So first the Court would have to find Pacific Premier knew about the Ponzi scheme, but second, the Court would have to find that Pacific Premier substantially assisted and proximately caused all the Ponzi scheme damages. And that's not possible here for this reason. Because in order for Pacific Premier to be

liable for all the pool managers wrongdoing, the Receiver would have to show more than Pacific Premier's lending helped to keep the pool managers in business. And that is what they're arguing. The Receiver would have to show Pacific Premier knew that every loan it made to the pool managers was a breach of fiduciary duty to the pools.

THE COURT: Well, here's -- here's my interpretation of their difference with your analysis and that is that you use the word lending as kind of a monolithic term. Lending. We're talking about multiple entities, multiple transactions, money shifting in and out of accounts, etcetera. And I think that's, as I understand, and I'll let him make his argument, but it's my understanding that's why he's saying he should get past summary judgment is because there's so many transactions that involve so many entities, transfers (inaudible) account (inaudible) pool, etcetera, that this is different than simply, you know, the gas station giving gas into the gas can and then the arsonist goes down the road and lights a house on fire, where it's a one-time transaction. So

I guess I'd be curious to hear argument more focused on that --

MR. DONOHUE: Yes.

THE COURT: -- specific graviton of the -- of where the rubber hits the road in this case.

MR. DONOHUE: Because where the rubber hits the road in this case is that Yeltsin's analysis is predicated on Pacific Premier's lending. So providing the -- the guidance line of --

THE COURT: Continued multiple transaction lending over many years, many specific transactions, many different pools.

MR. DONOHUE: And critically, the Receiver admits that there was loans from the guidance line of credit that were not -- were not breaches of fiduciary duty by the pool managers. So, in fact, in the Receiver's own words, the loans, quote, unquote, "functioned as intended."

So, we know that all the lending, which is what Yeltsin replies on, just like you said, providing a guidance line of credit over many, many, many, many years. That is what the Receiver uses to prop up the substantial assistance for the Ponzi scheme and cannot work under Washington law or the Restatement Second

of Torts because Pacific Premier would have to know and they would -- the Receiver would have to prove that each loan, each loan was a breach of fiduciary duty. And they don't even attempt to do that here. They would have to have evidence of how each transaction between Pacific Premier and the pool managers, each transaction caused harm to the pools. That's -- substantial assistance has to have proximate cause related to the harm. And that's -- that's the failing here.

Now, and it's also the reason, Your Honor, where you say, this is different than the gas station attendant case or, you know, aiding and abetting a breach of fiduciary duty. That's exactly why we look at the Ponzi scheme cases and you look at plaintiffs that are trying to hold the bank liable for exactly what you just articulated. The lending over a period of time helped the tortfeasor maintain a Ponzi scheme. And the law is crystal clear that the bank has to have actually known of the Ponzi scheme. (Inaudible) that that's the theory.

And number two, substantial assistance has to be directly tied to harm. Each -- each

breach of fiduciary duty. It's only enough if there's actual knowledge or the claim fails as a matter of law.

And the Receiver's argument is on page 36 of their brief, that they argue that this First Alliance case establishes that they can get past summary judgment. It's sufficient to support a jury verdict. And this is -- is their language that Pacific Premier's actions in supporting a -- constitute aiding and abetting the pool managers fraudulent scheme.

El Camino, the case that I handed up and we were just talking about, analyzed the exact same argument made by the plaintiff in that case relying on First Alliance.

THE COURT: Well, in fairness, that's the Southern District of Michigan case, right? So you're not -- you're not arguing that that is controlling case authority over this Court. You're arguing that (inaudible) persuasive authority.

MR. DONOHUE: It is -- it is the same analysis even though it is Michigan case, yes, Your Honor.

THE COURT: Okay.

MR. DONOHUE: It's looking, though, at the Restatement Second Section 876 of Torts. So that -- that substantial assistance that I've been talking about, although we have provided to you cases not only from Washington, but from other jurisdictions, those courts are analyzing the same language in that Restatement. So I think it is highly persuasive.

THE COURT: Persuasive. Not controlling, but persuasive.

MR. DONOHUE: Yeah.

THE COURT: We're on the same page.

MR. DONOHUE: Okay. But you see what the -- what the Court in El Camino noted about that. It said, you know, the plaintiff's contention that they only need to prove the bank somehow assisted the tortfeasor in keeping in business in general in order to become liable for all the wrongdoing was wrong as a matter of law. The Court noted that was a remarkable proposition and rejected the reliance on -- the plaintiff's reliance on First Alliance because in First Alliance, Your Honor, the jury found there was actual knowledge. And so, again, the Receiver's own admission here that Pacific Premier, they

never alleged actual knowledge and Pacific Premier didn't have actual knowledge. That in and of itself is fatal. It's fatal to the aiding and abetting claim to the extent that it's seeking to hold Pacific Premier liable for all the wrongdoing related to the Ponzi scheme.

The other problem -- and I just want to touch on this with -- with two more cases. The other problem with the Receiver's theory is that it's too speculative and attenuated. So the argument that Pacific Premier's loans allowed the Ponzi scheme to continue, that has also been rejected -- considered and rejected as insufficient to cause proximate cause -- or establish proximate cause. And that, Your Honor, is this SPV Osus Limited case which is 882 F. 3d 333 2018 Second Circuit Court of Appeals case. And that court affirmed that the plaintiffs adequately failed to plea proximate cause as a matter of law because the plaintiff's theory was that if the defendants did not provide the support and assistance to the feeder funds for the Ponzi scheme, the Ponzi scheme would not have collected money from investors. And if the money stopped flowing, the fraudulent

scheme would have collapsed much sooner staunching the losses. It's not enough. Defendant's actions or inactions and harm suffered by the plaintiff is too attenuated to constitute proximate cause. And that is the Receiver's theory here.

I do want to say one thing about inaction because you're going to hear argument from the Receiver that Pacific Premier's inaction substantially assisted the Ponzi scheme. Inaction can only be a form of substantial assistance if Pacific Premier had a duty to act. And the case law is clear on that.

Here -- here the Receiver would have to establish Pacific Premier had a fiduciary duty to the pools in order to allege and prove that Pacific Premier had to take an action. So there's no -- no duty that Pacific Premier had to the pools. And if you recall, there wasn't claim for fiduciary duty. The Receiver has abandoned that claim. Has dismissed that claim. So there is no duty that would require Pacific Premier to act. And inaction -- the argument about the inaction of Pacific Premier should be rejected by the Court.

Last case is In re Agape litigation, we've handed up next, 773 F. Supp. 2nd 298, Eastern District of New York. And that, again, is plaintiff's alleging that Bank of America's banking activities made it easier -- made it easier for the tortfeasor to effectuate a Ponzi scheme. And the Court, again, it held that is not enough, citing to Cromer (phonetic), which is another Southern District of New York case.

So for those reasons, Your Honor, as a matter of law, the Receiver cannot be liable for the Ponzi scheme damages. Thank you.

THE COURT: The bank?

MR. DONOHUE: I'm sorry. The bank.

THE COURT: Pacific Premier Bank.

MR. DONOHUE: Pacific Premier Bank. I apologize.

So I do want to talk about the other theory that aiding and abetting of breach of fiduciary duty and that is slide 5 of the handout. And that is to prevail on aiding and abetting against Pacific Premier arising from specific breaches of fiduciary duty, the Receiver must prove, and again, there's knowledge, Pacific Premier had actual knowledge of a specific

breach of fiduciary duty and Pacific Premier substantially assisted in that specific breach and caused damages arising from that specific breach. And that is -- that is the law, Your Honor.

And to be very clear about it, what the Receiver would have to prove for each specific breach of fiduciary duty by the pool managers is that Pacific Premier actually knew that the pool managers were breaching a fiduciary duty to the pools and that Pacific Premier substantially assisted each specific breach of fiduciary duty by the pool managers and that assistance caused harm to the pool. That's the standard.

If we look on page 6 of the demonstrative, I want to specifically point out that actual knowledge does not mean that Pacific Premier knew about the transaction at issue. Most of what the Receiver argues with respect to Pacific Premier's knowledge is Pacific Premier knew about a transaction with the pool managers. That's not the standard. The standard is whether or not Pacific Premier actually knew there was a breach of fiduciary duty by the pool managers. And the only evidence in the record

that the Receiver has that Pacific Premier knew the pool managers had a fiduciary duty in the first place is this long memorandum that they have cited to the Court that talks generally about Pacific Premier's awareness of the role the pool managers had with respect to the pools. That's it. That loan memo doesn't say Pacific -- that the pool managers have a fiduciary duty to the pools.

But putting that aside, the Receiver doesn't have any evidence in the record that Pacific Premier ever reviewed or relied upon pools specific information. So there's nothing in the record that Pacific Premier ever reviewed and relied upon offering memorandums, LFC agreements, the pool QuickBooks, any specific pool financial statement. And this is important because what the Receiver has done is speculated about what Pacific Premier knew about what the pool managers were doing with the pools.

What I mean by that is if you'll take a look at the LaPine (phonetic) transaction, it's a perfect illustration of how the Receiver has failed to prove that Pacific Premier actually knew there was breaches of fiduciary duty by the

pool managers and substantially assisted that specific breach of fiduciary duty to cause harm to the pool. And if you remember, the Receiver talked a lot about this LaPine transaction. All right? Let me take you through why I think this fails as a matter of law.

THE COURT: Let me do this. Just in terms of time management, how much time left on it? Because I need to make sure I leave time for Mr. Vance and Mr. Paternoster to --

MR. DONOHUE: I could do 15 more minutes.

THE COURT: Okay.

MR. DONOHUE: Unless you'd like shorter, and then I'll do shorter.

THE COURT: I'd be lying if I said I wouldn't want shorter. So if can you make 15 into 10, let's try it.

MR. DONOHUE: I'll squeeze it. Let me do -- let me talk about LaPine for a second because the Receiver spends a lot of time and you're going to hear about a lot -- about LaPine. LaPine AEI pool manager took five deeds of trust assigned the pool AEM 200, reassigned those trust deeds to AEI and then used those as collateral for a loan from Pacific Premier Bank.

I think that's undisputed.

The result is that the bank had essentially the same loan with AEI, the pool manager, but it had different collateral. And Receiver points to that as evidence that Pacific Premier knew -- Pacific Premier knew that the pool manager had breached the fiduciary duty.

So the question is how? Because number one, and this is an undisputed fact, the Receiver admits AEI had the authority to -- and its sole discretion, so this is -- this is undisputed. The Receiver -- or the pool manager could, quote, "loan funds, acquire service, manage, collect, replace and, in certain circumstances, liquidate or dispose pool collateral." AEI had actual authority to swap out collateral from the pools.

Now there's no evidence that Pacific Premier actually read the -- the (inaudible) disclosure to the document and knew that language. But Pacific Premier believed AEI had apparent authority to do it. It actually had actual authority. But that's the apparent authority piece of this. Pacific Premier rightfully believed under apparent authority

that AEI could swap out collateral. In order for Pacific Premier to know that that was a breach of fiduciary duty, assuming that it was, the information that Pacific Premier would have to know was not available to them. Because Pacific Premier would have to, essentially, know that AEI took collateral out of the pools and didn't put anything back into the pools. And that's not even what happened in LaPine. In LaPine, the Receiver admits there was collateral that was put back in the pools.

So in order for that -- the LaPine transaction does not prove Pacific Premier Bank knew of the breach of fiduciary duty. Pacific Premier didn't have the information to -- to actually know whether breach of fiduciary happened or not because it would have to have pool specific information.

What Pacific Premier would had to have done in order to recognize that there was breaches of fiduciary duty by the pool managers is either have Mr. Miles tell them, "I'm breaching fiduciary duties." That didn't happen. Or Pacific Premier would have had to hire a forensic accountant the same as Mr. Hamstreet

did and spend all that time disassembling the financial records to the pools to realize that there were breaches of fiduciary duty. And that cannot be the standard under Washington law for aiding and abetting a breach of fiduciary duty.

I want to skip to the negligence claim, Your Honor. And that is -- well, before I do that, let me -- let me just comment on the specific breaches of fiduciary duty. And this is page 7 of the demonstrative. Even assuming that the Court believes that the Receiver has record evidence on specific breaches of fiduciary duty, they have not, by their own admission, undertaken any analysis about what a specific breach of fiduciary duty, what damage that caused to a pool. And that's what we're reflecting on page 7 of the slide.

Negligence, Your Honor. We've put on page 8 the elements of negligence. And page 9 we've put an X on duty which, of course, has the whole claim -- makes the whole claim fail because there is undisputedly a contract that governs the deposit relationships with the three pools. The Receiver's argument is they're under Washington law is a common law duty of care.

Citing the Diffly (phonetic) case. That's not Washington law. The independent duty doctrine prohibits extra-contractual claims here because the Receiver's extra-contractual claim was for breach of fiduciary duty by Pacific Premier to the three pools, which they now have dismissed.

So it would turn the banking world on its head if ordinary deposit accounts were treated as trust accounts for the purposes of negligence. And the admissions by the Receiver are these are standard accounts, standard deposit accounts, we've cited deposition testimony. But more importantly, the Receiver admitted these are not trust accounts. The Receiver's argument now in summary judgment is that they were, quote, unquote, "effectively trust accounts." There's no record evidence that, even assuming we knew what "effectively trust accounts" meant, that would create a duty that Pacific Premier owed to those deposit accounts. It cannot be the case that a bank that opens a standard deposit account is held to a duty of care when the plaintiff admits they're not trust accounts.

And even assuming a duty of, the same

proximate causation exists for the negligence claim because, as the Court has seen, Mr. Yeltsin has simply taken for those three pools that had deposit accounts, all losses ever caused by those pools and assigned those as damage that Pacific Premier allegedly caused as a result of a breach of duty of care. And there's no record evidence to support proximate causation on this record to allow a negligence claim to move forward on -- against Pacific Premier.

I want to just point out one thing about standing, Your Honor. And that is that in cases where the Court has found standing in a receiver or/trustee context and specifically In re Consolidated Meridian case at page 612, there was a discussion of standing similar to the argument that Pacific Premier Bank and the Receiver are engaged in. And I wanted to point out that in that case, the Court found the trustee had standing for investors to bring claims related to Ponzi scheme because there was an assignment. There was an assignment of claims to the trustee. And the problem here is that there is no assignment that the Receiver

ever got from the investors to pursue claims on their behalf, which is what the Receiver is doing here.

And so, the situation that exists is that the Receiver is pursuing claims for the individual investors here while the individual investors have -- are maintaining separate lawsuits against Pacific Premier Bank in Oregon in two separate cases. So that result is not right. There should not be multiple lawsuits where individual investors have claims against Pacific Premier. And that is primary reason why the Receiver does not have a standing in this Court to pursue the claims on behalf of the individual investors.

And the last thing I'll say is with respect to the joint and several liability argument. The Receiver -- because the Receiver failed to do a claim-by-claim analysis, it's impossible to determine what damages were caused by intentional torts and what damages were caused by negligence. We can't do it. Receiver didn't do it. No one can do it. Pacific Premier could only be liable for losses to the pools proximately caused by specific breaches of

fiduciary duty that Pacific Premier know about -- - knew about. So it's manifestly unfair on a joint and several liability for the Court to allow the Receiver to proceed on claims against the pool managers and then hold Pacific Premier jointly and severally liable for whatever damages caused by the pool managers when Pacific Premier had nothing to do with some of those claims.

So we ask, Your Honor, just this aiding and abetting and negligence claims as a matter or alternatively an order limiting the Receiver to bringing claims that only seek damages that were proximately caused by Pacific Premier. In other words, hold the Receiver to Washington law where they have to point to a specific breach of fiduciary duty by the pool manager that Pacific Premier knew about and substantially assisted and that substantial assistance caused harm to the pool. Thank you.

THE COURT: Thank you. Mr. Paternoster.

MR. PATERNOSTER: Thank you, Your Honor. May I remain seated?

THE COURT: Certainly.

MR. PATERNOSTER: Thank you. May it please

the Court, just for playing purposes, I expect that I've got maybe 10 to 12 minutes of argument.

THE COURT: Perfect. There's a -- there's a bathroom break somewhere in the mix and so I'll give you --

MR. PATERNOSTER: And so that's what I was wondering. If, perhaps, we'll do this argument and then break for Mr. Vance.

THE COURT: Appreciate that, sir.

MR. VANCE: Well, if that's how we get favor, I'll do mine in five minutes.

MR. PATERNOSTER: Thank you, Your Honor. As I mentioned at the outset, I believe that many of the claims with respect to the banks overlap. And so what I'd like to do is start by addressing the fraudulent transfer claim that's been brought against Riverview and then, perhaps, at the end of my argument, just highlight a couple of issues where either the facts or the argument might be slightly different as to the remaining claims, the aiding and abetting claim, in particular.

So turning towards the fraudulent transfer claim. There are two bases for Riverview's

motion for summary judgment. The first is that the claim is extinguished pursuant to RCW 19.40.09181. The second basis is that the evidence is insufficient to move forward on the claim as a matter of law.

When we look at the statute of limitations question, there's no question here, I think, that we are beyond the four-year statutory period. These transactions all took place in 2007, 2008. And so the question under the statute is whether the claim was filed, quote, "not later than one year after the transfer or obligation was or could reasonably have been discovered by the claimant." Both parties in their briefing cite the Fripan (phonetic) case. And what the Fripan case tells us is that an aggrieved party is deemed to have knowledge when it has knowledge of the facts constituting the transfer or through the exercise of due diligence could have discovered those facts.

So the question becomes when did the pools or the Receiver either know or through the exercise of due diligence could have discovered the facts to start the one-year clock ticking? And while the Receiver makes certain statements

and testifies in his motion response about when it received and when it reviewed documents related to the pools and AEI and Riverview, the fact is that that question of knowledge is answered by the Receiver's counsel's own words. When the Receiver testified that in February of 2019 he'd at least identified the pools had potential claims arising from the breaches of the agreements by AEI. We've cited that testimony in our reply, page 11.

What the Receiver's counsel says is that by early February '19, he recognized that there might have been a claim that the receivership entities had against management for mismanaging them consistent with their documents. Later on, what Mr. Foraker testifies is that by early February 2019, he had identified potential claims by the pools against American Equities for violating the various agreements. And the fact is that based on that Fripan case that both parties have cited, that is enough to put the Receiver on notice and to start the one-year clock of RCW 19.40.091 ticking. The fact that the Receiver didn't obtain bank records from the pools until May of 2019 doesn't absolve the

Receiver or stop the clock. The fact that they didn't receive AEI documents until June of 2019 doesn't stop the clock. The fact that the Receiver waited 10 1/2 months for Mr. Foraker identifying potential claims to subpoena documents from Riverview doesn't delay the clock.

With respect to the fraudulent transfer claim, Your Honor, whether we agree or disagree with the substance of the claim, and we certainly disagree, there's no question that the claim itself that's brought by the Receiver is simple and straightforward. It's a single paragraph in the Second Amended Complaint found at paragraph 42 that suggests that certain transfers were made giving a total of money and the exact language is, "AEI transferred these funds from the pools to Riverview to pay them amounts owed on the Riverview line of credit despite the fact that Riverview's line of credit was AEI's debt, not the pools'." That's the only allegation in the Second Amended Complaint related to the fraudulent transfer claim. There is not extensive investigation that needed to be done. Again, the information that the Receiver

had and had identified in early February 2019 potential claims by the pools were very -- violating the various contracts is exactly the kind of knowledge that set the clock running.

And the bottom line is that it was more than 16 1/2 months from the time that the Receiver's counsel had that knowledge until the Receiver took steps to toll the statute on June 27, 2020. And we've highlighted, and we've accepted for the Court, that the statute was tolled by the agreement of the parties on that day, not in 2022 when the claim was ultimately filed against Riverview. That's the argument and the basis for Riverview's position that the claim is extinguished under the statute.

Turning now to the substance of the fraudulent transfer claim. That is a question of whether or not the Receiver has brought forward significant evidence to avoid judgment as a matter of law. And certainly, we understand that the -- this stage of the proceedings that the standard the Court is going to apply gives the Receiver significant benefit of the doubt at summary judgment when it comes to the evidence. But what we would submit to

the Court is that even with that benefit of the doubt, if Your Honor is examining the evidence that's cited by the Receiver in support of this claim, it's lacking as a matter of law.

In our motion for summary judgment and again in the reply, Your Honor, we lay out the different factors found in the fraudulent transfer statute and we demonstrate that with respect to nearly every single one, the evidence is overwhelmingly, if not completely, in Riverview's favor. And that explanation is found in pages 21 through 24 of our brief for the summary judgment motion.

Without going into too much repetitive detail, these were arms-length parties. At no point was Riverview an insider of the plaintiffs' or AEI defendants. There's no evidence that the AEI defendants maintain possession or control of any of these payments after they were made or that Riverview sent payments back or returned them to the AEI defendants. The transfers were made openly and recorded in the books, in financial records in the pools and Riverview. There's no evidence that the AEI defendants or the pools had been

threatened by a lawsuit before making the payments. None of the pool managers, members of the AEI defendants have absconded. And none of the transfers were property named to a lienor. The evidence is also undisputed that all the payments that were made by the pools on the Riverview line of credit were specifically directed and authorized by the managers of AEI and the pools.

In response, the Receiver offers a handful of things that they contend create questions of fact on the issue. The first is the idea that this was being run as a Ponzi scheme. And the Receiver's evidence for that argument is found at pages 6 and 7 of its responsive brief. And while the plaintiffs assert that there's substantial evidence for that finding, we ask the Court to really examine the evidence that's cited at pages 6 and 7 because we do believe it falls short.

One of the key examples is that it's alleged that there is a Ponzi scheme, but there's an omission when it comes to the Ponzi scheme of a critical fact for this time period of 2007 and 2008. And that’s, basically, the

heart of a Ponzi scheme, the use of new investor money to pay old investors. Again, there are allegations throughout made by the Receiver and the Receiver's expert and witnesses as to a Ponzi scheme being in place at certain periods of time. But when it comes to this 2007 and 2008 time period, we believe that there is an absence of evidence about the Ponzi scheme then that would give the Receiver the benefit of the doubt in calling these fraudulent transfers. To just break down that specific evidence, we're not aware of any Receiver testimony prior to November of 2009 wherein there is evidence that new money is being used to pay old investors.

The Receiver also cites the testimony of Miss Jacobs, a former AEI bookkeeper, about her belief that there was a Ponzi scheme being operated. That’s in plaintiffs' response at 5. But there's no testimony from Miss Jacobs about when she believed that Ponzi scheme began.

The other critical piece is the expert report of Mr. Oltsin (phonetic) because Mr. Oltsin does make certain statements about Ponzi schemes being in place in certain times. But the evidence that Mr. Oltsin points to, if you

examine Mr. Oltsin's report, Mr. Oltsin testified transactions that took place in May and June of 2014, September of 2016 and June of 2017. There's no evidence of new money being used to pay old investors, the classic and central idea behind a Ponzi scheme that the Receiver has shown that pins it to the time period when these transactions were made. That's the basis for the failure of evidence, Your Honor. Again, we appreciate that on summary judgment, the Court looks at it with an eye giving the benefit to the Receiver, but we'd ask that the Court with that eye examine the evidence and see if it pins the time frame that the facts brought by the Receiver allege when it comes to that August 2007 to August 2008 time frame.

Moving quickly to the aiding and abetting of breach fiduciary duty. I think the Court is probably aware and would appreciate that there has been extensive briefing on this case. I think that many of the cases that counsel has elucidated far better than I can are the same ones that we cited in our brief. The Norton case, the El Camino case. And so I'm not going

to go through those again. I'd simply like to highlight a couple issues on actual knowledge and substantial assistance with respect to Riverview.

As to Riverview, the Receiver offers speculation in its motion response about what it claims Riverview knew or maybe even more importantly what it claims it should have known based on investigations that it should have done or the knowledge that LLCs were involved and, therefore, they should have known that these LLCs owed fiduciary duties.

We would submit that under the Norton case that's been discussed and provided to the Court, that under Washington law, that doesn't satisfy the actual knowledge standard. Here, like that situation in Norton, the Receiver can't point to what Riverview employees should have known or what investigation they should have done as a basis for finding actual knowledge.

Likewise, and this particular comes from the El Camino case that the Court has noted isn't binding authority, but I believe is instructive. Many of the allegations turn on what Riverview employees should have known had

they employed Bank Secrecy Act procures or KYC, know your client, procedures. I think if you look specifically at the El Camino case, you'll see that in the El Camino case, the Court held that the mere breach or the mere inability to basically do that kind of due diligence was not a basis for finding actual knowledge.

Quickly moving to the evidence. Just so that -- this is also in the record, Your Honor. There's no Riverview employee that testified that they knew that there were any fiduciary duties owed to the pools. Even Mr. Roberts, the individual that we've heard a lot about, specifically testified, and we've provided his deposition testimony, explaining that he didn't understand or know that there are fiduciary duties owed to the pools. And counsel was showing me that when we're talking about El Camino, this may be useful to the Court, that the Washington Court of Appeals has also relied on El Camino as authority in other cases.

Finally, turning to substantial assistance on the aiding and abetting claim. Counsel has elucidated some of the law as to what constitutes substantial assistance. And we

cited in our brief, and I practiced it last night several times, I'm still not going to get it, the Percumpolin (phonetic) case which is a Western District of Washington case that I think lays out the kinds of things that courts look at in determining substantial assistance. I believe that what that case and other Washington cases find is that it's got to be significantly more than typical and routine banking services and lending services.

We've cited both in our brief and our reply what the allegations are specifically in the complaint about what Riverview did in this case. And here we believe that all of those allegations turn on routine banking and routine lending. There's no allegation at any point in time that Riverview or any Riverview employees participated in the operation of these pools. Riverview didn't exercise any managerial or advisory authority over the pools. And certainly, there's no evidence of going further as the Percumpolin case did, standing and eliciting investors for the defendants, putting someone on their board, writing letters of recommendation. There's no evidence in this

case that Riverview engaged in the kind of conduct that Washington courts have found to be substantial assistance. At best, the facts show that classic lender/borrower relationship or in the case of the pools, merely a deposit relationship.

I think we'll leave it at that at this point. I apologize if I exceeded 10, 12 minutes, Your Honor. Thank you.

THE COURT: Not at all, sir. Why don't we take five, ten minutes and we'll resume with Mr. Vance's (inaudible).

(OFF THE RECORD.)

THE COURT: Okay, we're back on the record, then. I think we have all our participants in. Mr. Vance.

MR. VANCE: Thank you, Your Honor. There's been a lot of comment and argument about ordinary and routine banking transactions. One thing that's perfectly clear from Gary Astolly's (phonetic) report, the banking expert that was provided to the Court. I don't know if the Court had a chance to read all of his expert opinion, but even the executive summary makes it clear that what this case is not about is any

ordinary and routine banking transactions. Particularly, here at the time of summary judgment, which Riverview's counsel made note of.

The question is whether there is evidence. And that evidence is whether it's direct or circumstantial, and in this case we have both. There's both direct and circumstantial evidence. And the question is is whether that evidence, when seen in a light most favorable to the plaintiff, the non-moving party, is it enough to establish a claim? And summary judgment must be denied if any of this evidence, seen in the light most favorable to the plaintiff, if it would establish the claim. And because of that, because when you look at the evidence that's been presented, the Court's not in a position to be able to weigh that evidence and decide. That's -- that is the province for the jury. Because the jury gets to determine the strength of that evidence. Even when it goes to something like knowledge. If -- if there's evidence of knowledge, whether direct and circumstantial, and again, in this case, there's both, then the jury gets to decide whether or

not that standard's been met.

Despite the volume of -- of paper that's been provided to the Court and despite, I guess, at some levels anytime you're dealing with these kind of transactions, there is a little bit of complexity in trying to trace and track and all of that. The -- despite all of that, the Receiver's claim for aiding and abetting against both of the banks is actually very simple. And it's -- it's ignored -- the banks understandably if I were in their shoes I'd be trying to do the same thing. But they, instead of addressing the evidence regarding the aiding and abetting, what the banks do is create some straw men and then attack the straw men. And they failed to actually look at the actual evidence of -- of the aiding and abetting.

And so what is the actual evidence regarding the aiding and abetting that was -- that was done by the bank? Well, the first is that the banks knew the pool managers were the managers of investment pools and had a duty to manage those investment pools for the benefit of investors. And we'll talk about the evidence and where that comes from. That's the first

element.

Second is the banks worked with the pool managers to take pool assets for the benefit of the pool managers and the banks. This is not a situation where the banks were just some kind of innocent stand -- you know, standby or like the example where you're just filling up the gas tank. They were involved and they knew that -- what was happening. They were -- they were -- they had -- they were involved in the process of taking pool assets that they knew that the pool managers managed for the benefit of the pool managers and, oh, by the way, it just happened to be for the benefit of the bank as well. That is classic aiding and abetting of the breach of a fiduciary duty.

And so then the question is what are the damages? Well, both bank experts when you look at the opinions together, Gary Astolly and then with Mike Lotsolin (phonetic), it's the bank's tortious conduct. If -- it's not some other conduct, their conduct. Their -- their tortious conduct that they committed that the opinion is that the pool managers would not have been able to continue to operate the pools but for that --

that tortious conduct.

So the first element. The Riverview's knowledge that the pool managers had a fiduciary duty to the pools. You don't have to go any farther than just their own credit memos. When you look at their credit memos, in the credit memos, they acknowledge that -- and they spell out, AEI has operated much like a bank in nature over the years. Historically, buying seasoned loans, holding the assets in our line of credit until packages or pools are formed of approximately two million in loans and then selling the pool to investors. And then they -- they also notes that currently AEI services over forty million in these pools for investors, collecting a management fee on each. Their own credit memo establishes that they knew that they were managers of these investment pools for the benefit of investors.

There's a letter that was provided that was nine -- September 9, 2008. It's from Ross Miles to Mike Roberts where Miles references, "please refer to the package that was sent this week concerning the pool offerings." That's evidence that the -- the offering materials the --

related to the pools or at least some of the offering materials related to the pools were offered to the bank. And then we have Mike Roberts and Dan Cox in their deposition, both acknowledged that they knew that -- that the pool managers had created and managed investment pools.

Likewise, Pacific Premier in their credit memos established in their own credit memos that they knew of the relationship between and the duty and responsibility that the pool managers had to the pools. Quote -- and this isn't just in one credit memo. This is repeated time after time after time in their credit memos. "AEI is currently active in the establishment of Regulation D investment pools acting as the managing member of numerous Washington limited liability companies organized to sell investment units within these pools to individual investors. AEI is the acting manager of each investment pool and is responsible for managing each LLC as provided in the companies' limited liability company agreement."

Then they further went on. "Responsibilities include lending the funds,

acquiring, servicing, managing, collecting, replacing, and in certain circumstances, liquidating or disposing of certain receivables within the portfolio for the benefit of individual investors." Again, that's repeated over and over in their own credit memos.

Greg Wilsolman (phonetic) who is the vice president for the bank and their relationship manager said this in his deposition. "Question: Did you understand that each of the investment pools was a separate entity from AEI?" "Answer: Yes." "And did you understand that AEI had the responsibilities and duties to those investment pools?" "Answer: They were the manager of the investment pools. Yes." "Question: What was your understanding of what that meant?" "Answer: Again, it would have been that AEI was acting as manager of the pools and servicing the day-to-day activities of that pool."

So there's no question based on their own documents and records and their -- and their deposition testimony that they knew of the fiduciary relationship between pool managers and -- and the pools. Or -- and I think it's clear just on that, but at the very least, it's --

it's enough to create an issue of fact for the -- for the jury.

So then the next question is, well, what did they do -- what did the banks do or what knowledge did they have regarding breach of that fiduciary duty and what -- and what substantial assistance did they give in that?

So looking at Riverview's first. And again, I'm not going to repeat all of the examples that were provided in our responses in our declaration and in support of the response. We listed a lot. Okay. I'm just going to highlight a few to -- to -- to illustrate. First, with regards to Riverview.

THE COURT: I've read them, Mr. Vance, honestly, so your talking about inter-entity transfers extinguishing or reduction of certain debt of this entity by funds coming from, obviously, some other. So I have the LaPine materials and all that. So I've seen all that evidence. So if you want to briefly summarize it, but let's not spend a lot of time with it.

MR. VANCE: Let me -- let me just briefly then -- to also then highlight (inaudible).

THE COURT: Okay.

MR. VANCE: Okay. So with regards to Riverview, Mike Roberts -- that there's direct testimony that Mike Roberts knew the pool managers used over $7,000,000 of pool funds to pay down AEI's debt to Riverview. So Mike Roberts who knows of the -- the relationship between the pool managers and the pools, knows that they're taking pool funds to pay AEI's debt. That's a knowledge of a breach of a fiduciary duty. And they're doing -- and they're assisting them. They're approving the authorization, the transfer from the pool to the debt. That is aiding and abetting. That's classic aiding and abetting. They -- Riverview tracked the collateral. So they knew that pool collateral was being used to secure AEI debt. That's -- they -- there's direct evidence of that.

The credit memos, and this is probably -- it's some of the most damning evidence against Riverview. Their own credit memos describe the fact that AEI doesn't have any assets, that all of their assets are encumbered. And so, Riverview is concerned because they have this line of credit that they want paid off and

they're looking at -- oh, AEI doesn't have any, but then they acknowledge, well, the pool has some. And so they actually, in their -- in their credit memos, acknowledge that that's what's going to happen. We're going to take -- we're going to take the -- the bad -- the bad collateral, give it to the pools and take the good pools' money to pay off the -- to pay off the debt. It's acknowledged in their own credit memo that that's -- that that's taking place.

And then, finally, the Riverview credit memos show that Riverview knew that the pool managers were, again, it's all in 2013. This is at the very end. And yet, they accepted payments generated from pool assets as part of the pay down of the pool managers' debt. Of the 1.6 million pay off, almost 1.3 million came from the -- from the pool assets.

So then you go to Pacific Premier Bank and the LaPine line. I know that the Court is familiar with the LaPine line. But the reason that this is such a classic is their own documents in the email communication established that the bank was in on it. And they're in on it because of the way that they mischaracterized

what was taking place. If they thought it was all right, why were you concealing what happened? Because otherwise, what was -- what, you know, they say, well, no, we didn't know. Well, of course, you knew or else why would you describe it the way that you described it? Because what they describe in the loan documents, which is going to be seen by the regulators and everybody that's over there. They said, well, we have -- and to set it in proper context, they have an overdue loan. They -- and their own -- Mr. Oltsena (phonetic) and -- and his boss at their depositions admitted that's not good for the bank. They need to get that cleared up. AEI didn't have a way of paying it off.

So what do they do? Well, they take the assets from the pools to pay off that old loan. But what do they describe? They can't just describe it, right, in your numbers. If this was okay -- if it was okay just to take the assets of the pools that are being managed by the pool managers to pay off their debt, then why don't we just say that in the memo? That's not what they say. Instead, what they say is,

oh, AEI is going to pay it off ahead of time and then we're going to take this draw and use the draw to buy the pool assets. That's false. They knew it was false. And that's not what happened. At the very least, the evidence is enough -- that evidence is enough for a jury to conclude, again, that -- and that this isn't just some ordinary banking transaction. They were involved in the scheme. In -- in -- in breaching of the fiduciary duty.

