

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION**

SECURITIES AND EXCHANGE  
COMMISSION

Plaintiff,

V.

THURMAN P. BRYANT, III and  
BRYANT UNITED CAPITAL FUNDING, INC.

Case 04:17-CV-00336-ALM

Defendants,

And

ARTHUR F. WAMMEL,  
WAMMEL GROUP, LLC,  
THURMAN P. BRYANT, JR.,  
CARLOS GOODSPEED a/k/a SEAN PHILLIPS  
d/b/a TOP AGENT ENTERTAINMENT d/b/a/  
MR. TOP AGENT ENTERTAINMENT

## Relief Defendants.

**RESPONSE TO RELIEF DEFENDANTS ARTHUR F. WAMMEL’S AND  
WAMMEL GROUP, LLC’S EMERGENCY MOTION AND BRIEF FOR  
RECONSIDERATION AND REPLY IN SUPPORT OF *EX PARTE* TRO,  
PRELIMINARY INJUNCTION, ASSET FREEZE, AND RECEIVERSHIP ORDERS**

Jennifer Ecklund, the Court-appointed Receiver (the “**Receiver**”) for Defendants Thurman P. Bryant, III (“**Bryant**”) and Bryant United Capital Funding, Inc. (“**BUCF**”) (Bryant and BUCF, collectively, the “**Bryant Defendants**”) and Relief Defendant Arthur F. Wammel (“**Wammel**”), Relief Defendant Wammel Group, LLC (the “**Wammel Group**”), and Wammel Group Holdings Partnership (“**WGHP**”) (together Wammel, Wammel Group, and WGHP, the “**Wammel Defendants**”) receivership estates (together, the “**Receivership Estate**” or the

“**Receivership**”) in the above-captioned case (the “**Case**”), by and through undersigned counsel, hereby files this Response to *Relief Defendants Arthur F. Wammel and Wammel Group, LLC’s Emergency Motion and Brief for Reconsideration of Ex Parte TRO, Preliminary Injunction, Asset Freeze, and Receivership Orders* [Dkt. No. 56] (the “**Request for Reconsideration**”) and Reply in support of the Receiver’s *Ex Parte* TRO, Preliminary Injunction, Asset Freeze, and Amended Order Appointing the Receiver (the “**Reply**”).

## I. INTRODUCTION

In an obvious attempt to avoid the merits and substance of the Receiver’s *Ex Parte Emergency Motion to Expand the Receivership and Asset Freeze Against the Wammel Defendants, for Temporary Restraining Order, and for Preliminary Injunction and Brief in Support* (the “**Motion**”), the Wammel Defendants instead accuse the Receiver of lying to the Court by focusing on minor procedural details and by taking statements out of context from the Receiver’s filings. The Wammel Defendants’ due process rights were not violated because the Receiver obtained *ex parte* relief properly—legally and procedurally. Further, the Receiver provided the Court with accurate and undisputed evidence to support such relief, including, evidence regarding the Wammel Defendants’: commingling of investor funds, participation in the BUCF fraud, alter ego with BUCF, and receipt of proceeds from the scheme. The Wammel Defendants never explain or try to justify the loss of millions of dollars of investor monies, losses in which Wammel was a direct participant and recipient. The Wammel Defendants never explain or justify any substantive bases provided by the Receiver in support of her Motion.

For the reasons explained below, the relief requested in the Wammel Defendants’ Request for Reconsideration should be denied and this Court should affirm the Receiver’s

expansion of the Receivership and Asset Freeze to include the Wammel Defendants and permanently enjoin the Wammel Defendants.

## II. ARGUMENT

### A. The Wammel Defendants' due process rights were not violated because the Receiver properly obtained *ex parte* relief with undisputed evidence.

The Wammel Defendants claim that the Receiver “manufactured a non-existent emergency and trampled on the Wammel Relief Defendants’ constitutional rights.” Yet, the Receiver obtained the relief she requested with due process—legally and procedurally—and she provided the Court with accurate and undisputed evidence to support such relief.

1. *The Receiver’s ex parte relief did not violate the Wammel Defendants’ due process rights and thus does not constitute an unconstitutional search and seizure.*

i. Pertinent legal authority supports the Court’s *ex parte* appointment of the Receivership over the Wammel Defendants.

