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

SECURITIES AND EXCHANGE COMMISSION	:	
Plaintiff,	:	
v.	:	Civil Action No.:
THURMAN P. BRYANT, III, and BRYANT UNITED CAPITAL FUNDING, INC.	:	**FILED UNDER SEAL**
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.	:	

EMERGENCY *EX PARTE* MOTION FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION, ASSET FREEZE, APPOINTMENT OF A RECEIVER, DOCUMENT PRESERVATION ORDER, ORDER TO MAKE ACCOUNTING AND OTHER EMERGENCY AND ANCILLARY RELIEF

Plaintiff Securities and Exchange Commission ("SEC") files this emergency motion to halt on an ongoing fraudulent securities offering being carried out by Defendants Thurman P. Bryant, III and his company Bryant United Capital Funding, Inc., in which they have already enriched themselves and Relief Defendants including Arthur F. Wammel ("Wammel"), his company Wammel Group, LLC ("Wammel Group"), Carlos Goodspeed a/k/a Sean Phillips d/b/a Top Agent Entertainment d/b/a Mr. Top Agent ("Goodspeed"), and Bryant's father Thurman P. Bryant, Jr. ("Bryant, Jr."), nearly $23 million dollars through material misrepresentations,

omissions, and fraudulent acts and practices involving supposed investments in the short-term mortgage industry. For the reasons stated in the accompanying memorandum of law and evidentiary appendix in support of this motion, the SEC moves for the following relief.

I. Preliminary Injunction and *Ex Parte* Temporary Restraining Order

The SEC moves the Court for an Order of Preliminary Injunction and, *ex parte*, a Temporary Restraining Order to restrain and enjoin, immediately and pending final adjudication on the merits, each Defendant from violating the anti-fraud provisions of the federal securities laws, specifically Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)], Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

II. Asset Freeze over Bryant and BUCF

For the purpose of effecting an asset freeze, the SEC further moves the Court *ex parte* for an order restraining and enjoining Defendants, along with their officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise from, directly or indirectly, making any payment or expenditure of funds, incurring any additional liability (including taking advances on any credit line or account), or effecting any sale, gift, hypothecation, or other disposition of any asset, without first proving to the Court that they possess and will retain sufficient funds or assets to satisfy all claims alleged in the SEC's Complaint or without first posting a bond or surety with the Court sufficient to assure payment of those claims or until further order of this Court.

To give effect to the requested asset freeze, the SEC moves the Court *ex parte* for an order (a) restraining and enjoining any bank, savings and loan association, trust company,

broker-dealer, or other financial or depository institution that holds an account in the name of or on behalf of the Defendants from engaging in any transaction in securities (except liquidating transactions) or any disbursements of funds or securities on behalf of the Defendants unless otherwise ordered by this Court and (b) directing such persons or entities to identify for SEC counsel and any Receiver appointed in this case all such accounts, including account number, and the nature an amount of all assets held in them.

III. Appointment of a Receiver Over Bryant and BUCF

To ensure the eventual return of the assets at issue in this case to their rightful claimants, the SEC moves the Court *ex parte* to appoint a Receiver for the Defendants, granting the Receiver the powers necessary to marshal, possess, conserve, hold, manage, and, operate all assets in the possession, custody, ownership, or control of Bryant and BUCF, pending further order of the Court.

IV. Document-Preservation Order Over Bryant and BUCF

The SEC further moves the Court *ex parte* for an order restraining and enjoining Defendants individually and jointly, and their officers, directors, agents, servants, employees, attorneys, and all other persons in active concert or participation with them, including any bank, securities broker-dealer, or any financial or depository institution, who receive actual notice of this order by personal service or otherwise, from destroying, removing, mutilating, altering, concealing, or disposing of, in any manner, any books, records, or accounts owned by or pertaining to the financial transactions and assets of the Defendants or any persons or entities under their control unless otherwise ordered by this Court.

V. Interim Accounting By Bryant and BUCF

The SEC further moves the Court *ex parte* for an order requiring Defendants to each provide an interim accounting, under oath, detailing (a) all monies and other benefits that that

Defendant received, directly and indirectly, as a result of the activities alleged in the Complaint, (b) all of that Defendant's assets wherever they may be located and by whomever they may be held, and (c) all accounts that that Defendant held during the period from January 1, 2010 through the date of the accounting.

VI. Expedited Discovery

The SEC further moves the Court *ex parte* for issuance of an order authorizing expedited discovery as to all parties.

VII. Alternative Service of Pleadings and Other Papers

The SEC further moves the Court *ex parte* for an order authorizing service of all pleadings and other papers, including the Summons, the Complaint, and court orders to be made personally, by facsimile, by email, by overnight courier, or by mail upon the Defendants and Relief Defendants, their agents, or their attorneys, by representatives of the SEC, the United States Marshal in any district in which a Defendant or Relief Defendant resides, transacts business, or may be found, any receiver appointed in this case, or by an alternative provision for service permitted by Rule 4 of the Federal Rules of Civil Procedure, or as this Court may direct by further order.

The SEC further moves the Court *ex parte* for an order authorizing service of the orders herein described on any bank, savings and loan association, trust company, broker, dealer, or other financial or depository institution, either by mail, email, or facsimile, as if such service were personal service on that bank, savings and loan association, trust company, broker-dealer, or other financial or depository institution.

CONCLUSION

Based on the foregoing facts and for the reasons set forth in its accompanying

memorandum of law and evidentiary appendix submitted in support hereof, the SEC respectfully requests that the Count enter orders providing the relief requested.

May 15, 2017

Respectfully submitted,

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Relief Defendants.	:	

PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF EMERGENCY *EX PARTE* MOTION FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION, ASSET FREEZE, APPOINTMENT OF A RECEIVER, DOCUMENT PRESERVATION ORDER, ORDER TO MAKE ACCOUNTING AND OTHER EMERGENCY AND ANCILLARY RELIEF

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FEDERAL CASES

FEDERAL STATUTES

As demonstrated throughout the accompanying evidentiary Appendix[1], Defendants Thurman (Trey) P. Bryant, III ("Bryant") and Bryant United Capital Funding, Inc. ("BUCF") (collectively, "Defendants") have defrauded investors of at least $22.7 million in fraudulent securities offerings. Plaintiff Securities and Exchange Commission ("Plaintiff" or "Commission") submits this Memorandum of Law in Support of its Emergency *Ex Parte* Motion for Temporary Restraining Order, Preliminary Injunction, Asset Freeze, Appointment of a Receiver, Document Preservation Order, Order to Make Accounting and Other Emergency and Ancillary Relief ("Motion") to halt ongoing violations of the law and to protect the Commission's ability to recover assets for defrauded investors.

I.
INTRODUCTION AND SUMMARY OF REQUESTED RELIEF

The Commission files this emergency action to halt an ongoing investment scheme and securities fraud being perpetrated on approximately 100 unsuspecting investors by Bryant and BUCF. These investors are being actively defrauded.

Since at least March 2011, BUCF and Bryant, BUCF's CEO and President, have raised approximately $22.7 million from approximately 100 investors in in Texas and other states, through materially false and misleading statements and omissions. (Ex. A at ¶ 11 [App. 4].) In fact, BUCF and Bryant have raised approximately $1.4 million since January 2017 alone. *Id.* at ¶ 25 [App. 7]. Among other things, BUCF and Bryant promised investors guaranteed minimum annual returns of 30% on risk-free investments Bryant represented he would make in the mortgage industry. (Ex. B at ¶¶ 7, 14 [App. 16-17]; Ex. C at ¶ 6 [App. 68].) Specifically, Bryant and BUCF promised investors their funds would be safely preserved in a secure escrow account

[1] The Statement of Fact section, below, reflects page-number citations to the Appendix such that, for example, the citation "App. 1, 59, 101." refers to pages one, 59, and 101 of the Appendix.

and used for the sole purpose of serving as proof of funds to enable BUCF to secure a line of credit with which to pursue a mortgage-related investment program. (Ex. B at ¶¶ 7, 14 [App. 15, 17-18]; Ex. C at ¶ 6 [App. 69].) As Bryant and BUCF knew, these promises were false. No secure escrow accounts existed, and there was no mortgage-related investment program. (Ex. A at ¶ 18 [App. 5].) In reality, and directly contrary to representations they made, Defendants commingled investor funds in a single deposit account controlled by Bryant, from which he, among other things, (a) funneled approximately $16.1 million to Arthur F. Wammel ("Wammel") and Wammel Group, LLC ("Wammel Group"); (b) misappropriated $4.8 million to fund his personal living expenses; (c) transferred $1.37 million to Carlos Goodspeed a/k/a Sean Phillips d/b/a Top Agent Entertainment d/b/a Mr. Top Agent Entertainment ("Goodspeed"); and (d) paid out at least $140,000 to Thurman P. Bryant, Jr. ("Bryant Jr."), all without investors' consent or knowledge. *Id.* at ¶¶ 20, 24-27 [App.6-8].

To date, BUCF has paid approximately $16.8 million to its investors in the form of purported investment returns and, for certain investors, significant referral fees for identifying new investors. *Id.* at ¶ 12 [App. 4]. In reality, BUCF has never used investor monies as Bryant claimed it would, and monies paid out as referral fees and supposed profits on investments are, rather, funds received from Wammel Group and Ponzi payments. *Id.* at ¶ 12 [App. 4].

For its part, Wammel and Wammel Group received BUCF investor funds and commingled them with money raised from Wammel Group's own investors in order to (a) make distributions to BUCF; (b) make distributions to Wammel Group's investors; and (c) fund high-risk investment schemes, including speculative options trading by Wammel since at least 2011. *Id.* at ¶¶ 21, 22 [App. 6]. Until very recently, BUCF's investors were never told of Wammel Group's involvement or its use of their funds, and they have never approved of this use of their

funds. Wammel Group does not have, and never has had, any legitimate claim to the funds it received from BUCF. *Id.* at ¶¶ 21-22 [App. 6].

Notwithstanding the facts that (a) Defendants never disclosed to investors that their funds would be transferred to Wammel and Wammel Group; and (b) Wammel and Wammel Group should never have received the funds in the first place, Wammel Group's options trading receipts from 2011 through 2016 totaled only about $5.9 million—well short of the sum required to pay BUCF investors the 30% returns they were promised. *Id.* at ¶ 22 [App. 6]. To date, Wammel Group has paid $15.8 million to BUCF, comprised of funds received from BUCF, funds raised from Wammel Group's non-BUCF investors, its limited trading profits, and other sources—all of which Wammel Group commingled. *Id.* at ¶ 22 [App. 6]. As recently as April 2017, Wammel removed approximately $385,000 from options trading accounts under his control and in which BUCF funds were received. *Id.* at ¶ 23 [App. 6].

Since January 2017 alone, Bryant and BUCF have solicited and accepted additional investments from unknowing investors totaling $1.4 million. (Ex. A at ¶ 25 [App. 7].) However, since becoming aware of the Commission's investigation in December 2016, Defendants have pivoted their behavior and handling of investor funds, and no longer appear to be funneling money to Wammel Group. *Id.*

Also unbeknownst to BUCF investors, Bryant and BUCF have transferred $1.37 million of investor funds to Goodspeed since January 2017. (Ex. A at ¶ 26 [App. 7-8].) Goodspeed, doing business as Top Agent Entertainment, purports to be a concert promotor and booking agent for entertainers like Taylor Swift and Aubrey "Drake" Graham. *Id.* Bryant intentionally or at least recklessly put BUCF investor funds at risk by transferring them to Goodspeed, not only because doing so violated his express promises to investors about how their money would

be used, but also because even a rudimentary search of Goodspeed online and in public records would have revealed to Bryant relevant concerns about Goodspeed's track record and reputation. Goodspeed appears to have provided no services or consideration in exchange for these funds, and has no legitimate claim to monies which were misappropriated from unwitting investors who were promised a no-risk investment in the mortgage industry in which their principal would be protected against loss in secured escrow accounts.

And as recently as April 2017, BUCF transferred $140,000 to Bryant's father, Bryant, Jr., who already has received payments from BUCF in excess of the sums he invested. (Ex. A at ¶¶ 12, 27 [App. 4, 8].) The sums paid to Bryant, Jr. are not investment returns from investments in the mortgage industry, and Bryant Jr. has no legitimate claims to these funds. (Ex. A at ¶ 12, 27 [App. 4, 8].)

In light of Defendants' unlawful conduct, and in an effort to preserve and recover, to the extent possible, investors' misappropriated money, the Commission seeks an *ex parte* temporary restraining order and, thereafter, preliminary injunction as to Defendants, pending final judgment: (1) restraining them from engaging in conduct violative of the federal securities laws; (2) freezing their assets; (3) appointing a Receiver to marshal, conserve, and hold the funds, assets, and property subject to their ownership, possession, or control; (4) prohibiting them from moving, altering, or destroying books, records, and accounts; (5) requiring them to provide a sworn, interim accounting to the Commission or, if the Court appoints a Receiver, to the Receiver; and (6) authorizing expedited discovery for the purpose of evidence gathering in advance of any preliminary-injunction hearing.