So what do we know from that? Oh, the -- the -- in reply, they cite to the -- the recent deposition of Hannah Schmidt to say, well, but the pool was compensated. No. Eight months after the transaction, AEI took the bad loan -- the bad -- bad collateral, the LaPine, and transferred that into the pools. They knew that was bad. It wasn't -- there was no value in the contracts that were -- that were being given there. And again, it was eight months after the fact. If -- if the bank -- if AEI had the funds to compensate the pools for that collateral, why wouldn't they have just taken those funds and paid them to the bank? They didn't have the funds. The bank knew they didn't have the

funds. And that's why they worked with them to take the assets of the -- of the pools to pay off the debt.

The franchise management services transactions and other transactions that are similar to that. We list several others where they're taking again -- taking pool assets, knowingly taking pool assets for the benefit of the -- of the pool managers and the benefit of the bank.

The -- the bank's involvement in this -- in helping AEI, the pool managers, to commit these breaches of fiduciary duty are illustrated also in the -- the alligator memo. This is where they're -- where the -- it's communication between, again, Ross Miles and -- and Mr. Osleman (phonetic) and in that they're talking about the need to get rid of AEI as the borrower and replace it with AEMM. And -- and Mr. Miles in his communication makes it clear. This wasn't just Mr. Miles that came up with this scheme. This was -- this was involvement with the bank to come up with this scheme. And that's what he has. And this is Exhibit 78 to my declaration. "Greg, I thought we were going

to have AEMM and Ross Miles guarantors. AEMM is going to look pretty ugly since all we have," "since we have all of the development (inaudible) in other," and he puts in quote "alligators in that entity. That is going to be ongoing until the market gets better and we sell off. Because of negative retained earnings from Richcrest, it will be a long time before that is zeroed out. It will then be a lot easier to maintain credit worthiness with AMM and Ross Miles than dragging AEI into the loan. I thought we had discussed and determined this would be the best approach last year."

Now, interestingly enough, then when Pacific Premier documents in their credit memos this change from the borrower from AEI to AMM, all they say is based on advice of legal counsel, it was recommended that Ross Miles establish this new entity in order to manage, service, purchase real estate, secure promissory notes/contracts apart from related real estate development activities. Again, failing to even document or acknowledge these other back channel communications and agreements about what the real reason was for -- for that change.

Much was made by Pacific Premier that, well, they didn't know about, quote, unquote, "Ponzi scheme." That's -- that's true. We don't have evidence that they knew about the, quote, unquote, "Ponzi scheme." But we have overwhelming evidence, example after example after example where they knew of the breach of the fiduciary duty. And these cases that you cite -- that they cite to including the El Camino. And we're not afraid of the El Camino case. The El Camino case is directly in line with what -- what we're talking about. In that case there, the Court acknowledges that if you had knowledge, if your -- if your banking activities were in support of activities that you had knowledge were breaches of a fiduciary duty, then that -- then that is a violation.

And that's what we have in this case here is there's -- it's -- what -- the damages that are being sought from the banks are damages that are directly related to their own tortious conduct. And what you have, the evidence that's been provided -- so and first let me just highlight this point. In the Consolidated Meridian Funds case that's been cited and handed

up to the Court by Pacific Premier Bank, one of the thing that that court acknowledges is it's long been the law in Washington that a bank has a duty to notify a beneficiary if it has, quote, "knowledge of the fiduciary relationship and know of the breach of fiduciary duty." We have that exact example here time after time after time after time with both banks. Not only did the banks not notify the beneficiaries as they have a duty and responsibility to do in Washington, they went ahead and assisted in the breach of the fiduciary duty. That creates liability for that tort. When you look at the testimony and the expert opinion of Gary Stolly and the -- the -- Michael Ultsemen (phonetic), what they -- what that combined together shows is that except for their tortious conduct, these pools would not have been able to continue to exist. Mike Ultseman said if either of the AEI lines of credit had been called, AEI would not have had the liquidity to continue to operate the pools. AEI would have been unable to pay interest on its other bank debt, interest to its investors, payroll to the employees and other expenses. No new investment pools would have

been created.

So the, again, at the very least, for purposes of summary judgment, this question of whether the damages that flow from these breaches, that's a question for the jury. The jury gets to decide. And if -- and if the bank wants to argue that, well, it's not -- it's not the 50,000,000 that the -- that the Receiver is arguing, the jury gets to determine whether those damages flow from -- from that conduct. The evidence that's been provided is enough to support those damages.

Going to the fraudulent transfer act claim against Riverview bank. Again, the first question is the timeliness of it. Riverview makes much about the fact that there was these conversations that happened in February. Keep in mind, the receivership -- the Receiver was not appointed until May. So the idea that they were supposed to have done something or investigated something clear back in February is just a misnomer. The question is -- and -- and both sides agree that -- that the critical date is June 27, 2019. So the Receiver is appointed in May and the question is is by June 27, should

they -- should they have known, not just about the transaction, but the fraudulent nature of these transactions.

So again, it's also different from the fact that, well, did the Receiver when the Receiver was appointed, did they -- did they recognize there were possible claims potentially against Ross Miles? Yeah, there was potential claims that were there given -- given the facts that had come out. That's far different from having knowledge or a reasonable basis for knowledge of a claim for the fraudulent transfer act claim. To do that, you have to actually have knowledge that there were transfers taken from an insolvent entity made to somebody else. And -- and based on the evidence in the declaration, they didn't even have all those pieces until well after June 27, 2019. Again, at the very least, it's an issue for the jury on th timeliness.

With the regards to the --

THE COURT: You're agreeing with the Fritag (phonetic) authority on that. And just the application of it, obviously --

MR. VANCE: Yeah, well, but the Fritag --

the important part of Fritag that's -- that Riverview doesn't -- that Riverview twists is Fritag is very clear that it's not just knowledge of the transaction. You need to know about the fraudulent nature of the transaction. And so, yes, Fritag is exactly, but it's important to understand what Fritag really says. And the reality is that that's -- that that's not -- that's not a basis for summary judgment in this case.

Finally, the issue of the fraudulent nature of these, at the very least, it's an issue of fact. It's cited -- which was ignored in their motion for summary judgment. They ignored the lion cases that say when there's a -- when there's a -- when -- when transfers are made in aid of a Ponzi scheme, they're -- per se, they are -- they're fraudulent in nature under -- under the act.

And in this case, in their reply, they argue, well, wait, you don't have evidence of the Ponzi scheme. The ignore Mr. Oltson's opinion that by December 31, 2006, the investment pools had become a Ponzi scheme. So before the -- his -- his expert opinion is

before December 31, 2006, they had become a Ponzi scheme.

Now, they cite in the declaration that was part of the motion to consolidate, he gave certain examples of new money being used to pay -- pay prior investors that were -- that were after that date, but those weren't -- those weren't all inclusive of the examples that he had. And it ignores the fact that all the -- of commingling that had taken place and was taking place as of that time of December 31, 2006. And so, again, at the very least, there's an issue of a fact with regards to them.

In their reply brief, they made this argument that -- about the equitable nature. And they -- they cited to two new cases where you had a parent company and a subsidiary and the -- and the payments from the subsidiary on behalf of the parent company. Again, it's a completely different situation than we have here. The pools were not a subsidiary of the pool managers. The pool managers had no equity in the -- in the pools. This was simply taking -- the pool managers have -- were managers of those pools and took those funds. And there's

not a single case that's been cited where that's been -- that's been a defense to the fraudulent nature in these -- when you have these kind of claw back claims. To claw back the transfers that were -- that were done.

The -- the argument on standing is just simply -- has no basis. We're not, to be clear, because this has been confused by Pacific Premier Bank. The Receiver is not bringing the claim on behalf of the investors. The Receiver is bringing it on behalf of the pools. The Isaiah case that was cited was cited completely out of context -- or the -- even the Isaiah case says, well, you don't have standing if you don't have any innocent -- innocent owners. We have innocent owners. But -- but again, it doesn't mean you're bringing the claim on behalf of the innocent owners. You're bringing the claim on behalf of the pool.

And then we cited several others and many other cases that make it very clear that in this context, the Receiver has to -- not in -- regardless of the assignment of claims. You don't have to have an assignment from the members of the LLC in order for you to have a

claim on behalf of the pools.

And just in the interest of -- well, I just wanted to hit this point about the joint and several liability. The joint and several liability is related to the aiding and abetting, right? You aid and abet. You're joint and several liability with the -- with the tortfeasor. You -- the aider is jointly and severally liable for -- for what the tortfeasor did. And what the -- the damages that are being sought here are directly related to that. And -- and proximate caused by them.

Just in the interest of time, again, we -- we briefed the issue of negligence and the -- and the duties that there are. I don't see a need to add anything more than was already in our response brief.

And so, with that, we just respectfully, request that the -- both motions be denied.

THE COURT: Brief rebuttal.

MR. DONOHUE: Thank you, Your Honor. Just want to make two points. The Receiver cannot pursue a theory of liability based on Ponzi scheme damages because it admits Pacific Premier had no actual knowledge of the Ponzi scheme. So

that's not asking the Court to weigh evidence. That is established in the record. And their case law is clear that you cannot allow aiding and abetting a Ponzi scheme when there is no allegation or evidence of knowledge of the Ponzi scheme. And the Receiver can't get away from that.

That leaves specific breaches of fiduciary duty. And let's assume for purposes of summary judgment, Your Honor -- Your Honor. Let's assume that LaPine, assume that the record evidence the Receiver has established on this summary judgment motion is enough for the jury to decide whether or not Pacific Premier Bank knew about that -- that transaction was a breach of fiduciary duty. Here's the problem. The Receiver by its own admission has never done a transaction -- a transaction analysis of what harm that caused. That's the problem.

So if we fast forward 12 weeks and this court allows the Receiver to argue that LaPine was aiding and abetting a breach of fiduciary duty, there's no analysis of what harm that caused. It's not a question of the amount of damages. The jury cannot sit and listen to

evidence about LaPine and then, without the absence of any evidence, determine that that specific transaction proximately caused 50.5 million dollars in damages. There's simply no record evidence of harm. And that is why the Court should grant summary judgment on aiding and abetting. And the same problem exists for the negligence claim. That's all, Your Honor.

THE COURT: Mr. Paternoster, are you about --

MR. PATERNOSTER: Just very briefly on the fraudulent transfer claim, Your Honor. I think that Fritag continues to get Riverview there on that if the Court looks at that in terms of when the clock starts ticking. And when, based on Mr. Foraker's testimony, he -- the Receiver, could reasonably have discovered the facts that form the basis for the claim.

The only thing that I'd add is counsel mentioned Mr. Oltsen's report when it came to timing and that Mr. Oltsen had opined that, in fact, in 2006 and 2007, there were certain issues or certain things going on. Mr. Oltsen may have opined that, but what we were asking the Court to do is evaluate whether there's any

evidence in support of that. The examples of Mr. Oltsen's cites are far later in time. So the mere fact that Mr. Oltsen says, oh, yeah, as of X date I believe X isn't consistent with Mr. Oltsen's report or what's been offered on summary judgment in response. Thank you, Your Honor.

THE COURT: All right. Thank you, counsel. Obviously, a lot of work has gone into this and we have some -- some big gears in motion on the near horizon.

Question number one I would have for counsel is has this been scheduled for any sort of mediation or an alternative dispute resolution on the global resolution of all of these particular matters?

MR. DONOHUE: Your Honor, there's nothing formally scheduled --

THE COURT: Okay.

MR. DONOHUE: -- we have engaged.

THE COURT: Obviously, there's been some discussion and negotiation work? We're closing that discovery. We're at the dispositive motion stage. We're -- we've got trial prep on the horizon. So I would certainly suggest to

counsel and if on motion it's -- there's a very good chance I would order the participation in an alternative dispute resolution on these matters. I don't want to get ahead of where I'm going here, but I just -- I wanted to know whether there was something like that on the horizon.

Obviously, you're all very experienced, capable commercial litigators. I presume you will know if and when it's appropriate to -- to go down that road and to avail yourself of those resources. There are plenty of good mediators who do this kind of work.

The cost -- obviously, it's a lot of money. Just thinking of this morning, the cost per minute of what's going on in this courtroom is -- is significant, shall we say.

So the question for the Court, of course, is the motion for summary judgment. The burden is on the moving party to -- moving parties, in this case, to demonstrate under CR56 that there are no genuine issues of material fact and that the Court should resolve the case as a matter of law. What, in essence, is happening is that the defendants are asking for the Court to take away

one or all of the Receiver's claims to, basically, short circuit the trial process.

Counsel are well aware of case authority in this area interpreting the standards which include all inferences to be drawn in favor of the non-moving party, so that the right to go and proceed in front of a jury is treated fairly and sacredly by the Appellate Courts.

The record on appeal of these types of motions is not particularly good for dispositive rulings on summary judgment. There are some cases that lend themselves well to disposition on summary judgment. Those could be, for example, promissory note case or a rear-end car accident case. There are other cases that are much more difficult to resolve on summary judgment because of those standards, because of the nature of the claims and the door being open and pleading standards in the state of Washington, etcetera.

So the real question for the Court is, again, whether the plaintiff has presented significant -- or sufficient evidence to get out of the batter's box, if you will, to first base to be able to proceed and go forward to trial.

And, again, counsel do a good job. I'll be honest, it's a pretty close call. And in reading the materials and hearing the arguments, it's not been an easy one to come down on.

At the end of the day, at this time, on the basis of disposition of summary judgment, the one summary judgment that I'm going to grant is Riverview's with respect to the fraudulent transfer claim because I do believe that there's not been sufficient factual basis from the 2007, 2008 -- excuse me, yeah, whatever that was in terms of the knowledge at that time to sustain fraudulent transfer statute there. So that particular one I'm going to grant summary judgment for.

The remainder of the claims I'm not prepared to grant summary judgment on at this time. I will advise, however, though, that -- again, it's a very close case. I'm not ruling out the possibility of post-trial relief if the Court were to hear the trial and make the determination and notwithstanding the presentation and the evidence notwithstanding the jury decision that the Court determines that there be a directed verdict or something along

those lines, I would certainly take that into account.

I say that only because and I'm not telling you anything you don't already know. You're the plaintiff. You have the uphill battle. I think damages is a very -- is a red blinking light for me in terms the damages and the speculative nature of those damages that's being claimed here, which Mr. Donohue has already pointed out in his argument. All of which is a way of messaging to say that I think this case deserves serious consideration by a capable commercial mediator with experience and knowledge in these types of cases.

I'm going to ask, then, that Mr. Paternoster, that you prepare a summary judgment order with respect to your fraudulent conveyance or transfer claim. What do we call it these days? Is called a transfer or fraudulent --

MR. PATERNOSTER: I think it's fraudulent transfer, yeah.

THE COURT: Fraudulent transfer. Different -- they call it different things in different jurisdictions. Summary judgment orders are typically under 56F, very hard boiled. There's

no findings and conclusions. There's simply reference to the pleadings and materials that the Court did consider. And so it should be -- it's usually pretty easy. I think in previous motions, counsel had done a good job of agreeing on the form of those orders. Mr. Vance.

MR. VANCE: Yeah, Your Honor. If I might just ask for point of clarification. When you said that there was no -- for purposes of summary judgment, that there was no knowledge with regards to the 2007, 2008. What -- what -- what was the knowledge in 2007 or 2008 that the Court was referring to?

THE COURT: Well, the -- the argument that Mr. Paternoster made was that the -- I mean, the essence of a fraudulent transfer claim is knowledge of insolvency at the time, you know, that the transfer is made. So the -- the opinion and the analysis from your expert indicated some -- some problems which preceded that date, but really the insolvency and whatnot seemed to ripen later in the 2012, 2014, as I recall, so.

MR. VANCE: All right. (Inaudible).

THE COURT: Yeah.

MR. VANCE: (Inaudible).

THE COURT: Anything further from counsel, then?

MR. VANCE: No.

MR. PATERNOSTER: Thank you, Your Honor.

MR. DONOHUE: Thank you.

THE COURT: All right. Do you want to -- do you want a forward date for presentation on the order or are you confident that you'll be able to work out --

MR. PATERNOSTER: Well, I think if we're going to go --

MR. VANCE: Yeah.

MR. PATERNOSTER: (Inaudible) anticipate (inaudible) what the order is.

THE COURT: Let -- let's do this, then. Because of structurally now me having gone through a (inaudible) criminal case load, I don’t have any easy docket to hang your case on for presentations, so if and when you run into a problem, simply contact my assistant and we'll get you a special set like we did today for (inaudible) any argument that (inaudible) follow-up.

MR. PATERNOSTER: Thank you.

THE COURT: Thank you.

MR. DONOHUE: Your Honor, just to clarify, with respect to the June trial date, are we still, from the Court's perspective, on -- you have the time and that's on -- on your calendar?

THE COURT: That is on -- that is on our calendar and I will ask counsel to confer with my assistant as we get closer to that. That's a very significant commitment of our resources as well as yours no doubt. So if, in fact, this thing is going given the age of the case, except for criminal cases in custody where there are constitutional provisions, I'm going do everything I can to move heaven and earth to give you priority, recognizing the huge commitment of resources and witnesses and evidence. Two weeks? Is that what we had booked with us?

MR. DONOHUE: So that's why I wanted to raise. I believe you have it blocked for four weeks and I'm not sure that we need four weeks. That -- that's -- that's what I think you have it blocked for. So I just wanted to raise that.

THE COURT: I don't say we'd be threading a needle with that, but that's going to be a tall

ask. Four weeks. In two weeks, we can --

UNIDENTIFIED MALE: I think it's actually -- I thought it was actually three weeks, but I could be --

CLERK: I have you scheduled for three.

THE COURT: So three weeks with -- with some stipulations and (inaudible) and other things that might trim the sails a little bit. I would guess that we could curtail that a little bit. We've done really lengthy trials before and I've done things like start early and -- and go late and drive the jury like farm animals in some cases, but we'll do what we have to do. Just keep in touch with our department, please, about the status of things. And again, can't stress enough I think this is one that is just crying out for mediated -- at least a good effort at mediation because the expense and the risks, the calculus there. I'm not telling you anything you don't already know.

MR. VANCE: Thank you, Judge

MR. DONOHUE: Thank you, Judge.

MR. PATERNOSTER: Thank you, Judge.

(HEARING IS ENDED.)

# EXHIBIT 3

# Investor Meeting Summary

## Introduction

Representatives from the Receivership team and Miller Nash led the meeting. In addition to Clyde Hamstreet, present from Hamstreet & Associates were Hannah Schmidt, the case lead and primary contact for all aspects of the case, Veronica Hamstreet, who facilitates much of the Mexico business, and Martha Cohn, who works with Hannah on case administration.

Edward Decker represented Miller Nash at the meeting. With the recent departure of Joe Vance, Edward is our lead litigator and has spearheaded the litigation efforts over the past 18 months. Clyde thanked Joe in absentia for all of his work building the case to this point. John Knapp, who specializes in receivership law, attended over Zoom, while David Foraker, the advisory partner, did not attend.

Clyde thanked the 60+ investors in attendance for coming out in person, noting it has been a long and complicated case and we appreciate your patience and continued interest in the proceedings. He shared the meeting agenda and began the presentation with an overview of the case to date.

## Section 1: Receivership to date

*Case Overview*

This case has been more complicated than anticipated. Total professional fees have been ~$8.4 million, the largest portion of which have been litigation costs, which have greater potential recovery. We provide a detailed breakdown of fees and recoveries on slides 12 and 16 of the presentation.

We are now starting to realize the value of the professionals and time spent in the case by higher returns than initial estimates. In January 2020, we estimated recoveries of 5-15% of total book value, or between $3.5-12 million. We've distributed $4.2 million, and with the proposed $17 million distribution, recovery would be ~33%.

*Background Leading to Receivership*

The Pools did not start out as a Ponzi scheme. In order for a Ponzi scheme to work, there has to be a legitimate business reason to invest. AEM's basic business model ran as follows: investor funds were used to purchase secured real estate notes at less than face value. The interest income from the notes was used to pay fixed monthly interest to investors and management and overhead costs. The notes could be liquidated at the Pool's maturity date to return investors' principal. The Pools were an attractive opportunity to many investors because of Miles' long-term history of success with individual investors.

The Pool offering documents contained provisions to protect investors. These included a minimum loan to value ratio for the real estate notes, ensuring that the value of the property used as collateral exceeded the value of the loan by a stated margin or cushion. These provisions also prohibited the Pool from commingling funds, borrowing money, and making unsecured or improper loans. Ross Miles and Maureen Wile later violated all of these protections

*Pools in distress*

Between 2003 and 2018, Miles raised approximately $60 million in principal investments– not including the recapitalization of interest earned. He made regular interest payments until late 2018. When an

investor note matured, he would frequently convince investors to roll over their investments and extend their due dates. He found ways to pay off investors who would not extend, usually by selling notes or using new investor money.

In late 2018, Miles was unable to make principal and interest payments as promised, and certain investors sued him for their money. Miles contacted Miller Nash, where he engaged David Foraker. Foraker suggested putting the Pools into Receivership, which would suspend the pending lawsuit and allow the Receiver to liquidate the remaining assets to maximize proceeds to all investors. Miles agreed, and Foraker suggested Hamstreet as a potential Receiver based on prior work we have done together. A few members of the Hamstreet team met with Miles to get a sense of the case, and Miles offered to put the AEM pools into receivership under Hamstreet's control as receiver. By order entered on May 10, 2019, Hamstreet was appointed the general receiver for the fifteen AEM pools.

*Duties of Receiver*

A Receiver serves as an arm of the Court to account for and protect the assets of the companies in receivership. Everything is disclosed to and approved by the Court. We provide regular quarterly reports along with notices of sales of property and other such events.

Both state and federal receivership law prioritize equitable treatment of investors. As Receiver, we are responsible for investigating and evaluating the assets of the Receivership and to liquidate the assets and distribute the funds recovered fairly. We are also responsible for determining who has a claim to those funds. The determination of claims and the plan(s) for distributing recovery must be submitted to and approved by the Court. In this case, the claimants are the investors who have promissory notes in the Pools, and the Court approved an interim distribution based on a Money In Money Out (MIMO) basis, an approach frequently used in federal receiverships. More information on MIMO can be found in the Receiver's Fifth Update to Investors (May 28, 2021).

We identified four categories of assets in this case: physical assets, e.g., real estate, financial assets – e.g., contracts, Mexico assets, and intangible assets – e.g., legal claims.

*Receivership Findings*

Once we were onsite at the AEI office and working with AEI staff, it was clear that things were not as they appeared from our initial meetings with Miles. His business model was one thing, but the reality was another. The bookkeeping was not compliant with Generally Accepted Accounting Principles (GAAP) and there was gross overstatement of assets due to capitalization of accrued interest and costs on delinquent contracts and Real Estate Owned (REOs). There was an extraordinary number of transactions between the Pools, many poorly documented, causing it to be time-consuming to follow the flow of cash.

Contrary to the provisions in the offering documents, Miles made frequent related party loans, most of which were poorly documented, some without documentation, and all were non-performing. Within a month of the Receivership, we enlisted forensic accountants to help sort through the mess.

*Domestic Assets*

The Receivership owned 64 properties located in 11 states across the US in varying condition. Many properties did not have an appropriate loan to value ratio, many were in poor condition, and all were sold as is.

As of today, we have sold all the real estate assets on the books on May 10, 2019. In addition, we obtained 6 properties through foreclosure of delinquent contracts receivable. These have all been sold or are under contract. The final property, a house in Nehalem, is under contract to close the second week of August with a sales price of $235,000. We recently discovered a small parcel adjacent to land previously sold in the Oregon Columbia Gorge area that we estimate to be worth ~$1,000. We are currently working on the best method of disposal.

We continue to hold and manage the domestic contract portfolio. Of 169 original contracts on the books in May 2019, we now have 59 remaining. We have put significant effort into recovering on 32 delinquent contracts, with a book value of $2.5 million, with excellent results. Through some foreclosures, some pay-offs, and some payment plans, we now have only 3 delinquent contracts, with a book value of $130,000. These are all located in California, where a foreclosure provision during the pandemic stopped the foreclosure process.

*Mexico Assets*

Veronica, who is a native Spanish speaker, has been very helpful in the collection and development efforts in Mexico. We inherited 13 viable loans in Mexico that were documented with collateral. One was making payments and 12 were delinquent. Two loans paid off and one remains in foreclosure. Ten loans were converted to real estate. We have sold seven condos and homes. The remaining three pieces of property are development parcels, which we will discuss in more detail later.

To date, recovery in Mexico has been $2.95 million net of Mexican legal expenses.

*Liquidation - Recovery and Costs*

Fees to date are reported in slide 12 of the presentation. Since the July 18th meeting, we've made minor modifications to this slide to agree with the 2023 second quarterly report that we will file before the end of July.

*Findings of Wrongdoing*

The Receiver's team and the forensic accountants found that the Pools had been insolvent since at least 2007. The value of the assets was decreasing and not sufficient to repay the notes held by investors. The contracts receivable income allowed AEI to pay monthly interest, but this constant outflow of cash undermined the Pools' ability to pay larger sums and long-term debts. Despite the insolvency, AEI continued to accept new investments and did not disclose the situation to investors.

The team also found numerous improper transactions. Funds were hopelessly commingled across the pools. Miles and Wile had made over 80 loans totaling $12 million to related party entities under his control, friends, and family members. With accrued interest, the outstanding balance on these notes is over $19 million. The Receiver has pending litigation against AEI, AEMM, Ross and Maureen based on

these findings. Though the case is stayed while we pursue the settlement with the banks, we will resume litigation after the settlement is resolved.

*Ponzi Scheme*

We concluded that the Pools became the foundation of a Ponzi scheme. New investment money was used to pay interest and principal to existing investors instead of for the stated business purposes. By the nature of the scheme, some investors did well at the expense of others. The purpose of the Receivership is to provide as equitable treatment to all investors as possible. The Receiver is able to "claw back" some of these payments, a provision also seen in bankruptcy. We sued to recover $2.26 million in preferentially distributed funds (net of legal costs).

We also implemented a Money In Money Out (MIMO) accounting for investor claims. The process comes from federal receiverships and protects investors as a whole against favorable treatment for some at the expense of others. MIMO nets the amount of cash received against the amount of cash invested for each investor. The remaining balance of the principal investment is the "MIMO claim." MIMO allows the Receivership recoveries to be distributed equitably. More information on MIMO can be found in the Receiver's Fifth Update to investors.

*Bank Involvement*

Ponzi schemes require cash to stay afloat, and the AEM scheme lasted years beyond its natural life span. Once we identified the Ponzi scheme, we looked for a source of liquidity. Bank involvement is common in Ponzi cases and in this case, two banks participated inappropriately in AEI's wrongdoing.

Based on our findings, we included two banks in our lawsuit against AEI et al. Early on, we attempted mediation with these banks, but they did not take the case seriously. In the first mediation, no offer was made, and in the second, one bank extended an offer of $50,000 to make the case go away. It became clear that we needed to prepare for trial.

Trial preparations required a lot of professional time from the Receiver's team and Miller Nash. We also enlisted experts in forensic accounting and banking regulations to provide reports and testimony at trial. Litigation preparation lasted for over two years.

Recently the case came to a hearing on the banks' motions for summary judgment, which is a request for a judge to decide a case based on law. If a case is based on disputed facts, it requires a jury decision. The banks lost their major motions for summary judgment at the hearing in late March. At the hearing, the judge strongly suggested that the Receiver and the banks go to mediation. The banks, realizing that they faced significant risk at trial after the failure of their motions, agreed to mediate and proposed the settlement that we will present after the break.

*Litigation – Recovery and Costs*

It was necessary to prepare for trial to defeat the summary judgment motions to secure a settlement of this size. Approximately $4.3 million, or just over half of the total Receivership costs to date, relate to the main litigation case. This includes professional fees for forensic accountants and expert witnesses. The other litigations have all been resolved and are no longer incurring fees. Except for the litigation of Danielson Contractors, which was insolvent, the efforts recovered greater amounts than costs.

## Section 2: Future of receivership

*Future of Receivership*

The Receivership must remain open until the litigation is resolved, whether through the settlement agreements, or, in the event they are unsuccessful, through trial. While the Receivership is ongoing, it makes sense to continue to hold the contracts and to pursue development in Mexico. There is likely to be higher recovery from the long-term management of the assets, but after the litigation is completed, the possible higher values will need to be weighed against the administrative costs of maintaining the Receivership.

Currently, the remaining assets include the contract portfolio, one remaining US property, Mexican property, and the stayed litigation against Ross et. al.

*Remaining Mexico Assets*

We have one ongoing foreclosure on a single-family home in a gated community between Cabo San Lucas and San Jose del Cabo. We estimate the value to be ~$800,000 USD and have been working with Mexican foreclosure counsel (working on contingency) for 3 years to obtain the property. We estimate that it will take another 4-5 years to finish the process, which has been slowed by the pandemic.

The Receiver holds approximately 40 acres north of La Paz. The area is known for overlapping ownership claims, and we are in the process of investigating whether we have clear title. If so, the property could have significant value.

The Receiver has partnered with Valerio Gonzalez in the development of two parcels of bare land. Gonzalez is a developer who had previously worked with Ross Miles. He was very cooperative in turning over collateral to the Receiver and working to get property ready for sale.

The Mar de Plata development comprises 35 acres on the East Cape. The land is off grid and about 1 mile past the end of the paved road south of San Jose del Cabo. It is in the process of being subdivided into 90 lots. We made 23 lots available for presale at ~$100,000 each with a required 35% deposit. Since April 2022, we have presold 9 lots. We are waiting for environmental permits to put in a gravel road and expect them within the next few months. Once the road is cut, we will close on the presold lots and reevaluate prices for the remainder of the lots.

The Todos Santos development is 6 acres in an agricultural valley outside of Todos Santos. It is in the process of being subdivided into 20-30 lots, and we are currently seeking approval of lot size.

**BREAK**

## Section 3: Settlement Agreement

*Methodology and Rationale*

A couple other matters were addressed at the summary judgment hearing. Ross's lawyer, along with Pacific Premier Bank, brought a motion to disqualify Miller Nash. They additionally claimed that the Receivership's decision not to pursue Columbia Bank along with Riverview and Pacific Premier Bank, with

which the Pools had deposit accounts, indicated preferential treatment. These accusations were meritless; there was no basis upon which to disqualify Miller Nash and we have no evidence that Columbia Bank had a lending relationship with the Pools or accepted Pool assets or cash as collateral or loan payments. The judge denied the motions.

In April 2023, we entered into two mediations with independent, well-respected mediators. At the first mediation, former federal judge Michael Hogan proposed a global settlement deal as the avenue to an appropriate settlement. The first bank proposed a settlement and the second bank agreed to follow suit. The global nature of the proposed agreement is responsible for the complexities of having it approved.

We believe that a global settlement is in the universal interest of all investors and aligns with the Receivership mandate to maximize recovery and ensure equitable distribution to all investors.

*Agreement Details*

There are two virtually identical agreements. Each bank agrees to pay $9.5 million to the Receiver upon satisfaction of certain conditions for a total of $19 million. The only material difference between the agreements is that Pacific Premier Bank agreed to withdraw their objection to the Oregon investors' settlement with Davis Wright Tremaine, releasing those funds.

In exchange for the $19 million, the Receiver would release its claims against the banks and dismiss the lawsuit against them. If the settlement isn't approved at any stage, banks will each pay $250,000 "break-up fee" to the Receiver. This helps to compensate parties for their time and energy spent pursuing settlement in the event of failure.

The settlement agreement requires that the Receiver request and supports entry of a claims bar order against the banks. This is an essential component of the deal. Without this provision, and if it fails to be upheld, we will proceed to trial, with all the associated costs and risks.

The settlement agreements must go through several stages of approval. The first stage is in the receivership court on August 18th before Judge Gregerson. If the settlement is approved there, the banks will then seek enforcement of the order in Oregon state and federal courts.

The agreement will be considered completed when a final, non-appealable order is entered into all courts or the other cases against the banks on the same facts are dismissed. We cannot receive funds or make distribution until the conditions are met.

*Claims Bar Order*

The claims bar order essentially prevents anyone with a claim in the receivership from pursuing Riverview or Pacific Premier Bank based on the same set of facts as the Receiver's case. The Oregon investors would not be able to sue the banks for the same claims, though they may still have claims against other parties. This provision is essential for an effective global settlement.

The advantages of the settlement include the possibility of material recovery without the expense and risk of trial and on a shorter timeline. If the case is returned to trial, the Receiver may not prevail on its claims. Even if we obtained a favorable award, that decision would likely be appealed. That process may take an additional 18-24 months and comes with the risk of any award being overturned.

*Outcomes of Settlement Agreement*

Please see the flow chart on slide 28 for a visual representation of the approval process.

If the agreement receives every green light, we estimate that the earliest possible distribution may be made at the start of January 2024. After the receivership court settlement hearing on August 18th, the case would proceed to the Oregon state and federal courts where the Oregon investor cases are pending. There is no definite timeline there for approval hearings. Additionally, an appeal at any stage would delay or prevent a settlement distribution, potentially by several years.

If at any point the agreement is unsuccessful, we would resume preparations for trial. Based on the current court calendars, we estimate that a new trial date might be set in 6 months from the reinstatement of the case. The break-up fee may help cover associated costs, but there would be no interim distribution until the litigation was entirely resolved. If the litigation was ultimately unsuccessful, it is unlikely that there would be any material future distributions.

*Proposed Distribution*

Along with the settlement agreements, we have proposed a $17 million distribution to the court in the event of the agreements' success. $13 million will pay MIMO claims in full, meaning all investors would have received the cash value of their principal investment in returns over the course of their investment.

The remaining $4 million, along with any future recovery, will be distributed based on the adjusted book value of investors' claims. The adjusted book value represents the principal value of the claim as of March 31, 2019 (the date the Pools ceased accruing interest) less the value of distributions from the Receiver. The $4 million distribution represents recovery of ~9.6 cents on the dollar.

The $2 million difference between the settlement and the distribution is based on a conservative holdback. This will be applied to unpaid legal fees and potential costs of future litigation and administrative wrap-up of Receivership. We do anticipate future distributions from the unused holdback and future recoveries from Mexico.

Because of taxes paid by investors on their interest income over the course of their investment, the Receiver does not believe there will be a tax impact. If you have a traditional IRA or a specific circumstance (such as a theft loss claim), we advise you to speak with your IRA custodian or your tax advisors. The Receiver will not be issuing 1099s.

*Closing Remarks*

We greatly appreciate your continued support and interest in the case. We request that if you have feedback, whether in support of or against the settlement, that you send the Receiver an email at AEMReceiver@hamstreet.net or by calling Martha Cohn at 503-223-6222 so that we can provide testimony in court to the feelings of investors about the proposed settlement.

## Q&A

*Receivership Assets*

**Q: What is the timeline for future distributions? Are distributions dependent on the settlement?**

**A:** No distribution is anticipated for 2023. If the settlement is approved, the proposed $17 million distribution will be made as soon as possible. If the settlement is not approved, no interim distribution will be made until trial proceedings are resolved.

**Q: What will happen to the contracts at the close of the Receivership?**

**A:** We will continue to hold the contracts until the Receivership is complete, at which point the remaining will be sold either individually or in bulk. The sale will likely be at some discount. However, given that there are only 59 contracts remaining, we are optimistic that many will continue to perform and potentially pay off during the remaining course of the Receivership.

