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COUNSEL FOR THE RECEIVER

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

**IN RE:** § **Case No. 11-35165-SGJ**  
§  
**RETIREMENT VALUE, LLC,** § **Involuntary Chapter 11**  
§  
**DEBTOR.** §

**ANSWER TO AMENDED INVOLUNTARY CHAPTER 11 PETITION  
AND COUNTERCLAIM**

Eduardo S. Espinosa, in his capacity as the State Court Receiver (the “Receiver”) for Retirement Value, LLC (the “Alleged Debtor”) appointed by the District Court of Travis County, Texas for the 126<sup>th</sup> Judicial District (the “State Court”) in *Texas v. Retirement Value, LLC, Richard H. “Dick” Gray, and Bruce Collins, and Keisling, Porter & Free, P.,C., Relief Defendant*, Cause No. D-1-GV-10-000454 (the “Receivership Action”) hereby answers the involuntary petition (the “Involuntary Petition”) giving rise to this involuntary Chapter 11 bankruptcy case (the “Involuntary”) and asserts a counterclaim, as follows:

**I. ANSWER**

**A. AFFIRMATIONS AND DENIALS**

1. The Alleged Debtor denies the allegations set forth in paragraph 1 of the portion of the Involuntary Petition headed “Allegations.”

2. The Alleged Debtor neither admits nor denies the allegations set forth in paragraph 2 of the portion of the Involuntary Petition headed “Allegations” because such allegation calls for a legal conclusion to which a response is not required.

3. The Alleged Debtor denies the allegations set forth in paragraph 3a of the portion of the Involuntary Petition headed “Allegations.”

4. The Alleged Debtor denies the allegations set forth in the portion of the Involuntary Petition headed “Venue.” Specifically, the Alleged Debtor denies that it has been domiciled or has had a residence, principal place of business, or principal assets in the Northern District of Texas for 180 days immediately preceding the date of the filing of the Involuntary Petition or for the longer part of such 180 days.

5. The Alleged Debtor denies both the individual claim amounts purportedly held by the petitioning creditors and the total claim amount identified in the portions of the Involuntary Petition headed “Petitioning Creditors.”

6. The Alleged Debtor denies the allegations set forth in any other portion of the Involuntary Petition to which a response may be required.

**B. FIRST AFFIRMATIVE DEFENSE**

7. Pursuant to Bankruptcy Code § 303(b), the petitioning creditors are not eligible to file the Involuntary Petition because their claims are contingent as to liability.

**C. SECOND AFFIRMATIVE DEFENSE**

8. Pursuant to Bankruptcy Code § 303(b), the petitioning creditors are not eligible to file the Involuntary Petition because their claims are subject to a bona-fide dispute as to liability or amount.

**D. THIRD AFFIRMATIVE DEFENSE**

9. Pursuant to Bankruptcy Code § 303(b), the petitioning creditors are not eligible to file the Involuntary Petition because they are not “holders” of the claims on which the Involuntary Petition is based.

**E. FOURTH AFFIRMATIVE DEFENSE**

10. Pursuant to Bankruptcy Code § 303(h), no order for relief can be entered against the Alleged Debtor because the Alleged Debtor is generally paying its debts as they come due.

**F. FIFTH AFFIRMATIVE DEFENSE**

11. Pursuant to Bankruptcy Code § 305(a)(1), the interests of the creditors in the Receivership Action would be better served by a dismissal or a suspension of all proceedings in this involuntary case.

**G. SIXTH AFFIRMATIVE DEFENSE**

12. No order for relief can be entered against the Alleged Debtor because the Involuntary Petition was not filed in good faith.

**H. SEVENTH AFFIRMATIVE DEFENSE**

13. No order for relief can be entered against the Alleged Debtor because adjudication of the Receivership Action by this Court would interfere with the State of Texas’s police power and general right to enforce its regulatory scheme.

**I. EIGHTH AFFIRMATIVE DEFENSE**

14. The Petitioning Creditors are estopped or otherwise precluded by principles of res judicata and collateral estoppel from litigating the Involuntary Petition.

**II. COUNTERCLAIM**

15. The Receiver hereby claims its right under Section 303(i) of the Bankruptcy Code to recover all costs, attorney’s fees and, in the event of a finding of bad faith on behalf of the

Petitioners, all actual and proximate damages caused by this Involuntary, as wells as appropriate punitive damages.

### III. PRAYER

WHEREFORE, the Receiver respectfully requests that this Court: (i) deny the relief sought in the Involuntary Petition; (ii) schedule a hearing to determine the amount of damages to be paid by the petitioning creditors pursuant to Bankruptcy Code § 303; and (iii) grant such other and further relief as the Court deems just and proper.

DATE: September 6, 2011

Respectfully submitted,

By: /s/ Daniel I. Morenoff

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**COUNSEL FOR THE RECEIVER**

**CERTIFICATE OF SERVICE**

I certify that on September 6, 2011, a true and correct copy of the attached Answer was served via email through the Bankruptcy Court's Electronic Case Filing System on those parties that have consented to such service and via first class U.S. Mail upon the parties listed below.

U.S. Trustee  
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