

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO.: 20-cv-81205-RAR**

**SECURITIES AND EXCHANGE COMMISSION,**

**Plaintiff,**

**v.**

**COMPLETE BUSINESS SOLUTIONS GROUP,  
INC. d/b/a/ PAR FUNDING,**

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**PLAINTIFF'S EXPEDITED MOTION TO AMEND RECEIVERSHIP ORDER**

**I. INTRODUCTION**

As addressed during the August 3, 2020 telephonic hearing on Defendant Dean Vagnozzi's Motion for Protective Order, the promissory notes Defendants Dean Vagnozzi, ABFP Income Fund and ABFP Income Fund 2 offered and sold to investors have been exchanged for promissory notes offered and sold by Vagnozzi's other entities. Plaintiff Securities and Exchange Commission now seeks to expand the Receivership to include these other entities in the form of the proposed Order filed with this Motion. The Commission also requests that the Court amend the existing Receivership Order to clarify the Receiver's powers and duties with respect to the entities already under the control of the Receiver.

**II. ABFP INCOME FUND INVESTOR MONIES ARE NOW UNDER THE CONTROL OF SO-CALLED "ABFP INCOME FUND PARALLEL" ENTITIES**

Defendants ABFP Income Fund and ABFP Income Fund 2 are currently in a Receivership pursuant to this Court's Order. [D.E. 36, amended at D.E. 56]. It is undisputed that the promissory notes issued by the ABFP Income Funds have been exchanged for notes issued by the so-called "ABFP Income Fund Parallel" investment funds.

In his Answers to Interrogatories, Vagnozzi, admits that "ABFP Income Fund 1 conducted an exchange offer into ABFP Income Fund 1 Parallel, ABFP Income Fund 3 conducted an exchange offer into ABFP Income Fund 3 Parallel, ABFP Income Fund 4 conducted an exchange offer into ABFP Income Fund 4 Parallel, and ABFP Income Fund 6 conducted an exchange offer into ABFP Income Fund 6 Parallel." (Exhibit A at Interrogatory Answer No. 2(b)). Vagnozzi also

admits that Defendant ABFP Management Company LLC is the manager of the ABFP Income Fund Parallel entities. (Exhibit A at Interrogatory Answer No. 2(c)).

As Vagnozzi's counsel agreed during the August 3 hearing, the accounts of the ABFP Income Fund Parallel entities remain unfrozen, and these entities now hold the promissory notes with Complete Business Solutions Group in which investors invested.

Therefore, for the reasons discussed during the August 3 telephonic hearing in this matter, the Commission seeks to expand the Receivership to include the ABFP Income Fund Parallel entities.

### **III. IF THE COURT GRANTS THE RELIEF SOUGHT, IT SHOULD ENTER THE "MODEL ORDER APPOINTING RECEIVER"**

#### **A. An Order Providing Greater Specificity Will Help Realize The Court's Intent In Appointing the Receiver**

If the Court grants the relief sought herein, it should enter the proposed Order accompanying this Motion, which is the Commission's "Model Order Appointing Receiver." This Order, and variations of it, have been entered in Commission cases nationwide, including in this District. [Composite Exhibit B]. The Court has vested the Receiver with the power to take custody, control, and possession of the Receivership Entities' property, to safeguard the Receivership's property, and to take any action necessary and appropriate to preserve the Receivership Entities' property interests and to prevent the dissipation or concealment of such property interests [D.E. 36 & 56]. To ensure the Court's intent in appointing the Receiver is realized, the Commission respectfully requests that the Court enter the proposed Order which provides greater clarification of the Receiver's powers, duties, and limitations.

Acting under order of the appointing court, the Receiver's goal is to maximize the Receivership Estate's value for harmed investors and other rightful claimants. The proposed Order specifies that appointing a Receiver is necessary for "marshaling and preserving" all assets subject to receivership. To achieve those goals, the Receiver has certain powers under the Court's equity jurisdiction.<sup>1</sup> The proposed Order enumerates many of these powers, as well as those set forth in 28 U.S.C. §§ 754, 959 and 1692, and Fed.R.Civ.P. 66.

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<sup>1</sup> *Chi. Deposit Vault Co. v. McNulta*, 153 U.S. 554, 561 (1894) ("The receiver being an officer of the court, and acting under the court's direction and instructions, his powers are derived from and defined by the court under which he acts."); *Liberte Capital Grp., L.L.C. v. Capwill*, 421 F.3d 377,

With the Receiver’s broad powers come certain duties. In managing the Receivership Estate, the Receiver “must exercise ordinary care and prudence, that is, the same care and diligence that an ordinary prudent person would exercise in handling his or her own estate, or under like circumstances”<sup>2</sup> The Receiver must also account for the assets in the Receivership Estate.<sup>3</sup> Under the proposed Order, the Receiver must provide the court quarterly accountings, “reflecting the existence, value, and location of all Receivership Property, and of the extent of liabilities, both those claimed to exist by others and those the Receiver believes to be legal obligations” of the Receivership Estate.<sup>4</sup> The Order also protects the Receivership Assets from interference, and ensures that there is no ambiguity whatsoever concerning the scope of the Receiver’s duties, authority, and powers.

**B. A More Specific Order Will Avoid Issues Arising From Perceived Ambiguities Concerning the Role of the Receiver**

The Model Order is important in all receivership cases, as the structure and clarity it provides benefit the Receiver, the parties, and third parties that have an interest in the Receivership Entities or Receivership Assets. The reason for such a specific order has been illustrated in this case by myriad issues that have arisen in the past two weeks since the Receiver was appointed.

**1. The Current Issue Of Attorneys Claiming They Cannot Withdraw As Counsel For Receivership Entities On Grounds The Order Appointing Receiver Does Not Explicitly Vest The Receiver With “Binding Legal Authority”**

On July 24, 2020, the Commission filed this case *ex parte* and under seal, seeking, among other emergency relief, the appointment of a Receiver over the corporate Defendants [D.E. 1, 3, 4 & 5]. On July 27, 2020, attorneys from the law firm of Fox Rothschild LLP (the “Fox Rothschild Attorneys”) filed notices of appearance in this case on behalf of: corporate Defendants Complete Business Solutions Group, Inc. d/b/a Par Funding (“Par Funding”) and Full Spectrum Processing, Inc. (“Full Spectrum”); individual defendants Lisa McElhone, Joseph LaForte, and Joseph Cole Barleta; and Relief Defendant LME 2017 Family Trust [D.E. 16-18], and argued both in a Court

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382 (6th Cir. 2005) (“a district court has broad powers and wide discretion in fashioning relief in an equity receivership proceeding”).

<sup>2</sup> *SEC v. Kirkland*, No. 6:06-cv-183-Orl-28KRS, 2012 U.S. Dist. LEXIS 126739, at \*6 (M.D. Fla. Aug. 1, 2012) (quoting 65 Am. Jur. 2d *Receivers* § 146 (2007)).

<sup>3</sup> *In re Andrews*, 25 F.2d 450, 452 (3d Cir. 1928).

<sup>4</sup> Model Order, Section XIII.

filing and during a telephonic hearing against the appointment of a Receiver [D.E. 19 & 26]. Thereafter, the Court appointed the Receiver over, among others, Par Funding and Full Spectrum [D.E. 36].

The Receiver did not retain or hire the Fox Rothschild Attorneys.<sup>5</sup> Nonetheless, the Fox Rothschild Attorneys have continued to appear on behalf of Par Funding and Full Spectrum – to argue against the Receiver, both in Court filings and during a hearing in this case [D.E. 85 & 92].

As the Fox Rothschild Attorneys acknowledge, the Receiver’s counsel have made clear to the Fox Rothschild Attorneys that Fox Rothschild no longer represents Par Funding and Full Spectrum as Defendants in this case [D.E. 100 at p.5]. Therefore, on August 4, the Fox Rothschild Attorneys filed what is essentially a second notice of appearance in this case. As with their first notice of appearance, they claim to file on behalf of Defendants Par Funding and Full Spectrum – but this time they claim to appear as so-called “independent counsel” for Par Funding and Full Spectrum at the behest of the unidentified “owners” of these entities. [D.E. 100].

The Fox Rothschild Attorneys claim they cannot withdraw as counsel because they have an ethical duty to continue their representation of Par Funding and Full Spectrum on grounds “the Court did not provide the Receiver with a legal change of control of the Companies” and therefore the Receiver lacks “binding legal authority.” *Id.* at pp.4-5.<sup>6</sup> It is a mystery who, if anyone, is the client in connection with the Fox Rothschild Attorneys’ so-called “independent counsel” legal work. Par Funding is owned by Relief Defendant LME 2017 Family Trust, Full Spectrum is owned by Defendant McElhone, and both entities are under a Court-Ordered Receivership. Undersigned

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<sup>5</sup> The law firm of Fox Rothschild currently holds a retainer it received from Par Funding and/or Full Spectrum. As the Commission expressed during the August 4 hearing, these funds should be returned to the Receivership Entities and are subject to the Court’s Asset Freeze Order.

<sup>6</sup> We give Fox Rothschild Attorneys’ argument that the Receiver lacks legal authority – despite this Court’s Order – the attention it is due. They cite a bankruptcy case, *NCL Corp. v. Lone Star Bldg. Centers*, 144 B.R. 170 (S.D. Fla. 1992), and *In re Yarn Processing Patent Validity Litig.*, 530 F.2d 83 (5<sup>th</sup> Cir. 1976), to assert that attorney-client privilege does not change hands based merely on the exchange of assets. These cases are inapposite. The issue in both *NCL* and *Yarn* was whether the transfer of a lease automatically transfers the attorney-client privilege from the predecessor lessee to the successor lessee. Further, as clarified in the *NCL* case upon which the Fox Rothstein Attorneys rely, the Supreme Court has held that the right to assert the attorney-client privilege is an incident of control of the corporation. 144 B.R. at 174 (citing *CFTC v. Weintraub*, 471 U.S. 343, 349 (1985) (holding that when the control of a corporation passes to new management, the authority to assert attorney-client privileges and other rights passes as well)).

counsel's efforts to obtain the name of the "owners" the Fox Rothschild Attorneys claim to now represent resulted in a vague response from one of the Fox Rothschild Attorneys that "We are informed that the legal ownership of CBSG is held in a trust." (Exhibit C).

The Model Order addresses these and other issues that might arise because it clearly vests the Receiver with the legal authority the Fox Rothschild Attorneys claim is lacking as the basis for their purported inability to withdraw as counsel.

**2. The Issue Of Defense Counsel Appearing On Behalf Of A Receivership Entity (Unbeknownst To The Receiver) Before Another Federal District Court To Oppose Compliance With The S.E.C.'s Administrative Subpoena**

Shortly after the Fox Rothschild Attorneys received the Court's Order Appointing the Receiver and after they had emailed undersigned counsel about "a team of FBI agents has raised the offices in Philadelphia of this firm's clients" [Exhibit D], one of the Fox Rothschild Attorneys appearing in this case appeared in another case – before the Eastern District of Pennsylvania during a telephonic hearing or status conference to object to the production of a Par Funding document that was responsive to an S.E.C. Administrative Subpoena. [Exhibit E, Declaration of Shane Heskin]. Neither the Commission nor the Receiver was aware of the fact that a Receivership entity was appearing in another Court through the Fox Rothschild Attorney. Nor were the Commission and Receiver aware that the Receivership Entity was contesting a matter concerning an S.E.C. Administrative Proceeding (or even that there was such a legal dispute), until after the hearing occurred. It is unclear whether the Honorable Juan Ramon Sanchez was aware during this hearing that Par Funding – the Defendant in that case – was in a Receivership.

A detailed Order reflecting the legal authority of the Receiver to litigate matters and retain counsel for the Receivership Entities will ensure that all counsel retained previously by the Receivership Entities refrain from engaging in litigation or taking legal positions outside of the scope of the Receivership and without the Receiver's knowledge and approval.

**3. Issues Concerning Receivership Entities' Employees and Officers**

As the Receiver has expressed to this Court, the principal officers and owners of the Receivership Entities – *i.e.*, the individual Defendants – have thus far refused to sit for direct interviews with the Receiver to discuss the historical (and potential future) financial and operational status and viability of these businesses. [D.E. 101 at ¶ 11]. Perhaps because there is no cooperation requirement in the Order and the Defendants claim the Order is not clear, the

Receiver is resorting to contacting the attorneys of the individual Defendants to obtain information about the Receivership Entities those individual Defendants operated.

By way of example, Defendant Dean Vagnozzi testified during his recent deposition during the expedited discovery phase of this case that there are about 20 “agent funds” involved with his company ABFP Management Company, a Receivership Entity; and that these agent funds offer and sell promissory notes to investors and send that investor money to Par Funding in exchange for promissory notes. Vagnozzi testified he signed contracts with the agent funds and ABFP Management handles all the paperwork for the agent funds, an ABFP employee is a signatory on each of the agent funds’ bank accounts through which the investor money flows, and ABFP Management transfers and distributes the investor funds.

The Receiver has been trying to obtain information about the identities of these roughly 20 agent funds from Vagnozzi’s counsel since no later than August 2. On August 6, Vagnozzi testified he cannot recall the names of these agent funds. After the deposition concluded, an employee of A Better Financial Plan advised undersigned counsel that information about each of the agent funds – the very information the Receiver has been seeking for days while the Defendants claim the lack of activity in the Receivership Entities is causing harm to investors – had in fact been requested by, and provided to, Vagnozzi and/or his counsel earlier on the day of Vagnozzi’s deposition. Apparently, Vagnozzi, directly or through his counsel, continues to utilize the ABFP employees for the information he wants, and is now serving as a sort of gatekeeper – absent taking the testimony of all the employees – for the information necessary to preserve and protect ABFP entities. As to ABFP, the employees of the Receivership Entity were compiling information for Vagnozzi and/or his counsel, while the Receiver and Commission could not obtain this same information. After five days, including two days of deposition testimony, Vagnozzi’s counsel provided the list to the Receiver this morning. The Receiver should not need to go through the individual Defendants or their counsel to gain access to information about the Receivership Entities. Yet that is what is occurring.

The proposed Order includes the standard language for a Receivership Order requiring individuals to cooperate with the Receiver, and making clear that the Receiver has the legal authority to request and receive information about the Receivership Entities and to control them.

These are but three of the issues that have arisen in the 11 days since the Court appointed the Receiver. Without a more specific Order concerning the Receiver’s duties, powers, and

limitations, there is a real concern that similar issues will continue to plague this matter, resulting in the further deterioration of the Receivership Estate and further litigation concerning the scope of the Receivership. All of which does nothing to advance the interests of the victims in this case.

#### **IV. CONCLUSION**

WHEREFORE, the Commission respectfully requests that the Court expand the Receivership to include the ABFP Income Fund Parallel entities, in the form of the proposed Order.

August 7, 2020

Respectfully submitted,

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#### **CERTIFICATE OF CONFERRAL**

The Receiver's counsel agrees with the relief requested. Commission counsel emailed Mr. Vagnozzi's Defense Counsel Brian Miller to confer about moving the agent funds discussed during Monday's hearing into the Receivership, but we have not heard back from him. Undersigned emailed other defense counsel today. Because they have made their objections to the Receivership clear, both in their recent filings and during the August 4 hearing, and because this Motion seeks expedited relief to curtail the issues addressed herein, we did not want to delay filing this Motion.

#### **CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on August 7, 2020, I certify that the foregoing document is being served this day on all parties, witnesses, and counsel of records by cm-emf and via email to Bettina Schein, whom we understand is counsel for Joseph Cole Barleta, at her email address, bschein@bettinascheinlaw.com.

s/Amie Riggle Berlin  
Amie Riggle Berlin

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO.: 9:20-cv-81205-RAR**

**SECURITIES AND EXCHANGE COMMISSION,**

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**v.**

**COMPLETE BUSINESS SOLUTIONS GROUP,  
INC. d/b/a/ PAR FUNDING, et al.,**

**Defendants.**

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**SPECIALLY APPEARING DEFENDANT DEAN VAGNOZZI'S  
RESPONSE TO SECURITIES AND EXCHANGE COMMISSION'S  
SECOND REQUEST FOR INTERROGATORIES**

Specially appearing Defendant DEAN VAGNOZZI (hereinafter "Defendant"), by and through his undersigned counsel, hereby responds to Plaintiff SECURITIES AND EXCHANGE COMMISSION'S ("Plaintiff") Second Request for Interrogatories (the "Request") as follows:

**GENERAL STATEMENT AND OBJECTIONS**

1. Defendant objects to the Request for lack of due process under the United States Constitution. The Court has imposed a two-calendar day response deadline without having provided Defendant any notice or opportunity to contest expedited discovery. This violates the Federal Rules of Civil Procedure and the United States Constitution. Defendant has not had adequate time to investigate his responses to the Request, which violates his Constitutional rights. Moreover, Defendant's counsel only appeared in this action the day prior to service of the Request, and has not had adequate time to investigate the allegations and the Interrogatory in order to properly advise Defendant on his responses, which further violates Defendant's Constitutional

**EXHIBIT**

**A**

rights. To the extent this Request is attempted to be used in any criminal prosecution, the circumstances of the Request further deny Defendant his right to effective assistance of counsel under the United States Constitution.

2. In responding to this Request, Defendant does not concede the information requested is relevant to the subject matter of this litigation or reasonably calculated to lead to the discovery of admissible evidence. Any response, in whole or in part, to the Request is not intended to be, and should not be construed as, a waiver by Defendant of all or any part of any objection. Defendant reserves the right to object, and hereby gives notice of its intent to object, to the admissibility into any information disclosed herein.

3. Defendant objects to the Request to the extent that it seeks to impose obligations that exceed, or are different from, those imposed by the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the Southern District of Florida.

4. Defendant objects to the Request to the extent it calls for the disclosure of information that is not in Defendant's possession, custody, or control, or that is not ascertainable after a reasonably diligent search.

5. Defendant reserves the right to supplement its responses as more information is available.

6. Defendant objects to the Request to the extent it seeks information that is not relevant to the issues in the pending action or reasonably calculated to lead to the discovery of admissible evidence supporting the claims in this proceeding.

7. Defendant objects to the Request to the extent it is, in whole or part, vague or ambiguous, duplicative, harassing, overbroad, or unduly burdensome, not restricted by time or

subject matter, in that the burdens imposed by responding to the Request clearly outweighs any potential value to Plaintiff of the response.

8. Defendant objects to the Request to the extent it seeks information that is subject to the attorney-client privilege, the attorney work product immunity doctrine, or any other applicable privilege or doctrine. Any inadvertent disclosure of such information shall not be deemed a waiver of the attorney-client privilege, the attorney work product immunity doctrine, or any other applicable privilege or doctrine.

9. Defendant objects to the Request to the extent it seeks information constituting trade secrets or other financial, strategic, confidential, proprietary, or otherwise highly sensitive commercial or personal information without protective measures necessary to prevent disclosure.

10. No incidental or implied admissions are intended by the, or shall be inferred from, response to the Request. That Defendant has responded to any Request is not intended to be, and shall not be construed as, a waiver by Defendant of any part of any General or specific objection. Nor shall such a response be construed as a waiver of any argument, whether or not as of yet asserted, in support of judgment in favor of Defendant.

11. Defendant objects to the Request insofar as it contains misstatements of fact and inaccurate assumptions. Nothing in the response shall be construed as constituting or implying an admission of any allegation or agreement with any assertion or characterization in the Request.

12. Defendant objects to the Request to the extent it seek information that would require the production of information that include private consumer, banking, and financial information protected by various state and federal privacy laws.

13. Defendant incorporates each of these General Objections into the specific responses below as if fully set forth therein.

14. Without waiver of any of the foregoing general objections, Defendant responds and specifically objects to Plaintiff's Request as follows:

**RESPONSE AND OBJECTION TO INDIVIDUAL INTERROGATORIES**

For each of ABFP Income Fund 1, ABFP Income Fund 2, ABFP Income Fund 3, ABFP Income Fund 4, ABFP Income Fund 5, ABFP Income Fund 6, and ABFP Income Fund 7, state:

- 2(a) Whether or not the promissory notes (or, for ABFP Income Fund 2, limited partnership interests) offered and sold to investors was exchanged for a replacement note offering a lower interest rate.

**Response: Defendant objects to this interrogatory on the grounds that the interrogatory is overbroad in scope, ambiguous, and not limited to the timeframe of the Complaint nor Securities and Exchange Commission's Emergency *Ex Parte* Motion for Temporary Restraining Order and Other Relief. Particularly, this interrogatory is irrelevant and disproportionate for purposes of the August 4, 2020 Preliminary Injunction Hearing. This interrogatory also seeks information, which is irrelevant and disproportionate to the claims or defenses of this action. Defendant further objects to this interrogatory to the extent that it seeks information that is not in the Defendant's possession, custody, or control. Currently, information that would be necessary to respond to this interrogatory are subject to the Court's receivership. Defendant has no access to his office in order to retrieve the information as a result of the Court's receivership. Specifically, the Receiver's letter to Defendant, attached hereto as "Exhibit A", directs Defendant to: (1) "[r]efrain from attempting to access the premises of ABetterFinancialPlan.com"; (2) "Immediately turn over to me any and all objects, assets or documents, including, but not limited to, any devices,**

writings, client or investor files and documents, ESI, invoices, and bank records pertaining to ABetterFinancialPlan.com d/b/a A Better Financial Plan, or any other Receivership Entities that are within your possession”; (3) refrain from accessing “bank accounts, email accounts, or other electronic media pertaining to ABetterFinancialPlan.com d/b/a A Better Financial Plan, or any other Receivership Entities”; and (4) refrain from “directly or indirectly taking any action, or causing any action to be taken, without the express written agreement of the Receiver that interferes with or hinders the Receiver’s efforts to take control, possession, or management of any accounts belonging to the Receivership Entities.” Further, Defendant objects to the term “investors” as being overly broad, vague, and undefined. Subject to and without waiving the foregoing objections, Defendant states that ABFP Income Fund 1, ABFP Income Fund 3, ABFP Income Fund 4, and ABFP Income Fund 6 conducted an exchange offer in or about April 2020, which is now completed. ABFP Income Fund 2, ABFP Income Fund 5 (which never had operations), and ABFP Income Fund 7 (which never had operations) did not conduct such an exchange offer.

- 2(b) The name of the entity offering the replacement note to investors (for example, for ABFP Income Fund: ABFP Income Fund Parallel.

**Response:** Defendant objects to this interrogatory on the grounds that the interrogatory is overbroad in scope, ambiguous, and not limited to the timeframe of the Complaint nor Securities and Exchange Commission’s Emergency *Ex Parte* Motion for Temporary Restraining Order and Other Relief. Particularly, this interrogatory is irrelevant and disproportionate for purposes of the August 4, 2020 Preliminary Injunction Hearing.