**Q: What happened to the marina and yachts in Mexico?**

**A:** We are not aware of any yachts, though we believe that Ross owns a boat.

*Note that this response has been adjusted from the one given at the meeting to be more accurate.* Approximately $3 million of AEM investor funds went to help fund the Marina Cortez in La Paz. The funds were loaned to a Mexican entity controlled by Miles and the shares in the marina were used as collateral for that loan. As time passed, the Mexican entity was unable to make payments on the loan, and the collateral was traded for land in East Cape. That land in East Cape has become the Mar de Plata development that the Receiver is in the process of subdividing and selling.

**Q: How is the Mexican developer (Valerio Gonzales) compensated?**

**A:** For Mar de Plata, he receives 16% of the gross proceeds. For Todos Santos, he will receive 20% of net proceeds.

**Q: Is MIMO legal?**

**A:** Yes. The use of MIMO for determining the allowed amounts of claims by investors in receiverships has been affirmed by the Ninth Circuit Court of Appeals and approved by other federal courts, as outlined in the Receiver's May 28, 2021, Motion (1) to Fix Allowed Amounts of Investor Claims and (2) for Authorization to Make Interim Distribution on Investor Claims, which Judge Gregerson granted.

**Q: Did Hamstreet sue all investors who received more than their principal in return? If not, how was this determined?**

**A:** Given the relative costs of litigation, Hamstreet only clawed back funds from investors who received returns in excess of $100,000 of their originally invested principal.

*Ross and Maureen*

**Q: What happens next with Ross and Maureen?**

**A:** Currently, the litigation against AEI et. al is stayed while we work on the settlement agreement. We will continue pursuing the litigation to its full extent after the case is resumed.

**Q: Why are we waiting to try Ross and Maureen?**

**A:** The entire case is paused right now to pursue the settlement agreement. If the settlement fails and we resume litigation and trial preparation, we want to be able to have the combined trial to save on expenses. Additionally, if we were to conclude the case against Ross and Maureen—through trial or settlement—they would no longer be parties to the action, and it would be more difficult to call them as witnesses.

**Q: What about Ross's assets?**

**A:** Assuming that we are able to obtain a judgment against Ross and Maureen, we will then pursue all avenues of potential recovery including against personal assets. We do believe that a judgment would have value worth pursuing against Ross.

The SEC is currently due to file its motions to determine the amount of a fine of disgorgement on October 13, 2023. Those motions will be fully briefed for the court's consideration as of November 17, 2023. As a government agency, they have more power to obtain bank records and other information about personal assets from Ross and Maureen.

The SEC is also scheduled to conduct a settlement conference with Ross and Maureen relating to the amount of disgorgement on October 3, 2023, before a settlement judge.

**Q: Why did the federal agencies choose not to prosecute criminally?**

**A:** The agencies are not forthcoming about their reasoning; we find their lack of criminal charges very frustrating. The FBI may choose to re-open their investigation if "new information comes to light" but as Ross and Maureen are currently opting to plead the 5$^{th}$ amendment, it does not seem likely that this will be the case.

**Q: Have Ross and Maureen had their passports revoked?**

**A:** Not to our knowledge.

*Settlement Agreement*

**Q: Is the settlement agreement entirely funded by the Banks' insurance policies?**

**A:** Pacific Premier Bank has spent legal fees that we believe are coming out of pocket. Some additional funds contributing to their $9.5 million would also be coming from the Bank. The breakdown of Riverview's insurance spending is less clear to us, and we assume the majority of the settlement is being funded by insurance.

**Q: What happens if there are objections to the settlement?**

**A:** We think it is likely that there will be several investors who will not be in favor of the settlement because they think they can obtain greater personal recovery in the Oregon court. One of the Oregon class lawyers stated at the meeting that they plan to object. The objection will not automatically take the settlement off the table. The class action team will have a chance to argue for their objection at the settlement approval hearing, and ultimately Judge Gregerson will determine if he approves the settlement agreements. We believe that the receiver has the ability and legal right to make a global

settlement that is most equitable to all investors, and we are hopeful that Gregerson will agree, based on his history with the case.

In a case like this, where there are many different interests in the outcome, it is necessary to have one person who is able to make decisions. The decision-making process needs to be transparent and consider what is best for everyone as a whole. In this case, that role is played by the Receiver and overseen by the Court.

*Oregon Investor Litigation*

**Q: Why didn't the Receiver sue DWT on behalf of all investors?**

**A:** The Receivership is located in Clark County Superior Court. Under Washington law, the Receiver does not have standing to bring claims against Davis Wright Tremaine; the claims are only available to Oregon investors.

**Q: Why were the Oregon investors' MIMO adjustments reversed? Will Oregon investors get "double recovery" from the Davis Wright Tremaine settlement?**

**A:** If the settlement agreement is approved, the receivership will have enough funds to pay out MIMO in full and so we do not believe an adjustment to MIMO is necessary. The Oregon investors may receive a higher recovery on their book values after MIMO as a result of more favorable securities laws in Oregon resulting in the Davis Wright Tremaine settlement.

**Q: What is the status of the Oregon investors' cases?**

**A:** Both cases in state and federal court have recently heard motions to dismiss. The state court denied the motion to dismiss, and though appealed, the Oregon Supreme Court was not interested in hearing the appeal. The expectation is that the federal court will also deny the motion to dismiss. At this point, it appears that both cases will proceed into discovery and potentially to trial, though that process is likely still years out.

**Q: How do the Oregon investors' cases impact the Receivership case timeline?**

A: The Oregon investors' cases impact the timeline for the settlement with the bank defendants to become effective. As outlined earlier in the presentation, if Judge Gregerson approves the settlement and enters the bar order in Clark County, then the next step will be to ask the Oregon courts to enforce that bar order in the investors' cases. We do not have a clear idea of how long that will take, although the Oregon federal court tends to move slowly.

**Q: How many people are in the Oregon class action?**

**A:** The Oregon class action has not yet been certified as a class action—that means that, for now, the attorneys represent only the named plaintiffs and not all Oregon investors. Currently, the class action, and the parallel non-class action case in Oregon state court each have seven distinct named plaintiffs. They make up a combined 13% of the investor group by book value. If the classes become certified, ~90 claims out of 245 belong to Oregon investors, accounting for 33.7% of the investor group by book value.

# EXHIBIT 4

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MULTNOMAH

**DIANE ANDERSON,** trustee of the Diane L. Anderson Revocable Trust; **BONNIE BUCKLEY**; trustee of the Bonnie K. Buckley IRA; **CARL AND KIRBY DYESS**, trustees of the Dyess Family Trust; **PETER KOUBECK**, an individual and trustee of Peter L. Koubeck IRA; **MICHAEL PETERSON**, trustee of the Michael T. Peterson IRA; and **ED WILSON**, an individual;

Plaintiffs,

v.

**DAVIS WRIGHT TREMAINE LLP**, a Washington limited liability partnership; **ROSS MILES**, an individual; **MAUREEN WILE,** an individual; and **PACIFIC PREMIER BANK**, a California chartered bank;

Defendants.

Case No. 20cv09418

**FIRST AMENDED CLASS ACTION COMPLAINT FOR OREGON SECURITIES LAW DAMAGES**

Claim Not Subject to Mandatory Arbitration

Filed Under ORS 21.160(e) (amount claimed exceeds $10 million)

Filing Fee: $1,008



**LARKINS VACURA KAYSER LLP**
121 SW Morrison St., Suite 700
Portland, OR 97204
(503) 222-4424

Plaintiffs allege:

1.

This case involves the sale of "real estate" securities to Oregonians who were told their investments would be well secured, responsibly managed, and safely returned to them with promised interest. The securities were sold by American Equities, including its principals, defendants Ross Miles and Maureen Wile, with the participation and material aid of their lawyers, defendant Davis Wright Tremaine, and their bankers, defendant Pacific Premier Bank. In reality, the investments were not well secured, responsibly managed, or safe. Investor money was misused—it was commingled and then used for improper and undisclosed purposes, including hiding earlier and ongoing losses, "lending" to insiders and their family members, and paying returns to earlier investors. In May 2019, the investment funds collapsed and were taken over by a court-appointed receiver. This action arises from the sales of securities in violation of the Oregon Securities Law by American Equities, including Ross Miles and Maureen Wile, and from the participation and material aid in those sales of Davis Wright Tremaine LLP ("Davis Wright") and Pacific Premier Bank.

**PLAINTIFFS AND THE CLASS THEY REPRESENT**

2.

Plaintiffs are seven investors who invested in securities issued by American Equities, Inc. ("AEI") and its principals and affiliates, including defendant Ross Miles, defendant Maureen Wile, their employee Miles Minsker, and AEI affiliate American Eagle Mortgage Management, LLC ("AEMM"). This Complaint refers to AEI and its principals and affiliates, including defendants Miles and Wile, collectively as "American Equities." The securities were in the form of private notes and ownership interests in at least fourteen "American Eagle Mortgage"-branded funds, all of which are now in receivership: American Eagle Mortgage 100, LLC; American Eagle Mortgage 200, LLC; American Eagle Mortgage 300, LLC; American



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Eagle Mortgage 400, LLC; American Eagle Mortgage 500, LLC; American Eagle Mortgage 600, LLC; American Eagle Mortgage Mexico 100, LLC; American Eagle Mortgage Mexico 200, LLC; American Eagle Mortgage Mexico 300, LLC; American Eagle Mortgage Mexico 400, LLC; American Eagle Mortgage Mexico 500, LLC; American Eagle Mortgage I, LLC; American Eagle Mortgage II, LLC; and American Eagle Mortgage Short Term, LLC (together, the "Funds" or "AEM Funds").

3.

Plaintiffs seek to recover their individual damages which, as of February 15, 2019, total over $3.7 million. Plaintiffs are also suing as representatives on behalf of members of a class of other similarly situated investors. The class consists of 93 individuals and total class losses exceed $17 million. Each plaintiff invested in one or more of the AEM Funds. Plaintiffs' investment accounts are shown on the attached Schedule I, which lists the investment/pool, account number, principal balance, and accrued and unpaid interest according to the Receiver. Each plaintiff was sold their AEM Fund securities by an offer to sell that was made in Oregon or by an offer to buy the security that was made and accepted in Oregon.

4.

The members of the Class are:

a. each Oregon citizen who was sold a security issued by American Equities in one of the Funds in violation of the Oregon Securities Law and is owed money by American Equities, including by one of the Funds, with respect to the Securities, and is not excluded from the Class pursuant to ¶ 5 below; and

b. each person who is a co-claimant (*e.g.*, a co-owner) with a person described in subparagraph a. of this ¶ 4 and is not excluded from the Class pursuant to ¶ 5.

5.

The following persons are excluded from the Class:



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a. each person who is liable as provided in ORS 59.115(1) or (3) to any member of the Class, and including each defendant;

b. each person who is an immediate family member of a person described in ¶ 5(a); and

c. each person who opts out of the Class.

6.

Plaintiffs may sue as representative parties on behalf of all the members of the Class because: (a) the class is so numerous that joinder of all members is impracticable; (b) there are questions of law or fact common to the class; (c) the claims or defense of the representative parties are typical of the claims or defenses of the class; (d) the representative parties will fairly and adequately protect the interest of the class; and (e) representative parties have complied with the prelitigation notice provisions of ORCP 32 H.

7.

This action may be maintained as a class action because, in addition to satisfying the prerequisites alleged in ¶ 6 a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

**DEFENDANTS**

8.

Defendant Ross Miles ("Miles") was the founder and sole owner of AEI and, with defendant Maureen Wile ("Wile"), an owner and manager of many of AEI's affiliates, including AEMM. Miles holds himself out as a real estate developer and investment manager and he claims that he has had decades of success in real estate lending, development, sales, and investments. Miles was the face of American Equities. Miles and Wile together at all material times were in control of AEI, AEMM, and the AEM Funds. They used their positions to take significant amounts of investor money out the AEM Funds for their own benefits and the



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benefit of their families. As a part of their sales of AEM Fund securities, Miles and Wile targeted Oregon investors, primarily in the Portland metropolitan area, offering them securities by phone and mail while the investors were in Oregon. In addition, Miles and Wile caused AEI and the AEM Funds to purchase receivables backed by Oregon real estate as a regular and ongoing part of the operations of the AEM Funds, AEI, and AEMM. In addition to selling the AEM Fund securities, Miles and Wile participated in and materially aided the sales.

9.

When Miles and Wile decided to create and sell AEM Funds, they hired defendant Davis Wright to do all of the related legal work, including preparing all AEM Fund offering materials, filing notices of the sales with the SEC and various state agencies and serving as lawyers for the Funds. Davis Wright is a Washington limited liability partnership that at all material times maintained a large office in Portland, Oregon, where it has been registered to do business since 1996. A substantial number of the partners of Davis Wright are citizens of the State of Oregon. From 2002 through 2010, Davis Wright attorneys working primarily or exclusively in the firm's Portland office prepared offering materials for the AEM Funds used in connection with the sales of the AEM Fund securities, provided important legal services related to the Fund offerings, and served as general counsel to American Equities.

10.

Davis Wright participated and materially aided in the sales of securities alleged in this Complaint. Davis Wright prepared the documentation used in connection with the sales, including so-called Private Placement Disclosure Documents ("PPMs") and accompanying subscription agreements, management agreements, limited liability company operating agreements, receivables purchase agreements, promissory notes (the securities documents), and underwriting criteria, which were exhibits to and were used in conjunction with the PPMs to sell the securities. These documents included legal papers necessary for American Equities to



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complete the sales of securities. Davis Wright's participation and aid in all these things contributed to the completion and consummation of the sale of the securities to investors. The documentation contained untrue statements and misleading omissions. (See below ¶¶ 20-35.) Davis Wright's knowledge, judgment, and assertions were reflected in the contents of the documents. On information and belief, Davis Wright also reviewed and advised American Equities on the content of general marketing brochures, marketing video(s), and its website, all of which were intended to and did generate interest in American Equities securities. The Davis Wright-drafted offering materials were used to sell AEM Fund securities to plaintiffs and other investors from no later than February 2003 until the Funds entered receivership in May 2019. Davis Wright also provided aid to the sales by locating potential investors for AEM Funds and directing them to American Equities to invest, and by listing the AEM Fund offerings on their website as successful transactions that they had handled.

11.

Offering materials for all of the Funds required investors to provide written notice directly to Davis Wright's Portland office, addressed to one of the firm's partners, in order to make any legally effective notice to the Fund. For every Fund except AEM Mexico 400, each page of the Fund PPMs was stamped with a footer containing the firm's full name, "Davis Wright Tremaine, LLP," and the PPM exhibits (the LLC agreement, subscription agreement, etc.) were stamped with the firm's initials, "DWT." Beginning in August 2008, the PPMs for AEM 500 and AEM 600 (the largest Fund) told investors, under the all-caps heading LEGAL MATTERS, "The law firm of Davis Wright Tremaine, LLP, Portland, Oregon, has acted as counsel to the Company in connection with the offering of Units in this offering." Davis Wright instilled investor confidence in American Equities by, among other things, affirmatively inserting its name in documents used to sell AEM Fund securities. Without Davis Wright's participation and aid, the sales of AEM Fund securities would not have been accomplished.



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12.

From around June 2008 until at least December 2018, defendant Pacific Premier Bank, including its predecessor Regents Bank, ("Pacific Premier") was an integral participant in the sales of AEM Fund securities. Pacific provided necessary financing to an insolvent American Equities through: (i) a "guidance line of credit" to AEI (and beginning in December 2010, AEMM); (ii) a credit line to defendant Miles, personally, that was earmarked for American Equities business operations; and (iii) several loans and credit lines to American Equities affiliates. As alleged in more detail below, the financing was secured by real estate contracts taken from AEM Funds, with no benefit to the Funds, and the loans enabled Miles to continue to sell securities to investors in the insolvent American Equities/AEM Fund operation. Money from Pacific Premier was deposited into a general checking account and was used as part of commingled funds across American Equities. In 2015, Miles' personal contacts left the bank. After nine renewals of the guidance line, new bank management began questioning the propriety of the guidance line. Pacific Premier worked with Miles to wind down the guidance line in a way that was designed to cause minimal interruption to American Equities' operations, including its sale of securities in the AEM Funds. Specifically, the bank arranged for the transfer of the remaining guidance line debt off its books to a different lender, which was owned by Miles' personal contacts and former bank managers. All the while, the bank continued to provide Miles and Wile with necessary funding so that American Equities could continue to operate and sell securities through 2018.

13.

Advances on the AEI/AEMM guidance line were supposed to be used, in Pacific Premier's words, "to finance the acquisition of specific contracts (secured by deeds of trust or real estate contracts), to be sold to various investment pools managed by the Borrower, or outside investors, within 12 months." The reference to "investment pools" was a reference to



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the existing Funds that AEI continued to solicit investments in from plaintiffs, the class and other investors. Pacific's loans to AEI and AEMM were in Pacific's own loan reports, to be, "paid off by investor funds." Those investors included the Oregon purchasers of AEM Fund securities, like plaintiffs and the Class they seek to represent. Many of the contracts purchased with Pacific Premier financing were secured by Oregon real estate, and Pacific Premier recorded its interests in each of the Oregon Counties where the real estate was located. Pacific Premier's financing to American Equities made it possible to hide the insolvency of the AEM Funds and American Equities. But for Pacific Premier's ongoing financing and its cooperation in quietly winding down the AEI/AEMM guidance line, the insolvency of American Equities and the AEM Funds would have been apparent, and American Equities would not have been able to continue to sell AEM Fund securities after 2008. Pacific Premier provided material aid to and participated in the AEM Fund security sales at issue here.

14.

Davis Wright's and Pacific Premier's participation or material aid—their personal contributions to the transactions—were important. It was necessary to complete the sale of securities. Each of them was a participant in the sale because, among other things, without its assistance, the sales would not have been accomplished; the sales would and could not have been completed or consummated without defendants' participation and material aid.

**JURISDICTION AND VENUE**

15.

This Court has jurisdiction over the defendants under ORCP 4. Venue in Multnomah County is proper under ORS 14.090 because part of the causes of action alleged arose in Multnomah County.

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## FACTUAL ALLEGATIONS

### I. Early Formation of the Funds and the Means by which the Securities were Sold

16.

As it would repeatedly advertise to investors in all of the Fund PPMs, AEI was founded in 1979 by defendant Ross C. Miles, who was joined at the operation in 1984 by defendant Maureen Wile. At all relevant times, AEI acted through Miles and Wile. During the 1980s and 90s, their primary business was purchasing individual real estate mortgages on properties in Oregon and Washington for resale to investors in the Portland-Vancouver area. The business model was described as a "one-to-one ratio investment": "we purchase an individual receivable and package it for sale to one individual."

17.

AEI's business of selling real estate paper required it to have a variety of licenses in Oregon and Washington, but AEI was never properly licensed. In 1995, the Oregon Department of Consumer and Business Services issued a Cease and Desist Order to AEI, demanding that it stop selling real estate paper to Oregon residents without first obtaining a mortgage broker license. The unlawful operations foreshadowed what would be a general practice over the following decades of operating outside of state and federal investor-protection laws.

18.

Before 2003, some investors made money on their AEI investments but, on information and belief, many investments were unsuccessful. The one-to-one investments were not standalone real estate deals. Instead, AEI, Miles, and Wile were involved in real estate development projects in Oregon and Washington, and sold to investors securities backed by real estate receivables secured by the same real estate in the developments owned and controlled by AEI, Miles, and Wile. Defendant Davis Wright provided important legal services



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to AEI related to these development projects, which included RC Hanes LP; American Securities, Inc.; and Ridgecrest Properties III, LLC (together, and without excluding other development projects, "AEI Developments"). The success of a particular one-to-one investment was tied to the overall success of the particular development project, and by 2003, several of the AEI Developments, on information and belief, were not generating sufficient returns for AEI to satisfy promises made to one-to-one investors.

19.

In early 2003 AEI introduced the AEM Funds as a new investment product it called "diversified mortgage funds." The Funds were created to purchase real estate-backed notes from AEI Developments, which were to be pooled together into a portfolio specific to each fund. Defendant Davis Wright was central to this new financing vehicle. In the words of one of its partners, Davis Wright was "producing" the offerings.

20.

The AEM Fund securities sold by American Equities consisted of long-term note obligations (Notes) issued by each Fund. The Notes were securities as defined in ORS 59.015(19)(a). The Notes had varying maturity terms: five, ten, and fifteen years. After August 2008, two Funds (AEM 500 and AEM 600) also offered a one-year Note. The interest rate obligation on the Notes varied depending on the term (and, in later years, sometimes depending also on the amount invested), from 7% to 10%. Interest was to be paid monthly. Investors had the option of "reinvesting" the monthly interest paid in the Fund's securities. Each monthly interest reinvestment constituted a new sale of a security to that investor. American Equities accounted for the interest reinvestments by increasing the "principal balance" due on the investor's Note, thus effectively compounding the interest paid on the security.

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21.

Each offering was a "part-or-none" offering meaning that in order for the project to get underway with a reasonable chance of success, a minimum amount had to be raised. American Equities told investors in offering materials that each investor's investment amount would be held in escrow until such time as the minimum amount had been received by that Fund. Part-or-none offerings provide an assurance to investors that the enterprise will be at least minimally capitalized. In addition, a less knowledgeable investor may be reassured and may be more willing to buy knowing that the offering must be reviewed and found to be acceptable by other investors who, the investor may reasonably hope, are more knowledgeable. Part-or-none offerings mean that when securities are sold by means of untrue statements or misleading omissions to an investor who is part of the "minimum," the securities are sold by means of those untrue statements or misleading omissions to all investors in that Fund.

22.

American Equities and defendant Davis Wright created each Fund as a nominally separate limited liability company and described them that way to investors in the PPMs and other materials prepared or edited by Defendant. The Funds were named sequentially, American Eagle Mortgage ("AEM") 100, AEM 200, 300, etc.; with two additional sequences for the Funds designated as concentrating in Mexican properties (AEM Mexico 100, AEM Mexico 200, etc.) and those available to non-accredited investors (AEM I and II). Investors in each Fund except AEM 600 were told that the offering would expire on the earlier of several different dates, but in practice the Funds were kept open for many years, as reflected in the chart below. Consistent with that practice, in 2009 the AEM 600 PPM told investors that "The Manager may, in the Manager's Discretion, extend the offering." Following is a list of each Fund, the date on the PPM for that fund, the dates on which it received funding from its first investor and the last funding by a new investor, and the cost of Davis Wright's services for the



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offering (according to Regulation D filings by Davis Wright). There were no AEM Fund PPMs other than those drafted by Davis Wright. The Funds are listed in chronological order by PPM date.

| Fund | Date of Davis Wright-Drafted PPM | Date of First Investor Money | Date of Last *New* Investor Money | Cost of Davis Wright's Services for the Offering |
|---|---|---|---|---|
| AEM 100 | 2003.01.15 | 2003.02.01 | 2007.10.22 | $80,000 |
| AEM I | 2003.03.26 | 2003.04.15 | 2003.11.18 | $5,000 |
| AEM II | 2003.10.15 | 2003.12.09 | 2006.05.30 | $5,000 |
| AEM 200 | 2004.03.01 | 2004.04.07 | 2005.03.01 | $5,000 |
| AEM Short Term | 2004.12.01 | 2005.01.12 | 2005.01.12 | *Unknown* |
| AEM Mexico 100 | 2005.03.15 | 2005.02.11 | 2008.12.05 | $10,000 |
| AEM 300 | 2005.03.14 | 2005.03.25 | 2015.03.14 | *Unknown* |
| AEM Mexico 200 | 2005.06.06 | 2005.07.11 | 2013.10.29 | $7,500 |
| AEM 400 | 2006.05.01 | 2006.05.09 | 2007.10.22 | *Unknown* |
| AEM Mexico 300 | 2006.08.01 | 2006.08.18 | 2010.05.21 | $7,500 |
| AEM Mexico 400 | 2007.08.10 | 2007.06.21 | 2014.05.30 | $7,500 |
| AEM 500 | 2008.08.06 | 2008.08.12 | 2009.10.30 | $7,500 |
| AEM Mexico 500 | 2009.01.26 | 2009.04.05 | 2009.04.05 | *Unknown* |
| AEM 600 | 2009.06.30<br>2009.11.05 | 2009.07.30 | 2017.12.14 | *Unknown*<br>*Unknown* |

23.

Although the American Equities books currently show that the last money from a new investor came into American Equities in December 2017, through a sale of a security denoted for AEM 600, existing investors continued to invest accrued interest and to reinvest money in the Funds for notes that matured through 2018 and into 2019. With the exception of the AEM 600 PPM dated June 30, 2009, the PPMs were never updated; and none of the PPMs or other offering materials ever showed new investors the historical results of actual operations of the particular Fund or the results of actual operations of Funds managed by American Equities.

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24.

American Equities sold investments in the AEM Funds to investors by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading (and the buyers did not know of the untruths or omissions):

a. American Equities told investors in each Fund PPM, among other things, that:

i. The funds raised by each Fund from each investor would be used exclusively for the purpose of acquiring secured real estate receivables in the form of land sale contracts, trust deeds, real estate mortgages, and promissory notes secured by those documents, which together would make up that Fund's identified "Receivables" portfolio. Each of the Receivables would embody an obligation secured by specific real property.

ii. Each Fund and each Fund's portfolio of secured Receivables would be managed by a "Manager," which, in all cases, would be American Equities, Inc. (AEI), an entity that had been formed in 1979 by Miles and that specialized in the very business of each Fund: purchasing, servicing, and selling first position mortgage loans and trust deeds secured by interests in single and multi-family residences, income-producing property, mobile homes, and improved or unimproved land. The Manager was controlled by its president, Miles, who, in turn, had over twenty-five years' experience in financial services. This Manager was under a "fiduciary duty" to them and would perform its duties in good faith and with care, according to the Limited Liability Company Agreement included in each Fund PPM.

iii. The Manager would determine the purchase price for each Receivable acquired, "generally based on the anticipated return that the Receivable will generate for the Company, appropriately discounted to reflect the risks associated with the Receivable." Each of the secured Receivables each Fund acquired would meet minimum underwriting criteria described in an exhibit to the Fund PPM. (The minimum underwriting criteria set forth



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different maximum investment to market value percentages (akin to a loan-to-value ratio) depending on the characteristics of the real property underlying the Receivable and the credit ("excellent payment") history of its owner.) The Manager would review and analyze information regarding the Receivables, and because of its experience in the industry dating back to 1979, it was confident that its investigations would be complete and that it would be able to ascertain whether the information was accurate.

iv. The Manager (AEI) would manage and service (including collecting on) the Receivables, manage and service the Notes (including the obligations owed to investors), and report to investors "any important developments" relative to the Receivables. (Management Agreement included in each Fund PPM.)

v. The investments (Notes) in each Fund would be repaid from amounts collected on that Fund's identified or identifiable portfolio of secured Receivables. Revenues from the collections on each Fund's secured Receivables would be used to pay, in the following order: (1) that Fund's defined expenses and reimbursable third party expenses; (2) a "Base Fee" (.5%, except for AEM 500, for which investors would pay a .75% Base Fee) and a "Reinvestment Fee" (1.5% of the amount of any Reinvestment); (3) the obligations owed to that Fund's investors on their investments (Notes); and (4) "Bonus Compensation" to the Manager of any remaining profit on the Fund's Receivables portfolio.

vi. AEI had certain potential conflicts of interest arising from its affiliate relationships and management of other Funds, but AEI would conduct the business and operations of each Fund separate and apart from the business and operations of AEI, its affiliates, and the other Funds; would segregate each Fund's assets (including revenues from the collections on each Fund's secured Receivables) and not allow them to be commingled with the assets of other Funds, AEI, or other affiliates; and would maintain books and records specific to each Fund separate and apart from the books and records of AEI, its affiliates, and



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each other Fund.

b. American Equities repeated the messages told in the PPMs, telling investors in a brochure (made around 2008), among other things, that:

i. "American Equities, Inc. offers high-yield, stable investment opportunities in real estate receivables. In business since 1979, we have accumulated a vast amount of experience buying individual notes and packaging them for resale to investors. We have cultivated a tradition of trust that we believe individual investors and brokers have come to expect.

Since opening our doors in 1979, we believe American Equities, Inc. has earned a reputation as a trusted advisor, astute investor, and an expert in the complex world of purchasing, servicing, and selling first position real estate receivables, secured by real property.

Thanks to our knowledgeable in-house investment specialists and thorough due diligence approach, we have historically maintained a steady, predictable, and safe return on investment for our clients.

We seek to provide investors a higher-than-average fixed rate of return by investing in well-secured first position real estate receivables. Historically, these receivables have typically outperformed the more volatile stock market.

We believe that our investors continue reinvesting with us because they know we will work hard to preserve their capital, provide a predictable cash flow, and deliver the responsive service they deserve."

ii. "It is our mission to continue developing our tradition of trust, by refining our investment opportunities for our clients. We intend to accomplish this by:

• Making sure that every major decision is made by our six-member senior staff with over 120 years' experience at American Equities, Inc., ensuring in-house, competent decisions.

• Maintaining a highly trained professional work force that provides unparalleled customer service.

• Continuing to refine and upgrade our education, technologies, products, and services."

iii. "OUR VISION – Our purpose for being in business is to create investment opportunities that meet the financial goals of our clients, with the objective of allowing them to preserve their capital and providing them with predictable cash flow."

iv. "Over the course of his 30 plus years in business, [Founder and President] Ross [Miles] has personally bought, built, developed, owned and sold well in excess of $60 million worth of real estate involving everything from single family homes to rock quarries, restaurants to farms, warehouses to subdivisions. We believe you would be hard-pressed to find a type of real estate in which Ross Miles has not been involved. An



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expert problem solver, Ross' meticulous attention to detail and his ability to think outside the box gives him a keen eye for excellent investments."

v. "In an effort to allow our investors to diversify their investment dollars among many receivables, we offer diversified mortgage portfolios. We handle the day-to-day management of the funds, but the investors own the receivables, not AEI. We put the investors in the driver's seat, while simultaneously offering expert advice and management that historically has provided a straightforward, stable, and predictable return-on-investment."

vi. In acquiring real estate receivables, "AEI first conducts a thorough due diligence process which includes verifying credit, reviewing payment history, conducting a loan-to-value analysis, receiving documentation for approval and property title insurance. We then purchase the seller's interest in the receivable and take over the right to receive the monthly payments from the payor. We then package the receivable for resale to an investor or hold for our own portfolio. This is what we call a one-to-one (1:1) receivable investment."

vii. "Preservation of capital – We strive to give our investors confidence that their original capital will be preserved by conducting a thorough due diligence process. Although past performance does not guarantee future results, they can draw further confidence from the fact that, in our history, no AEI investor has lost any amount of capital, whatsoever."

viii. "Less than 2% default rate in most years – Our default rate is historically low. Since opening our doors in 1979, AEI has experienced less than 2% default rate in most years on our receivables. In cases where defaults occurred, most of the properties still sold for a greater amount than what was owed on the property."

ix. "A predictable cash flow – The investment offers a fixed rate of return for the length of the receivable so that investors can enjoy a predictability of cash flow. The only interruption to this arises if a foreclosure or early pay off occurs."

x. "How much risk is associated with these investments? – Since AEI only invests in receivables where your original investment does not exceed a total of 80% of the property value, our default rate has been historically very low. Though the national average is significantly higher, AEI has experienced a foreclosure rate of less than 2% of all receivables in most years since 1979. In fact, although past performance does not guarantee future results, not one of AEIs' investors has ever lost any of their original capital as a result of a default. You should always consider risk factors in offering circulars and related documents before making an investment decision."

xi. "What if a default occurs? – Since the value of the real estate almost always exceeds our investment amount, in most cases there is a potential profit to be realized if the property were to be foreclosed upon and resold. Historically, other real estate investors interested in purchasing distressed properties have shown interest in acquiring these loans in default."

xii. Who handles the monthly disbursement on these investments? – Investors have the option of handling these themselves, or AEI, a licensed contract collection agency, can handle monthly collections and distribution.



