IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SECURITIES AND EXCHANGE COMMISSION,	§	
	§	
Plaintiff,	§	
	§	
v.	§	**CIVIL ACTION NO. 3-09-CV-0298-N**
	§	
STANFORD INTERNATIONAL BANK, LTD., et al.,	§	
	§	
Defendants,	§	

RESPONSE AND OBJECTION OF THE COURT-APPOINTED EXAMINER AND OFFICIAL STANFORD INVESTORS COMMITTEE TO THE KLS STANFORD VICTIMS' MOTION TO INTERVENE

John J. Little, the Court-appointed Examiner (the "Examiner"), and the Official Stanford Investors Committee (the "Committee"), respectfully submit this Response in opposition to the Motion of the so-called "KLS Stanford Victims" to Intervene and for Appointment to the Official Stanford Investor Committee [Doc. No. 1393] (the "Motion"). This Response is further supported by the Appendix filed herewith by the Examiner and the Committee. The Examiner and the Committee also incorporate herein the responses to the Motion filed by Ralph S. Janvey, as Receiver (the "Receiver") and by the United States Securities and Exchange Commission (the "SEC").

SUMMARY OF THE RESPONSE

The Motion to Intervene filed by the KLS Stanford Victims should be denied. While styled as a Motion to Intervene (and for the appointment of four additional Stanford investors to the Committee), the Motion is little more than an attempt by one lawyer – Gaytri Kachroo

("Kachroo") – to belatedly insert herself into these proceedings, principally in order to influence defrauded Stanford investors to hire her firm to sue the United States government, but also in an effort to circumvent prior orders of this Court which established and govern the conduct of the Committee.

Appointing certain of Kachroo's self-anointed ("representative") clients to lead roles in these two-and-a-half-year-old proceedings as members of an already established and functioning committee that is governed by non-appealable final orders of this Court would be detrimental to other Stanford victims and unfair to those who previously were denied intervention or a seat on the seven-member court-appointed Committee. Significantly, despite her complaints about the conduct of these cases and her public criticisms of the roles played by various parties, including the Receiver, the Committee and the Examiner, to date Kachroo and her clients have had *no* role in these cases, filed no pleading, interposed no objection to any motion or action filed with the Court, or commenced *any* lawsuit aimed at enhancing or obtaining recoveries for Stanford victims.

The Motion should be denied for at least each of the following reasons (any one of which would alone support denial):

A. This Court has uniformly denied all of the numerous previous requests (during this two-and-a-half-year old case) by individual Stanford investors, and groups of investors, to intervene, and instead determined to appoint the Examiner and the Committee to represent the interests of investors in these proceedings, all through carefully crafted orders entered after notice and an opportunity to be heard by Movants and all other Stanford investors and their representatives. Neither Kachroo nor any member of the KLS Group (nor any other Stanford investor for that matter) filed any objections to, or appeals from, any of the relevant orders about

which she now belatedly complains, but all of which became final and non-appealable long ago. In fact, no investors filed objections to entry of *any* of the orders which established the Committee, entrusted it with broad powers to investigate and prosecute claims on behalf of investors and the Receivership estates, and named the Examiner;

B. Even considering Kachroo's request for appointment of her firm's clients to the Committee would be premature and inappropriate unless this Court were to reverse its previous practice and grant her intervention motion;

C. Granting the Motion and/or other motions to intervene at this stage of the proceedings would create chaos, delay and increase the costs of administering these cases;

D. The requested intervention would be futile because the alleged and limited grounds for which the intervention is purportedly sought have either been addressed already, or would be unaffected by the requested intervention;

E. The putative intervenors, all of whom appear to be Stanford investors, are already fully and adequately represented in these proceedings; and

F. The requested intervention is untimely.

THE COMMITTEE, RECEIVER AND ASSET RECOVERY EFFORTS

On or about September 11, 2009, a large group of domestic and international Stanford victims, represented by Morgenstern & Blue, LLC ("M&B") filed a motion with this Court seeking to convert this case from a receivership to a bankruptcy proceeding. Following extensive briefing and a hearing before this Court, on or about August 10, 2010, this Court approved the appointment of the Committee to represent all Stanford investors as a compromise developed by the moving parties, the Examiner, Receiver, and the SEC. The Committee was

empowered with broad duties and responsibilities – much like a creditors' committee in a Chapter 11 bankruptcy case – to investigate potential claims on behalf of investors and the Receivership estates, and to be heard in connection with most issues relating to the conduct and administration of these cases, except, significantly, issues relating to fees and fee applications, which was left to the supervision of the Examiner.

