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8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**

10  
11 SECURITIES AND EXCHANGE  
COMMISSION,

12 Plaintiff,

13 vs.

14 WESTMOORE MANAGEMENT,  
15 LLC, et al.,

16 Defendants.  
17

Case No. 8:10-cv-00849-AG (MLGx)

**MOTION BY RECEIVER FOR  
APPROVAL OF SETTLEMENT  
WITH LESTER AND BETSYDIANE  
HENDRICKSON, AND  
MODIFICATION OF INJUNCTION  
WITH RESPECT TO LITIGATION  
PENDING IN THE BANKRUPTCY  
COURT FOR THE EASTERN  
DISTRICT OF WASHINGTON;  
AND MEMORANDUM OF POINTS  
AND AUTHORITIES,  
DECLARATION OF DAVID A.  
GILL, AND REQUEST FOR  
JUDICIAL NOTICE IN SUPPORT  
THEREOF**

*[Per order entered December 5,  
2011, no hearing required unless  
objection filed]*

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23 David A. Gill, the permanent receiver (the "Receiver") appointed in the above-  
24 captioned case, hereby moves the Court for an order (1) approving a proposed  
25 settlement between the Receiver and Lester and Betsydiane Hendrickson (the  
26 "Hendricksons"), and (2) modifying the injunction set forth in this Court's judgment  
27 against the Westmoore defendants to the extent necessary for the continuation of  
28 certain proceedings pending before the United States Bankruptcy Court for the

1 Eastern District of Washington (the “Bankruptcy Court”), and the entry of rulings,  
2 decisions and judgment by the Bankruptcy Court with respect to the extent, nature,  
3 amount and priority of secured claims against property of the bankruptcy estate of  
4 HW Partners, LLC (“HW Partners”). A copy of the Receiver’s proposed order is  
5 attached as Exhibit “1” hereto.

6 Very generally, the grounds for this motion are as follows: In October 2008,  
7 Westmoore Lending Opportunity Fund (“WM LOF”) borrowed \$1 million from the  
8 Hendricksons. As collateral, WM LOF assigned to the Hendricksons its interest in a  
9 \$3.23 million promissory note given by HW Partners, LLC (“HW Partners”) in favor  
10 of WM LOF, and mortgages recorded in favor of WM LOF securing HW Partners’  
11 \$3.23 million obligation. In August 2009, the Hendricksons filed a lawsuit in the  
12 Superior Court of Washington against WM LOF and various non-Westmoore parties  
13 alleging, among other things, that the \$3.23 million note and related mortgages were  
14 “permanently assigned” to them at the time of WM LOF’s default on December 31,  
15 2008, that they were the holders and owners of the \$3.23 million note and related  
16 mortgages, and as such they were entitled to enforce the \$3.23 million claim against  
17 HW Partners and its guarantors for their benefit. The Receiver has disputed whether  
18 such a permanent assignment took effect. The Receiver also has informally asserted  
19 that he may be entitled to avoid any such assignment as a fraudulent transfer because  
20 of the difference between the \$1 million loaned to WM LOF by the Hendricksons  
21 and the \$3.23 million note assigned by WM LOF to the Hendricksons as collateral.

22 Subject to Court approval, the Receiver has agreed to a settlement with the  
23 Hendricksons whereby the Receiver confirms and ratifies the permanent assignment  
24 to and ownership by the Hendricksons of the \$3.23 million note and the mortgages,  
25 effective as of January 1, 2009. The Hendricksons will pursue recovery from, among  
26 others, HW Partners and the guarantors of the \$3.23 million note, and all funds  
27 received by them will be split between the Hendricksons and the Receiver pursuant  
28 to the settlement. A copy of the Settlement Agreement is attached as Exhibit “2” to

1 the Declaration of David A. Gill. The Receiver believes that the settlement is a fair  
2 and reasonable compromise of claims by and against the Hendricksons, and is  
3 requesting approval thereof.