**This interrogatory also seeks information, which is irrelevant and disproportionate to the claims or defenses of this action. Defendant further objects to this interrogatory to the extent that it seeks information that is not in the Defendant's possession, custody, or control. Currently, information that would be necessary to respond to this interrogatory are subject to the Court's receivership. Defendant has no access to his office in order to retrieve the information as a result of the Court's receivership. Specifically, the Receiver's letter to Defendant, attached hereto as "Exhibit A", directs Defendant to: (1) "[r]efrain from attempting to access the premises of ABetterFinancialPlan.com"; (2) "Immediately turn over to me any and all objects, assets or documents, including, but not limited to, any devices, writings, client or investor files and documents, ESI, invoices, and bank records pertaining to ABetterFinancialPlan.com d/b/a A Better Financial Plan, or any other Receivership Entities that are within your possession"; (3) refrain from accessing "bank accounts, email accounts, or other electronic media pertaining to ABetterFinancialPlan.com d/b/a A Better Financial Plan, or any other Receivership Entities"; and (4) refrain from "directly or indirectly taking any action, or causing any action to be taken, without the express written agreement of the Receiver that interferes with or hinders the Receiver's efforts to take control, possession, or management of any accounts belonging to the Receivership Entities." Further, Defendant objects to the term "investors" as being overly broad, vague, and undefined. Subject to and without waiving the foregoing objections, Defendant states that ABFP Income Fund 1 conducted an exchange offer into ABFP Income Fund 1 Parallel, ABFP Income Fund 3 conducted an exchange offer into ABFP Income Fund 3 Parallel, ABFP Income Fund 4 conducted an exchange offer into ABFP Income Fund 4 Parallel, and ABFP Income Fund 6 conducted an exchange offer into ABFP Income Fund 6 Parallel.**

- 2(c) The name of the person who runs or controls the entity that offered the replacement note.

**Response: Defendant objects to this interrogatory on the grounds that the interrogatory is overbroad in scope, ambiguous, and not limited to the timeframe of the Complaint nor Securities and Exchange Commission’s Emergency *Ex Parte* Motion for Temporary Restraining Order and Other Relief. Particularly, this interrogatory is irrelevant and disproportionate for purposes of the August 4, 2020 Preliminary Injunction Hearing. This interrogatory also seeks information, which is irrelevant and disproportionate to the claims or defenses of this action. Defendant further objects to this interrogatory to the extent that it seeks information that is not in the Defendant’s possession, custody, or control. Currently, information that would be necessary to respond to this interrogatory are subject to the Court’s receivership. Defendant has no access to his office in order to retrieve the information as a result of the Court’s receivership. Specifically, the Receiver’s letter to Defendant, attached hereto as “Exhibit A”, directs Defendant to: (1) “[r]efrain from attempting to access the premises of ABetterFinancialPlan.com”; (2) “Immediately turn over to me any and all objects, assets or documents, including, but not limited to, any devices, writings, client or investor files and documents, ESI, invoices, and bank records pertaining to ABetterFinancialPlan.com d/b/a A Better Financial Plan, or any other Receivership Entities that are within your possession”; (3) refrain from accessing “bank accounts, email accounts, or other electronic media pertaining to ABetterFinancialPlan.com d/b/a A Better Financial Plan, or any other Receivership Entities”; and (4) refrain from “directly or indirectly taking any action, or causing any action to be taken, without the express written agreement of the Receiver that interferes with or hinders the Receiver’s efforts to take**

control, possession, or management of any accounts belonging to the Receivership Entities.” Further, Defendant objects to the term “controls” as being overly broad, vague, and undefined. Subject to and without waiving the foregoing objections, Defendant states that all of the entities referenced above in the response to No. 2(b) that conducted an exchange offer in or about April 2020 are LLC's whose Manager is ABFP Management Company LLC.

- 2(d) The name of each bank where the entity that offered the replacement note has a bank account.

**Response:** Defendant objects to this interrogatory on the grounds that the interrogatory is overbroad in scope, ambiguous, and not limited to the timeframe of the Complaint nor Securities and Exchange Commission’s Emergency *Ex Parte* Motion for Temporary Restraining Order and Other Relief. Particularly, this Interrogatory is irrelevant and disproportionate for purposes of the August 4, 2020 Preliminary Injunction Hearing. This interrogatory also seeks information, which is irrelevant and disproportionate to the claims or defenses of this action. Defendant further objects to this interrogatory to the extent that it seeks information that is not in the Defendant’s possession, custody, or control. Currently, bank records that would be necessary to respond to this interrogatory are subject to the Court’s receivership. Defendant has no access to his office in order to retrieve the information as a result of the Court’s receivership. Specifically, the Receiver’s letter to Defendant, attached hereto as “Exhibit A”, directs Defendant to: (1) “[r]efrain from attempting to access the premises of ABetterFinancialPlan.com”; (2) “Immediately turn over to me any and all objects, assets or documents, including, but not limited to, any devices, writings, client or investor files and documents, ESI, invoices, and

bank records pertaining to ABetterFinancialPlan.com d/b/a A Better Financial Plan, or any other Receivership Entities that are within your possession”; (3) refrain from accessing “bank accounts, email accounts, or other electronic media pertaining to ABetterFinancialPlan.com d/b/a A Better Financial Plan, or any other Receivership Entities”; and (4) refrain from “directly or indirectly taking any action, or causing any action to be taken, without the express written agreement of the Receiver that interferes with or hinders the Receiver’s efforts to take control, possession, or management of any accounts belonging to the Receivership Entities.” Subject to and without waiving the foregoing objections, Defendant states that all of the entities referenced above in the response to No. 2(b) that conducted an exchange offer in or about April 2020 have separate bank accounts at Citizens Bank.

- 2(e) The amount of interest and principal owed to investors by the entity that offered the replacement note.

**Response:** Defendant objects to this interrogatory on the grounds that the interrogatory is overbroad in scope, ambiguous, and not limited to the timeframe of the Complaint nor Securities and Exchange Commission’s Emergency *Ex Parte* Motion for Temporary Restraining Order and Other Relief. Particularly, this interrogatory is irrelevant and disproportionate for purposes of the August 4, 2020 Preliminary Injunction Hearing. This interrogatory also seeks information, which is irrelevant and disproportionate to the claims or defenses of this action. Defendant further objects to this interrogatory to the extent that it seeks information that is not in the Defendant’s possession, custody, or control. Currently, information that would be necessary to respond to this Request are subject to the Court's receivership. Defendant has no access to his office in order to retrieve the

information as a result of the Court's receivership. Specifically, the Receiver's letter to Defendant, attached hereto as "Exhibit A", directs Defendant to: (1) "[r]efrain from attempting to access the premises of ABetterFinancialPlan.com"; (2) "Immediately turn over to me any and all objects, assets or documents, including, but not limited to, any devices, writings, client or investor files and documents, ESI, invoices, and bank records pertaining to ABetterFinancialPlan.com d/b/a A Better Financial Plan, or any other Receivership Entities that are within your possession"; (3) refrain from accessing "bank accounts, email accounts, or other electronic media pertaining to ABetterFinancialPlan.com d/b/a A Better Financial Plan, or any other Receivership Entities"; and (4) refrain from "directly or indirectly taking any action, or causing any action to be taken, without the express written agreement of the Receiver that interferes with or hinders the Receiver's efforts to take control, possession, or management of any accounts belonging to the Receivership Entities." Further, Defendant objects to the term "investors" as being overly broad, vague, and undefined. Lastly, Defendant generally objects to this Request for the reason it imposes a burden and expense on Defendant which outweighs any potential benefit. Subject to and without waiving the foregoing objections, Defendant states that the principal amounts of notes issued by the entities referenced above in the response to No. 2(b) that conducted an exchange offer in or about April 2020 varies, but that the interest rate on the notes issued by such entities in the exchange offer is 4%.

- 2(f) Expenditures the entity offering the replacement note has made since March 1, 2020.

**Response:** Defendant objects to this interrogatory on the grounds that the interrogatory is overbroad in scope, ambiguous, and not limited to the timeframe of the

**Complaint nor Securities and Exchange Commission’s Emergency *Ex Parte* Motion for Temporary Restraining Order and Other Relief. Particularly, this interrogatory is irrelevant and disproportionate for purposes of the August 4, 2020 Preliminary Injunction Hearing. This interrogatory also seeks information, which is irrelevant and disproportionate to the claims or defenses of this action. Defendant further objects to this interrogatory to the extent that it seeks information that is not in the Defendant’s possession, custody, or control. Currently, bank records that would be necessary to respond to this interrogatory are subject to the Court’s receivership. Defendant has no access to his office in order to retrieve the information as a result of the Court’s receivership. Specifically, the Receiver’s letter to Defendant, attached hereto as “Exhibit A”, directs Defendant to: (1) “[r]efrain from attempting to access the premises of ABetterFinancialPlan.com”; (2) “Immediately turn over to me any and all objects, assets or documents, including, but not limited to, any devices, writings, client or investor files and documents, ESI, invoices, and bank records pertaining to ABetterFinancialPlan.com d/b/a A Better Financial Plan, or any other Receivership Entities that are within your possession”; (3) refrain from accessing “bank accounts, email accounts, or other electronic media pertaining to ABetterFinancialPlan.com d/b/a A Better Financial Plan, or any other Receivership Entities”; and (4) refrain from “directly or indirectly taking any action, or causing any action to be taken, without the express written agreement of the Receiver that interferes with or hinders the Receiver’s efforts to take control, possession, or management of any accounts belonging to the Receivership Entities.”**

**Lastly, Defendant generally objects to this interrogatory for the reason it imposes a burden and expense on Defendant which outweighs any potential benefit. Subject to and without waiving the foregoing objections, Defendant states he does not have details on amounts**

expended by the entities referenced above in the response to No. 2(b) that conducted an exchange offer in or about April 2020 varies, but that information could be located in company records within the current control of the Receiver.

By: 

STATE OF \_\_\_\_\_ )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2020, by \_\_\_\_\_, who executed the foregoing Answers To Interrogatories and is personally \_\_\_ known to me \_\_\_ or who produced the following identification \_\_\_\_\_.

\_\_\_\_\_  
Notary Public  
\_\_\_\_\_  
Print name

My Commission Expires:

Dated: August 3, 2020

**AKERMAN LLP**

Three Brickell City Centre, Suite 1100  
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By: /s/ Brian P. Miller

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*Attorneys for Dean Vagnozzi*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing *Specially Appearing Defendant Dean Vagnozzi's Response to Securities and Exchange Commission's Second Request for Interrogatories* was served electronically this 3<sup>rd</sup> day of August, 2020 to:

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Securities and Exchange Commission  
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Miami, FL 33131  
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Tel: 305-982-6300  
Fax: 305-536-4154  
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*Attorneys for Defendant Perry S. Abbonizio*

/s/ Brian P. Miller

Attorney

# EXHIBIT A



Ryan K. Stumphauzer  
Telephone: 305. 614. 1400  
[rstumphauzer@sflaw.com](mailto:rstumphauzer@sflaw.com)

July 31, 2020

**VIA EMAIL AND FEDERAL EXPRESS**

Dean J. Vagnozzi  
c/o Brian Miller, Esq.  
Akerman LLP  
Three Brickell City Centre  
98 Southeast Seventh Street  
Suite 1100  
Miami, FL 33131  
[brian.miller@akerman.com](mailto:brian.miller@akerman.com)

**Re: SEC v. CBSG., et al, No. 20-CIV-81205 (S.D. Fla.)**

Dear Mr. Vagnozzi,

In light of a preliminary injunction entered on July 28, 2020 by the Honorable Rodolfo A. Ruiz in the United States District Court for the Southern District of Florida, I am writing this letter to direct you to preserve all documents, assets and electronically-stored information (ESI) relating to ABetterFinancialPlan.com d/b/a A Better Financial Plan.

On July 27, 2020, Judge Ruiz appointed me as Receiver in the above-referenced case. I am enclosing with this letter a copy of the Order Granting Plaintiff Securities and Exchange Commission's Motion for Appointment of Receiver ("the Receivership Order"), along with a copy of the Order Granting Emergency *Ex Parte* Motion for Temporary Restraining Order and Other Relief (the "Order Granting TRO"), which was entered on July 28, 2020.

The Receiver appointment relates to the following entities: Complete Business Solutions Group, Inc. d/b/a Par Funding, Full Spectrum Processing, Inc., ABetterFinancialPlan.com LLC d/b/a A Better Financial Plan, ABFP Management Company, LLC f/k/a Pillar Life Settlement Management Company, LLC, ABFP Income Fund, LLC, ABFP Income Fund 2, L.P., United Fidelis Group Corp., Fidelis Financial Planning LLC, Retirement Evolution Group, LLC, RE Income Fund LLC, and RE Income Fund 2 LLC (the "Receivership Entities").

Pursuant to the Receivership Order, the Receiver has been directed by the United States District Court for the Southern District of Florida to take possession of and safeguard all property and assets of the Receivership entities, including all ESI and accounts, immediately upon the Court granting a temporary restraining order.

I understand that you are affiliated with ABetterFinancialPlan.com d/b/a A Better Financial Plan. Accordingly, I am writing to direct you to:

Dean Vagnozzi/ SEC v. CBSG., et al, No. 20-CIV-81205 (S.D. Fla.)

July 31, 2020

Page 2 of 2

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- Refrain from attempting to access the premises of ABetterFinancialPlan.com d/b/a A Better Financial Plan, located at 234 Mall Blvd, Suite 270 King of Prussia, PA 19406-2940;
- Immediately turn over to me any and all objects, assets or documents, including, but not limited to, any devices, writings, client or investor files and documents, ESI, invoices, and bank records pertaining to ABetterFinancialPlan.com d/b/a A Better Financial Plan, or any other Receivership Entities that are within your possession;
- Do not destroy or tamper with any objects, assets or documents, including, but not limited to, any devices, writings, client or investor files and documents, ESI, invoices or bank records relating to ABetterFinancialPlan.com d/b/a A Better Financial Plan, or any other Receivership Entities; and
- Do not access any bank accounts, email accounts, or other electronic media pertaining to ABetterFinancialPlan.com d/b/a A Better Financial Plan, or any other Receivership Entities.

Please be advised that pursuant to the Receivership Order you are hereby restrained and enjoined from directly or indirectly taking any action, or causing any action to be taken, without the express written agreement of the Receiver that interferes with or hinders the Receiver's efforts to take control, possession, or management of any accounts belonging to the Receivership Entities. Please contact me at [rstumphauzer@sflaw.com](mailto:rstumphauzer@sflaw.com) if you have any questions or concerns.

Sincerely,



Ryan K. Stumphauzer, Esq.

Enclosures: Receivership Order, Order Granting TRO

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO. 20-CIV-81205-RAR**

**SECURITIES AND EXCHANGE  
COMMISSION,**

Plaintiff,

v.

**COMPLETE BUSINESS SOLUTIONS  
GROUP, INC. d/b/a PAR FUNDING, et al.,**

Defendants.

---

**ORDER GRANTING PLAINTIFF'S URGENT MOTION TO AMEND ORDER  
APPOINTING RECEIVER TO INCLUDE LITIGATION INJUNCTION**

**THIS CAUSE** comes before the Court upon Plaintiff Securities and Exchange Commission's ("Commission") Urgent Motion to Amend Order Appointing Receiver to Include Litigation Injunction [ECF No. 48] ("Motion"), filed on July 31, 2020. In the Motion, Plaintiff seeks to amend the Court's Order Granting Plaintiff Securities and Exchange Commission's Motion for Appointment of Receiver [ECF No. 36] ("Order Appointing Receiver"), entered on July 27, 2020.

Specifically, Plaintiff seeks to amend the Order Appointing Receiver to include a litigation injunction in all cases and proceedings to which the following entities are a party: Complete Business Solutions Group, Inc. d/b/a Par Funding ("Par Funding"), Full Spectrum Processing, Inc., ABetterFinancialPlan.com LLC d/b/a A Better Financial Plan ("ABFP"), ABFP Management Company, LLC f/k/a Pillar Life Settlement Management Company, LLC ("ABFP Management"), ABFP Income Fund, LLC, ABFP Income Fund 2, L.P., United Fidelis Group Corp., Fidelis Financial Planning LLC, Retirement Evolution Group, LLC, RE Income Fund LLC, and RE

Income Fund 2 LLC (collectively, the “Receivership Entities”). The Receiver agrees with and joins in the request for this relief. For the reasons set forth in the Motion, it is hereby

**ORDERED AND ADJUDGED** that Plaintiff Securities and Exchange Commission’s Motion to Amend Order Appointing Receiver to Include Litigation Injunction [ECF No. 48] is **GRANTED**.

The Receiver, Ryan Stumphauzer, is authorized, empowered, and directed as follows until further Order of the Court:

1. To take custody, control, and possession of all Receivership Entity records, documents, and materials, and to safeguard these items until further Order of the Court;
2. To secure and safeguard the Receivership Entities’ information technology, data, documents, storage systems, and documents, including by making contact with any third-party vendors, such as movers and information technology personnel, to assist in this process;
3. To engage and employ persons in his discretion to assist him in carrying out his duties and responsibilities hereunder, including, but not limited to, accountants, lawyers, and paralegals (“Retained Personnel”);
4. To take any other action as necessary and appropriate for the preservation of the Receivership Entities’ property interests or to prevent the dissipation or concealment of such property interests; and
5. To take such other action as may be approved by this Court.
6. Additionally, the Receiver shall promptly give notice of his appointment to all known officers, directors, agents, employees, shareholders, creditors, debtors, managers, and general and limited partners of each Receivership Entity, as the Receiver deems necessary or advisable to effectuate the operation of the receivership.

7. In furtherance of his responsibilities in this matter, the Receiver is authorized to communicate with, and/or serve this Order upon, any person, entity or government office that he deems appropriate to inform them of the status of this matter and the Receiver's appointment.

8. The Receiver and Retained Personnel are entitled to reasonable compensation and expense reimbursement from the Receivership Entities' estates. The Receiver shall seek the Court's approval by filing a Motion for the reimbursement of expenses and compensation for time spent on the matters set forth herein.

9. The Receivership Entities and all persons receiving notice of this Order shall not hinder or interfere with the Receiver's efforts to take control or possession of the Receivership Entities' property interests identified above or hinder his efforts to preserve them.

#### **STAY OF LITIGATION**

"[W]hile it should be sparsely exercised, district courts possess the authority and discretion to enter anti-litigation orders" in the context of a Securities and Exchange Commission receivership. *Sec. & Exch. Comm'n v. Byers*, 609 F.3d 87, 89 (2d Cir. 2010); *see also Sec. & Exch. Comm'n v. Onix Capital, LLC*, No. 16-24678-CIV, 2017 WL 6728814, at \*4 (S.D. Fla. Jul. 24, 2017) ("That the receivership is not 'substantially underway' is not a compelling factor to lift a stay against litigation when balanced against the Receiver's interest in preventing ancillary litigation during the early stages of the receivership."); *Liberte Capital Grp., LLC v. Capwill*, 462 F.3d 543, 551 (6th Cir. 2006) ("[T]he receivership court may issue a blanket injunction, staying litigation against the named receiver and the entities under his control unless leave of that court is first obtained.").

As set forth below, the following proceedings—excluding the instant proceeding—and all law enforcement, police, or regulatory actions and actions of the Commission related to the above-captioned enforcement action, are hereby stayed until further Order of this Court:

All civil legal proceedings of any nature, including, but not limited to, bankruptcy proceedings, arbitration proceedings, foreclosure actions, default proceedings, or any other actions of any nature involving: (a) the Receiver, in his capacity as Receiver; (b) any of the Receivership Entities' property interests, wherever located; (c) any of the Receivership Entities, including subsidiaries and partnerships; or, (d) any of a Receivership Entity's past or present officers, directors, managers, agents, or general or limited partners sued for, or in connection with, any action taken by them while acting in such capacity of any nature, whether as plaintiff, defendant, third-party plaintiff, third-party defendant, or otherwise (such proceedings are hereinafter referred to as "Ancillary Proceedings").

The parties to any and all Ancillary Proceedings are enjoined from commencing or continuing any such legal proceeding, or from taking any action, in connection with any such proceeding, including, but not limited to, the issuance or employment of process.

All Ancillary Proceedings are stayed in their entirety, and all Courts having any jurisdiction thereof are enjoined from taking or permitting any action until further Order of this Court. Further, as to a cause of action accrued or accruing in favor of one or more of the Receivership Entities against a third person or party, any applicable statute of limitation is tolled during the period in which this injunction against commencement of legal proceedings is in effect as to that cause of action.

**DONE AND ORDERED** in Fort Lauderdale, Florida, this 31st day of July, 2020.



**RODOLFO A. RUIZ II**  
**UNITED STATES DISTRICT JUDGE**

Copies to: Counsel of Record

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 20-CIV-81205-RAR

SECURITIES AND EXCHANGE  
COMMISSION,

UNDER SEAL

Plaintiff,

v.

COMPLETE BUSINESS SOLUTIONS  
GROUP, INC. d/b/a PAR FUNDING, *et al.*,

Defendants.

\_\_\_\_\_ /

**ORDER GRANTING EMERGENCY *EX PARTE* MOTION  
FOR TEMPORARY RESTRAINING ORDER AND OTHER RELIEF**

**THIS CAUSE** comes before the Court upon Plaintiff’s Emergency *Ex Parte* Motion for Temporary Restraining Order and Other Relief [ECF No. 14] (“Motion”), filed on July 27, 2020. The Motion seeks the following relief with respect to Defendants Complete Business Solutions Group, Inc. d/b/a PAR Funding (“Par Funding”), Full Spectrum Processing, Inc. (“Full Spectrum”), ABetterFinancialPlan.com LLC d/b/a A Better Financial Plan (“ABFP”), ABFP Management Company, LLC f/k/a Pillar Life Settlement Management Company, LLC (“ABFP Management”), ABFP Income Fund, LLC (“ABFP Income Fund”), ABFP Income Fund 2, L.P. (“ABFP Income Fund 2”), United Fidelis Group Corp. (“United Fidelis”), Fidelis Financial Planning LLC (“Fidelis Financial”), Retirement Evolution Group, LLC (“Retirement Evolution”), Retirement Evolution Income Fund LLC, a/k/a RE Income Fund (“RE Income Fund”), RE Income Fund 2 LLC (“RE Income Fund 2”), Lisa McElhone (“McElhone”), Joseph Cole Barleta, a/k/a Joe Cole (“Cole”), Joseph W. LaForte, a/k/a Joe Mack, a/k/a Joe Macki, a/k/a Joe McElhone

(“LaForte”), Perry S. Abbonizio, Dean J. Vagnozzi, Michael C. Furman, and John Gissas, and Relief Defendant L.M.E. 2017 Family Trust (“L.M.E. Trust”):

1. a Temporary Restraining Order;
2. an Order to Show Cause Why a Preliminary Injunction Should Not be Granted;
3. an Order Freezing the Assets of Defendants and Relief Defendant;
4. an Order Requiring Sworn Accountings;
5. an Order Prohibiting Destruction of Documents; and
6. an Order Expediting Discovery.

The Court has reviewed Plaintiff’s Complaint, the Motion, Plaintiff’s exhibits filed in support of the Motion, and the Response to Plaintiff’s *Ex-Parte* Motions for Appointment of a Receiver and for an Asset Freeze, submitted on July 28, 2020 by Defendants Par Funding, Full Spectrum, McElhone, Cole, LaForte, and L.M.E. Trust.