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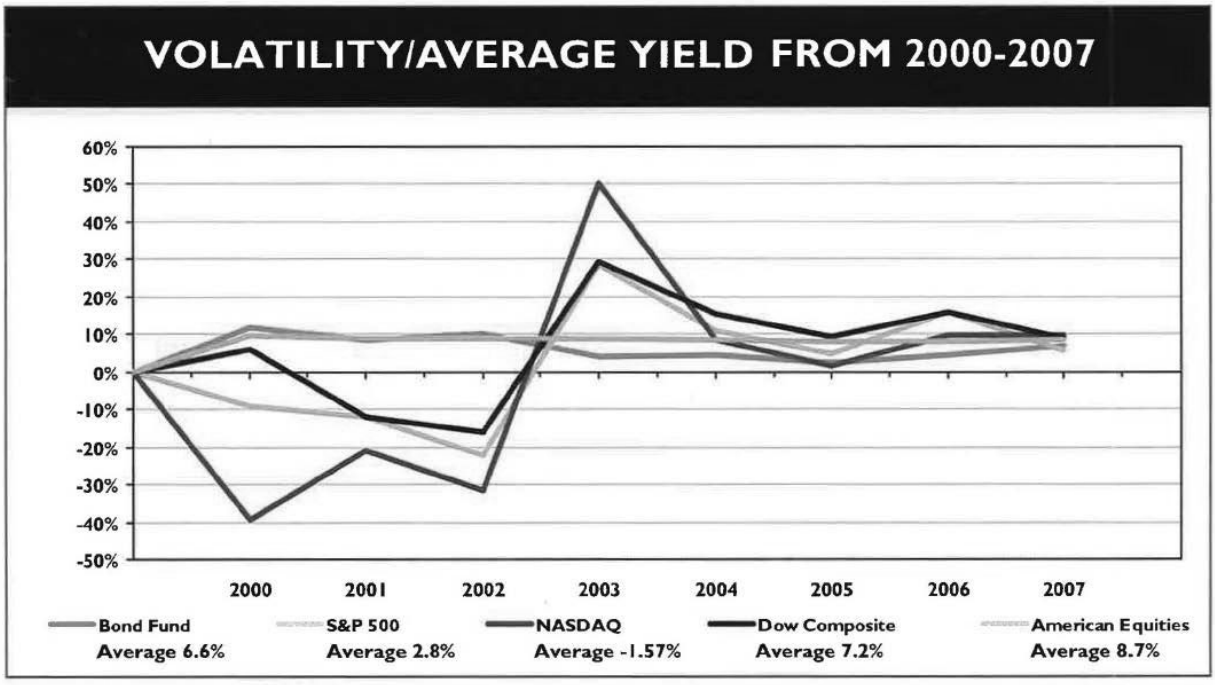
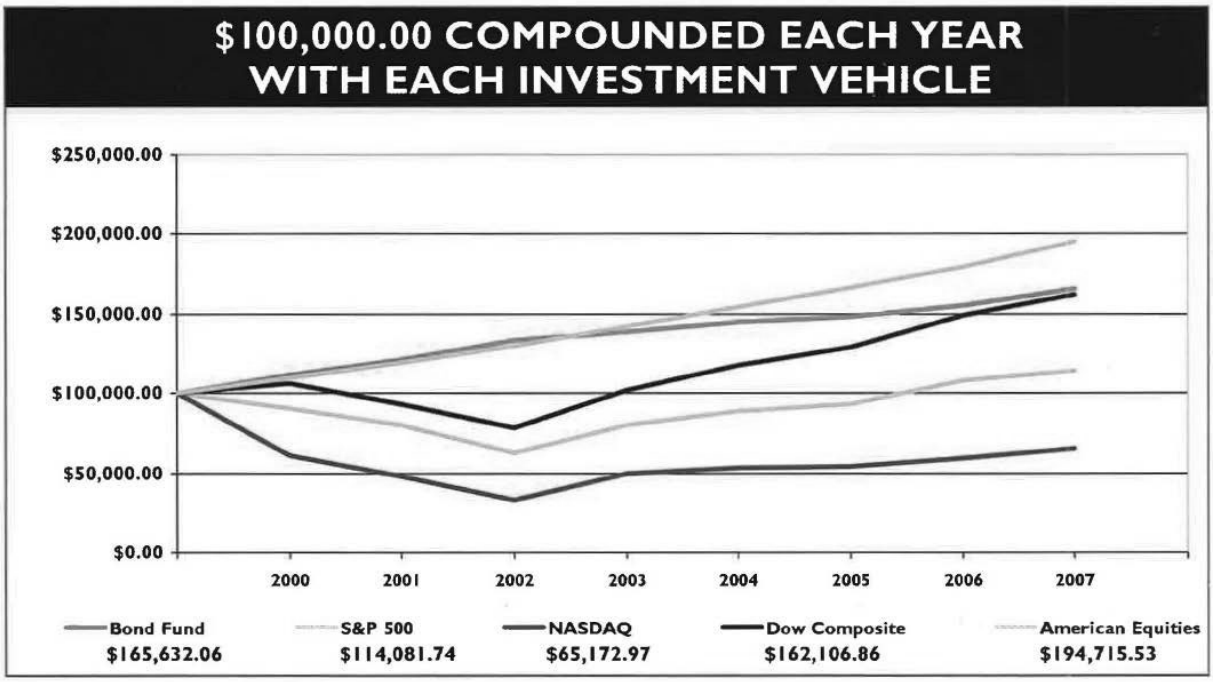
xiii. "COMPARISON OF RETURNS [from the CHAPTER FOUR: RISK VS. REWARD]



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c. In a marketing video made, on information and belief, around the same time as the brochure, American Equities told investors substantially the same things, and additional statements, including:

i. The following voiceover describing the charts reprinted above:

> "As you can see since year 2000, American Equities has out-performed the major index funds as well as most other fixed rate bond funds as per our example of one of the highest rated bond funds. If $100,000 was invested into each of these investment vehicles in January of 2000 through December of 2007, you can see that investing with American Equities Incorporated, which offers a fixed rate, less volatile return, has given the investor a significantly higher rate of return."

ii. The following explanation of American Equities' shift from 1:1 investments to mortgage pools (i.e., the Funds):

> "AEI looked to diversified mortgage funds as a way to respond to feedback from investors. A diversified mortgage fund is an opportunity for individual investors to participate in pooled investments, allowing for more diversification and potentially greater returns than 1:1 ratio receivables could offer. When we became looking into diversified mortgage funds in 2002, we saw that the vast majority of other companies owned the assets and sold divestures or bonds to investors. When investing in this type of fund, the issuing company is agreeing to pay a certain percent of interest and that promise is secured by corporate assets. From the company's point of view this is a very viable investment vehicle that gives them total control over the assets of the company regardless of the investors' input. In essence this takes all control away from the investor. If the company mismanages the investments there is little recourse for investors. In the case of mismanagement there are often legal fees and creditors to pay as well as other costs and expenses, leaving investors with a return of their investment that often ends up being pennies on the dollar.
>
> American Equities Incorporated takes a different approach. For the benefit of the investors AEI creates limited liability companies (or LLCs) that purchase or lend first position real estate receivables for a group of investors. This group owns the LLC on a pro rata basis. AEI is hired to manage these funds on their behalf. In the event that AEI went out of business the assets of the fund would not be affected, since the LLC, which is wholly owned by investors, owns 100% of the assets. AEI manages the assets under specific directives from investors and is held accountable in accordance with its management agreement with the LLC. Our day to day management activities include a specific due diligence process in selecting



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receivables for the funds to purchase."

iii. "Our investors rely on our extensive experience and our ability to conduct a thorough due diligence process in selecting the receivables for the LLC. At American Equities Incorporated our goal is to mitigate any loss to investors and we show this commitment by offering our bonus compensation, both past and future compensation, as a means of protecting our investors' returns. While these investments are not guaranteed, American Equities Incorporated has attempted to lower the risk to investors through the creation of this reserve and through our due diligence processes for safer and reliable investing.

AEI has maintained a steady and predictable return on investment for our clients since 1979. While future performance is impossible to predict, our clients' investment funds have consistently grown since we opened our doors, providing yields between 7% and 12% per year. We believe our investors return to us because of our commitment to providing higher than average fixed rates of return by investing in well secured first position receivables. We also believe our clients continue reinvesting with AEI because they know we strive to preserve their capital, provide predictable cash flows, and deliver the responsive service they deserve.

Almost all our clients are repeat investors. Once a client begins investing with us, we believe our results speak for themselves. That is why most of your customers continue to increase their investments with us over time. We believe investors come back to us again and again because we present attractive options, handle their transactions competently and swiftly and maintain an intense level of personal involvement. Because we are principals, not brokers, we believe investors have confidence that we will make sound investment choices for them with diligence and with speed. We strive to operate on the worst-case scenario theory. If we would not be comfortable owning a property in the event of a foreclosure, we won't offer it to our investors. We always strive to put ourselves in our investors' position when helping them make investment decisions.

Contact us today to find out more about sound investment opportunities with American Equities Incorporated. Our accessible investor specialists are available to work with you to find an appropriate and flexible investment strategy."

d. The statements made to investors described in ¶¶ 24 a. – c. were material—a reasonable investor would find them important in making a decision to invest. Likewise, the facts that were not disclosed that, in light of the circumstances under which the statements were made, made those statements misleading, also were material. If American Equities had



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published its actual track record, its true financial condition, its inability to perform its obligations to investors and other creditors, its misuse of proceeds (see below ¶¶ 26-27), and its noncompliance with state and federal laws and regulations (see below ¶¶ 28-34), it would have adversely affected the market for its securities; it would have shattered the illusion that American Equites created and maintained with the material aid of defendants (see below ¶ 25).

e. The untrue and/or misleading statements made by American Equities in connection with the sale of securities (and the illusion they created and maintained) created a market for the AEM Fund securities, even if a particular investor did not see the statement.

## II. Illusion of Credibility and False Expectations

25.

The untrue statements and misleading omissions by means of which American Equities sold the securities (see above ¶¶ 24 a.–c.) created and maintained an (false) illusion of credibility, prosperity, and false expectations; created and maintained a false impression that AEI was solvent, that it had a track record of successful investments in real estate and real estate-backed notes, that it could keep and perform its obligations, that an investor was taking upon him or herself nothing more than the ordinary risks incident to a debt investment in a well-operated business of that sort run by successful managers, and that investments with AEI, including the AEM Funds, were safe and secure. The untrue statements and misleading omissions and the resulting illusion and impression they created, instilled, and maintained investor confidence in American Equities, and created and maintained a market with investors for AEI securities, including the AEM Funds. The untrue statements and misleading omissions and the illusion and impression they created covered up the undisclosed risks, including significant credit and default risks associated with the real estate receivables that American Equities purchased and packaged purportedly with money raised from investors. The untrue statements and misleading omissions created the illusion that American Equities possessed all



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the necessary state and federal licenses and registrations permitting it to sell securities and permitting it to conduct its securities and business operations, the purpose of such state and federal licenses and registrations being to protect investors. (See below ¶¶ 28-34). They were misleading (at the times specified below) because American Equities did not disclose:

a. Beginning in 2003, American Equities had significant credit and default risks associated with the real estate receivables that American Equities purchased and packaged with money raised from investors.

b. Beginning in 2003, American Equities and the AEM Funds suffered liquidity problems that put it at risk of insolvency greater than the ordinary risks incident to a real estate investment.

c. Beginning in 2003, American Equities did not have a track record of entirely successful investments in real estate and real estate-backed notes.

d. By 2007, and on information and belief, beginning in 2003, American Equities could not keep and perform its obligations. An investor was taking upon him or herself more than the ordinary risks incident to a well-operated business of that sort run by successful managers, and the AEM Fund investments offered by American Equities were not safe and secure; and

e. By 2008, American Equities was insolvent or was at risk of insolvency.

Through their conduct alleged in this First Amended Complaint, defendants participated and materially aided in the sales of securities by aiding American Equities in creating and maintaining the illusion(s).

## III. Misuse of Proceeds

26.

American Equities' statements to investors about how funds raised by each Fund from investors would be used; how the amounts collected on each Fund's Receivables would be



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used; how the business and operations of each Fund would be conducted separate and apart from the business and operations of American Equities and the other Funds; how each Fund's assets would be segregated and not commingled with the assets of other Funds, American Equities, or other affiliates; and how each Fund would maintain its own books and records separate and apart from the books and records of American Equities and each other Fund, were untrue and were misleading because American Equities omitted to disclose facts a reasonable investor would find important in making a decision to invest. In particular:

a. By no later than 2007, and on information and belief, beginning in 2003, on a regular and consistent basis, one or more Funds did not have the cash flow to keep and perform its/their obligations to investors.

b. On a regular and consistent basis during that time, one or more Funds required money to be taken from other Funds or from American Equities or its affiliates to cover and hide losses, an operation-wide inability to keep and perform obligations to investors, and other defaults; and to maintain the illusion that investing in American Equities securities was a safe and sound investment. That misuse covered up the undisclosed risks, including significant credit and default risks.

c. As a part of the misuse of proceeds, American Equities regularly took money from one Fund's account (or, especially in early years, from an American Equities or an affiliate account), commingled it with other Funds' money, then used the commingled money to pay Funds' expenses, Fees, obligations, and Bonus Compensation. Money transferred from Fund to Fund, and among Fund(s) and American Equities, was not lent or repaid on any commercially standard terms. American Equities also used Fund money to make loans and gifts to Miles, Wile, and their family members and business affiliates.

d. By no later than 2006, and, on information and belief, beginning in 2003, American Equities commingled the funds raised by each Fund from investors (among Funds



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and among other American Equities monies) and commingled the amounts collected on each Fund's Receivables (including with amounts collected through AEI or its affiliates). Assets of each Fund were not segregated and were commingled with the assets of other Funds, American Equities, and other affiliates. Each Fund did not maintain its own books and records separate and apart from the books and records of American Equities and each other Fund. When one Fund did not have the cash flow to keep and perform its obligations, *i.e.*, to pay its expenses, Fees, obligations, and Bonus Compensation, money was taken from other Funds to cover the obligations, *i.e.*, to pay the expenses, Fees, obligations, and (unearned) Bonus Compensation. On top of that, "gifts" and undocumented "loans" were made out of the commingled accounts to affiliates and family members of the owners of American Equities. The inter-Fund transfers never carried commercially reasonable terms such as interest rates, payment schedules, or maturity dates. In the early years, some inter-Fund transfers were repaid to the transferor-Fund at the same amount (*i.e.*, without any interest), but no such repayment was promised and often it did not happen.

e. For example, at the end of 2006 (the earliest year for which plaintiffs currently have AEI financial statements), AEI's books reflected that it owed no less than $150,000 from the AEM Funds then in existence without any benefit to the AEM Funds and without any commercially reasonable terms governing AEI taking the money. That amount ballooned to over $1.9 million by the end of 2007. Those amounts reflect only unpaid debts owed to the AEM Funds, as recorded on AEI's books, and do not reflect debts that were paid back (which debts never carried interest or any commercially reasonable terms and were not in the interest of the AEM Funds). Consistent with American Equities' practice of commingling all AEM Fund and American Equities money, AEI's financial statements do not specify from which AEM Fund AEI had taken money—American Equities moved money freely among all AEM Funds.



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f. As just one illustration of the extent of cash transfers between the Funds (as set out in the declaration of an AEI employee based on a review of records and filed by the Receiver), at month's end in November 2016, AEM 600 had transferred approximately $925,000 to AEI, $6.2 million to other Funds, and $189,000 in undocumented loans to affiliates or family members of Miles and Wile.

g. Beginning no later than 2011, American Equities caused the AEM Funds to pay a newly created affiliate, AEMM, "Broker Fees." On information and belief, AEMM served no business purpose other than to facilitate commingling within American Equities and to hide American Equities' insolvency. The Broker Fees were paid to AEMM by an AEM Fund each time the Fund purchased Receivables, served no legitimate purpose, and AEM Funds received nothing in exchange for the Broker Fees.

h. According to the Receiver, as of April 2019, the balance of outstanding inter-Fund cash transfers was $10.9 million. This is separate from and does not account for the use of a central bank account to direct cash across the operation as needed.

i. American Equities used offering proceeds (*i.e.*, investor cash) to gift or loan money to at least sixteen people or entities affiliated with American Equities or related to Ross Miles or Maureen Wile. These transfers were not carried out through normal corporate procedures or on commercially reasonable terms. The transfers were often not recorded in the books and records, and the money was often not paid back to the transferor-Fund. Forensic investigation by the AEM Funds' Receiver found that, as of May 9, 2019, outstanding "loans" from the Funds to these people and entities totaled about $10.7 million in principal amount. Nearly all of the "loans" to these people and entities were in default and in some instances, the people and entities never made any payment on the "loans." There was no meaningful effort by American Equities to collect on "loans" to these people and entities.

j. By 2007, and on information and belief, beginning in 2003, American Equities



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had a practice of pledging Fund Receivables as security to obtain third-party financing (including, by no later than June 2010, to obtain financing from defendant Pacific Premier Bank) for its benefit, without regard to the best interest of the Fund which had purchased the receivable or investors in that Fund. Specifically, American Equities would assign a Receivable that had been held by a Fund to itself (*i.e.*, to AEI, AEMM, Miles, etc.) without consideration, then would pledge the Receivable as collateral for a bank loan. On information and belief, the bank financing was used: (i) to satisfy obligations to investors in various other Funds; (ii) to further the operations of AEI Developments described in Paragraph 18, and (iii) generally to benefit American Equities. It was not uncommon for a Receivable to later be reassigned back to one of the fourteen Funds, without regard to which Fund initially held it. This directly contradicted what investors were told: that they were the sole owners of the Fund Receivables, that they held first position liens, and that Receivables would be held by the Fund they invested in until maturity.

k. As just one example, between March 2007 and July 2014, one Receivable contract that a Fund had initially purchased from an AEI Development was then transferred at least six times among six different Funds and American Equities. At three different time periods during those years, the Receivable contract served as collateral to a bank for a loan to American Equities.

27.

In essence, at all relevant times, American Equities treated investor money and assets as its own to use freely for its own benefit or the benefit of Miles and Wile, their relatives, and their other business interests. Investors were never told their money could be treated that way or that American Equites needed to borrow money and the Receivable contracts from the AEM Funds in order to continue operating. Instead investors were always told that their money would be used exclusively to purchase Receivables that would be held by the Fund in which



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they invested to maturity of the loan.

## IV. Lack of State and Federal Licenses and Registrations

28.

Throughout the life of the Funds, American Equities was out of compliance with numerous investor and consumer safety laws and regulations. As Davis Wright prepared the Fund offerings, the 1995 Cease and Desist Order from the State of Oregon referenced in Paragraph 17 was not the only regulatory compliance matter that was not disclosed to investors. Undisclosed regulatory compliance issues were of two broad categories: compliance with laws protecting consumers in real estate transactions and compliance with laws protecting consumers in securities transactions. By not complying with the licensing and registration requirements, American Equities was able to unlawfully avoid disclosing its true financial condition to regulators and investors.

29.

American Equities told investors that each Fund and its portfolio of secured Receivables would be managed by a Manager: who had years of experience in the very business of each Fund; who was under a fiduciary duty to each Fund; who would perform its duties in good faith and with care; who would ensure that each secured Receivable met minimum underwriting criteria; who would review and analyze information regarding the Receivables and ensure that its investigations were complete and the information was accurate; who would manage and service the Receivables and the Notes; who would report to investors "any important developments" relative to the Receivables; who would conduct the business and operations of each Fund separate and apart from the business and operations of American Equites and the other Funds; and who was a licensed collection agency. Those statements were untrue or misleading because American Equities failed to disclose that:



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a. During its decades of experience and ongoing operations, AEI had not obtained or maintained licenses and registrations from the states in which it operated that were necessary to successfully conduct business and operations in the manner it told investors it would, or even to conduct them at all. It was not a "licensed contract collection agency." (See ¶ 24 b.xii.) Its track record included the 1995 Oregon Cease and Desist Order. At all material times, the failures to register or comply with regulations created material risks of substantial monetary fines, and a risk that one or more of its business operations could be shut down or significantly restricted by regulatory authorities.

b. At all material times, AEI did not have the escrow agent license that was required for it to collect and process payments on seller-financed real-property loans that were held by others. State regulation of licensed escrow agents included state authority to "[r]emove or prohibit any principal officer, controlling person, director, employee, or licensed escrow officer from participation in the conduct of the affairs of any licensed escrow agent." Wrongfully operating without a license is a criminal misdemeanor and punishment includes the possibility for prison time and daily fines. (In April 2018, AEI entered into a Consent Agreement with the Washington Department of Financial Institutions, agreeing that it was required to have an escrow agent license. It agreed to stop "conducting any servicing or contract collections activities that would require a license" until it obtained the license or qualified for an exemption.)

c. AEI did not have a Washington Consumer Loan Act license, which was required to service residential mortgage loans on properties in the State of Washington. (The State of Washington told AEI to stop servicing mortgage loans in Washington without a license.)

d. AEI was not licensed as an investment adviser in the State of Washington, which was required for it to provide investment advisory services in the State of Washington, including to the AEM Funds, which it managed.



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e. AEI was not registered with the Securities and Exchange Commission (SEC) as a Registered Investment Adviser under the federal Investment Advisers Act of 1940 ("Advisers Act"), which was required to provide investment advisory services to the Funds, which it managed.

f. AEI was not registered as a securities broker in accordance with the Securities Exchange Act of 1934, nor was it licensed as a securities broker by the States of Washington and Oregon, all three of these licenses were required for it to effect securities transactions for the Funds. In addition, AEI's sales employees, including Miles Minsker, were not licensed as securities salespersons by the States of Washington or Oregon, which was likely required because they were paid to sell AEI securities.

g. Because neither AEI, its principals, agents or AEMM had the registrations and licenses required by state and federal laws, American Equities could not lawfully conduct its business operations, and there was a continuing material risk that its business operations could be shut down or significantly restricted.

h. Because neither AEI, its principals, agents, or AEMM had the registrations and licenses required by state and federal laws and American Equities could not lawfully conduct its business operations, it was incurring significant contingent liabilities that could prevent it from keeping and performing its obligations to investors, including paying its debts as they came due, and could render it insolvent.

30.

The omissions alleged in ¶ 29 were material. A reasonable investor would consider AEI's failure to have the federal and state licenses that were required, and its consequent inability to lawfully conduct its business operations, to be important in making a decision to invest. In addition, it evidenced a scofflaw attitude that belied the idea that the Manager was a highly-experienced, faithful, and careful fiduciary. Reasonable investors would find it



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important in deciding whether to invest that American Equities failed to comply with applicable laws, especially laws put in place to protect investors; they would find it important that the State's investor protections were not in place for an investment in American Equities.

31.

In 2009, defendant Davis Wright prepared the offering materials for AEM 600. The first PPM for AEM 600 was dated June 30, 2009. It contained no disclosures related to securities regulation risk, consistent with all of the previous offering materials for AEM Funds.

32.

Davis Wright prepared a new version of the AEM 600 PPM dated November 5, 2009. In that new version, Davis Wright and American Equities added the following paragraph.

> **Risks Related to Status of the Company and the Manager Securities Regulators.** [sic]
>
> The Manager and the Manager's employees and agents are not registered with the SEC as investment advisers under the Investment Advisers Act of 1940, and are not registered with the SEC as brokers under the Securities and Exchange Act of 1934. The Company is not registered with the SEC as an investment company under the Investment Company Act of 1940. The Company, the Manager, and the Managers employees and agents are not registered as brokers or investment advisers with any state securities regulators. If state or federal regulators were to investigate and determine that exemptions from registration are not available to the Company, the Manager, or the Manager's employees and agents, such determination would have a material adverse impact on the Company's operations and financial results, and may result in the financial failure of the Company.

33.

That November 2009 disclosure was never provided to AEM 600 investors who first invested in an AEM Fund before November 5, 2009. What's more, no similar disclosure was added to any other Fund's PPM. Therefore, it was not provided to investors in any of the other Funds, all of which continued soliciting existing investors to reinvest accruing interest and otherwise-matured investments, and at least the following Funds which continued to solicit and receive new investor money: AEM 300 (until no earlier than 10/29/15), AEM Mexico 200



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(until no earlier than 10/29/13), AEM Mexico 300 (until no earlier than 5/21/10), AEM Mexico 400 (until no earlier than 5/30/14), and AEM 500 (until no earlier than 10/30/09). Moreover, the November 2009 disclosure to AEM 600 investors did not provide any factual information by which an investor could have assessed the level of that risk, let alone disclose that such registration was, in fact, required and the likelihood that the SEC or one of the states in which AEI was selling securities or operating its receivables business would discover AEI's noncompliance and take regulatory action. The underlying facts and the "risk" arising from AEI's (i.e., "the Manager's") failure to register with the SEC or the states in which it was operating as an investment adviser or broker would be important to reasonable investors considering investments or reinvestments in any AEM Fund.

34.

The November 2009 disclosure given to AEM 600 investors failed to disclose that AEI had been required to register with the State of Washington as an investment adviser since before 2003 and had failed to do so. It also omitted to state either on what basis AEI supposedly was exempt from the registrations described in ¶ 32 above, or the likelihood that regulators, upon investigation, would "determine that exemptions from registration are not available." On information and belief, there was no lawful exemption for AEI's failure to register with either state or federal regulators as an investment adviser and also likely as a broker, and that fact was not disclosed to investors.

35.

The omissions alleged in the previous paragraph made the November 2009 disclosure on regulatory risk to new investors in AEM Fund 600 misleading, because without those omitted disclosures, investors were given the impression that AEI (the Fund Manager) was in compliance with all applicable laws and regulations. Reasonable investors would find the



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omissions in the previous paragraphs 28 through 34 important in deciding whether to invest in AEM Funds.

## V. Pacific Premier Bank

36.

In 2008, after a period of rapid increase in real estate values, the real estate market crashed. The market collapse affected the AEI Developments, American Equities, and its borrowers as well. As a result, there was a decline in performing loans and an increase in defaults, particularly from more recent loans where the loss of value of the real estate exceeded the loan the property secured. This was true not only of loans made by American Equities and the Funds to unrelated parties, but also to investments the Funds had made to related parties and affiliates. On information and belief, American Equities had become functionally insolvent in that it could not liquidate its assets for enough money to repay investors and it needed new investor money to continue to pay interest and redeem investors whose notes came due.

37.

Investors were not told that by no later than 2008, American Equities' and the Funds' undisclosed previous liquidity problems had developed into functional insolvency. New investor money coming into the Funds was needed to keep the operations afloat and make payments of interest and redeem notes that were due and the only way American Equities could continue to maintain the appearance of stability and safety was through the rampant commingling across the operations described in ¶¶ 26-27, above.

38.

Beginning no later than June 2008, defendant Pacific Premier Bank provided a guidance line of credit to AEI that was necessary to American Equities' operations, including in selling the AEM Fund securities. The guidance was first provided to AEI in the amount of $3.1 million. Advances on the line were purportedly to be used by AEI to purchase real estate-



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secured promissory notes, with the notes secured primarily by properties located within the Western United States, including many in Oregon.

39.

AEM Fund security sales to investors were the "primary source of repayment" to Pacific Premier for the life of the guidance line, which remained in place through no earlier than early 2015. The stated purpose of the guidance line was short-term funding. Each advance was documented by a separate promissory note with a maximum maturity of 12 months, by which time Pacific Premier understood there would be a "sale of the … contracts to either an individual investor or an established investment pool," *i.e.*, one of the AEM Funds.

40.

AEI provided the bank with financial statements in 2008 that reflected the scale of its liberal borrowing from the AEM Funds and its accelerating difficulty in covering for its borrowing with new investor money: outstanding debt owed by AEI to the AEM Funds increased by over 1,100% between fiscal year ends 2006 and 2007. In early 2008, the outstanding balance owed to the AEM Funds on AEI's books was nearly $2 million. The Davis Wright-drafted AEM Fund PPMs and offering materials, which Pacific Premier refers to as "prospectuses" in its internal loan memoranda, did not permit AEI to borrow from the AEM Funds.

41.

Guidance line advances were made by Pacific Premier based on "drive by appraisals" to determine the value of the real property securing each loan, perpetuating American Equites' general business practice of acquiring real estate interests that were overvalued. And the property "value" that the bank approved as supporting an advance often included a broker's fee, paid by American Equities to a third party or to an affiliate. When AEI purchased a Receivable contract for resale to an AEM Fund (the purpose of the guidance line funding),



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American Equities capitalized broker's fees into the supposed value of the contract on its books. When it sold a contract to a Fund (the bank's expected primary source of repayment), the fee continued to be included in the contract's "value," contributing to the overvaluation of contracts on the Funds' books.

42.

In 2012, the bank considered requiring industry standard appraisals to determine the value of the real estate securing each advance on the guidance line. Miles told Pacific Premier that AEI would be "unable to comply" with such a requirement and that AEI would "consider developing an alternative banking relationship" if Pacific Premier required industry standard appraisals. As a result, the guidance line of credit was renewed again without the change.

43.

Advances on the guidance line of credit were paid directly by Pacific Premier into a checking account belonging to AEI or, after December 2010, AEMM. The guidance line of credit was an essential part of American Equities' misuse of proceeds, alleged above in ¶¶ 26-27. Although the bank recorded a security interest in real property to secure each advance, it did not require that American Equities use the advances for their intended purpose of purchasing an interest in that real estate, or for any particular use. And in fact, American Equities freely used funds from the guidance line for its wider operational costs, transferring the money to Miles, Wile, and among affiliates.

44.

Also, advances on the guidance line were sometimes secured by Receivable contracts that belonged to the AEM Funds. In or around March 2013, reassigning Receivable contracts out of an AEM Fund to secure advances on the Pacific Premier line, without consideration to the AEM Fund, became a widespread practice by American Equities. In that month alone, American Equities transferred no fewer than six Receivable contracts from different AEM



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Funds to AEMM and then to Pacific Premier in exchange for over $833,000 in funding. That money was first paid by Pacific Premier into an AEMM checking account, then transferred to AEI, and was then used, on information and belief, to pay down AEI's debt at another bank (or to cover other costs or obligations, to make that paydown possible without revealing American Equities' true financial condition).

45.

At least three of those Receivable contracts taken from AEM Funds in March 2013 were later transferred back to a Fund, only to be transferred out again in or around June 2014, again to be used as collateral for a Pacific Premier advance on the guidance line. Throughout those times, the records of the Funds continued to reflect the Receivables as held by the Funds, even though they had been assigned to the bank to collateralize a loan to American Equities.

46.

In the spring of 2014, the bank renewed the guidance line of credit for the ninth time. In underwriting the renewal, the bank analyzed AEMM's and AEI's internally prepared financial statements and the overall operations of American Equities, including management of the pools (*i.e.*, the Funds). In its memorandum approving the loan renewal—signed off on by at least five bank employees—the bank noted that AEMM revenues in 2013 were half of the 2011/12 averages. "Prior year revenues were weighted heavily in contract sales," *i.e.*, selling real estate contracts to the AEM Funds, but "[i]n 2013, this shifted away from contract sales ([down to] 29.5% [of revenue]) and more towards broker fees."

47.

The bank explained in its memorandum that these "broker fees" were a means for American Equities to profit on the front end of an AEM Fund purchase of a Receivable contract: "Broker fees are earned when AEMM facilitates the purchase of contracts/notes directly by the individual pool [Fund], instead of acquiring within AEMM and subsequently



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selling to the pool. The broker fees represent the difference between the purchase price and the price that provides the desired return to the pool." In other words, investor money into a Fund was used to pay an undisclosed "Broker Fee" to AEMM on top of each Receivable contract purchase. "In 2013," the bank observed, "Broker fees were significant at $723M. Broker fees were zero in 2012. This is expected to remain high in the future."

48.

Pacific Premier also explained that AEMM was using the investor money in part to pay $15,000 each month to an AEI Development for money it lent American Equities to pay off other third-party debt. (See above ¶¶ 26-27.)

49.

The bank approved the ninth renewal of the guidance line in April 2014. As in past loan memoranda, the bank noted favorably Ross Miles' relationship with bank founder Thomas Young, "dating back to the late 1970's," when American Equities began. Miles also touted his relationship with Young to investors.

50.

By 2015, when the guidance line came up for its tenth renewal, Young had left Regents. The bank's internal assessment of American Equities by new management soured, noting that it was highly leveraged and its "in-house accounting [was] not adequate." Its hesitations, however, were counterbalanced by the continued benefits of Miles' business with the bank: "Borrower has been a strong advocate for Regents Bank in the past and has provided strong deposit relationship and has referred a number of clients … Borrower and referred clients (for which Ross maintains a certain level of influence) maintain $3.4MM in loans outstanding and $3.2MM in avg deposits."

51.

Over the course of several months, the bank met with Miles and, although the guidance



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line of credit had not been renewed and existing loans on the line were maturing, the bank did not terminate its relationship or cut off funding to American Equities. It provided extensions on the maturing loans until quietly passing them off its books to Young's new financing company.

52.

Throughout this time, Pacific Premier had also provided credit directly to Miles for American Equities operations, which continued after 2015 through 2018. In June 2008, for example, the bank approved a $50,000 line of credit to Miles "to finance short-term business cash flow needs," recognizing the "business" as AEI, its affiliates, and the AEM Funds.

53.

In late 2009 and early 2010, Miles took bad debt off of the bank's hands and the bank, in exchange, lent additional money to Miles secured by deeds of trust taken from the AEM Funds for no consideration. (*See above* ¶¶ 26-27.) Specifically, in December 2009, Miles purchased a loan from the bank at par; the loan was secured by a promissory note and deed of trust, the borrower on which was in bankruptcy. Given the uncertainty of the borrower's ability to pay, Miles approached the bank looking for more "cash flow." The bank agreed to lend Miles $1.025 million. The bank described the loan as being "a result of negotiations with the Borrower on the sale of a problem credit by the Bank to Mr. Miles." The $1.025 million loan to Miles was secured by two real estate receivables, which Pacific Premier recognized "were originally owned by American Eagle Mortgage 100 and American Eagle Mortgage 400." The bank accepted them as collateral for the loan to Miles after they were "assigned from the given investment [fund] to Ross Miles personally and then assigned to [Pacific Premier's predecessor] Regents Bank" as a requirement to close the loan, which happened in May 2010.

54.

As a part of that $1.025 million loan in May 2010, Miles and the bank agreed that all



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payments by the underlying borrowers on the two real estate loans now securing his personal debt, which had been part of the Receivables owned by AEM 100 and AEM 400, would go directly to a Pacific Premier account, from which Miles' loan payments to the bank would automatically be deducted. Miles was expected to personally net over $6,000 each month from the transaction—*i.e.*, from the reassignment of two contracts from AEM Funds to Pacific Premier as security for a personal loan. The AEM Funds received no consideration for transferring the real estate loans to Pacific Premier.

55.

In January 2011, Pacific Premier renewed Miles' $50,000 "short-term business cash flow" line of credit for the fourth time. The bank noted that as a revolving line of credit, it was intended to be used "at 50% of the commitment amount" and fully "revolve"—*i.e.*, rest at a zero balance for some time—each year. During 2010, however, the outstanding balance was never below $40,000 and was maxed out at the time of renewal. Despite that, the bank renewed the line of credit.

56.

When the bank quietly wound down the guidance line of credit in 2015, it not only left Miles' line of credit in place, but it increased the available credit to $75,000. Pacific Premier's credit line to Miles was used, on information and belief, to pay obligations to existing investors and as needed throughout American Equities to hide its insolvency. In 2017, Miles still was not meeting the bank's requirement that the line rest at a zero balance for 30 days, but the bank continued to renew it. In December 2018, with American Equities in freefall, it was renewed yet again.

57.

The Pacific Premier lines of credit to American Equites (including to AEI, AEMM, and Ross Miles) made possible the sales of AEM Fund securities from no later than June 2008 to



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the collapse of the Funds in 2019. Without those lines of credit, American Equities would not have the money necessary to continue its (false) illusion of solvency, safety, and prosperity; it would have not been able to continue selling securities. By providing credit advances of necessary funding secured by receivable contracts taken from the AEM Funds, Pacific Premier participated in American Equities unlawful securities sales and its unlawful operations of a securities business.

## VI. Collapse of American Equities

58.

By early 2019, obligations to investors finally overwhelmed American Equities' capacity for bringing in new money. In order to stave off investors and other claimants, Miles and Wile hired a workout specialist to attempt to negotiate with creditors and investors. When the workout specialist reviewed the situation, he told Miles and Wile that they should consent to the appointment of a Receiver to take charge of the Funds.

59.

In May 2019, on Ross Miles' motion, the Funds were put into a court-supervised Receivership and an injunction was entered preventing plaintiffs from suing AEI and the Funds. The Court has since granted the Receiver's request that all of the Funds be treated as a single operating entity due to the extensive commingling of assets and cash among the Funds.

## FIRST CLAIM FOR RELIEF
**Oregon Securities Law**
**Sales in Violation of ORS 59.115(1)(b); Recovery under ORS 59.115(2)**
**Against Defendants Miles and Wile**

60.

Plaintiffs reallege ¶¶ 1-59.

61.

Miles and Wile (along with others in American Equities) sold securities to plaintiffs and



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members of the Class by means of untrue statements of material facts or omissions to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, in violation of ORS 59.115(b). The untrue or misleading statements of fact are described in ¶¶ 16-57 above. Each of the untrue or misleading statements were material in that a reasonable person in the position of plaintiffs and the other investors would have considered the information important in making a decision to invest in an AEM Fund.

62.

A schedule of plaintiffs' investment accounts is attached as Schedule I. Pursuant to ORS 59.115(1), (2), and (3), plaintiffs and members of the Class are each entitled to damages in the amount of the consideration that was paid for the securities, and interest from the date of payment equal to the greater of 9% interest or the rate provided in the security, less any amount received on the securities. In those cases where an investor received an interest dividend and simultaneously reinvested it (*i.e.*, where an investor did not receive an immediate cash payment of the interest), the interest is accounted as (a) an "amount received on [a] security"; and (b) the "consideration paid for [a] security," and it bears interest at the rate of 9% from the date of payment. The damages of plaintiffs and the members of the Class are in an approximate amount in excess of $17 million. Interest accrues until the date of payment. Plaintiffs will tender their securities at a time before entry of judgment.

63.