Based on evidence obtained by the Commission and included in the appendix submitted herewith, the Commission believes *ex parte* relief is necessary to avoid providing advance notice

to Defendants of the Commission's intended actions, which would provide them an opportunity to secrete, transfer, waste, or otherwise dissipate investor funds.

II.
STATEMENT OF FACTS

A. DEFENDANTS FALSELY PROMISED A GUARANTEED, NO-RISK INVESTMENT IN BUCF

Bryant formed BUCF in or around June 2011 and is, and always has been, BUCF's sole officer, manager, decision-maker, and employee. Bryant opened, maintained, and has signatory authority over BUCF's single bank account. (Ex. A at ¶ 7 [App. 3].) Hence, Bryant and BUCF's interests and activities were, and are, one and the same and their interests are, and always have been, aligned.

In early 2011, Bryant began raising money from investors. BUCF's earliest investors were supposed family and friends, including his father Bryant, Jr., though the investor count grew over time through word-of-mouth marketing. Today BUCF has approximately 100 investors located in Texas and other states around the country. (*See* Ex. A at ¶ 11 [App. 4].)

Defendants did not promote the BUCF investment opportunity through written formal offering memoranda. Rather, Bryant or existing BUCF investors would orally share the investment opportunity to potential investors. Existing BUCF investors encouraged potential investors to contact Bryant directly to learn about BUCF's purported investment. (*See* Ex. B at ¶ 4 [App. 15].) Bryant encouraged existing investors to market the BUCF investment by paying them sizeable referral bonuses. (Ex. A at ¶ 12 [App. 4].) Once a potential investor contacted Bryant, Bryant pitched the investor on the opportunity, orally representing, among other things, that investor funds would be protected in segregated escrow accounts and used solely to serve as "proof of funds" for BUCF to secure a line of credit from a hedge fund. (Ex. B at ¶ 7 [App. 15-

16]; Ex. C at ¶ 6 [App. 68-69].) Bryant further represented that BUCF would use the line of credit to fund short-term mortgage loans, which long-term lenders would quickly purchase in exchange for a set fee paid to BUCF. (Ex. B at ¶ 7 [App. 15-16]; Ex. C at ¶ 6[App. 68-69].) Furthermore, Bryant promised investors, orally and in partnership agreements, that their investment bore no risk and was guaranteed to generate 2.5% monthly returns for a total of 30% annually. (Ex. B at ¶ 7 [App. 15-16]; Ex. C at ¶ 6 [App. 68-69].)

B. BUCF'S PARTNERSHIP AGREEMENTS AND ACCOUNT STATEMENTS

Even though BUCF is a corporation, Bryant and BUCF sold investors—and continue to offer and sell—limited partnership interests in BUCF, documented by the *Limited Partnership Agreement of Bryant United Capital Funding* (the "BUCF Partnership Agreement"), which designates BUCF as the managing partner. (Ex. B at Ex. 3 [App. 49-64]; Ex. C at Ex. 1 [App. 71-85].) The BUCF Partnership Agreement specifies that BUCF, subject to very limited exceptions, "shall have full, exclusive and complete authority and discretion in the management and control of the Partnership business [...] and shall make all decisions affecting the business of the Partnership." (Ex. B at Ex 3 at § 9.1 [App. 53].)

The BUCF Partnership Agreement defines the purpose of the partnership as "the return on the equity promised herein[.]" Section 6.2.1 of the BUCF Partnership Agreement specifically states:

> Initial Preserved Capital [$_____][2] with the guaranteed annual Distributions of [$_____] (USD) or monthly distribution rate of [$_____] (USD) starting on [_____], and will remain such return throughout the life of the investment. Any or all reinvested capital will grow at a 30% per rate and maintain the 30% Growth

[2] The bracketed numbers in this excerpt of the BUCF Partnership Agreement changed for each investor to reflect the actual capital contribution by the respective investors as well as the associated distributions and date of initial distribution.

> per year until "Limited Partner(s)" elects to remove Capital investment amount in full. All initial investment and any and all reinvested growth are retained in a secure escrow account for the benefit of the Limited Partner. No risk to capital account is expressed or implied by General/Managing Partner.[3]

Id. at § 6.2.1 [App. 52].

After executing the BUCF Partnership Agreement, Bryant provided investors instructions for tendering their investment funds, and investors then transferred their funds to BUCF by wire transfer or check. (Ex. B at ¶ 13 [App. 17].) Investor distributions made pursuant to the BUCF Partnership Agreement typically began on the second month following the execution of the BUCF Partnership Agreement. *See id.* at ¶ 17 [App. 19]. This conduct reinforced Bryant's representation about BUCF's financial wherewithal and its ability to pay sizeable returns to investors.

Bryant and BUCF also prepared and issued monthly account statements ("Account Statement(s)") to BUCF investors which falsely identified, among other things, an investor's supposed "Escrow Capital Balance," "Calculated Account Balance," and "Accumulated Account Balance."[4] (Ex. A at ¶¶ 13-14, Ex. 3 [App. 4, 5, 12-14]; Ex. B at ¶ 16-17, Exs. 4-6 [App. 18-19, 65-67]; Ex. C at ¶ 9, Exs. 2, 3 [App. 69-70, 86-87].) Investors based their understanding about the safety of their investment, the location and application of their funds, and the source of their monthly payments, on Bryant's oral promises and the information they received in the BUCF Partnership Agreement and the monthly Account Statements. (Ex. B at ¶ 18 [App. 19]; Ex. C at ¶ 10 [App. 70].)

[3] The BUCF Partnership Agreements evolved over the course of the scheme in some respects. For example, while most of the agreements guaranteed returns of 30% per year, some agreements promised 42% returns for the first year or even throughout the life of the investment. (Ex. A at ¶ 4 [App. 2].)

[4] In January 2017, BUCF and Bryant changed the "Escrow Capital Balance" to "Equity Balance."

C. BUCF KNOWINGLY FAILS TO ESCROW INVESTOR FUNDS, AND INSTEAD DIRECTS FUNDS TO WAMMEL GROUP WITHOUT INVESTORS' KNOWLEDGE OR CONSENT.

Unbeknownst to investors, Bryant knowingly disregarded the promises and representations he and BUCF made to investors about the security and use of investment funds, and instead directed the majority of their capital to an undisclosed third-party, Wammel Group. (Ex. A at ¶ 5 [App. 3].) This was not an authorized or disclosed use of investor funds. *Id.*

Wammel Group, operated and controlled by Wammel, invests in various businesses, but the vast majority of Wammel Group's capital is used to trade securities, primarily options on index funds. *Id.* at ¶ 21 [App. 6]. It has 17 or more (including BUCF) individual and entity investors with combined capital contributions of approximately $44.7 million, including $16.1 million from unwitting BUCF investors. *See id.*

From July 12, 2011 to April 30, 2017, BUCF transferred approximately $16.1 million of its investors' funds to Wammel Group, without investors' consent or knowledge. *Id.* at ¶ 6 [App. 3]. Since July 2011, Wammel has distributed a total of approximately $15.8 million to BUCF. *Id.* at ¶ 22 [App. 6]. However, Wammel Group's investment revenues are far less than the sums it has distributed to BUCF. Its total options trading receipts from 2011 through 2016 amounted to only about $5.9 million and, since 2010, it has received less than $300,000 from its other investments in, among other things, cars and real estate. *Id.* Hence, while Wammel Group distributed $15.8 million to BUCF as purported investment returns, those sums were in fact comprised of limited earnings from options trading and other investments, ill-gotten BUCF investor funds received from BUCF, and funds obtained from Wammel Group's other, non-BUCF investors. *Id.* Based on the bank records, Wammel and Wammel Group have no other source of cash to support the level of distributions made.

Notably, Wammel Group ceased tendering monthly distributions to BUCF on or about April 1, 2017, soon after the Commission subpoenaed Wammel and Wammel Group for documents related to the relationship with Bryant and BUCF. *Id.* at ¶ 23 [App. 6]; (Ex. D at ¶¶ 8, 10 [App. 90].) In April 2017, Wammel withdrew at least $385,000 from Wammel Group options trading accounts he controls and which contain, or contained, ill-gotten gains obtained from BUCF and, indirectly, BUCF investors. (Ex. A at ¶ 23 [App. 6].)

D. DEFENDANTS MADE MATERIAL MISREPRESENTATIONS AND OMISSIONS

In the BUCF Partnership Agreements, Account Statements, and oral representations to investors and prospective investors, Bryant and BUCF made materially misleading statements and omitted material facts necessary to make the statements they made, in light of the circumstances under which they were made, not misleading with regard to, among other things, (1) the nature of BUCF's business operations; (2) the risk associated with investing with BUCF; (3) the use of investor proceeds; and (4) the source of investor returns.

1. BUCF's Business Operations.

Bryant and BUCF orally made materially misleading statements regarding the nature of BUCF's business operations. Bryant and BUCF represented to investors that their funds would be used to facilitate the funding of mortgage loans. (Ex. B at ¶¶ 7, 14, 18 [App. 16-19]; Ex. C at ¶ 6 [App. 68-69].) More specifically, Bryant and BUCF explained that BUCF would fund mortgages, and that those mortgages would be immediately sold to third party banks and servicers in exchange for a fixed fee. *Id.* Investor funds, according to Bryant and BUCF, would always sit safely in secure escrow accounts and be used for the *sole* purpose of securing a line of credit from an unnamed hedge fund with which BUCF would fund the mortgages. *Id.* On this basis, Bryant claimed BUCF would make 30% distributions to investors without exposing the

investors' capital to *any* risk. *Id.* Based on these representations, investors reasonably believed that their investments with BUCF were used solely in connection with BUCF's work in the short-term mortgage lending industry. Investors relied on Bryant and BUCF's representations to decide whether to invest with BUCF. (Ex. B at ¶¶ 7, 14, 18 [App. 16-19]; Ex. C at ¶ 6 [App. 68-69].)

Defendants' representations were fabrications. They never placed investor funds in secure escrow accounts. (Ex. A at ¶¶ 5, 14, 18 [App. 2-5].) They did not conduct any of the investment-related operations Bryant claimed they would. *Id.* at ¶¶ 18-19 [App. 5].

Instead, BUCF secretly directed approximately 71% of the monies invested— $16.1 million—to Wammel Group between 2011 and 2016, without BUCF investors' knowledge or consent. *Id.* at ¶¶ 5, 20 [App. 3, 6]. And, also unbeknownst to investors, Bryant and BUCF spent the remaining 29% of their money—$6.6million—for other undisclosed and unlawful purposes, including funding Bryant's extravagant lifestyle and making Ponzi payments to investors as purported investment returns. *Id.* at ¶¶ 12, 24 [App. 4, 6-7]. Thus, Bryant and BUCF's representations to investors as to BUCF's business operations were materially misleading.

2. Investment Risk.

Bryant and BUCF made numerous materially misleading statements regarding the risk(s) associated with investing in BUCF. More specifically, in the vast majority of the BUCF Partnership Agreements, Bryant and BUCF represented that investor capital would not be put at any risk but would, instead, be held in a secure escrow account. (*See, e.g.,* Ex. B at Ex. 3 [App. 52].) In addition, Bryant and BUCF fabricated and disseminated to investors monthly statements that purported to identify an investor's "Escrow Capital Balance," "Calculated Account

Balance," and "Accumulated Account Balance," all of which falsely conveyed that the investor's capital was, in fact, sitting in a secure escrow account. (Ex. A at ¶¶ 13-14, Ex. 3 [App. 4-5]; Ex. B at ¶¶ 16-17, Ex. 4-6 [App. 18-19, 65-67]; Ex. C at ¶ 9, Ex. 2-3 [App. 69-70, 86-87].) In addition, Bryant orally and in the BUCF Partnership Agreements promised that investors' funds would not be put at risk. Based on these representations, investors believed that their investments with BUCF were safe and bore no or relatively low risk. (Ex. B at ¶¶ 7, 14 [App. 16-18]; Ex. C ¶ 6 [App. 68].)