Courts (including the Fifth Circuit) have held that the Fourth Amendment does not bar the *ex parte* appointment of a receiver to take property. *Woods v. Federal Home Loan Bank Board*, 826 F.2d 1400, 1412 (5th Cir. 1987) (providing that court review of even a bank board’s *ex parte* appointment of a receiver without notice satisfies due process); *see also Foxfire Enterprises, Inc. v. Enterprise Holding Corp.*, 837 F.2d 597, 498 (2d Cir. 1988) (holding *ex parte* appointment of a receiver did not deprive defendant of property without due process of law); *see also Bradford Audio Corp. v. Pious*, 392 F.2d 67, 72 (2d Cir. 1968) (finding *ex parte* appointment of a receiver was not a violation of due process where defendant was thereafter notified and thereafter given a full opportunity to be heard). Here, the Receiver first moved to temporarily seal the docket for 48 hours, using the bases under Federal Rule of Civil Procedure

65 for support. Dkt. No. 42. In addition, the Motion filed by the Receiver was on its face a request for *ex parte* relief. The Court understood the request to be *ex parte*. Legally the Receiver was entitled to obtain the relief she was granted by the Court.

Further, obtaining a receivership on an *ex parte* basis is common where there are other reasons for expedited treatment, such as the imminent transfer of certain valuable assets, which in this case the Receiver had to immediately address upon her appointment. Here, the Receiver outlined the imminent irreparable injury, namely, the dissipation of assets by the Wammel Defendants. The Wammel Defendants admit that they “learned of the SEC’s investigation in December 2016” and that they began meeting with the SEC in March 2017. Request for Reconsideration at p. 4. The Receiver represents that the Wammel Defendants “dissipated over \$7 million in investor monies since December 2016” throughout her Motion. Motion at p. 3, 14, 15, and 30. Dissipation by the Wammel Defendants before the Receivership Order and TRO obtained by the SEC was relevant to the Receiver’s request that the Receivership be expanded to include the Wammel Defendants. Whether the Wammel Defendants dissipated \$7 million or \$200,000 after the Receivership Order and TRO is not relevant—what is relevant is that the Wammel Defendants moved a material amount of money both at the time that they gained knowledge of the SEC’s investigation (beginning in December 2016) and after the Receivership was put in place in violation of the TRO. In addition, in freezing the assets of the Wammel Defendants, the Receiver learned that the Wammel Defendants transferred the last \$200,000<sup>1</sup> from the OptionsXpress account on July 18, 2017—one (1) day before the expansion was granted—further evidencing the necessity to institute the expansion. *See* Transaction

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<sup>1</sup> At the time of the filing of the Receiver’s Motion, the account balance of the Wammel Group investment account at OptionsXpress was \$213,570.89. Motion at ¶ 38.

Documentation from OptionsXpress (reflecting and confirming withdrawal by A. Wammel of \$213,579.33 from OptionsXpress to Wells Fargo on July 18, 2017), attached hereto as **Exhibit A**.

ii. The Receiver utilized the correct procedural mechanisms to request and obtain the *ex parte* relief granted by the Court.

In addition to having the legal authority to move, the Receiver filed and abided by appropriate procedural protocols. The Receiver obtained *ex parte* relief pursuant to (i) the *Receiver's Emergency Ex Parte Motion to Temporarily Seal Docket and Proceedings and Brief in Support* [Dkt. No. 42] (the "**Motion to Seal**") pursuant to Local Rule CV-5(a)(7), and (ii) the Receiver's request for *ex parte* relief in her Motion pursuant to Federal Rule of Civil Procedure 65(b). Notice to the Wammel Defendants was not required under the rules. Furthermore, the Court granted the Motion to Seal [*see* Dkt. No. 46] and the request for *ex parte* relief in the Motion [*see* Dkt. No. 49]. Given that the Receiver properly moved under the Local Rule CV-5(a)(7) and Rule 65(b) and that this Court granted the relief within its right only after such procedural burdens were met, the Receiver's *ex parte* relief did not violate the Wammel Defendants' due process rights and thus does not constitute an unconstitutional search and seizure.

2. *The Receiver did not mislead the Court in her Motion.*

The Wammel Defendants claim that the Receiver obtained the expansion over the Wammel Defendants using "flagrant inaccuracies" and by "manufactur[ing] a non-existent emergency." Request for Reconsideration at p. 1-2. The Receiver never misled the Court, but instead, provided undisputed evidence (none of which has been controverted by the Wammel Defendants' Request for Reconsideration) to support the requested relief. The Wammel

Defendants, in an attempt to distract the Court from the lack of defenses to the substantive bases for expansion, inaccurately allege a number of purportedly misleading statements made by the Receiver in the Motion. The Receiver responds to each of the Wammel Defendants' inaccurate arguments below:

i. The Receiver's definition of the "Wammel Defendants" is not misleading.

