

Introduction

3. JEI proposes to sell the Greenwich Campus to WFHA for \$20 million. This is \$6.8 million less than the fair market value (FMV) of the property as determined by a current independent appraisal. See Complete Appraisal and Self Contained Report dated January 17, 2006, by Christopher K. Kerin, MAI, CCIM (“Kerin Appraisal”), copy annexed as Exhibit B to Affidavit of Christopher K. Kerin, MAI CCIM sworn to on March 20, 2006 (“Kerin Aff.”).

4. JEI’s Trustees knew, or should have known, that they were approving a transaction that would waste millions of dollars of charitable assets. Not only were they trying to rely on a stale 2004 appraisal to justify the price of \$20 million, they were about to receive a much anticipated 5-year re-evaluation determination from the Greenwich Township Assessor. In fact, about a week before the JEI Trustees approved the \$20 million price, the Assessor issued a notice to JEI that the FMV of the Greenwich Campus was \$28,286,000. That is \$8.3 million higher than what WFHA would be paying. See Print-out of Real Property Assessment Record, Township of Greenwich, Japanese Educational Institute, Card No. 1 (printed 11/28/05), copy annexed hereto as Exhibit A. See also N. Vigdor, “Holiday reprieve / Property owners’ assessment notices are still in the mail,” Greenwich Time, November 24, 2005, at p. 1, copy annexed hereto as Exhibit B.

5. The PTA is not suggesting that JEI had to accept the Assessor’s exact figure. We are saying, however, that the Greenwich Township valuation (“GT Valuation”) raised a red flag that no responsible fiduciary could ignore. At the very least, the JEI Board of Trustees should have postponed voting on the \$20 million contract and commissioned a current independent appraisal.

6. The Trustees' behavior is not surprising, however, once the facts as to the real reasons why JEI is trying to sell the Greenwich Campus to WFHA are brought out.

7. To begin with, there is no educational or fiscal need to sell the Greenwich Campus. Further along in this affidavit I will take refute JEI's economic justification for selling. For the moment, I will simply say that JEI would be much better off renting unused space on the campus to raise revenue than selling this rapidly appreciating tax-exempt property for \$6.8 million below its FMV. For all of JEI's talk about the problem of declining enrollments at JSNY, one can hardly think of a way to inflict greater harm on the expectations of current school families and of potential enrollees than selling off JSNY's home without identifying another quality facility that will become its new permanent home.

8. JEI would have the Court believe that it made an impartial policy decision to sell the Greenwich Campus and thereafter began to search for a buyer. The sequence of events was exactly the opposite. The idea of selling the campus to WFHA came first, and justification for the sale was created afterwards, with JEI avoiding or ignoring any outside bids that competed with WFHA.

9. The Contract is signed by WFHA's Vice President, Mr. David A. Messer. Mr. Messer and his wife live on an adjoining property. Mr. Messer was the President and CEO of Sempra Energy Trading.

10. In 2000, Mr. Messer was introduced to JEI's new Executive Secretary, Shigehiko Matsumura. Mr. Messer and Mr. Matsumura began communicating and meeting on a regular basis. See Affidavit of Tatsuo Takahashi sworn to on March 21, 2006 ("Takahashi Aff."). Mr. Matsumura instructed JEI staff to accommodate special requests from Mr. Messer regarding the property. Id. See also Memo dated April 25, 2001 from Matsumura (initialed) to Mr. Takahashi

re: Mr. Messer (handwritten original in Japanese language except for the English language term “Mr. Messer,” and certified translation into English language), copy annexed hereto as Exhibit C.

11. Mr. Messer and WFHA were deeply involved in communications about purchasing the Greenwich Campus before the JEI Trustees even voted to approve the concept of selling the property to anyone at all on March 24, 2004. See Proposal to Purchase and Lease Back the Campus of the Greenwich Japanese School, submitted to JEI Board of Directors by Westchester Fairfield Hebrew Academy dated February 5, 2004, copy annexed hereto as Exhibit D. See also Letter dated February 2, 2004, from T. Heagney to WFHA Board of Directors (mentioning involvement of Mr. Messer), copy annexed hereto as Exhibit E. There can be little doubt that the purpose of the vote on March 24, 2004 was to push ahead with a pre-existing plan to sell to Mr. Messer’s organization. Indeed, Trustees Nagato and Kurihara commented on the lack of discussion of the educational issues. See Minutes of Board Meeting 3/24/04, Exhibit Z annexed hereto.

12. The deal was kept secret from the PTA for more than a year, and when it was finally revealed, it was presented to the parents as a fait accomplis. Undaunted, the PTA worked up a strong critique of JEI’s selling plan and developed sound alternative plans including written offers from one responsible party to rent unused space on the campus for five years (a significant revenue flow) and from another responsible party to buy a sliver of the campus for a large sum of money (for an infusion of cash).

13. The parents’ objections to the sale plan led to heavy handed pressure to force the sale to completion.

14. A prestigious JEI Trustee, Motoatsu Sakurai, gave a speech to a gathering of parents in which he said in his business capacity he had a meeting with a corporate executive

who was also a trustee of WFHA and that in this business setting the other executive brought up the issue of JSNY parents objecting to the sale of the Greenwich Campus. The same day as his speech to the parents Mr. Sakurai told me in a side conversation that the WFHA-connected businessman had threatened a lawsuit against JEI alleging anti-Semitism if the sale did not go through. Also that day another JEI officer told me that in the contract negotiations a WFHA representative warned JEI that it had a United States Senator on its side.

15. At the time, Mr. Sakurai was President and CEO of Mitsubishi International Corporation, headquartered in New York and wholly owned by the Tokyo based Mitsubishi Corporation. See Press Release dated April 1, 2003, Mitsubishi International Corporation, “Motoatsu Sakurai Appointed President & CEO of Mitsubishi International Corporation” copy annexed hereto as Exhibit F. In the beginning of 2005, the trade press reported a \$500,000,000 contract involving a subsidiary of Sempra Energy (the parent of Mr. Messer’s company) and a subsidiary of Mitsubishi Corporation (i.e. a sister corporation of Mr. Sakurai’s company). I have annexed copies of some articles about the half billion dollar contract as Exhibit G.