Bryant and BUCF knew that their representations concerning the risks of investing, or lack thereof, were false. Their investors' capital was never stored in a secured escrow account. In fact, no such escrow account(s) ever existed. Instead, Bryant and BUCF deposited investor capital into a single BUCF account, where they comingled investor funds with whatever other money BUCF held in its accounts. (Ex. A at ¶¶ 5, 7, 11, 14, 18, Ex. 1 [App. 3-5, 9].) Bryant then either transferred those commingled funds to Wammel Group for its securities and options trading (and later to Goodspeed and Bryant, Jr.) or used it to fund his lifestyle and make Ponzi payments to investors, which created the misimpression that the payments were returns on no-risk mortgage investments. *Id.* at ¶¶ 5, 12, 20, 24-27 [App. 3-4, 6-8]. Thus, Bryant and BUCF's representations to investors as to the risks associated with the investments were materially misleading.

At least until recently, BUCF investors continued to believe—and some investors may still believe—based on their monthly Account Statements and recent and ongoing verbal claims made by Bryant, that their initial investment monies were still safe in an escrow account. *Id.* at ¶ 15 [App. 5].

3. Misuse of Proceeds.

Bryant and BUCF made numerous materially false and misleading statements regarding the use of investment proceeds. In the BUCF Partnership Agreements, Bryant represented that the investors' funds would be secured in escrow accounts, and he orally represented that these funds would be used as proof of funds for a line of credit. All of this was untrue. First, investor funds were never escrowed but, as described above, commingled in one account. Further, Defendants intentionally: (a) misappropriated $4.8 million to pay for Bryant's personal expenses and extravagances; (b) funneled approximately $16.1 million to Wammel Group, which was used for speculative options and securities trading; (c) sent $1.37 million to Goodspeed for no apparent legitimate or lawful reason; (d) sent $140,000 to Bryant Jr. as purported but unearned investment returns; and (e) made Ponzi payments to investors. *Id.* at ¶¶ 12, 20-21, 24, 26-27 [App. 4, 6-8]. These uses violated the promises and representations in the BUCF Partnership Agreement and monthly account statements, and those made by Bryant orally.

As discussed, Bryant spent $4.8 million of the investors' funds on himself and his family. *Id.* at ¶¶ 24 [App. 7]. In fact, Bryant paid his family's living expenses almost exclusively out of the same BUCF bank account into which investors deposited their funds and believed—and still believe—they would be safely held and never placed at risk. Bryant's approximate monthly personal expenses paid with investor funds include, but are not limited to:

- $10,000 to $19,000 per month to rent a house in Frisco, Texas;
- $3,500 in lease payments for luxury and other vehicles;
- $1,800 for a housekeeper;
- $3,000 for meals and groceries;
- $3,400 for private school tuition;
- $1,000 for horse riding expenses; and
- $1,200 for an apartment.

Bryant also spent more than $250,000 to furnish and decorate his *rented* home. *Id.* at ¶ 24 [App. 6-7].

4. Source of Investor Returns.

Bryant orally represented to investors that BUCF's guaranteed 30% per year distributions would be generated from investments in the mortgage industry, and paid out monthly to investors. (Ex. B at ¶¶ 7, 14 [App. 16, 18]; Ex. C at ¶ 6 [App. 69].) This was false. BUCF never used investor capital to facilitate the funding of short-term mortgage loans. Instead, the vast majority of investor capital—nearly $16.1 million or approximately 71% of all funds raised—was sent to Wammel Group. (Ex. A at ¶¶ 5, 20 [App. 3, 6].) Until very recently, Bryant did not tell BUCF investors about Wammel, Wammel Group, or their involvement in their investments. *Id.* at ¶ 7, 14 [App. 16, 18]; Ex. C at ¶ 6 [App. 69]. Neither Wammel nor Wammel Group is involved in the mortgage industry, nor did they offer or sell investments therein. (Ex. A at ¶ 21 [App. 6].)

Wammel Group used the majority of the $16.1 million of BUCF investor capital it received, combined and commingled with $28.6 million in funds raised from Wammel Group's own investors, to fund speculative options and securities trading. *Id.* Notwithstanding this misuse of BUCF investor funds and the fact that Wammel Group should never have received those funds to begin with, Wammel Group's performance in the options market varied wildly, and over six years it received only $5.9 million from trading. *Id.* at ¶ 22 [App. 6]. Apart from options and securities trading, Wammel Group made approximately $300,000 from other investments using BUCF investor monies, including two car dealerships, a boat and RV storage facility, and two luxury rental cars—all without BUCF investors' consent, much less their knowledge. *Id.* at ¶¶ 21-22 [App. 6]. Like Wammel Group's options trading, these other

investments deviate from BUCF's purported short-term mortgage lending business.

Wammel Group's revenues from trading and other activities were not sufficient to generate BUCF's promised 30% investor returns. While Wammel Group paid $15.8 million to BUCF between 2011 and 2017 as purported returns on investments, in reality those funds were comprised of (1) the $5.9 million in receipts from Wammel Group's options and securities trading and $300,000 from other investments; (2) ill-gotten investor funds obtained from BUCF; and (3) funds raised from Wammel Group's own, non-BUCF investors. *Id.* at ¶ 22 [App. 6].

Bryant and BUCF were well aware that BUCF's purported revenues did not come from BUCF's own investments in the mortgage industry, as represented to its investors, since Bryant controlled BUCF's single bank account as well as the receipt, management, use, and repayment of investor funds.

E. BRYANT AND BUCF CHANGED COURSE WHEN THEY LEARNED OF THE COMMISSION'S UNDERLYING INVESTIGATION, BUT CONTINUE TO DEFRAUD NEW AND EXISTING INVESTORS.

1. BUCF Secretly Directs Investor Funds to Goodspeed, Putting it at Risk of Loss

Bryant learned of the Commission's investigation in December 2016 when the Commission served Bryant and BUCF with a subpoena. *Id.* at ¶25 [App. 7]; Ex. D. at ¶¶ 4, 6 [App. 89]. Just since January 2017, Bryant and BUCF have transferred significant sums of investor funds to Goodspeed, who purports to be a concert promoter and booking agent for well-known entertainers. (Ex. A at ¶ 26 [App. 7-8].)

Between January and March 2017, Bryant and BUCF transferred $1.37 million of new and existing investor funds to Goodspeed. (Ex. A at ¶ 26 [App. 7-8].) Notations on wire transfer documentation for these transactions indicate that the funds are to be used to promote concerts by Taylor Swift and Aubrey "Drake" Graham. *Id.* BUCF investors were never made aware of,

and hence never approved, this purported investment with Goodspeed about whom public records reveal, among other things, he:

- pled guilty in 2011 to felony theft in excess of $100,000 in Dallas County, Texas in *State of Texas v. Carlos D. Goodspeed*, Cause No. F1001270M (194th Judicial District Court, Dallas County, Texas) and obtained deferred adjudication;

- was found liable by default judgment in 2011 for fraud and breach of contract in connection with a supposed promise to secure concerts by Aubrey "Drake" Graham and "Ciara" Wilson in *Howard Smith, Steven Murphy, d/b/a 80's Baby Entertainment v. Carlos Goodspeed a/k/a Golden Child, Jason Rudd a/k/a Jason Rudd a/k/a DJ J Rudd*, Cause No. DC-10-11923 (filed Sept. 20, 2013, 134th Judicial District Court, Dallas County, Texas);

- was found liable by default judgment in 2014 for breach of contract in connection with an agreement to secure an event with Shawn "Jay-Z" Carter In *Michael Aigbedion v. Carlos Goodspeed a/k/a Sean Phillips d/b/a Top Agent Entertainment*, Cause No. CC-14-05445-C (filed Oct. 29, 2014, County Court at Law No. 3, Dallas County, Texas); and

- is a named defendant in ongoing litigation alleging Goodspeed committed fraud and other violations in connection with promising to promote events with Tremaine "Trey Songz" Neverson, among others, in

    - *Rachel Morgan and Art B4 Commerce, LLC v. Sean Phillips*[5] *and Sean Phillips d/b/a Top Agent Entertainment*, Cause No. CC-16-03340 (filed July 6, 2016, County Court at Law No. 3, Dallas County, Texas); and

    - *Evelina Smith v. Carl Phillip, a/k/a Carlos DeSean Goodspeed, a/k/a Sean Phillips, a/k/a Top Agent Entertainment*, Cause No. DC-17-03198 (filed March 15, 2017, 101st Judicial District Court of Dallas County, Texas).

2. BUCF Directs Investor Funds to Bryant Jr.

In April 2017, Bryant and BUCF diverted $140,000 of investor monies to Bryant's father, Bryant Jr., an early BUCF investor. (Ex. A at ¶ 27 [App. 8].) Bryant, Jr. has no legitimate claim to these funds, and there is no legitimate purpose for the transfers, much less any indication that

[5] "Sean Phillips" is a known alias of Goodspeed.

they were in furtherance of BUCF's stated short-term mortgage lending investment program. At the time of the $140,000 payment, BUCF had already paid Bryant's father more than he invested in BUCF, making Bryant, Jr. one of a handful of BUCF's investors who has received funds in excess of their initial investment. *Id.*

III.
ARGUMENT AND AUTHORITIES

A. The Court Should Issue an *Ex Parte* Restraining Order, Preliminary Injunction, and Other Equitable Relief in Order to Halt Defendant's Ongoing Fraud, Maintain the Status Quo, and Protect Investors Against Further Harm

1. A Special Standard Applies to Commission Requests for Injunctions and Asset Freezes.

Federal courts have broad equitable powers enabling them to fashion appropriate remedies necessary to grant full relief, including injunctions and asset freezes. *SEC v. Blatt*, 583 F.2d 1325, 1335-1336 (5th Cir. 1978). Rule 65(b) of the Federal Rules of Civil Procedure empowers a court to grant an *ex parte* temporary restraining order ("TRO") to prevent immediate and irreparable injury, loss, or damage. FED. R. CIV. P. 65(b). Unlike private litigants, however, the Commission is not required to show a risk of irreparable injury, loss, or damage to obtain a TRO.[6] *SEC v. Mgmt. Dynamics, Inc.*, 515 F.2d 801, 808 (2d Cir. 1975); *Unifund*, 910 F.2d 1028, 1036 (2nd Cir. 1990). Rather, the Commission is entitled to entry of temporary and preliminary injunctive relief upon a showing that it is likely to succeed on the merits of its case. *See* 15 U.S.C. § 77t(b); 15 U.S.C. § 78u(d); *see also SEC v. Cavanagh*, 155 F.3d 129, 132 (2d

[6] "[T]he rationale for this rule is readily apparent. It requires little elaboration to make the point that the SEC appears in these proceedings not as an ordinary litigant, but as a statutory guardian charged with safeguarding the public interest in enforcing the securities laws. Hence, by making a showing required by statute that the defendant 'is engaged or about to engage' in illegal acts, the Commission is seeking to protect the public interest, and 'the standards of the public interest, not the requirements of private litigation, measure the propriety and need for injunctive relief.'" *SEC v. Mgmt. Dynamics, Inc.*, 515 F.2d at 808-809 (quoting *Hecht v. Bowles*, 321 U.S. 321, 331 (1944)).

Cir. 1998).

Section 20(b) of the Securities Act [15 U.S.C. § 77t(b)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)] authorize the Commission to seek and direct the courts to enter "a permanent or temporary injunction or restraining order" upon a "proper showing" that the defendant "is engaged or is about to engage" in violations of the securities laws. In the Fifth Circuit, the Commission makes a proper showing and "is entitled to prevail when the inferences flowing from the defendant's prior illegal conduct, viewed in light of present circumstances, betoken a "reasonable likelihood" of future transgressions." *SEC v. Zale Corp.*, 650 F.2d 718, 720 (5th Cir. 1981).

To determine whether a party "reasonable likelihood" of future violations, the court analyzes: (1) the nature of the past violation; (2) the defendant's present attitude; and (3) objective constraints on (or opportunities for) future violations of the securities laws ("*Zale* factors"). *Id.* "Such factors include the egregiousness of the defendant's actions, the isolated or recurrent nature of the infraction, the degree of *scienter* involved, the sincerity of the defendant's recognition of the wrongful nature of his conduct, and the likelihood that the defendant's occupation will present opportunities for future violations." *Id.* When the Commission has established a *prima facie* showing of violations and the likelihood that such violations will continue, issuance of a preliminary injunction is appropriate. *SEC v. First Fin. Group of Tex.* 645 F.2d 429, 434-35 (5th Cir. 1981); *SEC v. United Fin. Group, Inc.*, 474 F.2d 354, 358 (9th Cir. 1973); *SEC v. Keller Corp.*, 323 F.2d 397, 402-03 (7th Cir. Ind. 1963).

Here, the *Zale* factors strongly favor entry of a TRO and preliminary injunction against each Defendant. Their violations to date are egregious and worse, are ongoing. Defendants have defrauded approximately 100 victims of more than $22.7 million in a callous, fraudulent scheme.