The Court finds that Plaintiff has made a sufficient and proper showing in support of the relief granted herein by: (i) presenting a *prima facie* case of securities laws violations by Defendants; and (ii) showing a reasonable likelihood the Defendants will harm the investing public by continuing to violate the federal securities laws unless they are immediately restrained. The Court also finds good cause to believe that unless immediately enjoined by Order of this Court, the Defendants may dissipate, conceal or transfer from the jurisdiction of this Court assets which could be subject to an Order of Disgorgement. Accordingly, it is hereby

**ORDERED AND ADJUDGED** that Plaintiff’s Motion [ECF No. 14] is **GRANTED** as follows:

**I.**

**SHOW CAUSE HEARING AND TELEPHONIC STATUS CONFERENCE**

The Defendants shall show cause, if any, before the Court **via a Zoom hearing on Tuesday, August 4, 2020 at 3:30 P.M.**, or as soon thereafter as the matter can be heard, why a Preliminary Injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure should not be granted against Defendants, as requested by Plaintiff. In advance of the hearing, the Court will provide the parties with information on how to join via Zoom.

Additionally, the Court will hold a telephonic status conference on **Monday, August 3, 2020 at 4:15 P.M.** The parties are instructed to call 1-877-402-9753 by no later than 4:10 P.M. The access code is 9372453 and the password is 0918. The Court requires that the parties appear via a landline (i.e., not a cellular phone or a speaker phone) for clarity.

**II.**

**TEMPORARY RESTRAINING ORDER**

**A. Section 17(a)(1) of the Securities Act**

Pending further Order of the Court, Defendants Par Funding, Full Spectrum, ABFP, ABFP Management, ABFP Income Fund, ABFP Income Fund 2, United Fidelis, Fidelis Planning, McElhone, LaForte, Cole, Abbonizio, Vagnozzi, and Furman are preliminarily restrained and enjoined from violating Section 17(a)(1) of the Securities Act of 1933 (“Securities Act”), 15 U.S.C. § 77q(a)(1), in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly: to employ any device, scheme, or artifice to defraud, by, directly or indirectly (i) creating a false appearance or otherwise deceiving any person, or (ii) disseminating false or misleading documents, materials, or information or making, either orally or in writing, any false

or misleading statement in any communication with any investor or prospective investor, about: (A) any investment in securities; (B) the prospects for success of any product or company; (C) the use of investor funds; (D) the safety of any securities investment; (E) the use of investor funds or investment proceeds; (F) Orders issued against the Defendants by state or federal enforcement agencies; (G) the financial status of Par Funding; or (H) the management of Par Funding.

As provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Order by personal service or otherwise: (a) any of Par Funding, Full Spectrum, ABFP, ABFP Management, ABFP Income Fund, ABFP Income Fund 2, United Fidelis, Fidelis Planning, McElhone, LaForte, Cole, Abbonizio, Vagnozzi, or Furman's officers, directors, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Par Funding, Full Spectrum, ABFP, ABFP Management, ABFP Income Fund, ABFP Income Fund 2, United Fidelis, Fidelis Planning, McElhone, LaForte, Cole, Abbonizio, Vagnozzi, or Furman.

**B. Section 17(a)(2) of the Securities Act**

Pending further Order of the Court, all Defendants are preliminarily restrained and enjoined from violating Section 17(a)(2) of the Securities Act, 15 U.S.C. § 77q(a)(2), in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly: to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, by, directly or indirectly (i) creating a false appearance or otherwise deceiving any person, or (ii) disseminating false or misleading documents, materials, or information or making, either orally or in writing, any false or misleading statement in any communication with any

investor or prospective investor, about: (A) any investment in securities; (B) the prospects for success of any product or company; (C) the use of investor funds; (D) the safety of any securities investment; (E) the use of investor funds or investment proceeds; (F) Orders issued against the Defendants by state or federal enforcement agencies; (G) the financial status of Par Funding; or (H) the management of Par Funding.

As provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Order by personal service or otherwise: (a) any of the Defendants' officers, directors, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with any Defendant.

**C. Section 17(a)(3) of the Securities Act**

Pending further Order of the Court, all Defendants are preliminarily restrained and enjoined from violating Section 17(a)(3) of the Securities Act, 15 U.S.C. § 77q(a)(3), in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly: to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser, by, directly or indirectly (i) creating a false appearance or otherwise deceiving any person, or (ii) disseminating false or misleading documents, materials, or information or making, either orally or in writing, any false or misleading statement in any communication with any investor or prospective investor, about: (A) any investment in securities; (B) the prospects for success of any product or company; (C) the use of investor funds; (D) the safety of any securities investment; (E) the use of investor funds or investment proceeds; (F) Orders issued against the

Defendants by state or federal enforcement agencies; (G) the financial status of Par Funding; or (H) the management of Par Funding.

As provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Order by personal service or otherwise: (a) any of the Defendants' officers, directors, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with any Defendant.

**D. Section 10(b) and Rule 10b-5(a) of the Exchange Act**

Pending further Order of the Court, Defendants Par Funding, Full Spectrum, ABFP, ABFP Management, ABFP Income Fund, ABFP Income Fund 2, United Fidelis, Fidelis Planning, McElhone, LaForte, Cole, Abbonizio, Vagnozzi, and Furman, and their respective directors, officers, agents, servants, employees, attorneys, representatives and those persons in active concert or participation with them, and each of them, are hereby restrained and enjoined from violating Section 10(b) and Rule 10b-5(a) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5(a), by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security, to employ any device, scheme, or artifice to defraud, by, directly or indirectly (i) creating a false appearance or otherwise deceiving any person, or (ii) disseminating false or misleading documents, materials, or information or making, either orally or in writing, any false or misleading statement in any communication with any investor or prospective investor, about: (A) any investment in securities; (B) the prospects for success of any product or company; (C) the use of investor funds; (D) the safety of any securities investment; (E) the use of investor funds or investment proceeds; (F) Orders issued against the Defendants by state

or federal enforcement agencies; (G) the financial status of Par Funding; or (H) the management of Par Funding.

As provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Order by personal service or otherwise: (a) any of Par Funding, Full Spectrum, ABFP, ABFP Management, ABFP Income Fund, ABFP Income Fund 2, United Fidelis, Fidelis Planning, McElhone, LaForte, Cole, Abbonizio, Vagnozzi, or Furman's officers, directors, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Par Funding, Full Spectrum, ABFP, ABFP Management, ABFP Income Fund, ABFP Income Fund 2, United Fidelis, Fidelis Planning, McElhone, LaForte, Cole, Abbonizio, Vagnozzi, or Furman.

**E. Section 10(b) and Rule 10b-5(b) of the Exchange Act**

Pending further Order of the Court, Defendants Par Funding, Full Spectrum, ABFP, ABFP Management, ABFP Income Fund, ABFP Income Fund 2, United Fidelis, Fidelis Planning, McElhone, LaForte, Cole, Abbonizio, Vagnozzi, and Furman, and their respective directors, officers, agents, servants, employees, attorneys, representatives and those persons in active concert or participation with them, and each of them, are hereby restrained and enjoined from violating: Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Exchange Act Rule 10b-5(b), 17 C.F.R. § 240.10b-5(b), by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security, to employ any device, scheme, or artifice to defraud, by, directly or indirectly (i) creating a false appearance or otherwise deceiving any person, or (ii) disseminating false or misleading documents, materials, or information or making, either orally or in writing, any false or misleading statement in any communication with any investor or prospective investor, about: (A) any

investment in securities; (B) the prospects for success of any product or company; (C) the use of investor funds; (D) the safety of any securities investment; (E) the use of investor funds or investment proceeds; (F) Orders issued against the Defendants by state or federal enforcement agencies; (G) the financial status of Par Funding; or (H) the management of Par Funding.

As provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Order by personal service or otherwise: (a) any of Par Funding, Full Spectrum, ABFP, ABFP Management, ABFP Income Fund, ABFP Income Fund 2, United Fidelis, Fidelis Planning, McElhone, LaForte, Cole, Abbonizio, Vagnozzi, or Furman's officers, directors, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Par Funding, Full Spectrum, ABFP, ABFP Management, ABFP Income Fund, ABFP Income Fund 2, United Fidelis, Fidelis Planning, McElhone, LaForte, Cole, Abbonizio, Vagnozzi, or Furman.

**F. Section 10(b) and Rule 10b-5(c) of the Exchange Act**

Pending further Order of the Court, Defendants Par Funding, Full Spectrum, ABFP, ABFP Management, ABFP Income Fund, ABFP Income Fund 2, United Fidelis, Fidelis Planning, McElhone, LaForte, Cole, Abbonizio, Vagnozzi, and Furman and their respective directors, officers, agents, servants, employees, attorneys, representatives and those persons in active concert or participation with them, and each of them, are hereby restrained and enjoined from violating Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Exchange Act Rule 10b-5(c), 17 C.F.R. § 240.10b-5(c), by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security, to employ any device, scheme, or artifice to defraud, by, directly or indirectly (i) creating a false appearance or otherwise deceiving any person, or (ii) disseminating false or misleading

documents, materials, or information or making, either orally or in writing, any false or misleading statement in any communication with any investor or prospective investor, about: (A) any investment in securities; (B) the prospects for success of any product or company; (C) the use of investor funds; (D) the safety of any securities investment; (E) the use of investor funds or investment proceeds; (F) Orders issued against the Defendants by state or federal enforcement agencies; (G) the financial status of Par Funding; or (H) the management of Par Funding.

As provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Order by personal service or otherwise: (a) any of Par Funding, Full Spectrum, ABFP, ABFP Management, ABFP Income Fund, ABFP Income Fund 2, United Fidelis, Fidelis Planning, McElhone, LaForte, Cole, Abbonizio, Vagnozzi, or Furman's officers, directors, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Par Funding, Full Spectrum, ABFP, ABFP Management, ABFP Income Fund, ABFP Income Fund 2, United Fidelis, Fidelis Planning, McElhone, LaForte, Cole, Abbonizio, Vagnozzi, or Furman.

**G. Sections 5(a) and 5(c) of the Securities Act**

Pending further Order of the Court, that all Defendants and their respective directors, officers, agents, servants, employees, attorneys, representatives and those persons in active concert or participation with them, and each of them, are hereby enjoined from violating Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C. § 77e, by directly or indirectly, in the absence of any applicable exemption:

- (a) Unless a registration statement is in effect as to a security, making use of any means or instruments of transportation or communication in interstate commerce or of the

mails to sell such security through the use or medium of any prospectus or otherwise;

- (b) Unless a registration statement is in effect as to a security, carrying or causing to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale; or
- (c) Making use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security, unless a registration statement has been filed with the Securities and Exchange Commission as to such security, or while the registration statement is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding or examination under Section 8 of the Securities Act, 15 U.S.C. § 77h.

As provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Order by personal service or otherwise: (a) any of Defendants' officers, directors, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with any Defendant.

### III.

#### **ASSET FREEZE AS TO PAR FUNDING, MCELHONE, AND LAFORTE**

Pending determination of Plaintiff's request for a Preliminary Injunction:

A. Defendants Par Funding, McElhone, and LaForte and their respective directors, officers, agents, servants, employees, attorneys, depositories, banks, and those persons in active concert or participation with any one or more of them, and each of them, who receive notice of

this Order by personal service, mail, email, facsimile transmission or otherwise, hereby are restrained from, directly or indirectly, transferring, setting off, receiving, changing, selling, pledging, assigning, liquidating or otherwise disposing of, or withdrawing any assets or property, including but not limited to cash, free credit balances, fully paid for securities, personal property, real property, and/or property pledged or hypothecated as collateral for loans, or charging upon or drawing from any lines of credit, owned by, controlled by, or in the possession of, whether jointly or singly, and wherever located, Par Funding, Lisa McElhone, and Joseph LaForte, a/k/a Joe Mack, a/k/a Joe Macki, a/k/a Joe McElhone.

B. Any financial or brokerage institution or other person or entity holding any such funds or other assets, in the name, for the benefit or under the control of Defendants Par Funding, McElhone, or LaForte, directly or indirectly, held jointly or singly, and wherever located, and which receives actual notice of this Order by personal service, mail, email, facsimile, or otherwise, shall hold and retain within its control and prohibit the withdrawal, removal, transfer, disposition, pledge, encumbrance, assignment, set off, sale, liquidation, dissipation, concealment, or other disposal of any such funds or other assets.

This asset freeze is limited to the amount received from the securities fraud, which is estimated at this time to be \$482,000,000.

**ASSET FREEZE AS TO FULL SPECTRUM**

Pending determination of Plaintiff's request for a Preliminary Injunction:

Defendant Full Spectrum and its respective directors, officers, agents, servants, employees, attorneys, depositories, banks, and those persons in active concert or participation with any one or more of them, and each of them, who receive notice of this Order by personal service, mail, email, facsimile transmission or otherwise, hereby are restrained from, directly or indirectly, transferring,

setting off, receiving, changing, selling, pledging, assigning, liquidating or otherwise disposing of, or withdrawing any assets or property of Par Funding, Full Spectrum, McElhone, or LaForte.

This asset freeze is limited to the amount received from the securities fraud, which is estimated at this time to be \$4,398,535.

**ASSET FREEZE AS TO DEFENDANT ABFP,  
ABFP INCOME FUND, AND ABFP INCOME FUND 2**

Pending determination of Plaintiff's request for a Preliminary Injunction:

A. Defendants ABFP, ABFP Income Fund, and ABFP Income Fund 2, and their respective directors, officers, agents, servants, employees, attorneys, depositories, banks, and those persons in active concert or participation with any one or more of them, and each of them, who receive notice of this Order by personal service, mail, email, facsimile transmission or otherwise, hereby are restrained from, directly or indirectly, transferring, setting off, receiving, changing, selling, pledging, assigning, liquidating or otherwise disposing of, or withdrawing any assets or property, including but not limited to cash, free credit balances, fully paid for securities, personal property, real property, and/or property pledged or hypothecated as collateral for loans, or charging upon or drawing from any lines of credit, owned by, controlled by, or in the possession of, whether jointly or singly, and wherever located: ABFP, ABFP Income Fund, and ABFP Income Fund 2.

B. Any financial or brokerage institution or other person or entity holding any such funds or other assets, in the name, for the benefit or under the control of Defendants ABFP, ABFP Income Fund, and ABFP Income 2, directly or indirectly, held jointly or singly, and wherever located, and which receives actual notice of this Order by personal service, mail, email, facsimile, or otherwise, shall hold and retain within its control and prohibit the withdrawal, removal, transfer, disposition, pledge, encumbrance, assignment, set off, sale, liquidation, dissipation, concealment, or other disposal of any such funds or other assets.

C. This asset freeze is limited to the amounts ABFP, ABFP Income Fund, and ABFP Income Fund 2 received from the securities fraud, which is estimated at this time to be: \$25,487,690 as to ABFP Income Fund and ABFP, jointly and severally; \$13,252,600 as to ABFP Income Fund 2 and ABFP, jointly and severally; and \$1,914,045 as to ABFP independent of ABFP Income Fund and ABFP Income Fund 2.

**ASSET FREEZE AS TO DEFENDANTS UNITED FIDELIS AND FIDELIS FINANCIAL**

Pending determination of Plaintiff's request for a Preliminary Injunction:

A. Defendants United Fidelis and Fidelis Financial, and their respective directors, officers, agents, servants, employees, attorneys, depositories, banks, and those persons in active concert or participation with any one or more of them, and each of them, who receive notice of this Order by personal service, mail, email, facsimile transmission or otherwise hereby are, restrained from, directly or indirectly, transferring, setting off, receiving, changing, selling, pledging, assigning, liquidating or otherwise disposing of, or withdrawing any assets or property, including but not limited to cash, free credit balances, fully paid for securities, personal property, real property, and/or property pledged or hypothecated as collateral for loans, or charging upon or drawing from any lines of credit, owned by, controlled by, or in the possession of, whether jointly or singly, and wherever located: United Fidelis and Fidelis Financial.

B. Any financial or brokerage institution or other person or entity holding any such funds or other assets, in the name, for the benefit or under the control of United Fidelis and Fidelis Financial, directly or indirectly, held jointly or singly, and wherever located, and which receives actual notice of this Order by personal service, mail, email, facsimile, or otherwise, shall hold and retain within its control and prohibit the withdrawal, removal, transfer, disposition, pledge,

encumbrance, assignment, set off, sale, liquidation, dissipation, concealment, or other disposal of any such funds or other assets.

C. This asset freeze is limited to the amounts United Fidelis and Fidelis Financial received from the fraud, which is estimated at this time to be: \$11,603,000, jointly and severally.

**ASSET FREEZE AS TO DEFENDANTS RETIREMENT EVOLUTION,  
RE INCOME FUND, AND RE INCOME FUND 2**

Pending determination of Plaintiff’s request for a Preliminary Injunction:

A. Defendants Retirement Evolution, RE Income Fund, and RE Income Fund 2, and their respective directors, officers, agents, servants, employees, attorneys, depositories, banks, and those persons in active concert or participation with any one or more of them, and each of them, who receive notice of this Order by personal service, mail, email, facsimile transmission or otherwise, hereby are restrained from, directly or indirectly, transferring, setting off, receiving, changing, selling, pledging, assigning, liquidating or otherwise disposing of, or withdrawing any assets or property, including but not limited to cash, free credit balances, fully paid for securities, personal property, real property, and/or property pledged or hypothecated as collateral for loans, or charging upon or drawing from any lines of credit, owned by, controlled by, or in the possession of, whether jointly or singly, and wherever located: Retirement Evolution, RE Income Fund, and RE Income Fund 2.

B. Any financial or brokerage institution or other person or entity holding any such funds or other assets, in the name, for the benefit or under the control of Retirement Evolution, RE Income Fund, and RE Income Fund 2, directly or indirectly, held jointly or singly, and wherever located, and which receives actual notice of this Order by personal service, mail, email, facsimile, or otherwise, shall hold and retain within its control and prohibit the withdrawal, removal, transfer,

disposition, pledge, encumbrance, assignment, set off, sale, liquidation, dissipation, concealment, or other disposal of any such funds or other assets.

C. This asset freeze is limited to the amounts Retirement Evolution, RE Income Fund, and RE Income Fund 2 received from the fraud, which is estimated at this time to be: \$6.5 million as to Retirement Evolution; \$5,450,000 as to RE Income Fund; and \$150,000 as to RE Income Fund 2.

**ASSET FREEZE AS TO DEFENDANT COLE**

Pending determination of Plaintiff's request for a Preliminary Injunction:

A. Defendant Cole and his respective directors, officers, agents, servants, employees, attorneys, depositories, banks, and those persons in active concert or participation with any one or more of them, and each of them, who receive notice of this Order by personal service, mail, email, facsimile transmission or otherwise, hereby are restrained from, directly or indirectly, transferring, setting off, receiving, changing, selling, pledging, assigning, liquidating or otherwise disposing of, or withdrawing any assets or property, including but not limited to cash, free credit balances, fully paid for securities, personal property, real property, and/or property pledged or hypothecated as collateral for loans, or charging upon or drawing from any lines of credit, owned by, controlled by, or in the possession of, whether jointly or singly, and wherever located: Joseph Cole Barleta, a/k/a Joe Cole.

B. Any financial or brokerage institution or other person or entity holding any such funds or other assets, in the name, for the benefit or under the control of Cole, directly or indirectly, held jointly or singly, and wherever located, and which receives actual notice of this Order by personal service, mail, email, facsimile, or otherwise, shall hold and retain within its control and

prohibit the withdrawal, removal, transfer, disposition, pledge, encumbrance, assignment, set off, sale, liquidation, dissipation, concealment, or other disposal of any such funds or other assets.

C. This asset freeze is limited to the amount Cole received from the fraud, which is estimated at this time to be \$16,159,000.

**ASSET FREEZE AS TO L.M.E. 2017 FAMILY TRUST**

Pending determination of Plaintiff's request for a Preliminary Injunction:

A. Relief Defendant L.M.E. 2017 Family Trust and its respective directors, officers, agents, servants, employees, attorneys, depositories, banks, and those persons in active concert or participation with any one or more of them, and each of them, who receive notice of this Order by personal service, mail, email, facsimile transmission or otherwise, hereby are restrained from, directly or indirectly, transferring, setting off, receiving, changing, selling, pledging, assigning, liquidating or otherwise disposing of, or withdrawing any assets or property, including but not limited to cash, free credit balances, fully paid for securities, personal property, real property, and/or property pledged or hypothecated as collateral for loans, or charging upon or drawing from any lines of credit, owned by, controlled by, or in the possession of, whether jointly or singly, and wherever located: The L.M.E. 2017 Family Trust.

B. Any financial or brokerage institution or other person or entity holding any such funds or other assets, in the name, for the benefit or under the control of the L.M.E. 2017 Family Trust, directly or indirectly, held jointly or singly, and wherever located, and which receives actual notice of this Order by personal service, mail, email, facsimile, or otherwise, shall hold and retain within its control and prohibit the withdrawal, removal, transfer, disposition, pledge, encumbrance, assignment, set off, sale, liquidation, dissipation, concealment, or other disposal of any such funds or other assets.

C. This asset freeze is limited to the amount the L.M.E. 2017 Family Trust received from the fraud, which is estimated at this time to be \$14.3 million.

#### IV.

#### **SWORN ACCOUNTINGS**

##### **Accounting and Identification of Accounts by Each Defendant**

Within five calendar days of the issuance of this Order, each Defendant, separately, shall:

(a) make a sworn accounting to this Court and the Plaintiff of all funds, whether in the form of compensation, commissions, income (including payments for assets, shares or property of any kind), and other benefits (including the provision of services of a personal or mixed business and personal nature) received, directly or indirectly, by the Defendant making the sworn accounting;

(b) make a sworn accounting to this Court and the Plaintiff of all assets, funds, or other properties, whether real or personal, held by the Defendant making the sworn accounting, jointly or individually, or for its direct or indirect beneficial interest, or over which it maintains control, wherever situated, stating the location, value, and disposition of each such asset, fund, and other property; and

(c) provide to the Court and the Plaintiff a sworn identification of all accounts (including, but not limited to, bank accounts, savings accounts, securities accounts and deposits of any kind and wherever situated) in which the Defendant making the sworn accounting (whether solely or jointly), directly or indirectly (including through a corporation, partnership, relative, friend or nominee), either has an interest or over which he has the power or right to exercise control.

V.

**RECORDS PRESERVATION**

Pending determination of the Plaintiff's request for a Preliminary Injunction, all Defendants and the Relief Defendant, their directors, officers, agents, servants, employees, attorneys, depositories, banks, and those persons in active concert or participation with any one or more of them, and each of them, hereby are restrained and enjoined from, directly or indirectly, destroying, mutilating, concealing, altering, disposing of, or otherwise rendering illegible in any manner, any of the books, records, documents, correspondence, brochures, manuals, papers, ledgers, accounts, statements, obligations, files and other property of or pertaining to any and all Defendants and the Relief Defendant, wherever located and in whatever form, electronic or otherwise, until further Order of this Court.

VI.