16. WFHA carried out its threats.

17. On the legal front, WHFA’s lawyer sent a letter to the President of JEI threatening to sue JEI for race discrimination. See Letter dated July 13, 2005 from R. Emery to K. Sakamoto, copy annexed hereto as Exhibit H. See also Letter [in response] dated July 26, 2005 from D. Schwarz to R. Emery, copy annexed hereto as Exhibit I.

18. On the political pressure front, Sen. Joseph Lieberman called Amb. Hiroyasu Ando, Consul-General of Japan in New York. Besides being Japan’s second highest ranking

diplomat in the United States, Amb. Ando was the Honorary President of JEI.⁴ Amb. Ando later told the then PTA President, Mr. Takanori Adachi, that Sen. Lieberman expressed concern that the contract was being delayed because of the parents' objections. Amb. Ando also said that he made a special trip to Washington to reassure Sen. Lieberman about the sale of the Greenwich Campus to WFHA. Mr. Ando's Deputy Consul-General, Hiroshi Sato, confirmed these facts in a meeting attended by me, Mr. Adachi, and two mothers from the PTA. See Affidavit of Takanori Adachi sworn to on March 23, 2006 ("Adachi Aff."); Affidavit of Kyoko Kajiwara sworn to on March 27, 2006 ("Kajiwara Aff."); and Affidavit of Hamako King sworn to on March 27, 2006 ("H. King Aff."). Mr. Sato, by the way, is a JEI Trustee.

19. Mr. Messer, his wife, and his corporation's political action committee (Sempra PAC) are major political contributors to Sen. Lieberman, to the Democratic National Committee, and to politicians allied with Sen. Lieberman. See Affidavit of Jade Joan Hon sworn to on March 21, 2006 ("Hon Aff.").

20. Mr. Sato also told the four of us that it was impossible to stop the sale of the Greenwich Campus for at least two reasons. First, JEI was afraid of being sued for race discrimination by WFHA. Second, the JEI Trustees were angry at the parents (many of whom are employed by the various trustees' business corporations) for challenging their authority, so they would never change JEI's plans in response to the parents' grass roots protest. Adachi, H. King, and Kajiwara Affs.

21. Mr. Sakurai recently moved from his corporate CEO position at Mitsubishi International Corporation to become the Consul-General of Japan in New York. See "Ex-

⁴ Annexed hereto as Exhibit J is a copy of the first version of page 1 of JEI's Petition Exhibit A, including "Amb Hiroyasu Ando/Honorary President" at the top of the list of JEI Trustees. JEI subsequently removed Amb. Ando's name from this exhibit.

Mitsubishi executive picked as Japan consul general for New York,” dateline March 23, 2003, www.crisscross.com/jp/news/367756, copy annexed hereto as Exhibit K. This is a striking illustration of how the JEI Board of Directors is enmeshed in a seamless web of Japanese government and Japanese multi-national corporation relationships and interests.

22. In short, there never has been any merit to JEI’s plan to sell the Greenwich Campus. The plan was conceived specifically to transfer the property to Mr. Messer’s organization. When the parents showed that the plan was harmful and unnecessary, JEI nevertheless approved the sale to Mr. Messer’s organization at a price that is \$6.8 million below FMV. JEI based its decision on political, diplomatic, legal, and business considerations, none of which should play a role in the management of the programs and assets of a not-for-profit organization.

23. JEI’s Petition gives the Court a fundamentally misleading picture of how JEI determined the necessity of selling the Greenwich Campus, why it accepted a price of \$20 million from the particular buyer, and why it rejected the PTA’s objections and proposed alternatives.

24. Several material allegations in the Petition are outright falsehoods. For example, JEI claims that it vigorously marketed the Greenwich Campus. In fact, WFHA was the chosen purchaser before the property was “for sale.” The Board package for the March 2004 meeting already included the detailed WFHA proposal for a sale and lease back. Exhibit D. The vote in March 2004 was a de facto approval of selling to WFHA under the guise of a general policy decision to begin to offer the property for sale. JEI’s subsequent marketing of the property was so feeble that it seemed designed to eliminate competition to the favored party. JEI’s Executive Secretary apparently tried to deflect, misdirect or minimize any inquiries that came in. See, e.g.,

Letter dated March 13, 2006 from Mie Glenn, Sotheby's International Realty, to E. Jachmann, copy annexed hereto as Exhibit L; see also infra at ¶¶ 66-77.

25. The Petition falsely says that JEI could not consider the excellent \$500,000 per year (plus operating expenses) rental offer⁵ that the PTA procured from the British Schools of America (BSA) because the BSA had a poor credit standing and an inadequate track record. Pet. ¶ 33. In truth, the BSA and its parent organization are financially sound organizations with a track record in the United States and abroad for starting and operating excellent private schools. See Letter dated March 15, 2006 from Daniel A. Lukas of Structured Development, LLC to Whom It May Concern re: business reputation, operating standards and financial viability of WCLS Group Limited (parent of British Schools of America), copy annexed hereto as Exhibit N; and Press Release dated March 6, 2006, "The British School of Chicago Announces Plans for New Location in Lincoln Park" copy annexed hereto as Exhibit O. See also Exhibit M.

26. In the following section I will describe the interests and goals of the PTA. Then I delve more deeply into the facts based upon my personal knowledge and the results of research and inquiries. First, I will focus on how the \$20 million price (and leaseback arrangement) is far below fair consideration. Second, I will present facts showing that the Contract is not in the fiscal and educational interests of JEI. I will show, for example, that JEI's economic rationale for selling the Greenwich Property is plainly wrong, and is now being used as a pretext for selling the campus to a party with business and political connections that made it a favored buyer from the start.

⁵ See Letter dated September 19, 2005 from D. Hallahane, CEO of WCLS Group, to K. Sakamoto, JEI President, copy annexed hereto as Exhibit M.

The Interests and Goals of the PTA

27. The PTA will be 30 years old in June. It was formed shortly after the school was founded. The PTA has worked ever since to promote quality education for its students.