Defendants' violations are not isolated—their misrepresentations and omissions have multiplied over time, they have victimized investors in more than one state, and continue to lie to existing and prospective investors concerning the state of the business and the source of funds used to pay returns. They have acted with a high degree of *scienter*, employing false claims that invested proceeds would be secured in an escrow account in order to induce investments, only to turn around and intentionally and repeatedly misappropriate those funds for personal and undisclosed uses. Defendants have not recognized the wrongful nature of their conduct.

B. The Commission is Likely to Succeed on the Merits of Its Case.

Ample evidence establishes that the Defendants intentionally, or at least with severe recklessness designed, orchestrated, and executed a multi-million dollar fraudulent securities offering which continues today. Likewise, the evidence clearly shows that the Wammel Relief Defendants received at least $16.1 of investor funds from Defendants and that Defendants transferred investor funds in the amount of $1.37 million to Goodspeed and $140,000 to Bryant Jr., without lawful or legitimate reason to do so.

1. Defendants Offered and Sold Securities.

The interests purchased by BUCF investors constitute securities under Section 2(a)(1) of the Securities Act and Section 3(a)(10) of the Exchange Act because they are "investment contracts." In *SEC v. W.J. Howey Co.*, the Supreme Court held that an investment contract exists where (1) a person invests his or her money, (2) in a common enterprise, and (3) with the expectation of profits derived solely from the efforts of the promoter or a third party. 328 U.S. 293, 298-99 (1946). The definition of a security "embodies a flexible rather than static principle, one that is capable of adaptation" and requires an analysis into the substance rather than the form of the transaction with an emphasis on economic reality. *Howey*, 328 U.S. at 298-99; *see also*

United Hous. Found., Inc. v. Forman, 421 U.S. 837, 850 (1975); *SEC v. Edwards*, 540 U.S. 389 (2004).

In this case, the BUCF partnership interests meet the *Howey* test. First, investors paid cash directly to accounts controlled by BUCF. (Ex. A at ¶ 11 [App. 4].) Second, they invested in a "common enterprise" because the investors' fortunes are dependent on the efforts and expertise of Bryant and BUCF, which is sufficient to satisfy the "broad vertical commonality" required in the Fifth Circuit. *See Long v. Shultz Cattle Company, Inc.*, 881 F.2d 129, 140 (5th Cir. 1989); *SEC v. Koscot Interplanetary, Inc.*, 497 F.2d 473, 479 (5th Cir. 1974).

Third, the investors' role in the investment program was entirely passive and they were expected to realize profits based solely from the efforts of Bryant and BUCF. (*See* Ex. B at Ex 3 at § 9.1 [App. 53].) Courts have not interpreted the "solely" language in *Howey* restrictively. *SEC v. Merch. Capital, LLC*, 483 F.3d 747, 754-55 (11th Cir. 2007). The relevant efforts of others are the "entrepreneurial or managerial" efforts on which investors' financial return depend. *Forman*, 421 U.S. at 852 (1975) (citing *Howey*, 28 U.S. at 301). In *Williamson v. Tucker*, the Fifth Circuit noted that analysis of this factor turned on whether the efforts of others "are undeniably significant ones . . . which affect the failure or success of the enterprise." 645 F.2d 404, 418 (5th Cir. 1981), *citing SEC v. Glenn W. Turner Enterprises, Inc.*, 474 F.2d 476 (9th Cir. 1973).

Viewed in the factual context, the BUCF investors are unable to exercise any meaningful control over their capital contributions and rely entirely on Bryant and BUCF to manage and direct the investment program. (Ex. B at Ex 3 at § 9.1 [App. 53].) The BUCF Partnership Agreement explicitly provides that BUCF has exclusive power to make decisions for the partnership, and does not give the limited partners any authority or control over the business. *Id.*

The BUCF investment is designed (at least as represented by Bryant) to be the passive deposit of investment capital into a secure escrow account. *Id.*; Ex. B at ¶ 7 [App. 15-16]. Under this scheme, the BUCF investors are left with a single choice—keep their investment principal where it is (or where it purports to be) or request that the capital (or some portion thereof) be returned to them. (*See* Ex. B at Ex 3 at §§ 6.6, 9.1, 9.2 [App. 52-53].) Thus, Bryant and BUCF alone had the power to make all of the significant decisions regarding the use of investor capital.

In sum, the limited partnership interests acquired by BUCF's investors are securities by virtue of being "investment contracts" that satisfy the *Howey* factors.

2. Defendants Carried On, and Continue to Conduct, a Fraudulent Securities Offering in Violation of Securities Act Section 17(a) and Exchange Act Section 10(b) and Rule 10b-5 thereunder.

Defendants violated, and continue to violate, Securities Act Section 17(a) [15 U.S.C. § 77q(a)] and Exchange Act Section 10(b) [15 U.S.C. § 78j(b)] and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5]. Securities Act Section 17(a) provides in relevant part:

> It shall be unlawful for any person in the offer or sale of any securities . . . by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly—
>
> (1) To employ any device, scheme, or artifice to defraud, or
>
> (2) 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; or
>
> (3) To engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

15 U.S.C. § 77q(a).

A statement or omitted fact is material if there is a substantial likelihood that a reasonable investor would consider the information important in making an investment decision. *SEC v.*

Seghers, 298 Fed. Appx. 319, 328 (5th Cir. 2008); *see also SEC v. Gann*, 565 F.3d 932, 937 n.17 (5th Cir. 2009).

Exchange Act Section 10(b) makes it unlawful to use or employ any manipulative or deceptive device in connection with the purchase or sale of any security in contravention of prescribed Commission rules. 15 U.S.C. § 78j(b). Exchange Act Rule 10b-5 provides:

> It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange,
>
> (a) To employ any device, scheme, or artifice to defraud,
>
> (b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or
>
> (c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.

17 C.F.R. § 240.10b-5.

Violations of Securities Act Section 17(a)(1) and Exchange Act Section 10(b) and Rule 10b-5 require showing *scienter*—a mental state embracing intent to deceive, manipulate, or defraud—but showing negligence suffices for Securities Act Sections 17(a)(2) and (3) violations. *Aaron v. SEC*, 446 U.S. 680, 691, 697 (1980). *Scienter* is established by showing that the defendant acted intentionally or with severe recklessness. *Broad v. Rockwell Int'l Corp.*, 642 F.2d 929, 961 (5th Cir. 1981). A company's *scienter* can be imputed from its management and individuals who control it. *SEC v. Manor Nursing Centers, Inc.*, 458 F.2d 1082, 1089, n.3 (2d Cir. 1972); *see, e.g., Southland Sec. Corp. v. INSpire Ins. Solution, Inc.*, 365 F.3d 353, 366 (5th Cir. 2004).

(a) Defendants Made, and Continue to Make, Untrue and Misleading Statements of Material Fact

Bryant and BUCF violated Section 17(a)(2) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5(b) thereunder by, among other things, making statements in the offer and sale and in connection with the sale of securities that were false and materially misleading in light of the disclosures they did make and also by omitting true and material facts in the offer and sale, and in connection with the sale, of the BUCF limited partnership interests. As set forth in detail above, Defendants obtained money from investors through the sale of securities by means of numerous material misstatements and omissions regarding, among other things, (1) the nature of BUCF's business operations, (2) the risk associated with investing with BUCF, (3) the use of investor proceeds, and (4) the source of investor returns. (Ex. B at ¶¶ 7, 14, 18 [App. 16-19]; Ex. C at ¶ 6 [App. 68-69].) These misleading statements were material. (Ex. B at ¶¶ 20-23 [App. 20]; Ex. C at ¶¶ 12-14 [App. 70].) Indeed, Defendants' own investors considered each of the false statements and omissions material in making their investment decision about the funds. (Ex. B at ¶¶ 20-23 [App. 20]; Ex. C at ¶¶ 12-14 [App. 70].)

A defendant "makes" a statement if the defendant is "the person or entity with ultimate authority over the statement, including its content and whether and how to communicate it." *Janus Capital Grp., Inc. v. First Derivative Traders*, 564 U.S. 135 (2011). A violation of these provisions occurs when the alleged misrepresentations or omitted facts were material. Information is material if there is a substantial likelihood that a reasonable investor would consider such information important in making an investment decision or if the information would significantly alter the total mix of available information. *Basic, Inc. v. Levinson*, 485 U.S. 224, 231-32 (1988); *U.S. v. Bruteyn*, 686 F. 3d 318, 323 (5th Cir. 2012).

Bryant, as CEO, President, and the sole representative of BUCF, had ultimate authority over each of his and BUCF's verbal and written statements. Bryant prepared and disseminated the BUCF Partnership Agreement, and Account Statements containing the foregoing untrue and misleading statements. (Ex. B at ¶¶ 11, 16, 17 [App. 17-19]; Ex. C at ¶¶ 7, 9 [App. 69-70].) Hence, Bryant is a "maker" of actionable statements and omissions under *Janus*. Bryant also controlled the BUCF Bank Account into which, and out of which, investor funds flowed. (Ex. A at ¶ 7 [App. 3]. Consequently, Defendants violated Securities Act Section 17(a) and Exchange Act Section 10(b) and Rule 10b-5.

(b) Defendants Engaged, and are Currently Engaged, in a Scheme to Defraud Investors

The antifraud provisions of Sections 17(a)(l) and (3) of the Securities Act and Exchange Act Rules 10b-5(a) and (c) also encompass deceptive "practices," *Santa Fe Indus., Inc. v. Green*, 430 U.S. 462, 475-76 (1977), deceptive "conduct," *id.* at 475 n. 15; *U.S. v. O'Hagan*, 521 U.S. 642, 659 (1997); and deceptive "acts," *Central Bank of Denver v. First Interstate Bank of Denver*, 511 U.S. 164, 173 (1994); *see also Superintendent of Ins. v. Bankers Life & Cas. Co.*, 404 U.S. 6, 9 (1971). In *SEC v. Zandford*, 535 U.S. 813, 815 (2002), addressing a fraudulent scheme under Rule 10b-5(a) and a fraudulent course of business under Rule 10b-5(c), the high court concluded: "Indeed, each time respondent 'exercised his power of disposition (of his customers' securities) for his own benefit,' that conduct, 'without more,' was a fraud." (emphasis added); *see also Affiliated Ute Citizens of Utah v. U.S.*, 406 U.S. 128, 152 (1972) (noting that while Rule 10b-5(b) targets false statements or omissions, paragraphs (a) and (c) "are not so restricted").

As shown above and in the corresponding evidentiary appendix submitted herewith,

Bryant and BUCF engaged in a practice and course of business of misusing investor funds by, among other things:

a. Contrary to representations made to investors, failing to secure investor funds in segregated escrow account(s);

b. Commingling investor funds;

c. Contrary to representations made to investors, sending investor funds to unknown third-parties;

d. Using investor funds to fund Bryant's personal expenses; and

e. Sending investors Account Statements that created the impression that BUCF was earning the promised 30% returns.

See Ex. A, generally [App. 1 – 14]. These fraudulent practices demonstrate that the Bryant and BUCF were engaged in an overall scheme to defraud. *See Zandford,* 535 U.S. at 819-21; *Grippo v. Perazzo,* 357 F.3d 1218, 1223 (11th Cir. 2004).

3. Defendants Acted With a High Degree of Scienter

Defendants acted knowingly or, at a minimum, with severe recklessness. As the person controlling investor funds and BUCF's financial account and activities, Bryant knew, or was severely reckless in not knowing, the amount, source, and disposition of the proceeds that flowed into and out of those accounts. He knew, or was severely reckless in not knowing, that investor money was not being used as promised and that, instead of being safely housed in a secure escrow account, he sent it to undisclosed third parties. As such, he also knew, or was severely reckless in not knowing, that investors could not and would not *ever* receive legitimate investment returns but, instead, Ponzi payments sourced from other investors' stolen money. In fact, Defendants transferred $16.1 million to Wammel Group without so much as a written agreement of any kind. (Ex. D at ¶ 14 [App. 91].) Thus, Bryant acted with *scienter*. Because Bryant's *scienter* imputes to BUCF, it too possessed the requisite *scienter* for liability under the

anti-fraud provisions.

4. Defendants' Conduct Involved Interstate Commerce

To violate the anti-fraud provisions of the federal securities laws, the misstatements or scheme must use the mails or instrumentalities of interstate commerce. *See* Section 17(a) of the Securities Act; Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. That element is easily satisfied here. Investors wired funds to Defendants from multiple states and countries, and they communicated with Defendants by telephone and over the internet, via email. *SEC v. Tropikgadget FZE*, 2017 U.S. Dist. LEXIS 25495 (D. Mass. Feb. 23, 2017) (citing *United States v. Chiaradio*, 684 F.3d 265, 281 (1st Cir. 2012) for the proposition that anything that travels via the internet travels in interstate commerce.) In addition, Defendants relied on email to solicit investors, including the dissemination of account statements and the BUCF Partnership Agreement. *See, e.g., SEC v. Inteligentry, Ltd*, Case No. 2:13-cv-00344-RFB-NJK, 2015 WL 14704898, *9 (D. Nev. Mar. 31, 2015) (SEC made out prima facie showing of interstate commerce where defendants used the internet to solicit investors in several different states as well as internationally); *SEC v. Abacus Int'l Holding Corp.*, Case No. C 99-02191, 2001 UWL 940913, *3 (N.D. Cal. Aug. 15, 2001) (offer and sale of securities to the public through the internet satisfies interstate commerce element).