4 The Hendricksons' lawsuit is currently pending before the Bankruptcy Court  
5 because, in mid-2011, HW Partners filed for bankruptcy. The Bankruptcy Court has  
6 expressed concern that its issuance of rulings on issues not being resolved by the  
7 Settlement Agreement might violate the injunction set forth in the judgment in this  
8 case against the Westmoore defendants. To ensure that the Bankruptcy Court has the  
9 authority to issue such rulings, the Receiver is requesting that the order approving the  
10 Settlement Agreement provide that the injunction is modified to the extent necessary  
11 for the continuation of the pending litigation and for the entry of rulings, decisions  
12 and judgments with respect to the extent, nature, amount and priority of secured  
13 claims against property of HW Partners' bankruptcy estate.


14 This motion is based on the accompanying Memorandum of Points and  
15 Authorities, Declaration of David A. Gill, and Request for Judicial Notice, the  
16 separate notice of the motion filed and served concurrently herewith, the papers and  
17 pleadings filed with the Court in this case, and such other papers and pleadings as  
18 may be properly presented to the Court at or before the hearing on the motion.

19 For the reasons set forth herein and in the papers filed in support of this  
20 motion, the Receiver requests that the Court enter an order in substantially the form  
21 of the proposed order attached as Exhibit "1" hereto.

22  
23 DATED: June 14, 2013

DANNING, GILL, DIAMOND &  
KOLLITZ, LLP

24  
25  
26 By:



JOHN N. TEDFORD IV

Attorneys for David A. Gill, Receiver

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2  
3 **I.**

4 **INTRODUCTION**

5 In 2007 and 2008, Westmoore Lending Opportunity Fund, LLC (“WM LOF”) made loans to HW Partners, LLC (“HW Partners”), and Huntley Family Investments, LLC (“HFI”). Certain loans were secured by mortgages on agricultural real property in Walla Walla, Washington. These mortgages, or some of them, were later assigned as collateral by WM LOF to MKA Real Estate Qualified Fund I, LLC (“MKA”).

10 In September 2008, HW Partners executed a new promissory note in favor of WM LOF for approximately \$3.23 million. The note recited that it consolidated and paid off the prior loans made by WM LOF to HW Partners and HFI. The new note was secured by new mortgages on seven parcels of the agricultural real property in Walla Walla, Washington, owned by HW Partners.

15 Shortly after the new consolidated note for \$3.23 million was executed, Satisfactions of Mortgages were recorded with respect to the mortgages that had been assigned as collateral to MKA. New mortgages were executed by HW Partners and recorded in favor of WM LOF.

19 Shortly thereafter, WM LOF borrowed \$1 million from Lester and Betsydiane Hendrickson (the “Hendricksons”). As security, WM LOF granted the Hendricksons an assignment of the \$3.23 million note from HW Partners and the new mortgages securing that \$3.23 million note. According to the \$1 million note executed by WM LOF in favor of the Hendricksons, “In the Event of Default . . . [HW Partners’ \$3.23 million note] and Mortgages shall be permanently assigned to [the Hendricksons].”

25 WM LOF did not satisfy its debt to the Hendricksons when the \$1 million note matured on December 31, 2008. In August 2009, the Hendricksons filed a complaint in Washington state court against WM LOF and others, including HW Partners. In 28 January 2011, the Washington state court found that the Hendricksons were entitled

1 to a judgment against WM LOF. The state court deferred its determination as to  
2 whether the assignment of the \$3.23 million note to the Hendricksons had become  
3 permanent at the time of WM LOF's default.

4 In July 2011, HW Partners filed for bankruptcy in the Eastern District of  
5 Washington, and the Hendricksons' lawsuit was removed from the state court to the  
6 Bankruptcy Court. A "mediation stay" was imposed to give parties an opportunity to  
7 discuss settlement, and an initial mediation took place in April 2012. No settlement  
8 was reached, so the stay was lifted to allow the Hendricksons and MKA to each seek  
9 summary judgment with respect to the extent, nature, amount and priority of secured  
10 claims against property of HW Partners' estate. The Hendricksons' and MKA's  
11 cross-motions were taken under submission, and remain pending.