28. The PTA is comprised of the parents whose children are enrolled in JSNY, and of the school's pedagogical staff. There are approximately 170 families that have one or more children in the school. The parents from these families make up a large majority of the PTA members.⁶ These JSNY families are beneficiaries of the corporation that was created by the University of the State of New York

29. I am a PTA member because my wife and I have a child who entered JSNY as a first grader, and now is in third grade.

30. In many of the PTA families, the father/husband is a Japanese citizen employed by one of the 37 corporations that fill seats on the Board of Trustees.

31. In October 2005, I became the PTA's 22nd President. Before I became President, I was already active on a PTA working group addressing JEI's proposal to sell the Greenwich Campus (the "PTA Task Force").

32. JEI attempts to undermine the credibility of the parents by saying that we simply desire "to continue [the] luxury" of operating with 220 students on a campus zoned to accommodate 450 students. Petition ¶ 57. This falsifies both our motivations and our position on the merits of the proposed sale.

33. The parents have repeatedly told JEI that it should rent the unused space on the campus to another school rather than sell the campus without having a long term plan for our school. Our lawyer wrote to JEI's counsel to confirm that we wanted JEI to offer a long term

lease to WFHA in lieu of selling WFHA the campus and leasing space back from it. See Letter dated September 19, 2005 from A. Block to D. Schwarz at p. 2, copy annexed hereto as Exhibit P.

34. The PTA Task Force searched out other potential lessees and quickly found the British Schools of America (“BSA”) which promptly made a concrete written offer to JEI to rent part of the campus for 5 years. Exhibit M. This shows that JEI’s insinuation that our priority is to keep all of the underutilized campus for ourselves is a deliberate falsehood intended to make us look spoiled and selfish.

35. JEI also insinuates that we don’t care about the approximately fifty families that send their children to JEI’s New Jersey day school or about the hundreds of other families that have children enrolled in JEI’s afterschool/weekend programs. This is a smokescreen to obscure the PTA’s proposals for strengthening the overall finances of JEI and to reverse the decline in enrollment in JEI’s programs, which are far superior to JEI’s proposal to sell its flagship campus unnecessarily and to waste at least \$6.8 million in charitable assets.

36. JEI also tries to argue that because it will acquire a lease for use of part of the Greenwich Campus, the parents have nothing to be concerned about. In truth, there are many reasons why the lease arrangements impair both the short term and long term interests of the parents/students beneficiaries of JEI.

37. The existence of the lease is no guarantee that JEI won’t close its flagship program in Greenwich in the very near future. The terms of the lease explicitly allow JEI to terminate after three years. As a practical matter, JEI probably could leave even sooner. After

⁶ The PTA’s decision to oppose the proposed sale of the Greenwich Campus was made through a ballot of the parent members. The JSNY staff members were not put in a position to potentially oppose their employer.

all, JEI claims that it is paying far less than a market rental rate. If that is true, then WFHA should be delighted to have JEI leave sooner so that it could rent the space at a higher price to another party (or use some or all of the vacated space to accommodate WFHA's planned expansion of its student body and increase its tuition income).

38. JEI decided in March 2004 to delay unification of the New Jersey and New York Day Schools for 3-5 years.⁷ Under its own official timetable that would mean closing the Greenwich Campus as soon as March 2007.

39. JEI's sale of the Greenwich Campus, together with its perceived ability to vacate the campus altogether within a year or two leaves current parents and recruitment prospects guessing about where JSNY will be located in the next 2-3 years. It also leaves them with grave doubts about the quality of education in the school in years to come.

40. The enrollment cap in the lease means that JEI is giving up on increasing enrollment at JSNY. JEI's excuse that demographic trends doom a growing, vibrant school community will now become a self-fulfilling prophesy.⁸ In fact, there are positive signs in our community indicating the opposite. For example, in recent years the local Japanese kindergarten has filled all of its available seats and has a waiting list. This should be a natural feeder school into JEI's first grade.

41. If JEI truly intended to continue to operate a quality Japanese language day school in the Greenwich vicinity, then a) it would not sell the Greenwich Campus at all, but would lease

⁷ "On March 24, 2004, the board of trustees approved the postponement of the plan of integration for three to five years." Minutes of JEI Board Meeting March 24, 2004, copy annexed hereto as Exhibit Z. Financial Statements, Note 1, Petition Ex. E.

⁸ JEI claims that it tried to increase enrollments, without success. To the best of my knowledge, JEI's efforts in this regard were very minimal.

out unused space; or b) it would not sell the Greenwich Campus until it had secured a quality facility in the Greenwich area into which to move JSNY.

42. JEI's ill-conceived plan seems designed to trigger a further decline in enrollment at JSNY which JEI will be able to use to rationalize closing the Greenwich operation altogether, closing the existing New Jersey day school, and opening a very scaled down facility in upstate New York.

43. The New York metropolitan area is a very important part of the world for Japanese expatriate families, and for mixed families (like my own) that want to educate their children to be successful and sophisticated both in American and Japanese societies and institutions. JEI's Japanese language day schools are needed to provide full-time educational programs for these children. JSNY is the only school providing this educational opportunity in the New York City – Southwest Connecticut area.

44. While the parents of the PTA are, of course, interested in the impact of the proposed sale of the Greenwich Campus on their own children, our 30-year-old PTA is also interested in the continuation, growth and improvement of the JSNY facilities and programs for the present and future community of families that want access to a quality full-time Japanese school for their children.

\$20 Million Is Far Less Than Fair Consideration

The Fair Market Value of the Greenwich Campus is \$26,800,000

45. JEI is asking the Court to approve a sale price of \$20 million. JEI already admits that its proposed price is \$1.7 million less than the fair market value ("FMV"). See Petition Exhs. F & G. In truth, the FMV is \$26.8 million. See Kerin Appraisal.

46. JEI's figure is based upon an out-of-date appraisal report from May 2004, a year and a half prior to the contract date. Pet. Exh. F. The May 2004 valuation was merely \$20 million. But JEI attempts to bootstrap its stale appraisal report using a page and a half letter which supposedly updates the value to \$21.7 as of August 4, 2005 (which is still more than four months before the contract date). Pet. Exh. G. JEI's perfunctory letter does not incorporate any recent sales data. It merely extrapolates from the outdated original report using gross market trends in land and construction prices.