In those cases where a plaintiff no longer owns a security, a plaintiff is entitled to recover damages in the amount that would be recoverable upon a tender, less the value of the security when the purchaser disposed of it and less interest on such value at the rate of 9% per annum from the date of disposition.

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64.

Pursuant to ORS 59.115(10), this Court should award plaintiffs their reasonable attorney fees.

**SECOND CLAIM FOR RELIEF**
**Oregon Securities Law**
**Sales in Violation of ORS 59.115(1)(b);**
**Liability under ORS 59.115(3); Recovery under ORS 59.115(2))**
**Against Defendants Davis Wright and Pacific Premier**

65.

Plaintiffs reallege ¶¶ 1-59.

66.

American Equities sold securities to plaintiffs and members of the Class by means of untrue statements of material facts or omissions to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, in violation of ORS 59.115(b). The untrue or misleading statements of fact are described in ¶¶ 16-57 above. Each of the untrue or misleading statements were material in that a reasonable person in the position of plaintiffs and the other investors would have considered the information important in making a decision to invest in an AEM Fund.

67.

Defendant Davis Wright is jointly and severally liable with American Equities, including Miles and Wile, for participating or materially aiding in the sales in the manner described in ¶¶ 9-11 and 29-35 above. (ORS 59.115(3).)

68.

Defendant Pacific Premier Bank is jointly and severally liable with American Equities, including Miles and Wile, for participating or materially aiding in the sales in the manner described in ¶¶ 12-13 and 36-57 above. (ORS 59.115(3).)

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69.

A schedule of plaintiffs' investment accounts is attached as Schedule I. Pursuant to ORS 59.115(1), (2), and (3), plaintiffs and members of the Class are each entitled to damages in the amount of the consideration that was paid for the securities, and interest from the date of payment equal to the greater of 9% interest or the rate provided in the security, less any amount received on the securities. In those cases where an investor received an interest dividend and simultaneously reinvested it (*i.e.*, where an investor did not receive an immediate cash payment of the interest), the interest is accounted as (a) an "amount received on [a] security"; and (b) the "consideration paid for [a] security," and it bears interest at the rate of 9% from the date of payment. The damages of plaintiffs and the members of the Class are in an approximate amount in excess of $17 million. Interest accrues until the date of payment. Plaintiffs will tender their securities at a time before entry of judgment.

70.

In those cases where a plaintiff no longer owns a security, a plaintiff is entitled to recover damages in the amount that would be recoverable upon a tender, less the value of the security when the purchaser disposed of it and less interest on such value at the rate of 9% per annum from the date of disposition.

71.

Pursuant to ORS 59.115(10), this Court should award plaintiffs their reasonable attorney fees.

**THIRD CLAIM FOR RELIEF**
**(Oregon Securities Law – sales in violation of ORS 59.135; recovery under ORS 59.115(2))**
**Against Defendants Ross Miles and Maureen Wile**

72.

Plaintiffs reallege ¶¶ 1-59.



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73.

Miles and Wile, along with American Equities, sold securities in violation of ORS 59.135(1) through (3) (civil liability under ORS 59.115(1)). Miles and Wile, directly or indirectly, in connection with the sale of the securities or the conduct of a securities business:

(1) employed a device, scheme or artifice to defraud;

(2) made untrue statements of a material fact or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; and

(3) engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon any person.

In employing a device, scheme or artifice to defraud, Miles and Wile each acted with a guilty state of mind—they acted with an intent to deceive, manipulate, or defraud.

74.

A schedule of plaintiffs' investment accounts is attached as Schedule I. Pursuant to ORS 59.115(1), (2), and (3), plaintiffs and class members are each entitled to damages in the amount of the consideration that was paid for the securities, and interest from the date of payment equal to the greater of 9% interest or the rate provided in the security, less any amount received on the securities. In those cases where an investor received an interest dividend and simultaneously reinvested it (*i.e.*, where an investor did not receive an immediate cash payment of the interest), the interest is accounted as (a) an "amount received on [a] security"; and (b) the "consideration paid for [a] security," and it bears interest at the rate of 9% from the date of payment. The damages of plaintiffs and the members of the Class are in an approximate amount in excess of $17 million. Interest accrues until the date of payment. Plaintiffs will tender their securities at a time before entry of judgment.

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75.

In those cases where a plaintiff no longer owns a security, a plaintiff is entitled to recover damages in the amount that would be recoverable upon a tender, less the value of the security when the purchaser disposed of it and less interest on such value at the rate of 9% per annum from the date of disposition.

76.

Pursuant to ORS 59.115(10), this Court should award plaintiffs their reasonable attorney fees.

**FOURTH CLAIM FOR RELIEF**
**(Oregon Securities Law – sales in violation of ORS 59.135; liability under ORS 59.115(1) and ORS 59.115(3); recovery under ORS 59.115(2))**

77.

Plaintiffs reallege ¶¶ 1-59.

78.

American Equities, including Miles and Wile, sold securities in violation of ORS 59.135(1) through (3) (civil liability under ORS 59.115(1)). American Equities, including Miles and Wile, directly or indirectly, in connection with the sale of the securities or the conduct of a securities business:

(1) employed a device, scheme or artifice to defraud;

(2) made untrue statements of a material fact or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; and

(3) engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon any person.

In employing a device, scheme or artifice to defraud, American Equities acted with a guilty



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state of mind—American Equities acted with an intent to deceive, manipulate, or defraud.

79.

Defendants Davis Wright and Pacific Premier are jointly and severally liable with American Equities for participating or materially aiding in the sales in the manner described above in ¶¶ 9-11, 14, and 31-35, for Davis Wright, and ¶¶ 12-13 and 36-57, for Pacific Premier. (ORS 59.115(3)).

80.

A schedule of plaintiffs' investment accounts is attached as Schedule I. Pursuant to ORS 59.115(1), (2), and (3), plaintiffs and class members are each entitled to damages in the amount of the consideration that was paid for the securities, and interest from the date of payment equal to the greater of 9% interest or the rate provided in the security, less any amount received on the securities. In those cases where an investor received an interest dividend and simultaneously reinvested it (*i.e.*, where an investor did not receive an immediate cash payment of the interest), the interest is accounted as (a) an "amount received on [a] security"; and (b) the "consideration paid for [a] security," and it bears interest at the rate of 9% from the date of payment. The damages of plaintiffs and the members of the Class are in an approximate amount in excess of $17 million. Interest accrues until the date of payment. Plaintiffs will tender their securities at a time before entry of judgment.

81.

In those cases where a plaintiff no longer owns a security, a plaintiff is entitled to recover damages in the amount that would be recoverable upon a tender, less the value of the security when the purchaser disposed of it and less interest on such value at the rate of 9% per annum from the date of disposition.

82.

Pursuant to ORS 59.115(10), this Court should award plaintiffs their reasonable



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attorney fees.

WHEREFORE, plaintiffs, on their own behalf and on behalf of members of the Class, respectfully demand an award against defendant in an approximate amount in excess of $17 million, along with interest from the dates of payments of consideration equal to the greater of 9% interest or the rate provided in the security; awarding plaintiffs their reasonable attorney fees; awarding plaintiffs their costs and disbursements; and providing for such further relief as the Court may deem appropriate.

DATED this 17th day of July 2020.

LARKINS VACURA KAYSER LLP

s/Bridget M. Donegan

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Attorneys for Plaintiffs

Schedule I

| Plaintiff | "Pool" | Account Number | Principal Balance | Accrued & Unpaid Interest Per Receiver |
|---|---|---|---|---|
| **Anderson, Diane,** trustee of Diane Anderson Trust | American Eagle Mortgage 200 LLC | 4108 | $ 47,570.72 | $ 634.28 |
| **Anderson, Diane,** trustee of Diane Anderson Trust | American Eagle Mortgage 400, LLC | 6103 | $ 124,940.73 | $ 1,665.88 |
| **Anderson, Diane,** trustee of Diane Anderson Trust | American Eagle Mortgage Mexico 200 LLC | 0144 | $ 53,620.54 | $ 848.99 |
| **Buckley, Bonnie,** trustee of Bonnie K. Buckley IRA | American Eagle Mortgage 600, LLC | 8113 | $ 70,000.00 | $ 875.00 |
| **Buckley, Bonnie,** trustee of Bonnie K. Buckley IRA | American Eagle Mortgage 600, LLC | 8114 | $ 70,000.00 | $ 933.33 |
| **Buckley, Bonnie,** trustee of Bonnie K. Buckley IRA | American Eagle Mortgage 600, LLC | 8115 | $ 70,000.00 | $ 991.67 |
| **Dyess, Carl and Kirby,** trustees of Dyess Family Trust | American Eagle Mortgage Mexico 200 LLC | 0102 | $ 223,553.32 | $ 3,725.89 |
| **Dyess, Carl and Kirby,** trustees of Dyess Family Trust | American Eagle Mortgage Mexico 400 LLC | 0107 | $ 688,105.67 | $ 11,468.43 |
| **Dyess, Carl and Kirby,** trustees of Dyess Family Trust | American Eagle Mortgage 100 LLC | 1171 | $ 957,596.82 | $ 11,171.96 |
| **Koubeck, Peter L.,** an individual | American Eagle Mortgage Mexico 100 LLC | 5139 | $ 334,504.65 | $ 7,944.48 |
| **Koubeck, Peter,** trustee of Peter L. Koubeck IRA | American Eagle Mortgage Mexico 400 LLC | 0141 | $ 440,368.80 | $ 10,465.17 |
| **Peterson, Michael,** trustee of Michael T. Peterson IRA | American Eagle Mortgage 500, LLC | 7122 | $ 124,686.15 | $ 1,558.58 |
| **Peterson, Michael,** trustee of Michael T. Peterson IRA | American Eagle Mortgage 500, LLC | 7123 | $ 128,795.78 | $ 1,824.61 |
| **Peterson, Michael,** trustee of Michael T. Peterson IRA | American Eagle Mortgage 600, LLC | 8222 | $ 98,500.00 | $ 1,231.25 |
| **Peterson, Michael,** trustee of Michael T. Peterson IRA | American Eagle Mortgage Mexico 200 LLC | 0147 | $ 134,612.08 | $ 2,131.36 |
| **Wilson, Ed,** an individual | American Eagle Mortgage Mexico 100 LLC | 5101 | $ 64,675.00 | $ 1,024.02 |
| **Wilson, Ed,** an individual | American Eagle Mortgage Mexico 200 LLC | 137 | $ 68,891.99 | $ 1,090.79 |
| **TOTALS** | | | **$ 3,700,422.25** | **$ 59,585.69** |

## CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **FIRST AMENDED CLASS ACTION COMPLAINT FOR OREGON SECURITIES LAW VIOLATIONS** on the following person(s) on July 17 2020, by hand-delivering, faxing, mailing, or e-mailing (as indicated below) to each a true copy thereof, and if by eService, service was accomplished at the person's email address as recorded on the date of service in the eFiling system, and if mailed, contained in a sealed envelope, with postage paid, addressed to them at the last-known address of each shown below and deposited in the post office on said day at Portland, Oregon:

| | |
|---|---|
| Timothy S. DeJong, OSB No. 940662<br>TDeJong@stollberne.com<br>Stoll Berne<br>209 SW Oak St, Suite 500<br>Portland, OR 97204<br>Telephone: (503) 227-1600<br>Facsimile: (503) 227-6840<br><br>Of Attorneys for Defendant Davis Wright Tremaine LLP | ☐ by hand-delivery<br>☐ by facsimile<br>☐ by first class mail<br>☒ by e-mail<br>☒ by eService via eFiling system |
| Bridget Donegan, OSB No. 103753<br>bdonegan@lvklaw.com<br>Larkins Vacura Kayser, LLP<br>121 SW Morrison Street, Suite 700<br>Portland, OR 97204<br>Telephone: (503) 222-4424<br>Facsimile: (503) 827-7600<br><br>Of Attorneys for Plaintiffs | ☐ by hand-delivery<br>☐ by facsimile<br>☐ by first class mail<br>☒ by e-mail<br>☐ by eService via eFiling system |

DATED this 17th day of July, 2020.

s/John w. Stephens
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Of Attorneys for Plaintiffs



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# EXHIBIT 5

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**Attorneys for Plaintiffs**

**UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF OREGON**

**DIANE ANDERSON**, trustee of the Diane L. Anderson Revocable Trust; **BONNIE BUCKLEY**; trustee of the Bonnie K. Buckley IRA; **CARL AND KIRBY DYESS**, trustees of the Dyess Family Trust; **PETER KOUBECK**, an individual and trustee of Peter L. Koubeck IRA; **MICHAEL PETERSON**, trustee of the Michael T. Peterson IRA; and **ED WILSON**, an individual,

Plaintiffs,

v.

Case No.: 3:20-cv-01194-AC

**SECOND AMENDED CLASS ACTION ALLEGATION COMPLAINT FOR OREGON SECURITIES LAW DAMAGES (28 U.S.C. § 1332(d))**

**DEMAND FOR JURY TRIAL**

**DAVIS WRIGHT TREMAINE LLP**, a Washington limited liability partnership; **ROSS MILES**, an individual; **MAUREEN WILE**, an individual; **PACIFIC PREMIER BANK**, a California chartered bank; **RIVERVIEW COMMUNITY BANK, a Washington chartered bank**,

Defendants.

Plaintiffs allege:

## JURISDICTION

1. By order dated February 23, 2022, the District Court determined that the Court has jurisdiction of the subject-matter pursuant to § 4(a) of the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d).

2. This case involves the sale of "real estate" securities to Oregonians who were told their investments would be well secured, responsibly managed, and safely returned to them with promised interest. Investors were told the securities consisted of "pooled" real estate receivables secured by the underlying real property. The securities were sold by American Equities, including its principals, defendants Ross Miles and Maureen Wile, with the participation and material aid of their lawyers, defendant Davis Wright Tremaine, and their bankers, defendant Riverview Community Bank and defendant Pacific Premier Bank. In reality, the investments were not well secured, responsibly managed, or safe. Investor money was misused—it was commingled and then used for improper and undisclosed purposes, including hiding earlier and ongoing losses,



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"lending" to insiders and their family members, and paying returns to earlier investors. Investor money was misused to repay loans defendant banks had made to American Equities and its affiliates. Collateral that was supposed to secure Receivables owned by and owed to the Funds was instead transferred to defendant banks for (unrelated) loans to American Equities. In May 2019, the investment funds collapsed and were taken over by a court-appointed receiver. This action arises from the sales of securities in violation of the Oregon Securities Law by American Equities, including Ross Miles and Maureen Wile, and from the participation and material aid in those sales of Davis Wright Tremaine LLP ("Davis Wright"), Riverview Community Bank ("Riverview), and Pacific Premier Bank ("Pacific Premier").

**CLASS ACTION ALLEGATIONS**

3. Plaintiffs are seven investors who invested in securities issued by American Equities, Inc. ("AEI") and its principals and affiliates, including defendant Ross Miles, defendant Maureen Wile, their employee Miles Minsker, and AEI affiliate American Eagle Mortgage Management, LLC ("AEMM"). This Second Amended Complaint refers to AEI and its principals and affiliates, including defendants Miles and Wile, collectively as "American Equities."

4. The securities were in the form of private notes and ownership interests in at least fourteen "American Eagle Mortgage"-branded funds, all of which are now in receivership: American Eagle Mortgage 100, LLC; American Eagle Mortgage 200, LLC;



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American Eagle Mortgage 300, LLC; American Eagle Mortgage 400, LLC; American Eagle Mortgage 500, LLC; American Eagle Mortgage 600, LLC; American Eagle Mortgage Mexico 100, LLC; American Eagle Mortgage Mexico 200, LLC; American Eagle Mortgage Mexico 300, LLC; American Eagle Mortgage Mexico 400, LLC; American Eagle Mortgage Mexico 500, LLC; American Eagle Mortgage I, LLC; American Eagle Mortgage II, LLC; and American Eagle Mortgage Short Term, LLC (together, the "Funds" or "AEM Funds").

5. Plaintiffs seek to recover their individual damages which, as of February 15, 2019, total over $3.7 million. Plaintiffs are also suing as representatives on behalf of members of a class of other similarly situated investors. The class, as determined by the Court in its order dated February 23, 2022, consists of at least 100 persons and total class losses exceed $25.3 million. Each plaintiff invested in one or more of the AEM Funds. Plaintiffs' investment accounts are shown on the attached Schedule I, which lists the investment/pool, account number, principal balance, and accrued and unpaid interest according to the Receiver. Each plaintiff was sold their AEM Fund securities by an offer to sell that was made in Oregon or by an offer to buy the security that was made and accepted in Oregon.

6. The members of the Class are:

a. each Oregon citizen who was sold a security issued by American Equities in one of the Funds in violation of the Oregon Securities Law and is owed money by American



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Equities, including by one of the Funds, with respect to the Securities, and is not excluded from the Class pursuant to ¶ 7 below; and

b. each person who is a co-claimant (*e.g.*, a co-owner) with a person described in subparagraph a. of this ¶ 6 and is not excluded from the Class pursuant to ¶ 7.

7. The following persons are excluded from the Class:

a. each person who is liable as provided in ORS 59.115(1) or (3) to any member of the Class, and including each defendant;

b. each person who is an immediate family member of a person described in ¶ 7(a); and

c. each person who opts out of the Class.

8. Plaintiffs may sue as representative parties on behalf of all the members of the Class because: (a) the class is so numerous that joinder of all members is impracticable; (b) there are questions of law or fact common to the class; (c) the claims or defense of the representative parties are typical of the claims or defenses of the class; and (d) the representative parties will fairly and adequately protect the interest of the class.

9. This action may be maintained as a class action because, in addition to satisfying the prerequisites alleged in ¶ 8, the questions of law or fact common to class members predominate over any questions affecting only individual members, and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.



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**DEFENDANTS**

10. Defendant Ross Miles ("Miles") was the founder and sole owner of AEI and, with defendant Maureen Wile ("Wile"), an owner and manager of many of AEI's affiliates, including AEMM. Miles holds himself out as a real estate developer and investment manager and he claims that he has had decades of success in real estate lending, development, sales, and investments. Miles was the face of American Equities. Miles and Wile together at all material times were in control of AEI, AEMM, and the AEM Funds. They used their positions to take significant amounts of investor money out of the AEM Funds for their own benefits and the benefit of their families. As a part of their sales of AEM Fund securities, Miles and Wile targeted Oregon investors, primarily in the Portland metropolitan area, offering them securities by phone and mail while the investors were in Oregon. In addition, Miles and Wile caused AEI and the AEM Funds to purchase receivables backed by Oregon real estate as a regular and ongoing part of the operations of the AEM Funds, AEI, and AEMM. In addition to selling the AEM Fund securities, Miles and Wile participated in and materially aided the sales.

11. When Miles and Wile decided to create and sell AEM Funds, they hired defendant Davis Wright to do all of the related legal work, including preparing all AEM Fund offering materials, filing notices of the sales with the SEC and various state agencies and serving as lawyers for the Funds. Davis Wright is a Washington limited liability partnership that at all material times maintained a large office in Portland, Oregon, where



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it has been registered to do business since 1996. A substantial number of the partners of Davis Wright are citizens of the State of Oregon. From 2002 through 2010, Davis Wright attorneys working primarily or exclusively in the firm's Portland office prepared offering materials for the AEM Funds used in connection with the sales of the AEM Fund securities, provided important legal services related to the Fund offerings, and served as general counsel to American Equities.

12. Davis Wright participated and materially aided in the sales of securities alleged in this Second Amended Complaint. Davis Wright prepared the documentation used in connection with the sales, including so-called Private Placement Disclosure Documents ("PPMs") and accompanying subscription agreements, management agreements, limited liability company operating agreements, receivables purchase agreements, promissory notes (the securities documents), and underwriting criteria, which were exhibits to and were used in conjunction with the PPMs to sell the securities. These documents included legal papers necessary for American Equities to complete the sales of securities. Davis Wright's participation and aid in all these things contributed to the completion and consummation of the sale of the securities to investors. The documentation contained untrue statements and misleading omissions. (See below ¶¶ 26-31.) Davis Wright's knowledge, judgment, and assertions were reflected in the contents of the documents. On information and belief, Davis Wright also reviewed and advised American Equities on the content of general marketing brochures, marketing video(s), and



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its website, all of which were intended to and did generate interest in American Equities securities. The Davis Wright-drafted offering materials were used to sell AEM Fund securities to plaintiffs and other investors from no later than February 2003 until the Funds entered receivership in May 2019. Davis Wright also provided aid to the sales by locating potential investors for AEM Funds and directing them to American Equities to invest, and by listing the AEM Fund offerings on their website as successful transactions that they had handled.

13. Offering materials for all of the Funds required investors to provide written notice directly to Davis Wright's Portland office, addressed to one of the firm's partners, in order to make any legally effective notice to the Fund. For every Fund except AEM Mexico 400, each page of the Fund PPMs was stamped with a footer containing the firm's full name, "Davis Wright Tremaine, LLP," and the PPM exhibits (the LLC agreement, subscription agreement, etc.) were stamped with the firm's initials, "DWT." Beginning in August 2008, the PPMs for AEM 500 and AEM 600 (the largest Fund) told investors, under the all-caps heading LEGAL MATTERS, "The law firm of Davis Wright Tremaine, LLP, Portland, Oregon, has acted as counsel to the Company in connection with the offering of Units in this offering." Davis Wright instilled investor confidence in American Equities by, among other things, affirmatively inserting its name in documents used to sell AEM Fund securities. Without Davis Wright's participation and aid, the sales of AEM Fund securities would not have been accomplished.



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14. Riverview is a Washington chartered bank with branch offices in Vancouver, Washington. On or before 2001, defendant Riverview began lending money to American Equities on what became a $3 million to $4 million line of credit. Riverview did so knowing its own credit memoranda showed that in 2003 and beginning with 2005, in every year thereafter, American Equities was insolvent—its liabilities exceed its assets—and increasingly so. (By January 31, 2008, AEI had a negative net worth of $400,000 and net operating losses of $383,000.) Riverview knew that American Equities used the line of credit to purchase "first position real estate contracts and first position notes with deeds of trusts," that American Equities then formed "packages or 'pools'" of those loans, and then sold the "'pools' [securities] to investors." In essence, on an ongoing basis, Riverview provided American Equities with the product that American Equities then securitized and sold to investors. Riverview understood that repayment of its loans to American Equities depended upon American Equities' ability to continue to generate new investors: Riverview's loans to American Equities were to be paid when American Equities sold the "pools" of loans American Equities had purchased using the line of credit. E.g., Credit Memoranda, Nov. 10, 2004, Feb. 17, 2006, Oct. 5, 2007, Oct. 3, 2008, Sep. 15, 2009, May 24, 2010. Riverview knew that with the "economic slowdown" in 2007 and 2008, investors had "decreased"—being "more concerned about keeping cash than buying real estate products." This had put "extreme pressure" on American Equities' "ability to continue to 'revolve' our line of credit," and had "left [American Equities] with no short-term source



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to liquidate their inventory of notes/contracts on our line." Credit Memoranda, Sep. 15, 2009.

15. Riverview understood that American Equities was "operating essentially as a 'bank.'" Credit Memoranda, Nov. 10, 2004, Feb. 17, 2006, Oct. 5, 2007, Oct. 3, 2008, Sep. 15, 2009, May 24, 2010.

16. In addition to directly aiding American Equities in the sale of its securities, Riverview also held the Funds' deposit accounts. It knew, therefore, the amount investors were paying for AEM Fund securities, and how those funds were being (mis)used. On top of that, from September 28, 2007 to April 18, 2008, Riverview received $7,369,000 in payments on American Equities' line of credit by payment directly from the AEM Funds. Riverview was, in other words, "participating" in the proceeds from the sales of securities to investors.

17. Riverview continued to lend money to American Equities (and separately to Miles personally) through the Great Recession and the collapse of the real estate market, and when American Equities was insolvent. The Riverview line of credit remained in place until Fall 2009, at which time, Riverview began pumping the brakes in the face of AEI's difficulty in raising new capital from investors. After years of AEI's insolvency and difficulties in meeting its obligations to the bank, Riverview stopped loaning funds and eventually was repaid through the combination of investor funds, the Funds' collateral, and the proceeds from a Regents Bank loan. See below.



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18. From around June 2008 until at least December 2018, defendant Pacific Premier Bank, including its predecessor Regents Bank, ("Pacific Premier") was an integral participant in the sales of AEM Fund securities. Pacific Premier is a California chartered bank with branch offices in Portland and Vancouver Washington. Pacific provided necessary financing to an insolvent American Equities through: (i) a "guidance line of credit" to AEI (and beginning in December 2010, AEMM); (ii) a credit line to defendant Miles, personally, that was earmarked for American Equities business operations; and (iii) several loans and credit lines to American Equities affiliates. Pacific Premier did so knowing that with the exception of 2005, American Equities was at all times insolvent—that its total liabilities exceeded its total assets. E.g., Loan Memoranda, Feb. 11, 2008, Aug. 10, 2009. Pacific Premier did so knowing that American Equities was in the securities business and that Pacific Premier's loans were going to be used to finance the operation of that securities business. Pacific Premier also did so knowing that as of 2009, American Equities prospects did not look good, that there had been a "significant decrease in the number of refinances within the pool of contracts managed by AEI, and the "down turn in the economy ha[d] negatively impacted AEI's investor activity, resulting in a reduction in the sale of new contracts," and that "[l]osses within the stock market and/or from other investments have reduced the amount of excess investment capital available to AEI's client base." Loan Memoranda, Aug. 10, 2009. As alleged in more detail below, the financing was secured by real estate Receivables taken from AEM Funds, with no benefit to the



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Funds, and the loans enabled Miles to continue to sell securities to investors in the insolvent American Equities/AEM Fund operation. Money from Pacific Premier was deposited into a general checking account and was used as part of commingled funds across American Equities. In 2015, Miles' personal contacts left the bank. After nine renewals of the guidance line, new bank management began questioning the propriety of the guidance line of credit. Pacific Premier worked with Miles to quietly wind down the guidance line of credit in a way that was designed to cause minimal interruption to American Equities' operations, including its continuing sales of securities in the AEM Funds. Specifically, the bank arranged for the transfer of the remaining guidance line of credit debt off its books to a different lender, which was owned by Miles' personal contacts and former bank managers. All the while, the bank continued to provide Miles and Wile with necessary funding so that American Equities could continue to operate and sell securities through 2018.

19. Advances on the AEI/AEMM guidance line were supposed to be used, in Pacific Premier's words, "to finance the acquisition of specific contracts (secured by deeds of trust or real estate contracts), to be sold to various investment pools managed by the Borrower, or outside investors, within 12 months." As Pacific Premier also put it, the purpose was to "allow" (i.e., materially aid) American Equities to "purchase real estate contracts at a discount" to be included in "various Investment Pools" that would then be "sold to individual investors." E.g., Loan Memoranda, Feb. 11, 2008, Aug. 10, 2009. The



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reference to "investment pools" was a reference to the existing Funds that AEI continued to solicit investments in from plaintiffs, the class and other investors. In essence, on an ongoing basis, Pacific Premier provided American Equities with the product that American Equities then securitized and sold to investors. Pacific Premier also understood that repayment of its loans to American Equities depended upon American Equities' ability to continue to generate new investors: Pacific's loans to AEI and AEMM were in Pacific's own loan reports, to be, "paid off by investor funds." E.g., Credit Approval Memoranda, Nov. 16, 2015, Feb. 16, 2016. The loans were to be repaid "from the sale[s] of the real estate contract[s] into a new or established Investment Pool," that is, the AEM Fund securities. E.g., Loan Memoranda, Feb. 11, 2008, Aug. 10, 2009. Pacific Premier was, in other words, "participating" in the proceeds from the sales of securities to investors. Those investors included the Oregon purchasers of AEM Fund securities, like plaintiffs and the Class they seek to represent. Many of the contracts purchased with Pacific Premier financing were secured by Oregon real estate, and Pacific Premier recorded its interests in each of the Oregon Counties where the real estate was located. Despite what American Equities was telling investors, Pacific Premier also knew American Equities was in the (securities) business of "purchas[ing] real estate contracts at a discount and then sell[ing] th[o]se contracts to investors at face value," and American Equities was earning interest income from contracts held as inventory, broker fees, management fees from the creation of investment pools, contract collection fees, and miscellaneous fees. *Id.* Pacific



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Premier's financing to American Equities made it possible to hide the insolvency of the AEM Funds and American Equities. But for Pacific Premier's ongoing financing and its cooperation in quietly winding down the AEI/AEMM guidance line, the insolvency of American Equities and the AEM Funds would have been apparent, and American Equities would not have been able to continue to sell AEM Fund securities after 2008. Pacific Premier provided material aid to and participated in the AEM Fund security sales at issue here.

20. Davis Wright's, Riverview's, and Pacific Premier's participation or material aid—their personal contributions to the transactions—were important. It was necessary to complete the sale of securities. Each of them was a participant in the sale because, among other things, without its assistance, the sales would not have been accomplished; the sales would and could not have been completed or consummated without defendants' participation and material aid.

## FACTUAL ALLEGATIONS

### Early Formation of the Funds and the Means by which the Securities were Sold

22. As it would repeatedly advertise to investors in all of the Fund PPMs, AEI was founded in 1979 by defendant Ross C. Miles, who was joined at the operation in 1984 by defendant Maureen Wile. At all relevant times, AEI acted through Miles and Wile. During the 1980s and 90s, their primary business was purchasing individual real estate mortgages on properties in Oregon and Washington for resale to investors in the Portland-



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Vancouver area. The business model was described as a "one-to-one ratio investment": "we purchase an individual receivable and package it for sale to one individual."

23. AEI's business of selling real estate paper required it to have a variety of licenses in Oregon and Washington, but AEI was never properly licensed. In 1995, the Oregon Department of Consumer and Business Services issued a Cease and Desist Order to AEI, demanding that it stop selling real estate paper to Oregon residents without first obtaining a mortgage broker license. The unlawful operations foreshadowed what would be a general practice over the following decades of operating outside of state and federal investor-protection laws.

24. Before 2003, some investors made money on their AEI investments but, on information and belief, many investments were unsuccessful. The one-to-one investments were not standalone real estate deals. Instead, AEI, Miles, and Wile were involved in real estate development projects in Oregon and Washington, and sold to investors securities backed by real estate receivables secured by the same real estate in the developments owned and controlled by AEI, Miles, and Wile. Defendant Davis Wright provided important legal services to AEI related to these development projects, which included RC Hanes LP; American Securities, Inc.; and Ridgecrest Properties III, LLC (together, and without excluding other development projects, "AEI Developments"). The success of a particular one-to-one investment was tied to the overall success of the particular development project, and by 2003, several of the AEI Developments, on information and



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belief, were not generating sufficient returns for AEI to satisfy promises made to one-to-one investors.

25. In early 2003 AEI introduced the AEM Funds as a new investment product it called "diversified mortgage funds." The Funds were created to purchase real estate-backed notes from AEI Developments, which were to be pooled together into a portfolio specific to each fund. Defendant Davis Wright was central to this new financing vehicle. In the words of one of its partners, Davis Wright was "producing" the offerings.

26. The AEM Fund securities sold by American Equities consisted of long-term note obligations (Notes) issued by each Fund. The Notes were securities as defined in ORS 59.015(19)(a). The Notes had varying maturity terms: five, ten, and fifteen years. After August 2008, two Funds (AEM 500 and AEM 600) also offered a one-year Note. The interest rate obligation on the Notes varied depending on the term (and, in later years, sometimes depending also on the amount invested), from 7% to 10%. Interest was to be paid monthly. Investors had the option of "reinvesting" the monthly interest paid in the Fund's securities. Each monthly interest reinvestment constituted a new sale of a security to that investor. American Equities accounted for the interest reinvestments by increasing the "principal balance" due on the investor's Note, thus effectively compounding the interest paid on the security.

27. Each offering was a "part-or-none" offering meaning that in order for the project to get underway with a reasonable chance of success, a minimum amount had to



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be raised. American Equities told investors in offering materials that each investor's investment amount would be held in escrow until such time as the minimum amount had been received by that Fund. Part-or-none offerings provide an assurance to investors that the enterprise will be at least minimally capitalized. In addition, a less knowledgeable investor may be reassured and may be more willing to buy knowing that the offering must be reviewed and found to be acceptable by other investors who, the investor may reasonably hope, are more knowledgeable. Part-or-none offerings mean that when securities are sold by means of untrue statements or misleading omissions to an investor who is part of the "minimum," the securities are sold by means of those untrue statements or misleading omissions to all investors in that Fund.

28. American Equities and defendant Davis Wright created each Fund as a nominally separate limited liability company and described them that way to investors in the PPMs and other materials prepared or edited by Defendant. The Funds were named sequentially, American Eagle Mortgage ("AEM") 100, AEM 200, 300, etc.; with two additional sequences for the Funds designated as concentrating in Mexican properties (AEM Mexico 100, AEM Mexico 200, etc.) and those available to non-accredited investors (AEM I and II). Investors in each Fund except AEM 600 were told that the offering would expire on the earlier of several different dates, but in practice the Funds were kept open for many years, as reflected in the chart below. Consistent with that practice, in 2009 the AEM 600 PPM told investors that "The Manager may, in the Manager's Discretion, extend



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the offering." Following is a list of each Fund, the date on the PPM for that fund, the dates on which it received funding from its first investor and the last funding by a new investor, and the cost of Davis Wright's services for the offering (according to Regulation D filings by Davis Wright). There were no AEM Fund PPMs other than those drafted by Davis Wright. The Funds are listed in chronological order by PPM date.

| Fund | Date of Davis Wright-Drafted PPM | Date of First Investor Money | Date of Last *New* Investor Money | Cost of Davis Wright's Services for the Offering |
|---|---|---|---|---|
| AEM 100 | 2003.01.15 | 2003.02.01 | 2007.10.22 | $80,000 |
| AEM I | 2003.03.26 | 2003.04.15 | 2003.11.18 | $5,000 |
| AEM II | 2003.10.15 | 2003.12.09 | 2006.05.30 | $5,000 |
| AEM 200 | 2004.03.01 | 2004.04.07 | 2005.03.01 | $5,000 |
| AEM Short Term | 2004.12.01 | 2005.01.12 | 2005.01.12 | *Unknown* |
| AEM Mexico 100 | 2005.03.15 | 2005.02.11 | 2008.12.05 | $10,000 |
| AEM 300 | 2005.03.14 | 2005.03.25 | 2015.03.14 | *Unknown* |
| AEM Mexico 200 | 2005.06.06 | 2005.07.11 | 2013.10.29 | $7,500 |
| AEM 400 | 2006.05.01 | 2006.05.09 | 2007.10.22 | *Unknown* |
| AEM Mexico 300 | 2006.08.01 | 2006.08.18 | 2010.05.21 | $7,500 |
| AEM Mexico 400 | 2007.08.10 | 2007.06.21 | 2014.05.30 | $7,500 |
| AEM 500 | 2008.08.06 | 2008.08.12 | 2009.10.30 | $7,500 |
| AEM Mexico 500 | 2009.01.26 | 2009.04.05 | 2009.04.05 | *Unknown* |
| AEM 600 | 2009.06.30<br>2009.11.05 | 2009.07.30 | 2017.12.14 | *Unknown*<br>*Unknown* |

29. Although the American Equities books currently show that the last money from a new investor came into American Equities in December 2017, through a sale of a security denoted for AEM 600, existing investors continued to invest accrued interest and to reinvest money in the Funds for notes that matured through 2018 and into 2019. With the exception of the AEM 600 PPM dated June 30, 2009, the PPMs were never updated; and none of the PPMs or other offering materials ever showed new investors the historical



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results of actual operations of the particular Fund or the results of actual operations of Funds managed by American Equities.

