

I. Introduction

Plaintiff Securities and Exchange Commission (“Commission”) files this motion in an effort to halt three fraudulent securities schemes, including a Ponzi scheme that has claimed at least 80 victims since July 2011, defrauding them of at least \$17.9 million combined. The factual basis for this motion is set forth in the accompanying Fact Brief and evidentiary Appendix. It is further supported by a Certification under Fed.R. Civ. P. 65(b). The Defendants and Relief Defendants referred to herein are those individuals and entities so-designated in the above caption.

Preliminary Injunction and *Ex Parte* Temporary Restraining Order

The Commission 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: (1) each Defendant, from violating 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]; (2) Defendants Deven Sellers and Roland Barrera, from violating the broker-registration provisions of the federal securities laws, specifically Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)(1)]; and (3) Defendants Robert A. Helms, Janniece S. Kaelin, Sellers, and Barrera from participating, directly or indirectly, including, but not limited to, through any entity owned or controlled by Helms, Kaelin, Sellers, or Barrera, in the issuance, purchase, offer, or sale of any security, provided, however, that such injunction shall not prevent Helms, Kaelin, Sellers, or Barrera from purchasing or selling securities for their own accounts.

II. Asset Freeze

For the purpose of effecting an asset freeze, the Commission further moves the Court *ex parte* for an order restraining and enjoining the Defendants and Relief Defendants, 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 Commission'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 Commission 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 or Relief Defendants from engaging in any transaction in securities (except liquidating transactions) or any disbursements of funds or securities on behalf of the Defendants or Relief Defendants unless otherwise ordered by this Court and (b) directing such persons or entities to identify for Commission counsel and any Receiver appointed in this case all such accounts, including account number, and the nature and amount of all assets held in them.

III. Receiver Appointment

To ensure the eventual return of the assets at issue in this case to their rightful claimants, the Commission moves the Court *ex parte* to appoint a Receiver for the Defendants and Relief 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 each Defendant

and each Relief Defendant, pending further order of the Court.

IV. Document-Preservation Order

The Commission further moves the Court *ex parte* for an order restraining and enjoining Defendants and Relief 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 Relief Defendants or any persons or entities under their control unless otherwise ordered by this Court.

V. Interim Accounting

The Commission further moves the Court *ex parte* for an order requiring each Defendant and each Relief Defendant to provide an interim accounting, under oath, detailing (a) all monies and other benefits that that Defendant or Relief Defendant received, directly and indirectly, as a result of the activities alleged in the Complaint, (b) all of that Defendant or Relief Defendant's assets wherever they may be located and by whomever they may be held, and (c) all accounts that that Defendant or Relief Defendant held during the period from January 1, 2010, through the date of the accounting.

VI. Expedited Discovery

The Commission further moves the Court for issuance of an order authorizing expedited discovery consistent with the following guidelines: (1) 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 parties prior to the expiration of thirty (30) days after service of the

Complaint on the Defendants; (2) All 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; (3) Any party may notice and conduct depositions upon oral examination subject to minimum notice of 72 hours; (4) All 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. (5) All parties shall serve written responses to any other party's request for discovery, and the interim accounting to be provided by each Defendant and each Relief Defendant, by delivery to Plaintiff Commission addressed as follows: United States Securities and Exchange Commission, Fort Worth Regional Office, Attention: Timothy S. McCole, Burnett Plaza, Suite 1900, 801 Cherry Street, Unit #18, Fort Worth, TX 76102-6882, Email: McColeT@SEC.gov, Facsimile: (817) 978-4927 and by delivery to other 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 facsimile machine and email.

VII. Alternative Service of Pleadings and Other Papers

The Commission 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 overnight courier, or by mail upon the Defendants and Relief Defendants, their agents, or their attorneys by representatives of the Plaintiff Commission, 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 Commission 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 United States 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.

VIII. Passport Surrender

The Commission further moves the Court for issuance of an order requiring Defendants Helms, Kaelin, Sellers, and Barrera to remain within the United States and to surrender their passports to the Court pending further order by the Court.

IX. Legal Authorities Supporting Motion

A. The Court should issue a temporary restraining order *ex parte* and a preliminary injunction to enjoin the Defendants' violative acts and practices.