47. The PTA's attorney advises us that JEI's stale appraiser's report would not be even minimally adequate to a petition of this kind even if it were not starkly contradicted by an independent appraisal, as in this case.

48. The Kerin Appraisal proves that JEI's stale appraisal is way off the mark. Mr. Kerin is a licensed and highly qualified real estate appraiser.⁹ He determines FMV in accordance with professional standards. Furthermore, Mr. Kerin uses fresh data and he determines FMV as of the contract date of December 12, 2005.

49. JEI was provided with a copy of the Kerin Appraisal, and its attorney wrote a letter criticizing it. Mr. Kerin responds to the lawyer's criticisms in his affidavit being submitted herewith.

50. In short, the Petition is not supported by a valid appraisal report, but the PTA's objections are supported by a timely and valid independent appraisal. The properly appraised FMV exceeds the proposed sale price by \$6.8 million, or 34%.

51. JEI had plenty of notice that its stale appraisal was very inaccurate.

⁹ See Outline of Qualifications annexed to Kerin Aff. as Exh. B and also appended to the Kerin Appraisal.

52. For example, JEI admits that it received a bid of \$23 million in March 2005. Pet. ¶ 39. That bid was coupled with an offer to lease back part of the campus to JEI for four years!

53. As described below, the \$23 million bid came in without a serious marketing effort by JEI. It should have expected that the \$23 million bidder might go higher, especially after a nine month rise in real estate values, and that if the market was tested much higher bids could be received.

54. JEI's excuse for rejecting the offer of \$23 million out of hand was that it was essential to have a lease for more than four years. But the Petition does not indicate¹⁰ that JEI made any genuine attempt to resolve that issue by negotiation.

55. Furthermore, property owners in Greenwich were anticipating the results of the 2005 Greenwich Township re-evaluation.

56. On November 23, 2005, the Town of Greenwich issued a real property assessment notice to JEI stating that the fair market value ("FMV") of the Greenwich Campus as of October 1, 2005 was \$28,286,100.¹¹

57. This much-anticipated notice was sent to JEI before the JEI officers put the Contract before the Board of Trustees for a vote. JEI's Petition and attached meeting minutes give no indication that the JEI Trustees considered the Greenwich FMV determination of \$28,286,100 when it voted to sell the Greenwich Campus for \$20 million. JEI's court papers make no mention of the valuation at all.

58. JEI undoubtedly will attack the Greenwich valuation, saying that it is much too high and that real estate tax valuations on exempt property are not taken seriously. That misses

¹⁰ JEI does not identify the alleged bidder. The PTA urges that the Court insist on disclosure of this information so that it will be possible to investigate the accuracy and completeness of JEI's description of this truncated negotiation.

¹¹ A copy of the summary page of the assessment for this property is annexed hereto as Exhibit A.

the point. If the PTA was depending on the Greenwich Township figure, then the PTA would not have commissioned an independent appraisal.

59. A Board of Trustees cannot in good faith approve a contract for \$20 million supposedly justified by a stale appraisal when the government authority has made a current value determination that exceeds the sale price by 42%.

60. If JEI had exercised due care, it would have invigorated its marketing efforts and commissioned a fresh appraisal report before signing a contract at \$20 million, nine months after receiving an offer of \$23 million in a period of rapidly rising real estate values in Greenwich.

61. The significance of the Greenwich valuation is what it shows about gross lack of due diligence before signing the contract and, at worst, a deliberate effort to give a particular buyer a special deal.¹²

The Lease Back Terms Do Not Offset The Undervaluation Of \$6.8 Million

62. JEI's rationale for selling the property to its favored bidder (see below) for \$1,700,000 less than JEI's alleged FMV is that the lost consideration in the purchase price was offset by a savings from receiving "substantially below market rent." Petition ¶ 5. This excuse dissolves under scrutiny.

63. First, it is very questionable that the lease back arrangement necessitated a lowering of the purchase price from fair market value rather than an increase. It is very advantageous for a purchaser like WFHA to purchase the property with a uniquely suitable tenant in place paying rent for parts of the premises that the purchaser could not use itself for several years. There were many potential buyers who could not use all of the space right away and

¹² The Petition does not indicate whether or not JEI, before deciding to rely upon the flimsy appraisal update letter, either obtained a full current appraisal that returned a much higher figure, or obtained an informal expert opinion that

would welcome a quality tenant while they enlarged their program and grew into their new facility.

64. Second, if JEI's own financial statements are to be believed, then JEI's rent is merely a fair rent, not a sweetheart deal. The last schedule of JEI's Financial Statements represents that the rental "cost" of the Greenwich Campus is \$440,000. See Petition Ex. E at "Schedule 3," column "All-Day Greenwich," row "Rent." By comparison the "Base Rent" established in the proposed lease is \$434,949. See Petition Ex. D at Annex III. The figures are almost identical!

65. Third, if JEI is achieving any theoretical savings, it is a relatively small amount that arises merely from WFHA's carrying of the rent for about a third of the space. (The amount is very small compared to a \$1.7 million price reduction; it is tiny compared to a \$3,000,000 reduction (i.e. the March 2005 offer of \$23 million); and it is infinitesimal compared to a \$6.8 million price reduction.) The "saving" is reduced further if JEI leaves the premises before the maximum term of eight years, which is very likely to occur. (As noted above, JEI's official plan is to consolidate New Jersey and New York as soon as Spring 2007.) Also, any "saving" is offset by JEI's loss of the rental income from the Chapel, the summer school, and any other rentals that JEI could have realized by remaining the owner.

JEI Did Not Make A Bona Fide Effort To Market The Property

66. JEI did not make a bona fide effort to test the market and determine the highest price it could realize from a sale of the Greenwich Campus.