12 Subsequently, subject to approval of this District Court, the Receiver and the  
13 Hendricksons reached a settlement. The terms of the settlement are memorialized in  
14 a Settlement Agreement attached as Exhibit "2" to the Declaration of David A. Gill.  
15 Very generally, the Settlement Agreement provides that the receivership estate will  
16 receive a portion of any proceeds collected by the Hendricksons from HW Partners,  
17 persons who guaranteed the \$3.23 million note, and the Hendricksons' title insurer.  
18 The Receiver believes that his proposed settlement is a fair and reasonable settlement  
19 of the Hendricksons' claims against the receivership estate and should be approved.<sup>1</sup>

20 The Bankruptcy Court has expressed concern that, because the Hendricksons'  
21 and MKA's respective interests (or alleged interests) arise out of or relate to WM  
22 LOF's mortgages against HW Partners' property, its determination regarding the  
23 extent, nature, amount and priority of the Hendricksons' and MKA's alleged interests

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24  
25 <sup>1</sup> After the Receiver settled with the Hendricksons, the Hendricksons (with the  
26 Receiver's consent) reached a settlement with HW Partners and one of its principals  
27 who had guaranteed HW Partners' \$3.23 million note. That settlement provides for,  
28 among other things, the establishment of a \$1.95 million fund from which to pay the  
Hendricksons and/or MKA, depending on the outcome of the pending cross-motions  
for summary judgment and, if necessary, other litigation between them.

1 would violate the injunction set forth in this Court’s August 2011 judgment against  
2 the Westmoore Entities. The Receiver is therefore requesting that this Court modify  
3 the injunction to the extent necessary for the Bankruptcy Court to enter rulings,  
4 decisions and judgments with respect to the extent, nature, amount and priority of  
5 secured claims against property of HW Partners’ estate.

6  
7 **II.**

8 **RELEVANT FACTS**

9 **A. BRIEF PROCEDURAL HISTORY**

10 On June 15, 2010, the Securities and Exchange Commission (the “SEC”) filed  
11 its *Complaint for Violations of the Federal Securities Laws* (the “Complaint”) in this  
12 case. On August 12, 2011, the Court entered its *Judgment of Permanent Injunction,*  
13 *Appointment of Permanent Receiver, and Imposing Other Relief as to Defendants*  
14 *Westmoore Management, LLC; Westmoore Investment, L.P.; Westmoore Capital*  
15 *Management, Inc.; and Westmoore Capital, LLC* (the “Final Judgment”) appointing  
16 David A. Gill as the permanent receiver for all four Westmoore defendants and their  
17 subsidiaries and entities otherwise majority-owned, managed or controlled, directly  
18 or indirectly, by any of them. WM LOF is an entity that was majority-owned,  
19 managed or controlled by a Westmoore defendant.

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21 **B. SUMMARY OF WM LOF’S LOANS TO HW PARTNERS AND HFI,**  
22 **AND RELATED TRANSACTIONS**

23 The facts in the Hendricksons’ adversary proceeding against WM LOF, HW  
24 Partners, MKA and others are extremely convoluted, as evidenced by thousands of

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1 pages of briefs and exhibits that have been submitted to the Bankruptcy Court. The  
2 Receiver provides the following summary:<sup>2</sup>

3 1. HFI executed a promissory note dated July 20, 2007, in favor of WM  
4 LOF in the principal amount of \$850,000. The maturity date was December 31,  
5 2008, and could be extended twice for a fee. The loan was secured by mortgages on  
6 80 acres of undeveloped agricultural real property in Walla Walla, Washington, that  
7 was part of a group of properties known as the “Eritage Estates.” HFI apparently  
8 intended to develop the property for use as wineries. HFI’s loan was guaranteed by  
9 HFI’s principal, Jason Huntley (“Huntley”).<sup>3</sup>

10 2. HW Partners executed a promissory note dated July 31, 2007, in favor  
11 of WM LOF in the principal amount of \$1.6 million. The maturity date was  
12 December 31, 2008, and could be extended twice for a fee. The loan was secured by  
13 mortgages on 240 additional acres of undeveloped agricultural real property included  
14 in the Eritage Estates. HW Partners’ loan was guaranteed by its principals, Justin  
15 Wylie (“Wylie”) and Huntley.