5. Defendants' Misconduct is Ongoing and Will Continue

Among the factors to be considered in assessing the likelihood that defendants will repeat their wrongdoing are (1) the character of the violation, (2) the degree of *scienter* involved, and (3) whether a defendant has acknowledged the wrongfulness of his conduct and given sufficient assurances that it will not be repeated. *See SEC v. Savoy Industries, Inc.*, 587 F.2d 1149, 1168 (D.C. Cir. 1978), *cert. denied*, 440 U.S. 913 (1979). A likelihood of future violations can also be

inferred from past violations. *See SEC v. Murphy*, 626 F.2d 633, 655 (9th Cir. 1980).

Here, Defendants have demonstrated a high probability that they will continue violating the federal securities laws unless they are restrained and enjoined. This case does not involve an isolated incident, but took place over at least six years and defrauded approximately 100 investors. Further, Defendants' violations are egregious and exhibit a high degree of *scienter*. In addition, even after learning of the Commission's investigation, Defendants continue to move money and misuse investor funds. Finally, Defendants have not acknowledged the wrongfulness of their conduct, nor assured that it will not be repeated. Given the seriousness of Defendants' violations, it is highly likely that they will continue to violate the securities laws unless restrained and enjoined. For all the foregoing reasons, a TRO is necessary and appropriate. The facts described above establish a *prima facie* showing of securities law violations and a likelihood of future violations.[7]

C. The Court Should Also Issue an *Ex Parte* Order Freezing Defendants' Assets, Requiring Document Preservation, Requiring Sworn Accountings, Permitting Alternative Service, and Permitting Expediting Discovery

Federal courts have broad equitable powers enabling them to fashion appropriate ancillary remedies necessary to grant full relief. *SEC v. Manor Nursing Centers, Inc.*, 458 F.2d 1082, 1103-4 (2d Cir. 1972); *SEC v. Blatt*, 583 F.2d 1325, 1335-1336 (5th Cir. 1978).

The Court should freeze Defendants' assets based on the misconduct described above. Such an order is appropriate to prevent dissipation pending an assessment of the assets' value and liquidity and their return to investors. *See, e.g., SEC v. Manor Nursing Centers, Inc.*, 458 F.2d at 1106. The Defendants' wrongdoing amply demonstrates that they should not be

[7] Alternatively, the facts demonstrate either (1) a combination of probable success on the merits and the possibility of irreparable injury or (2) that serious questions are raised and the balance of hardships tips in the Commission's favor.

entrusted with investor funds.

An asset freeze is appropriate to assure Defendants' satisfaction of whatever equitable relief the Court ultimately may order. *Id.*; *Commodity Futures Trading Com. v. Muller*, 570 F.2d 1296, 1300 (5th Cir. 1978). The Court's power to freeze assets extends to accounts over which a defendant exercises effective control, even if the ill-gotten gains have not been traced to the account. *See SEC v. Grossman*, 887 F. Supp. 649, 661 (S.D.N.Y. 1995). This is because an asset freeze "facilitate(s) enforcement of any disgorgement remedy that might be ordered" and may be granted "even in circumstances where the elements required to support a traditional SEC injunction have not been established." *SEC v. Unifund SAL,* 910 F.2d 1028, 1041 (2d Cir. 1990). Courts recognize that an asset freeze is sometimes necessary to ensure that a future disgorgement order will have effect. *See, e.g., U.S. v. Cannistraro*, 694 F. Supp. 62, 71 (D.N.J. 1988), *aff'd in part, vacated in part on other grounds*, 871 F.2d 1210 (3d Cir. 1989); *SEC v. Vaskevitch*, 657 F. Supp. 312, 315 (S.D.N.Y. 1987); *SEC v. R. J. Allen & Assocs., Inc.*, 386 F. Supp. 866, 881 (S.D. Fla. 1974).

To obtain an asset freeze, the Commission need not show a reasonable likelihood of future violations. *Commodity Futures Trading Com. v. Muller*, 570 F.2d at 1300. Rather, it need only present a *prima facie* case that a violation of the securities laws has occurred. *See Unifund SAL*, 910 F.2d at 1040-41; *see also* 15 U.S.C. §§ 77t(b) and 78u(d)(1). The Commission's burden is lower than that of a preliminary injunction because an asset freeze only preserves the *status quo*. *Unifund SAL*, 910 F.2d at 1039. As set forth above, the Commission has clearly demonstrated Defendants' violations of the antifraud provisions insofar as they intentionally, or at least with severe recklessness, made material misrepresentations and omissions of material fact and engaged in conduct, acts, and practices which misled BUCF's trusting but ultimately

unwitting investors. Hence the Court should freeze Defendants' assets to ensure the best and most complete recovery for the victims of their fraud, and to prevent them from concealing or wasting whatever assets remain.

In addition, the Court should enter an order prohibiting the movement, alteration, and destruction of books, records, and accounts to prevent destruction of documents before the Commission's claims can be adjudicated. To more fully ascertain the extent of the Defendants' misconduct, the Court should order the Defendants to submit an interim accounting on an expedited basis and order broad expedited discovery in the case, in anticipation of a hearing on the Commission's request for a preliminary injunction. These orders will assure that whatever equitable relief might ultimately be granted is available and meaningful. *See R. J. Allen & Assocs., Inc.*, 386 F. Supp. at 881.

D. *Ex Parte* Order Appointing a Receiver Over the Defendants

As set forth above, pursuant to their general equity powers, courts may order ancillary relief to effectuate the purposes of the federal securities laws, to preserve defendants' assets, and to ensure that wrongdoers do not profit from their unlawful conduct. In this regard, the power of the district court to appoint a receiver to marshal and preserve assets and perfect property rights is well-established. *SEC v. First Financial* Group, 645 F.2d 429, 438 (5th Cir. 1981). *See also* 12 C. Wright, A. Miller & R. Marcus, "Federal Practice & Procedure" §2983 at 23-24 (2d ed. 1997). An evidentiary hearing is not required on Plaintiff's request to appoint a receiver where the record discloses sufficient facts to warrant such an appointment. *Bookout v. Atlas Fin. Corp.*, 395 F. Supp. 1338, 1342 (N.D. Ga. 1974), *aff'd*, 514 F.2d 757 (5th Cir. 1975).

The evidence presented here establishes that Defendants have misappropriated and misapplied millions of dollars received from investors and are in possession of investor assets or

assets acquired with investor funds that are at risk of disappearing any moment. Defendants have transferred investor money to other parties, who do not have a legitimate claim to retain possession of that money or those assets. Under these circumstances, the appointment of a receiver to marshal, conserve, and hold Defendants' property and other property traceable to the fraud is essential to providing meaningful recovery for the scheme victims.

E. *Ex parte* treatment is necessary as to this ancillary relief.

The accompanying Rule 65 certification and supporting evidentiary appendix show that immediate and irreparable injury, harm, or damage will result to the Commission and BUCF investors before the Defendants can be heard in this case. As reflected in the Complaint, the Commission seeks an order requiring the Defendants to disgorge an amount equal to the illegal profits and other benefits they received as a result of the violations. If Defendants receive notice of this action before the requested ancillary relief is entered, then they will have the opportunity to dissipate, secrete, encumber, and place outside the Court's jurisdiction assets they obtained from the scheme's victims. They will also have an opportunity to destroy, alter, or mutilate evidence needed to determine the full scope of the scheme.

Such actions will create irreparable injury to the Commission by preventing it from collecting all funds and assets it is entitled to collect from the Defendants in connection with the disgorgement order the Commission seeks. It will create further irreparable injury by greatly diminishing the Commission's law-enforcement goal of returning assets acquired in this scheme to their rightful claimants through the appointment of a receiver.

IV.
CONCLUSION

Based on the foregoing facts and for the reasons set forth above, the Commission

respectfully requests that the Count enter orders granting the Motion and providing the relief requested.

Dated: May 15, 2017

Respectfully submitted,

JASON P. REINSCH
Texas Bar No. 24040120
JESSICA B. MAGEE
Texas Bar No. 24037757

United States Securities and Exchange Commission
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ATTORNEYS FOR PLAINTIFF
SECURITIES AND EXCHANGE COMMISSION

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

SECURITIES AND EXCHANGE COMMISSION	:	
Plaintiff,	:	
v.	:	Civil Action No.:
THURMAN P. BRYANT, III, and BRYANT UNITED CAPITAL FUNDING, INC.	:	**FILED UNDER SEAL**
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.	:	

CERTIFICATION UNDER FED.R.CIV.P. 65(b)

I, Barbara Gunn, do hereby declare under penalty of perjury, in accordance with 28 U.S.C. §1746, that the following is true and correct, and further that this declaration is made on my personal knowledge and that I am competent to testify as to the matters stated herein:

1. I am an attorney-at-law.

2. I am currently admitted to practice in Texas.

3. I have worked in the Enforcement Division of the United States Securities and Exchange Commission ("Commission") for 29 years, including 18 years in the Fort Worth Regional Office. I currently serve as an Assistant Regional Director of Enforcement for the Fort Worth Regional Office.

4. Since 1998 the Fort Worth Office has sought and obtained emergency relief for the protection of defrauded investors in ninety nine cases.[1] In several of those cases, including

[1] *SEC v. 4D Circle, LLC, et al.,* No. 4:17-cv-321-Y(N.D. Tex. 2017)(Means, J.)(granting preliminary injunction by consent and order appointing receiver); *SEC v. Patrick O. Howard, et al.,* No. 3:17-cv-420-L (N.D. Tex. 2017)(Lindsay, S.)(granting freeze order, temporary restraining order, preliminary injunction, preservation of documents, accounting, expedited discovery, and order appointing, receiver); *SEC v. Ash Narayan, et al.,* No. 3:16-cv-1417-M (N.D. Tex. 2016)(Lynn, B.)(granting freeze order, temporary restraining order, preservation of documents, expedited discovery, and other emergency relief); *SEC v. Crumbley, Jr., et al.,* No. 3:16-cv-0172-L (N.D. TX. 2016)(Lindsey, S)(granting freeze order, document preservation, interim accounting, expedited discovery, alternate service and order appointing receiver); *SEC v. Ascenergy LLC, et al.,* No. 2:15-cv-01974-GMN-PAL (NV 2015)(Navarro, G.)(granting freeze order, interim accounting, and preservation of documents); *SEC v. Sethi Petroleum, LLC, et al.,* No. 4:15-cv-338-ALM (E.D. Tex. 2015)(Mazzant, A.)(granting freeze order, document preservation, interim accounting, expedited discovery and order appointing receiver); *SEC v. Brown, et al.*, No. 6:15-cv-119-WSS (W.D. Tex. 2015)(Smith, W.)(granting order freezing assets, requiring accounting, preserving documents and other emergency relief); *SEC v. Robert A. Helms, et al.*, No. 1:13-cv-01036-LY (W.D. Tex. 2013)(**Yeakel**, L.)(granting order freezing assets, requiring an accounting, preservation of documents and other emergency relief; granting order appointing receiver); *SEC v. Marco A. Ramirez, et al.,* No. 7:13-cv-531 (S.D. Tex. 2013)(Crane, R.)(granting order freezing assets, appointment of receiver, requiring an accounting, preservation of documents and other emergency relief); *SEC v. Kevin G. White, et al.*, No. 4:13-cv-00383-RAS-DDB (E.D. Tex. 2013)(Schell, R.)(granting order freezing assets, requiring an accounting, preservation of documents and other emergency relief; granting order appointing receiver); *SEC v. Bergin, et al,* No. 3:13-cv-01940-M (N.D. Tex 2013)(Lynn, B.)(granting order freezing assets, requiring preservation of documents and authorizing expedited discovery); *SEC v. Investment Intelligence Corporation PTY LLC, et al.,* No. 1:12-cv-00863-LY (W.D. Tex 2012)(Yeakel, L.)(granting order freezing assets, granting temporary restraining order and other emergency relief); *SEC v. Usee, Inc., et al.,* No. 3:12-cv-01325-M (N.D. Tex 2012)(Lynn, B.)(granting order freezing assets, requiring accounting, requiring preservation of documents and authorizing expedited discovery), *SEC v. Evolution Capital Advisors, LLC, et al.,* No. H-11-2945 (S.D. TX 2012)(Miller, G.)(granting asset freeze, and appointing receiver); *SEC v. Temme, et al.,* No. 4:11-cv-655 (E.D. Tex.)(Schneider, M.)(granting temporary restraining order, expedited discovery, and appointing receiver); *SEC v. Bjork, et al.,* No. 4:11-cv-02830 (S.D. Tex.)(Ellison, K)(granting temporary restraining order, order requiring an accounting, expedited discovery, and order appointing receiver); *SEC v. Blackwell, et al.,* No. 3:11-cv-234-L (N.D. Tex.)(Lindsay, S.)(granting temporary restraining order); *SEC v. Smith, et al.*, No.4:10-cv-613-MHS-ALM (E.D. Tex.)(Snyder, M.)(granting temporary restraining order, orders requiring asset freeze, accounting, preservation of documents and expedited discovery); *SEC v. Ginder, et al.*, No. 4:10-cv-02867 (S.D. Tex 2010)(Sim, L.)(granting agreed orders appointing receiver and requiring an accounting); *SEC v. Petrogas Overseas Trading, LP, et al.,* No. 4:10-cv-395-A (N.D. Tex 2010)(McBryde, J.)(granting temporary restraining order, orders freezing assets, requiring and accounting of revenues, expenses and assets, requiring an accounting of revenues, expenses and assets, prohibiting the destruction and/or alteration of documents, requiring surrender of passports, requiring repatriation of assets and authorizing expedited discovery); *SEC v. American Settlement Associates, LLC, et al.,* No. 4:10-cv-912 (S.D. Tex 2010)(Lake, S.)(granting order freezing assets and other emergency relief and order appointing receiver); *SEC v. Alan Todd May, et al.,* No. 3:10-cv-425-L (N.D. Tex 2010)(Lindsey, S.)(granting order freezing assets and other emergency relief and order appointing receiver); *SEC v. Striker Petroleum, LLC, et al,* No. 3:09cv2304-D (N.D. Tex 2009)(Fitzwater, S.)(granting agreed order freezing assets and appointing receiver); *SEC v. Harris, et al.*, No. 3:09cv1809-M (N.D. Tex 2009)(Boyle, J.)(granting agreed order freezing assets and appointing