In contrast to Kachroo and her group, the Committee and its seven victim and attorney members, have since been actively involved in these cases on a daily basis, taking concrete and aggressive steps to identify and prosecute legal claims aimed at maximizing and accelerating recoveries for *all* Stanford investors and creditors. The Committee holds weekly conference calls, communicates with each other on a daily basis, and pursuant to this Court's Order, meets formally with the Receiver and his professionals, in person, on at least a monthly basis. The Committee has been provided access to a multitude of non-public information made available to it by a variety of sources, including the Receiver and his professionals, government agencies and representatives, and it works, where possible, to cooperate with the Receiver and his professionals to jointly investigate, identify and prosecute claims on behalf of investors and the Receivership estates, and to most effectively administer these complex cases. The Committee interacts with dozens of government officials, agencies and staff and actively continues to investigate additional claims and causes of action for the benefit of Stanford creditors/investors. The Committee and its members have been responsible for obtaining major Congressional hearings on the Stanford matter, and has met on numerous occasions with senior officials of the United States Government.

The Committee and its members have commenced, either individually or together with the Receiver, dozens of lawsuits against financial institutions, professionals, recipients of

fraudulent transfers, and others, aimed at recovering billions of dollars for Stanford's victims. These efforts and investigations are active and ongoing and the Committee anticipates filing numerous additional actions in the future seeking substantial recoveries for Stanford investors. Upon information and belief, Kachroo has not commenced a *single* lawsuit to date and has taken *no* steps to recover Stanford assets, other than to embark on a massive client solicitation campaign (even publically stating she needed 300 Stanford investors to "sign up" by mid-January 2011 and 2,000 clients signed up by early-February 2011, *see* Q12 on FAQ Kachroo). Appendix at p. 59.

The foregoing statements should not be misconstrued as an endorsement of all the actions taken during the Receivership process or suggest that the Committee or its members are not carefully scrutinizing those actions. To the contrary, the Committee is deeply frustrated and disappointed with the substantial cost and progress of these cases and is working diligently to ensure that this receivership proceeds swiftly and efficiently, seeking to accelerate the process where possible. But the Committee recognizes—as Kachroo apparently does not—the complex nature of the many Stanford cases, the interaction of these cases with the ongoing criminal proceedings involving Allen Stanford and his compatriots, the international aspects of these cases, the impact of court-imposed discovery stays, and the unfortunate impact and cost of the protracted litigation between the competing receivers in the U.S. and in Antigua. The Committee has endeavored to assure that these cases are run as expeditiously and economically as possible. While the Committee has had differences of opinion with the Receiver, it has attempted to resolve such issues and disputes on a consensual and cooperative basis, and has been largely able to work cooperatively with the Receiver and his legal and financial professionals.

WHO ARE THE PROPOSED INTERVENORS?

Movants are identified as Catherine Burnell ("Kate"),[1] Ursula Mesa, Marcelo Avila-Orejuela, and Steven Graham. Each of the Movants appears to be represented by attorney Kachroo.