The Wammel Defendants claim that the Receiver "mischaracterized Relief Defendants as Defendants." Request for Reconsideration at p. 5. The Wammel Defendants' focus on the "definition" the Receiver chose is perplexing. The Receiver defined the Wammel Defendants as follows:

The Receiver moves the Court to expand the Receivership so that the following are placed in receivership and made subject to the asset freeze:

- Relief Defendant Arthur F. Wammel ("Wammel");
- Wammel Group Holdings Partnership ("WGHP"); and
- Wammel Group, LLC (the "Wammel Group," together with Wammel and WGHP, the "Wammel Defendants").

This was done for efficiency purposes in the Motion. In the first instance when the Receiver defines the Wammel Defendants, she uses the word "Relief" and thereafter often uses it throughout her Motion—eight (8) additional times. *See* Motion at p. 2, 6, 21, and 29. Further, the caption to the case, itself, qualifies that the Wammel Defendants are "Relief Defendants." The Receiver's definition of the Wammel Defendants is not misleading.

- ii. The Receiver's representations regarding the Wammel Defendants' dissipation of over \$7 million in investor monies are not misleading as the Receiver adequately explains the timing of such dissipation.

The Wammel Defendants allege that the Receiver “misrepresents that they had ‘dissipated’ some \$7 million in assets since December 2016 in violation of a receivership order.” Request for Reconsideration at p. 7. The Wammel Defendants’ argument that the Receiver’s statements regarding the dissipation of the \$7 million in investor monies are misleading is a distraction from the substantive nature of the Receiver’s proof of dissipation.

*First*, the Receiver mentions the dissipation by the Wammel Defendants of over \$7 million in investor monies five (5) times throughout her Motion. Motion at p. 3, 14, 15, 23, and 30. In four (4) of the references to the dissipation of over \$7 million in investor monies by the Wammel Defendants, the Receiver clarifies that such dissipation was “since December 2016.” Motion at p. 3, 14, 15, and 30. The Receiver mentioned that such dissipation of \$7 million began in December 2016 in nearly every reference in the Motion.

*Second*, although the Receiver’s one instance stating that “[t]he Wammel Defendants dissipation of over \$8 million cash and \$7 million in total value of the assets of the Receivership Defendants’ funds directly violates the Receivership Order” may be incorrectly worded, the context through the Motion makes the statement clear. The Receiver specifically and in detail outlined the dissipation month-by-month by the Wammel Defendants in the Motion (*and* attached each monthly statement from the OptionsXpress account to the Motion), concluding with a statement that “the Wammel Group has dissipated assets from December 2016 to June 2017 of over \$7 million.” Motion at ¶ 34-39. The Receiver *never* intended nor effectively alleged that all of the dissipation occurred post appointment of the Receiver in May 2017. The

Receiver's representations regarding dissipation by the Wammel Defendants of over \$7 million in investor monies are not misleading.

iii. The Receiver accurately established dissipation of assets.

The Wammel Defendants claim that the Receiver simplifies the “decline in account value in the Wammel Group’s OptionsXpress account” as dissipation. Request for Reconsideration at p. 8. The Wammel Defendants criticize the Receiver for suggesting that the dissipation was wrongful and that there may be legitimate reasons for the dissipation. Notably, the Wammel Defendants do not offer to explain the alternative.

To dissipate means “to spend or use up wastefully or foolishly.” Merriam-Webster, n.d. Web, July 27, 2017. The losses by and transfers to Mr. Wammel, individually, fit within that definition. *See* Motion at p. 16 and 25. To the Receiver it does not matter that the dissipation was caused by the losses—the fact that the dissipation and/or loss occurred is what is important.

Further, the Receiver alleged that (a) the losses included commingled BUCF investor monies (a claim that the Wammel Defendants do not deny in the Wammel Defendants’ Request for Reconsideration), and (b) that the BUCF investors did not consent to high risk options trading (another claim unrefuted by the Wammel Defendants). *See* Motion at p. 20. Thus, the Receiver’s allegations regarding dissipation are not misleading or untrue, and the Receiver, contrary to the Wammel Defendants’ claim (Request for Reconsideration at p. 8), *has* demonstrated dissipation of assets.

iv. Representations made by the Receiver regarding the Wammel Defendants' computer were made in good faith based upon information provided to her by the Wammel Defendants' counsel.