67. The JEI Board of Trustees first approved of the concept of offering the Greenwich Campus for sale on March 24, 2004. Significantly, a month and a half before this Board vote,

if a new appraisal was done then the FMV determination would be millions of dollars greater than even the

WFHA had already submitted a detailed written proposal to purchase and lease back the campus.
Exhibit D.

68. In theory, JEI should have been marketing the property in earnest in April 2004 and for the next year and a half. That is not what JEI did. Rather, in Spring 2004 the Executive Secretary of JEI and the President of JEI acted as if they wanted to avoid receiving any offers that would be competitive with WFHA's bid.

69. Ms. Mie Glenn is an agent with the largest real estate company in Greenwich, Sotheby's International Realty. She has provided a written report "about what I experienced with Japanese School of Greenwich during the spring of 2004." See Exhibit L.

70. Ms. Glenn reports that she received a call from a local attorney in April 2004, asking her to find out if the Japanese School was for sale, because he had a client who was a potential buyer. Next, she says:

I immediately called our commercial division in my office to find out if the school is on the market for sale. (We have MLS system to find any properties for Sale in the state of Connecticut, if they are listed for sale.) After I spoke with a sales representative of commercial division, I found out that they could not find the school listed for sale, and I had to find out the fact from the school directly.

Id.

71. This led Ms. Glenn to JEI's Executive Secretary and to the office of JEI's President, to no avail:

I immediately called Mr. Matsumura at Japanese School and reported him that I have a potential buyer for the school, and I wanted discuss about it. Mr. Matsumura asked me to call Mr. Kashima at Marubeni [JEI President Sakamoto is CEO of Marubeni] regarding any sales transactions of Japanese school. I called Mr. Kashima and left a message instantly with my phone numbers to call me back to talk about the sale of Japanese school. Since I did not receive any calls back, I left at least 4 messages over the next 2 weeks to call me back in Japanese and

\$21,700,000 figure in the letter.

English explaining that I have a potential buyer. I never received any calls back after several attempts to talk to him, so I finally spoke with Mr. Kashima's secretary and left a message to call me back, but I never heard back from him.

Id.

72. Thus, JEI's lack of interest in communicating with potential buyer was present merely a month after the Board supposedly authorized commencement of marketing. JEI's indifference to parties other than WFHA was also observed from within the school. See Affidavit of Tatsuo Takahashi sworn to on March 21, 2006 at ¶¶ 32-36. Mr. Takahashi was the Facility Manager. He observed little realtor activity on the campus. He was asked to give limited tours to a couple of prospective bidders, but JEI official did not participate in his tours. Nor did JEI officials brief him on how to conduct tours for prospective purchasers. He was told to refer all telephone inquiries to Mr. Matsumura's office. By contrast, when it came to WFHA, he saw JEI officials personally take them on one or more tours.

73. The vague and conclusory allegations in the Petition about JEI's supposed marketing efforts are consistent with the evidence that JEI was not trying to elicit an offer that was competitive with WFHA's proposal.

74. JEI's story is that it initially engaged a broker to help it buy a property. Later, it asked the broker to check around with nearby schools to see if any of them wanted to buy the Greenwich Campus.

75. The Petition does not aver to the dates and scope of advertising of the property for sale, and when, if ever, the property was entered into multiple listings.

76. JEI's alleged determination that the property would only be of interest to nearby schools was grossly negligent. Assuming for the sake of argument that the property would only be suitable for use as a school, then JEI should have widely advertised its property on the Internet

and in local, national and international publications that reach educational institutions. An organization or institution based far from Greenwich, Connecticut might be interested in opening a facility there. I proved this to be true when I easily made contact with the English company that operates the British Schools of America (“BSA”). BSA did not have any existing school in the area and it wanted to open a new one here

77. To get the highest price, the property should also have been marketed for uses other than a private elementary and secondary school. It is suitable for other educational, training, religious or spiritual organizations. JEI says it had to limit its target audience to schools that were suitable for sharing the campus. But that begs the question as to what the highest bid would have been with a real marketing effort.

78. Even JEI’s woefully inadequate marketing effort yielded a bid of \$23 million. A real marketing effort may have yielded bids in the range of \$23 - \$30 million, or higher.

79. One of the homeowners with an adjoining property offered to buy a one acre sliver of land from JEI for fair market value, which would be over a million dollars, and to assume the risk of obtaining any necessary regulatory approvals. See Letter dated October 4, 2005 from Alan Breed to Kazuhiko Sakamoto (a copy of the letter is the fourth page of Exhibit Q.)

80. Both the BSA rental offer and the neighbor’s offer to purchase unneeded land were facilitated by the PTA Task Force, in order to give JEI better alternatives for its alleged financial needs than selling the Greenwich Campus.

81. The PTA Task Force developed these potential deals after JEI’s President, Mr. Sakamoto, stated to a large group of parents and PTA Task Force members that if the PTA

could bring forward a concrete proposal that is better than the JEI Plan, then he would consider such proposals as alternatives to selling the campus.

82. But as soon as we made rapid progress in building concrete proposals JEI moved swiftly to shut down our efforts.

83. One of JEI's lawyers dispatched letters to the BSA representative and to the neighbor rejecting their offers out of hand, and simultaneously wrote a demand letter to the PTA's outgoing President (Mr. Adachi) telling the PTA to "immediately cease all . . . activities" aimed at obtaining alternative offers to JEI regarding the property.¹³

84. A few weeks later JEI's President sent me (as the new PTA President) a letter demanding that I stop the PTA mothers and fathers from trying to speak directly with the JEI trustees or their corporate sponsors about the problems with JEI's proposed plan and about the merits of the PTA's alternatives.¹⁴

JEI Is Trying To Sell The Property To A Favored Buyer

85. This is a classic example of an attempted sale of charitable assets to a favored buyer, WFHA.

86. In the first phase of the proposed transaction, WFHA was a favored buyer because the plan to sell the property was conceived with Mr. Messer's organization pre-selected as purchaser. This is described in my introduction section, and supporting facts are set forth as well in the Takahashi Affidavit.