Movants

The Motion alleges that Kate is a British citizen residing in Antigua who created and manages a blog (Stanford's Forgotten Victims) for what appears to be a small group of Stanford investor/victims.[2] A review of Kate's blog reflects that she has devoted substantial energy over the past eight (8) months to the promotion of Kachroo and her efforts to solicit Stanford investor/victims as her clients, particularly for the purpose of suing the SEC. Kate first posted an item concerning Kachroo on December 15, 2010. That item was Kachroo's initial effort to solicit Stanford investor/victims to sign up with her law firm for the purpose of suing the SEC under the Federal Tort Claims Act ("FTCA").[3]

During 2011, Kate has posted 40 entries on her blog in 2011 (through July 19) that specifically relate to Kachroo's effort to solicit Stanford investor/victims as her clients (and Kate's active promotion of that effort) – including a remarkable 31 out of 45 posts in January 2011 *alone* that were part of Kate's "campaign" to get Stanford investors to retain Kachroo to pursue an FTCA class action lawsuit against the U.S. Government.[4] Kate has been publicly critical of this Court, the Committee as a whole, individual members of the Committee, the Committee's litigation initiatives undertaken on behalf of Stanford victims, including lawsuits

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[1] The Motion spells Kate's first name with both a K and a C. Doc. 1393 at 1, 6. Kate's blog includes entries spelling her first name with a C, so this Response does likewise.

[2] Ms. Burnell's blog may be accessed at http://stanfordsforgottenvictims.blogspot.com/. It is relevant to note that Stanford International Bank was not authorized to market its main product, CDs, to Antiguans.

[3] As of July 19, 2011, this post could be accessed at http://stanfordsforgottenvictims.blogspot.com/2010/12/kachroo-legal-services-statement-to.html

[4] Links to Kate's December and January blog posts relating to Kachroo are included in the Appendix at p. 5-7.

brought against the Government of Antigua (seeking billions in damages), and other Committee actions. Significantly, Kate actively sought membership on the Committee at the time of its formation, but was not selected.

Movant Ursula Mesa is alleged to be a United States citizen, originally from Peru, who resides in Florida. The Motion alleges that Ms. Mesa's family lost over $2 million to Stanford's scheme and that she individually lost approximately $100,000.

Movant Marcelo Avila-Orejuela is alleged to be a citizen, and former ambassador of Ecuador, who lost something less than $200,000 to Stanford's scheme.

Movant Steven Graham is a United States citizen residing in Louisiana, less than 100 miles from current Committee member, Dr. John Wade. It is alleged that he lost $1.7 million in the Stanford fraud. It is also alleged that he is "active" in the Stanford Victims Coalition ("SVC"), whose director and founder, Ms. Angela Shaw Kogutt, serves on the Committee.[5]

Movants' Counsel

Each of the Movants is represented by Kachroo who, prior to 2009, purported to be a corporate transactional lawyer focusing on representing corporate clients in business transactions between the United States and India. For purposes of soliciting clients for the Stanford case, Kachroo has advertised that she "*has never lost a case.*" It is worth noting that Kachroo appears in only one reported federal court decision published on Westlaw, *In re Starback Inc.*, 2010 WL 3927504 (Bk. Mass. 2010), in which a bankruptcy court deemed her ineligible to receive compensation and denied her fee application.

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[5] The Motion does not give any hint as to what Mr. Graham does with respect to the SVC to support the allegation that he is "active" in that group's efforts on behalf of Stanford victims. He is a registered member of the SVC.

The Motion alleges that Movants are "representatives for investors with over 500 Stanford accounts" and defined Movants as the "KLS Stanford Victims", i.e., Kachroo's group of Stanford investor clients. Neither the Motion nor the Declaration submitted by Kachroo to support the Motion identifies the actual number of individual investors that she claims to represent, the dollar amounts at issue, and whether or not any of the Movants have a conflict with the Receivership estate (i.e. whether they were recipients of other investors' funds in the form of fictitious interest payments or redemption payments)[6]

Kachroo is a lawyer licensed to practice in Massachusetts, *see* Doc. No. 1395-1, who maintains an office in Cambridge, Massachusetts, and is the principal of a law firm bearing the name Kachroo Legal Services, P.C. *Id.* For at least the last eight (8) months, Kachroo has waged a very aggressive public campaign[7] to solicit clients, and to collect upfront payments from Stanford's victims, primarily for the purpose of suing the United States government for the SEC's negligent actions in the Stanford case.

Kachroo's massive solicitation campaign, however, has not been limited to seeking retention by Stanford's defrauded victims for the purposes of suing the SEC. Her campaign has thus far proceeded in three phases, as set forth below.

