

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 21-61176-CIV-SINGHAL

RICHARD BENTLEY, an individual,
JOSEPH ALEXANDER, an individual,
and P&E PROPERTIES, LP, a limited partnership,

Plaintiff,

vs.

LARRY BRODMAN, an individual,
ANTHONY NICOLOSI, an individual,
PROPERTY INCOME INVESTORS
9007, LLC, a Florida limited liability
company, PROPERTY INCOME
INVESTORS 1361, LLC, a Florida
limited liability company, PROPERTY
INCOME INVESTORS 201, LLC, a
Florida limited liability company,
PROPERTY INCOME INVESTORS 304,
LLC, a Florida limited liability company,
and PROPERTY INCOME INVESTORS
26, LLC, a Florida limited liability company,
ANTHONY COLEMAN, CPA, P.A., DAVID COHEN,
EQUINOX HOLDINGS, INC.,

Defendants.

**RESPONSE AND OBJECTION TO RECEIVER'S MOTION TO ESTABLISH AND
APPROVE CLAIM PROCESS (DE #48) FILED BY INVESTORS RICHARD BENTLEY,
JOSEPH ALEXANDER AND P&E PROPERTIES, LP**

COMES NOW, Investors, RICHARD BENTLEY, JOSEPH ALEXANDER, and P&E PROPERTIES, LP (hereinafter referred to either as "Investors or Movants") files this Response and Objection to the proposed Claims Process (DE #48) and as grounds would state as follows:

1. On or about December 31st, 2021, Miranda L. Soto, Esq., solely in her capacity as Receiver (the "Receiver") for the Defendants Property Income Investors, LLC; Equinox Holdings, Inc; Property Income Investors 26, LLC; Property Income Investors 304, LLC; Property Income

Investors 201, LLC; Property Income Investor 3504, LLC; Property Income Investors 1361, LLC; Property Income Investors 4020, LLC; Property Income Investors 9007, LLC; Property Income Investors 417, LLC; Property Income Investors 4450, LLC; and Property Income Investors 3050, LLC (collectively “Receivership Entities”) provides a recommended plan as it relates to the process of returning funds to claimants harmed by the wrongdoing of the Defendants in this case.

2. Receiver seeks to apply a procedure and framework which includes the “net investment” method to determine claims, procedures to review and determine claims, a bar date and proof of claim form and notice procedure for all known and unknown potential claimants. Investors, RICHARD BENTLEY, JOSEPH ALEXANDER, and P&E PROPERTIES, LP are claimants that invested substantial assets in the Receivership Entities.

3. This case involves allegations that the Defendant BRODMAN and Receivership Entities raised approximately \$9 million dollars from investors. Approximately \$2.15 million was raised from investors who purchased shares in Defendant EQUINOX HOLDINGS, INC. and were not promised any specific returns. The remaining funds were generated from investors who were told that their funds would be used almost entirely to purchase turnkey, multifamily properties in South Florida which were to be renovated, rented to tenants, and eventually sold. Investors were told that they would be entitled to receive a portion of the rental income and profits from any sale proceeds generated from the properties they were investing in. The SEC has alleged that the Defendant BRODMAN and the Receivership Entities misappropriated and diverted over \$2 million dollars of investors' funds, extensively committing investors funds and diverting funds for personal profit.

4. Movants invested in individual limited liability companies and received a proportionate interest in those companies that purchased specific rental properties that were 100%

self-financed. Two of those limited liability companies had sold all of their assets prior to the Receivership being established, and the sale proceeds were being prepared for a final distribution to individual investors.

5. The Receiver proposes to utilize a “net investment method” to calculate each investors claim. By using the net investment method, the Receiver proposes calculating each investors claim amount by adding all amounts contributed by the pertinent investor and subtracting all payments made to that investor and/or in connection with that investment, regardless of whether those payments were characterized as interests, earnings, returns or redemption of principle.

6. The Receiver's proposed methodology fails to take into account that the Investors made individual capital contributions into separate and distinct limited liability companies. Such investments were collateralized by those properties with risks that depended on issues related to rental revenues, the ability to maintain quality tenants, value and condition of the properties, and future prospects for appreciation. In fact, all but two properties were purchased whereby the Investors paid for 100% of the purchase price of the property and 100% of the renovations. Two properties required outside financing with significant mortgages. Each of the Receivership Entities were purchased by various investors with different revenue streams, different renovation costs, different occupancies, and different anticipated returns on investment. Each limited liability company was a separate entity with unique costs, revenues, and associated risks. The current plan lumps all investors into one entity, failing to account for any of these clearly defined differences. It also fails to account that it was these Investors' money that was utilized to purchase each property that is currently being sold.