**EXPEDITED DISCOVERY**

(a) Immediately upon entry of this Order, and while the Plaintiff's request for a Preliminary Injunction is pending, the parties may take depositions upon oral examination of parties and non-parties subject to two days' notice. Should any Defendant fail to appear for a properly noticed deposition, that party may be prohibited from introducing evidence at the hearing on the Plaintiff's request for a preliminary injunction;

(b) Immediately upon entry of this Order, and while the Plaintiff's request for a Preliminary Injunction is pending, the parties shall be entitled to serve interrogatories, requests for the production of documents and requests for admissions. The parties shall respond to such discovery requests within two days of service;

(c) Immediately upon entry of this Order, and while the Plaintiff’s request for a Preliminary Injunction is pending, the parties may issue subpoenas for documents, things and electronically stored information to non-parties pursuant to Fed. R. Civ. P. 45, with responses due within one week of the date of service;

(d) All responses to the Plaintiff’s discovery requests shall be delivered to Amie Riggle Berlin, Esq. at 801 Brickell Avenue, Suite 1950, Miami, Florida 33131 by the most expeditious means available; and

(e) Service of discovery requests shall be sufficient if made upon the parties by email, facsimile, or overnight courier, and depositions may be taken by telephone or other remote electronic means.

**VII.**

**RETENTION OF JURISDICTION**

This Court shall retain jurisdiction over this matter and Defendants and Relief Defendants in order to implement and carry out the terms of all Orders and Decrees that may be entered and/or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court, and will order other relief that this Court deems appropriate under the circumstances.

**DONE AND ORDERED** in Fort Lauderdale, Florida, this 28th day of July, 2020.



**RODOLFO A. RUIZ II**  
**UNITED STATES DISTRICT JUDGE**

Copies to: Counsel of Record

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 20-21964-CIV-ALTONAGA/Goodman

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,  
vs.

TCA FUND MANAGEMENT GROUP CORP., *et al.*,

Defendants, and

TCA GLOBAL CREDIT FUND, LP; *et al.*,

Relief Defendants.

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**ORDER GRANTING PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S  
UNOPOSED EXPEDITED MOTION FOR APPOINTMENT OF RECEIVER**

THIS CAUSE came before the Court on Plaintiff Securities and Exchange Commission's Unopposed Motion and Memorandum of Law for Appointment of Receiver [ECF No. 3]. The Court has carefully reviewed the Motion and finds that, based on the record in these proceedings, the appointment of a receiver is necessary and appropriate for purposes of marshaling and preserving all assets of the Receivership Entities ("Receivership Assets") and those assets of the Receivership Entities that: (a) are attributable to funds derived from investors or clients of the Receivership Entities; (b) are held in constructive trust for the Receivership Entities; (c) were fraudulently transferred by the Receivership Entities; and/or (d) may otherwise be includable as assets of the estates of the Receivership Entities.

The Receivership Entities have consented to the appointment of a receiver, the Court has subject matter jurisdiction over this action and personal jurisdiction over the Receivership Entities, and venue properly lies in this District. Therefore, it is

EXHIBIT

B

**ORDERED AND ADJUDGED** that the Motion [ECF No. 3] is **GRANTED** as follows:

1. The Court takes exclusive jurisdiction and possession of the assets, of whatever kind and wherever situated, of the Receivership Entities.

2. Until further Order of this Court, Jonathan E Perlman is appointed to serve without bond as receiver (the “Receiver”) for the estates of the Receivership Entities and is given authority to retain Genovese Joblove & Battista as counsel.

**I. Asset Freeze**

3. Except as otherwise specified herein, all Receivership Assets are frozen until further order of the Court. Accordingly, all persons and entities with direct or indirect control over any Receivership Assets, other than the Receiver, are hereby restrained and enjoined from directly or indirectly transferring, setting off, receiving, changing, selling, pledging, assigning, liquidating or otherwise disposing of or withdrawing such assets. This freeze shall include, but not be limited to, Receivership Assets that are on deposit with financial institutions such as banks, brokerage firms and mutual funds.

**II. General Powers and Duties of Receiver**

4. The Receiver shall have all powers, authorities, rights and privileges heretofore possessed by the officers, directors, managers and general and limited partners of the Receivership Entities under applicable state, federal, or foreign law, by the governing charters, by-laws, articles and/or agreements in addition to all powers and authority of a receiver at equity, and all powers conferred upon a receiver by the provisions of 28 U.S.C. §§ 754, 959 and 1692, and Federal Rule of Civil Procedure 66.

5. The trustees, directors, officers, managers, employees, investment advisors, accountants, attorneys and other agents of the Receivership Entities are hereby dismissed and the

powers of any general partners, directors and/or managers are hereby suspended. Such persons and entities shall have no authority with respect to the Receivership Entities' operations or assets, except to the extent as may hereafter be expressly granted by the Receiver. The Receiver shall assume and control the operation of the Receivership Entities and shall pursue and preserve all their claims.

6. No person holding or claiming any position of any sort with any of the Receivership Entities shall possess any authority to act by or on behalf of any of the Receivership Entities.

7. Subject to the specific provisions in Sections III through XIV, below, the Receiver has the following general powers and duties:

- A. To use reasonable efforts to determine the nature, location and value of all property interests of the Receivership Entities, including, but not limited to, monies, funds, securities, credits, effects, goods, chattels, lands, premises, leases, claims, rights and other assets, together with all rents, profits, dividends, interest or other income attributable thereto, of whatever kind, which the Receivership Entities own, possess, have a beneficial interest in, or control directly or indirectly ("Receivership Property" or, collectively, the "Receivership Estates");
- B. To take custody, control and possession of all Receivership Property and records relevant thereto from the Receivership Entities; to sue for and collect, recover, receive and take into possession from third parties all Receivership Property and records relevant thereto;
- C. To manage, control, operate and maintain the Receivership Estates and hold in Receiver's possession, custody and control all Receivership Property, pending further Order of the Court;
- D. To use Receivership Property for the benefit of the Receivership Estates, making payments and disbursements and incurring expenses as may be necessary or advisable in the ordinary course of business in discharging Receiver's duties;
- E. To take any action which, prior to the entry of this Order, could have been taken by the officers, directors, partners, managers, trustees and agents of the Receivership Entities;

- F. To engage and employ persons in Receiver's discretion to assist Receiver in carrying out Receiver's duties and responsibilities hereunder, including, but not limited to, accountants, attorneys, securities traders, registered representatives, financial or business advisers, liquidating agents, real estate agents, forensic experts, brokers, traders or auctioneers;
- G. To take such action as necessary and appropriate for the preservation of Receivership Property or to prevent the dissipation or concealment of Receivership Property;
- H. The Receiver is authorized to issue subpoenas for documents and testimony consistent with the Federal Rules of Civil Procedure;
- I. To bring such legal actions based on law or equity in any state, federal, or foreign court as the Receiver deems necessary or appropriate in discharging Receiver's duties;
- J. To pursue, resist and defend all suits, actions, claims and demands which may now be pending or which may be brought by or asserted against the Receivership Estates; and,
- K. To take such other action as may be approved by the Court.

**III. Access to Information**

8. The Receivership Entities and the past and/or present officers, directors, agents, managers, general and limited partners, trustees, attorneys, accountants and employees of the Receivership Entities, as well as those acting in their place, are ordered and directed to preserve and turn over to the Receiver forthwith all paper and electronic information of, and/or relating to, the Receivership Entities and/or all Receivership Property; such information shall include but not be limited to books, records, documents, accounts and all other instruments and papers.

9. The Receivership Entities and the Receivership Entities' past and/or present officers, directors, agents, attorneys, managers, shareholders, employees, accountants, debtors, creditors, managers and general and limited partners, and other appropriate persons or entities shall answer under oath to the Receiver all questions which the Receiver may put to them and

produce all documents as required by the Receiver regarding the business of the Receivership Entities, or any other matter relevant to the operation or administration of the receivership or the collection of funds due to the Receivership Entities. In the event the Receiver deems it necessary to require the appearance of the aforementioned persons or entities, the Receiver shall make its discovery requests in accordance with the Federal Rules of Civil Procedure.

10. To issue subpoenas to compel testimony of persons or production of records, consistent with the Federal Rules of Civil Procedure and applicable Local Rules, except for the provisions of Federal Rule of Civil Procedure 26(d)(1), concerning any subject matter within the powers and duties granted by this Order.

**IV. Access to Books, Records and Accounts**

11. The Receiver is authorized to take immediate possession of all assets, bank accounts or other financial accounts, books and records and all other documents or instruments relating to the Receivership Entities. All persons and entities having control, custody or possession of any Receivership Property are hereby directed to turn such property over to the Receiver.

12. The Receivership Entities and the Receivership Entities' past and/or present officers, directors, agents, attorneys, managers, shareholders, employees, accountants, debtors, creditors, managers and general and limited partners, and other appropriate persons or entities shall cooperate with and assist the Receiver in the performance of Receiver's duties.

13. The Receivership Entities, as well as their agents, servants, employees, attorneys, any persons acting for or on behalf of the Receivership Entities, and any persons receiving notice of this Order by personal service, facsimile transmission or otherwise, having possession of the

property, business, books, records, accounts or assets of the Receivership Entities are directed to deliver the same to the Receiver or the Receiver's agents and/or employees.

14. All banks, brokerage firms, financial institutions, and other persons or entities that have possession, custody or control of any assets or funds held by, in the name of, or for the benefit of, directly or indirectly, and of the Receivership Entities that receive actual notice of this Order by personal service, facsimile transmission or otherwise shall:

- A. Not liquidate, transfer, sell, convey or otherwise transfer any assets, securities, funds, or accounts in the name of or for the benefit of the Receivership Entities except upon instructions from the Receiver;
- B. Not exercise any form of set-off, alleged set-off, lien, or any form of self-help whatsoever, or refuse to transfer any funds or assets to the Receiver's control without the permission of this Court;
- C. Within five (5) business days of receipt of that notice, file with the Court and serve on the Receiver and counsel for the Commission a certified statement setting forth, with respect to each such account or other asset, the balance in the account or description of the assets as of the close of business on the date of receipt of the notice; and,
- D. Cooperate expeditiously in providing information and transferring funds, assets and accounts to the Receiver or at the direction of the Receiver.

**V. Access to Real and Personal Property**

15. The Receiver is authorized to take immediate possession of all personal property of the Receivership Entities, wherever located, including but not limited to electronically stored information, computers, laptops, hard drives, external storage drives, and any other such memory, media or electronic storage devices, books, papers, data processing records, evidence of indebtedness, bank records and accounts, savings records and accounts, brokerage records and accounts, certificates of deposit, stocks, bonds, debentures, and other securities and investments, contracts, mortgages, furniture, office supplies and equipment.

16. The Receiver is authorized to take immediate possession of all real property of the Receivership Entities, wherever located, including but not limited to all ownership and leasehold interests and fixtures. Upon receiving actual notice of this Order by personal service, facsimile transmission or otherwise, all persons other than law enforcement officials acting within the course and scope of their official duties, are (without the express written permission of the Receiver) prohibited from: (a) entering such premises; (b) removing anything from such premises; or, (c) destroying, concealing or erasing anything on such premises.

17. In order to execute the express and implied terms of this Order, the Receiver is authorized to change door locks to the premises described above. The Receiver shall have exclusive control of the keys. The Receivership Entities, or any other person acting or purporting to act on their behalf, are ordered not to change the locks in any manner, nor to have duplicate keys made, nor shall they have keys in their possession during the term of the receivership.

18. The Receiver is authorized to open all mail directed to or received by or at the offices or post office boxes of the Receivership Entities, and to inspect all mail opened prior to

the entry of this Order, to determine whether items or information therein fall within the mandates of this Order.

**VI. Notice to Third Parties**

19. The Receiver shall promptly give notice of Receiver's appointment to all known officers, directors, agents, employees, shareholders, creditors, debtors, managers and general and limited partners of the Receivership Entities, as the Receiver deems necessary or advisable to effectuate the operation of the receivership.

20. All persons and entities owing any obligation, debt, or distribution with respect to an ownership interest to any Receivership Entity shall, until further ordered by the Court, pay all such obligations in accordance with the terms thereof to the Receiver and its receipt for such payments shall have the same force and effect as if the Receivership Entity had received such payment.

21. In furtherance of Receiver's responsibilities in this matter, the Receiver is authorized to communicate with, and/or serve this Order upon, any person, entity or government office that he deems appropriate to inform them of the status of this matter and/or the financial condition of the Receivership Estates. All government offices which maintain public files of security interests in real and personal property shall, consistent with such office's applicable procedures, record this Order upon the request of the Receiver or the Commission.

22. The Receiver is authorized to instruct the United States Postmaster to hold and/or reroute mail which is related, directly or indirectly, to the business, operations or activities of any of the Receivership Entities (the "Receiver's Mail"), including all mail addressed to, or for the benefit of, the Receivership Entities. The Postmaster shall not comply with, and shall immediately report to the Receiver, any change of address or other instruction given by anyone

other than the Receiver concerning the Receiver's Mail. The Receivership Entities shall not open any of the Receiver's Mail and shall immediately turn over such mail, regardless of when received, to the Receiver. All personal mail of any Receivership Entities, and/or any mail appearing to contain privileged information, and/or any mail not falling within the mandate of the Receiver, shall be released to the named addressee by the Receiver. The foregoing instructions shall apply to any proprietor, whether individual or entity, of any private mailbox, depository, business or service, or mail courier or delivery service, hired, rented or used by the Receivership Entities. The Receivership Entities shall not open a new mailbox or take any steps or make any arrangements to receive mail in contravention of this Order, whether through the U.S. mail, a private mail depository or courier service.

23. Subject to payment for services provided, any entity furnishing water, electric, telephone, sewage, garbage or trash removal services to the Receivership Entities shall maintain such service and transfer any such accounts to the Receiver unless instructed to the contrary by the Receiver.

## **VII. Injunction Against Interference with Receiver**

24. The Receivership Entities and all persons receiving notice of this Order by personal service, facsimile or otherwise, are hereby restrained and enjoined from directly or indirectly taking any action or causing any action to be taken, without the express written agreement of the Receiver, which would:

- A. Interfere with the Receiver's efforts to take control, possession, or management of any Receivership Property; such prohibited actions include but are not limited to, using self-help or executing or issuing or causing the execution or issuance of any court attachment, subpoena, replevin, execution, or other process for the purpose of impounding or taking possession of or interfering with or creating or enforcing a lien upon any Receivership Property;

- B. Hinder, obstruct or otherwise interfere with the Receiver in the performance of Receiver's duties; such prohibited actions include but are not limited to, concealing, destroying or altering records or information;
- C. Dissipate or otherwise diminish the value of any Receivership Property; such prohibited actions include but are not limited to, releasing claims or disposing, transferring, exchanging, assigning or in any way conveying any Receivership Property, enforcing judgments, assessments or claims against any Receivership Property or any Receivership Entity, attempting to modify, cancel, terminate, call, extinguish, revoke or accelerate (the due date), of any lease, loan, mortgage, indebtedness, security agreement or other agreement executed by any Receivership Entity or which otherwise affects any Receivership Property; or,
- D. Interfere with or harass the Receiver or interfere in any manner with the exclusive jurisdiction of this Court over the Receivership Entities.

25. The Receiver shall promptly notify the Court and Commission counsel of any failure or apparent failure of any person or entity to comply in any way with the terms of this Order.

#### **VIII. Stay of Litigation**

26. As set forth in detail below, the following proceedings, excluding the instant proceeding and all police or regulatory actions and actions of the Commission related to the above-captioned enforcement action, are stayed until further Order of the Court:

All civil legal proceedings of any nature, including, but not limited to, bankruptcy proceedings, arbitration proceedings, foreclosure actions, default proceedings, or other actions of any nature involving: (a) the Receiver, in Receiver's capacity as Receiver; (b) any Receivership Property, wherever located; (c) any of the Receivership Entities, including subsidiaries and partnerships; or, (d) any of the Receivership Entities' past or present officers, directors, managers, agents, or general or limited partners sued for, or in connection with, any action taken by them while acting in such capacity of any nature, whether as plaintiff, defendant, third-party plaintiff, third-party defendant, or otherwise (such proceedings are hereinafter referred to as "Ancillary Proceedings").

27. The parties to any and all Ancillary Proceedings are enjoined from commencing or continuing any such legal proceeding, or from taking any action, in connection with any such proceeding, including, but not limited to, the issuance or employment of process.

28. All Ancillary Proceedings are stayed in their entirety, and all courts having any jurisdiction thereof are enjoined from taking or permitting any action until further Order of this Court. Further, as to a cause of action accrued or accruing in favor of one or more of the Receivership Entities against a third person or party, any applicable statute of limitation is tolled during the period in which this injunction against commencement of legal proceedings is in effect as to that cause of action.

**IX. Managing Assets**

29. For each of the Receivership Estates, the Receiver shall establish one or more custodial accounts at a federally insured bank to receive and hold all cash equivalent Receivership Property (the "Receivership Funds").

30. The Receiver's deposit account shall be entitled, together with the name of the action:

- A. Receiver's Account, Estate of TCA Fund Management Group Corp.
- B. Receiver's Account, Estate of TCA Global Credit Fund GP, Ltd.
- C. Receiver's Account, Estate of TCA Global Credit Fund, LP
- D. Receiver's Account, Estate of TCA Global Credit Fund, Ltd.
- E. Receiver's Account, Estate of TCA Global Credit Master Fund, LP

31. The Receiver may, without further Order of the Court, transfer, compromise, or otherwise dispose of any Receivership Property, other than real estate, in the ordinary course of business, on terms and in the manner the Receiver deems most beneficial to the Receivership Estate, and with due regard to the realization of the true and proper value of such Receivership Property.

32. Subject to Paragraph 33 immediately below, the Receiver is authorized to locate, list for sale or lease, engage a broker for sale or lease, cause the sale or lease, and take all necessary and reasonable actions to cause the sale or lease of all real property in the Receivership Estates, either at public or private sale, on terms and in the manner the Receiver deems most beneficial to the Receivership Estate, and with due regard to the realization of the true and proper value of such real property.

33. Upon further Order of the Court, pursuant to such procedures as may be required by this Court and additional authority such as 28 U.S.C. §§ 2001 and 2004, the Receiver will be authorized to sell, and transfer clear title to, all real property in the Receivership Estates.

34. The Receiver is authorized to take all actions to manage, maintain, and/or wind-down business operations of the Receivership Estates, including making legally required payments to creditors, employees, and agents of the Receivership Estates and communicating with vendors, investors, governmental and regulatory authorities, and others, as appropriate.

35. The Receiver shall take all necessary steps to enable the Receivership Funds to obtain and maintain the status of a taxable "Settlement Fund," within the meaning of Section 468B of the Internal Revenue Code and of the regulations, when applicable.

**X. Investigate and Prosecute Claims**

36. Subject to the requirement, in Section VII above, that leave of this Court is required to resume or commence certain litigation, the Receiver is authorized, empowered and directed to investigate, prosecute, defend, intervene in or otherwise participate in, compromise, and/or adjust actions in any state, federal or foreign court or proceeding of any kind as may in Receiver's discretion, and in consultation with Commission counsel, be advisable or proper to recover and/or conserve Receivership Property.

37. Subject to Receiver's obligation to expend receivership funds in a reasonable and cost-effective manner, the Receiver is authorized, empowered and directed to investigate the manner in which the financial and business affairs of the Receivership Entities were conducted and (after obtaining leave of this Court) to institute such actions and legal proceedings, for the benefit and on behalf of the Receivership Estate, as the Receiver deems necessary and appropriate; the Receiver may seek, among other legal and equitable relief, the imposition of constructive trusts, disgorgement of profits, asset turnover, avoidance of fraudulent transfers, rescission and restitution, collection of debts, and such other relief from this Court as may be necessary to enforce this Order. Where appropriate, the Receiver should provide prior notice to Counsel for the Commission before commencing investigations and/or actions.

38. The Receiver hereby holds, and is therefore empowered to waive, all privileges, including the attorney-client privilege, held by all Receivership Entities.

39. The receiver has a continuing duty to ensure that there are no conflicts of interest between the Receiver, Receiver's Retained Personnel (as that term is defined below), and the Receivership Estate.

#### **XI. Bankruptcy Filing**

40. The Receiver may seek authorization of this Court to file voluntary petitions for relief under Title 11 of the United States Code (the "Bankruptcy Code") for the Receivership Entities. If a Receivership Entity is placed in bankruptcy proceedings, the Receiver may become, and may be empowered to operate each of the Receivership Estates as, a debtor in possession. In such a situation, the Receiver shall have all the powers and duties as provided a debtor in possession under the Bankruptcy Code to the exclusion of any other person or entity.

Pursuant to Paragraph 4 above, the Receiver is vested with management authority for all Receivership Entities and may therefore file and manage a Chapter 11 petition.

41. The provisions of Section VIII above bar any person or entity, other than the Receiver, from placing any of the Receivership Entities in bankruptcy proceedings.

## **XII. Liability of Receiver**

42. Until further Order of the Court, the Receiver shall not be required to post bond or give an undertaking of any type in connection with Receiver's fiduciary obligations in this matter.

43. The Receiver and Receiver's agents, acting within scope of such agency ("Retained Personnel") are entitled to rely on all outstanding rules of law and Orders of the Court and shall not be liable to anyone for their own good faith compliance with any order, rule, law, judgment, or decree. In no event shall the Receiver or Retained Personnel be liable to anyone for their good faith compliance with their duties and responsibilities as Receiver or Retained Personnel, nor shall the Receiver or Retained Personnel be liable to anyone for any actions taken or omitted by them except upon a finding by the Court that they acted or failed to act as a result of malfeasance, bad faith, gross negligence, or in reckless disregard of their duties.

44. The Court shall retain jurisdiction over any action filed against the Receiver or Retained Personnel based upon acts or omissions committed in their representative capacities.

45. In the event the Receiver decides to resign, the Receiver shall first give written notice to the Commission's counsel of record and the Court of its intention, and the resignation shall not be effective until the Court appoints a successor. The Receiver shall then follow such instructions as the Court may provide.

### **XIII. Recommendations and Reports**

46. The Receiver is authorized, empowered and directed to develop a plan for the fair, reasonable, and efficient recovery and liquidation of all remaining, recovered, and recoverable Receivership Property (the "Liquidation Plan").

47. Within ninety (90) days of the entry date of this Order, the Receiver shall file the Liquidation Plan in the above-captioned action, with service copies to counsel of record.

48. Within thirty (30) days after the end of each calendar quarter, the Receiver shall file and serve a full report and accounting of each Receivership Estate (the "Quarterly Status Report"), reflecting (to the best of the Receiver's knowledge as of the period covered by the report) the existence, value, and location of all Receivership Property, and of the extent of liabilities, both those claimed to exist by others and those the Receiver believes to be legal obligations of the Receivership Estates.