receiver); *SEC v. Saleh, et al.*, No. 3:09-cv-1778-M, (N.D. Tex. 2009)(Lynn, B.)(granting order freezing assets, requiring an accounting, requiring preservation of documents, and authorizing expedited discovery); *SEC v. Poetter, et al.*, No. 6:09-cv-398, (E.D. Tex. 2009)(Schneider, M.)(granting appointment of receiver and expedited discovery); *SEC v. Titan Wealth Management, et al.*, No. 4:09-cv-418 (E.D. Tex 2009)(Schneider, M.)(granting temporary restraining order, freezing assets, requiring an accounting, requiring preservation of documents, authorizing expedited discovery and granting other equitable relief); *SEC v. Randall, et al.*, No. 3:09-cv-1465-O (N.D. Tex 2009)(O'Connor, R.)(granting temporary order, order freezing assets, requiring accounting, requiring preservation of documents, and authorizing expedited discovery and order appointing receiver); *SEC v. PrivateFX Global One, Ltd., et al.*, No.H-09-cv-1541, (S.D. Tex. 2009)(Lake, S)(granting asset freeze and other emergency relief, and appointing receiver); *SEC v. Kiselak Capital Group, et al.*, No. 4:09-cv-256-A (N. Tex-Ft. Worth 2009)(McBryde, J.)(granting temporary restraining order and other emergency relief including receiver); *SEC v. Ponta Negra Fund I, LLC, et al.*, No. A09CA-324-SS (W.D. Tex. 2009)(Sparks, B.)(granting temporary restraining order, order freezing assets and granting other emergency relief including receiver); *SEC v. Benny L. Judah and Excel Lease Fund, Inc.*, No. 5:09cv0087-C (N.D. Tex 2009)(S. Cummings)(granting agreed order freezing assets and appointing receiver); *SEC v. Oversea Chinese Fund Limited Partnership,* et al., No. 3:09-cv0614-B (N.D. Tex 2009)(Boyle, J.)(granting temporary restraining order, order freezing assets, order requiring an accounting, order requiring preservation of documents, and order authorizing expedited discovery, and order appointing receiver); *SEC v. Millennium Bank., et al,* No. 7-09-cv-050-O (N.D. Tex 2009)(O'Connor, R)(order granting temporary restraining order, order freezing assets, temporary restraining order, order appointing receiver,); *SEC v. Ray M. White., et al,* No. 3-09-cv-0407-K (N.D. Tex 2009)(Kinkeade, E)(granting order freezing assets, temporary restraining order and order appointing receiver); *SEC v. Stanford International Bank, Ltd., et al.*, No. 3:09-cv-0298-N (N.D. Tex. 2009)(Godbey, D)(order granting temporary restraining order, order freezing assets, order requiring an accounting, order requiring preservation of documents, and order authorizing expedited discovery, and order appointing receiver); *SEC v. Rod Cameron Stringer, et al,* No. 5:09cv0009-C (N.D. Tex. Lubbock 2009)(Cummings, S.)(order appointing receiver); *SEC v. Star Exploration, Inc.*, et al, No. 3:08-cv-2248-O (N.D. Tex. 2008)(O'Connor, R.)(order appointing receiver); *SEC v. Delta Onshore Management, LLC, et al,* No. 08-1278-MLB (D. Kan. Wichita 2008)(Belot, M.)(order freezing assets and order appointing receiver); *SEC v. Patrick Henry Haxton, et al.*, No. 3-08CV1467-L (N.D. Tex. 2008)(Lindsay, J.)(granting asset freeze, temporarily restraining order, requiring accountings; prohibiting document alteration or destruction, authorizing expedited discovery; and authorizing alternative methods of service); *SEC v. W Financial Group, LLC, et al.*, No. 3:08-CV-499-N (N.D. Tex. 2008)(Godbey, D.)(granting temporary restraining order, order freezing assets, requiring preparation of sworn accountings, prohibiting document alteration or destruction, authorizing expedited discovery, repatriating all funds and assets and authorizing alternative methods of service, and receiver); *SEC v. McNaul, II, et al.*, No.08-1159-JTM (D. Kan. 2008)(Marten, J.)(granting order freezing assets and requiring preservation of documents, and order appointing receiver); *SEC v. T-Bar Resources, LLC, et al.*, No. 3-07-CV-1994 (N.D. Tex. 2007)(Boyle, J.)(granting agreed preliminary injunction and emergency asset freeze, and appointment of receiver); *SEC v. Terax Energy, Inc.*, No. 3-07-CV-1554 (N.D. Tex. 2007)(Lynn, B.) (granting temporary restraining order, order freezing assets, requiring an accounting, requiring preservation of documents, and authorizing expedited discovery); *SEC v. Roberts, et al.*, No. 4:07-CV786-JLH (E.D. AR. 2007)(Holmes, J.)(granting agreed order of preliminary injunction, order freezing assets, requiring an accounting, and requiring preservation of documents); *SEC v. AmeriFirst Funding, et al.*, No. 3-07-CV-1188 (N.D. Tex. 2007)(Fitzwater, S.)(granting temporary restraining order, order freezing assets, requiring an account, requiring preservation of documents, requiring repatriation of assets and authorizing expedited discovery, and order appointing temporary receiver); *SEC v. Longs, et al.*, No. 4-07-cv-537-SWW (E.D. AR, Western Div.)(Wrights, S.)(agreed order of preliminary injunction, order freezing assets, requiring an accounting, requiring repatriation of assets, and requiring preservation of documents); *SEC v. One or More Unknown Purchasers of Call*

Options for the Common Stock of TXU Corp, et al., No. 01-07-CV-1208 (N.D. Tex. 2007)(Lindberg, G.) (granting temporary restraining order and order freezing assets); *SEC v. ABC Viaticals*, et al., No. 3-06-CV-2136-P (N.D. Tex. 2006) (Solis, J.)(granting temporary restraining order and order appointing receiver); *SEC v. Seaforth Meridian, LTD., et al.* (No. 06-4107-RDR)(D. Kan. 2006)(granting ex parte order freezing assets, requiring repatriation of assets, authorizing expedited discovery, order requiring preservation of documents and order appointing receiver); *SEC v. Integrated Equities, Inc., et al.*, No. 2:06-CV-00779-RCJ-GWF (D. Nevada 2006)(Jones, R.)(granting preliminary injunctions and order appointing temporary receiver), *SEC v. Sunray Oil Company, Inc., et al.*, No. 3:06-CV-1097-R (N.D. Tex. 2006)(Buchmeyer, J.)(granting temporary restraining order, order freezing assets, and order appointing temporary receiver), *SEC v. EFS, LLC, et al.*, No. 3-06CV0793-M (N.D. Texas 2006)(Sanders, B)(granting ex parte temporary restraining order and order freezing assets and order appointing temporary receiver), *SEC v. ATM Alliance, et al.*, No.A-05-CA-190-LY (W.D. Tex. 2005)(granting ex parte temporary restraining order, order freezing assets, and order appointing temporary receiver); *SEC v. Travis Correll, et al.*, No. 4:05-CV-472 (E.D. Tex. 2005)(Schell, R.)(granting ex parte temporary restraining order, order freezing assets and order appointing temporary receiver), *SEC v. Allixon International Corp., et al.*, No. 3:05-CV-2260-P (N.D. Tex. 2005)(Godbey, D)(granting temporary order freezing assets); *SEC v. Nelson, et al.*, No. 5:05-CV-0266-C (N.D. Tex. 2005)(Cummings, S.)(granting ex parte order freezing asset and order appointing temporary receiver); *SEC v. Megafund, Inc.*, No. 3:05-CV-1328-L (N.D. Tex. 2005)(Lindsey, J.)(granting ex parte temporary restraining order, order freezing assets and order appointing receiver); *SEC v. David Tanner*, No. 05-4057-SAC (D. Kan. 2005)(Crow, J.)(granting ex parte temporary restraining order and asset freeze order); *SEC v. Philip D. Phillip*, No. 2-05CV-107-J (N.D. Tex. 2005)(Robinson, J.)(granting temporary restraining order and order freezing assets); *SEC v. Jack A. Brown*, No. 6:04-CV-537 (E.D. Tex. Dec. 2004)(Schneider, J.)(granting ex parte order freezing assets and order appointing receiver); *SEC v. Kaye*, No. 04-1275-MLB (D. Kan. 2004) (Belot, J.) (granting ex parte temporary restraining order, order freezing assets and order appointing receiver); *SEC v. Kings Real Estate Inv. Trust*, No. 5:04-04006-RDR-KGS (D. Kan. 2004) (Rogers, J.) (granting ex parte temporary restraining order, order freezing assets and order appointing receiver); *SEC v. Cash Link Systems Inc.*, No. 3-04-CV-1573-L (N.D. Tex. 2004) (Lindsay, J.) (granting ex parte temporary restraining order, order freezing assets and order appointing receiver); *SEC v. Levy*, No. 304-CV- 00351-N (N.D. Tex. 2004) (Godbey, J.) (granting order freezing assets); *SEC v. Montana*, No. CIV-04-542 (S.D. Tex. 2004) (Kent, J.) (granting ex parte temporary restraining order, order freezing assets and order appointing receiver); *SEC v. Holt*, No. Civ-03-1825 (D. Ariz. 2003) (Rosenblatt, J.) (granting ex parte temporary restraining order, order freezing assets and order appointing receiver); *SEC v. Henderson*, No. 3-03-CV-2661-K (N.D. Tex. 2003) (Kinkeade, J.) (granting ex parte temporary restraining order, order freezing assets, and order appointing receiver); *SEC v. IPIC Int'l, Inc.*, No. 3-03-CV-2781-P (N.D. Tex. 2003) (Solis, J.) (granting ex parte temporary restraining order, order freezing assets and order appointing receiver); *SEC v. Rocky Mountain Energy Corp.*, No. H-03-1133 (S.D. 2003) (Lake, J.) (granting ex parte temporary restraining order, order freezing assets and order appointing receiver); *SEC v. United States Reservation Bank and Trust*, No. CIV-02-0581 (D. Ariz. 2002) (Carroll, J.) (granting ex parte temporary restraining order, order freezing assets, and order appointing receiver); *SEC v. Southmark Advisory, Inc.*, No. 02CV-830E-(M) (N.D. Okla. 2002) (Ellison, J.) (granting ex parte temporary restraining order, order freezing assets, and order appointing receiver); *SEC v. Tyler*, No. 3-02-CV-0282-P (N.D. Tex. 2002) (Solis, J.) (granting preliminary injunction, order freezing assets and order appointing receiver); *SEC v. Res. Dev. Int'l, L.L.C.*, No. 3-02-CV-0605-H (N.D. Tex. 2002) (Buchmeyer, J.) (granting ex parte temporary restraining order, order freezing assets and order appointing receiver); *SEC v. Dillie*, No. Civ-01-2493 (D. Ariz. 2001) (Teilborg, J.) (granting ex parte temporary restraining order, order freezing assets and order appointing receiver); *SEC v. Stroud*, No. Civ-01-999-L (W.D. Okla. 2001) (West, J.) (granting ex parte temporary restraining order, order freezing assets and order appointing receiver); *SEC v. English*, No. Civ-01-223-W (W.D. Okla. 2001) (West, J.) (granting ex parte temporary restraining order, order freezing assets and order appointing receiver); *SEC v. Hill*, No. 3-01-CV-2189-X (N.D. Tex.

ones in which the asset freeze was granted *ex parte*, one or more defendants or relief defendants violated the asset freeze.