16 3. WM LOF executed a promissory note dated September 4, 2007, in favor  
17 of MKA in the principal amount of \$859,000. The maturity date was November 3,  
18 2007 (60 days). The loan to WM LOF was secured by, among other things, the July  
19 20 note executed by HFI and the related but yet-to-be-recorded mortgages in favor of  
20 WM LOF on 80 acres of the Eritage Estates. The loan was guaranteed by Matthew  
21 Jennings.

22 \_\_\_\_\_  
23 <sup>2</sup> This summary is not intended to be an exhaustive description of every fact that  
24 may be relevant in the adversary proceeding. Some of these facts may be disputed  
25 by parties involved in HW Partners’ case. The Receiver is *not* requesting that this  
26 Court adjudicate any facts at issue in the adversary proceeding.

27 <sup>3</sup> Westmoore-related entities entered into a number of transactions with Huntley  
28 and entities with which Huntley was affiliated. By marriage, Huntley is reportedly  
related to Matthew Jennings. The Receiver has filed suit against Huntley to recover  
approximately \$3.7 million in transfers made by Westmoore entities to Huntley over  
a 3-year period, including a \$500,000 transfer made in February 2010.

1           4.     WM LOF executed another promissory note dated September 21, 2007,  
2 in favor of MKA in the principal amount of \$3.1 million. The maturity date was  
3 September 21, 2008, but could be extended for up to one year. The loan was secured  
4 by, among other things, the July 31 note executed by HW Partners and the related but  
5 yet-to-be-recorded mortgages in favor of WM LOF on 240 acres of the Eritage  
6 Estates. The loan was guaranteed by Matthew Jennings.

7           5.     In December 2007, mortgages were recorded against five parcels in  
8 favor of WM LOF to secure HW Partners' obligations under the July 31 note (for  
9 \$1.6 million).

10          6.     In April 2008, mortgages were recorded against two other parcels in  
11 favor of WM LOF to secure HFI's obligations under the July 20 note (for \$850,000).  
12 The legal description on one of the mortgages was incorrect. Another mortgage was  
13 promptly recorded against the relevant parcel with the correct legal description.

14          7.     A few weeks later, assignments of mortgages were recorded in favor of  
15 MKA to secure WM LOF's obligations under the September 4 note (for \$859,000).  
16 The assignments related to the two mortgages referred to in paragraph 6 above.  
17 However, one assignment referred to the mortgage that had an incorrect legal  
18 description, not the subsequently recorded mortgage with a correct legal description.  
19 It does not appear that MKA ever recorded an assignment of the mortgage containing  
20 the correct legal description.

21          8.     In May 2008, two new mortgages were recorded in favor of WM LOF  
22 to secure HFI's obligations under its July 2007 note. The purpose of the two new  
23 mortgages appears to have been to restate the amount secured by each parcel.<sup>4</sup> At  
24 the same time, satisfactions were recorded with respect to the mortgages referred to  
25

26                 <sup>4</sup> Originally, each mortgage secured \$425,000 of the total \$850,000 loan. The  
27 new mortgages reflected that one parcel secured \$550,000 of the \$850,000 loan, and  
28 the other parcel secured \$300,000 of the \$850,000 loan.



1 in paragraph 6 above. The Receiver is unaware whether MKA was aware of the  
2 recording of these satisfactions. MKA did not ever record new assignments with  
3 respect to these mortgages.

4 9. In June 2008, assignments of mortgages were recorded in favor of MKA  
5 to secure WM LOF's obligations under the September 21 note (for \$3.1 million).  
6 These assignments related to the five mortgages referred to in paragraph 5 above.