While initially, Kachroo began soliciting Stanford investor/victims to engage her (and pay her upfront fees) to prepare and file administrative FTCA claims with the SEC in anticipation of her eventually filing a class action lawsuit. The various items posted on Kate's blog during December 2010 and January 2011 were all a part of Kachroo's SEC lawsuit

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[6] Stanford CD investors almost always had multiple Stanford accounts, since each account represented a separate CD, such that it is highly likely that Kachroo represents significantly fewer than five hundred actual investors. As just an example, Committee member Ed Snyder represents some 450 investors who between them hold some 1,202 CD accounts. See Appendix at p. 28.

[7] That campaign has been assisted to a large extent by Kate's blog and the solicitation efforts of several other Stanford investor/victims.

solicitation campaign; some prepared and issued by Kachroo, others by Kate or other Stanford investors who have also solicited clients for Kachroo. The terms upon which Kachroo proposed to represent Stanford investors with respect to these FTCA claims required an initial cash payment from each client, plus a contingent fee agreement as to any recovery, as follows:

- For clients who invested under $100,000 with Stanford, the cash payment was $500.00, plus a contingent fee of 15% of any recovery, plus reasonable expenses (not to exceed 20% of the fee);
- For clients who invested between $100,000 and $1 million with Stanford, the cash payment was $1,000.00, plus a contingent fee of 15% of any recovery, plus reasonable expenses (not to exceed 20% of the fee); and
- For clients who invested over $1,000,000 with Stanford, the cash payment was $1,500.00, plus a contingent fee of 15% of any recovery, plus reasonable expenses (not to exceed 20% of the fee).

See Appendix at p. 61-74 (Kachroo's proposed engagement letter and related solicitation materials).

The accuracy of the solicitation materials issued by Kachroo is suspect, at best. In a document titled "*Frequently Asked Questions about the Federal Tort Claims Act*,"[8] Kachroo suggests that Stanford investors might recover under the FTCA from the U.S. Government for "*tortious injuries*" including medical costs, loss of consortium, and "the financial loss you suffered if you lost your home or other possessions."[9] Kachroo has told investors that she will recover such "individualized" type damages via a putative class action lawsuit against the SEC.

Kachroo's and Movant Kate's very public marketing campaign to "sign up" Stanford's defrauded victims had a stated goal of signing up 2,000 clients in order for Kachroo to justify

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[8] Appendix at p. 56-59.

[9] Without debating the merits of an FTCA claim based upon the actions (or inactions) of the SEC relative to Stanford, neither the Committee nor the Examiner is aware of any authority for the proposition that an investor asserting such a claim could ever recover for medical expenses, loss of consortium, or the loss of a home, through a class action lawsuit.

filing the lawsuit her engagement letter specifically obligated her to file regardless of the number of clients who engaged her services. Insert statement about how many clients she needed. Kachroo's efforts to get those 2,000 victim clients was also targeted at the Committee members. In a December 23, 2010 email to the Committee, Kachroo insinuated the Committee members had an obligation—and even a liability—to refer Stanford investors to her firm so they could retain her to sue the SEC on their behalf. "This being said there is another issue while investors and their attorneys ponder whether to preserve their rights - that is liability....However, all investors and especially clients should be advised of upcoming deadlines as they may incur liability for not providing such information when they are aware of it." Appendix at p. 46.

Kachroo's solicitation materials warned investors that the FTCA administrative claims she was proposing to file with the SEC needed to be submitted by February 16, 2011. When that date passed, she began the second phase of her solicitation campaign. On or about April 26, 2011, Kachroo issued a new statement to the Stanford investor community claiming that her "research" had unearthed the "***possibility of recovering over $3 billion worth of assets***" and announcing her willingness "***to commence such action as may be necessary to recover those funds on behalf of all of my clients***." Upon information and belief, Kachroo has never identified the source of this purported $3 billion of assets that remain unknown to the other parties to these cases or commenced any action to recover these purported assets. The clear implication from such statements was that Kachroo, and only Kachroo, knows where and how to recover $3 billion in assets and intended to distribute these "assets" only to Kachroo's clients. As was the case with her solicitation of FTCA clients, the statement also included a separate fee arrangement that would apply to any clients who signed up with her, as follows:

- For clients who invested under $250,000 with Stanford, the cash payment was $500.00, plus a contingent fee of 10% of any recovery (or a 30% fee with no initial payment);
- For clients who invested between $250,000 and $500,000 with Stanford, the cash payment was $1,000.00, plus a contingent fee of 10% of any recovery (or a 30% fee with no initial payment);
- For clients who invested between $500,000 and $1 million with Stanford, the cash payment was $2,000.00, plus a contingent fee of 10% of any recovery;
- For clients who invested between $1 million and $2 million with Stanford, the cash payment was $5,000.00, plus a contingent fee of 10% of any recovery;
- For clients who invested between $2 million and $3 million with Stanford, the cash payment was $10,000.00, plus a contingent fee of 10% of any recovery;
- For clients who invested between $3 million and $4 million with Stanford, the cash payment was $15,000.00, plus a contingent fee of 10% of any recovery; and
- For clients who invested over $4 million with Stanford, the cash payment was at least $20,000.00, plus a contingent fee of 10% of any recovery.

Appendix at p. 71-72. Ultimately, Kachroo dubbed the efforts she was willing to make to recover the $3 billion in assets she had "found" (for those who engaged her on the terms set forth above) "Stanford Further Action" ("SFA").

This second round of SFA solicitations is troublesome as it implies that Kachroo has somehow located $3 billion in recoverable assets that are unknown to the Receiver (and hence to this Court) and to the Antiguan Liquidators. To date, there has been no suggestion in either proceeding that recoverable assets are available at that level. More troublesome still is the suggestion made to the Stanford investor community that Kachroo can somehow bring an action to recover these "newly discovered" assets for the *sole benefit* of her clients, and apparently without the supervision of this Court (or the Antiguan court).

In fact, Kachroo's repeated statements to investors that she had discovered $3 billion in assets prompted the Receiver to issue a Subpoena to Kachroo on June 29, 2011 requesting that she produce all documents related to or referencing any such assets. Kachroo's deadline to respond to the Receiver's Subpoena came and went and she has failed to respond with any information that suggests that she has found assets of any kind—much less assets worth $3 billion.

The SEC's issuance of its recent decision directing the Securities Investor Protection Corporation ("SIPC") to commence a liquidation proceeding relating to Stanford Group Company triggered a third round of client solicitations by Kachroo. On June 16, 2011, Kachroo issued a statement claiming some role in helping to secure the SEC's decision and assuring her clients that – "for those who have signed up for Stanford Further Actions (SFA) and for those who continue to do so" – her firm "will determine and push for your eligibility" for SIPC coverage. Appendix at p. 73. That same statement was posted by Movant Kate on her blog on June 17, along with Kate's own commentary urging "all victims to make contact with Kachroo Legal Services to establish whether or not you may be eligible for coverage." Appendix at p. 21.

As noted above, to date, Kachroo has not filed a single Stanford-related lawsuit. Yet, nothing has precluded her from seeking leave to do so. Rather, it appears Kachroo's primary activity and interest in connection with the Stanford cases has been the solicitation of clients and their money. It is also clear that Movant Kate has devoted substantial energy, via her website, to the promotion of Kachroo and her firm and Kachroo's Stanford client solicitation efforts.

Such activities do not demonstrate that these Movants should be granted leave to intervene; at best, they demonstrate that the *real* purpose of this Motion is to enable Kachroo to

improve her position and gain some personal pecuniary benefit. This is NOT a basis for intervention.