The Wammel Defendants allege that the Receiver “claims with no proof that Mr. Wammel had ‘recently’ destroyed a computer.” Request for Reconsideration at p. 2-3. The proof relied upon by the Receiver with respect to her concerns about the preservation of evidence and the Wammel Defendants’ computer comes directly from the Wammel Defendants’ counsel. During the Rule 26(f) conference on June 30, 2017, counsel for the Wammel defendants informed all parties that the computer used by the Wammel Defendants had been disposed of or was no longer able to be located. *See* Motion at p. 22; *see also* Declaration of M. Wallace, attached hereto as **Exhibit B**. This was the first time that the Receiver was made aware of any potential preservation issues associated with the Wammel Defendants’ electronic media. During the course of the Receiver’s seizures of the Wammel Defendants’ assets, counsel for the Wammel Defendants indicated that the Wammel Defendants’ computer was “in [Mr. Wammel’s] upstairs office at his now-former residence.” Request for Reconsideration at p. at 3. This representation is contrary to counsel of the Wammel Defendants’ prior representations regarding the computer of the Wammel Defendants.

The Receiver agrees that any statement that Mr. Wammel had “recently destroyed a computer” may be false; however, the Receiver never stated such but simply alleged that the Wammel Defendants’ failed to preserve evidence, which was based upon their own counsel’s representation that the computer used by them was no longer available. Representations made by the Receiver in her Motion were made in good faith based upon the information provided to

her by the Wammel Defendants' counsel and available to her at the time of the filing of the Motion.

- v. The Wammel Defendants are in clear violation of the Receivership Order and TRO despite the Wammel Defendants' disingenuous claim that such were not directed to them when they were sent to them and given months to comply.

The Wammel Defendants surprisingly appear to argue that the Receivership Order and TRO do not apply to them. Specifically, the Wammel Defendants claim that the Receiver "misleadingly stated that [the Wammel Defendants] had violated court orders that the Receiver had not even sought to enforce." Request for Reconsideration at p. 5.

The express language of the Receivership Order and the TRO dictate otherwise. The Receivership Order requires "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 any Receivership Defendants" not to "liquidate, transfer, sell, convey, or otherwise transfer any assets . . . except upon instructions from the Receiver . . . ." See Motion at 6 (quoting Receivership Order at ¶ 16). The TRO requires that "all persons in . . . participation with the Defendants are restrained and enjoined from . . . making any payment or expenditure of funds . . . ." See *id* (quoting TRO at ¶ 15). The evidence in the Receiver's Motion confirms that the Wammel Defendants were in possession of investor funds and dissipated those funds. This amounts to a clear violation of the Receivership Order and TRO.

As outlined above, in each instance where the Wammel Defendants attempt to claim the Receiver manufactured an emergency, the Receiver did not mislead the Court. The Wammel Defendants' arguments regarding misleading statements by the Receiver are simply an avoidance

tactic. Instead, the Receiver provided this Court with accurate and undisputed evidence in support of her Motion. Thus, invalidation of the *ex parte* relief is unwarranted.

3. *The Receiver acts independently of the SEC to carry out her duties.*

The Wammel Defendants next argue that the “Receiver’s *ex parte* motion is directly contrary to the understanding the Wammel Relief Defendants had with the SEC.” Request for Reconsideration at p. 3. However, the Receiver is not privy to the details of the settlement discussions between the Wammel Defendants and the SEC. Although the Receiver was aware that the Wammel Defendants were in discussions regarding potential settlement with the SEC, the Receiver owes different duties as a fiduciary of this Court to represent the interest of the defrauded investors.

Moreover, the Wammel Defendants claim that the SEC “did not accuse them of wrongdoing.” Request for Reconsideration at p. 4. *First*, the Receiver disputes this claim as the SEC alleged that the Wammel Defendants commingled BUCF investor funds with Wammel Group investor funds and that the Wammel Defendants unlawfully obtained funds from BUCF investors subject to disgorgement. Complaint, Dkt. No. 1, at ¶¶ 5 and 7. *Second*, the Wammel Defendants admit in their own Wammel Defendants’ Request for Reconsideration, by attaching the settlement consents, that the SEC was accusing the Wammel Defendants of wrongdoing and that had the consents been agreed to by the SEC, the Complaint in this case would have been amended to add the Wammel Defendants as Defendants instead of Relief Defendants. *Finally*, regardless of the SEC’s accusations, the Receiver’s Motion is replete with examples and evidence conclusively showing that the Wammel Defendants participated in the fraud—nowhere in the Wammel Defendants’ Request for Reconsideration is this evidence refuted.