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.¹ *SEC v. Management Dynamics, Inc.*, 515 F.2d 801, 808 (2d Cir. 1975); *Unifund*, 910 F.2d 1028, 1036 (2nd Cir. 1990).

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

¹ [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. Management Dynamics, Inc., 515 F.2d at 808-809 (quoting *Hecht v. Bowles*, 321 U.S. 321, 331 (1944)).

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 “reasonable likelihood,” 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. *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 militate strongly in favor of a TRO and preliminary injunction against each Defendant. The Defendants’ violations to date have been extremely egregious. They have defrauded at least 80 victims of nearly \$18 million inter-connected, securities-fraud schemes. The Defendants’ violations were not isolated. They have engaged in successive schemes since at least 2011, the latest version of which, Iron Rock Partners, is ongoing. The

Defendants have carried out the scheme with extremely high *scienter*, employing rank lies to induce investments and then misappropriating the proceeds. And they have not recognized the wrongful nature of their conduct.

Finally, as to occupation, Helms, Kaelin, Sellers, and Barrera presently remain associated with one another and with Vendetta Partners, Vesta Partners, and Iron Rock. Moreover, Helms and Kaelin continue to control Haley Oil, Technicolor Minerals, Barefoot Minerals, SeBud Minerals, Lake Rock, G3 Minerals, and Arcady Resources. In these occupations, the Defendants will continue to have opportunities to defraud investors. Therefore, the Commission has made a proper showing for a TRO and preliminary injunction.

B. The Court should order ancillary relief.

1. Orders Freezing Assets, Requiring Document Preservation, and 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 the Defendants and Relief 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 entrusted with investor funds. And the Relief Defendants have no legitimate claim to the investor funds they received. *See Janvey v. Adams*, 588 F.3d 831, 834 (5th Cir. 2009) (“[a] relief defendant . . . has no ownership interest in the property that is the subject of litigation but may be joined in the lawsuit to aid the recovery of relief.” (*citing SEC v. Cavanagh*, 445 F.3d 105, 109 n. 7 (2nd Cir. 2006))).

An asset freeze is also appropriate to assure 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). Additionally, 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., United States 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 & Associates, 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. Its 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.

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. And to more fully ascertain the extent of the Defendants’ misconduct, the Court should order expedited discovery 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.

2. Appointment of a Receiver

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

3. Passport Surrender

A passport-surrender order is necessary to prevent Defendants Helms, Kaelin, Sellers, and Barrera from fleeing the United States with assets obtained through the misconduct alleged in the Commission's Complaint. It is also necessary to facilitate their transfer of information, documents, and other necessary things to the Receiver to allow the Receiver to carry out his duties under the proposed receivership order. Courts have ordered such relief in cases involving similar fraudulent conduct. *See, e.g., S.E.C. v. Resource Development Intern. LLC*, 160

Fed.Appx. 368, 2005 WL 3525588 (5th Cir. 2005).

C. *Ex parte* ancillary relief is necessary as to this ancillary relief.

The accompanying Rule 65 certification and annotated fact brief clearly show that immediate and irreparable injury, harm, or damage will result to the Commission before the Defendants and Relief Defendants can be heard in this case. As reflected in the Complaint, the Commission seeks an order requiring the Defendants and Relief Defendants to disgorge an amount equal to the illegal profits and other benefits they received as a result of the violations. If the Defendants or Relief Defendants receive notice of this action before the requested ancillary relief is entered, then the Defendants and Relief Defendants 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.

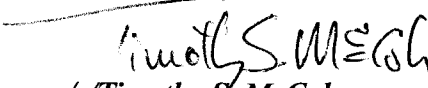
Such actions will create irreparable injury to the Commission by preventing it from collecting all funds and assets it is entitled to collect from the Defendants and Relief Defendants in connection with the disgorgement order the Commission seeks. It will create further irreparable injury by greatly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

VII. CONCLUSION

Based on the foregoing facts and for the reasons set forth above, the Commission respectfully requests that the Court enter orders providing the relief requested.

Dated: December 3, 2013

Respectfully submitted,


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