ARGUMENT AND AUTHORITIES

Movants contend that they should be permitted to intervene either as of right, pursuant to Fed. R. Civ. P. 24(a)(2), or permissively, pursuant to Fed. R. Civ P. 24(b). While Movants correctly articulate the showing they must make under *Edwards v. City of Houston*, 78 F.3d 983, 999 (5th Cir. 1996),[10] to intervene as of right under Rule 24(a)(2), they fall short on at least two of the four required elements and should therefore be denied authority to intervene.[11]

A. Movants Are Already Fully Represented in this Matter

This Court, like others before it, has already recognized in this case that intervention is inappropriate if the putative intervenors are adequately represented by the parties already before the Court. Order dated April 20, 2009 [Doc. No. 321]. The interests of the Movants are no different from the interests of all other Stanford investor/victims – they seek recovery of their stolen investments, or as much of their lost investments as possible, and they would like the process to be completed as quickly and efficiently as the system will allow. The Movants differ from the thousands of other Stanford investors (many of whose representatives have already been denied the right to formally intervene) solely because they have retained an attorney who now, belatedly seeks to upend the very Committee that has worked tirelessly for investors. This is not a basis for intervention – mandatory or permissive.

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[10] Under *Edwards*, an intervenor as of right must demonstrate (1) that the motion to intervene is timely, (2) that the applicant has an interest in the property or transaction which is the subject of the action, (3) that the applicant is so situated that the disposition of the action may, as a practical matter, impair or impede his ability to protect that interest, and (4) that the applicant's interest is inadequately represented.

[11] The putative intervenors certainly have an interest in the property or transaction that is at issue in this matter.

The interests of these Movants are adequately represented by four different parties to this litigation – the SEC, the Receiver, the Examiner, and perhaps most importantly, the Committee. This Court already has concluded that the SEC provides adequate representation for any interests these Movants (or similarly situated Stanford investor/victims) may have. Doc. 321 at 4. Similarly, the Court already has concluded that the Receiver adequately represents the interest of these Movants and any other similarly situated Stanford investor/victims. *Id.*

In addition, the interests of these Movants, and all other Stanford investor/victims, are represented by the Examiner, appointed by Order of this Court on April 20, 2009, and expressly charged with informing the Court as to matters that would be helpful to the Court in considering the interests of the Stanford investors. Doc. 322 at 1. Movants offer no argument, and no evidence, to suggest that the Examiner is not discharging the obligations imposed on him by the Court. As this Court has observed, a "party seeking to intervene in an action bears the burden of establishing the inadequate representation requirement of Rule 24 [citation omitted]." Doc. 321 at 4. There is absolutely nothing in the Motion, nor in the supporting materials, that even addresses the work of the Examiner, nor that suggests the Examiner cannot or does not adequately represent the interests of these Movants.

Finally, on August 10, 2010, this Court entered an Order creating the Committee and charged it with representing the interests of Stanford investors. Doc. 1149. The members of the Committee were chosen by the agreement of the moving parties at that time (certain Stanford investors), the SEC, the Receiver and the Examiner, so that they would represent the broadest possible spectrum of Stanford investors. The designation of Committee members was accomplished precisely as contemplated and mandated by this Court's order and announced to the Court on January 10, 2011, and no one, including the Movants, filed an objection to the

procedure for determining Committee members or to the actual choice of Committee members.

In addition to the Examiner, the Committee members include the following:

- Angela Shaw Kogutt is the founder and director of the Stanford Victims Coalition ("SVC"). The SVC is a nonprofit corporation registered in the state of Texas. At present, is has more than 4,000 registered members (all Stanford victims) in 38 states in the U.S. and in 50 countries throughout the world.

- Dr. John Wade is a member of the SVC, a U.S. citizen, and a resident of Louisiana. Dr. Wade represents all investors, and is particularly representative of the investors who purchased SIB CDs through Stanford's offices in Louisiana and through the Stanford Trust Company.

- Jaime Pinto Tabini, an attorney practicing in Peru who represents several hundred Stanford investors who are citizens of Peru, Ecuador and other South American countries.

- Peter Morgenstern, an attorney practicing in New York (who filed the original motion that led to the formation of the Committee), who represents approximately 700 investors from numerous different countries, holding approximately $327 million in CD claims.

- Ed Snyder, an attorney practicing in San Antonio, Texas, who represents approximately 500 predominately Mexican Stanford investors holding approximately $250 million in CD claims.