49. The Quarterly Status Report shall contain the following:

- A. A summary of the operations of the Receiver;
- B. The amount of cash on hand, the amount and nature of accrued administrative expenses, and the amount of unencumbered funds in the estate;
- C. A schedule of all the Receiver's receipts and disbursements (attached as Exhibit A to the Quarterly Status Report), with one column for the quarterly period covered and a second column for the entire duration of the receivership;
- D. A description of all known Receivership Property, including approximate or actual valuations, anticipated or proposed dispositions, and reasons for retaining assets where no disposition is intended;
- E. A description of liquidated and unliquidated claims held by the Receivership Estate, including the need for forensic and/or investigatory resources; approximate valuations of claims; and anticipated or proposed methods of enforcing such claims (including likelihood of success in: (i) reducing the claims to judgment; and, (ii) collecting such judgments);

- F. A list of all known creditors with their addresses and the amounts of their claims;
- G. The status of Creditor Claims Proceedings, after such proceedings have been commenced; and,
- H. The Receiver's recommendations for a continuation or discontinuation of the receivership and the reasons for the recommendations.

50. On the request of the Commission, the Receiver shall provide the Commission with any documentation that the Commission deems necessary to meet its reporting requirements, that is mandated by statute or Congress, or that is otherwise necessary to further the Commission's mission.

**XIV. Fees, Expenses and Accountings**

51. Subject to Paragraphs 52-58 immediately below, the Receiver need not obtain Court approval prior to the disbursement of Receivership Funds for expenses in the ordinary course of the administration and operation of the receivership. Further, prior Court approval is not required for payments of applicable federal, state or local taxes.

52. Subject to Paragraph 53 immediately below, the Receiver is authorized to solicit persons and entities ("Retained Personnel") to assist Receiver in carrying out the duties and responsibilities described in this Order. Except for counsel retained by the Receiver pursuant to Paragraph 2 of this Order, the Receiver shall not engage any Retained Personnel without first obtaining an Order of the Court authorizing such engagement.

53. The Receiver and Retained Personnel are entitled to reasonable compensation and expense reimbursement from the Receivership Estates as described in the "Billing Instructions for Receivers in Civil Actions Commenced by the U.S. Securities and Exchange Commission"

(the “Billing Instructions”) agreed to by the Receiver. Such compensation shall require the prior approval of the Court.

54. Within forty-five (45) days after the end of each calendar quarter, the Receiver and Retained Personnel shall apply to the Court for compensation and expense reimbursement from the Receivership Estates (the “Quarterly Fee Applications”). At least thirty (30) days prior to filing each Quarterly Fee Application with the Court, the Receiver will serve upon counsel for the Commission a complete copy of the proposed Application, together with all exhibits and relevant billing information in a format to be provided by Commission staff.

55. All Quarterly Fee Applications will be interim and will be subject to cost benefit and final reviews at the close of the receivership. At the close of the receivership, the Receiver will file a final fee application, describing in detail the costs and benefits associated with all litigation and other actions pursued by the Receiver during the receivership.

56. Quarterly Fee Applications may be subject to a holdback in the amount of 20% of the amount of fees and expenses for each application filed with the Court. The total amounts held back during the receivership will be paid out at the discretion of the Court as part of the final fee application submitted at the close of the receivership.

57. Each Quarterly Fee Application shall:

- A. Comply with the terms of the Billing Instructions agreed to by the Receiver; and,
- B. Contain representations (in addition to the Certification required by the Billing Instructions) that: (i) the fees and expenses included therein were incurred in the best interests of the Receivership Estate; and, (ii) with the exception of the Billing Instructions, the Receiver has not entered into any agreement, written or oral, express or implied, with any person or entity concerning the amount of compensation paid or to be paid from the Receivership Estate, or any sharing thereof.

CASE NO. 20-21964-CIV-ALTONAGA

58. At the close of the Receivership, the Receiver shall submit a Final Accounting, in a format to be provided by Commission staff, as well as the Receiver's final application for compensation and expense reimbursement.

**DONE AND ORDERED** in Miami, Florida, this 11th day of May, 2020.

  
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**CECILIA M. ALTONAGA**  
**UNITED STATES DISTRICT JUDGE**

cc: counsel of record

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. 9:19-CV-80633-ROSENBERG

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

NATURAL DIAMONDS INVESTMENT CO.,  
EAGLE FINANCIAL DIAMOND GROUP INC.  
a/k/a DIAMANTE ATERLIER,  
ARGYLE COIN, LLC,  
JOSE ANGEL AMAN,  
HAROLD SEIGEL, &  
JONATHON H. SEIGEL,

Defendants,

H.S. MANAGEMENT GROUP LLC,  
GOLD 7 OF MIAMI, LLC,  
WINNERS CHRUCH INTERNATIONAL INC.  
OF WEST PALM BEACH, FLORIDA,  
FREDERICK D. SHIPMAN, &  
WHITNEY SHIPMAN,

Relief Defendants.

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**ORDER GRANTING PLAINTIFF SECURITIES AND  
EXCHANGE COMMISSION'S MOTION FOR APPOINTMENT OF RECEIVER [DE 7]**

**WHEREAS**, Plaintiff Securities and Exchange Commission has filed a Motion for the Appointment of a Receiver over Defendant Argyle Coin, LLC ("Argyle"), DE 7, with full and exclusive power, duty, and authority to: administer and manage the business affairs, funds, assets, causes in action and any other property of Argyle; marshal and safeguard all of their assets; and take whatever actions are necessary for the protection of investors;

**WHEREAS**, the SEC has made a sufficient and proper showing in support of the relief requested;

**WHEREAS**, the SEC has submitted the credentials of a candidate to be appointed as Receiver of all of the assets, properties, books and records, and other items of Argyle (“Receivership Entity”), including any properties, assets and other items held in their names or their principals’ names, and the SEC has advised the Court that this candidate is prepared to assume this responsibility if so ordered by the Court;

**IT IS THEREFORE ORDERED AND ADJUDGED** that **Jeffrey Schneider, Esq.** is hereby appointed Receiver over the Receivership Entities, their subsidiaries, successors, and assigns, and is hereby authorized, empowered, and directed as follows:

**I. General Powers and Duties of Receiver**

1. The Receiver shall have all powers, authorities, rights and privileges heretofore possessed by the officers, directors, managers and general and limited partners of the entity Receivership Parties under applicable state and federal law, by the governing charters, by-laws, articles and/or agreements in addition to all powers and authority of a receiver at equity, and all powers conferred upon a receiver by the provisions of 28 U.S.C. §§ 754, 959 and 1692, and Fed. R. Civ. P. 66.

2. The trustees, directors, officers, managers, employees, investment advisors, accountants, attorneys and other agents of the Receivership Entity are hereby dismissed and the powers of any general partners, directors and/or managers are hereby suspended. Such persons and entities shall have no authority with respect to the Receivership Entity’s operations or assets, except to the extent as may hereafter be expressly granted by the Receiver. The Receiver shall assume and control the operation of the Receivership Entity and shall pursue and preserve all of their claims.

3. No person holding or claiming any position of any sort with any of the Receivership Entity shall possess any authority to act by or on behalf of any of the Receivership Entity.

4. Subject to the specific provisions below, the Receiver shall have the following general powers and duties:

- A. To use reasonable efforts to determine the nature, location and value of all property interests of the Receivership Entity, including, but not limited to, monies, funds, securities, credits, effects, goods, chattels, lands, premises, leases, claims, rights and other assets, together with all rents, profits, dividends, interest or other income attributable thereto, of whatever kind, which the Receivership Entity own, possess, have a beneficial interest in, or control directly or indirectly (“Receivership Property” or, collectively, the “Receivership Estates”);
- B. To take custody, control and possession of all Receivership Property and records relevant thereto from the Receivership Entity; to sue for and collect, recover, receive and take into possession from third parties all Receivership Property and records relevant thereto;
- C. To manage, control, operate and maintain the Receivership Estates and hold in his possession, custody and control all Receivership Property, pending further Order of this Court;
- D. To use Receivership Property for the benefit of the Receivership Estates, making payments and disbursements and incurring expenses as may be necessary or advisable in the ordinary course of business in discharging his duties as Receiver;
- E. To take any action which, prior to the entry of this Order, could have been taken by the officers, directors, partners, managers, trustees and agents of the Receivership Entity;
- F. To engage and employ persons in his discretion to assist him in carrying out his duties and responsibilities hereunder, including, but not limited to, accountants, attorneys, securities traders, registered representatives, financial or business advisers, liquidating agents, real estate agents, forensic experts, brokers, traders or auctioneers;
- G. To take such action as necessary and appropriate for the preservation of Receivership Property or to prevent the dissipation or concealment of

Receivership Property;

- H. The Receiver is authorized to issue subpoenas for documents and testimony consistent with the Federal Rules of Civil Procedure;
- I. To bring such legal actions based on law or equity in any state, federal, or foreign court as the Receiver deems necessary or appropriate in discharging his duties as Receiver;
- J. To pursue, resist and defend all suits, actions, claims and demands which may now be pending or which may be brought by or asserted against the Receivership Estates; and,
- K. To take such other action as may be approved by this Court.

## **II. Access to Information**

5. The individual Receivership Entity and the past and/or present officers, directors, agents, managers, general and limited partners, trustees, attorneys, accountants and employees of the entity Receivership Entity, as well as those acting in their place, are hereby ordered and directed to preserve and turn over to the Receiver forthwith all paper and electronic information of, and/or relating to, the Receivership Entity and/or all Receivership Property; such information shall include but not be limited to books, records, documents, accounts and all other instruments and papers.

6. Within ten (10) days of the entry of this Order, the Receivership Entity shall file with the Court and serve upon the Receiver and the Commission a sworn statement, listing: (a) the identity, location and estimated value of all Receivership Property; (b) all employees (and job titles thereof), other personnel, attorneys, accountants and any other agents or contractors of the Receivership Entity; and, (c) the names, addresses and amounts of claims of all known creditors of the Receivership Entity.

7. Within thirty (30) days of the entry of this Order, the Receivership Entity shall

file with the Court and serve upon the Receiver and the Commission a sworn statement and accounting, with complete documentation, covering the period from January 2017 to the present:

- A. Of all Receivership Property, wherever located, held by or in the name of the Receivership Entity, or in which any of them, directly or indirectly, has or had any beneficial interest, or over which any of them maintained or maintains and/or exercised or exercises control, including, but not limited to: (a) all securities, investments, funds, real estate, automobiles, jewelry and other assets, stating the location of each; and (b) any and all accounts, including all funds held in such accounts, with any bank, brokerage or other financial institution held by, in the name of, or for the benefit of any of them, directly or indirectly, or over which any of them maintained or maintains and/or exercised or exercises any direct or indirect control, or in which any of them had or has a direct or indirect beneficial interest, including the account statements from each bank, brokerage or other financial institution;
- B. Identifying every account at every bank, brokerage or other financial institution: (a) over which Receivership Entity have signatory authority; and (b) opened by, in the name of, or for the benefit of, or used by, the Receivership Entity;
- C. Identifying all credit, bank, charge, debit or other deferred payment card issued to or used by each Receivership Defendant, including but not limited to the issuing institution, the card or account number(s), all persons or entities to which a card was issued and/or with authority to use a card, the balance of each account and/or card as of the most recent billing statement, and all statements for the last twelve months;
- D. Of all assets received by any of them from any person or entity, including the value, location, and disposition of any assets so received;
- E. Of all funds received by the Receivership Entity, and each of them, in any way related, directly or indirectly, to the conduct alleged in the Commission's Complaint. The submission must clearly identify, among other things, all investors, the securities they purchased, the date and amount of their investments, and the current location of such funds;
- G. Of all expenditures exceeding \$1,000 made by any of them, including those made on their behalf by any person or entity; and
- H. Of all transfers of assets made by any of them.

8. Within thirty (30) days of the entry of this Order, the Receivership Entity shall provide to the Receiver and the Commission copies of the Receivership Entity's federal income tax returns for 2015 through present with all relevant and necessary underlying documentation.

9. The individual Receivership Entity and the entity Receivership Entity's past and/or present officers, directors, agents, attorneys, managers, shareholders, employees, accountants, debtors, creditors, managers and general and limited partners, and other appropriate persons or entities shall answer under oath to the Receiver all questions which the Receiver may put to them and produce all documents as required by the Receiver regarding the business of the Receivership Entity, or any other matter relevant to the operation or administration of the receivership or the collection of funds due to the Receivership Entity. In the event that the Receiver deems it necessary to require the appearance of the aforementioned persons or entity, the Receiver shall make its discovery requests in accordance with the Federal Rules of Civil Procedure.

10. To issue subpoenas to compel testimony of persons or production of records, consistent with the Federal Rules of Civil Procedure and applicable Local Rules, except for the provisions of Fed. R. Civ. P. 26(d)(1), concerning any subject matter within the powers and duties granted by this Order.

11. The Receivership Entity is required to assist the Receiver in fulfilling his duties and obligations. As such, they must respond promptly and truthfully to all requests for information and documents from the Receiver.

### **III. Access to Books, Records and Accounts**

12. The Receiver is authorized to take immediate possession of all assets, bank accounts or other financial accounts, books and records and all other documents or instruments relating to the Receivership Entity. All persons and entities having control, custody or possession

of any Receivership Property are hereby directed to turn such property over to the Receiver.

13. The Receivership Entity, as well as their agents, servants, employees, attorneys, any persons acting for or on behalf of the Receivership Entity, and any persons receiving notice of this Order by personal service, facsimile transmission or otherwise, having possession of the property, business, books, records, accounts or assets of the Receivership Entity is hereby directed to deliver the same to the Receiver, his agents and/or employees.

14. All banks, brokerage firms, financial institutions, and other persons or entities which have possession, custody or control of any assets or funds held by, in the name of, or for the benefit of, directly or indirectly, and of the Receivership Entity that receive actual notice of this Order by personal service, facsimile transmission or otherwise shall:

- A. Not liquidate, transfer, sell, convey or otherwise transfer any assets, securities, funds, or accounts in the name of or for the benefit of the Receivership Entity except upon instructions from the Receiver;
- B. Not exercise any form of set-off, alleged set-off, lien, or any form of self-help whatsoever, or refuse to transfer any funds or assets to the Receiver's control without the permission of this Court;
- C. Within five (5) business days of receipt of that notice, file with the Court and serve on the Receiver and counsel for the Commission a certified statement setting forth, with respect to each such account or other asset, the balance in the account or description of the assets as of the close of business on the date of receipt of the notice; and,
- D. Cooperate expeditiously in providing information and transferring funds, assets and accounts to the Receiver or at the direction of the Receiver.

#### **IV. Access to Real and Personal Property**

15. The Receiver is authorized to take immediate possession of all personal property of the Receivership Entity, wherever located, including but not limited to electronically stored

information, computers, laptops, hard drives, external storage drives, and any other such memory, media or electronic storage devices, books, papers, data processing records, evidence of indebtedness, bank records and accounts, savings records and accounts, brokerage records and accounts, certificates of deposit, stocks, bonds, debentures, and other securities and investments, contracts, mortgages, furniture, office supplies and equipment.

16. The Receiver is authorized to take immediate possession of all real property of the Receivership Entity, wherever located, including but not limited to all ownership and leasehold interests and fixtures. Upon receiving actual notice of this Order by personal service, facsimile transmission or otherwise, all persons other than law enforcement officials acting within the course and scope of their official duties, are (without the express written permission of the Receiver) prohibited from: (a) entering such premises; (b) removing anything from such premises; or, (c) destroying, concealing or erasing anything on such premises.

17. In order to execute the express and implied terms of this Order, the Receiver is authorized to change door locks to the premises described above. The Receiver shall have exclusive control of the keys. The Receivership Entity, or any other person acting or purporting to act on their behalf, are ordered not to change the locks in any manner, nor to have duplicate keys made, nor shall they have keys in their possession during the term of the receivership.

18. The Receiver is authorized to open all mail directed to or received by or at the offices or post office boxes of the Receivership Entity, and to inspect all mail opened prior to the entry of this Order, to determine whether items or information therein fall within the mandates of this Order.

#### **V. Notice to Third Parties**

19. The Receiver shall promptly give notice of his appointment to all known officers, directors, agents, employees, shareholders, creditors, debtors, managers and general and limited

partners of the Receivership Entity, as the Receiver deems necessary or advisable to effectuate the operation of the receivership.

20. All persons and entities owing any obligation, debt, or distribution with respect to an ownership interest to any Receivership Defendant shall, until further ordered by this Court, pay all such obligations in accordance with the terms thereof to the Receiver and its receipt for such payments shall have the same force and effect as if the Receivership Defendant had received such payment.

21. In furtherance of his responsibilities in this matter, the Receiver is authorized to communicate with, and/or serve this Order upon, any person, entity or government office that he deems appropriate to inform them of the status of this matter and/or the financial condition of the Receivership Estates. All government offices which maintain public files of security interests in real and personal property shall, consistent with such office's applicable procedures, record this Order upon the request of the Receiver or the SEC.

22. The Receiver is authorized to instruct the United States Postmaster to hold and/or reroute mail which is related, directly or indirectly, to the business, operations or activities of any of the Receivership Entity (the "Receiver's Mail"), including all mail addressed to, or for the benefit of, the Receivership Entity. The Postmaster shall not comply with, and shall immediately report to the Receiver, any change of address or other instruction given by anyone other than the Receiver concerning the Receiver's Mail. The Receivership Entity shall not open any of the Receiver's Mail and shall immediately turn over such mail, regardless of when received, to the Receiver. All personal mail of any individual Receivership Entity, and/or any mail appearing to contain privileged information, and/or any mail not falling within the mandate of the Receiver, shall be released to the named addressee by the

Receiver. The foregoing instructions shall apply to any proprietor, whether individual or entity, of any private mail box, depository, business or service, or mail courier or delivery service, hired, rented or used by the Receivership Entities. The Receivership Entity shall not open a new mailbox, or take any steps or make any arrangements to receive mail in contravention of this Order, whether through the U.S. mail, a private mail depository or courier service.

23. Subject to payment for services provided, any entity furnishing water, electric, telephone, sewage, garbage or trash removal services to the Receivership Entity shall maintain such service and transfer any such accounts to the Receiver unless instructed to the contrary by the Receiver.

#### **VI. Injunction Against Interference with Receiver**

24. The Receivership Entity and all persons receiving notice of this Order by personal service, facsimile or otherwise, are hereby restrained and enjoined from directly or indirectly taking any action or causing any action to be taken, without the express written agreement of the Receiver, which would:

- A. Interfere with the Receiver's efforts to take control, possession, or management of any Receivership Property; such prohibited actions include but are not limited to, using self-help or executing or issuing or causing the execution or issuance of any court attachment, subpoena, replevin, execution, or other process for the purpose of impounding or taking possession of or interfering with or creating or enforcing a lien upon any Receivership Property;
- B. Hinder, obstruct or otherwise interfere with the Receiver in the performance of his duties; such prohibited actions include but are not limited to, concealing, destroying or altering records or information;
- C. Dissipate or otherwise diminish the value of any Receivership Property; such prohibited actions include but are not limited to, releasing claims

or disposing, transferring, exchanging, assigning or in any way conveying any Receivership Property, enforcing judgments, assessments or claims against any Receivership Property or any Receivership Defendant, attempting to modify, cancel, terminate, call, extinguish, revoke or accelerate (the due date), of any lease, loan, mortgage, indebtedness, security agreement or other agreement executed by any Receivership Defendant or which otherwise affects any Receivership Property; or,

D. Interfere with or harass the Receiver, or interfere in any manner with the exclusive jurisdiction of this Court over the Receivership Estates.

25. The Receivership Entity shall cooperate with and assist the Receiver in the performance of his duties.

26. The Receiver shall promptly notify the Court and SEC counsel of any failure or apparent failure of any person or entity to comply in any way with the terms of this Order.

## **VII. Stay of Litigation**

27. As set forth in detail below, the following proceedings, excluding the instant proceeding and all police or regulatory actions and actions of the Commission related to the above-captioned enforcement action, are stayed until further Order of this Court:

All civil legal proceedings of any nature, including, but not limited to, bankruptcy proceedings, arbitration proceedings, foreclosure actions, default proceedings, or other actions of any nature involving: (a) the Receiver, in his capacity as Receiver; (b) any Receivership Property, wherever located; (c) any of the Receivership Entity, including subsidiaries and partnerships; or, (d) any of the Receivership Entity's past or present officers, directors, managers, agents, or general or limited partners sued for, or in connection with, any action taken by them while acting in such capacity of any nature, whether as plaintiff, defendant, third-party plaintiff, third-party defendant, or otherwise (such proceedings are hereinafter referred to as "Ancillary Proceedings").

28. The parties to any and all Ancillary Proceedings are enjoined from commencing or continuing any such legal proceeding, or from taking any action, in connection with any such proceeding, including, but not limited to, the issuance or employment of process.

29. All Ancillary Proceedings are stayed in their entirety, and all Courts having any

jurisdiction thereof are enjoined from taking or permitting any action until further Order of this Court. Further, as to a cause of action accrued or accruing in favor of one or more of the Receivership Entity against a third person or party, any applicable statute of limitation is tolled during the period in which this injunction against commencement of legal proceedings is in effect as to that cause of action.

### **VIII. Managing Assets**

30. For each of the Receivership Estates, the Receiver shall establish one or more custodial accounts at federally insured bank to receive and hold all cash equivalent Receivership Property (the “Receivership Funds”).

31. The Receiver may, without further Order of this Court, transfer, compromise, or otherwise dispose of any Receivership Property, other than real estate, in the ordinary course of business, on terms and in the manner the Receiver deems most beneficial to the Receivership Estate, and with due regard to the realization of the true and proper value of such Receivership Property.

32. Subject to Paragraph 33, the Receiver is authorized to locate, list for sale or lease, engage a broker for sale or lease, cause the sale or lease, and take all necessary and reasonable actions to cause the sale or lease of all real property in the Receivership Estates, either at public or private sale, on terms and in the manner the Receiver deems most beneficial to the Receivership Estate, and with due regard to the realization of the true and proper value of such real property.

33. Upon further Order of this Court, pursuant to such procedures as may be required by this Court and additional authority such as 28 U.S.C. §§ 2001 and 2004, the Receiver will be authorized to sell, and transfer clear title to, all real property in the

Receivership Estates.

34. The Receiver is authorized to take all actions to manage, maintain, and/or wind-down business operations of the Receivership Estates, including making legally required payments to creditors, employees, and agents of the Receivership Estates and communicating with vendors, investors, governmental and regulatory authorities, and others, as appropriate.

**IX. Investigate and Prosecute Claims**

35. Subject to the requirement, in Section VI above, that leave of this Court is required to resume or commence certain litigation, the Receiver is authorized, empowered and directed to investigate, prosecute, defend, intervene in or otherwise participate in, compromise, and/or adjust actions in any state, federal or foreign court or proceeding of any kind as may in his discretion, and in consultation with SEC counsel, be advisable or proper to recover and/or conserve Receivership Property.

36. Subject to his obligation to expend receivership funds in a reasonable and cost-effective manner, the Receiver is authorized, empowered and directed to investigate the manner in which the financial and business affairs of the Receivership Entity were conducted and (after obtaining leave of this Court) to institute such actions and legal proceedings, for the benefit and on behalf of the Receivership Estate, as the Receiver deems necessary and appropriate; the Receiver may seek, among other legal and equitable relief, the imposition of constructive trusts, disgorgement of profits, asset turnover, avoidance of fraudulent transfers, rescission and restitution, collection of debts, and such other relief from this Court as may be necessary to enforce this Order. Where appropriate, the Receiver should provide prior notice to Counsel for the Commission before commencing investigations and/or actions.

