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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff.

v.

TRAFFIC MONSOON, LLC, a Utah Limited
Liability Company, and CHARLES DAVID
SCOVILLE, an individual,

Defendants.

**RECEIVER’S *EX PARTE* MOTION
SEEKING AUTHORIZATION TO
COMMENCE LEGAL PROCEEDINGS
AND MEMORANDUM IN SUPPORT**

2:16-cv-00832-JNP

The Honorable Jill N. Parrish

Peggy Hunt, as the Court-appointed Receiver in the above-captioned case (the “Receiver”), by and through counsel, hereby requests that the Court authorize her to commence legal proceedings to recover assets of the receivership estate. A proposed form of order is attached hereto as **Exhibit A**.

I. BACKGROUND

1. On July 26, 2016, the above-captioned case was commenced by the United States Securities and Exchange Commission (the “SEC”) against Defendants Traffic Monsoon, LLC (“Traffic Monsoon”) and Charles David Scoville (“Scoville” and together with Traffic Monsoon, the “Defendants”) by the filing of a *Complaint*. Docket No. 2. The SEC claimed, among other things, that between October 2014 and July 26, 2016, the Defendants engaged in securities fraud and operated a Ponzi scheme, taking approximately \$207 million from over 162,000 investors primarily through the solicitation of an investment known as an “AdPack.” See Docket No. 2.

2. That same day, this Court entered a *Temporary Restraining Order and Order Freezing Assets*, which, prior to the entry of the Preliminary Injunction discussed below, the Court amended by Orders entered on July 27, 2016 and on November 4, 2016 (collectively, the “TRO”). Docket Nos. 8, 14, & 16. The TRO, among other things, prohibited the Defendants from operating and imposed an asset freeze of the Defendants’ assets.

3. On July 27, 2016, just after the entry of the TRO, the Court entered an *Order Appointing Receiver* [Docket No. 11] appointing the Receiver to serve as the receiver of Traffic Monsoon and the assets of Scoville (the “Receivership Estate”). Subsequently the Court issued its *Amended Order Appointing Receiver* [Docket No. 81], later revised in the *Second Amended Order Appointing Receiver* [Docket No. 120] (the “Receivership Order”), maintaining the Receiver’s appointment.

4. The Receivership Order states, in relevant part:

- a. The Receiver is appointed “for the purpose of marshaling and preserving all assets of Traffic Monsoon, LLC and all assets of Charles D. Scoville

. . . that were obtained directly or indirectly from Traffic Monsoon” (the “Receivership Assets”); and

- b. “[T]he Receiver shall have all powers, authorities, rights and privileges heretofore possessed by the officers, directors, managers and general and limited partners of Traffic Monsoon . . . under applicable 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 on a receiver by the provisions of 28 U.S.C. §§ 754, 959 and 1692, and Rule 66 of the Federal Rules of Civil Procedure.”

5. Upon her appointment, the Receiver immediately took control of known assets of the Receivership Estate and commenced an investigation into Traffic Monsoon’s operations.

6. On March 30, 2017, after an evidentiary hearing, the Court issued a *Preliminary Injunction* [Docket No. 80] (the “Preliminary Injunction”) in this case, thereby taking “exclusive jurisdiction and possession of the assets, of whatever kind and wherever situated, of Traffic Monsoon, LLC and of Charles D. Scoville that were obtained directly or indirectly from Traffic Monsoon, LLC” *Id.* at 2. The Preliminary Injunction was based, in part, on evidence presented by the SEC showing that Traffic Monsoon operated as a Ponzi scheme.

7. In its *Memorandum Decision and Order Granting a Preliminary Injunction and Denying the Defendants’ Motion to Set Aside the Receivership* [Docket No. 79] (the “Memorandum Decision”), this Court found that the SEC had shown that it could likely prove that Traffic Monsoon operated as a Ponzi scheme, paying investors returns on their AdPack

purchases of with money from other investors' AdPack purchases. Memorandum Decision, at pp. 34-39.

8. Scoville appealed the Court's decision to the United States Court of Appeals for the Tenth Circuit. Case No. 17-4059, 10th Cir. (2017) (the "Appeal"). On January 24, 2019, the Tenth Circuit filed its *Opinion* affirming the Receivership Order and Preliminary Injunction, and finding, among other things, "that the SEC has asserted sufficient evidence to make it likely that the SEC will be able to prove that Defendants were operating a fraudulent scheme—a Ponzi scheme—selling Adpacks and that scheme violated the antifraud statutes invoked in this litigation." *SEC v. Scoville*, No. 17-4059, 2019 U.S. App. LEXIS 2316, at *2-3 (10th Cir. Jan. 24, 2019).

9. On February 8, 2019, Scoville filed an *Unopposed Motion to Stay Mandate Pending Petition for Writ of Certiorari* in the Tenth Circuit. The Tenth Circuit entered an *Order* on February 12, 2019, granting his motion in part and denying it in part. The Order stayed execution of the mandate until April 24, 2019, but ordered that the "district court's preliminary orders—freezing Defendants' assets, appointing a receiver, and preliminarily enjoining Defendants from continuing to operate their business—remain in force and effect." Appeal, Order of February 12, 2019, p. 2.