- Ed Valdespino, an attorney practicing in San Antonio whose firm (Strasburger & Price, LLP) represents approximately 2,000 predominately Venezuelan, Mexican and other Latin American Stanford investors holding approximately $500 million in CD claims.

Apart from complaints about the Committee's failure to object to the Receiver's fee applications (which, as discussed, is not the Committee's task in any event), the Movants offer no evidence or argument as to why the existing members of the Committee are inadequate to represent their interests or the interests of all Stanford victims or cite to any provision of any order which would require or even authorize the appointment of four additional Committee members. Previous requests by other investors were rejected as the Committee has been fairly and properly constituted.

B. Intervention Would be Futile and Will Not Address the Movants' Complaints

The Motion to Intervene is really a series of complaints about certain aspects of the conduct of this Receivership to date and the uniformly shared disappointment with the pace and amounts of recoveries achieved to date. But the fact of the matter is that ***none*** *of the enumerated complaints would be addressed or ameliorated by permitting the proposed intervention.*

The Motion also assumes that the Receiver will apply for, and be awarded, the fees that have been held back by the Court from each of the Receiver's fee applications. That is an assumption that only the Movants are willing to make; the Court has expressly reserved ruling on any objections to the Receiver's fees and will take up an application for some or all of the fees subject to the holdback at an appropriate time.

Second, the Motion attacks the Committee for failing to object to the Receiver's several fee applications. This argument reflects a fundamental misunderstanding of this proceeding, and reflects an apparent failure to even read the text of the Order appointing the Committee. The Movants ignore the express provisions of the Order creating the Committee, through which this Court expressly directed the Committee that it should ***not*** **"lodge separate responses or objections to the Receiver's future fee applications."** Doc. No. 1149 at 5, ¶4. That task was expressly left to (and has been diligently performed by) the Examiner.

This argument also ignores the calendar and the chronology of the Committee's appointment. The Committee was appointed in August 2010. By that time, the Receiver had already filed seven (7) interim fee applications, pursuant to which he sought payment of just over $55 million in fees and as to which he received payment of just under $42 million in fees, with $13 million subject to this Court's holdback. Those numbers represent **85% of the fees** incurred through the Receiver's recently-filed 12th interim fee application. The Committee could not have

objected to those fees, even had it been authorized to do so, *because it did not even exist at the time these applications were considered.*

Third, the Motion alleges that "the attorneys" serving on the Committee have "merely negotiated fees for themselves," and attacks the agreement entered into between the Receiver, the Committee and certain law firms authorizing the Committee to pursue litigation for the benefit of the Receivership estate. To the contrary, the agreement about which the Movants now complain was ratified by this Court on Motion (duly noticed to Movants and all other Stanford investors and not objected to by her or anyone else) and approved by final Order entered on February 25, 2011. The Motion simply ignores the fact of this Court's final Order and consideration and approval of the arrangement reached between and among the Receiver, the Examiner, the SEC and the Committee. *See* Doc. No. 1267. This Order is not appealable and is final. Also, while it is certainly true that five members of the Committee are practicing lawyers, only three of those members (Messrs. Morgenstern, Snyder and Valdespino) are involved in the prosecution of lawsuits on behalf of the estates (together with the very able and qualified law firm Neligan Foley LLP). Mr. John Little, the Court-appointed Examiner, receives compensation in this matter only upon application to, and approval by, the Court. His fees have been, and remain, subject to objection by any party to this proceeding, and there is no relationship between his fees and the amounts recovered (or not recovered) in the lawsuits being pursued by the Committee. Mr. Jaime Pinto is an attorney licensed in Peru, but he has not entered into any contingent fee arrangements with respect to litigation being prosecuted by the Committee. In fact, as is true of all members of the Committee, Mr. Pinto receives no compensation for his service on the Committee at all. Contrary to the argument made in the Motion, the majority of the Committee (Ms. Kogutt, Mr. Wade, Mr. Pinto and Mr. Little) have

no direct financial interest in the outcome of the lawsuits that are being pursued by the Committee.