¹³ See Letter dated October 7, 2005 from P. Batten, Esq., Bingham McCutchen Murase, to T. Adachi, PTA President, (with four letters enclosed - 9/19 Hallanahane to Sakamoto, 10/4 letter Breed to Sakamoto, 10/6 Batten to Hallanahane; 10/6 Batten to Breed), copy annexed hereto as Exhibit Q.

¹⁴ Letter dated October 21, 2005 from Kazuhiko Sakamoto, JEI President, to Emil Jachmann, PTA President, copy annexed hereto as Exhibit R. I declined to muzzle the mothers and fathers of the PTA. See Letter dated October 28, 2005 from E. Jachmann to K. Sakamoto, copy annexed hereto as Exhibit S.

87. In the second phase, JEI treated WFHA as a favored bidder by refraining from engaging in a serious marketing effort.

88. The third phase of the favored bidder status was more unusual. When the PTA's objections to the sale of the campus delayed the contract negotiations, WFHA directed legal threats and political pressure at its benefactor. WFHA forced JEI to resume a sales process that had been suspended.

89. I briefly describe the legal threat and political pressure in my introduction. I will now provide some additional detail about the WFHA's unfounded charge of anti-Semitism.

90. After hearing about JEI's sale plan, the PTA developed superior alternative plans, most notably the plan to retain ownership and control of the Greenwich Campus and to raise revenues for JEI by renting unused space to WFHA, BSA, or another suitable campus-sharing partner.

91. Although the PTA's position was that JEI should not sell the campus at all, a lawyer for WFHA sent a letter to JEI accusing the parents of being anti-Semitic and alleging that opposition to the transaction was based on the parents not wanting to share the campus with Jewish children. WFHA's lawyer demanded that JEI conclude a sale contract immediately, threatening a civil rights action against JEI for invidious discrimination if the sale did not go through. Exhibit H.

92. Around the time of this legal letter, we learned about Sen. Lieberman's communications with Amb. Ando, who was simultaneously the Honorary President of JEI and the Consul-General of Japan in New York. We heard that Sen. Lieberman said that he had a good opinion of WFHA and he knew that JEI was experiencing some resistance to the sale from the JSNY community. He reportedly requested Mr. Ando to "watch over" the sale to ensure its

consummation. Sen. Lieberman also said that he had heard the resistance to the sale was based on anti-Semitism within the JSNY community. This comment so alarmed Ambassador Ando, who is the honorary President of JEI, that he promptly flew to Washington to assure Sen. Lieberman in person that JEI and the Japanese parents were not anti-Semitic.

93. JEI's attorney wrote a letter to Mr. Emery in which he denied the charge of anti-Semitism. Exhibit I.

94. The PTA had its attorney write to JEI's attorney to make absolutely clear that the parents would be happy to have their children share the campus with the WFHA children. The PTA's position was that JEI should retain ownership of the campus and rent to WFHA (or another school). Exhibit P.

95. A Jewish teacher at the JSNY heard about the anti-Semitism charge leveled against the school community in which she worked. She wrote a letter strongly disputing that there was any anti-Semitism at the school, and describing how the school welcomed her and supported her efforts to include speakers and information about Jewish culture and history on to the campus. See Undated letter from Beth Sandler to JEI Board of Trustees, copy annexed hereto as Exhibit T.¹⁵

96. WFHA's accusation of anti-Semitism became the subject of a front page article in a local newspaper. See "N. Vigdor, "Bias accusations dog Japanese School sale," Greenwich Time printed October 7, 2005, copy annexed hereto as Exhibit V. Local residents with knowledge of the school wrote to the paper to attest to the decency and community spirit of the parents. Copies of the published letters are annexed hereto as Exhibits W and X.

¹⁵ A copy of Ms. Sandler's letter was attached to a letter dated October 25, 2005, from the PTA's attorney to JEI's attorney. Letter dated October 25, 2005 from A. Block to D. Schwarz, copy annexed hereto as Exhibit U.

97. Also, I should note that since 2000, JEI a Jewish Summer Camp, Gan Israel, has been renting part of the campus. The Jewish Camp bestowed on JSNY a plaque thanking the JSNY community for welcoming it onto its campus.

98. Despite JEI's strenuous denial of the anti-Semitism charge, and despite Ambassador Ando's assurance to Sen. Lieberman that the Japanese parents and school staff were not anti-Semitic, JEI's trustees told the PTA representatives that the sale to WFHA had to be completed so that JEI would not be sued, and so that the JEI-related business corporations and Japanese Government would not suffer the embarrassment of a public charge of racism.

99. Whatever was JEI's original motivation for keeping JEI as a favored bidder, after receiving the WFHA legal threat and the communication from Sen. Lieberman, JEI's trustees told PTA representatives that JEI must go through with the sale to WFHA no matter how compelling were the alternatives presented by the PTA.

100. JEI proceeded to sign a contract with WFHA to sell the property for \$6.8 million below FMV, and added on as a final exhibit to the contract a general release from WFHA to JEI and its trustees.¹⁶

The Proposed Sale Does Not Further JEI's Educational Purposes

The Proposed Sale Will Weaken JEI's Financial Position

101. The Petition conjures up a financial crisis and tries to blame it on JEI's ownership of the Greenwich Campus. Then, using flawed reasoning and a dearth of hard financial facts, JEI incorrectly asserts that the sale of the Greenwich Campus will resolve the supposed crisis.

¹⁶ The contract is Petition Ex. D, and the release is marked as contract exhibit "L-2." It is my understanding that a general release by the buyer to the seller is not a standard part of a real estate contract.

102. The unnecessary sale of an organization's assets at a loss of \$6.8 million is hardly the way to strengthen the organization's long term financial picture. This is especially so when the asset is tax exempt real estate that is rapidly appreciating in value.

103. The proposed sale is also indefensible because there are better alternatives for improving both the short-term and long-term financial picture of JEI.¹⁷

There Is No Financial Crisis

104. JEI's latest financial statement reports cash, cash equivalents, and investments totaling \$4,468,364. Petition Ex. E, "Statements of Financial Position."