7 10. In mid-2008, WM LOF loaned additional funds to HFI. It is unclear  
8 whether this loan was, or these loans were, documented in the form of a promissory  
9 note or notes.

10 11. In August 2008, a satisfaction of one of WM LOF's mortgages was  
11 recorded, and a new mortgage against a different, previously unencumbered parcel  
12 owned by HW Partners was recorded. The Receiver is unaware whether MKA was  
13 aware of the recording of the satisfaction. MKA did not ever record an assignment  
14 with respect to the new mortgage.

15 12. In September 2008, HW Partners executed a new promissory note in  
16 favor of WM LOF in the principal amount of \$3,226,249.40. The note was intended  
17 to consolidate and pay off the prior loans made by WM LOF to HW Partners and  
18 HFI. The maturity date was December 31, 2009, but could be extended one year.  
19 The loan was secured by mortgages on seven parcels of the Walla Walla property.  
20 The loan was guaranteed by Wylie and Huntley.

21 13. In October 2008, satisfactions were recorded with respect to all of WM  
22 LOF's then-recorded mortgages, including those that had been assigned to MKA. At  
23 the same time, new mortgages were recorded against seven Eritage Estates parcels in  
24 favor of WM LOF to secure HW Partners' obligations under the new \$3.23 million  
25 note. MKA alleges that it was not aware of the recording of the satisfactions. WM  
26 LOF did not assign any of the new mortgages to MKA.

27 14. About one week later, WM LOF borrowed \$1 million from Lester and  
28 Betsydiane Hendrickson (the "Hendricksons"), evidenced by a promissory note dated

1 October 23, 2008. The maturity date was December 31, 2008, at which time WM  
2 LOF was to pay \$1,120,000. The loan was secured by an assignment of the seven  
3 mortgages recorded the previous week. An Assignment of Mortgages was recorded  
4 on October 23, 2008. The Hendricksons took possession of the mortgages assigned  
5 to them by WM LOF, and remain in possession of those mortgages.

6 15. According to the note executed by WM LOF in favor of the  
7 Hendricksons, the \$3.23 million note executed by HW Partners would be held in  
8 escrow until all amounts due under the Hendricksons' \$1 million note were paid in  
9 full. However, "[i]n the Event of Default . . . [HW Partners' \$3.23 million note] and  
10 Mortgages shall be permanently assigned to [the Hendricksons]."

11 16. WM LOF defaulted on December 31, 2008, when it did not satisfy its  
12 debt to the Hendricksons prior to such date. Upon default, the \$3.23 million note  
13 was delivered out of escrow to the Hendricksons, who have since then continuously  
14 maintained possession thereof. The Hendricksons assert, among other things, that  
15 the \$3.23 million note was permanently assigned to the Hendricksons and that the  
16 Hendricksons are entitled to collect and retain all funds received by them from HW  
17 Partners, Wylie and Huntley.

18  
19 **C. HENDRICKSONS V. HW PARTNERS**

20 **1. Procedural History**

21 (a) In August 2009, the Hendricksons filed a *Complaint for Breach of*  
22 *Contract, Fraud, and Foreclosure of Mortgages* (the "Complaint") in the Superior  
23 Court of Washington. Named defendants included WM LOF, HW Partners, Wylie,  
24 Huntley, HFI, and MKA, as well as a title company who issued a title policy to the  
25 Hendricksons in connection with their \$1 million loan to WM LOF.

26 (b) In December 2009, WM LOF filed an answer to the Complaint.  
27 At the same time, WM LOF filed a cross-claim against HW Partners, Wylie,  
28 Huntley, and their marital communities.