The SEC's attempt to settle with the Wammel Defendants should not prevent this Court from exercising its power to grant the Receiver authority over the Wammel Defendants' assets.

**B. The Wammel Defendants' have not and *cannot* address the Receiver's substantive bases for expansion.**

The Wammel Defendants offer no response to the substantive allegations of the Receiver in her Motion regarding the Wammel Defendants': commingling, participation in the fraud, alter ego with BUCF, and receipt of proceeds from the scheme. For example, the Wammel Defendants failed to present *substantive* evidence to controvert the following:

- **The Receivership Defendants and the Wammel Defendants were intertwined.** The Receivership Defendants and the Wammel Defendants created a virtual spider's web of interlocking entities that they utilized in connection with the investment scheme out of which this case arises.
- **The Wammel Defendants received significant transfers from the Receivership Defendants.** The Wammel Defendants received over \$16.2 million from BUCF from 2011 to date.
- **The Wammel Defendants commingled BUCF investors funds with Wammel Group investor funds.** The Wammel Defendants used the majority of the \$16.2 million of BUCF investor capital received, commingled with \$28.6 million in funds raised from the Wammel Defendants' own investors, to fund speculative options and securities trading.
- **The Wammel Defendants dissipated assets.** The Wammel Defendants have dissipated over \$7 million in investor monies since December 2016.
- **Like Bryant, Wammel personally benefitted.** Wammel benefitted personally by transferring or withdrawing over \$5 million in investors' funds received by the Wammel Group.
- **Wammel held various positions at BUCF and was aware of representations made to BUCF investors.** Wammel knew that Bryant communicated to BUCF investors that such monies would be used in the mortgage industry. Bryant communicated to Wammel the investment options he offered to BUCF investors. He further communicated to Wammel that BUCF investors were promised returns of 30%.

- **Wammel and Bryant falsified documents.** Wammel and Bryant coordinated the falsification of multiple documents. For example, acting as an employee of the Bryant entities, Wammel falsified documents for Bryant's personal benefit to purchase assets. Bryant also falsified documents for Wammel to solicit investors.
- **The Wammel Defendants violated the Receivership Order and TRO.** By dissipating BUCF assets, the Wammel Defendants violated (1) Judge Mazzant's *Order Appointing Receiver* ("**Receivership Order**") [Dkt. No. 17 at ¶ 16], and (2) Judge Mazzant's *Ex Parte Order Granting Motion for Temporary Restraining Order Preliminary Injunction, Asset Freeze, Appointment of Receiver, Document Preservation Order, Order to Make Accounting and Other Emergency Relief, and Setting Hearing Date on Plaintiff's Preliminary-Injunction Motion* (the "**TRO**") [Dkt. No. 16 at ¶ 15]. The Receivership Order and TRO required an accounting and forbade the dissipation or removal of any BUCF assets.
- **Wammel pled the Fifth Amendment and has failed to preserve evidence.** In response to the SEC's discovery, Wammel pled the Fifth Amendment. Additionally, the Receiver was only recently made aware that the computer used by the Wammel Defendants to transact business is no longer available.

The Receiver, in addition to the above, offered significant substantive support to demonstrate the need for expansion of the Receivership over the Wammel Defendants. Those arguments and substantive support presented in the Motion [Dkt. No. 45] and the Amended Order Appointing the Receiver [Dkt. No. 48], as well as the *Ex Parte* Order Granting the TRO and Expansion [Dkt. No. 49], are incorporated by reference as if they were specifically included herein.

### III. CONCLUSION

For the foregoing reasons, the Receiver respectfully requests that this Court (i) affirm its previously-issued Amended Order Appointing Receiver, continuing the expansion of the Receivership Order to include the Wammel Defendants and freeze the assets of the Wammel Defendants, and (ii) permanently enjoin the Wammel Defendants from further violating the Receivership Order.

Dated: August 1, 2017.