The Committee's role is to investigate and pursue litigation that will benefit the Receivership Estate and the Stanford investor victims. Since its creation, the Committee, and the individual law firms serving on the Committee (together with additional associated counsel), have been involved in the investigation, filing and litigation of dozens of fraudulent transfer and class action lawsuits seeking billions of dollars in recoveries, and have also provided briefing to this Court on the crucial issue of SLUSA. To date none of the lawyers involved in these litigation efforts have received any contingency fee payments for their work on these cases or for their substantial work on other, non-litigation related Committee matters, but continue to diligently pursue all such recoveries.

C. The Motion is Untimely

Whether seeking intervention as of right, or by permission, a motion to intervene must be timely filed. This Motion is not – rather, it is little more than an effort to belatedly challenge actions taken by the Receiver, the Examiner, the Committee and even the Court.

The Movants' primary complaint, and seemingly the only basis for intervention, concerns the fees that have been charged by and paid to the Receiver and his professionals. Movants appear to suggest that it was not until they received the Receiver's 12th interim fee application (Doc. Nos. 1383 and 1384, filed June 28, 2011) that they reached the conclusion that they needed to intervene because of the Receiver's professional fees and expenses. That argument cannot withstand scrutiny.

Movants make no effort to explain why it has taken them two full years to seek to intervene to address the Receiver's professional fees, nor do they explain how the Receiver's

latest fee application purportedly "opened their eyes" and suddenly made their intervention timely.

Movants also point to the materials filed by the Receiver on February 22, 2011, as being the triggering event that led them to argue that the Receiver has not created any benefit for the Estate.[12] The Movants' reliance on those materials demonstrates that they haven't been paying much attention to the Stanford case. The argument being made now by the Movants could have been made by these Movants (or others) based upon the Receiver's prior status reports, which were filed over two years ago (on April 23, 2009, Doc. No. 336) and over one year ago (on July 1, 2010, Doc. Nos. 1117, 1118) respectively.

As of July 1, 2010, this Court had approved the Receiver's first six interim fee applications, and ordered that approximately $12.4 million be held back and addressed at a later date. Thus, these Movants (or others) could have argued over a year ago, using the same flawed logic they apply here, that the Receiver had generated a "net benefit" of only $1.5 million.

To the extent that this Motion is based upon the Receiver's fees, or his alleged "net recovery" for the Estate, it is untimely. The complaints on that issue made here could have been made over a year ago.

A secondary complaint made by the Movants is that the Investors Committee has entered into contingent fee agreements with certain lawyers and law firms that are represented on the Committee. The proposal to enter into those agreements was on file with this Court and publicly available since January 2011, Doc. No. 1207, and has been known both to the Movants and their counsel since that time. Kachroo met with the Committee in Dallas, Texas, on December 10, 2010 as its invitation. During that meeting, the Committee discussed its efforts to negotiate an

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[12] Intervenors rely upon the Receiver's Second Interim Status Report, Doc. Nos. 1236 and 1237.

agreement with the Receiver pursuant to which the Committee would be authorized to prosecute litigation on behalf of the estates and to do so using counsel retained on a contingent fee basis. Appendix at p. 8. That agreement was subsequently finalized and filed; ***neither the Movants nor their counsel objected to the proposal when it was filed***, and it was approved by this Court by its now non-appealable Order dated February 25, 2011 (Doc. No. 1267). Movants should not now be permitted to intervene to attack an Order that memorialized and approved an agreement that was filed with and approved by the Court many months ago and pursuant to which able counsel has been operating. The Movants had an opportunity to object at an appropriate time but chose not to.

Based upon all of the foregoing, the undersigned respectfully requests that this Court deny the Motion in its entirety and grant such other and further relief as it considers just and proper.

Respectfully submitted,

/s/ John J. Little
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AS EXAMINER AND ON
BEHALF OF THE OFFICIAL
STANFORD INVESTORS COMMITTEE
AS ITS CHAIRPERSON

CERTIFICATE OF SERVICE

On July 28, 2011, I electronically submitted the foregoing document with the clerk of the court of the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all counsel and/or pro se parties of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Edward F. Valdespino
Edward F. Valdespino