37. The Receiver hereby holds, and is therefore empowered to waive, all privileges, including the attorney-client privilege, held by all entity Receivership Entities.

38. The receiver has a continuing duty to ensure that there are no conflicts of interest between the Receiver, his Retained Personnel (as that term is defined below), and the Receivership Estate.

#### **XI. Bankruptcy Filing**

39. The Receiver may seek authorization of this Court to file voluntary petitions for relief under Title 11 of the United States Code (the “Bankruptcy Code”) for the Receivership Entity. If a Receivership Defendant is placed in bankruptcy proceedings, the Receiver may become, and may be empowered to operate each of the Receivership Estates as, a debtor in possession. In such a situation, the Receiver shall have all of the powers and duties as provided a debtor in possession under the Bankruptcy Code to the exclusion of any other person or entity. Pursuant to Paragraph 4 above, the Receiver is vested with management authority for all entity Receivership Entity and may therefore file and manage a Chapter 11 petition.

40. The provisions of Section VII above bar any person or entity, other than the Receiver, from placing any of the Receivership Entity in bankruptcy proceedings.

#### **XI. Liability of Receiver**

41. Until further Order of this Court, the Receiver shall not be required to post bond or give an undertaking of any type in connection with his fiduciary obligations in this matter.

42. The Receiver and his agents, acting within scope of such agency (“Retained Personnel”) are entitled to rely on all outstanding rules of law and Orders of this Court and shall not be liable to anyone for their own good faith compliance with any order, rule, law, judgment, or decree. In no event shall the Receiver or Retained Personnel be liable to anyone for their good faith compliance with their duties and responsibilities as Receiver or Retained Personnel, nor shall the Receiver or Retained Personnel be liable to anyone for any actions

taken or omitted by them except upon a finding by this Court that they acted or failed to act as a result of malfeasance, bad faith, gross negligence, or in reckless disregard of their duties.

43. This Court shall retain jurisdiction over any action filed against the Receiver or Retained Personnel based upon acts or omissions committed in their representative capacities.

44. In the event the Receiver decides to resign, the Receiver shall first give written notice to the Commission's counsel of record and the Court of its intention, and the resignation shall not be effective until the Court appoints a successor. The Receiver shall then follow such instructions as the Court may provide.

## **XII. Recommendations and Reports**

45. The Receiver is authorized, empowered and directed to develop a plan for the fair, reasonable, and efficient recovery and liquidation of all remaining, recovered, and recoverable Receivership Property (the "Liquidation Plan").

46. Within thirty (30) days after the end of each calendar quarter, the Receiver shall file and serve a full report and accounting of each Receivership Estate (the "Quarterly Status Report"), reflecting (to the best of the Receiver's knowledge as of the period covered by the report) the existence, value, and location of all Receivership Property, and of the extent of liabilities, both those claimed to exist by others and those the Receiver believes to be legal obligations of the Receivership Estates.

47. The Quarterly Status Report shall contain the following:

- A. A summary of the operations of the Receiver;
- B. The amount of cash on hand, the amount and nature of accrued administrative expenses, and the amount of unencumbered funds in the estate;
- C. A schedule of all the Receiver's receipts and disbursements (attached as Exhibit A to the Quarterly Status Report), with one column for the quarterly period covered and a second column for the entire duration of the receivership;

- D. A description of all known Receivership Property, including approximate or actual valuations, anticipated or proposed dispositions, and reasons for retaining assets where no disposition is intended;
- E. A description of liquidated and unliquidated claims held by the Receivership Estate, including the need for forensic and/or investigatory resources; approximate valuations of claims; and anticipated or proposed methods of enforcing such claims (including likelihood of success in: (i) reducing the claims to judgment; and, (ii) collecting such judgments);
- F. A list of all known creditors with their addresses and the amounts of their claims;
- G. The status of Creditor Claims Proceedings, after such proceedings have been commenced; and,
- H. The Receiver's recommendations for a continuation or discontinuation of the receivership and the reason for the recommendations.

48. On the request of the Commission, the Receiver shall provide the Commission with any documentation that the Commission deems necessary to meet its reporting requirements, that is mandated by statute or Congress, or that is otherwise necessary to further the Commission's mission.

### **XIII. Fees, Expenses and Accountings**

49. The Receiver need not obtain Court approval prior to the disbursement of Receivership Funds for expenses in the ordinary course of the administration and operation of the receivership. Further, prior Court approval is not required for payments of applicable federal, state or local taxes.

50. The Receiver is authorized to solicit persons and entities ("Retained Personnel") to assist him in carrying out the duties and responsibilities described in this Order. The Receiver shall not engage any Retained Personnel without first obtaining an Order of the Court authorizing such engagement.

51. The Receiver and Retained Personnel are entitled to reasonable compensation and expense reimbursement from the Receivership Estates as described in the “Billing Instructions for Receivers in Civil Actions Commenced by the U.S. Securities and Exchange Commission” (the “Billing Instructions”) agreed to by the Receiver. Such compensation shall require the prior approval of the Court.

52. Within forty-five (45) days after the end of each calendar quarter, the Receiver and Retained Personnel shall apply to the Court for compensation and expense reimbursement from the Receivership Estates (the “Quarterly Fee Applications”). At least thirty (30) days prior to filing each Quarterly Fee Application with the Court, the Receiver will serve upon counsel for the SEC a complete copy of the proposed Application, together with all exhibits and relevant billing information in a format to be provided by SEC staff.

53. All Quarterly Fee Applications will be interim and will be subject to cost benefit and final reviews at the close of the receivership. At the close of the receivership, the Receiver will file a final fee application, describing in detail the costs and benefits associated with all litigation and other actions pursued by the Receiver during the course of the receivership.

54. Quarterly Fee Applications may be subject to a holdback in the amount of 20% of the amount of fees and expenses for each application filed with the Court. The total amounts held back during the course of the receivership will be paid out at the discretion of the Court as part of the final fee application submitted at the close of the receivership.

55. Each Quarterly Fee Application shall:

- A. Comply with the terms of the Billing Instructions agreed to by the Receiver;
- and,**
- B. Contain representations (in addition to the Certification required by the Billing Instructions) that: (i) the fees and expenses included therein were

incurred in the best interests of the Receivership Estate; and, (ii) with the exception of the Billing Instructions, the Receiver has not entered into any agreement, written or oral, express or implied, with any person or entity concerning the amount of compensation paid or to be paid from the Receivership Estate, or any sharing thereof.

56. At the close of the Receivership, the Receiver shall submit a Final Accounting, in a format to be provided by SEC staff, as well as the Receiver's final application for compensation and expense reimbursement.

**DONE AND ORDERED** in Chambers, West Palm Beach, Florida, this 16th day of May, 2019.

Copies furnished to:  
Counsel of Record

  
ROBIN L. ROSENBERG  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

<input checked="" type="checkbox"/> SEALED
<input type="checkbox"/> NOT SEALED

CASE NO.:

*17-21033-CV-JA*

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

Per Local Rule 5.4(d), the matter(s) shall remain sealed.

\_\_\_\_ years; \_\_\_\_ (specific date);  
\_\_\_\_ permanently;  (other).

v.

LOTTONET OPERATING CORP.,  
DAVID GRAY,  
JOSEPH VITALE A/K/A DONOVAN KELLY,

*See sealing order*

Defendants, and

ORACLE MARKETING GROUP INC.,  
CRM INTERACTIVE LLC,  
THE COUNCIL CLUB LLC,

Relief Defendants.

**ORDER GRANTING PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S  
MOTION FOR APPOINTMENT OF RECEIVER**

WHEREAS, Plaintiff Securities and Exchange Commission has filed a motion for the appointment of a Receiver over Defendant LottoNet Holdings Corp. and Relief Defendants Oracle Marketing Group Inc., CRM Interactive LLC, and The Council Club LLC, with full and exclusive power, duty, and authority to: administer and manage the business affairs, funds, assets, causes in action and any other property of LottoNet and the Relief Defendants; marshal and safeguard all of their assets; and take whatever actions are necessary for the protection of investors;

WHEREAS, the SEC has made a sufficient and proper showing in support of the relief requested;

WHEREAS, the SEC has submitted the credentials of a candidate to be appointed as Receiver of all of the assets, properties, books and records, and other items of LottoNet and the

Relief Defendants (“Receivership Entities”), including any properties, assets and other items held in their names or their principals’ names, and the SEC has advised the Court that this candidate is prepared to assume this responsibility if so ordered by the Court;

IT IS THEREFORE ORDERED AND ADJUDGED that  
Ryan Stumphauzer, Esq. is hereby appointed Receiver over the Receivership Entities, their subsidiaries, successors, and assigns, and is hereby authorized, empowered, and directed as follows:

**I. General Powers and Duties of Receiver**

1. The Receiver shall have all powers, authorities, rights and privileges heretofore possessed by the officers, directors, managers and general and limited partners of the entity Receivership Parties under applicable state and federal law, by the governing charters, by-laws, articles and/or agreements in addition to all powers and authority of a receiver at equity, and all powers conferred upon a receiver by the provisions of 28 U.S.C. §§ 754, 959 and 1692, and Fed.R.Civ.P. 66.

2. The trustees, directors, officers, managers, employees, investment advisors, accountants, attorneys and other agents of the Receivership Entities are hereby dismissed and the powers of any general partners, directors and/or managers are hereby suspended. Such persons and entities shall have no authority with respect to the Receivership Entities’ operations or assets, except to the extent as may hereafter be expressly granted by the Receiver. The Receiver shall assume and control the operation of the Receivership Entities and shall pursue and preserve all of their claims.

3. No person holding or claiming any position of any sort with any of the Receivership Entities shall possess any authority to act by or on behalf of any of the

Receivership Entities.

4. Subject to the specific provisions below, the Receiver shall have the following general powers and duties:

- A. To use reasonable efforts to determine the nature, location and value of all property interests of the Receivership Entities, including, but not limited to, monies, funds, securities, credits, effects, goods, chattels, lands, premises, leases, claims, rights and other assets, together with all rents, profits, dividends, interest or other income attributable thereto, of whatever kind, which the Receivership Entities own, possess, have a beneficial interest in, or control directly or indirectly (“Receivership Property” or, collectively, the “Receivership Estates”);
- B. To take custody, control and possession of all Receivership Property and records relevant thereto from the Receivership Entities; to sue for and collect, recover, receive and take into possession from third parties all Receivership Property and records relevant thereto;
- C. To manage, control, operate and maintain the Receivership Estates and hold in his possession, custody and control all Receivership Property, pending further Order of this Court;
- D. To use Receivership Property for the benefit of the Receivership Estates, making payments and disbursements and incurring expenses as may be necessary or advisable in the ordinary course of business in discharging his duties as Receiver;
- E. To take any action which, prior to the entry of this Order, could have been taken by the officers, directors, partners, managers, trustees and agents of the Receivership Entities;
- F. To engage and employ persons in his discretion to assist him in carrying out his duties and responsibilities hereunder, including, but not limited to, accountants, attorneys, securities traders, registered representatives, financial or business advisers, liquidating agents, real estate agents, forensic experts, brokers, traders or auctioneers;
- G. To take such action as necessary and appropriate for the preservation of Receivership Property or to prevent the dissipation or concealment of Receivership Property;

- H. The Receiver is authorized to issue subpoenas for documents and testimony consistent with the Federal Rules of Civil Procedure;
- I. To bring such legal actions based on law or equity in any state, federal, or foreign court as the Receiver deems necessary or appropriate in discharging his duties as Receiver;
- J. To pursue, resist and defend all suits, actions, claims and demands which may now be pending or which may be brought by or asserted against the Receivership Estates; and,
- K. To take such other action as may be approved by this Court.

## **II. Access to Information**

5. The individual Receivership Entities and the past and/or present officers, directors, agents, managers, general and limited partners, trustees, attorneys, accountants and employees of the entity Receivership Entities, as well as those acting in their place, are hereby ordered and directed to preserve and turn over to the Receiver forthwith all paper and electronic information of, and/or relating to, the Receivership Entities and/or all Receivership Property; such information shall include but not be limited to books, records, documents, accounts and all other instruments and papers.

6. Within ten (10) days of the entry of this Order, the Receivership Entities shall file with the Court and serve upon the Receiver and the Commission a sworn statement, listing: (a) the identity, location and estimated value of all Receivership Property; (b) all employees (and job titles thereof), other personnel, attorneys, accountants and any other agents or contractors of the Receivership Entities; and, (c) the names, addresses and amounts of claims of all known creditors of the Receivership Entities.

7. Within thirty (30) days of the entry of this Order, the Receivership Entities shall file with the Court and serve upon the Receiver and the Commission a sworn statement and accounting, with complete documentation, covering the period from January 1, 2014 to the

present:

- A. Of all Receivership Property, wherever located, held by or in the name of the Receivership Entities, or in which any of them, directly or indirectly, has or had any beneficial interest, or over which any of them maintained or maintains and/or exercised or exercises control, including, but not limited to: (a) all securities, investments, funds, real estate, automobiles, jewelry and other assets, stating the location of each; and (b) any and all accounts, including all funds held in such accounts, with any bank, brokerage or other financial institution held by, in the name of, or for the benefit of any of them, directly or indirectly, or over which any of them maintained or maintains and/or exercised or exercises any direct or indirect control, or in which any of them had or has a direct or indirect beneficial interest, including the account statements from each bank, brokerage or other financial institution;
- B. Identifying every account at every bank, brokerage or other financial institution: (a) over which Receivership Entities have signatory authority; and (b) opened by, in the name of, or for the benefit of, or used by, the Receivership Entities;
- C. Identifying all credit, bank, charge, debit or other deferred payment card issued to or used by each Receivership Defendant, including but not limited to the issuing institution, the card or account number(s), all persons or entities to which a card was issued and/or with authority to use a card, the balance of each account and/or card as of the most recent billing statement, and all statements for the last twelve months;
- D. Of all assets received by any of them from any person or entity, including the value, location, and disposition of any assets so received;
- E. Of all funds received by the Receivership Entities, and each of them, in any way related, directly or indirectly, to the conduct alleged in the Commission's Complaint. The submission must clearly identify, among other things, all investors, the securities they purchased, the date and amount of their investments, and the current location of such funds;
- G. Of all expenditures exceeding \$1,000 made by any of them, including those made on their behalf by any person or entity; and
- H. Of all transfers of assets made by any of them.

8. Within thirty (30) days of the entry of this Order, the Receivership Entities shall provide to the Receiver and the Commission copies of the Receivership Entities' federal income tax returns for 2014 through present with all relevant and necessary underlying documentation.

9. The individual Receivership Entities and the entity Receivership Entities' past and/or present officers, directors, agents, attorneys, managers, shareholders, employees, accountants, debtors, creditors, managers and general and limited partners, and other appropriate persons or entities shall answer under oath to the Receiver all questions which the Receiver may put to them and produce all documents as required by the Receiver regarding the business of the Receivership Entities, or any other matter relevant to the operation or administration of the receivership or the collection of funds due to the Receivership Entities. In the event that the Receiver deems it necessary to require the appearance of the aforementioned persons or entities, the Receiver shall make its discovery requests in accordance with the Federal Rules of Civil Procedure.

10. To issue subpoenas to compel testimony of persons or production of records, consistent with the Federal Rules of Civil Procedure and applicable Local Rules, except for the provisions of Fed.R.Civ.P. 26(d)(1), concerning any subject matter within the powers and duties granted by this Order.

11. The Receivership Entities are required to assist the Receiver in fulfilling his duties and obligations. As such, they must respond promptly and truthfully to all requests for information and documents from the Receiver.

### **III. Access to Books, Records and Accounts**

12. The Receiver is authorized to take immediate possession of all assets, bank accounts or other financial accounts, books and records and all other documents or instruments

relating to the Receivership Entities. All persons and entities having control, custody or possession of any Receivership Property are hereby directed to turn such property over to the Receiver.

13. The Receivership Entities, as well as their agents, servants, employees, attorneys, any persons acting for or on behalf of the Receivership Entities, and any persons receiving notice of this Order by personal service, facsimile transmission or otherwise, having possession of the property, business, books, records, accounts or assets of the Receivership Entities are hereby directed to deliver the same to the Receiver, his agents and/or employees.

14. All banks, brokerage firms, financial institutions, and other persons or entities which have possession, custody or control of any assets or funds held by, in the name of, or for the benefit of, directly or indirectly, and of the Receivership Entities that receive actual notice of this Order by personal service, facsimile transmission or otherwise shall:

- A. Not liquidate, transfer, sell, convey or otherwise transfer any assets, securities, funds, or accounts in the name of or for the benefit of the Receivership Entities except upon instructions from the Receiver;
- B. Not exercise any form of set-off, alleged set-off, lien, or any form of self-help whatsoever, or refuse to transfer any funds or assets to the Receiver's control without the permission of this Court;
- C. Within five (5) business days of receipt of that notice, file with the Court and serve on the Receiver and counsel for the Commission a certified statement setting forth, with respect to each such account or other asset, the balance in the account or description of the assets as of the close of business on the date of receipt of the notice; and,
- D. Cooperate expeditiously in providing information and transferring funds, assets and accounts to the Receiver or at the direction of the Receiver.

#### **IV. Access to Real and Personal Property**

15. The Receiver is authorized to take immediate possession of all personal property

of the Receivership Entities, wherever located, including but not limited to electronically stored information, computers, laptops, hard drives, external storage drives, and any other such memory, media or electronic storage devices, books, papers, data processing records, evidence of indebtedness, bank records and accounts, savings records and accounts, brokerage records and accounts, certificates of deposit, stocks, bonds, debentures, and other securities and investments, contracts, mortgages, furniture, office supplies and equipment.

16. The Receiver is authorized to take immediate possession of all real property of the Receivership Entities, wherever located, including but not limited to all ownership and leasehold interests and fixtures. Upon receiving actual notice of this Order by personal service, facsimile transmission or otherwise, all persons other than law enforcement officials acting within the course and scope of their official duties, are (without the express written permission of the Receiver) prohibited from: (a) entering such premises; (b) removing anything from such premises; or, (c) destroying, concealing or erasing anything on such premises.

17. In order to execute the express and implied terms of this Order, the Receiver is authorized to change door locks to the premises described above. The Receiver shall have exclusive control of the keys. The Receivership Entities, or any other person acting or purporting to act on their behalf, are ordered not to change the locks in any manner, nor to have duplicate keys made, nor shall they have keys in their possession during the term of the receivership.

18. The Receiver is authorized to open all mail directed to or received by or at the offices or post office boxes of the Receivership Entities, and to inspect all mail opened prior to the entry of this Order, to determine whether items or information therein fall within the mandates of this Order.

**V. Notice to Third Parties**

19. The Receiver shall promptly give notice of his appointment to all known officers, directors, agents, employees, shareholders, creditors, debtors, managers and general and limited partners of the Receivership Entities, as the Receiver deems necessary or advisable to effectuate the operation of the receivership.

20. All persons and entities owing any obligation, debt, or distribution with respect to an ownership interest to any Receivership Defendant shall, until further ordered by this Court, pay all such obligations in accordance with the terms thereof to the Receiver and its receipt for such payments shall have the same force and effect as if the Receivership Defendant had received such payment.

21. In furtherance of his responsibilities in this matter, the Receiver is authorized to communicate with, and/or serve this Order upon, any person, entity or government office that he deems appropriate to inform them of the status of this matter and/or the financial condition of the Receivership Estates. All government offices which maintain public files of security interests in real and personal property shall, consistent with such office's applicable procedures, record this Order upon the request of the Receiver or the SEC.

22. The Receiver is authorized to instruct the United States Postmaster to hold and/or reroute mail which is related, directly or indirectly, to the business, operations or activities of any of the Receivership Entities (the "Receiver's Mail"), including all mail addressed to, or for the benefit of, the Receivership Entities. The Postmaster shall not comply with, and shall immediately report to the Receiver, any change of address or other instruction given by anyone other than the Receiver concerning the Receiver's Mail. The Receivership Entities shall not open any of the Receiver's Mail and shall immediately turn over such mail, regardless of when

received, to the Receiver. All personal mail of any individual Receivership Entities, and/or any mail appearing to contain privileged information, and/or any mail not falling within the mandate of the Receiver, shall be released to the named addressee by the Receiver. The foregoing instructions shall apply to any proprietor, whether individual or entity, of any private mail box, depository, business or service, or mail courier or delivery service, hired, rented or used by the Receivership Entities. The Receivership Entities shall not open a new mailbox, or take any steps or make any arrangements to receive mail in contravention of this Order, whether through the U.S. mail, a private mail depository or courier service.

23. Subject to payment for services provided, any entity furnishing water, electric, telephone, sewage, garbage or trash removal services to the Receivership Entities shall maintain such service and transfer any such accounts to the Receiver unless instructed to the contrary by the Receiver.

#### **VI. Injunction Against Interference with Receiver**

24. The Receivership Entities and all persons receiving notice of this Order by personal service, facsimile or otherwise, are hereby restrained and enjoined from directly or indirectly taking any action or causing any action to be taken, without the express written agreement of the Receiver, which would:

- A. Interfere with the Receiver's efforts to take control, possession, or management of any Receivership Property; such prohibited actions include but are not limited to, using self-help or executing or issuing or causing the execution or issuance of any court attachment, subpoena, replevin, execution, or other process for the purpose of impounding or taking possession of or interfering with or creating or enforcing a lien upon any Receivership Property;
- B. Hinder, obstruct or otherwise interfere with the Receiver in the performance of his duties; such prohibited actions include but are not limited to, concealing, destroying or altering records or information;

- C. Dissipate or otherwise diminish the value of any Receivership Property; such prohibited actions include but are not limited to, releasing claims or disposing, transferring, exchanging, assigning or in any way conveying any Receivership Property, enforcing judgments, assessments or claims against any Receivership Property or any Receivership Defendant, attempting to modify, cancel, terminate, call, extinguish, revoke or accelerate (the due date), of any lease, loan, mortgage, indebtedness, security agreement or other agreement executed by any Receivership Defendant or which otherwise affects any Receivership Property; or,
- D. Interfere with or harass the Receiver, or interfere in any manner with the exclusive jurisdiction of this Court over the Receivership Estates.

25. The Receivership Entities shall cooperate with and assist the Receiver in the performance of his duties.

26. The Receiver shall promptly notify the Court and SEC counsel of any failure or apparent failure of any person or entity to comply in any way with the terms of this Order.

#### **VII. Stay of Litigation**

27. As set forth in detail below, the following proceedings, excluding the instant proceeding and all police or regulatory actions and actions of the Commission related to the above-captioned enforcement action, are stayed until further Order of this Court:

All civil legal proceedings of any nature, including, but not limited to, bankruptcy proceedings, arbitration proceedings, foreclosure actions, default proceedings, or other actions of any nature involving: (a) the Receiver, in his capacity as Receiver; (b) any Receivership Property, wherever located; (c) any of the Receivership Entities, including subsidiaries and partnerships; or, (d) any of the Receivership Entities' past or present officers, directors, managers, agents, or general or limited partners sued for, or in connection with, any action taken by them while acting in such capacity of any nature, whether as plaintiff, defendant, third-party plaintiff, third-party defendant, or otherwise (such proceedings are hereinafter referred to as "Ancillary Proceedings").