1 (c) In January 2011, the state court issued an *Order Granting*  
2 *Plaintiffs' Motion for Partial Summary Judgment (Breach of Contract)* (the "Partial  
3 Summary Judgment Order").<sup>5</sup> The state court ruled, among other things, that the  
4 Hendricksons were entitled to a judgment against WM LOF for \$1,120,000 plus  
5 accrued interest and costs incurred after December 31, 2008. The state court also  
6 ruled that the Hendricksons were entitled to judgment against each of the "Huntley  
7 Defendants"<sup>6</sup> for the full amount due under the September 2008 note, which as of  
8 November 10, 2010, equaled \$4,740,495.78, plus reasonable attorneys' fees less  
9 credits for any amounts previously received from them. The state court deferred  
10 ruling as to whether the Hendricksons were entitled to retain funds collected from the  
11 Huntley Defendants in excess of the debt owed by WM LOF to the Hendricksons.  
12 The state court also did not at that time rule with respect to the Hendricksons' and  
13 MKA's competing claims to senior mortgage interests in six of the parcels.

14 (d) In July 2011, HW Partners filed a Chapter 11 bankruptcy petition  
15 in the Eastern District of Washington, case number 11-03366-JAR11. HW Partners  
16 subsequently removed the state court lawsuit to the Bankruptcy Court, where it was  
17 assigned case number 11-80317-JAR (the "Adversary Proceeding").

18 (e) In January 2012, the Bankruptcy Court issued a "mediation stay"  
19 to prevent parties from engaging in discovery pending the outcome of a court-  
20 ordered mediation. In April 2012, a mediation was held in Yakima, Washington. As  
21 an accommodation to the parties and the Bankruptcy Court, and to help facilitate a  
22 global settlement, counsel for the Receiver attended the mediation. During the  
23 mediation, it became clear that a roadblock to settlement was uncertainty regarding  
24 whether MKA presently holds a security interest in mortgages on HW Partners'

25 \_\_\_\_\_  
26 <sup>5</sup> A copy of the order is attached as Exhibit "6" to the Receiver's declaration.

27 <sup>6</sup> The "Huntley Defendants" were defined to include HW Partners, HFI, Huntley,  
28 Huntley's spouse, Wylie, and Wylie's spouse.

1 property, and if so whether MKA's interests are senior to the Hendricksons'  
2 interests. It also was clear that settlement would be more likely if the real property  
3 was sold and there was a finite pot of money to be distributed.

4 (f) In June 2012, the Bankruptcy Court lifted the mediation stay to  
5 permit the continuation of litigation in the Adversary Proceeding with respect to the  
6 extent, nature, amount and priority of secured claims against HW Partners' property.  
7 Specifically, it was contemplated that the Hendricksons and MKA would file cross-  
8 motions for summary judgment with respect to the claimed validity and priority of  
9 MKA's alleged interests. Those motions, among others, were filed. After a few  
10 hearings and further briefing by the parties, the Bankruptcy Court took the cross-  
11 motions under advisement.

12 (g) In January 2013, the Bankruptcy Court entered an order  
13 authorizing a proposed sale of HW Partners' real property and related assets for \$2.3  
14 million. The sale closed in March 2013. The mediator is presently holding  
15 approximately \$2.05 million in net sale proceeds.

16 (h) The Bankruptcy Court recently ordered the parties to attend a  
17 second mediation session in Yakima, Washington. During this session, a settlement  
18 was reached between the Hendricksons (with the Receiver's consent), HW Partners,  
19 and Wylie (the "Bankruptcy Settlement"). The Bankruptcy Settlement is subject to  
20 the approval of the Bankruptcy Court, and also subject to this Court's approval of the  
21 Settlement Agreement between the Receiver and the Hendricksons. Among other  
22 things, the Bankruptcy Settlement provides that the sum of \$1.95 million will be set  
23 aside subject to the Hendricksons' interests and MKA's alleged interests pending  
24 resolution of the dispute of their conflicting claims. In addition, \$100,000 will be  
25 paid to the Hendricksons on account of claims against Wylie as guarantor of HW  
26 Partners' note. If this Court approves the Settlement Agreement, funds collected by  
27 the Hendricksons will be split between the Receiver and the Hendricksons pursuant  
28 to the terms in the Settlement Agreement.