30. American Equities sold investments in the AEM Funds to investors by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading (and the buyers did not know of the untruths or omissions):

a. American Equities told investors in each Fund PPM, among other things, that:

i. The funds raised by each Fund from each investor would be used exclusively for the purpose of acquiring secured real estate receivables in the form of land sale contracts, trust deeds, real estate mortgages, and promissory notes secured by those documents, which together would make up that Fund's identified "Receivables" portfolio. Each of the Receivables would embody an obligation secured by specific real property.

ii. Each Fund and each Fund's portfolio of secured Receivables would be managed by a "Manager," which, in all cases, would be American Equities, Inc. (AEI), an entity that had been formed in 1979 by Miles and that specialized in the very business of each Fund: purchasing, servicing, and selling first position mortgage loans and trust deeds secured by interests in single and multi-family residences, income-producing property, mobile homes, and improved or unimproved land. The Manager was controlled by its president, Miles, who, in turn, had over twenty-five years' experience in financial services.



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This Manager was under a "fiduciary duty" to them and would perform its duties in good faith and with care, according to the Limited Liability Company Agreement included in each Fund PPM. Using Washington law as an example, this duty is breached when a fiduciary misappropriates an asset or an opportunity that rightfully belongs to the LLC.

iii. The Manager would determine the purchase price for each Receivable acquired, "generally based on the anticipated return that the Receivable will generate for the Company, appropriately discounted to reflect the risks associated with the Receivable." Each of the secured Receivables each Fund acquired would meet minimum underwriting criteria described in an exhibit to the Fund PPM. (The minimum underwriting criteria set forth different maximum investment to market value percentages (akin to a loan-to-value ratio) depending on the characteristics of the real property underlying the Receivable and the credit ("excellent payment") history of its owner.) The Manager would review and analyze information regarding the Receivables, and because of its experience in the industry dating back to 1979, it was confident that its investigations would be complete and that it would be able to ascertain whether the information was accurate. The Manager would act in good faith in purchasing any Receivables from its Affiliates; and that the price actually paid by the Company for any Receivable purchased an Affiliate might ("may") be "more or less" than the price that would have been paid in an arm's length transaction.



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iv. The Manager (AEI) would manage and service (including collecting on) the Receivables, manage and service the Notes (including the obligations owed to investors), and report to investors "any important developments" relative to the Receivables. (Management Agreement included in each Fund PPM.)

v. The investments (Notes) in each Fund would be repaid from amounts collected on that Fund's identified or identifiable portfolio of secured Receivables. Revenues from the collections on each Fund's secured Receivables would be used to pay, in the following order: (1) that Fund's defined expenses and reimbursable third party expenses; (2) a "Base Fee" (.5%, except for AEM 500, for which investors would pay a .75% Base Fee) and a "Reinvestment Fee" (1.5% of the amount of any Reinvestment); (3) the obligations owed to that Fund's investors on their investments (Notes); and (4) "Bonus Compensation" to the Manager of any remaining profit on the Fund's Receivables portfolio.

vi. AEI had certain potential conflicts of interest arising from its affiliate relationships and management of other Funds, but AEI would conduct the business and operations of each Fund separate and apart from the business and operations of AEI, its affiliates, and the other Funds; would segregate each Fund's assets (including revenues from the collections on each Fund's secured Receivables) and not allow them to be commingled with the assets of other Funds, AEI, or other affiliates; and would maintain books and records specific to each Fund separate and apart from the books and records of



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AEI, its affiliates, and each other Fund.

b. American Equities repeated the messages told in the PPMs, telling investors in a brochure (made around 2008), among other things, that:

i. "American Equities, Inc. offers high-yield, stable investment opportunities in real estate receivables. In business since 1979, we have accumulated a vast amount of experience buying individual notes and packaging them for resale to investors. We have cultivated a tradition of trust that we believe individual investors and brokers have come to expect.

Since opening our doors in 1979, we believe American Equities, Inc. has earned a reputation as a trusted advisor, astute investor, and an expert in the complex world of purchasing, servicing, and selling first position real estate receivables, secured by real property.

Thanks to our knowledgeable in-house investment specialists and thorough due diligence approach, we have historically maintained a steady, predictable, and safe return on investment for our clients.

We seek to provide investors a higher-than-average fixed rate of return by investing in well-secured first position real estate receivables. Historically, these receivables have typically outperformed the more volatile stock market.

We believe that our investors continue reinvesting with us because they know we will work hard to preserve their capital, provide a predictable cash flow, and deliver the responsive service they deserve."

ii. "It is our mission to continue developing our tradition of trust, by refining our investment opportunities for our clients. We intend to accomplish this by:

- Making sure that every major decision is made by our six-member senior staff with over 120 years' experience at American Equities, Inc., ensuring in-house, competent decisions.
- Maintaining a highly trained professional work force that provides unparalleled customer service.
- Continuing to refine and upgrade our education, technologies, products, and services."



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iii. "OUR VISION – Our purpose for being in business is to create investment opportunities that meet the financial goals of our clients, with the objective of allowing them to preserve their capital and providing them with predictable cash flow."

iv. "Over the course of his 30 plus years in business, [Founder and President] Ross [Miles] has personally bought, built, developed, owned and sold well in excess of $60 million worth of real estate involving everything from single family homes to rock quarries, restaurants to farms, warehouses to subdivisions. We believe you would be hard-pressed to find a type of real estate in which Ross Miles has not been involved. An expert problem solver, Ross' meticulous attention to detail and his ability to think outside the box gives him a keen eye for excellent investments."

v. "In an effort to allow our investors to diversify their investment dollars among many receivables, we offer diversified mortgage portfolios. We handle the day-to-day management of the funds, but the investors own the receivables, not AEI. We put the investors in the driver's seat, while simultaneously offering expert advice and management that historically has provided a straightforward, stable, and predictable return-on-investment."

vi. In acquiring real estate receivables, "AEI first conducts a thorough due diligence process which includes verifying credit, reviewing payment history, conducting a loan-to-value analysis, receiving documentation for approval and property title insurance. We then purchase the seller's interest in the receivable and take over the right to receive the monthly payments from the payor. We then package the receivable for resale to an investor or hold for our own portfolio. This is what we call a one-to-one (1:1) receivable investment."

vii. "Preservation of capital – We strive to give our investors confidence that their original capital will be preserved by conducting a thorough due diligence process. Although past performance does not guarantee future results, they can draw further confidence from the fact that, in our history, no AEI investor has lost any amount of capital, whatsoever."

viii. "Less than 2% default rate in most years – Our default rate is historically low. Since opening our doors in 1979, AEI has experienced less than 2% default rate in most years on our receivables. In cases where defaults occurred, most of the properties still sold for a greater amount than what was owed on the property."

ix. "A predictable cash flow – The investment offers a fixed rate of return for the



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length of the receivable so that investors can enjoy a predictability of cash flow. The only interruption to this arises if a foreclosure or early pay off occurs."

x. "How much risk is associated with these investments? – Since AEI only invests in receivables where your original investment does not exceed a total of 80% of the property value, our default rate has been historically very low. Though the national average is significantly higher, AEI has experienced a foreclosure rate of less than 2% of all receivables in most years since 1979. In fact, although past performance does not guarantee future results, not one of AEIs' investors has ever lost any of their original capital as a result of a default. You should always consider risk factors in offering circulars and related documents before making an investment decision."

xi. "What if a default occurs? – Since the value of the real estate almost always exceeds our investment amount, in most cases there is a potential profit to be realized if the property were to be foreclosed upon and resold. Historically, other real estate investors interested in purchasing distressed properties have shown interest in acquiring these loans in default."

xii. Who handles the monthly disbursement on these investments? – Investors have the option of handling these themselves, or AEI, a licensed contract collection agency, can handle monthly collections and distribution.

xiii. "COMPARISON OF RETURNS [from the CHAPTER FOUR: RISK VS. REWARD]



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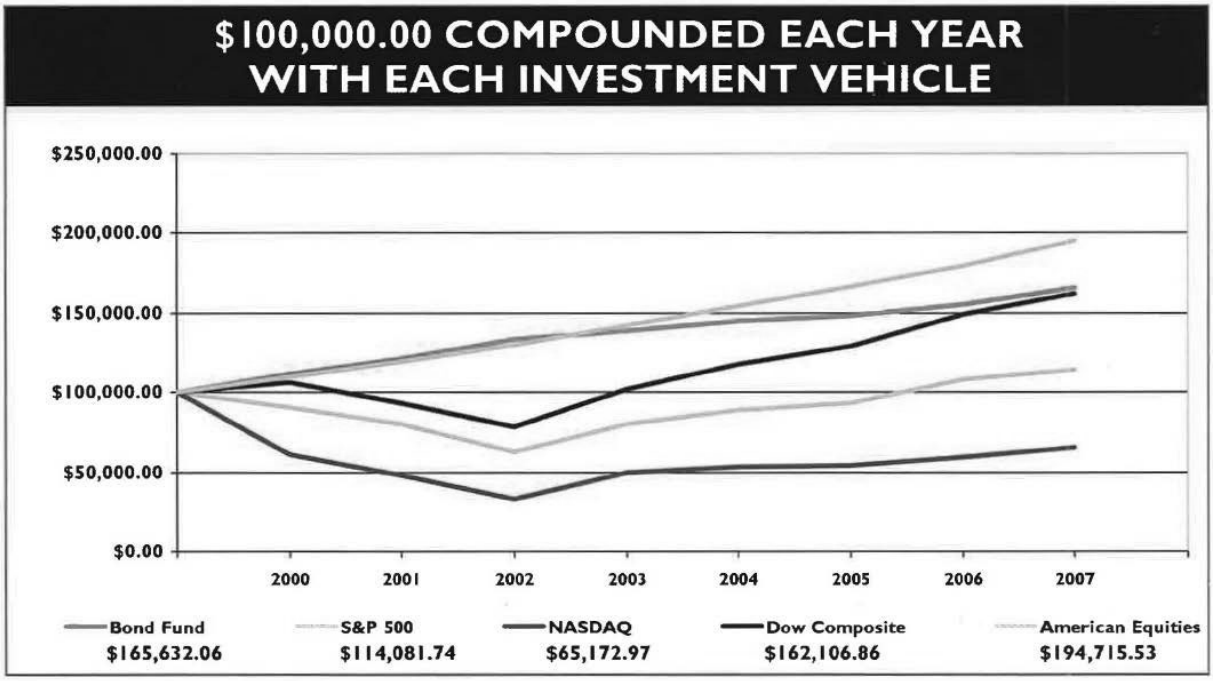


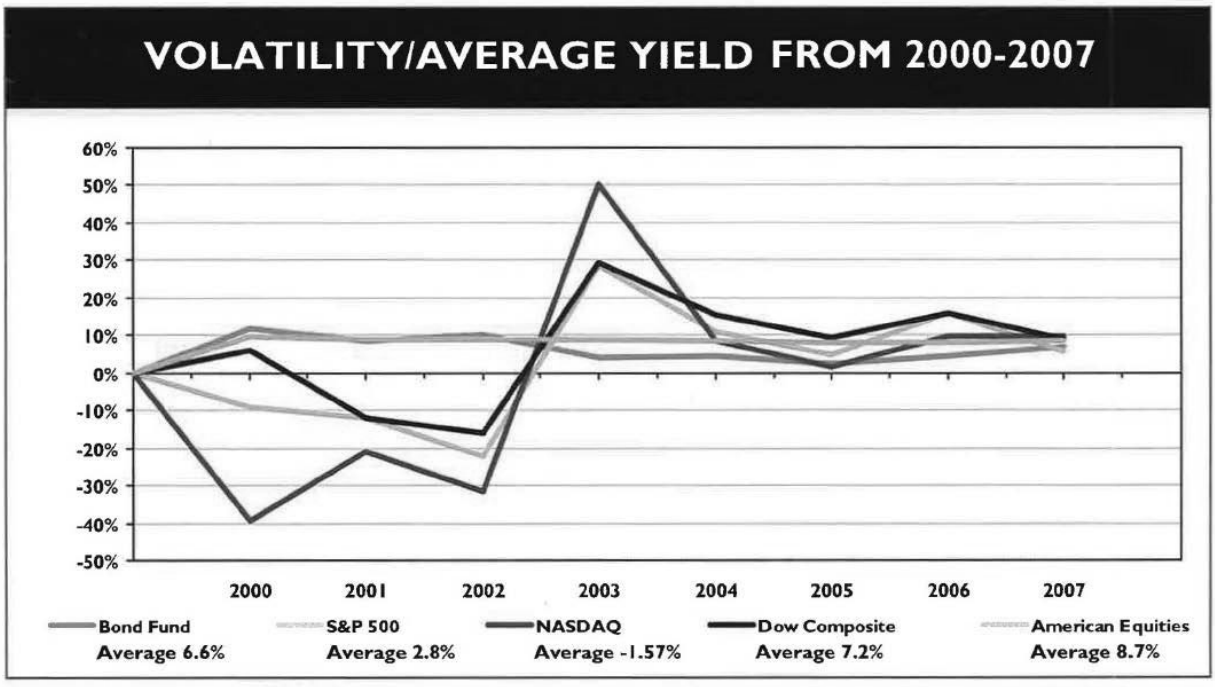


c. In a marketing video made, on information and belief, around the same time as the brochure, American Equities told investors substantially the same things, and additional statements, including:

i. The following voiceover describing the charts reprinted above:



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> "As you can see since year 2000, American Equities has out-performed the major index funds as well as most other fixed rate bond funds as per our example of one of the highest rated bond funds. If $100,000 was invested into each of these investment vehicles in January of 2000 through December of 2007, you can see that investing with American Equities Incorporated, which offers a fixed rate, less volatile return, has given the investor a significantly higher rate of return."

ii. The following explanation of American Equities' shift from 1:1 investments to mortgage pools (i.e., the Funds):

> "AEI looked to diversified mortgage funds as a way to respond to feedback from investors. A diversified mortgage fund is an opportunity for individual investors to participate in pooled investments, allowing for more diversification and potentially greater returns than 1:1 ratio receivables could offer. When we became looking into diversified mortgage funds in 2002, we saw that the vast majority of other companies owned the assets and sold divestures or bonds to investors. When investing in this type of fund, the issuing company is agreeing to pay a certain percent of interest and that promise is secured by corporate assets. From the company's point of view this is a very viable investment vehicle that gives them total control over the assets of the company regardless of the investors' input. In essence this takes all control away from the investor. If the company mismanages the investments there is little recourse for investors. In the case of mismanagement there are often legal fees and creditors to pay as well as other costs and expenses, leaving investors with a return of their investment that often ends up being pennies on the dollar.
>
> American Equities Incorporated takes a different approach. For the benefit of the investors AEI creates limited liability companies (or LLCs) that purchase or lend first position real estate receivables for a group of investors. This group owns the LLC on a pro rata basis. AEI is hired to manage these funds on their behalf. In the event that AEI went out of business the assets of the fund would not be affected, since the LLC, which is wholly owned by investors, owns 100% of the assets. AEI manages the assets under specific directives from investors and is held accountable in accordance with its management agreement with the LLC. Our day to day management activities include a specific due diligence process in selecting receivables for the funds to purchase."



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iii. "Our investors rely on our extensive experience and our ability to conduct a thorough due diligence process in selecting the receivables for the LLC. At American Equities Incorporated our goal is to mitigate any loss to investors and we show this commitment by offering our bonus compensation, both past and future compensation, as a means of protecting our investors' returns. While these investments are not guaranteed, American Equities Incorporated has attempted to lower the risk to investors through the creation of this reserve and through our due diligence processes for safer and reliable investing.

AEI has maintained a steady and predictable return on investment for our clients since 1979. While future performance is impossible to predict, our clients' investment funds have consistently grown since we opened our doors, providing yields between 7% and 12% per year. We believe our investors return to us because of our commitment to providing higher than average fixed rates of return by investing in well secured first position receivables. We also believe our clients continue reinvesting with AEI because they know we strive to preserve their capital, provide predictable cash flows, and deliver the responsive service they deserve.

Almost all our clients are repeat investors. Once a client begins investing with us, we believe our results speak for themselves. That is why most of your customers continue to increase their investments with us over time. We believe investors come back to us again and again because we present attractive options, handle their transactions competently and swiftly and maintain an intense level of personal involvement. Because we are principals, not brokers, we believe investors have confidence that we will make sound investment choices for them with diligence and with speed. We strive to operate on the worst-case scenario theory. If we would not be comfortable owning a property in the event of a foreclosure, we won't offer it to our investors. We always strive to put ourselves in our investors' position when helping them make investment decisions.

Contact us today to find out more about sound investment opportunities with American Equities Incorporated. Our accessible investor specialists are available to work with you to find an appropriate and flexible investment strategy."

d. The statements made to investors described in ¶¶ 30 a. – c. were material—a reasonable investor would find them important in making a decision to invest. Likewise, the facts that were not disclosed that, in light of the circumstances under which the



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statements were made, made those statements misleading, also were material. If American Equities had published its actual track record, its true financial condition, its inability to perform its obligations to investors and other creditors, its misuse of proceeds (see below ¶¶ 32-33), and its noncompliance with state and federal laws and regulations (see below ¶¶ 34-40), it would have adversely affected the market for its securities; it would have shattered the illusion that American Equites created and maintained with the material aid of defendants (see below ¶ 31).

e. The untrue and/or misleading statements made by American Equities in connection with the sale of securities (and the illusion they created and maintained) created a market for the AEM Fund securities, even if a particular investor did not see the statement.

**Illusion of Credibility and False Expectations**

31. The untrue statements and misleading omissions by means of which American Equities sold the securities (see above ¶¶ 30 a.–c.) created and maintained an (false) illusion of credibility, prosperity, and false expectations; created and maintained a false impression that AEI was solvent, that it had a track record of successful investments in real estate and real estate-backed notes, that it could keep and perform its obligations, that an investor was taking upon him or herself nothing more than the ordinary risks incident to a debt investment in a well-operated business of that sort run by successful managers, and that investments with AEI, including the AEM Funds, were safe and



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secure. The untrue statements and misleading omissions and the resulting illusion and impression they created, instilled, and maintained investor confidence in American Equities, and created and maintained a market with investors for AEI securities, including the AEM Funds. The untrue statements and misleading omissions and the illusion and impression they created covered up the undisclosed risks, including significant credit and default risks associated with the real estate receivables that American Equities purchased and packaged purportedly with money raised from investors. The untrue statements and misleading omissions created the illusion that American Equities possessed all the necessary state and federal licenses and registrations permitting it to sell securities and permitting it to conduct its securities and business operations, the purpose of such state and federal licenses and registrations being to protect investors. (See below ¶¶ 34-40). They were misleading (at the times specified below) because American Equities did not disclose:

a. Beginning in 2003, American Equities had significant credit and default risks associated with the real estate receivables that American Equities purchased and packaged with money raised from investors.

b. Beginning in 2003, American Equities and the AEM Funds suffered liquidity problems that put it at risk of insolvency greater than the ordinary risks incident to a real estate investment.

c. Beginning in 2003, American Equities did not have a track record of entirely



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successful investments in real estate and real estate-backed notes.

d. By 2007, and on information and belief, beginning in 2003, American Equities could not keep and perform its obligations. An investor was taking upon him or herself more than the ordinary risks incident to a well-operated business of that sort run by successful managers, and the AEM Fund investments offered by American Equities were not safe and secure; and

e. By 2008, American Equities was insolvent or was at risk of insolvency.

f. American Equities was in the (securities) business of "purchas[ing] real estate contracts at a discount and then sell[ing] th[o]se contracts to investors at face value." There was no "may" be about it.

g. American Equities was secretly earning interest income from contracts held as inventory, broker fees (see below ¶¶ 32 g.,55), management fees from the creation of investment pools, contract collection fees, and miscellaneous fees.

Through their conduct alleged in this Second Amended Complaint, defendants participated and materially aided in the sales of securities by aiding American Equities in creating and maintaining the illusion(s).

**Misuse of Proceeds**

32. American Equities' statements to investors about how funds raised by each Fund from investors would be used; how the amounts collected on each Fund's Receivables would be used; how the business and operations of each Fund would be



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conducted separate and apart from the business and operations of American Equities and the other Funds; how each Fund's assets would be segregated and not commingled with the assets of other Funds, American Equities, or other affiliates; and how each Fund would maintain its own books and records separate and apart from the books and records of American Equities and each other Fund, were untrue and were misleading because American Equities omitted to disclose facts a reasonable investor would find important in making a decision to invest. In particular:

a. By no later than 2007, and on information and belief, beginning in 2003, on a regular and consistent basis, one or more Funds did not have the cash flow to keep and perform its/their obligations to investors.

b. On a regular and consistent basis during that time, one or more Funds required money to be taken from other Funds or from American Equities or its affiliates to cover and hide losses, an operation-wide inability to keep and perform obligations to investors, and other defaults; and to maintain the illusion that investing in American Equities securities was a safe and sound investment. That misuse covered up the undisclosed risks, including significant credit and default risks.

c. As a part of the misuse of proceeds, American Equities regularly took money from one Fund's account (or, especially in early years, from an American Equities or an affiliate account), commingled it with other Funds' money, then used the commingled money to pay Funds' expenses, Fees, obligations, and Bonus Compensation. Money



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transferred from Fund to Fund, and among Fund(s) and American Equities, was not lent or repaid on any commercially standard terms. American Equities also used Fund money to make loans and gifts to Miles, Wile, and their family members and business affiliates.

d. By no later than 2006, and, on information and belief, beginning in 2003, American Equities commingled the funds raised by each Fund from investors (among Funds and among other American Equities monies) and commingled the amounts collected on each Fund's Receivables (including with amounts collected through AEI or its affiliates). Assets of each Fund were not segregated and were commingled with the assets of other Funds, American Equities, and other affiliates. Each Fund did not maintain its own books and records separate and apart from the books and records of American Equities and each other Fund. When one Fund did not have the cash flow to keep and perform its obligations, *i.e.*, to pay its expenses, Fees, obligations, and Bonus Compensation, money was taken from other Funds to cover the obligations, *i.e.*, to pay the expenses, Fees, obligations, and (unearned) Bonus Compensation. On top of that, "gifts" and undocumented "loans" were made out of the commingled accounts to affiliates and family members of the owners of American Equities. The inter-Fund transfers never carried commercially reasonable terms such as interest rates, payment schedules, or maturity dates. In the early years, some inter-Fund transfers were repaid to the transferor-Fund at the same amount (*i.e.*, without any interest), but no such repayment was promised and often it did not happen.



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e. For example, at the end of 2006 (the earliest year for which plaintiffs currently have AEI financial statements), AEI's books reflected that it owed no less than $150,000 to the AEM Funds then in existence without any benefit to the AEM Funds and without any commercially reasonable terms governing AEI taking the money. That amount ballooned to over $1.9 million by the end of 2007. Those amounts reflect only unpaid debts owed to the AEM Funds, as recorded on AEI's books, and do not reflect debts that were paid back (which debts never carried interest or any commercially reasonable terms and were not in the interest of the AEM Funds). Consistent with American Equities' practice of commingling all AEM Fund and American Equities money, AEI's financial statements do not specify from which AEM Fund AEI had taken money—American Equities moved money freely among all AEM Funds.

f. As just one illustration of the extent of cash transfers between the Funds (as set out in the declaration of an AEI employee based on a review of records and filed by the Receiver), at month's end in November 2016, AEM 600 had transferred approximately $925,000 to AEI, $6.2 million to other Funds, and $189,000 in undocumented loans to affiliates or family members of Miles and Wile.

g. Beginning no later than 2011, American Equities caused the AEM Funds to pay a newly created affiliate, AEMM, "Broker Fees." On information and belief, AEMM served no business purpose other than to facilitate commingling within American Equities and to hide American Equities' insolvency. The Broker Fees were paid to AEMM by an



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AEM Fund each time the Fund purchased Receivables, served no legitimate purpose, and AEM Funds received nothing in exchange for the Broker Fees.

h. According to the Receiver, as of April 2019, the balance of outstanding inter-Fund cash transfers was $10.9 million. This is separate from and does not account for the use of a central bank account to direct cash across the operation as needed.

i. American Equities used offering proceeds (*i.e.*, investor cash) to gift or loan money to at least sixteen people or entities affiliated with American Equities or related to Ross Miles or Maureen Wile. These transfers were not carried out through normal corporate procedures or on commercially reasonable terms. The transfers were often not recorded in the books and records, and the money was often not paid back to the transferor-Fund. Forensic investigation by the AEM Funds' Receiver found that, as of May 9, 2019, outstanding "loans" from the Funds to these people and entities totaled about $10.7 million in principal amount. Nearly all of the "loans" to these people and entities were in default and in some instances, the people and entities never made any payment on the "loans." There was no meaningful effort by American Equities to collect on "loans" to these people and entities.

j. By 2007, and on information and belief, beginning in 2003, American Equities had a practice of pledging Fund Receivables as security to obtain third-party financing (including, by no later than June 2010, to obtain financing from defendant Pacific Premier Bank) for its benefit, without regard to the best interest of the Fund which had purchased



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the receivable or investors in that Fund. Specifically, American Equities would assign a Receivable that had been held by a Fund to itself (*i.e.*, to AEI, AEMM, Miles, etc.) without consideration, then would pledge the Receivable as collateral for a bank loan. On information and belief, the bank financing was used: (i) to satisfy obligations to investors in various other Funds; (ii) to further the operations of AEI Developments described in ¶ 24, and (iii) generally to benefit American Equities. It was not uncommon for a Receivable to later be reassigned back to one of the fourteen Funds, without regard to which Fund initially held it. This directly contradicted what investors were told: that they were the sole owners of the Fund Receivables, that they held first position liens, and that Receivables would be held by the Fund they invested in until maturity.

k. As just one example, between March 2007 and July 2014, one Receivable contract that a Fund had initially purchased from an AEI Development was then transferred at least six times among six different Funds and American Equities. At three different time periods during those years, the Receivable contract served as collateral to a bank for a loan to American Equities.

33. In essence, at all relevant times, American Equities treated investor money and assets as its own to use freely for its own benefit or the benefit of Miles and Wile, their relatives, and their other business interests. Investors were never told their money could be treated that way or that American Equities needed to borrow money and the Receivable contracts from the AEM Funds in order to continue operating. Instead



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investors were always told that their money would be used exclusively to purchase Receivables that would be held by the Fund in which they invested to maturity of the loan.

**Lack of State and Federal Licenses and Registrations**

34. Throughout the life of the Funds, American Equities was out of compliance with numerous investor and consumer safety laws and regulations. As Davis Wright prepared the Fund offerings, the 1995 Cease and Desist Order from the State of Oregon referenced in ¶ 23 was not the only regulatory compliance matter that was not disclosed to investors. Undisclosed regulatory compliance issues were of two broad categories: compliance with laws protecting consumers in real estate transactions and compliance with laws protecting consumers in securities transactions. By not complying with the licensing and registration requirements, American Equities was able to unlawfully avoid disclosing its true financial condition to regulators and investors.

35. American Equities told investors that each Fund and its portfolio of secured Receivables would be managed by a Manager: who had years of experience in the very business of each Fund; who was under a fiduciary duty to each Fund; who would perform its duties in good faith and with care; who would ensure that each secured Receivable met minimum underwriting criteria; who would review and analyze information regarding the Receivables and ensure that its investigations were complete and the information was accurate; who would manage and service the Receivables and the Notes; who would



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report to investors "any important developments" relative to the Receivables; who would conduct the business and operations of each Fund separate and apart from the business and operations of American Equites and the other Funds; and who was a licensed collection agency. Those statements were untrue or misleading because American Equities failed to disclose that:

a. During its decades of experience and ongoing operations, AEI had not obtained or maintained licenses and registrations from the states in which it operated that were necessary to successfully conduct business and operations in the manner it told investors it would, or even to conduct them at all. It was not a "licensed contract collection agency." (See ¶ 30 b.xii.) Its track record included the 1995 Oregon Cease and Desist Order. At all material times, the failures to register or comply with regulations created material risks of substantial monetary fines, and a risk that one or more of its business operations could be shut down or significantly restricted by regulatory authorities.

b. At all material times, AEI did not have the escrow agent license that was required for it to collect and process payments on seller-financed real-property loans that were held by others. State regulation of licensed escrow agents included state authority to "[r]emove or prohibit any principal officer, controlling person, director, employee, or licensed escrow officer from participation in the conduct of the affairs of any licensed escrow agent." Wrongfully operating without a license is a criminal misdemeanor and punishment includes the possibility for prison time and daily fines. (In April 2018, AEI



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entered into a Consent Agreement with the Washington Department of Financial Institutions, agreeing that it was required to have an escrow agent license. It agreed to stop "conducting any servicing or contract collections activities that would require a license" until it obtained the license or qualified for an exemption.)

c. AEI did not have a Washington Consumer Loan Act license, which was required to service residential mortgage loans on properties in the State of Washington. (The State of Washington told AEI to stop servicing mortgage loans in Washington without a license.)

d. AEI was not licensed as an investment adviser in the State of Washington, which was required for it to provide investment advisory services in the State of Washington, including to the AEM Funds, which it managed.

e. AEI was not registered with the Securities and Exchange Commission (SEC) as a Registered Investment Adviser under the federal Investment Advisers Act of 1940 ("Advisers Act"), which was required to provide investment advisory services to the Funds, which it managed.

f. AEI was not registered as a securities broker in accordance with the Securities Exchange Act of 1934, nor was it licensed as a securities broker by the States of Washington and Oregon. All three of these licenses were required for it to effect securities transactions for the Funds. In addition, AEI's sales employees, including Miles Minsker,



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were not licensed as securities salespersons by the States of Washington or Oregon, which was likely required because they were paid to sell AEI securities.

g. Because neither AEI, its principals, agents or AEMM had the registrations and licenses required by state and federal laws, American Equities could not lawfully conduct its business operations, and there was a continuing material risk that its business operations could be shut down or significantly restricted.

h. Because neither AEI, its principals, agents, or AEMM had the registrations and licenses required by state and federal laws and American Equities could not lawfully conduct its business operations, it was incurring significant contingent liabilities that could prevent it from keeping and performing its obligations to investors, including paying its debts as they came due, and could render it insolvent.

36. The omissions alleged in ¶ 35 were material. A reasonable investor would consider AEI's failure to have the federal and state licenses that were required, and its consequent inability to lawfully conduct its business operations, to be important in making a decision to invest. In addition, it evidenced a scofflaw attitude that belied the idea that the Manager was a highly-experienced, faithful, and careful fiduciary. Reasonable investors would find it important in deciding whether to invest that American Equities failed to comply with applicable laws, especially laws put in place to protect investors; they would find it important that the State's investor protections were not in place for an investment in American Equities.



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37. In 2009, defendant Davis Wright prepared the offering materials for AEM 600. The first PPM for AEM 600 was dated June 30, 2009. It contained no disclosures related to securities regulation risk, consistent with all of the previous offering materials for AEM Funds.

38. Davis Wright prepared a new version of the AEM 600 PPM dated November 5, 2009. In that new version, Davis Wright and American Equities added the following paragraph.

> **Risks Related to Status of the Company and the Manager Securities Regulators.** [sic]
>
> The Manager and the Manager's employees and agents are not registered with the SEC as investment advisers under the Investment Advisers Act of 1940, and are not registered with the SEC as brokers under the Securities and Exchange Act of 1934. The Company is not registered with the SEC as an investment company under the Investment Company Act of 1940. The Company, the Manager, and the Managers employees and agents are not registered as brokers or investment advisers with any state securities regulators. If state or federal regulators were to investigate and determine that exemptions from registration are not available to the Company, the Manager, or the Manager's employees and agents, such determination would have a material adverse impact on the Company's operations and financial results, and may result in the financial failure of the Company.

39. That November 2009 disclosure was never provided to AEM 600 investors who first invested in an AEM Fund before November 5, 2009. What's more, no similar disclosure was added to any other Fund's PPM. Therefore, it was not provided to investors in any of the other Funds, all of which continued soliciting existing investors to reinvest accruing interest and otherwise-matured investments, and at least the following



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Funds which continued to solicit and receive new investor money: AEM 300 (until no earlier than 10/29/15), AEM Mexico 200 (until no earlier than 10/29/13), AEM Mexico 300 (until no earlier than 5/21/10), AEM Mexico 400 (until no earlier than 5/30/14), and AEM 500 (until no earlier than 10/30/09). Moreover, the November 2009 disclosure to AEM 600 investors did not provide any factual information by which an investor could have assessed the level of that risk, let alone disclose that such registration was, in fact, required and the likelihood that the SEC or one of the states in which AEI was selling securities or operating its receivables business would discover AEI's noncompliance and take regulatory action. The underlying facts and the "risk" arising from AEI's (i.e., "the Manager's") failure to register with the SEC or the states in which it was operating as an investment adviser or broker would be important to reasonable investors considering investments or reinvestments in any AEM Fund.

40. The November 2009 disclosure given to AEM 600 investors failed to disclose that AEI had been required to register with the State of Washington as an investment adviser since before 2003 and had failed to do so. It also omitted to state either on what basis AEI supposedly was exempt from the registrations described in ¶ 38 above, or the likelihood that regulators, upon investigation, would "determine that exemptions from registration are not available." On information and belief, there was no lawful exemption for AEI's failure to register with either state or federal regulators as an investment adviser and also likely as a broker, and that fact was not disclosed to investors.



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41. The omissions alleged in the previous paragraph made the November 2009 disclosure on regulatory risk to new investors in AEM Fund 600 misleading, because without those omitted disclosures, investors were given the impression that AEI (the Fund Manager) was in compliance with all applicable laws and regulations. Reasonable investors would find the omissions in the previous paragraphs 28 through 34 important in deciding whether to invest in AEM Funds.

**Riverview Community Bank**

42. The line of credit described above (see above ¶¶ 14-17) was very profitable for Riverview—producing a high return on the bank's equity ("ROE") of close to 36%. Credit Memorandum, Oct. 5, 2007. Riverview continued to extend credit to American Equities even when its financial statements revealed that it was insolvent. The line of credit was known as a "guidance" line because any advances required that the use of the funds meet specific criteria and that the purchased Receivables needed proper documentation and an acceptable risk. Most of the advances, however, lacked the required documents, and American Equities chronically failed to comply with material terms of the guidance line of credit such as timely providing financial statements. American Equities continued to struggle, but Riverview continued to accommodate its ongoing operations, embarking on a quiet exit from the relationship. In the face of AEI's insolvency and years' long difficulties in meeting its obligations to the bank, as late as



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2012, Riverview allowed AEI to defer loan payments, counting on AEI to have the loan "refinanced with investor funds by year end," saying:

> American Equities is seeking investors to refinance RCB loan prior to 12/31/12. Borrower will pay the two Quarterly payments on 12/31/12 from company's operating cash flow if the subject loan is not refinanced with investor funds by year end."

Credit Memorandum, Oct. 23, 2012.