28. The parties to any and all Ancillary Proceedings are enjoined from commencing or continuing any such legal proceeding, or from taking any action, in connection with any such

proceeding, including, but not limited to, the issuance or employment of process.

29. All Ancillary Proceedings are stayed in their entirety, and all Courts having any jurisdiction thereof are enjoined from taking or permitting any action until further Order of this Court. Further, as to a cause of action accrued or accruing in favor of one or more of the Receivership Entities against a third person or party, any applicable statute of limitation is tolled during the period in which this injunction against commencement of legal proceedings is in effect as to that cause of action.

### **VIII. Managing Assets**

30. For each of the Receivership Estates, the Receiver shall establish one or more custodial accounts at a federally insured bank to receive and hold all cash equivalent Receivership Property (the "Receivership Funds").

31. The Receiver may, without further Order of this Court, transfer, compromise, or otherwise dispose of any Receivership Property, other than real estate, in the ordinary course of business, on terms and in the manner the Receiver deems most beneficial to the Receivership Estate, and with due regard to the realization of the true and proper value of such Receivership Property.

32. Subject to Paragraph 33, the Receiver is authorized to locate, list for sale or lease, engage a broker for sale or lease, cause the sale or lease, and take all necessary and reasonable actions to cause the sale or lease of all real property in the Receivership Estates, either at public or private sale, on terms and in the manner the Receiver deems most beneficial to the Receivership Estate, and with due regard to the realization of the true and proper value of such real property.

33. Upon further Order of this Court, pursuant to such procedures as may be required

by this Court and additional authority such as 28 U.S.C. §§ 2001 and 2004, the Receiver will be authorized to sell, and transfer clear title to, all real property in the Receivership Estates.

34. The Receiver is authorized to take all actions to manage, maintain, and/or wind-down business operations of the Receivership Estates, including making legally required payments to creditors, employees, and agents of the Receivership Estates and communicating with vendors, investors, governmental and regulatory authorities, and others, as appropriate.

#### **IX. Investigate and Prosecute Claims**

35. Subject to the requirement, in Section VI above, that leave of this Court is required to resume or commence certain litigation, the Receiver is authorized, empowered and directed to investigate, prosecute, defend, intervene in or otherwise participate in, compromise, and/or adjust actions in any state, federal or foreign court or proceeding of any kind as may in his discretion, and in consultation with SEC counsel, be advisable or proper to recover and/or conserve Receivership Property.

36. Subject to his obligation to expend receivership funds in a reasonable and cost-effective manner, the Receiver is authorized, empowered and directed to investigate the manner in which the financial and business affairs of the Receivership Entities were conducted and (after obtaining leave of this Court) to institute such actions and legal proceedings, for the benefit and on behalf of the Receivership Estate, as the Receiver deems necessary and appropriate; the Receiver may seek, among other legal and equitable relief, the imposition of constructive trusts, disgorgement of profits, asset turnover, avoidance of fraudulent transfers, rescission and restitution, collection of debts, and such other relief from this Court as may be necessary to enforce this Order. Where appropriate, the Receiver should provide prior notice to Counsel for the Commission before commencing investigations and/or actions.

37. The Receiver hereby holds, and is therefore empowered to waive, all privileges, including the attorney-client privilege, held by all entity Receivership Entities.

38. The receiver has a continuing duty to ensure that there are no conflicts of interest between the Receiver, his Retained Personnel (as that term is defined below), and the Receivership Estate.

#### **XI. Bankruptcy Filing**

39. The Receiver may seek authorization of this Court to file voluntary petitions for relief under Title 11 of the United States Code (the "Bankruptcy Code") for the Receivership Entities. If a Receivership Defendant is placed in bankruptcy proceedings, the Receiver may become, and may be empowered to operate each of the Receivership Estates as, a debtor in possession. In such a situation, the Receiver shall have all of the powers and duties as provided a debtor in possession under the Bankruptcy Code to the exclusion of any other person or entity. Pursuant to Paragraph 4 above, the Receiver is vested with management authority for all entity Receivership Entities and may therefore file and manage a Chapter 11 petition.

40. The provisions of Section VII above bar any person or entity, other than the Receiver, from placing any of the Receivership Entities in bankruptcy proceedings.

#### **XI. Liability of Receiver**

41. Until further Order of this Court, the Receiver shall not be required to post bond or give an undertaking of any type in connection with his fiduciary obligations in this matter.

42. The Receiver and his agents, acting within scope of such agency ("Retained Personnel") are entitled to rely on all outstanding rules of law and Orders of this Court and shall not be liable to anyone for their own good faith compliance with any order, rule, law, judgment, or decree. In no event shall the Receiver or Retained Personnel be liable to anyone for their

good faith compliance with their duties and responsibilities as Receiver or Retained Personnel, nor shall the Receiver or Retained Personnel be liable to anyone for any actions taken or omitted by them except upon a finding by this Court that they acted or failed to act as a result of malfeasance, bad faith, gross negligence, or in reckless disregard of their duties.

43. This Court shall retain jurisdiction over any action filed against the Receiver or Retained Personnel based upon acts or omissions committed in their representative capacities.

44. In the event the Receiver decides to resign, the Receiver shall first give written notice to the Commission's counsel of record and the Court of its intention, and the resignation shall not be effective until the Court appoints a successor. The Receiver shall then follow such instructions as the Court may provide.

## **XII. Recommendations and Reports**

45. The Receiver is authorized, empowered and directed to develop a plan for the fair, reasonable, and efficient recovery and liquidation of all remaining, recovered, and recoverable Receivership Property (the "Liquidation Plan").

46. Within thirty (30) days after the end of each calendar quarter, the Receiver shall file and serve a full report and accounting of each Receivership Estate (the "Quarterly Status Report"), reflecting (to the best of the Receiver's knowledge as of the period covered by the report) the existence, value, and location of all Receivership Property, and of the extent of liabilities, both those claimed to exist by others and those the Receiver believes to be legal obligations of the Receivership Estates.

47. The Quarterly Status Report shall contain the following:

- A. A summary of the operations of the Receiver;
- B. The amount of cash on hand, the amount and nature of accrued administrative expenses, and the amount of unencumbered funds in the

estate;

- C. A schedule of all the Receiver's receipts and disbursements (attached as Exhibit A to the Quarterly Status Report), with one column for the quarterly period covered and a second column for the entire duration of the receivership;
- D. A description of all known Receivership Property, including approximate or actual valuations, anticipated or proposed dispositions, and reasons for retaining assets where no disposition is intended;
- E. A description of liquidated and unliquidated claims held by the Receivership Estate, including the need for forensic and/or investigatory resources; approximate valuations of claims; and anticipated or proposed methods of enforcing such claims (including likelihood of success in: (i) reducing the claims to judgment; and, (ii) collecting such judgments);
- F. A list of all known creditors with their addresses and the amounts of their claims;
- G. The status of Creditor Claims Proceedings, after such proceedings have been commenced; and,
- H. The Receiver's recommendations for a continuation or discontinuation of the receivership and the reasons for the recommendations.

48. On the request of the Commission, the Receiver shall provide the Commission with any documentation that the Commission deems necessary to meet its reporting requirements, that is mandated by statute or Congress, or that is otherwise necessary to further the Commission's mission.

### **XIII. Fees, Expenses and Accountings**

49. The Receiver need not obtain Court approval prior to the disbursement of Receivership Funds for expenses in the ordinary course of the administration and operation of the receivership. Further, prior Court approval is not required for payments of applicable federal, state or local taxes.

50. The Receiver is authorized to solicit persons and entities ("Retained Personnel")

to assist him in carrying out the duties and responsibilities described in this Order. The Receiver shall not engage any Retained Personnel without first obtaining an Order of the Court authorizing such engagement.

51. The Receiver and Retained Personnel are entitled to reasonable compensation and expense reimbursement from the Receivership Estates as described in the "Billing Instructions for Receivers in Civil Actions Commenced by the U.S. Securities and Exchange Commission" (the "Billing Instructions") agreed to by the Receiver. Such compensation shall require the prior approval of the Court.

52. Within forty-five (45) days after the end of each calendar quarter, the Receiver and Retained Personnel shall apply to the Court for compensation and expense reimbursement from the Receivership Estates (the "Quarterly Fee Applications"). At least thirty (30) days prior to filing each Quarterly Fee Application with the Court, the Receiver will serve upon counsel for the SEC a complete copy of the proposed Application, together with all exhibits and relevant billing information in a format to be provided by SEC staff.

53. All Quarterly Fee Applications will be interim and will be subject to cost benefit and final reviews at the close of the receivership. At the close of the receivership, the Receiver will file a final fee application, describing in detail the costs and benefits associated with all litigation and other actions pursued by the Receiver during the course of the receivership.

54. Quarterly Fee Applications may be subject to a holdback in the amount of 20% of the amount of fees and expenses for each application filed with the Court. The total amounts held back during the course of the receivership will be paid out at the discretion of the Court as part of the final fee application submitted at the close of the receivership.

55. Each Quarterly Fee Application shall:
- A. Comply with the terms of the Billing Instructions agreed to by the Receiver; and,
  - B. Contain representations (in addition to the Certification required by the Billing Instructions) that: (i) the fees and expenses included therein were incurred in the best interests of the Receivership Estate; and, (ii) with the exception of the Billing Instructions, the Receiver has not entered into any agreement, written or oral, express or implied, with any person or entity concerning the amount of compensation paid or to be paid from the Receivership Estate, or any sharing thereof.

56. At the close of the Receivership, the Receiver shall submit a Final Accounting, in a format to be provided by SEC staff, as well as the Receiver's final application for compensation and expense reimbursement.

**DONE AND ORDERED** this 20 day of March 2017, at  
Miami, Florida.

  
UNITED STATES DISTRICT JUDGE

Copies to: Amie Riggle Berlin, Esq.  
Senior Trial Counsel  
Securities and Exchange Commission  
801 Brickell Avenue, Suite 1800  
Miami, Florida 33131  
Facsimile: (305) 536-4154  
Email: [berlina@sec.gov](mailto:berlina@sec.gov)  
*Counsel for Plaintiff*

**From:** [DeMaria, Joseph A.](#)  
**To:** [Berlin, Amie R.](#)  
**Cc:** [Elgidely, Robert F.](#); [Berman, Brett](#); [Jacqmein, Victoria](#)  
**Subject:** Re: [EXT] Re: Fox Rothschild  
**Date:** Thursday, August 6, 2020 9:57:50 PM

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Our email has been down.

We are informed that the legal ownership of CBSG is held in a trust.

**From:** Berlin, Amie R. <BerlinA@sec.gov>  
**Date:** 8/6/20, 6:29:40 PM EDT  
**To:** DeMaria, Joseph A. <jdemaria@foxrothschild.com>  
**Cc:** Elgidely, Robert F. <RElgidely@foxrothschild.com> Berman, Brett <BBerman@foxrothschild.com> Jacqmein, Victoria <JacqmeinV@SEC.GOV>  
**Subject:** Re: [EXT] Re: Fox Rothschild

I just saw your filing of today where you tell the Court you represent “the owners” of CBSG. Who are “the owners” to whom you are referring? Please let me know today.

Thank you,  
Amie

> On Aug 5, 2020, at 7:35 PM, DeMaria, Joseph A. <jdemaria@foxrothschild.com> wrote:  
>  
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>  
>  
> I thought you don't work after 5. I'll try to make this clear.  
>  
> The individuals and the relief defendant have their own counsel. Joe Cole's counsel still has to file a notice of appearance. And then my firm will withdraw from all three individuals and the relief defendant. That is step one.  
>  
> Step two as Brett and I told the receiver's counsel today is that my firm will not be part of the preliminary injunction hearing. That should alleviate the Judge's concern on that issue there is no reason for mY form to participate in that hearing as it only affects the individual defendants and relief defendant. Their counsel will handle that as they apparently have been doing.

EXHIBIT

C

>

> That leaves representation of the two companies. Brett and I had a detailed conversation with the Receiver's counsel today about the legal and practical issues related to the representation of the companies. They told us they would consult with the Receiver and get back to us.

>

> So that's everything. And now I'm beyond my work hours for today. Have a nice evening.

>

> Joseph A. DeMaria

> Please excuse any typos

>

>> On Aug 5, 2020, at 7:27 PM, Berlin, Amie R. <BerlinA@sec.gov> wrote:

>>

>> I am confused by your response, "For the individual defendants." Are you continuing to represent anyone or any entity in this case? Please let me know.

>>

>> -----Original Message-----

>> From: DeMaria, Joseph A. <jdemaria@foxrothschild.com>

>> Sent: Wednesday, August 5, 2020 6:15 PM

>> To: Berlin, Amie R. <BerlinA@sec.gov>

>> Cc: Elgidely, Robert F. <RElgidely@foxrothschild.com>; Berman, Brett <BBerman@foxrothschild.com>; Jacqmein, Victoria <JacqmeinV@SEC.GOV>

>> Subject: Re: [EXT] Re: Fox Rothschild

>>

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>>

>>

>> For the individual defendants.

>>

>> Sent from Joe DeMaria's iPhone

>> [305-322-2263](tel:305-322-2263)

>> Please excuse any typos.

>>

>>>> On Aug 5, 2020, at 6:12 PM, Berlin, Amie R. <BerlinA@sec.gov> wrote:

>>>>

>>>> I'm sorry, I was in a deposition today and just saw that you are going to withdraw as counsel. I hope you have a good night.

>>>>

>>>> On Aug 5, 2020, at 6:11 PM, Berlin, Amie R. <BerlinA@sec.gov> wrote:

>>>>

>>>> I hope you all are doing well. Please let me know whether or not Fox Rothschild is withdrawing as counsel for the CBSG and/or other entities in receiverships.

>>>>

>>>> Thank you,

>>>> Amie

>>

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>> If you are not the intended recipient, or the employee or agent authorized to receive

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Thank you.

>>

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**Berlin, Amie R.**

---

**From:** DeMaria, Joseph A. <jdemaria@foxrothschild.com>  
**Sent:** Tuesday, July 28, 2020 10:37 AM  
**To:** Berlin, Amie R.; Elgidely, Robert F.  
**Cc:** Berman, Brett; Miller-Hayle, Michelle; Serrano, Bea; Braunstein, Alex L.  
**Subject:** RE: SEC v Complete Business Solutions Group, Inc., FBI Raid

**Importance:** High

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Ms. Berlin: I have just been informed that a team of FBI agents has raised the offices in Philadelphia of this firm's clients. As the Government knows from the filing of our notices of appearance, these entities and persons are represented by counsel. As you obviously were aware of the pending FBI action, I would assume that you informed the U.S. Attorneys' Office and the FBI that pursuant to the Sixth Amendment, the Government must not attempt to speak to this firm's client's outside of our presence. They obviously have the right to execute their search warrant. But they have no right to ignore their Sixth Amendment obligations.

Please confirm that the U.S. Attorneys' Office and FBI were made aware of this firm's representation of these entities and persons. If they were not previously informed, please call the FBI immediately and inform them of this representation and please provide my contact information to them. Please impress upon them the Sixth Amendment rights of the persons at the location they are raising.

**Joseph A. DeMaria**  
Board Certified in Business Litigation  
**Fox Rothschild LLP**  
2 South Biscayne Boulevard  
One Biscayne Tower, Suite 2750  
Miami, FL 33131  
(305) 442-6547 - direct  
(305) 322-2263 - cell  
[jdemaria@foxrothschild.com](mailto:jdemaria@foxrothschild.com)  
[www.foxrothschild.com](http://www.foxrothschild.com)

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**DECLARATION OF SHANE HESKIN, ESQUIRE**

Pursuant to 28 U.S.C. Section 1746, the undersigned states as follows:

1. My name is Shane Heskin. I am an attorney and I have personal knowledge of the matters set forth herein.
2. I received a subpoena from the U.S. Securities and Exchange Commission, and one of the responsive documents was subject to an Agreed Protective Order Concerning Discovery in a case for which I serve as Plaintiff's counsel, *HMC v. Complete Business Solutions Group, d/b/a Par Funding*, et al., 19-cv-3285, which is pending in the U.S. District Court for the Eastern District of Pennsylvania.
3. I filed a letter with the Court seeking leave to produce the document pursuant to the S.E.C. subpoena ("Letter").
4. At about 11:00 am on July 28, 2020, the Court held a telephonic hearing. Brett Berman appeared on behalf of Par Funding and opposed the relief sought in the Letter. I advised the Court that the SEC had filed a motion seeking to place CBSG in a receivership based on publicly available information released by court services. Mr. Berman confirmed the filing of the motion and the accidental public release of the motion. Mr. Berman, however, did not advise the Court or me that Par Funding had been actually placed in a Receivership at the time of the hearing, nor did he tell me or the Court that he had no authority to act on behalf of Par Funding. The Court entered an Order requiring a motion and setting a briefing schedule based on the arguments made by Mr. Berman.



5. On July 30, 2020, I contacted Commission staff to tell them I would need an additional extension of time because Par Funding was opposing the production of material responsive to the subpoena.

Executed on this 7<sup>th</sup> day of August, 2020.

  
SHANE HESKIN, ESQUIRE

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO.: 20-cv-81205=RAR**

**SECURITIES AND EXCHANGE COMMISSION,**

**Plaintiff,**

**v.**

**COMPLETE BUSINESS SOLUTIONS GROUP,  
INC. d/b/a/ PAR FUNDING,**

**/**

**AMENDED ORDER APPOINTING RECEIVER**

**WHEREAS** this matter has come before this Court upon motion of the Plaintiff U.S. Securities and Exchange Commission (“SEC”, “Commission” or “Plaintiff”) to amend the Receivership Order previously entered by this Court; and,

**WHEREAS** as set forth in the July 27, 2020 Order appointing the Receiver, the Court found that, based on the record in these proceedings, the appointment of a receiver in this action is necessary and appropriate for the purposes of marshaling and preserving all assets of the Defendants (“Receivership Assets”) and those assets of the Relief Defendant that: (a) are attributable to funds derived from investors or clients of the Defendants; (b) are held in constructive trust for the Defendants; (c) were fraudulently transferred by the Defendants; and/or (d) may otherwise be includable as assets of the estates of the Defendants (collectively, the “Recoverable Assets”); and,

**WHEREAS** this Court has subject matter jurisdiction over this action and personal jurisdiction over the Defendants, and venue properly lies in this district.

**NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED**

**THAT:**

1. This Court hereby takes exclusive jurisdiction and possession of the assets, of whatever kind and wherever situated, of the following Defendants: Complete Business Solutions Group, Inc. d/b/a Par Funding (“Par Funding”), Full Spectrum Processing, Inc., ABetterFinancialPlan.com LLC d/b/a A Better Financial Plan (“ABFP”), ABFP Management Company, LLC f/k/a Pillar Life Settlement Management Company, LLC (“ABFP Management”), ABFP Income Fund, LLC, ABFP Income Fund 2, L.P., United Fidelis Group Corp., Fidelis Financial Planning LLC, Retirement Evolution Group, LLC, RE Income Fund LLC, and RE Income Fund 2 LLC; and the following related entities: ABFP Income Fund 3, LLC, ABFP Income Fund 4, LLC, ABFP Income Fund 6, LLC, ABFP Income Fund Parallel LLC, ABFP Income Fund 2 Parallel, ABFP Income Fund 3 Parallel, ABFP Income Fund 4 Parallel, and ABFP Income Fund 6 Parallel (collectively, the “Receivership Entities”).

2. Until further Order of this Court, Ryan Stumphauzer, Esq. is appointed to serve without bond as receiver (the “Receiver”) for the estates of the Receivership Entities.

**I. Asset Freeze**

3. Except as otherwise specified herein, all Receivership Assets and Recoverable Assets are frozen until further order of this Court. Accordingly, all persons and entities with direct or indirect control over any Receivership Assets and/or any Recoverable Assets, other than the Receiver, are hereby restrained and enjoined from directly or indirectly transferring, setting off, receiving, changing, selling, pledging, assigning, liquidating or otherwise disposing of or withdrawing such assets. This freeze shall include, but not be limited to, Receivership Assets and/or Recoverable Assets that are on deposit with financial institutions such as banks, brokerage firms and mutual funds.

## **II. General Powers and Duties of Receiver**

4. The Receiver shall have all powers, authorities, rights and privileges heretofore possessed by the officers, directors, managers and general and limited partners of the Receivership Entities under applicable state and federal law, by the governing charters, by-laws, articles and/or agreements in addition to all powers and authority of a receiver at equity, and all powers conferred upon a receiver by the provisions of 28 U.S.C. §§ 754, 959 and 1692, and Fed.R.Civ.P. 66.

5. The trustees, directors, officers, managers, employees, investment advisors, accountants, attorneys and other agents of the Receivership Entities are hereby dismissed and the powers of any general partners, directors and/or managers are hereby suspended. Such persons and entities shall have no authority with respect to the Receivership Entities' operations or assets, except to the extent as may hereafter be expressly granted by the Receiver. The Receiver shall assume and control the operation of the Receivership Entities and shall pursue and preserve all of their claims.

6. No person holding or claiming any position of any sort with any of the Receivership Entities shall possess any authority to act by or on behalf of any of the Receivership Entities.

7. Subject to the specific provisions in Sections III through XIV, below, the Receiver shall have the following general powers and duties:

- A. To use reasonable efforts to determine the nature, location and value of all property interests of the Receivership Entities, including, but not limited to, monies, funds, securities, credits, effects, goods, chattels, lands, premises, leases, claims, rights and other assets, together with all rents, profits, dividends, interest or other income attributable thereto, of whatever kind, which the Receivership Entities own, possess, have a beneficial interest in, or control directly or indirectly ("Receivership Property" or, collectively, the "Receivership Estates");

- B. To take custody, control and possession of all Receivership Property and records relevant thereto from the Receivership Entities; to sue for and collect, recover, receive and take into possession from third parties all Receivership Property and records relevant thereto;
- C. To manage, control, operate and maintain the Receivership Estates and hold in his possession, custody and control all Receivership Property, pending further Order of this Court;
- D. To use Receivership Property for the benefit of the Receivership Estates, making payments and disbursements and incurring expenses as may be necessary or advisable in the ordinary course of business in discharging his duties as Receiver;
- E. To take any action which, prior to the entry of this Order, could have been taken by the officers, directors, partners, managers, trustees and agents of the Receivership Entities;
- F. To engage and employ persons in his discretion to assist him in carrying out his duties and responsibilities hereunder, including, but not limited to, accountants, attorneys, securities traders, registered representatives, financial or business advisers, liquidating agents, real estate agents, forensic experts, brokers, traders or auctioneers;
- G. To take such action as necessary and appropriate for the preservation of Receivership Property or to prevent the dissipation or concealment of Receivership Property;
- H. The Receiver is authorized to issue subpoenas for documents and testimony consistent with the Federal Rules of Civil Procedure;
- I. To bring such legal actions based on law or equity in any state, federal, or foreign court as the Receiver deems necessary or appropriate in discharging his duties as Receiver;
- J. To pursue, resist and defend all suits, actions, claims and demands which may now be pending or which may be brought by or asserted against the Receivership Estates; and,
- K. To take such other action as may be approved by this Court.