1 (i) The exact amount that will be received by the receivership estate  
2 is unknown. However, the Receiver anticipates that he will receive a portion of the  
3 \$1.95 million sale proceeds because it is undisputed that one parcel encumbered by a  
4 mortgage recorded in October 2008 was never encumbered by a mortgage assigned  
5 to MKA, and therefore the Hendricksons are the only party to have been assigned an  
6 interest in that mortgage. The Receiver also anticipates that he will receive a portion  
7 of the \$100,000 to be paid by Wylie.

8  
9 **2. Summary of the Hendricksons' and MKA's Claims Asserted in the**  
10 **Adversary Proceeding**

11 Generally, the Hendricksons assert that HW Partners' \$3.23 million note was  
12 permanently assigned to them when WM LOF defaulted on December 31, 2008.  
13 They therefore argue that they are the holders of the note and have full and complete  
14 authority to enforce it against HW Partners, its property, and the guarantors, and to  
15 retain whatever is collected, up to the full amount of the \$3.23 million note, plus  
16 accrued interest and attorneys' fees and costs. The Hendricksons contend that if it is  
17 determined that a permanent assignment did not occur at the time of default, WM  
18 LOF affirmed and ratified the permanent assignment after its default and waived any  
19 obligation the Hendricksons may have had to foreclose on their security interest.

20 The Hendricksons also assert that even if it is determined that a permanent  
21 assignment did not occur, they still have a first-priority security interest in the  
22 mortgages securing the \$3.23 million note. The Hendricksons further contend that  
23 they may foreclose on their security interest due to WM LOF's default. They also  
24 contend that, until such foreclosure, they have a security interest in funds paid to the  
25 Receiver on account of the \$3.23 million note, up to the full amount owed to them  
26 under the \$1 million note (*i.e.*, \$1,120,000 as of December 31, 2008, plus all interest  
27 and other charges that have accrued since then).

28

1 Generally, MKA asserts that it has a first-priority lien against seven parcels in  
2 the Eritage Estates, or at least against mortgages encumbering those parcels. MKA  
3 alleges that it did not know about the \$3.23 million note, and that WM LOF did not  
4 have the right to record satisfactions with respect to the mortgages that had been  
5 assigned as collateral to MKA. MKA contends that it has a perfected security  
6 interest in the July 2007 notes, whereas the Hendricksons have a perfected security  
7 interest in the subsequent October 2008 note. It further contends that the  
8 Hendricksons took their security interests with constructive notice of MKA's  
9 recorded interests, and therefore the Hendricksons' interests are junior to MKA's.

10 These and other related disputes are currently before the Bankruptcy Court.  
11 However, because of the nature of MKA's alleged claims, and the dispute regarding  
12 whether WM LOF had authority to record satisfactions of the original mortgages, the  
13 Bankruptcy Court has expressed a concern that its entry of a ruling might violate the  
14 injunction set forth in this Court's Final Judgment. For example, the Bankruptcy  
15 Court might determine that WM LOF had the authority to record satisfactions of the  
16 original mortgages, and as a result WM LOF has no valid lien under those original  
17 mortgages (and, by extension, MKA does not have a security interest in any such  
18 lien). Such a ruling might violate this Court's injunction against "doing any act or  
19 thing whatsoever to interfere with taking control, possession or management by the  
20 [Receiver] of the property and assets owned, controlled or managed by or in the  
21 possession of" WM LOF. Accordingly, to ensure that the Bankruptcy Court has the  
22 authority to rule in the Adversary Proceeding, the Receiver is requesting that this  
23 Court's order approving the Settlement Agreement provide that the injunction relief  
24 set forth in the Final Judgment is modified to the extent necessary for the  
25 continuation of the Adversary Proceeding and for the entry of rulings, decisions and  
26 judgments by the Bankruptcy Court with respect to the extent, nature, amount and  
27 priority of secured claims against property of HW Partners' estate.

28