43. When new investors for the AEM Funds became harder for American Equities to find, Riverview responded by refusing to renew the line of credit and terming out the balance that American Equities owed. Noting that American Equities' "debt to worth…has been increasing to alarming levels over the past two or three years as the company struggles to rid itself [of] non-earning real estate assets," Riverview decided that "because of [American Equities'] lack of profitability and lack of revolving on the line, it is prudent for the bank to discontinue the revolving function." Credit Memorandum, Sep. 15, 2009, May 24, 2010, Sep. 15, 2010. Despite all this, Riverview did not take steps to foreclose on its loans, and, instead chose the strategy of making a quiet exit that would help (aid) ensure that investors did not learn about the precarious financial condition of American Equities and the Funds and would help facilitate the repayment of its loan, at least in part, from investor funds. Foreclosing on the line of credit and the Fund Receivables would have shattered the (false) illusion of solvency, safety, and prosperity that was necessary for American Equities to continue selling securities and for Riverview to be repaid. By following the quiet exit strategy, the bank managed to end its credit



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relationship with AEI and to be made whole, and thereby enabling (aiding) American Equities to victimize more investors.

**Pacific Premier Bank**

44. In 2008, after a period of rapid increase in real estate values, the real estate market crashed. The market collapse affected the AEI Developments, American Equities, and its borrowers as well. As a result, there was a decline in performing loans and an increase in defaults, particularly from more recent loans where the loss of value of the real estate exceeded the loan the property secured. This was true not only of loans made by American Equities and the Funds to unrelated parties, but also to investments the Funds had made to related parties and affiliates. American Equities had become functionally insolvent in that it could not liquidate its assets for enough money to repay investors and it needed new investor money to continue to pay interest and redeem investors whose notes came due.

45. American Equities did not tell investors that by no later than 2008, American Equities' and the Funds' undisclosed previous liquidity problems had developed into functional insolvency. Nor did American Equities tell investors that new investor money coming into the Funds was needed to keep the operations afloat and make payments of interest and redeem notes that were due and that the only way American Equities could continue to maintain the appearance of stability and safety was through the rampant commingling across the operations described in ¶¶ 23-33, above.



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46. Beginning no later than June 2008, defendant Pacific Premier Bank provided a guidance line of credit to AEI that was necessary to American Equities' operations, including in selling the AEM Fund securities. Like Riverview's guidance line, Pacific Premier required American Equities (and later AEMM) to meet certain criteria before any money could be drawn on the loan. The guidance line was first provided to AEI in the amount of $3.1 million. Advances on the line were purportedly to be used by AEI to purchase real estate-secured promissory notes, with the notes secured primarily by properties located within the Western United States, including many in Oregon.

47. AEM Fund security sales to investors were the "primary source of repayment" to Pacific Premier for the life of the guidance line, which remained in place through no earlier than early 2015. The stated purpose of the guidance line was short-term funding. American Equities (and later AEMM) was supposed to document each advance with a separate promissory note with a maximum maturity of 12 months, by which time Pacific Premier understood there would be a "sale of the … contracts to either an individual investor or an established investment pool," *i.e.*, one of the AEM Funds.

48. AEI provided the bank with financial statements in 2008 that reflected the scale of its liberal borrowing from the AEM Funds and its accelerating difficulty in covering for its borrowing with new investor money: outstanding debt owed by AEI to the AEM Funds increased by over 1,100% between fiscal year ends 2006 and 2007. In early 2008, the outstanding balance owed to the AEM Funds on AEI's books was nearly $2



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million. The Davis Wright-drafted AEM Fund PPMs and offering materials, which Pacific Premier refers to as "prospectuses" in its internal loan memoranda, did not permit AEI to borrow from the AEM Funds.

49. Guidance line of credit advances were made by Pacific Premier based on "drive by appraisals" to determine the value of the real property securing each loan, perpetuating American Equites' general business practice of acquiring real estate interests that were overvalued. And the property "value" that the bank approved as supporting an advance often included a broker's fee, paid by American Equities to a third party or to an affiliate. When AEI purchased a Receivable contract for resale to an AEM Fund (the purpose of the guidance line funding), American Equities capitalized broker's fees into the supposed value of the contract on its books. When it sold a contract to a Fund (the bank's expected primary source of repayment), the fee continued to be included in the contract's "value," contributing to the overvaluation of contracts on the Funds' books.

50. In 2012, the bank considered requiring industry standard appraisals to determine the value of the real estate securing each advance on the guidance line. Miles told Pacific Premier that AEI would be "unable to comply" with such a requirement and that AEI would "consider developing an alternative banking relationship" if Pacific Premier required industry standard appraisals. As a result, the guidance line of credit was renewed again without the change.



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51. Advances on the guidance line of credit were paid directly by Pacific Premier into a checking account belonging to AEI or, after December 2010, AEMM. The guidance line of credit was an essential part of American Equities' misuse of proceeds, alleged above in ¶¶ 32-33. Although the bank recorded a security interest in real property to secure each advance, it did not require that American Equities use the advances for their intended purpose of purchasing an interest in that real estate, or for any particular use. And in fact, American Equities freely used funds from the guidance line for its wider operational costs, transferring the money to Miles, Wile, and among affiliates.

52. Also, advances on the guidance line were sometimes secured by Receivable contracts that belonged to the AEM Funds. In or around March 2013, reassigning Receivable contracts out of an AEM Fund to secure advances on the Pacific Premier line, without consideration to the AEM Fund, became a widespread practice by American Equities. In that month alone, American Equities transferred no fewer than six Receivable contracts from different AEM Funds to AEMM and then to Pacific Premier in exchange for over $833,000 in funding. That money was first paid by Pacific Premier into an AEMM checking account, then transferred to AEI, and was then used, on information and belief, to pay down AEI's debt at Riverview (or to cover other costs or obligations, to make that paydown possible without revealing American Equities' true financial condition).

53. At least three of those Receivable contracts taken from AEM Funds in March 2013 were later transferred back to a Fund, only to be transferred out again in or around



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June 2014, again to be used as collateral for a Pacific Premier advance on the guidance line. Throughout those times, the records of the Funds continued to reflect the Receivables as held by the Funds, even though they had been assigned to the bank to collateralize a loan to American Equities.

54. In the spring of 2014, the bank renewed the guidance line of credit for the ninth time. In underwriting the renewal, the bank analyzed AEMM's and AEI's internally prepared financial statements and the overall operations of American Equities, including management of the pools (*i.e.*, the Funds). In its memorandum approving the loan renewal—signed off on by at least five bank employees—the bank noted that AEMM revenues in 2013 were half of the 2011/12 averages. "Prior year revenues were weighted heavily in contract sales," *i.e.*, selling real estate contracts to the AEM Funds, but "[i]n 2013, this shifted away from contract sales ([down to] 29.5% [of revenue]) and more towards broker fees."

55. The bank explained in its memorandum that these "broker fees" were a means for American Equities to profit on the front end of an AEM Fund purchase of a Receivable contract: "Broker fees are earned when AEMM facilitates the purchase of contracts/notes directly by the individual pool [Fund], instead of acquiring within AEMM and subsequently selling to the pool. The broker fees represent the difference between the purchase price and the price that provides the desired return to the pool." In other words, investor money into a Fund was used to pay an undisclosed "Broker Fee" to AEMM on



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top of each Receivable contract purchase. "In 2013," the bank observed, "Broker fees were significant at $723M. Broker fees were zero in 2012. This is expected to remain high in the future."

56. Pacific Premier also explained that AEMM was using the investor money in part to pay $15,000 each month to an AEI Development for money it lent American Equities to pay off other third-party debt. (See above ¶¶ 32-33.)

57. Pacific Premier approved the ninth renewal of the guidance line in April 2014. As in past loan memoranda, the bank noted favorably Ross Miles' relationship with bank founder Thomas Young, "dating back to the late 1970's," when American Equities began. Miles also touted his relationship with Young to investors.

58. By 2015, when the guidance line came up for its tenth renewal, Young had left Regents, Pacific Premier's predecessor. The bank's internal assessment of American Equities by new management soured, noting that it was highly leveraged and its "in-house accounting [was] not adequate." Its hesitations, however, were counterbalanced by the continued benefits of Miles' business with the bank: "Borrower has been a strong advocate for Regents Bank in the past and has provided strong deposit relationship and has referred a number of clients … Borrower and referred clients (for which Ross maintains a certain level of influence) maintain $3.4MM in loans outstanding and $3.2MM in avg deposits."



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59. Over the course of several months, the bank met with Miles and, although the guidance line of credit had not been renewed and existing loans on the line were maturing, the bank did not terminate its relationship or cut off funding to American Equities. It provided extensions on the maturing loans until quietly passing them off its books to Young's new financing company.

60. Throughout this time, Pacific Premier had also provided credit directly to Miles for American Equities operations, which continued after 2015 through 2018. In June 2008, for example, the bank approved a $50,000 line of credit to Miles "to finance short-term business cash flow needs," recognizing the "business" as AEI, its affiliates, and the AEM Funds.

61. In late 2009 and early 2010, Miles took bad debt off of the bank's hands and the bank, in exchange, lent additional money to Miles secured by deeds of trust taken from the AEM Funds for no consideration. (See above ¶¶ 32-33.) Specifically, in December 2009, Miles purchased a loan from the bank at par; the loan was secured by a promissory note and deed of trust, the borrower on which, Franchise Management Services, Inc., was in bankruptcy. Given the uncertainty of the borrower's ability to pay, Miles approached the bank looking for more "cash flow." The bank agreed to lend Miles $1.025 million. The bank described the loan as being "a result of negotiations with the Borrower on the sale of a problem credit by the Bank to Mr. Miles." The $1.025 million reciprocal loan to Miles was secured by two real estate receivables, which Pacific Premier recognized "were



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originally owned by American Eagle Mortgage 100 and American Eagle Mortgage 400." The bank accepted them as collateral for the loan to Miles after they were "assigned from the given investment [fund] to Ross Miles personally and then assigned to [Pacific Premier's predecessor] Regents Bank" as a requirement to close the loan, which happened in May 2010. Earlier in January 2009, Pacific Premier "loaned" Miles $600,000 in order that that Miles could pay off another bad Miles-related loan Pacific Premier had made on a property in La Pine. Miles provided as collateral six Receivables that were owned by and owed to AEM Funds. The AEM Funds received no consideration for transferring the real estate loans to Pacific Premier. Miles willingness to take the bad debts off the bank's hands motivated Pacific Premier to continue to extend credit to American Equities and then quietly wind down the guidance line of credit—all the while providing American Equities the money necessary to maintain its (false) illusion of solvency, safety, and prosperity, and necessary for it to continue selling securities.

62. As a part of that $1.025 million loan in May 2010, Miles and the bank agreed that all payments by the underlying borrowers on the two real estate loans now securing his personal debt, which had been part of the Receivables owned by AEM 100 and AEM 400, would go directly to a Pacific Premier account, from which Miles' loan payments to the bank would automatically be deducted. Miles was expected to personally net over $6,000 each month from the transaction—*i.e.*, from the reassignment of two contracts from



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AEM Funds to Pacific Premier as security for a personal loan. The AEM Funds received no consideration for transferring the real estate loans to Pacific Premier.

63. In January 2011, Pacific Premier renewed Miles' $50,000 "short-term business cash flow" line of credit for the fourth time. The bank noted that as a revolving line of credit, it was intended to be used "at 50% of the commitment amount" and fully "revolve"—*i.e.*, rest at a zero balance for some time—each year. During 2010, however, the outstanding balance was never below $40,000 and was maxed out at the time of renewal. Despite that, the bank renewed the line of credit.

64. When Pacific Premier quietly wound down the guidance line of credit in 2015, it not only left Miles' line of credit in place, but it increased the available credit to $75,000. Pacific Premier's credit line to Miles was used, on information and belief, to pay obligations to existing investors and as needed throughout American Equities to hide its insolvency. In 2017, Miles still was not meeting the bank's requirement that the line rest at a zero balance for 30 days, but the bank continued to renew it. In December 2018, with American Equities in freefall, it was renewed yet again.

65. The Pacific Premier lines of credit to American Equites (including to AEI, AEMM, and Ross Miles) made possible the sales of AEM Fund securities from no later than June 2008 to the collapse of the Funds in 2019. Without those lines of credit, American Equities would not have the money necessary to continue its (false) illusion of solvency, safety, and prosperity; it would have not been able to continue selling securities.



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By providing credit advances of necessary funding secured by receivable contracts taken from the AEM Funds, Pacific Premier participated in American Equities unlawful securities sales and its unlawful operations of a securities business.

**Collapse of American Equities**

66. By early 2019, obligations to investors finally overwhelmed American Equities' capacity for bringing in new money. In order to stave off investors and other claimants, Miles and Wile hired a workout specialist to attempt to negotiate with creditors and investors. When the workout specialist reviewed the situation, he told Miles and Wile that they should consent to the appointment of a Receiver to take charge of the Funds.

67. In May 2019, on Ross Miles' motion, the Funds were put into a court-supervised Receivership and an injunction was entered preventing plaintiffs from suing AEI and the Funds. The Court has since granted the Receiver's request that all of the Funds be treated as a single operating entity due to the extensive commingling of assets and cash among the Funds.

**FIRST CLAIM FOR RELIEF**

**Oregon Securities Law**
**Sales in Violation of ORS 59.115(1)(b);**
**Recovery under ORS 59.115(2)**
**Against Defendants Miles and Wile**

68. Plaintiffs reallege ¶¶ 1-67.

69. Miles and Wile (along with others in American Equities) sold securities to plaintiffs and members of the Class by means of untrue statements of material facts or



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omissions to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, in violation of ORS 59.115(b). The untrue or misleading statements of fact are described in ¶¶ 22-65 above. Each of the untrue or misleading statements were material in that a reasonable person in the position of plaintiffs and the other investors would have considered the information important in making a decision to invest in an AEM Fund.

70. A schedule of plaintiffs' investment accounts is attached as Schedule I. Pursuant to ORS 59.115(1), (2), and (3), plaintiffs and members of the Class are each entitled to damages in the amount of the consideration that was paid for the securities, and interest from the date of payment equal to the greater of 9% interest or the rate provided in the security, less any amount received on the securities. In those cases where an investor received an interest dividend and simultaneously reinvested it (*i.e.*, where an investor did not receive an immediate cash payment of the interest), the interest is accounted as (a) an "amount received on [a] security"; and (b) the "consideration paid for [a] security," and it bears interest at the rate of 9% from the date of payment. The damages of plaintiffs and the members of the Class are in an approximate amount in excess of $25.3 million. Interest accrues until the date of payment. Plaintiffs will tender their securities at a time before entry of judgment.

71. In those cases where a plaintiff no longer owns a security, a plaintiff is entitled to recover damages in the amount that would be recoverable upon a tender, less



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the value of the security when the purchaser disposed of it and less interest on such value at the rate of 9% per annum from the date of disposition.

72. Pursuant to ORS 59.115(10), this Court should award plaintiffs their reasonable attorney fees.

**SECOND CLAIM FOR RELIEF**

**Oregon Securities Law**
**Sales in Violation of ORS 59.115(1)(b);**
**Liability under ORS 59.115(3); Recovery under ORS 59.115(2))**
**Against Defendants Davis Wright, Riverview, and Pacific Premier**

73. Plaintiffs reallege ¶¶ 1-67.

74. American Equities sold securities to plaintiffs and members of the Class by means of untrue statements of material facts or omissions to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, in violation of ORS 59.115(b). The untrue or misleading statements of fact are described in ¶¶ 22-65 above. Each of the untrue or misleading statements were material in that a reasonable person in the position of plaintiffs and the other investors would have considered the information important in making a decision to invest in an AEM Fund.

75. Defendant Davis Wright is jointly and severally liable with American Equities, including Miles and Wile, for participating or materially aiding in the sales in the manner described in ¶¶ 11-13, 20, and 34-41 above. (ORS 59.115(3).)

76. Defendant Riverview Community Bank is jointly and severally liable with



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American Equities, including Miles and Wile, for participating or materially aiding in the sales in the manner described in ¶¶ 14-17, 20, and 42-43 above. (ORS 59.115(3).)

77. Defendant Pacific Premier Bank is jointly and severally liable with American Equities, including Miles and Wile, for participating or materially aiding in the sales in the manner described in ¶¶ 18-20 and 44-65 above. (ORS 59.115(3).)

78. A schedule of plaintiffs' investment accounts is attached as Schedule I. Pursuant to ORS 59.115(1), (2), and (3), plaintiffs and members of the Class are each entitled to damages in the amount of the consideration that was paid for the securities, and interest from the date of payment equal to the greater of 9% interest or the rate provided in the security, less any amount received on the securities. In those cases where an investor received an interest dividend and simultaneously reinvested it (*i.e.*, where an investor did not receive an immediate cash payment of the interest), the interest is accounted as (a) an "amount received on [a] security"; and (b) the "consideration paid for [a] security," and it bears interest at the rate of 9% from the date of payment. The damages of plaintiffs and the members of the Class are in an approximate amount in excess of $25.3 million. Interest accrues until the date of payment. Plaintiffs will tender their securities at a time before entry of judgment.

79. In those cases where a plaintiff no longer owns a security, a plaintiff is entitled to recover damages in the amount that would be recoverable upon a tender, less the value of the security when the purchaser disposed of it and less interest on such value



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at the rate of 9% per annum from the date of disposition.

80. Pursuant to ORS 59.115(10), this Court should award plaintiffs their reasonable attorney fees.

**THIRD CLAIM FOR RELIEF**

**Oregon Securities Law –**
**Sales in violation of ORS 59.135;**
**Recovery under ORS 59.115(2)**
**Against Defendants Ross Miles and Maureen Wile**

81. Plaintiffs reallege ¶¶ 1-67.

82. Miles and Wile, along with American Equities, sold securities in violation of ORS 59.135(2) through (3) (civil liability under ORS 59.115(1)). Miles and Wile, directly or indirectly, in connection with the sale of the securities or the conduct of a securities business:

(1) made untrue statements of a material fact or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; and

(2) engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon any person.

83. A schedule of plaintiffs' investment accounts is attached as Schedule I. Pursuant to ORS 59.115(1), (2), and (3), plaintiffs and class members are each entitled to damages in the amount of the consideration that was paid for the securities, and interest from the date of payment equal to the greater of 9% interest or the rate provided in the security, less any amount received on the securities. In those cases where an investor



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received an interest dividend and simultaneously reinvested it (*i.e.*, where an investor did not receive an immediate cash payment of the interest), the interest is accounted as (a) an "amount received on [a] security"; and (b) the "consideration paid for [a] security," and it bears interest at the rate of 9% from the date of payment. The damages of plaintiffs and the members of the Class are in an approximate amount in excess of $25.3 million. Interest accrues until the date of payment. Plaintiffs will tender their securities at a time before entry of judgment.

84. In those cases where a plaintiff no longer owns a security, a plaintiff is entitled to recover damages in the amount that would be recoverable upon a tender, less the value of the security when the purchaser disposed of it and less interest on such value at the rate of 9% per annum from the date of disposition.

85. Pursuant to ORS 59.115(10), this Court should award plaintiffs their reasonable attorney fees.

**FOURTH CLAIM FOR RELIEF**

**Oregon Securities Law –**
**Sales in violation of ORS 59.135;**
**Liability under ORS 59.115(1) and ORS 59.115(3);**
**Recovery under ORS 59.115(2))**
**Against Defendants Davis Wright, Riverview, and Pacific Premier**

86. Plaintiffs reallege ¶¶ 1-67.

87. American Equities, including Miles and Wile, sold securities in violation of ORS 59.135(2) through (3) (civil liability under ORS 59.115(1)). American Equities,



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including Miles and Wile, directly or indirectly, in connection with the sale of the securities or the conduct of a securities business:

(1) made untrue statements of a material fact or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; and

(2) engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon any person.

88. Defendants Davis Wright, Riverview, and Pacific Premier are jointly and severally liable with American Equities for participating or materially aiding in the sales in the manner described above in ¶¶ 11-13, 20, and 34-41, for Davis Wright, ¶¶ 14-17, 20, and 42-43, for Riverview, and ¶¶ 18-20 and 44-65, for Pacific Premier. (ORS 59.115(3)).

89. A schedule of plaintiffs' investment accounts is attached as Schedule I. Pursuant to ORS 59.115(1), (2), and (3), plaintiffs and class members are each entitled to damages in the amount of the consideration that was paid for the securities, and interest from the date of payment equal to the greater of 9% interest or the rate provided in the security, less any amount received on the securities. In those cases where an investor received an interest dividend and simultaneously reinvested it (*i.e.*, where an investor did not receive an immediate cash payment of the interest), the interest is accounted as (a) an "amount received on [a] security"; and (b) the "consideration paid for [a] security," and it bears interest at the rate of 9% from the date of payment. The damages of plaintiffs and the



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members of the Class are in an approximate amount in excess of $25.3 million. Interest accrues until the date of payment. Plaintiffs will tender their securities at a time before entry of judgment.

90. In those cases where a plaintiff no longer owns a security, a plaintiff is entitled to recover damages in the amount that would be recoverable upon a tender, less the value of the security when the purchaser disposed of it and less interest on such value at the rate of 9% per annum from the date of disposition.

91. Pursuant to ORS 59.115(10), this Court should award plaintiffs their reasonable attorney fees.

92. Plaintiffs demand a jury trial.

WHEREFORE, plaintiffs, on their own behalf and on behalf of members of the Class, respectfully demand an award against defendants in an approximate amount in excess of $25.3 million, along with interest from the dates of payments of consideration equal to the greater of 9% interest or the rate provided in the security; awarding plaintiffs

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their reasonable attorney fees; awarding plaintiffs their costs and disbursements; and providing for such further relief as the Court may deem appropriate.

DATED this 25th day of March 2022.

By: s/ John W. Stephens

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Attorneys for Plaintiffs

Schedule I

| Plaintiff | "Pool" | Account Number | Principal Balance | Accrued & Unpaid Interest Per Receiver |
|---|---|---|---|---|
| **Anderson, Diane,** trustee of Diane Anderson Trust | American Eagle Mortgage 200 LLC | 4108 | $ 47,570.72 | $ 634.28 |
| **Anderson, Diane,** trustee of Diane Anderson Trust | American Eagle Mortgage 400, LLC | 6103 | $ 124,940.73 | $ 1,665.88 |
| **Anderson, Diane,** trustee of Diane Anderson Trust | American Eagle Mortgage Mexico 200 LLC | 0144 | $ 53,620.54 | $ 848.99 |
| **Buckley, Bonnie,** trustee of Bonnie K. Buckley IRA | American Eagle Mortgage 600, LLC | 8113 | $ 70,000.00 | $ 875.00 |
| **Buckley, Bonnie,** trustee of Bonnie K. Buckley IRA | American Eagle Mortgage 600, LLC | 8114 | $ 70,000.00 | $ 933.33 |
| **Buckley, Bonnie,** trustee of Bonnie K. Buckley IRA | American Eagle Mortgage 600, LLC | 8115 | $ 70,000.00 | $ 991.67 |
| **Dyess, Carl and Kirby,** trustees of Dyess Family Trust | American Eagle Mortgage Mexico 200 LLC | 0102 | $ 223,553.32 | $ 3,725.89 |
| **Dyess, Carl and Kirby,** trustees of Dyess Family Trust | American Eagle Mortgage Mexico 400 LLC | 0107 | $ 688,105.67 | $ 11,468.43 |
| **Dyess, Carl and Kirby,** trustees of Dyess Family Trust | American Eagle Mortgage 100 LLC | 1171 | $ 957,596.82 | $ 11,171.96 |
| **Koubeck, Peter L.,** an individual | American Eagle Mortgage Mexico 100 LLC | 5139 | $ 334,504.65 | $ 7,944.48 |
| **Koubeck, Peter,** trustee of Peter L. Koubeck IRA | American Eagle Mortgage Mexico 400 LLC | 0141 | $ 440,368.80 | $ 10,465.17 |
| **Peterson, Michael,** trustee of Michael T. Peterson IRA | American Eagle Mortgage 500, LLC | 7122 | $ 124,686.15 | $ 1,558.58 |
| **Peterson, Michael,** trustee of Michael T. Peterson IRA | American Eagle Mortgage 500, LLC | 7123 | $ 128,795.78 | $ 1,824.61 |
| **Peterson, Michael,** trustee of Michael T. Peterson IRA | American Eagle Mortgage 600, LLC | 8222 | $ 98,500.00 | $ 1,231.25 |
| **Peterson, Michael,** trustee of Michael T. Peterson IRA | American Eagle Mortgage Mexico 200 LLC | 0147 | $ 134,612.08 | $ 2,131.36 |
| **Wilson, Ed,** an individual | American Eagle Mortgage Mexico 100 LLC | 5101 | $ 64,675.00 | $ 1,024.02 |
| **Wilson, Ed,** an individual | American Eagle Mortgage Mexico 200 LLC | 137 | $ 68,891.99 | $ 1,090.79 |
| **TOTALS** | | | **$ 3,700,422.25** | **$ 59,585.69** |

# EXHIBIT 6

18 Pages

Honorable Da



SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY

In re:

AMERICAN EAGLE MORTGAGE 100, LLC; AMERICAN EAGLE MORTGAGE 200, LLC; AMERICAN EAGLE MORTGAGE 300, LLC; AMERICAN EAGLE MORTGAGE 400, LLC; AMERICAN EAGLE MORTGAGE 500, LLC; AMERICAN EAGLE MORTGAGE 600, LLC; AMERICAN EAGLE MORTGAGE MEXICO 100, LLC; AMERICAN EAGLE MORTGAGE MEXICO 200, LLC; AMERICAN EAGLE MORTGAGE MEXICO 300, LLC; AMERICAN EAGLE MORTGAGE MEXICO 400, LLC; AMERICAN EAGLE MORTGAGE MEXICO 500, LLC; AMERICAN EAGLE MORTGAGE MEXICO 600, LLC; AMERICAN EAGLE MORTGAGE I, LLC; AMERICAN EAGLE MORTGAGE II, LLC; and AMERICAN EAGLE MORTGAGE SHORT TERM, LLC.

Case No. 19-2-01458-06

NOTICE OF FILING OF RECEIVER'S SECOND UPDATE TO INVESTORS, SEPTEMBER 18, 2019

PLEASE TAKE NOTICE that Clyde A. Hamstreet & Associates, LLC, the duly appointed general receiver herein (the "Receiver"), has filed the Receiver's Second Update to Investors, September 18, 2019 attached hereto as Exhibit A (the "Second Update").



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You may also view the Second Update at the Receiver's website for this case, www.aeminvestors.com.

DATED this 20th day of September, 2019.

MILLER NASH GRAHAM & DUNN LLP

*/s/ John R. Knapp Jr.*
John R. Knapp, Jr., P.C., WSB No. 29343

Attorneys for Receiver
Clyde A. Hamstreet & Associates, LLC



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# EXHIBIT A

HAMSTREET
& associates

## RECEIVER'S SECOND UPDATE TO INVESTORS, SEPTEMBER 18, 2019

### Introduction

The Receiver's First Update to Investors was issued on August 1, 2019, and includes a general introduction to issues related to the Receivership Pools and the Management Company. Please refer to that document for general background.

### Definitions and Capitalized Terms

| | |
|---|---|
| **AEI** | American Equities, Inc. |
| **AEM** | American Eagle Mortgage |
| **AEMM** | American Eagle Mortgage Management, LLC |
| **Affiliated Parties** | Business and/or investment vehicles operated by Ross Miles and/or Maureen Wile that are not part of the Receivership. This term may also refer to the people involved in managing or benefiting from Affiliated Party entities. |
| **Management Company** | AEI as Manager of the Pools, and later (in practice) AEMM |
| **Pools** | The Receivership Pools |
| **Receivership Pools** | The 15 entities that are part of this Receivership, also referred to as the Receivership estates |
| **REO** | Real estate owned by the Receivership, typically due to foreclosure |

Since the First Update, the Receiver's group has continued its investigation into the records of the Pools and the management companies, AEI and AEMM. We completed a forensic backup of AEI's electronic data, including emails, workstations, and servers. Although we do not yet have authority to access all of this data, we are assured of its preservation and expect to gain access to relevant portions in the future.

Our work is proceeding on several fronts, including asset recovery, case consolidation, and claims investigation. This report addresses each of these areas, along with a section dealing with common questions we have been hearing from investors. In addition, we invite those

interested to come to an informational meeting on October 2, 2019, from 10:00 to noon, at the Jantzen Beach Red Lion. Please check the investor website for details.

**ASSET RECOVERY**

The Receiver's team has been focused on evaluating and preparing the Receivership assets for sale. This is happening on four main fronts: (a) the marketing and sale of owned real estate in Oregon, Washington, and California through an auction process; (b) the disposition of owned real estate in other states; (c) the bundling and sale of domestic real estate contracts; and (d) investigation into loans made to borrowers located in Mexico and loans secured by property located in Mexico. This report provides an update on each of these items except property in other states, which we will cover in a later report.

*Real Estate Auction*

By court order entered on August 30, 2019, the Receiver was authorized to list properties in Oregon, Washington and California in Realty Marketing/Northwest's fall auction.[1] The auction will include 18 offerings located in Oregon, 13 in Washington, and five in California.

RMNW is a real estate marketing and brokerage company based in Portland and Vancouver with extensive experience conducting regional auctions and sealed bid marketing campaigns and a database of 150,000 potential purchasers (visit https://www.rmnw-auctions.com/). The auction campaign will begin on September 29, 2019, when RMNW's catalog becomes available on its website; promotional materials will be mailed out to approximately 20,000 potential buyers. Bids on properties in the auction are due by November 13, 2019, with sales to close by February 15, 2020.

We cannot provide a firm estimate of the recovery to the Receivership estates, but we are hopeful that, if all the properties are sold, it will exceed $3 million. As noted in our First Update, however, many of AEM's properties are problematic. Table 1 summarizes the auction properties' book value (i.e., the value carried on the Pools' books at the time the property was

[1] See documents posted August 9, 2019, relating to "Receiver's Motion for Order (1) Authorizing Receiver to Sell Real Property Outside the Ordinary Course of Business and Employ Broker to Conduct Sale and (2) Shortening Time for Hearing" at www.aeminvestors.com/documents.

taken into REO), the most recent assessed value, and the published auction reserve price (explained below).

**Table 1: Auction Properties**

| Property location | # in auction | Book value | Assessed value | Reserve price |
|---|---|---|---|---|
| Washington | 13 | $ 2.0 million | $ 1.3 million | $ 0.9 million |
| Oregon | 18 | $ 2.2 million | $ 1.8 million | $ 2.2 million |
| California | 5 | $ 1.2 million | $ 0.7 million | $ 0.3 million |
| **Total** | **38** | **$ 5.4 million** | **$ 3.8 million** | **$ 3.4 million** |

The published reserve is the price at which the Receiver is committed to sell the property on an as-is, all cash basis; the court has approved these sales in advance. Bids containing contingencies or that come in below the published reserve are subject to the Receiver's review. We may accept, reject, or counter such offers; bids under the reserve price that the Receiver wishes to accept are required to be posted on the website for 14 days prior to receiving court approval.

It should be noted that not all properties have a reserve price. This may be due to complications relating to squatters, zoning, or environmental issues that make an as-is/where-is sale unattractive to most buyers, or because we felt a reserve price might artificially limit the pool of prospective buyers. The Receiver is free to sell properties with no reserve at his discretion for the highest bid, whatever that may be. A detailed listing of properties in the auction is presented in Exhibit A.

More information about the auction process and how to bid on properties can be found on RMNW's website, linked above. The Receiver will provide auction updates on the AEM Investor website as more information becomes available.

*Contract Collections and Recovery*

We will be seeking court approval to employ DebtX (https://www.debtx.com/corp), a company that facilitates the sale of mortgages and mortgage-type loans, to package and sell the Receivership Pools' contract portfolio. DebtX has worked with the FDIC and major governmental institutions and commercial lenders around the world to sell these kinds of assets. The major drivers of value in AEM's contract portfolio are the quality of the underlying

collateral, the completeness of the documentation, and the payment histories. We are in the process now of assembling this information along with many other data points required by Debt X for all 200+ contracts. We have also been working to improve collections by sending demand letters to delinquent payors. Table 2 shows the payment history for June, July and August.

**Table 2: Recent Contract Payment History**

| | Monthly due | June payments | July payments | August payments |
|---|---|---|---|---|
| Unaffiliated | $ 120,817 | $ 72,307 | $ 72,798 | $ 74,225 |
| Affiliated parties | $ 13,542 | $ 1,117 | $ 767 | $1,117 |
| **Total** | **$ 134,359** | **$ 73,424** | **$ 73,565** | **$ 75,342** |

For a variety of reasons, we do not yet have a good sense of what the contracts are likely to be worth to the Receivership estates. Based on conversations with DebtX, we can expect to recover approximately 60% of the value of the collateral underlying the contracts. Unfortunately, however, AEM did not reliably track these collateral values, so the Receiver is responsible for developing this information. In addition, the Management Company did not always follow through on contract documentation, so the ownership chain according to Pool balance sheets does not always match the ownership chain according to county and other records. We have also learned that the Management Company sometimes used contracts owned by the Pools as collateral for its own loans. For example, we have identified four real estate contracts owned by the Pools that are also serving as collateral for loans from Blakemore Holdings to AEMM. The four contracts have a book value of approximately $330,000; three of the four are currently performing, but the fourth is in default. The Receiver has not yet determined the Receivership estates' claims to the underlying collateral.

These and other circumstances make it impossible to predict what the recovery will be from the sale of the Pools' contract assets.

*Mexico Assets*

The Receiver has engaged Ben Rosen of Rosen Law, S.C., and DR Abogados, S.C. Rosen Law, a firm with offices in Los Cabos, Riviera Maya, and San Diego, specializes in real estate and cross-

border transactions (visit http://rosenlaw.com.mx/), and will aid our investigation into loans made to borrowers located in Mexico and loans that are secured by property located in Mexico, including contract collections, foreclosures, and sales as appropriate. DR Abogados, a firm based in Los Cabos, will provide litigation support as may be necessary. The Court entered its order authorizing the Receiver's employment of these firms on September 18, 2019.

## SUBSTANTIVE CONSOLIDATION

We intend to file our motion for substantive consolidation within the next month. For more information about what substantive consolidation is and why it is important in this case, please refer to page 11 of our First Update.

## PURSUIT OF CLAIMS

*Background and Status*

As investors have come to realize that recovery from the Pools is likely to be very low, they have begun to ask questions about the potential for recovery from other parties who may share responsibility for the Pools' failure. We have been receiving many questions along the lines of:

1. *What claims do you intend to pursue against the managers of the Pools?*
2. *What claims do you intend to pursue against other parties?*
3. *Will you be pursuing insiders and related parties?*
4. *Will you be pursuing the banks?*
5. *Will you be pursuing Davis Wright Tremaine?*
6. *What is the status of any investigation of third parties?*
7. *Do I need to hire my own lawyer?*

Before addressing these questions in turn, we note that, as a legal matter, anyone who brings a claim against another party is required to have standing to do so.[2] The Receiver, as the representative of the Pools, has standing to bring only certain kinds of claims. These include collection actions against those who owe money to the Pools, actions against the Management Company and those who operated and controlled AEI and AEMM for mismanagement of the Pools, and, potentially, actions against other entities or individuals whose wrongful actions helped cause the inability of the Pools to repay investors. In contrast, only individual investors, who purchased AEM securities in the first place, would have the standing necessary to bring claims for securities fraud.