5. Based on those experiences and the information I have reviewed about Defendants Thurman P. Bryant, III and Bryant United Capital Funding, Inc. (collectively "Defendants"), including the evidence in the Appendix accompanying this filing, I believe that irreparable injury and loss is likely to occur if the Court requires notice and a hearing before

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2001) (Fitzwater, J.) (granting ex parte temporary restraining order, order freezing assets and order appointing receiver); *SEC v. C-Tech, L.L.P.*, No. 3-01-CV-2542-P (N.D. Tex. 2001) (Solis, J.) (granting order freezing assets and an order appointing a receiver); *SEC v. First Americap Corp.*, No. H-01-1153 (S.D. Tex. 2001) (Buchmeyer, J.) (granting ex parte temporary restraining order and an order freezing assets); *SEC v. Perennial Fund I LP*, No. C00-21181 (N.D. Cal. 2000) (Ware, J.) (granting ex parte temporary restraining order, order freezing assets and order appointing receiver); *SEC v. Broadband Wireless Int'l Corp.*, No. Civ-00-1375 (W.D. Okla. 2000) (Russell, J.) (granting ex parte temporary restraining order, order freezing assets and order appointing receiver); *SEC v. Garland*, No. 3-00-CV-1149-X (N.D. Tex. 2000) (Kendall, J.) (granting temporary restraining order and order freezing assets); *SEC v. New World Web Vision.Com, Inc.*, No. 4-00-CV-0231-Y (N.D. Tex. 2000) (Means, J.) (granting temporary restraining order, order freezing assets and order appointing receiver); *SEC v. Stadtt Media, L.L.C.*, No. 3-00-CV-1489-P (N.D. Tex. 2000) (granting temporary restraining order, order freezing assets and order appointing receiver) ; *SEC v. Ellis*, No. 3-00-CV-1040-P (N.D. Tex. 2000) (Solis, J.) (granting ex parte temporary restraining order and an order freezing assets); *SEC v. Le Club Prive, S.A.*, No. 3-00-CV-1851-R (N.D. Tex. 2000) (Buchmeyer, J.) (granting ex parte temporary restraining order, order freezing assets, and order appointing receiver); *SEC v. Houston Texans NFL Football Team Holding Co.*, No. H-00-3072 (S.D. Tex. 2000) (Rainey, J.) (granting ex parte temporary restraining order and order freezing assets); *SEC v. Oracle Trust Fund*, No. 99-1483-MLB (D. Kan. 1999) (Belot, J.) (granting ex parte temporary restraining order, order freezing assets, and order appointing receiver); *SEC v. Cornerstone Prodigy Group, Inc.*, No. 4-99-CV-0978-Y (N.D. Tex. 1999) (Means, J.) (granting order freezing assets and order appointing receiver); *SEC v. Highland Financial Corp.*, No. 4-99-CV-0719-D (N.D. Tex. 1999) (granting ex parte restraining order, order freezing assets and order appointing a receiver); *SEC v. Brooks*, No. 3-99-CV-1326-D (N.D. Tex. 1999) (Fitzwater, J.) (granting ex parte temporary restraining order and order freezing assets); *SEC v. Redbank Petroleum, Inc.*, No. 3-99-CV-1267-T (N.D. Tex. 1999) (granting ex parte temporary restraining order, order freezing assets, and order appointing receiver); *SEC v. Cook*, No. 3-99-CV-051-X (N.D. Tex. 1999) (Buchmeyer, J.) (granting ex parte temporary restraining order, order freezing assets, and order appointing receiver); *SEC v. Inverworld, Inc.*, No. SA-99-CA-0822-FB (W.D. Tex. 1999) (Biery, J.) (granting order freezing assets and order appointing receiver); *SEC v. Great White Marine and Recreation, Inc.*, No. W-99-CA-230 (W.D. Tex. 1999) (Smith, J.) (granting temporary restraining order); *SEC v. Sunpoint Securities, Inc.*, No. 6-99-CV-667 (E.D. Tex. 1999) (Hannah, J.) (granting ex parte temporary restraining order, order freezing assets, and order appointing receiver); *SEC v. American Automation, Inc.*, No. 3-98-CV-1596-D (N.D. Tex. 1998) (Fitzwater, J.) (granting ex parte temporary restraining order and order freezing assets); *SEC v. Trinity Gas Corp., et al.*, No. 4:97-cv-01018 (N.D. Tex. 1997) (Means, J.) (granting temporary restraining order, order freezing assets, order for accounting, order prohibiting destruction, order granting expedited discovery, order setting hearing date for preliminary hearing and appointing receiver).

deciding the Commission's Motion for Preliminary Injunction, *Ex Parte* Temporary Restraining Order, Asset Freeze, Appointment of a Receiver, and Other Emergency and Ancillary Relief.

6. In this case, the Commission has made no effort to give notice to Defendants because doing so would give them an opportunity – before the Court enters the asset freeze and other relief the Commission is seeking – to dissipate, secrete, encumber, and place outside the Court's jurisdiction assets they obtained in the fraudulent scheme described in the Complaint filed herewith, as similarly situated Defendants have done in the past.

SIGNED this 12th day of May, 2017.

Barbara L Gunn

Barbara Gunn

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

SECURITIES AND EXCHANGE COMMISSION	:	
Plaintiff,	:	
v.	:	Civil Action No.:
THURMAN P. BRYANT, III, and BRYANT UNITED CAPITAL FUNDING, INC.	:	**FILED UNDER SEAL**
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.	:	

EX PARTE ORDER GRANTING MOTION FOR TEMPORARY RESTRAINING ORDER PRELIMINARY INJUNCTION, ASSET FREEZE, APPOINTMENT OF A RECEIVER, DOCUMENT PRESERVATION ORDER, ORDER TO MAKE ACCOUNTING AND OTHER EMERGENCY RELIEF, AND SETTING HEARING DATE ON PLAINTIFF'S PRELIMINARY-INJUNCTION MOTION

This matter came before the Court this _____ day of May, 2017 on motion of the Securities and Exchange Commission ("SEC"), for the issuance of an order granting, *ex parte,* certain emergency relief.

The SEC seeks orders: (1) temporarily restraining and preliminarily enjoining Defendants Thurman P. Bryant, III and Bryant United Capital Funding, Inc. (collectively “Defendants”) from violating the antifraud provisions of the federal securities laws; (2) freezing the assets of Defendants; (3) prohibiting Defendants from moving, altering, or destroying books, records, and

accounts; (4) requiring Defendants each to provide sworn accountings; (5) authorizing expedited discovery; and (6) providing for alternative service of pleadings and other papers. Having considered the SEC's Complaint, motion, supporting memorandum, declarations, and exhibits thereto, and the argument of counsel, the Court finds:

1. This Court has jurisdiction over the subject matter of this action and over the Defendants and Relief Defendants, and the SEC is a proper party to bring this action seeking the relief sought in its Complaint and in its motion.

2. There is good cause to believe that each Defendant has engaged, is engaged, and, unless enjoined, will continue to engage, in acts and practices that constitute and will constitute violations of Sections 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)] and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

3. There is good cause to believe that Defendants used improper and unlawful means to obtain investor funds and assets and that they inappropriately transferred investor funds to Relief Defendants, and there is also good cause to believe that investor funds and assets obtained and distributed by Defendants, as described in the SEC's Complaint, have been commingled and misapplied and will be misappropriated, hidden, wasted, or otherwise used to the detriment of investors. Furthermore, there is good cause to believe that Defendants do not have sufficient funds or assets to satisfy the relief that might be ordered in this action.

4. There is good cause to believe that requiring notice to the Defendants of the SEC's motion for this Order would result in immediate and irreparable injury, loss, or damage to the SEC and to investors.

5. There is good cause to believe that it is necessary to preserve and maintain Defendants' business records from destruction.

6. There is good cause to believe that it is necessary to identify quickly all assets in the possession or control of Defendants.

7. An accounting by each of the Defendants is appropriate to determine the location and disposition of investor funds obtained and distributed or spent by Defendants, and to ascertain the total assets that should continue to be frozen.

8. Expedited discovery is appropriate in this action to permit a prompt and fair hearing on the SEC's Motion for Preliminary Injunction.

9. This proceeding is one in which the SEC seeks a preliminary injunction.

10. The timing restrictions of Fed. R. Civ. P. 26(d) and (f), 30(a)(2)(C) and 34 do not apply to this proceeding in light of the SEC's requested relief and its demonstration of good cause.

IT IS THEREFORE ORDERED:

I. Temporary Restraining Order

11. Defendants, and their officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are restrained and enjoined in connection with the purchase or sale of a security, by the use of means or instrumentalities of interstate commerce, or of the mails, or of the facilities of a national securities exchange, knowingly or recklessly:

a. employing a device, scheme, or artifice to defraud;

b. making any untrue statement of material fact or omitting 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; or

c. engaging in an act, practice, or course of business which operates or would operate as a fraud or deceit upon a person; or

d. employing any manipulative or deceptive device or contrivance in contravention of a rule or regulation proscribed by the SEC.

[Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5(a) and (c)]].

14. Defendants and their officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise are restrained and enjoined from in the offer or sale of securities, by the use of means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly, knowingly, recklessly, or negligently

a. employing any device, scheme, or artifice to defraud;

b. obtaining money or property by means of an untrue statement of a material fact or an 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; or

c. engaging in any transactions, practices, or courses of business which operate or would operate as a fraud or deceit upon any purchaser or prospective purchaser.

[Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)]]

II. Asset Freeze Order

15. Defendants and their officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise are restrained and enjoined from, directly or indirectly, making any payment or expenditure of funds, incurring any additional liability (including, specifically, by advances on any line of credit and any charges on any credit card), or effecting any sale, gift, hypothecation or other disposition of any asset, pending provision of sufficient proof to the Court of sufficient funds or assets to satisfy all claims alleged in the SEC's Complaint, or the posting of a bond or surety sufficient to assure payment of any such claim. Further, any bank, trust company, broker-dealer, depository institution, entity, or individual holding accounts or assets for or on behalf of any of the Defendants shall make no transactions in assets or securities (excepting liquidating necessary as to wasting assets) and no disbursement of assets or securities (including extensions of credit, or advances on existing lines of credit), including the honor of any negotiable instrument (including, specifically, any check, draft, or cashier's check) purchased by or for the Defendants, unless otherwise ordered by this Court.

16. The SEC may cause a copy of this Order to be served on any bank, trust company, broker-dealer, depository institution, entity, or individual either by United States mail, email, or facsimile as if such service were personal service, to restrain and enjoin any such institution, entity, or individual from disbursing assets, directly or indirectly, to or on behalf of Defendants, or any companies or persons or entities under their control.

17. Further, any bank, trust company, broker-dealer or other depository institution holding accounts for or on behalf of Defendants shall make no transactions in securities (excepting liquidating transactions necessary to prevent wasting of assets) and no disbursements

of funds or securities (including extensions of credit, or advances on existing lines of credit), including the honor of any negotiable instrument (including specifically, any check, draft, or cashier's check) purchased by or for Defendants pending further order of this Court.

18. All other individuals, corporations, partnerships, limited liability companies and other artificial entities are hereby restrained and enjoined from disbursing any funds, securities, or other property obtained from Defendants without adequate consideration.