### **III. Access to Information**

8. The individual Receivership Entities and the past and/or present officers, directors, agents, managers, general and limited partners, trustees, attorneys, accountants and employees of the entity Receivership Entities, as well as those acting in their place, are hereby

ordered and directed to preserve and turn over to the Receiver forthwith all paper and electronic information of, and/or relating to, the Receivership Entities and/or all Receivership Property; such information shall include but not be limited to books, records, documents, accounts and all other instruments and papers.

9. Within ten days of the entry of this Order, the Receivership Entities shall file with the Court and serve upon the Receiver and the Commission a sworn statement, listing: (a) the identity, location and estimated value of all Receivership Property; (b) all employees (and job titles thereof), other personnel, attorneys, accountants and any other agents or contractors of the Receivership Entities; and, (c) the names, addresses and amounts of claims of all known creditors of the Receivership Entities.

10. Within thirty (30) days of the entry of this Order, the Receivership Entities shall file with the Court and serve upon the Receiver and the Commission a sworn statement and accounting, with complete documentation, covering the period from January 1, 2015 to the present:

- A. Of all Receivership Property, wherever located, held by or in the name of the Receivership Entities, or in which any of them, directly or indirectly, has or had any beneficial interest, or over which any of them maintained or maintains and/or exercised or exercises control, including, but not limited to: (a) all securities, investments, funds, real estate, automobiles, jewelry and other assets, stating the location of each; and (b) any and all accounts, including all funds held in such accounts, with any bank, brokerage or other financial institution held by, in the name of, or for the benefit of any of them, directly or indirectly, or over which any of them maintained or maintains and/or exercised or exercises any direct or indirect control, or in which any of them had or has a direct or indirect beneficial interest, including the account statements from each bank, brokerage or other financial institution;
- B. Identifying every account at every bank, brokerage or other financial institution: (a) over which Receivership Entities have signatory authority; and (b) opened by, in the name of, or for the benefit of, or used by, the Receivership Entities;

- C. Identifying all credit, bank, charge, debit or other deferred payment card issued to or used by each Receivership Entity, including but not limited to the issuing institution, the card or account number(s), all persons or entities to which a card was issued and/or with authority to use a card, the balance of each account and/or card as of the most recent billing statement, and all statements for the last twelve months;
- D. Of all assets received by any of them from any person or entity, including the value, location, and disposition of any assets so received;
- E. Of all funds received by the Receivership Entities, and each of them, in any way related, directly or indirectly, to the conduct alleged in the Commission's Complaint. The submission must clearly identify, among other things, all investors, the securities they purchased, the date and amount of their investments, and the current location of such funds;
- G. Of all expenditures exceeding \$1,000 made by any of them, including those made on their behalf by any person or entity; and
- H. Of all transfers of assets made by any of them.

11. Within thirty (30) days of the entry of this Order, the Receivership Entities shall provide to the Receiver and the Commission copies of the Receivership Entities' federal income tax returns for 2015 through present with all relevant and necessary underlying documentation.

12. The individual Receivership Entities and the entity Receivership Entities' past and/or present officers, directors, agents, attorneys, managers, shareholders, employees, accountants, debtors, creditors, managers and general and limited partners, and other appropriate persons or entities shall answer under oath to the Receiver all questions which the Receiver may put to them and produce all documents as required by the Receiver regarding the business of the Receivership Entities, or any other matter relevant to the operation or administration of the receivership or the collection of funds due to the Receivership Entities. In the event that the Receiver deems it necessary to require the appearance of the aforementioned persons or entities, the Receiver shall make its discovery requests in accordance with the Federal Rules of Civil Procedure.

13. To issue subpoenas to compel testimony of persons or production of records, consistent with the Federal Rules of Civil Procedure and applicable Local Rules, except for the provisions of Fed.R.Civ.P. 26(d)(1), concerning any subject matter within the powers and duties granted by this Order.

14. The Receivership Entities are required to assist the Receiver in fulfilling his duties and obligations. As such, they must respond promptly and truthfully to all requests for information and documents from the Receiver.

#### **IV. Access to Books, Records and Accounts**

15. The Receiver is authorized to take immediate possession of all assets, bank accounts or other financial accounts, books and records and all other documents or instruments relating to the Receivership Entities. All persons and entities having control, custody or possession of any Receivership Property are hereby directed to turn such property over to the Receiver.

16. The Receivership Entities, as well as their agents, servants, employees, attorneys, any persons acting for or on behalf of the Receivership Entities, and any persons receiving notice of this Order by personal service, facsimile transmission or otherwise, having possession of the property, business, books, records, accounts or assets of the Receivership Entities are hereby directed to deliver the same to the Receiver, his agents and/or employees.

17. All banks, brokerage firms, financial institutions, and other persons or entities which have possession, custody or control of any assets or funds held by, in the name of, or for the benefit of, directly or indirectly, and of the Receivership Entities that receive actual notice of this Order by personal service, facsimile transmission or otherwise shall:

- A. Not liquidate, transfer, sell, convey or otherwise transfer any assets, securities, funds, or accounts in the name of or for the benefit of the Receivership Entities except upon instructions from the Receiver;

- B. Not exercise any form of set-off, alleged set-off, lien, or any form of self-help whatsoever, or refuse to transfer any funds or assets to the Receiver's control without the permission of this Court;
- C. Within five (5) business days of receipt of that notice, file with the Court and serve on the Receiver and counsel for the Commission a certified statement setting forth, with respect to each such account or other asset, the balance in the account or description of the assets as of the close of business on the date of receipt of the notice; and,
- D. Cooperate expeditiously in providing information and transferring funds, assets and accounts to the Receiver or at the direction of the Receiver.

**V. Access to Real and Personal Property**

18. The Receiver is authorized to take immediate possession of all personal property of the Receivership Entities, wherever located, including but not limited to electronically stored information, computers, laptops, hard drives, external storage drives, and any other such memory, media or electronic storage devices, books, papers, data processing records, evidence of indebtedness, bank records and accounts, savings records and accounts, brokerage records and accounts, certificates of deposit, stocks, bonds, debentures, and other securities and investments, contracts, mortgages, furniture, office supplies and equipment.

19 The Receiver is authorized to take immediate possession of all real property of the Receivership Entities, wherever located, including but not limited to all ownership and leasehold interests and fixtures. Upon receiving actual notice of this Order by personal service, facsimile transmission or otherwise, all persons other than law enforcement officials acting within the course and scope of their official duties, are (without the express written permission of the Receiver) prohibited from: (a) entering such premises; (b) removing anything from such premises; or, (c) destroying, concealing or erasing anything on such premises.

20. In order to execute the express and implied terms of this Order, the Receiver is authorized to change door locks to the premises described above. The Receiver shall have exclusive control of the keys. The Receivership Entities, or any other person acting or

purporting to act on their behalf, are ordered not to change the locks in any manner, nor to have duplicate keys made, nor shall they have keys in their possession during the term of the receivership.

21. The Receiver is authorized to open all mail directed to or received by or at the offices or post office boxes of the Receivership Entities, and to inspect all mail opened prior to the entry of this Order, to determine whether items or information therein fall within the mandates of this Order.

22. Upon the request of the Receiver, the United States Marshal Service, in any judicial district, is hereby ordered to assist the Receiver in carrying out his duties to take possession, custody and control of, or identify the location of, any assets, records or other materials belonging to the Receivership Estate.

#### **VI. Notice to Third Parties**

23. The Receiver shall promptly give notice of his appointment to all known officers, directors, agents, employees, shareholders, creditors, debtors, managers and general and limited partners of the Receivership Entities, as the Receiver deems necessary or advisable to effectuate the operation of the receivership.

24. All persons and entities owing any obligation, debt, or distribution with respect to an ownership interest to any Receivership Entity shall, until further ordered by this Court, pay all such obligations in accordance with the terms thereof to the Receiver and its receipt for such payments shall have the same force and effect as if the Receivership Entity had received such payment.

25. In furtherance of his responsibilities in this matter, the Receiver is authorized to communicate with, and/or serve this Order upon, any person, entity or government office that he deems appropriate to inform them of the status of this matter and/or the financial condition of the

Receivership Estates. All government offices which maintain public files of security interests in real and personal property shall, consistent with such office's applicable procedures, record this Order upon the request of the Receiver or the SEC.

26. The Receiver is authorized to instruct the United States Postmaster to hold and/or reroute mail which is related, directly or indirectly, to the business, operations or activities of any of the Receivership Entities (the "Receiver's Mail"), including all mail addressed to, or for the benefit of, the Receivership Entities. The Postmaster shall not comply with, and shall immediately report to the Receiver, any change of address or other instruction given by anyone other than the Receiver concerning the Receiver's Mail. The Receivership Entities shall not open any of the Receiver's Mail and shall immediately turn over such mail, regardless of when received, to the Receiver. All personal mail of any individual Receivership Entities, and/or any mail appearing to contain privileged information, and/or any mail not falling within the mandate of the Receiver, shall be released to the named addressee by the Receiver. The foregoing instructions shall apply to any proprietor, whether individual or entity, of any private mail box, depository, business or service, or mail courier or delivery service, hired, rented or used by the Receivership Entities. The Receivership Entities shall not open a new mailbox, or take any steps or make any arrangements to receive mail in contravention of this Order, whether through the U.S. mail, a private mail depository or courier service.

27. Subject to payment for services provided, any entity furnishing water, electric, telephone, sewage, garbage or trash removal services to the Receivership Entities shall maintain such service and transfer any such accounts to the Receiver unless instructed to the contrary by the Receiver.

## **VII. Injunction Against Interference with Receiver**

29. The Receivership Entities and all persons receiving notice of this Order by personal service, facsimile or otherwise, are hereby restrained and enjoined from directly or indirectly taking any action or causing any action to be taken, without the express written agreement of the Receiver, which would:

- A. Interfere with the Receiver's efforts to take control, possession, or management of any Receivership Property; such prohibited actions include but are not limited to, using self-help or executing or issuing or causing the execution or issuance of any court attachment, subpoena, replevin, execution, or other process for the purpose of impounding or taking possession of or interfering with or creating or enforcing a lien upon any Receivership Property;
- B. Hinder, obstruct or otherwise interfere with the Receiver in the performance of his duties; such prohibited actions include but are not limited to, concealing, destroying or altering records or information;
- C. Dissipate or otherwise diminish the value of any Receivership Property; such prohibited actions include but are not limited to, releasing claims or disposing, transferring, exchanging, assigning or in any way conveying any Receivership Property, enforcing judgments, assessments or claims against any Receivership Property or any Receivership Entity, attempting to modify, cancel, terminate, call, extinguish, revoke or accelerate (the due date), of any lease, loan, mortgage, indebtedness, security agreement or other agreement executed by any Receivership Entity or which otherwise affects any Receivership Property; or,
- D. Interfere with or harass the Receiver, or interfere in any manner with the exclusive jurisdiction of this Court over the Receivership Estates.

30. The Receivership Entities shall cooperate with and assist the Receiver in the performance of his duties.

31. The Receiver shall promptly notify the Court and SEC counsel of any failure or apparent failure of any person or entity to comply in any way with the terms of this Order.

## **VIII. Stay of Litigation**

32. As set forth in detail below, the following proceedings, excluding the instant proceeding and all police or regulatory actions and actions of the Commission related to the

above-captioned enforcement action, are stayed until further Order of this Court:

All civil legal proceedings of any nature, including, but not limited to, bankruptcy proceedings, arbitration proceedings, foreclosure actions, default proceedings, or other actions of any nature involving: (a) the Receiver, in his capacity as Receiver; (b) any Receivership Property, wherever located; (c) any of the Receivership Entities, including subsidiaries and partnerships; or, (d) any of the Receivership Entities' past or present officers, directors, managers, agents, or general or limited partners sued for, or in connection with, any action taken by them while acting in such capacity of any nature, whether as plaintiff, defendant, third-party plaintiff, third-party defendant, or otherwise (such proceedings are hereinafter referred to as "Ancillary Proceedings").

33. The parties to any and all Ancillary Proceedings are enjoined from commencing or continuing any such legal proceeding, or from taking any action, in connection with any such proceeding, including, but not limited to, the issuance or employment of process.

34. All Ancillary Proceedings are stayed in their entirety, and all Courts having any jurisdiction thereof are enjoined from taking or permitting any action until further Order of this Court. Further, as to a cause of action accrued or accruing in favor of one or more of the Receivership Entities against a third person or party, any applicable statute of limitation is tolled during the period in which this injunction against commencement of legal proceedings is in effect as to that cause of action.

#### **IX. Managing Assets**

35. For each of the Receivership Estates, the Receiver shall establish one or more custodial accounts at a federally insured bank to receive and hold all cash equivalent Receivership Property (the "Receivership Funds").

36. The Receiver's deposit account shall be entitled "Receiver's Account, Estate of [Receivership Entity]" together with the name of the action.

37. The Receiver may, without further Order of this Court, transfer, compromise, or otherwise dispose of any Receivership Property, other than real estate, in the ordinary course of business, on terms and in the manner the Receiver deems most beneficial to the Receivership

Estate, and with due regard to the realization of the true and proper value of such Receivership Property.

38. Subject to Paragraph 39, immediately below, the Receiver is authorized to locate, list for sale or lease, engage a broker for sale or lease, cause the sale or lease, and take all necessary and reasonable actions to cause the sale or lease of all real property in the Receivership Estates, either at public or private sale, on terms and in the manner the Receiver deems most beneficial to the Receivership Estate, and with due regard to the realization of the true and proper value of such real property.

39. Upon further Order of this Court, pursuant to such procedures as may be required by this Court and additional authority such as 28 U.S.C. §§ 2001 and 2004, the Receiver will be authorized to sell, and transfer clear title to, all real property in the Receivership Estates.

40. The Receiver is authorized to take all actions to manage, maintain, and/or wind-down business operations of the Receivership Estates, including making legally required payments to creditors, employees, and agents of the Receivership Estates and communicating with vendors, investors, governmental and regulatory authorities, and others, as appropriate.

41. The Receiver shall take all necessary steps to enable the Receivership Funds to obtain and maintain the status of a taxable "Settlement Fund," within the meaning of Section 468B of the Internal Revenue Code and of the regulations, when applicable, whether proposed, temporary or final, or pronouncements thereunder, including the filing of the elections and statements contemplated by those provisions. The Receiver shall be designated the administrator of the Settlement Fund, pursuant to Treas. Reg. § 1.468B-2(k)(3)(i), and shall satisfy the administrative requirements imposed by Treas. Reg. § 1.468B-2, including but not limited to (a) obtaining a taxpayer identification number, (b) timely filing applicable federal, state, and local tax returns and paying taxes reported thereon, and (c) satisfying any information, reporting or

withholding requirements imposed on distributions from the Settlement Fund. The Receiver shall cause the Settlement Fund to pay taxes in a manner consistent with treatment of the Settlement Fund as a “Qualified Settlement Fund.” The Receivership Entities shall cooperate with the Receiver in fulfilling the Settlement Funds’ obligations under Treas. Reg. § 1.468B-2].

**X. Investigate and Prosecute Claims**

42. Subject to the requirement, in Section VII above, that leave of this Court is required to resume or commence certain litigation, the Receiver is authorized, empowered and directed to investigate, prosecute, defend, intervene in or otherwise participate in, compromise, and/or adjust actions in any state, federal or foreign court or proceeding of any kind as may in his discretion, and in consultation with SEC counsel, be advisable or proper to recover and/or conserve Receivership Property.

43. Subject to his obligation to expend receivership funds in a reasonable and cost-effective manner, the Receiver is authorized, empowered and directed to investigate the manner in which the financial and business affairs of the Receivership Entities were conducted and (after obtaining leave of this Court) to institute such actions and legal proceedings, for the benefit and on behalf of the Receivership Estate, as the Receiver deems necessary and appropriate; the Receiver may seek, among other legal and equitable relief, the imposition of constructive trusts, disgorgement of profits, asset turnover, avoidance of fraudulent transfers, rescission and restitution, collection of debts, and such other relief from this Court as may be necessary to enforce this Order. Where appropriate, the Receiver should provide prior notice to Counsel for the Commission before commencing investigations and/or actions.

44. The Receiver hereby holds, and is therefore empowered to waive, all privileges, including the attorney-client privilege, held by all entity Receivership Entities.

45. The receiver has a continuing duty to ensure that there are no conflicts of interest between the Receiver, his Retained Personnel (as that term is defined below), and the Receivership Estate.

## **XII. Bankruptcy Filing**

46. The Receiver may seek authorization of this Court to file voluntary petitions for relief under Title 11 of the United States Code (the “Bankruptcy Code”) for the Receivership Entities. If a Receivership Entity is placed in bankruptcy proceedings, the Receiver may become, and may be empowered to operate each of the Receivership Estates as, a debtor in possession. In such a situation, the Receiver shall have all of the powers and duties as provided a debtor in possession under the Bankruptcy Code to the exclusion of any other person or entity. Pursuant to Paragraph 4 above, the Receiver is vested with management authority for all entity Receivership Entities and may therefore file and manage a Chapter 11 petition.

47. The provisions of Section VIII above bar any person or entity, other than the Receiver, from placing any of the Receivership Entities in bankruptcy proceedings.

## **XII. Liability of Receiver**

48. Until further Order of this Court, the Receiver shall not be required to post bond or give an undertaking of any type in connection with his fiduciary obligations in this matter.

49. The Receiver and his agents, acting within scope of such agency (“Retained Personnel”) are entitled to rely on all outstanding rules of law and Orders of this Court and shall not be liable to anyone for their own good faith compliance with any order, rule, law, judgment, or decree. In no event shall the Receiver or Retained Personnel be liable to anyone for their good faith compliance with their duties and responsibilities as Receiver or Retained Personnel, nor shall the Receiver or Retained Personnel be liable to anyone for any actions taken or omitted by them except upon a finding by this Court that they acted or failed to act as a result of

malfeasance, bad faith, gross negligence, or in reckless disregard of their duties].

50. This Court shall retain jurisdiction over any action filed against the Receiver or Retained Personnel based upon acts or omissions committed in their representative capacities.

51. In the event the Receiver decides to resign, the Receiver shall first give written notice to the Commission's counsel of record and the Court of its intention, and the resignation shall not be effective until the Court appoints a successor. The Receiver shall then follow such instructions as the Court may provide.

### **XIII. Recommendations and Reports**

52. The Receiver is authorized, empowered and directed to develop a plan for the fair, reasonable, and efficient recovery and liquidation of all remaining, recovered, and recoverable Receivership Property (the "Liquidation Plan").

53. Within ninety (90) days of the entry date of this Order, the Receiver shall file the Liquidation Plan in the above-captioned action, with service copies to counsel of record.

54. Within thirty (30) days after the end of each calendar quarter, the Receiver shall file and serve a full report and accounting of each Receivership Estate (the "Quarterly Status Report"), reflecting (to the best of the Receiver's knowledge as of the period covered by the report) the existence, value, and location of all Receivership Property, and of the extent of liabilities, both those claimed to exist by others and those the Receiver believes to be legal obligations of the Receivership Estates.

55. The Quarterly Status Report shall contain the following:

- A. A summary of the operations of the Receiver;
- B. The amount of cash on hand, the amount and nature of accrued administrative expenses, and the amount of unencumbered funds in the estate;
- C. A schedule of all the Receiver's receipts and disbursements (attached as Exhibit A to the Quarterly Status Report), with one column for the

quarterly period covered and a second column for the entire duration of the receivership;

- D. A description of all known Receivership Property, including approximate or actual valuations, anticipated or proposed dispositions, and reasons for retaining assets where no disposition is intended;
- E. A description of liquidated and unliquidated claims held by the Receivership Estate, including the need for forensic and/or investigatory resources; approximate valuations of claims; and anticipated or proposed methods of enforcing such claims (including likelihood of success in: (i) reducing the claims to judgment; and, (ii) collecting such judgments);
- F. A list of all known creditors with their addresses and the amounts of their claims;
- G. The status of Creditor Claims Proceedings, after such proceedings have been commenced; and,
- H. The Receiver's recommendations for a continuation or discontinuation of the receivership and the reasons for the recommendations.

56. On the request of the Commission, the Receiver shall provide the Commission with any documentation that the Commission deems necessary to meet its reporting requirements, that is mandated by statute or Congress, or that is otherwise necessary to further the Commission's mission.

#### **XIV. Fees, Expenses and Accountings**

57. Subject to Paragraphs 58 – 64 immediately below, the Receiver need not obtain Court approval prior to the disbursement of Receivership Funds for expenses in the ordinary course of the administration and operation of the receivership. Further, prior Court approval is not required for payments of applicable federal, state or local taxes.

58. Subject to Paragraph 59 immediately below, the Receiver is authorized to solicit persons and entities ("Retained Personnel") to assist him in carrying out the duties and responsibilities described in this Order. The Receiver shall not engage any Retained Personnel without first obtaining an Order of the Court authorizing such engagement.

59. The Receiver and Retained Personnel are entitled to reasonable compensation and expense reimbursement from the Receivership Estates as described in the “Billing Instructions for Receivers in Civil Actions Commenced by the U.S. Securities and Exchange Commission” (the “Billing Instructions”) agreed to by the Receiver. Such compensation shall require the prior approval of the Court.

60. Within forty-five (45) days after the end of each calendar quarter, the Receiver and Retained Personnel shall apply to the Court for compensation and expense reimbursement from the Receivership Estates (the “Quarterly Fee Applications”). At least thirty (30) days prior to filing each Quarterly Fee Application with the Court, the Receiver will serve upon counsel for the SEC a complete copy of the proposed Application, together with all exhibits and relevant billing information in a format to be provided by SEC staff.

61. All Quarterly Fee Applications will be interim and will be subject to cost benefit and final reviews at the close of the receivership. At the close of the receivership, the Receiver will file a final fee application, describing in detail the costs and benefits associated with all litigation and other actions pursued by the Receiver during the course of the receivership.

62. Quarterly Fee Applications may be subject to a holdback in the amount of 20% of the amount of fees and expenses for each application filed with the Court. The total amounts held back during the course of the receivership will be paid out at the discretion of the Court as part of the final fee application submitted at the close of the receivership.

63. Each Quarterly Fee Application shall:

- A. Comply with the terms of the Billing Instructions agreed to by the Receiver; and,
- B. Contain representations (in addition to the Certification required by the Billing Instructions) that: (i) the fees and expenses included therein were incurred in the best interests of the Receivership Estate; and, (ii) with the exception of the Billing Instructions, the Receiver has not entered into any agreement, written or oral, express or implied, with any person or entity

concerning the amount of compensation paid or to be paid from the Receivership Estate, or any sharing thereof.

64. At the close of the Receivership, the Receiver shall submit a Final Accounting, in a format to be provided by SEC staff, as well as the Receiver's final application for compensation and expense reimbursement.

**IT IS SO ORDERED, this \_\_\_\_\_ day of \_\_\_\_\_, 2020, at Ft. Lauderdale, Florida.**

**THE HONORABLE RODOLFO A. RUIZ, II**  
**UNITED STATES DISTRICT JUDGE**