105. The same report shows that JEI's current assets exceed its current liabilities by over \$4 million.

106. JEI owns un-mortgaged real estate that is worth \$26.8 million, and its only long-term debt is just \$1.2 million.

107. Without acknowledging that JEI is asset rich and has substantial liquidity, JEI makes the alarmist statement that the organization's cash on hand decreased by \$1.06 million in 2004. Petition ¶19. This figure is not broken down or explained¹⁸

108. By contrast, the "Schedule of Activities" for the year ended March 31, 2005 reports a decrease in net assets of \$359,445. This is 8% of JEI's cash and investments on hand.

109. Most important, the decrease in net assets can easily be eliminated in the future and transformed into an increase by leasing part of the Greenwich Campus to WFHA, the BSA,

¹⁷ At one point President Sakamoto told the PTA that if the enrollment could increase to 300 then the alleged financial problem with JSNY would be resolved. Later he simply withdrew his representation. See Adachi Aff. This is one example of JEI's manipulation of the financial issues.

¹⁸ JEI used a similar scare tactic in its communications with the JSNY parents. JEI sent the parents a letter stating that a JSNY tuition increase of \$4,000 was required to cover a JSNY deficit. This letter was very misleading because the \$4,000 increase would have corrected the combined deficits of all four schools, if paid only by the JSNY parents.

or another school or compatible organization. For example, BSA offered to pay rent of \$500,000 per year and also to pay JEI \$300,000 per year to cover maintenance expenses.

110. JEI alleges that BSA was not a responsible bidder, that it was not credit worthy. Pet. ¶ 33. JEI gives no support for this assertion, and it is plainly false. To begin with, the representations in the original offer letter (Exhibit M) from Mr. Hallahane to Mr. Sakamoto could have been verified. For example, at my request BSA has provided a third party letter of reference from a real estate developer in Chicago that signed a 15 year lease with BSA companies in connection with a major new school project. Exhibit N. JEI also alleges that BSA has no track record. Both the Halahane letter and a recent press release about the Chicago school project (Exhibit O) shows that BSA has an excellent track record.

111. JEI asserts that it cannot increase its revenues by renting part of the campus because any rent it received would have to be turned over to the Government of Japan. This is a startling argument to be made by a supposedly independent New York State educational corporation.

112. JEI is the title owner of the Greenwich Campus. JEI does not identify any legal instrument that forces it to remit rental income to the Government of Japan. JEI does not even submit evidence that there is a Japanese Government policy, edict or regulation that would somehow be binding on JEI to that effect.

113. Assuming that the Japanese Government has an interest in the long-term financial health of JEI and its programs, it is not even plausible that the Japanese Government would want JEI to commit waste of \$6.8 million in assets by selling the property because JEI was deterred from simply leasing part of the campus by a government demand that JEI give it the rental income.

114. If it is true that the Japanese government would expect to recoup some of its contributions to JEI if JEI rented part of the campus, then it would seem that the Japanese government would have an even stronger expectation to be refunded some of its investment in the Greenwich Campus from the proceeds of the sale.

115. Given the substantial financial support the Japanese Government has given to the cost of owning and developing this asset, is the government going to let JEI sell it and keep all of the money for JEI's use? ¹⁹ If the government would let JEI keep the \$20 million proceeds of this proposed sale, then why wouldn't it let JEI keep \$500,000 per year in rental income? Or at least enough of the rental income to balance the JEI budget?

JSNY Is Not The Cause Of The Alleged Deficit

116. JEI uses creative accounting to blame JSNY for the entire alleged JEI deficit of about \$360,000. Schedules 2 & 3 of the Financial Statements unfairly assign expenses to JSNY and divert revenues away from JSNY (see columns headed "All-Day Greenwich").

117. Schedule 3 states that JEI incurs an annual rental expense of \$440,000 for the Greenwich Campus. In fact, JEI does not pay any "Rent" at all for the Greenwich Campus because JEI is the owner.²⁰ JEI's financial report characterizes the \$440,000 as a "functional expense."

118. Schedule 2 shortchanges JSNY on the revenue side. The entry for rent is a blank, i.e., \$0.00. But if you read Note 8 to the Financial Statements, you discover that JEI received

¹⁹ JEI's implication that it will not have to give any of the proceeds of the sale of the property to the Japanese government, either directly or indirectly through a reduction in future government subsidies, needs to be closely scrutinized.

²⁰ Note further that the Schedule also includes direct expenses for Repairs and Maintenance, and for Utilities, even though a "landlord" would have been responsible for much of this expense.

\$64,250 in “lease income” from residential leases to faculty members of premises that are part of the Greenwich Campus. This amount should be included with “Revenue” for JSNY.

119. JEI admits that it receives \$25,000 per year in rent for a summer camp rental. Petition ¶ 26. But then JEI arbitrarily excludes this revenue from JSNY’s column on the schedules.

120. JEI even goes to the extreme of excluding from JSNY “revenue” the fees that are received each year for use of the chapel building on the Greenwich Campus.²¹

121. On the revenue side JEI also fails to explain how it can fairly allocate \$273,868 from “Contributions” to the column for its central administration operation, while allocating \$0.00 to JSNY. A not-for-profit organization should not be proud of applying virtually all of its contribution receipts to administrative costs and 0% to the cost of operating its most significant program.

122. The same applies to subsidy revenues of \$1,270,000. JEI merely allocates 5% of its subsidies to the Greenwich Campus program.

123. The so-called JSNY “deficit” that JEI takes from its Financial Statements is utterly lacking in support or credibility. JEI has manipulated its financial reports to make the finances of the JSNY program look as bad as possible. If proper accounting was used, there would be no JSNY deficit.

The Alleged \$1.1 Million In Savings Is A Myth

124. JEI’s justification for the sale of the Greenwich Campus is based upon the assertion that “JEI will improve its financial situation by approximately \$1.1 million annually.” Petition ¶ 5. This claim is unsupported and untrue.

125. A major component of the alleged financial gain is interest income on conservatively invested proceeds of the sale. But such income cannot be counted as a gain resulting from the sale without first deducting the expected appreciation of the real property if it is not sold. In fact, the real property is probably a much better investment than CD's and money market funds. Real estate prices in Greenwich, CT have been rising rapidly. Real estate is an especially beneficial investment for JEI because it does not have to pay real estate taxes in order to remain owner of the asset.