19. All banks, savings and loan associations, savings banks, trust companies, broker dealers, commodities dealers, investment companies, other financial or depository institutions and investment companies, individuals, corporations, partnerships, limited liability companies or other artificial entities that holds or has held, controls or has controlled, or maintains or has maintained custody of any of Defendants' funds, securities or other property at any time since January 1, 2010 shall:

A. Prohibit them and all other persons from withdrawing, removing, assigning, transferring, pledging, encumbering, disbursing, dissipating, converting, selling, or otherwise disposing of Defendants' Assets, except as directed by further Order of the Court;

B. Deny them and all other persons access to any safe deposit box that is: (i) owned, controlled, managed, or held by, on behalf of, or for the benefit of Defendants, either individually or jointly; or (ii) otherwise subject to access by Defendants;

C. Provide counsel for the Commission, or any Receiver appointed in this matter, within five (5) business days of receiving a copy of this Order, a statement setting forth: (i) the identification number of each and every

account or other asset owned, controlled, managed, or held by, on behalf of, or for the benefit of Defendants, either individually or jointly;

(ii) the balance of each such account, or a description of the nature and value of such asset as of the close of business on the day on which this Order is served, and, if the account or other asset has been closed or removed, the date closed or removed, the total funds removed in order to close the account, and the name of the person or entity to whom such account or other asset was remitted; and (iii) the identification of any safe deposit box that is owned controlled, managed, or held by, on behalf of, or for the benefit of Defendants, either individually or jointly, or is otherwise subject to access by Defendants; and

D. Upon request by the Commission, or any Receiver appointed in this matter, promptly provide the Commission and the Receiver with copies of all records or other documentation pertaining to such account or asset, including, but not limited to, originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit instruments or slips, currency transaction reports, Internal Revenue Service Form 1099s, and safe deposit box logs.

III. Document Preservation Order

20. Defendants and their agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are restrained an enjoined from destroying, removing, mutilating, altering,

concealing or disposing of, in any manner, any of their books and records or any documents relating in any manner to the matters set forth in the SEC's Complaint, or the books and records of any entities under their control, unless otherwise ordered by this Court.

IV. Order to Provide Sworn Accounting

21. Defendants are each ordered to provide an interim accounting, under oath, detailing (1) all monies and other benefits which each received, directly and indirectly, as a result of the activities alleged in the Complaint or thereafter transferred (including the date on which the monies or other benefit was received and the name, address and telephone number of the person paying the money or providing the benefit), (2) all monies and other assets received, directly or indirectly, from Defendants or Defendants' investors; (3) listing all current assets wherever they may be located and by whomever they are being held (including the name and address of the holder and the amount or value of the holdings) and (4) listing all accounts with any financial or brokerage institution maintained in the name of, on behalf of or for the benefit of the any Defendant in this proceeding (including the name and address of the account holder and the account number) and the amount held in each account at any point during the period from January 1, 2010 through the date of the accounting.

22. Each accounting shall be sufficient to permit a full understanding of the flow of funds to the party making the accounting from the investors of Bryant United Capital Funding, Inc. and to their present location to the extent known or within the party's power to learn. The accounting and all documents reviewed in the course of the preparation thereof or otherwise pertaining thereto shall be delivered by facsimile or overnight courier to Jason Reinsch; Securities and Exchange Commission; Burnett Plaza, Suite 1900; 801 Cherry Street, Unit 18; Fort Worth, Texas 76102 by the deadline set forth above.

V. Order Authorizing Expedited Discovery

23. Expedited discovery may take place consistent with the following:

A. Any party may notice and conduct depositions upon oral examination and may request production of documents or other things for inspection and or copying from Defendants prior to the expiration of thirty (30) days after service of the Complaint.

B. Parties shall comply with the provisions of Rule 45 of the Federal Rules of Civil Procedure regarding issuance and service of subpoenas unless the person designated to provide testimony or to produce documents or things agrees to provide the testimony or to produce the documents or things without the issuance of a subpoena and/or to do so at a place other than one at which testimony or production can be compelled.

C. Parties may may notice and conduct depositions upon oral examination subject to minimum notice of 72 hours.

D. Parties shall produce for inspection and copying all documents and things that are requested within 72 hours of service of a written request for those documents and things.

E. Parties shall serve written responses to requests for discovery. Discovery responses, and the interim accountings to be provided by Defendants, shall be sent to the Plaintiff SEC addressed as follows:

United States Securities and Exchange Commission
Fort Worth Regional Office
Attention: Jason Reinsch
Burnett Plaza, Suite 1900
801 Cherry Street, Unit #18
Fort Worth, TX 76102-6882

ReinschJ@SEC.gov
Telephone: (817) 900-2601

24. The SEC's responses shall be sent to the parties at such address(es) as may be designated by them in writing. Such delivery shall be made by the most expeditious means available, including by email and facsimile machine.

VI. Service

25. The United States Marshal in any district in which any Defendant or Relief Defendant resides, transacts business, or may be found, representatives of the SEC, or any receiver appointed in this case, is hereby authorized and directed to make service of process at the request of the SEC. Furthermore, the SEC is permitted to effect service of all pleadings and other papers, including the Summons, the Complaint, and court orders, by facsimile, by overnight courier, or by mail upon Defendants or Relief Defendants and their agents or their attorneys or by an alternative provision for service permitted by Rule 4 of the Federal Rules of Civil Procedure, or as this Court may direct by further order.

VII. Expiration of Temporary Restraining and Other Emergency Orders and Order to Show Cause.

26. Unless extended by agreement of the parties, the portion of this order that constitutes a temporary restraining order shall expire at **_____.m. on May ___, 2017**, or such later date as may be ordered by the Court. All other provisions of the orders issued herein, including the asset freeze, shall remain in full force and effect until specifically modified by further order of this Court.

27. Defendants shall appear before this Court at the United States District Courthouse, 101 E. Pecan Street, Sherman, Texas 75090 at ___, __.m. on _____, 2017 or as soon thereafter as they can be heard, and in any event prior to the expiration of the orders issued herein, to show cause, if any, why this Court should not enter a preliminary injunction extending the asset

freeze and other relief granted in this Order until a final adjudication on the merits may be had. Defendants shall serve any papers in opposition to such relief by hand delivery or overnight courier service to the Commission's counsel, Jason Reinsch, Securities and Exchange Commission, 801 Cherry Street, Suite 1900, Fort Worth, Texas 76102, fax number (817) 978-4927, no later than five full business days before such hearing. The Commission may serve and file a reply no later than 24 hours before the hearing, and shall serve such reply brief, if any, on Defendants or their attorneys by facsimile transmission, courier service, email, or such other means as the Commission may reasonably determine will give them or their attorneys prompt delivery of these papers. Pursuant to Rule 43(e) of the Federal Rules of Civil Procedure, the Court, in determining whether Defendants should be preliminarily enjoined, may consider affidavits, declarations and exhibits.

IT IS SO ORDERED.

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

SECURITIES AND EXCHANGE COMMISSION	:	
Plaintiff,	:	
v.	:	Civil Action No.:
THURMAN P. BRYANT, III, and BRYANT UNITED CAPITAL FUNDING, INC.	:	**FILED UNDER SEAL**
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.	:	

ORDER APPOINTING RECEIVER

WHEREAS this matter has come before this Court upon motion of the Plaintiff U.S. Securities and Exchange Commission ("SEC" or "Plaintiff") to appoint a receiver in the above-captioned action; and,

WHEREAS the Court finds 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 Defendants Thurman P. Bryant, III and Bryant United Capital Funding, Inc. ("Receivership Assets"); and,

WHEREAS this Court has subject matter jurisdiction over this action and personal jurisdiction over the Defendants and Relief 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, or under the control of, the following Defendants:

- Thurman P. Bryant, III; and
- Bryant United Capital Funding, Inc.

(collectively, "Receivership Defendants").

2. Until further Order of this Court, _____ is hereby appointed to serve without bond as receiver (the "Receiver") for the estate of the Receivership Defendants.

I. Asset Freeze

3. Except as otherwise specified herein, all Receivership Assets are frozen until further order of this 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 entity Receivership Defendants 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 Defendants 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 Defendants' 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 Defendants and shall pursue and preserve all of their claims.

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

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 Defendants, 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 Defendant owns, possesses, has a beneficial interest in, or controls directly or indirectly ("Receivership Property" or, collectively, the "Receivership Estate");

B. To take custody, control and possession of all Receivership Property and records relevant thereto from the Receivership Defendants; 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 Defendants;

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. 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 Defendant and the past and/or present officers, directors, agents, managers, general and limited partners, trustees, attorneys, accountants and employees of the entity Receivership Defendant, 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 Defendants 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 (10) days of the entry of this Order, the Receivership Defendants shall file with the Court and serve upon the Receiver and the SEC 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 Defendants; and, (c) the names, addresses and amounts of claims of all known creditors of the Receivership Defendants.

10. Within twenty (20) days of the entry of this Order, the Receivership Defendants shall file with the Court and serve upon the Receiver and the SEC a sworn statement and accounting, with complete documentation, covering the period from January 1, 2010 to the present:

A. Of all Receivership Property, wherever located, held by or in the name of the Receivership Defendants, 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 Defendants have signatory authority; and (b) opened by, in the name of, or for the benefit of, or used by, the Receivership Defendants;

C. Identifying all credit, bank, charge, debit or other deferred payment cards 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 Defendants, and each of them, in any way related, directly or indirectly, to the conduct alleged in the SEC'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 twenty (20) days of the entry of this Order, the Receivership Defendants shall provide to the Receiver and the SEC copies of the Receivership Defendants' federal income tax returns for taxable years 2010-2016 with all relevant and necessary underlying documentation.

12. The Receivership Defendants' 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 Defendants, or any other matter relevant to the operation or administration of the receivership or the collection of funds due to the Receivership Defendants. 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. The Receivership Defendants 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

14. 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 Defendants. All persons and entities having control, custody or

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

15. The Receivership Defendants, as well as their agents, servants, employees, attorneys, any persons acting for or on behalf of the Receivership Defendants, 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 Defendants are hereby directed to deliver the same to the Receiver, his agents and/or employees.

16. 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 Defendants 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 Defendants 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 SEC 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

17. The Receiver is authorized to take immediate possession of all personal property of the Receivership Defendants, 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.

18. The Receiver is authorized to take immediate possession of all real property of the Receivership Defendants, 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.

19. 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 Defendants, 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.

20. The Receiver is authorized to open all mail directed to or received by or at the offices or post office boxes of the Receivership Defendants, 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.

21. 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

22. 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 Defendants, as the Receiver deems necessary or advisable to effectuate the operation of the receivership.

23. All persons and entities owing any obligation, debt, or distribution with respect to an ownership interest to any Receivership Defendants 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 Defendants had received such payment.

24. 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.

25. 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 Defendants (the "Receiver's Mail"), including all mail addressed to, or for the benefit of, the Receivership Defendants. 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 Defendants 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 the Receivership Defendants, 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 Defendants. The Receivership Defendants 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.

26. Subject to payment for services provided, any entity furnishing water, electric, telephone, sewage, garbage or trash removal services to the Receivership Defendants 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

27. The Receivership Defendants 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 Defendants, 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.

28. The Receivership Defendants shall cooperate with and assist the Receiver in the performance of his duties.

29. 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

30. As set forth in detail below, the following proceedings, excluding the instant proceeding and all police or regulatory actions and actions of the SEC 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) the Receivership Defendants, including subsidiaries and partnerships; or, (d) any of the Receivership Defendants' 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").

31. 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.

32. 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 Defendants 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

33. 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").

34. The Receiver's deposit account shall be entitled "Receiver's Account, Estate of Thurman P. Bryant, III and Bryant United Capital Funding, Inc." together with the name of the action.

35. 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.

36. Subject to Paragraph 37, 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.

37. 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.

38. 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.

39. 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.

X. Investigate and Prosecute Claims

40. Subject to the requirement, in Section VIII 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.

41. 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 Defendant 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 SEC before commencing investigations and/or actions.

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

43. 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

44. 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 a Receivership Defendant. 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 the Receivership Defendant and may therefore file and manage a Chapter 11 petition.

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

XII. Liability of Receiver

46. 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.

47. 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.

48. 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.

49. In the event the Receiver decides to resign, the Receiver shall first give written notice to the SEC'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

50. 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").

51. Within thirty (30) days of the entry date of this Order, the Receiver shall file a status report with the Court. The status report will include a summary of receivership activities to date. It will also include a proposed plan for administering the receivership going forward, as well as a proposed deadline by which the Receiver will submit the Liquidation Plan. The Receiver's fees—including all fees and costs for the Receiver and others retained to assist in the administration and liquidation of the Receivership estate—are capped at $75,000 during the initial 30-day period. Further fee limitations, including capping fees at sixty (60) or ninety (90) days after the entry date of this Order, if any, will be set by the Court after the Receiver submits the first status report.

52. 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.

53. 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.

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

XIV. Fees, Expenses and Accountings

55. Subject to Paragraphs 56- 62 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.

56. Subject to Paragraph 57 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.

57. Subject to the limitations in Paragraph 56 above, the Receiver and Retained Personnel are entitled to reasonable compensation and expense reimbursement from the Receivership Estate 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.

58. 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.

59. 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.

60. 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.

61. 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.

62. 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.