Respectfully submitted,

By: /s/ Timothy E. Hudson

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**COUNSEL TO RECEIVER**

**CERTIFICATE OF SERVICE**

I hereby certify that on August 1, 2017, I electronically filed the foregoing document with the Clerk for the United States District Court, Eastern District of Texas. The electronic case filing system (ECF) will send a Notice of Electronic Filing (NEF) to the attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means. The foregoing document will also be sent to all counsel of record via the method identified below.

/s/ Timothy E. Hudson

Timothy E. Hudson

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# EXHIBIT A

## Existing ACH Instructions

| Bank Name   | ABA       | Bank Acct # | Bank Acct Title  | Acct Type | Payee Alias | Type | Amount 1 | Amount 2 | Request Date         | Processed Date       | Periodic Date | Periodic Amount | Frequency | Status      | Action                                        |
|-------------|-----------|-------------|------------------|-----------|-------------|------|----------|----------|----------------------|----------------------|---------------|-----------------|-----------|-------------|-----------------------------------------------|
| Wells Fargo | 111900659 | 6981199950  | Wammel Group LLC | Checking  | 122851      | OD   | 0.01     | 0.04     | 11/3/2007 9:27:39 PM | 11/8/2007 9:10:48 AM | 12:00:00 AM   |                 |           | Established | <a href="#">Edit</a>   <a href="#">Cancel</a> |

|               |               |             |          |              |        |        |                          |
|---------------|---------------|-------------|----------|--------------|--------|--------|--------------------------|
| Account ID    | Business Unit | Acct Entity | Action   | Request Type | Amount | Status | Periodic                 |
| 496803        | All           | All         | All      | All          | All    | All    | <input type="checkbox"/> |
| Date Range    |               |             |          |              |        |        |                          |
| Current Month | 7/1/2017      | To          | 8/1/2017 |              |        |        |                          |
|               |               |             |          | Submit       | Go     |        |                          |

Total: 1 - Page 1 Of 1

| Acct #    | Acct ID | Total Comm   | Full Name     | Request Type   | Currency | Bank               | ABA       | Overnight | Amount        | Comments                                                                          | Code | Request Date         | Status    | Processed By | Processed Date       | Action                 |
|-----------|---------|--------------|---------------|----------------|----------|--------------------|-----------|-----------|---------------|-----------------------------------------------------------------------------------|------|----------------------|-----------|--------------|----------------------|------------------------|
| 0502-2959 | 496803  | \$738,190.68 | Arthur Wammel | ACH Withdrawal |          | Wells Fargo XXX950 | 111900659 |           | *\$213,589.27 |  | A -  | 7/18/2017 8:09:08 AM | Completed | 1088708      | 7/18/2017 9:23:27 AM | <a href="#">Delete</a> |

&lt;&lt; Prev Next &gt;&gt;

| Communication View                       |                        |
|------------------------------------------|------------------------|
| Date:                                    | 7/18/2017 8:09:08 AM   |
| Comm. type:                              | Transfer Funds         |
| Subject:                                 | ACH Withdrawal Request |
| Message:                                 |                        |
| Requested by customer (Person ID 497537) |                        |
| IP address: 73.255.110.134               |                        |
| Amount: \$213,579.33                     |                        |
| Cash available: \$213579.33              |                        |
| Held Funds: \$213579.33                  |                        |

**Communication View**

Date: 7/18/2017 9:23:27 AM

Comm. type: Transfer Funds

Subject: ACHWithdrawal request has been processed.

**Message:**

MRID: 3144925

Processed by broker: Nicholas Foote (Id: 1088708)

Amount: \$213,579.33

Code: FIX

Request inserted into FR for reconcile. FRID: 4045409

Sending Email to: artwammel@gmail.com....Email was successfully delivered.

Email title: ACHWithdrawal request has been processed.

Email body:



Dear Arthur Wammel,

Your \$213,579.33 ACH withdrawal request has been received, and will be submitted for processing.

An ACH transfer will take two business days after date of initiation to complete at your financial institution. However, you should contact your bank for details on their specific policy. If you have any questions regarding this movement, please contact us.

User System Data: Mozilla/5.0 (Windows NT 6.3; WOW64) AppleWebKit/537.36 (KHTML, like Gecko)

Chrome/52.0.2743.116 Safari/537.36

Web Server: NVM4522BDC

Index: 44

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|--------------------------------------------------------------------------------------------------|-----------------------------|
| <b>Securities and Exchange Commission</b><br><br>vs<br><br><b>Thurman P. Bryant, III, et al.</b> | <b>Case No. 4:17-cv-336</b> |
|--------------------------------------------------------------------------------------------------|-----------------------------|

**AFFIDAVIT OF CUSTODIAN OF RECORDS**

optionsXpress Account Number: XXXX-2959

I am the duly authorized Custodian of Records for optionsXpress ("oX") in this particular instance and have the authority to certify the enclosed records.

