



fiduciary duty, is not in the best interests of the Estate, and should not occur until the case is resolved on its merits. Accordingly, the Receiver's motion should be denied.

**A. Liquidation of the Estate is Not in the Best Interest of the Estate**

2. The Receiver was appointed without BRYANT III having a chance to defend his position or clarify his defenses to the claims made by Plaintiff. BRYANT III has repeatedly stated, and continues to assert, that there are no investor funds being held by any of the Receivership Defendants, including his own personal accounts. All investor funds were invested and placed in the control of Wammel Group, and monthly distributions were made such that no residual funds were left in the accounts held by the Receivership Defendants. All funds and assets that have been placed into the Receiver's control are personal assets of BRYANT III and of his family, who are not defendants herein.

3. Through seizure and freezing of various bank accounts and credit cards, this receivership has caused personal financial hardship on BRYANT III and on his family, who are not defendants herein, by making it difficult to meet personal financial obligations and maintain their household. In addition, this personal financial hardship has caused BRYANT III to be unable to retain professional counsel, as evident by his appearing in this matter pro se.

4. The existence of the receivership has harmed the business of the Receivership Defendants, and has irreparably damaged their reputations and their ongoing business, whether related to the matter at hand or not. In fact, a large portion of the funds and assets currently held in receivership do not belong to or relate to the claims made against the Receivership Defendants by the Plaintiff. There is no benefit to the Receivership Defendants' investors to have BRYANT III's personal and family funds and assets held in receivership, not to mention the inability of BUCF to invest those investors' funds and generate returns on them as the investors expect.

5. Liquidating the listed assets – the swing set, the horse, the car, and the motorcycle – will not benefit the Estate and should not be allowed at this time.

**B. The Receiver Cannot Liquidate Estate Assets Until the Case is Resolved on the Merits**

6. Allowing the Receiver to sell Estate assets will abrogate this Court's ability to render a meaningful judgment on the merits. A preliminary injunction preserves the status quo, prevents irreparable injury to the parties – all of the parties, including the Receivership Defendants – and preserves the Court's ability to render a meaningful decision after a trial on the merits. See *Meis v. Sanitas Service Corp.*, 511 F.2d 655 (5<sup>th</sup> Cir. 1975). If the Receiver is able to sell the Estate's assets prior to adjudication on the merits, the Court's findings will have little or no value. If the Receivership Defendants are victorious at a trial on the merits, that result will be diminished significantly if the Receiver is permitted to dispose of Estate assets prior to that time. The Receiver should not be permitted to liquidate Estate assets without an adjudication on the merits of the underlying claims. "It is only in rare cases that it is appropriate for a receiver, rather than a bankruptcy court and particularly before judgment has been entered, to liquidate, rather than manage, the assets of a receivership." *SEC v. TLC Investments and Trade Co.*, 147 F. Supp. 2d 1031, 1036 (C.D. Ca. 2001). "Such drastic measures are [not] appropriate prior to the entry of final judgment. The [Movant should] renew its motion to encompass such relief if necessary in the future." *SEC v. Current Financial Services*, 783 F. Supp. 1441, 1445-46 (D.D.C. 1992).

**C. The Receiver's Liquidation Request Exceeds the Scope of the Appointment Order and is a Breach of her Fiduciary Obligation to Preserve the Estate for All Claimants**

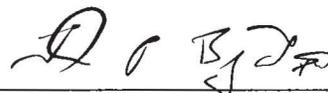
7. It is well established that the purpose for a court to appoint an equity receiver is to take custody and manage property involved in litigation in order to preserve the property pending the court's final disposition of the suit. See *Wright & Miller*, 12 *Fed. Prac. & Proc. Civ.* 2d §2981 (2005). A receiver has a duty to preserve the property for the benefits of the claimants, and that

duty must be undertaken without bias to one side or the other. See *Boothe v. Clarke*, 58 U.S. 322, 331 (1854). The receiver is a fiduciary to the person who ultimately has rights in the property. See *Citibank, N.A. v. Nyland Ltd.*, 839 F.2d 93, 98 (2d. Cir. 1988). Indeed, the Order Appointing Receiver entered in this matter explicitly instructs the Receiver on her fiduciary obligations, ordering her to “take such action as necessary and appropriate for the preservation of Receivership Property or to prevent the dissipation or concealment of Receivership Property.” See Docket No. 17, *Order*, at 7(G), pg. 4. The liquidation requested by the Receiver does not benefit the Estate and is thus not in its best interests and must be denied.

**Conclusion**

Based on the foregoing reasons, the Receiver’s attempt to liquidate the Receivership Estate’s asset contravenes the Order Appointing Receiver and constitutes a breach of her duty to preserve the Estate. Accordingly, BRYANT III and the Receivership Defendants respectfully request that the Court deny the Receiver’s Emergency Motion for Expedited Order Authorizing Liquidation of Certain Bryant Defendants’ Receivership Assets, and for such other and further relief to which they may show themselves entitled.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that on this 4 day of August, 2017, a true and correct copy of the above and foregoing has been forwarded to all parties via electronic mail to the address listed below.

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