10. Accordingly, the Receiver's appointment has been confirmed by the Tenth Circuit, and no stay prevents her from continuing to administer the Receivership Estate.

11. Assets of the Receivership Estate include litigation claims against third parties.

II. REQUESTED RELIEF

12. To comply with her duties, the Receiver now requests authority to commence legal proceedings involving the recovery of assets of the Receivership Estate, including but not limited to clawback actions, turnover actions, and other litigation necessary to recover such assets.

13. With this authority, the Receiver currently anticipates bringing suit against those investors in Traffic Monsoon who received more money from the scheme than they invested (the “Net Winners”). Based on her investigation, there are over 4,800 Net Winners who received \$1,000 or more in false profits from Traffic Monsoon while it operated under the control of Scoville. Collectively, these Net Winners profited in amounts exceeding \$42,000,000.

14. To recover these false profits and maximize the Receivership Assets, the Receiver currently anticipates filing a class action against the Net Winners for avoidance and recovery of fraudulent transfers under the Utah Uniform Voidable Transactions Act (“UVTA”), common law fraudulent transfer, unjust enrichment, and imposition of constructive trusts (the “Net Winner Suit”).

15. The Receiver also currently anticipates bringing suit for turnover of certain funds that may not be returned upon demand.

III. MEMORANDUM IN SUPPORT

The Receiver was appointed for the purpose of marshaling and preserving all Receivership Assets and she has all of the powers and authority of a receiver at equity. Receivership Order ¶¶ 1-3. Indeed, marshaling the Receivership Assets “so that [they] may be distributed to the injured parties in a manner the court deems equitable” is “precisely the purpose

of a receiver.” *Wuliger v. Manufacturers Life Ins. Co.*, 567 F.3d 787, 795 (6th Cir. 2009); *see also SEC v. Wing*, 599 F.3d 1189, 1194 (10th Cir. 2010) (focus of receivership is “to assist the district court in achieving a final, equitable distribution of the” the Receivership Assets).

The Net Winners received more than \$42,000,000 in false profits from the Traffic Monsoon Ponzi scheme. These funds represent one of the most significant Receivership Assets. To comply with her duty to marshal and preserve all Receivership Assets as dictated by the Receivership Order, the Receiver must be allowed to commence litigation, including by filing a complaint against the Net Winners on behalf of Traffic Monsoon.

As part of the “the inherent powers of an equity court to fashion relief,” this Court may authorize the Receiver to bring the Net Winner Suit, as well as other litigation. *SEC v. Wing*, 599 F.3d at 1194. Further, the Receivership Order vests the Receiver with all the “powers, authorities, rights and privileges” of a director or officer of Traffic Monsoon, including the right to bring claims on behalf of Traffic Monsoon. Receivership Order ¶ 3.

Traffic Monsoon holds claims against the NetWinners as a defrauded creditor under the UVTA, and the Receiver intends to bring those claims on Traffic Monsoon’s behalf in the Net Winner Suit. *See Windham v. Allen et al.*, Case No. 2:18-cv-00054 (D. Utah 2018), Docket No. 186, p. 4; *Klein v. Cornelius*, 786 F.3d 1310, 1316-17 (10th Cir. 2015). As the representative of Traffic Monsoon, vested with all powers of the officers and directors of Traffic Monsoon, the Receiver has standing to bring those claims, as well as other clawback or turnover claims, on behalf of Traffic Monsoon. Receivership Order ¶ 1-3; *Windham v. Allen*, Docket No. 186, p. 4.

IV. CONCLUSION

For the reasons set forth herein, the Receiver requests that the Court enter the proposed Order attached hereto as **Exhibit A**, authorizing her to commence legal proceedings involving the recovery of assets of the Receivership Estate, including but not limited to clawback actions, turnover actions, and other litigation necessary to recover such assets.

DATED this 5th day of March, 2019.

DORSEY & WHITNEY LLP

/s/ Milo Steven Marsden _____

Milo Steven Marsden

Michael F. Thomson

Sarah Goldberg

John J. Wiest

Attorneys for Receiver, Peggy Hunt

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of March, 2019, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of the filing to all counsel of record in this case.

/s/ John J. Wiest _____

Exhibit A

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2:16-cv-00832-JNP

The Honorable Jill N. Parrish

The matter before the Court is the *Receiver's Ex Parte Motion Seeking Authorization to Commence Legal Proceedings and Memorandum in Support* [Docket No. ____] (the "Motion"). In the Motion, Peggy Hunt, the Court-appointed Receiver (the "Receiver"), pursuant to the *Second Amended Order Appointing Receiver* [Docket No. 120] (the "Receivership Order"), requests authorization to commence legal proceedings to recover assets of the Receivership Estate. The Court, having considered the Receivership Order, the Motion, and applicable law,

and for good cause appearing,

HEREBY ORDERS that:

- (1) The Motion is **GRANTED**;
- (2) The Receiver is **AUTHORIZED** to commence legal proceedings related to claims held by the Receivership Estate.

DATED this ____ day of _____, 2019.

BY THE COURT:

The Honorable Jill N. Parrish
United States District Court