The enclosed copies of business records represent true and correct copies thereof.

The records were prepared by the personnel of oX in the ordinary course of business, at or near the time of the act, condition, or event described herein.

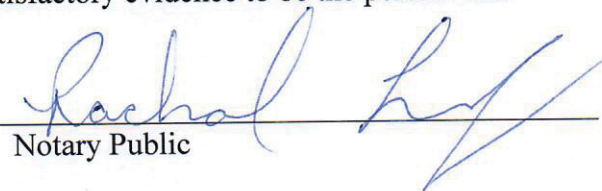
I declare under penalty of perjury under the laws of the State of Colorado that the foregoing statements are true and correct.

Executed in Lone Tree, Colorado this 31st day of July, 2017.

  
Custodian of Records  
Shawnette Erdos, Legal Specialist  
Name, Title

State of Colorado  
County of Douglas

Subscribed and sworn to (or affirmed) before me on this 31<sup>st</sup> day of July, 2017,  
by Shawnette Erdos proved to me on the basis of satisfactory evidence to be the person who  
appeared before me.

  
Notary Public



# EXHIBIT B

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION**

SECURITIES AND EXCHANGE  
COMMISSION

Plaintiff,

V.

Case 04:17-CV-00336-ALM

THURMAN P. BRYANT, III and  
BRYANT UNITED CAPITAL FUNDING,  
INC.

Defendants,

and

ARTHUR F. WAMMEL, WAMMEL  
GROUP, LLC, THURMAN P. BRYANT,  
JR., CARLOS GOODSPEED a/k/a SEAN  
PHILLIPS d/b/a TOP AGENT  
ENTERTAINMENT d/b/a MR. TOP  
AGENT ENTERTAINMENT

Relief Defendants.

**DECLARATION OF MACKENZIE WALLACE IN SUPPORT OF REPLY TO  
RELIEF DEFENDANTS ARTHUR F. WAMMEL AND WAMMEL GROUP, LLC'S  
EMERGENCY MOTION AND BRIEF FOR RECONSIDERATION OF *EX PARTE* TRO,  
PRELIMINARY INJUNCTION, ASSET FREEZE, AND RECEIVERSHIP ORDERS**

I, Mackenzie Wallace, declare as follows pursuant to 28 U.S.C. § 1746:

1. I am an associate with the law firm of Thompson & Knight LLP (“**T&K**”) in Dallas, Texas. I am a member in good standing of the bar of the State of Texas, and am admitted to practice in the United States District Court for the Eastern District of Texas. There are no disciplinary proceedings pending against me.

2. I represent Jennifer R. Ecklund, the Court-appointed Receiver (the “**Receiver**”) for Defendants Thurman P. Bryant, III (“**Bryant**”) and Bryant United Capital Funding, Inc.

(“**BUCF**”) (Bryant and BUCF, collectively, the “**Bryant Defendants**”) and Relief Defendant Arthur F. Wammel (“**Wammel**”), Relief Defendant Wammel Group, LLC (the “**Wammel Group**”), and Wammel Group Holdings Partnership (“**WGHP**”) (together Wammel, Wammel Group, and WGHP, the “**Wammel Defendants**”) receivership estates (together, the “**Receivership Estate**” or the “**Receivership**”) in the above-captioned case (the “**Case**”). I am fully familiar with the facts and procedural history of this case and the information contained in this Declaration is within my personal knowledge.

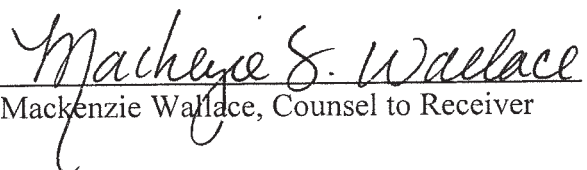
3. I submit this declaration in support of the Receiver’s *Reply to Relief Defendants Arthur F. Wammel and Wammel Group, LLC’s Emergency Motion and Brief for Reconsideration of Ex Parte TRO, Preliminary Injunction, Asset Freeze, and Receivership Orders*.