7. The current plan severely over-simplifies the practicality and reality of the current situation. The fraud committed does not affect all investors equally. Certain investors' money were not intended to purchase real property and were never intended to hold title to any of the Receivership Entities. For instance, the EQUINOX HOLDINGS, INC. Investors were entitled, at best, to receive 30% of the rental income after expenses and 70% of the net profits when properties were sold. EQUINOX HOLDINGS, INC. Investors received no equity in any of the Receivership Properties. Such investors should not share equally with investors who owned 100% equity in revenue producing real estate. Investors who received distributions from net rental revenues should not be penalized for earned income received by revenue generating real estate investments. Investors who successfully self-financed properties should not be penalized for other completely separate limited partnerships that required outside financing. Lumping all investors into one entity is inequitable and completely fails to reflect the true nature of the individual investments.

8. The Receiver correctly stated in several Court filings that one of the "priorities" was to keep all of the Receiver Entities separate and apart so that investors could be compensated according to the revenue and expenses of each limited liability company. After spending more than six months and hiring forensic accountants to go over the bank books, the Receiver has provided no explanation whatsoever as to why the independency for each limited partnership could not be maintained. Nor has the Receiver explained why the separately determined profit and losses, as reflected by four years of Schedule K-1's as prepared by professional accounts, could not be relied upon.

9. Only by defining and segregating investors that purchased equity interest in real property versus investors that did not purchase equity interest in real property can a fair, reasonable,

and acceptable plan for distribution be approved. Therefore, each separate limited liability company should be treated independently with distributions based on the specific profits and losses for each.

10. Only if this is not possible, then individual investors should, at the very least, be divided into classes based on the similar characteristics that define their investments. As such, there should be separate classes of investors established by this Court. The first class should include investors that made direct loans to the receivership properties and received equity interest in these properties. The second class should involve investors that were never to receive any equity interest in any of the receivership properties.

11. Investors believe that the Court should establish separate categories for claims that arise from or in connection with the actual purchase of specific interest in each limited liability company versus investors that were simply anticipating a return on investment. The first class should be the EQUINOX HOLDINGS, INC. Investors, who invested in shares of ownership to a separate corporation that owned no real estate nor possessed any equity; the second class should be investors who invested in specific limited partnerships that, in turn, purchased real estate properties. Within the latter class, investors should be separated based on (1) whether the property was sold or unsold prior to the Receivership, and (2) whether the property was 100% self-financed or required a mortgage.

12. Investors believe that the Receiver's simplified plan for lumping together all defrauded investors provides an inequitable means for distributing limited proceeds when they become available. Without a complete and thorough explanation as to why the stated priority of maintaining the independency of each financial entity cannot be met, the proposed plan has no bearing and should be rejected.

WHEREFORE, Investors, RICHARD BENTLEY, JOSEPH ALEXANDER, and P&E PROPERTIES, LP, pray this Honorable Court enter an Order properly identifying specific classes of investors so as to ensure that an investor that invested substantial capital in an individual limited liability company receive a distribution proportionate to that investment, and for any and all further relief that the Court deems just and proper in premises.

Respectfully submitted,

By: /s/ Barry S. Mittelberg

Barry S. Mittelberg, Esq.

Florida Bar No.: 396567

BARRY S. MITTELBERG, P.A.

Attorney for Investors/Movants

10100 W Sample Road, Suite 407

Coral Springs, FL 33065

Tel: (954) 752-1213 | Fax: (954) 752-5299

Barry@mittelberglaw.com

Rode@mittelberglaw.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via e-filing through the CM/ECF system this 14th day of January, 2022 to: Alice Sum, Esq., sumal@sec.gov; Mark C. Perry, Esq., mark@markperrylaw.com; Carl F. Schoeppl, Esq., Schoeppl Law, P.A., carl@schoepplaw.com; Raquel Rodriguez, Esq. and Jordan D. Maglich, Esq., Buchanan Ingersoll & Rooney PC, raquel.rodriguez@bipc.com, jordan.maglich@bipc.com.

By: /s/ Barry S. Mittelberg

Barry S. Mittelberg, Esq.

Florida Bar No.: 396567

BARRY S. MITTELBERG, P.A.

Attorney for Investors/Movants

10100 W Sample Road, Suite 407

Coral Springs, FL 33065

Tel: (954) 752-1213 | Fax: (954) 752-5299

Barry@mittelberglaw.com

Rode@mittelberglaw.com