126. At best for JEI, this category of "gain" must be eliminated from JEI's alleged \$1.1 million. At worst, it should be counted as a net loss from selling the asset.

127. The alleged future financial gain also must be reduced by the \$6.8 million that JEI is reducing its net worth by selling the asset at far below market value.

128. Another alleged saving is that JEI will retire a bank loan. The projected reduction in future loan payments has to eliminate the portion of the payments that is repayment of principal. Paying back the principal of a loan has no affect on an organization's net worth.

129. Whether the elimination of future interest payments on the loan is a net financial gain depends on whether the rate of interest exceeds the rate of appreciation in value of the real estate that is being liquidated in order to repay the principal balance of the loan. In this case, the real property is probably appreciating at a rate no less than the 7.4% rate of interest on the bank loan. This category of alleged gain must be disregarded.

130. Another serious error in JEI's rationale is that it ignores the Japanese Government subsidies. The loan was taken out to finance some of the acquisition and construction costs for

²¹ The amount is relatively small. As I found out by talking to professional wedding planners in the Greenwich area, however, it would be a significantly larger revenue flow if JEI used due diligence to obtain bookings.

the Greenwich Campus. My understanding is that one part of the government subsidy ties in with the loan repayment. Hence, it is very possible that when the bank loan is repaid, there will

be a corresponding decrease in the government subsidy.

131. A reduction in government subsidy will worsen JEI's financial position. The supposed savings from eliminating the loan balance will be entirely offset by the reduction in subsidy. Also, because the subsidy was helping to repay loan principal, JEI may be terminating a very beneficial arrangement in which the government subsidy was increasing JEI's net worth with every loan payment.

132. It is possible that JEI will try to counter this point by saying that the Japanese Government has indicated that it will not decrease the subsidy after a sale of the property. But if this were true, then it is hard to believe that the Japanese government would not also be amenable to letting JEI keep all or some of the rental income it could receive if JEI did not sell the Greenwich Campus and leased out part of it, as urged by the PTA.

133. The figure of \$1.1 million is also wrong because it does not take into account JEI's lost revenues from property ownership. As noted above, historically JEI has been receiving about \$65,000 in rent for the faculty residences, \$25,000 for summer camp rental, and fees for use of the Chapel. (The rental income for the non-residential premises, the PTA Task Force has learned, could be substantially increased.)

134. In addition to these historic revenues, by selling the property JEI will give up the opportunity to improve its financial position in years to come by using due diligence to increase Chapel and miscellaneous rental and, most important, to enter into a lease with a school like WFHA or BSA.

135. JEI cannot support the figure of \$1.1 million with a supposed substantial saving in rent payments. To begin with, JEI does not pay rent to itself. In any event, the "functional" rent that JEI carries on its books values the rental cost at approximately the amount as the proposed

lease back. JEI's functional rent is \$440,000; the base rent under the proposed lease starts at \$434,949. The best that can be made out of JEI's rent saving argument is that there is a small "savings" attributable to allocating about a third of the "rent" to WFHA. This small savings is more than extinguished by JEI's loss of rental income from the residences, summer school, chapel, etc., not to mention the other losses it will incur if it sells the property.

136. Finally, JEI does not consider losses in future tuition revenue when it calculates the supposed gain of \$1.1 million. JEI's sale of the campus will almost certainly depress new enrollments and re-enrollments.

137. In conclusion, JEI's claimed financial improvement of \$1.1 million per year must be rejected completely as a justification for selling the Greenwich Campus.

138. JEI's proposed sale of the Greenwich Campus for \$6.8 million below FMV will deal a substantial blow to JEI's financial position.

JEI's Decision To Sell Is Not Based Upon Educational Considerations

139. JEI Trustees have in moments of candor admitted to PTA representatives that the final decision to sell the Greenwich Campus was not based upon educational considerations. The minutes of Board of Trustees minutes that I have seen also reflect a lack of educational considerations in the Board deliberations.

140. As described above, the JEI Trustees wanted to avoid the political and business ramifications of a threatened discrimination law suit.

141. Also, Mr. Sato admitted the Trustees were angry at the parents' challenge to the Trustees' authority and were adamant about not acknowledging the merit of the PTA's arguments. The accompanying Affidavit of Yukio Sasaki describes in detail the closely controlled and authoritarian form of governance practiced in Japanese business corporations. He

also shows that JEI is governed under that model, even though it is an American not-for-profit organization that should be operated on the principles of openness, independence, checks and balances, diversity, and democracy.

142. Particularly striking is how the businessmen who run JEI have utterly disregarded the educational judgment of the JSNY's Principal, Mr. Ryuichiro Toki.

143. At one point in the process JEI's President, Mr. Sakamoto, promised the parents that JEI would not sell the campus without the support of Mr. Toki. Later, Mr. Sakamoto revised his position to be that the sale would not be approved if the Principal opposed it. Then, Mr. Sakamoto sent the parents an inaccurate letter stating that Mr. Toki supported the sale. At considerable personal risk, Mr. Toki then went on record to say that he thought that from the perspective of educational interests the campus should not be sold at this time. I have attached a copy of Mr. Toki's statement in Japanese together with a certified translation into English. See Memo dated October 25, 2005, from Headmaster Ryuichiro Toki to Members of the Japanese Education Council of New York (copy of certified English translation of Japanese original), copy annexed hereto as Exhibit Y.

Conclusion

144. The Court should not approve JEI's proposed plan to dispose of substantially all of its assets. The sale of the Greenwich Campus lacks fair consideration and will not further JEI's educational purposes.

145. Also, the plan was not validly approved by the Board of Trustees because they did not consider crucial information about the FMV of the property. The Trustees either were not informed about or they disregarded the recent GT Valuation of \$28.3 million. They also did not

give due consideration to the alternatives to selling, such as the BSA offer to rent unused space for \$500,000 per year and to pay an additional \$300,000 in operating costs.

EMIL F. JACHMANN

Sworn to before me this
28th day of March 2006

Notary Public