4. During the Rule 26(f) Conference, counsel to the Wammel Defendants represented that the computers used by the Wammel Group during the relevant time frame had either been disposed of or were longer able to be located. Based on the Wammel Defendants own counsel’s representations, the Receiver alleged in her *Ex Parte Emergency Motion for Temporary Restraining Order, for Preliminary Injunction, and to Expand Asset Freeze Against Arthur F. Wammel and Wammel Group, LLC and Brief in Support* that the Wammel Defendants’ failed to preserve critical evidence.

5. All facts set forth in this Declaration are based on my personal knowledge and my involvement as counsel to Receiver in the above-captioned case.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 31, 2017 at Dallas, Texas.

  
Mackenzie Wallace, Counsel to Receiver

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

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SECURITIES AND EXCHANGE COMMISSION

Plaintiff,

v.

THURMAN P. BRYANT, III, and  
BRYANT UNITED CAPITAL FUNDING, INC.

Defendants,

ARTHUR F. WAMMEL,  
WAMMEL GROUP, LLC  
THURMAN P. BRYANT, JR.,  
CARLOS GOODSPEED a/k/a SEAN PHILLIPS  
d/b/a TOP AGENT ENTERTAINMENT d/b/a  
MR. TOP AGENT ENTERTAINMENT,

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Relief Defendants.

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Civil Action No.: 4:17cv336

FILED UNDER SEAL

**ORDER GRANTING PRELIMINARY INJUNCTION**

This matter came before the Court this 2<sup>nd</sup> day of August, 2017, on motion of Jennifer Ecklund, the Court-appointed Receiver (the “**Receiver**”) for issuance of an order granting *Ex Parte Motion to Expand the Receivership and Asset Freeze Against the Wammel Defendants for Temporary Restraining Order, and for Preliminary Injunction and Brief in Support* (the “**Motion**”) relief [Dkt. Nos. 44 and 45], *Relief Defendants Arthur F. Wammel and Wammel Group, LLC’s Emergency Motion and Brief for Reconsideration of Ex Parte TRO, Preliminary Injunction, Asset Freeze, and Receivership Orders* (the “**Response and Request for Reconsideration**”) [Dkt. No. 56], and *Response to Relief Defendants Arthur F. Wammel’s And Wammel Group, LLC’s Emergency Motion and Brief for Reconsideration and Reply in Support*

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

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SECURITIES AND EXCHANGE COMMISSION

Plaintiff,

v.

THURMAN P. BRYANT, III, and  
BRYANT UNITED CAPITAL FUNDING, INC.

Defendants,

ARTHUR F. WAMMEL,  
WAMMEL GROUP, LLC  
THURMAN P. BRYANT, JR.,  
CARLOS GOODSPEED a/k/a SEAN PHILLIPS  
d/b/a TOP AGENT ENTERTAINMENT d/b/a  
MR. TOP AGENT ENTERTAINMENT,

Relief Defendants.

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Civil Action No.: 4:17cv336

FILED UNDER SEAL

**ORDER DENYING WAMMEL DEFENDANTS' REQUEST FOR RECONSIDERATION**

This matter came before the Court this 2<sup>nd</sup> day of August, 2017, on motion of Jennifer Ecklund, the Court-appointed Receiver (the “**Receiver**”) for issuance of an order granting *Ex Parte Motion to Expand the Receivership and Asset Freeze Against the Wammel Defendants, for Temporary Restraining Order, and for Preliminary Injunction and Brief in Support* (the “**Motion**”) relief [Dkt. Nos. 44 and 45], *Relief Defendants Arthur F. Wammel and Wammel Group, LLC’s Emergency Motion and Brief for Reconsideration of Ex Parte TRO, Preliminary Injunction, Asset Freeze, and Receivership Orders* (the “**Response and Request for Reconsideration**”) [Dkt. No. 56], and *Response to Relief Defendants Arthur F. Wammel’s And Wammel Group, LLC’s Emergency Motion and Brief for Reconsideration and Reply in Support*

*of Ex Parte TRO, Preliminary Injunction, Asset Freeze, and Receivership Orders* (the “**Reply**”) [Dkt. No. \_\_\_\_], and oral argument.

Having considered the Receiver’s Motion, supporting memorandum, declarations, and exhibits thereto, the Response and Request for Reconsideration, the Reply, and the argument of counsel, it is therefore ORDERED that the Wammel Defendants’ Response and Request for Reconsideration is denied.

**IT IS SO ORDERED.**