Table 3 provides an overview of the different categories of claims that might be available, and which party or parties would have legal standing to pursue them. Please note that the table does not purport to provide a comprehensive listing of all possible claims. The types of claims listed are a result of the research and analysis that we have done so far; others may exist that we are not yet aware of.

**Table 3: Types and Holders of Potential Litigation Claims**

| Basis of Claim | Potentially Liable Parties | Holder of Claim | Status |
|---|---|---|---|
| Loans made by the Pools | Borrowers and other recipients of the loan proceeds | Receiver (on behalf of the Pools) | Investigation well underway |
| Mismanagement of Pools/Breach of management agreements; aiding, abetting, or participating in breaches of fiduciary duty, and like claims | AEI, AEMM, Ross Miles, Maureen Wile, and other responsible parties that materially contributed to the mismanagement of the Pools or breach of management agreements | Receiver (on behalf of the Pools) | Investigation well underway |

[2] Standing refers to the ability of a party to bring a lawsuit based on the party's connection to and harm from the challenged action.

| Basis of Claim | Potentially Liable Parties | Holder of Claim | Status |
|---|---|---|---|
| Violation of state or federal securities laws | AEI, AEMM, Ross Miles, Maureen Wile, AEI investor representatives, attorneys (including those who prepared offering materials), banks, IRA plan administrators, or others who participated in or materially aided transactions that violated securities laws | Individual investors | Receiver not specifically investigating but willing to share information |

Investors who believe they have relevant information about potential claims can help us research and evaluate them by responding to an investor survey currently available on the AEM website. You may also attend the meeting this Friday, Sept. 20, to provide the Receiver information and speak in person about potential claims.

1. *What claims do you intend to pursue against the managers of the Pools?*

The entities (AEI/AEMM) and individuals (Ross Miles and Maureen Wile) who managed the Pools had explicit duties to perform certain acts of due diligence, explicit prohibitions against taking certain actions, and, more generally, a requirement to exercise their powers in the best interest of the Pools. The records we have examined present many examples where these duties appear to have been violated. The Receiver intends to thoroughly investigate these violations, and, if warranted, to assert claims of mismanagement and breach of fiduciary duty against the Management Company and its principals.

2. *What claims do you intend to pursue against other parties?*

The Receiver can pursue claims against (a) Pool managers and insiders who controlled what happened to investor funds and Pool assets; (b) people who owe money to the Pools; and (c) parties that contributed in a material way to the mismanagement of the Pools or the misappropriation of Pool assets. We will be evaluating claims and potential recovery from all parties that owe money to the Pools and, to the extent such claims are held by the Pools, any other parties who may have participated in fraudulent or wrongful conduct related to the Pools. If it is in the best interest of the investors to proceed with litigation, we will do so. In

general, this means that we intend to pursue those claims whose prospects for recovery exceed the cost of enforcing the claim.

3. *Will you be pursuing insiders and related parties?*

There are a number of different insider people and entities that received money from the Pools. We are looking at each of these transactions to determine the nature of the Pools' claim, whether there is a cause of action, and whether there is a potential for recovery. On that basis we will make decisions about which claims to pursue – i.e., those whose prospects for recovery exceed the cost of enforcement. As a general matter, we wish to help investors in their search for justice, but our specific task is to recover as much money as we can in an effort to improve the investors' financial situation.

4. *Will you be pursuing the banks?*

We intend to investigate whether the Pools may have claims against one or more banks, just as we intend to investigate whether the Pools have claims against other parties. To that end, we would appreciate information from investors or other sources that might help to advance this part of our work. These kinds of claims tend to be difficult to prove, but if there is evidence that employees of banks or other third-party entities involved in transactions with AEI and/or AEMM knew that Pool funds or collateral were being misused, that would be helpful for us to know.

5. *Will you be pursuing Davis Wright Tremaine?*

Davis Wright Tremaine (DWT) was involved in drawing up the offering materials that were used in soliciting the original investments. Claims arising out of the materials used and representations made as part of the solicitation of an investment belong to individual investors and not to the Receivership Entities. The Receiver can only pursue third party claims that belong to the Pools. That said, we will assist and share information with attorneys who are working on behalf of investors, just as we are cooperating with various regulatory authorities interested in this case. Presently, the Receiver does not expect that it will bring a case against DWT. However, we do think it would make sense for investors to work together with an

experienced and reputable attorney to investigate, evaluate, and if appropriate, assert securities claims against DWT and possibly others.

*6. What is the status of any investigation of third parties?*

The Receiver has a great deal of information related to the mismanagement of the Pools, but relatively little information relating to the activities and knowledge of third parties. For example, we have had reports of what appear to be inappropriate transactions with lending institutions, which, if the institutions had knowledge of the circumstances, might be grounds for legal action. For that reason, as mentioned above, we would appreciate hearing from investors and other sources who might help to advance this part of our work. Please visit this link if you have information you wish to share in this regard. We are also available to meet in person on Friday, Sept. 20, from 11:30 to 1:30 at the Jantzen Beach Red Lion. Please visit the AEM website for details.

*7. Do I need to hire my own lawyer?*

The Receiver's team is not in a position to provide personal financial or legal advice to investors, so we cannot directly answer this question. However, we hope that our discussion of third party claims and our answer to question #5 above will provide some guidance to you in considering this issue.

*Next steps*

After the September 20 meeting and closure of the investor survey in mid-October, the Receiver will assemble and analyze available information to determine potential claims, areas requiring further investigation, and steps needed to gather pertinent information and proceed.

**OTHER QUESTIONS**

*Summary of recovery sources with current status*

Investors frequently ask the Receiver about estimated recoveries in this case. Given the many unknowns about the Mexico assets and the early stage of work on the third party claims, we

are not in a position to provide firm estimates. We have created Table 4 as a summary of the different sources of recovery and current information about the status of each. We intend to include this table, as it may be revised or expanded, in future updates, as a way to keep investors apprised of progress in this area.

**Table 4: Source of Recovery and Current Status**

| Existing or Potential Asset | Plan for recovery | Book value (if available)[3] | Estimated recovery | Status |
|---|---|---|---|---|
| Properties located in OR, WA, and CA | Real estate auction | $ 5.4 million | +/- $ 3 million | Auction launches Sept. 29 with bids due Nov. 13 |
| Other domestic properties | Work with realtors and/or auctioneers to sell | $ 2.2 million | +/- $ 1.0 million | Evaluating the best way to get value from these assets |
| Contracts with non-affiliated parties in the US | Package and sell | $ 6.7 million | Uncertain | Assembling information for and preparing to seek court approval to employ Debt X |
| Mexico assets, including Mexico-based contracts and RMV marina loan | Engage Mexican attorney to evaluate and/or establish legal claims, then sell | $ 8 million | Uncertain | Interviewed and selected Mexican attorney; in process of seeking court approval to employ |
| Collections actions against Affiliated Parties | Evaluate ability to pay and develop plan for collections | $ 6.1 million (principal only; excludes RMV/ marina, which is grouped with Mex. props) | Uncertain | Legal analysis to determine Pools' position and claims as a creditor |
| Claims for mismanagement, breach of fiduciary duty, etc. | Obtain information; evaluate causes of action, potential liability, and prospects of recovery | N/A | Uncertain | Actively assembling evidence and requesting information from investors |

NOTE: The costs of recovery, such as auction, broker, and legal fees have not been estimated or applied to the recoveries in this table.

[3] *Properties*: As discussed in the First Update, the book value of REOs as calculated by AEI/AEMM includes non-GAAP elements such as capitalization of accrued interest and expenses, which led to an inflated reporting of book values on the Receivership Schedules. In this table, while we have not attempted to calculate a GAAP book value, we have used the AEI/AEMM book value as recorded at the time the property was taken into REO status rather than as reported in the Receivership Schedules.
*Contracts*: The book value reported for contracts is the remaining principal balance owed.

*Status of Receiver vis-à-vis Ross Miles*

We are finding that some investors misunderstand the position and role of the Receiver. For example, we recently received this question from an investor: "Will you pursue Ross Miles, Maureen Wile and Miles Minsker, or would that be like pursuing yourself since Ross hired you?" The Receiver's decisions about which third parties to pursue will be based on our prospects to recover assets for the Receivership estates. Pursuing Ross Miles and other AEI principals would not be like pursuing ourselves. We do not work for Ross Miles, Maureen Wile, or Miles Minsker. The Receiver works under the supervision of the Court on behalf of the Receivership estates. The Receiver has a fiduciary duty to the investors and other creditors of the Receivership Pools, not to the operators of AEI or AEMM.

*Cost and time of the Receivership*

We have had many questions about the cost of the receivership and why things aren't moving faster. The Receivership Entities are in a complicated situation that took years to develop. Since the first Pools were organized in 2003 there have been thousands of loan, real estate, and other transactions, many of which were not properly documented and which now need to be understood well enough to take appropriate action. Tracking down the information needed to determine the ownership and value of dozens of properties, some of which are in a foreign country, or to clear squatters out of properties so they can be sold, or to evaluate whether it is worthwhile spending the money to foreclose a property or pay maintenance costs and property taxes, or to follow assets as they were transferred back and forth among the Pools, banks, and Management Company – to name just a few of the tasks we are performing – takes professional resources and costs money. We are managing this expense by employing former AEI office staff to do much of the property-related work, and by using less expensive professional and office personnel where possible. But a situation rife with mismanagement that brewed for more than 15 years and that has now become subject to a cumbersome legal process cannot be responsibly sorted out by anybody without considerable time and expense.

*Claims status*

Some investors have been asking about the status of their claims and whether they need to provide further information. The Receiver's attorneys have collected all of the Proof of Claim forms, but we have not yet begun to evaluate them for completeness or accuracy. For the time being, no further action is needed from investors. If we have questions about your claims, we will reach out to you directly.

*Pensco Trust Company*

Pensco has asked the Receiver to let investors know they should contact Pensco directly to discuss their accounts. Investors need to call their client service team at 800-962-4238 and request that their AEM assets be reviewed in light of the receivership. The Pensco team will create a service request for review and make decisions on an account by account basis. Unfortunately, Pensco gave us no general rule that they said would apply to all accounts with assets in the Pools.

September 13, 2019

# 1904 TABLE OF PROPERTIES

Sealed Bids due November 13, 2019

| # | Seller | Description | Location | Published Reserve |
|---|---|---|---|---|
| | AEM | 836± square foot Floating Home 3157 NE Marine Drive, Space 23 | Portland, OR | $35,000 |
| | AEM | 3,210± square foot former Chinook Inn - 2827 NE Corbett Hill Rd | Corbett, OR | $125,000 |
| | AEM | 45± acre E. Larchmont Road Timber Tract | Clackamas County, OR | $95,000 |
| | AEM | Sandy River Brightwater Estates Lot 2, 2256 E. Brightwater Way | Rhododendron, OR | $171,000 |
| | AEM | Sandy River Brightwater Estates Lot 4, 22542 E. Brightwater Way | Rhododendron, OR | $175,500 |
| | AEM | Sandy River Brightwater Estates Lot 5, 22534 E. Brightwater Way | Rhododendron, OR | SALE PENDING |
| | AEM | Non-Riverfront Brightwater Estates Lot 10, 22479 E. Brightwater Way | Rhododendron, OR | $204,000 |
| | AEM | Non-Riverfront Brightwater Estates Lot 11, 22463 E. Brightwater Way | Rhododendron, OR | $193,500 |
| | AEM | 900± square foot Commercial Building – 254 N. Columbia River Highway | St. Helens, OR | $75,000 |
| | AEM | 1.28± acre Parcel 30112 Carmel Road | Columbia County, OR | $25,000 |
| | AEM | Highway 101 28,000± square foot Commercial Development Site - 2254 SE Highway 101 | Lincoln City, OR | $125,000 |
| | AEM | 17,850± square foot Residential Development Site | Depoe Bay, OR | $150,000 |
| | AEM | .51± acre Commercial Development Site – 1805 NW Hilton Drive | Waldport, OR | No Minimum Bid |
| | AEM | 2± acre Winchester Ridge Residential Lot – 881 Southridge Way | Roseburg, OR | $55,000 |
| | AEM | 20± acre Layman Creek Timber Tract | Josephine County, OR | No Minimum Bid |
| | AEM | 632± square foot Single Family Home (Not Habitable) - 34021 E Yak Lane | Bonanza, OR | No Minimum Bid |

| # | Seller | Description | Location | Published Reserve |
|---|---|---|---|---|
| | AEM | Five bedroom, three bathroom Lodge-Style Home - 16105 Jackpine Road | La Pine, OR | $275,000 |
| | AEM | 27± acre Residential Development Site | Boardman, OR | $325,000 |
| | AEM | 4,174± square foot Residential Lot 13801 NE 33rd Circle | Vancouver, WA | $50,000 |
| | AEM | 5± acre Home Site near Washougal River | Washougal, WA | $50,000 |
| | AEM | 2,176± square foot Commercial Building - 31902 NE Lewisville Highway | Battle Ground, WA | $125,000 |
| | AEM | Lewis River Recreation Site | Woodland, WA | No Minimum Bid |
| | AEM | 4± acre Commercial Development Site - Franklin Street and Belmont Loop | Woodland, WA | $495,000 |
| | AEM | 1.5± acre Evergreen Terrace Residential Development Lot – 116 Clark Creek Road | Longview, WA | $37,500 |
| | AEM | Bulk Sale of 26 Lots | Oceanside, WA | $25,000 |
| | AEM | 19± acre Residential Parcel 20315 167th Lane SE | Thurston County, WA | $75,000 |
| | AEM | 4,356± square foot Residential Lot 1078 Edwards Court | Port Orchard, WA | No Minimum Bid |
| | AEM | 7,750± square foot Infill Residential Lot – Union Street | Marlin, WA | No Minimum Bid |
| | AEM | 7.59± acre N. Wenas Road Residential Parcel | Yakima County, WA | $25,000 |
| | AEM | 1,880± square foot Multi-Family Dwelling - 121 NW 2nd Street | Goldendale, WA | $50,000 |
| | AEM | 924± square foot Single-Wide Trailer Home - 129 NW 2nd Street | Goldendale, WA | No Minimum Bid |
| | AEM | 3.4± acre Off-Grid Residential Parcel | Tehachapi, CA | No Minimum Bid |
| | AEM | 2.3± acre Off-Grid Residential Parcel | Tehachapi, CA | No Minimum Bid |

| # | Seller | Description | Location | Published Reserve |
|---|---|---|---|---|
| | AEM | 39,500± square foot Twentynine Palms Highway Residential Parcel | Yucca Valley, CA | $112,500 |
| | AEM | 20± acre Via Majorca Residential Parcel | Riverside County, CA | No Minimum Bid |
| | AEM | 7± acre West Avenue South at Tierra Subida Avenue Residential Site | Palmdale, CA | $165,000 |

# EXHIBIT 7

17 Pages

Honorable Da



SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY

In re:

AMERICAN EAGLE MORTGAGE 100, LLC; AMERICAN EAGLE MORTGAGE 200, LLC; AMERICAN EAGLE MORTGAGE 300, LLC; AMERICAN EAGLE MORTGAGE 400, LLC; AMERICAN EAGLE MORTGAGE 500, LLC; AMERICAN EAGLE MORTGAGE 600, LLC; AMERICAN EAGLE MORTGAGE MEXICO 100, LLC; AMERICAN EAGLE MORTGAGE MEXICO 200, LLC; AMERICAN EAGLE MORTGAGE MEXICO 300, LLC; AMERICAN EAGLE MORTGAGE MEXICO 400, LLC; AMERICAN EAGLE MORTGAGE MEXICO 500, LLC; AMERICAN EAGLE MORTGAGE MEXICO 600, LLC; AMERICAN EAGLE MORTGAGE I, LLC; AMERICAN EAGLE MORTGAGE II, LLC; and AMERICAN EAGLE MORTGAGE SHORT TERM, LLC.

Case No. 19-2-01458-06

NOTICE OF FILING OF RECEIVER'S THIRD UPDATE TO INVESTORS, FEBRUARY 26, 2020

PLEASE TAKE NOTICE that Clyde A. Hamstreet & Associates, LLC, the duly appointed general receiver herein (the "Receiver"), has filed the Receiver's Third Update to Investors, February 26, 2020 attached hereto as Exhibit A (the "Third Update").



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You may also view the Third Update at the Receiver's website for this case, www.aeminvestors.com.

DATED this 26th day of February, 2020.

MILLER NASH GRAHAM & DUNN LLP

*/s/ John R. Knapp Jr.*
John R. Knapp, Jr., P.C., WSB No. 29343

Attorneys for Receiver
Clyde A. Hamstreet & Associates, LLC



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# EXHIBIT A


## RECEIVER'S THIRD UPDATE TO INVESTORS, FEBRUARY 26, 2020

### Prior Updates

This report follows several others that collectively provide a substantial amount of information about the Receivership Pools. The Receiver's First Update to Investors, issued August 1, 2019, provides a general introduction to the receivership and issues related to the Receivership Pools and Management Company. The Receiver's Second Update to Investors, issued September 18, 2019, provides an overview of the Pools' assets and the Receiver's potential litigation claims. On November 19, the Receiver updated investors on results of the real estate auction. The Receiver has also filed two formal reports on the financial condition and affairs of the Receivership Pools. The first report, filed October 31, 2019, covers the period from May 10, 2019, through June 30, 2019, and the quarter ending September 30, 2019; the second report, filed January 31, 2020, covers the quarter ending December 31, 2019. These reports include statements of sources and uses of cash as well as detailed listings of the Receivership Pools' assets. All of the reports mentioned here are posted in the Documents section of the www.AEMinvestors.com website.

### Definitions and Capitalized Terms

| | |
|---|---|
| **AEI** | American Equities, Inc. |
| **AEM** | American Eagle Mortgage |
| **AEMM** | American Eagle Mortgage Management, LLC |
| **Affiliated Parties** | Business and/or investment vehicles operated by Ross Miles and/or Maureen Wile that are not part of the Receivership. This term may also refer to the people involved in managing or benefiting from Affiliated Party entities. |
| **Management Company** | AEI as Manager of the Pools, and later (in practice) AEMM |
| **Pools** | The Receivership Pools |
| **Receivership Pools** | The 15 entities that are part of this Receivership, also referred to as the Receivership estates |
| **REO** | Real estate owned by the Receivership Pools, typically due to foreclosure |

## REAL ESTATE OWNED

### Washington, Oregon, and California

The Receiver offered 35 REOs for sale in the RMNW fall auction. Sixteen properties received bids at or above the reserve price. Bids below the reserve price were accepted for another 12 properties. Sales have closed on 24 of these properties, and four more closings are pending. Three of the 35 properties received bids, but title problems or other issues discovered during the closing process caused the sales to fail. The Receiver does not anticipate being able to find a buyer for any of these three properties at any price. Four properties received no bids in the auction and are still available for sale. Table 1 summarizes the results of the auction. The net proceeds column represents the sales price less the sum of closing costs, a 6% real estate commission, and outstanding property taxes.

**Table 1: Auction Properties**

| | Count | Winning Bid | Net Proceeds |
|---|---|---|---|
| Closed Sales | 24 | $ 1,841,950.00 | $ 1,525,466.36 |
| Pending Sales | 4 | $ 273,000.00 | $ - |
| No Bids Receieved | 4 | $ - | $ - |
| Title Issues | 3 | $ 120,100.00 | $ - |
| **Total** | **35** | **$2,235,050.00** | **$1,525,466.36** |

### Other States

The Receivership Pools own 28 other REOs in Alaska (1), Arizona (18), Colorado (1), Indiana (1), New Mexico (2), Nevada (4), and Texas (1). The Receiver has listed 25 of these properties for sale, and at the time of this Report four have sold. Three properties remain unlisted due to their remote locations or low value. Access to one of these properties has been limited due to snow conditions, and we have identified an agent willing to list the property in the spring. We have been unable to locate an agent willing to list the other two properties and are evaluating options, including abandonment. Table 2 summarizes the current status of this group of properties.

**Table 2: Non-Auction Properties**

| | Count | BPO value | Listing Price | Offer Amount | Net Proceeds |
|---|---|---|---|---|---|
| Sold | 4 | $126,000.00 | $ 139,000.00 | $ 136,000.00 | $ 120,238.69 |
| Pending | 2 | $ 49,500.00 | $ 38,500.00 | $ 28,200.00 | $ - |
| Listed | 19 | $341,550.00 | $ 379,099.00 | $ - | $ - |
| Not Listed | 3 | $ 65,500.00 | $ - | $ - | $ - |
| **Total** | **28** | **$582,550.00** | **$ 556,599.00** | **$ 164,200.00** | **$120,238.69** |

## DOMESTIC REAL ESTATE CONTRACTS

### Overview

When the Receiver was appointed in May 2019, the Receivership Pools' contract portfolio consisted of 141 domestic real estate contracts with third parties and 21 partial purchase agreements (sometimes referred to as "streams"). As of January 31, 2020, there were 125 contracts and 17 streams. Table 3 summarizes activity during the receivership period.

**Table 3: Summary of Contracts**

| | May 2019 | Jan 2020 | Change | Accounting for difference | |
|---|---|---|---|---|---|
| **Type** | **# of contracts** | | | | |
| Real Estate Contracts | 141 | 125 | -16 | Paid off | |
| Streams | 21 | 17 | -4 | Normal course | 7 |
| **Total** | **162** | **142** | **-20** | Demand letter | 4 |
| | | | | Foreclosed | 1 |
| Performing | 130 | 117 | -13 | Streams Sold | 3 |
| Delinquent | 32 | 25 | -7 | Ownership Issues | 5 |
| **Total** | **162** | **142** | **-20** | **Total** | **20** |

The Receiver identified five contracts listed on the balance sheets of the Pools where underlying assignments and deeds of trust contradict the Pools' ownership claims. These contracts were used as collateral for AEMM debt and were either never assigned to the Pools or were assigned from a Pool to AEMM to use for collateral. AEMM defaulted on these debts and the lenders took the collateral.

As of January 31, 2020, the face value of the 142 domestic real estate contracts and streams was $5,676,549. Approximately $600,000 of this amount comes from streams, which can be more difficult to sell than contracts.

**Non-Performing Contracts**

At the commencement of the receivership, 32 of the domestic real estate contracts were severely delinquent and considered non-performing. The Receiver began sending demand letters to the borrowers on these contracts in August 2019. To date, the Receiver has sent 24 letters and received 14 responses. Eight more demand letters are in process. Once these last eight demand letters are sent, the Receiver will have contacted all borrowers on non-performing contracts. The demand letters have led to a reduction in the number of delinquent and non-performing contracts, which now stands at 25, reflecting a total face value of $1,567,019 or 27% of the total portfolio value at January 31, 2020.

Five non-performing contracts have paid off in full as a result of the Receiver's collection efforts, bringing in just over $190,000 as of the first week of January 2020. In addition, we have reached agreements with two other borrowers and expect to receive another $215,000 by the end of February. Four contract payors have brought delinquent accounts current, and three others have been following payment plans to cure delinquencies, yielding approximately $33,000 since September 2019.

In total, the Receiver's collection efforts have brought in just shy of $440,000 from otherwise non-paying contracts, as summarized in Table 4 below.

**Table 4: Collection from Demand Letters**

| Type | | Amount |
|---|---|---|
| Payoffs | $ | 191,279.63 |
| Pending Payoffs | $ | 215,250.00 |
| Payments Received | $ | 32,949.23 |
| **Total** | **$** | **439,478.86** |

Two contract payors have informed the Receiver that they would like to turn over their properties via deed-in-lieu of foreclosure transactions. We are ordering foreclosure title reports for these properties and evaluating the Receiver's options.

One pending foreclosure action is stayed because of a bankruptcy case filed by one of the contract payors. We do not know when the Receiver will take possession of the property subject to this contract, which is located in Troy, Montana, and has a BPO value of $179,000. The bankruptcy case is pending in the United States Bankruptcy Court for the Western District of Virginia. The Receiver has engaged attorneys in both Virginia and Montana to enforce the contract.

For the remaining delinquent contracts, we are following up with the borrowers and will continue to evaluate future options, such as foreclosure proceedings, sale of the contract, or abandonment.

In addition to the non-performing loans discussed above, the Pools' books list 47 non-performing loans made to Affiliated Parties as real estate contract receivables. The Receiver intends to file lawsuits against these Affiliated Parties in the receivership in coming weeks.

**Future Recovery**

The Receiver has been conducting thorough due diligence on the contract portfolio and various approaches to recovery. Among other things, the Receiver has obtained Broker Price Opinions (BPOs) and Owner and Encumbrance reports on the contracts' underlying collateral and has been in contact with two brokers regarding potential sales of the contract portfolio. One strategy is to sell the entire portfolio in one offering via an online auction. Another strategy is to carve the portfolio into groups and offer to sell those packages to investors that have different risk profiles. Both strategies suggest a net recovery to the estate in the range of 55% to 65% of the total outstanding principal balances owing on the remaining contracts.

In December and January, the Receiver's office received multiple requests to consider forming a trust for the benefit of AEM investors for the purpose of holding and managing the non-

delinquent contracts long term. We are completing an analysis of this option and will issue a separate memo on the subject in the near future.

**MEXICO ASSETS**

The Receivership Pools originally included 16 loans made to Mexico borrowers. Only one of these loans was performing, and has since paid off, generating approximately $560,000. The Receiver has taken or is in the process of taking action to collect amounts owing to the Pools on 14 of the other 15 loans, and has visited 11 of the properties that secure or support those 14 loans. The 15th loan, which was made in 2004 and matured in April 2009, is not enforceable under Mexico law and will not be pursued by the Receiver.

The foreclosure process in Mexico is lengthy and can take several years to complete. In January, the Receiver traveled to San Jose del Cabo to work towards settlements with two of AEM's Mexican borrowers and to tour two large parcels of raw land owned by one borrower. As a result of these discussions, the estate anticipates taking possession of eight properties owned by the borrowers in the next six to eight months. Notice of any proposed settlement will be given to investors in accordance with the procedures set forth in the Court's November 22, 2019, order.

The Receiver does not yet have possession of any real property in Mexico, but has received offers on three of the expected properties and is negotiating with the potential buyers. If an acceptable sales price can be reached, notice of the proposed sale will be given to investors in accordance with the procedures set forth in the Court's August 8, 2019, order.

Table 5 lists and provides basic information about the properties that secure or support the 14 Mexico-based loans that the Receiver is taking action to enforce.

**Table 5: Mexican Assets**

| | Common Name | Type | BPO |
|---|---|---|---|
| **Settlements In Process** | | | |
| 1-3 | Tamar Condos | 3 Condos | Pending |
| 4 | Villas de Oro - Lirio | Condo | $415,000 |
| 5 | Villas de Oro - Rosa | Condo | $415,000 |
| 6 | Hacienda Los Cabos - E2 | Condo | $85,000 |
| 7 | East Cape | Land | unknown |
| 8 | Todos Santos | Land | unknown |
| **Demand Letters Served** | | | |
| 9 | Cabo Belo | Duplex | Pending |
| 10 | Cabo Real | Single Family Residence | Pending |
| **Demand Letters in Process** | | | |
| 11 | La Paz | Unknow | Unknown |
| 12 | Casa Napita | Single Family Residence | Pending |
| 13 | Rancho Paraiso | Single Family Residence | Unknown |
| **Litigation Pending** | | | |
| 14 | Villa Montana | Single Family Residence | Pending |

On February 14, the Receiver filed a foreclosure proceeding related to Villa Montana, a single-family home located in the Pedrigal subdivision of Cabo San Lucas. With regard to the remaining five loans, demand letters have been served on two borrowers and demand letters to the borrowers on the other three loans are in process.

## CONSOLIDATION OF RECEIVERSHIP ESTATES

The Court entered on November 22, 2019, an order granting the Receiver's motion to consolidate the assets and liabilities of all Pools into a single receivership estate for the purposes of administering and distributing all assets that are the subject of the receivership proceeding, effective retroactively to May 10, 2019. The entry of that order means, among

other things, that the all investor claims against all Pools will be treated as claims against the consolidated receivership estate.

**FILING OF COMPLAINT AGAINST PRIOR FUND MANAGERS**

On February 19, the Receiver filed a complaint in the Superior Court of Washington for Clark County against AEI, AEMM, Ross and Beverly Miles, and Maureen and Robert Wile for breach of contract, breach of fiduciary duty, and aiding and abetting breach of fiduciary duty. The complaint alleges, among other things:

- These insiders used Pool funds for undisclosed and unauthorized purposes, including investment in a Mexican marina enterprise and payments to an investor who knowingly invested in the Mexican enterprise. These investments and payments violated the terms of the Offering Materials.
- The Pools are insolvent and have been insolvent since at least 2011.
- The insiders' breaches of contract and of their fiduciary duties after 2011 increased the losses to AEM investors.
- Self-dealing on the part of these insiders contributed to the Pools' growing insolvency. Self-dealing took various forms, typically that of causing the Pools to lend money to Related Parties, including Ross Miles and Maureen Wile and their family members, with no apparent intention to repay. In addition, they carried out sales of contracts or portions of contracts without any business purpose other than to collect fees on these transactions from the Pools.
- The Pools were operated by these insiders as part of a Ponzi scheme.
- The insiders' management activities were wrongful, and the Receiver believes Miles and Wile knew they were wrongful. Just prior to placing the Pools in receivership, Miles and Wile attempted to "clean house" by zeroing out the loan balances between the Pools—a hopeless task that was not successful.

The full complaint and other related documents can be found in the Documents section at www.AEMinvestors.com/documents.

The Receiver is unable to determine at this time the collectability of any judgment that might be obtained in this adjunct litigation. The Receiver's information regarding the extent and value of the insiders' assets and regarding their other liabilities is incomplete.

## PROFESSIONAL FEES AND RECEIVERSHIP COSTS

The cost of the receivership through January 2020 has been $2.1 million. Some investors have voiced frustration over this cost. The Receiver and its team of professionals—comprising general counsel, forensic accountants, special counsel in Mexico, Montana, and Virginia, and a communications firm—have had to do a tremendous amount of work to sort out the Pools' affairs, review their books and records, liquidate assets, and perform a forensic accounting investigation to support substantive consolidation and litigation claims against the Pools' managers and insider control group, as well as potential claims against other parties. The high cost of this receivership is a consequence of the Management Company's business practices and recordkeeping. The Receiver and its professionals are doing their best to manage or solve the problems that the Pools' managers and insider control group created.

## CLASS ACTION LAWSUIT

Portland attorneys Chris Kayser and Bridget Donegan (https://lvklaw.com/) and Mike Esler (http://www.eslerstephens.com/) talked with a number of investors last fall in relation to a potential lawsuit against third parties that might be liable for participating or materially aiding the sales of the AEM securities. On February 25, two lawsuits were filed on behalf of AEM investors. One lawsuit, in which class action certification will be sought, concerns investors who currently live in Oregon and whose investments are covered by the Oregon Securities Law because they were offered the security or agreed to purchase the security while in Oregon. The other lawsuit concerns investors who do not currently live in Oregon. Investors who believe they may qualify and would like to participate in these lawsuits, and any investors who were offered or agreed to purchase their security while in Oregon, should contact Christine Ortez or Gary Hardiman at Esler Stephens by calling 503-223-1510.

## DISTRIBUTION PLAN PROCESS

Distributions to investors in this receivership must be approved by the Court. The Receiver will submit a proposed distribution plan to the Court with a motion requesting that the Court approve the plan. The Receiver anticipates filing this motion with the Court later this year.

## SUBPOENAS

In January, the Receiver issued subpoenas to Riverview Bank and to Pacific Premier Bank (formerly Regents) seeking records in relation to the AEI and AEMM loans where Pool assets were used as collateral or to pay off debt, among other matters. Information supplied in response to the subpoenas will be evaluated for further action.

## TAX MATTERS

The Receiver is not issuing Form 1099s to investors for 2019. All payments to investors from 2019 have been reclassified as return of principal, rather than interest income. The Receiver is informed that Pensco has issued 1099s to some AEM investors. Pensco representatives have asked the Receiver to inform those investors who receive 1099s to contact their client service team to determine the source of the interest income.

**If you have not discussed amending your prior year tax returns with your tax advisors, we recommend doing so.** To support possible conversations with an advisor, your IRA manager, or any other relevant party, the Receiver sent to investors last month, in anticipation of tax season, a letter advising investors that the estimated value of their AEM investments is in the range of 5% to 15% of their face values. This letter is included in this report as Exhibit A. It is also available on the Receiver's website at www.aeminvestors.com/documents.

### Pensco

Pensco has asked the Receiver to let investors know they should contact Pensco directly to discuss their accounts. Investors may call their client service team at 800-962-4238 and request that their AEM assets be reviewed in light of the receivership. The Pensco team will create a service request for review and make decisions on an account by account basis. In some instances, Pensco has requested a personalized letter from the Receiver's office confirming the reduced account. If you need such a letter, or other personalized information, please contact our office at AEMreceiver@hamstreet.net or 971-279-5546.

**IRA Services**

IRA Services issued Form 5498s for 2020 to AEM investors showing an investment balance equal to 30% of face value. IRA Services has informed the Receiver that it will revised these 5498s to reflect a balance equal to 10% of face value. Investors who have required minimum distributions should contact IRA Services directly by emailing Compliance@iraservices.com or by calling 800-248-8447 to request a revised form 5498.

# Exhibit A

HAMSTREET
& associates

January 17, 2019

Re: Important Tax Information Concerning Your American Eagle Mortgage Investment

Dear Investor,

On May 10, 2019, the following entities (collectively, the "AEM Pools") were put into receivership under the supervision of the Superior Court of Washington for Clark County in Case No. 19-2-01458-06 (the "Receivership Proceeding"): American Eagle Mortgage 100, LLC; American Eagle Mortgage 200, LLC; American Eagle Mortgage 300, LLC; American Eagle Mortgage 400, LLC; American Eagle Mortgage 500, LLC; American Eagle Mortgage 600, LLC; American Eagle Mortgage Mexico 100, LLC; American Eagle Mortgage Mexico 200, LLC; American Eagle Mortgage Mexico 300, LLC; American Eagle Mortgage Mexico 400, LLC; American Eagle Mortgage Mexico 500, LLC; American Eagle Mortgage Mexico 600, LLC; American Eagle Mortgage I, LLC; American Eagle Mortgage II, LLC; American Eagle Mortgage Short Term, LLC. By order entered in the Receivership Proceeding on November 22, 2019, all of the AEM Pools were consolidated into a single receivership estate for the purposes of administering and distributing their assets. A copy of this order is available at www.aeminvestors.com/documents.

At this time, the value of your investments in the AEM Pools cannot be precisely determined. The value of the investments in the AEM Pools, however, presently is estimated to be in the range of 5% to 15% of the face value of each such investment.

One SW Columbia Suite 1575 Portland, Oregon 97258 phone: 503.223.6222 fax: 503.546.6579 www.hamstreetandassociates.com

We urge you to provide a copy of this letter to your tax advisor and to retain this letter with your tax records for your 2019 tax reporting period.

Sincerely,

Clyde Hamstreet
Hamstreet & Associates, General Receiver
American Eagle Mortgage Receiverships