

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

MICHAEL J. QUILLING, Receiver for ABC  
VIATICALS, INC. and Related Entities,

Plaintiff,

vs.

Civil Action No.: 3:07-CV-0421

INTERNATIONAL FIDELITY & SURETY  
LIMITED, INTERNATIONAL CONSULTANTS  
& MANAGEMENT LTD., SURETY  
MARKETING SOURCE, LLC, KPMG  
VANUATU, HAWKES LAW, KPMG  
INTERNATIONAL, BOSWELL, DERMOTT &  
PAWLETT, LLP, MOHAN & ASSOCIATES,  
DAVID A. GOLDENBERG, DAG  
INVESTMENTS, LLC, LPG INVESTMENTS,  
LLC, WED MARKETING, LLC, GALAX  
HOLDINGS, LTD., MARK WOLOK, LINDA  
WOLOK and ARIE KOTLER.

ECF

Defendants

**PLAINTIFF'S EX PARTE MOTION FOR TEMPORARY RESTRAINING ORDER  
AND PRELIMINARY INJUNCTION AND BRIEF IN SUPPORT**

TO THE HONORABLE JORGE SOLIS, UNITED STATES DISTRICT JUDGE:

COMES NOW, Michael J. Quilling, as Receiver for ABC Viaticals, Inc. and other related entities and as the Plaintiff in these proceedings, and files this his Ex Parte Motion for Temporary Restraining Order and Preliminary Injunction and, in support, would respectfully show the Court as follows:

**I.**

**BACKGROUND FACTS**

1. On November 17, 2006, the United States Securities and Exchange Commission ("SEC") initiated Cause No. 3:06-CV-2136-P, currently styled *SEC v. ABC Viaticals, Inc., C.*

*Keith LaMonda, and Jesse W. LaMonda, Jr. Defendants,, and LaMonda Management Family Limited Partnership, Structured Life Settlements, Inc., Blue Water Trust, and Destiny Trust, Relief Defendants* (“SEC Proceedings”). *Complaint* [Dkt. No. 1] (3:06-CV-2136). The Court overseeing the SEC Proceedings appointed Michael J. Quilling as Receiver for those entities and authorized him to prosecute all claims necessary to collect assets or proceeds thereof for the Receivership Estate. *Order Appointing Receiver* [Dkt. No. 8] (3:06-CV-2136).

2. Accordingly, on March 7, 2007, the Receiver filed this lawsuit to recover investor funds that ABC Viaticals, Inc. (“ABC”) transferred to the Defendants and other damages caused by the Defendants’ conduct. *Complaint* [Dkt. No. 1].

3. Defendants David Goldenberg, DAG Investments, LLC, LPG Investments, LLC, and Surety Marketing Source, LLC were served with summons in this lawsuit on March 22, 2007. *Summons Returns* [Dkt. Nos. 11-14]. Defendant Mark Wolok was served with a summons in this lawsuit on March 13, 2007. *Summons Return* [Dkt. No. 9]. None of those Defendants has entered an appearance or filed a timely answer within the time permitted by Fed. R. Civ. P. 12(a)(1)(A) even though their time to do so has passed. The Receiver is in the process of seeking a default against each of them.<sup>1</sup>

4. The Receiver’s Complaint alleges that Defendants David A. Goldenberg, Mark Wolok, and Arie Kotler operated a network of companies that marketed, sold, and guaranteed fraudulent bonds purchased by ABC. In exchange for those fraudulent bonds, the Defendants received more than \$3 million of investor funds, which they diverted to benefit themselves, their friends, and family.

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<sup>1</sup> The Receiver has recently learned that Defendant Mark Wolok has filed bankruptcy proceedings in the Eastern District of Michigan so until those matters are resolved, no default will be sought against him.

5. Before going into receivership, ABC was involved in the “viatical” or “life settlement” business. ABC purchased insurance policies on the lives of third-party insureds and sold fractional interests in those policies to investors. ABC represented that each investor’s contribution would purchase a fractional interest in a single insurance policy and pay premiums on only that policy. However, the Receiver has obtained account records showing that ABC commingled all investor funds into a common account and used those funds to pay commissions, buy new policies, and make premium payments on numerous policies as they became due. ABC’s principals eventually depleted the company’s reserves by, among other things, transferring at least \$5 million to themselves. Therefore, to keep policies from lapsing, funds from new investors were used to pay the premiums on policies benefiting earlier investors. In reality, ABC was insolvent and relied on the contributions of new investors to sustain itself.

6. ABC attracted investors by marketing insurance policies that were supposedly backed by a bonding company. Investors were told that, after a certain time, a bonding company would pay the death benefit due on a policy even if the insured had not yet died. This representation was designed to convince investors that death benefits would be paid by a particular date, even if the insured outlived their life expectancy. The Receiver has interviewed investors who insist that this representation was the single most important factor in deciding to invest with ABC. As a result, ABC raised approximately \$121 million from at least 3,300 investors.

7. ABC initially purchased its bonds through Defendant International Fidelity & Surety Limited (“IFS”). IFS claimed to be a legitimate bonding company operating out of a South Pacific island in the Republic of Vanuatu. Defendant Arie Kotler purported to serve as the

managing director and beneficial owner of IFS and its holding company, International Consultants & Management Ltd. (“ICM”).

8. Since their inception, IFS and ICM have represented that they maintain offices in Connecticut as well as the Republic of Vanuatu. However, neither of those companies maintains actual offices at either location. Instead, ICM and IFS have a mail drop box in Connecticut without any known employees, facilities, or assets. To date, the Receiver’s investigation indicates that IFS and ICM exist only on paper as the alter egos of Defendants Arie Kotler, David A. Goldenberg (“Goldenberg”), and Mark Wolok (“Wolok”).

9. Beginning in 2001, Defendant Surety Marketing Source, LLC, (“SMS”) then known as Unlimited Bond Source, represented that it was the exclusive marketing agent for IFS. While actively soliciting business for that company, SMS, Goldenberg, and Wolok represented that IFS and ICM were legitimate entities, financially sound, and that they had the financial resources to issue and honor bonds for a variety of purposes. Those marketing efforts were targeted toward the viatical industry in general and ABC in particular.

10. These representations by SMS, Goldenberg, and Wolok convinced ABC to purchase bonds from IFS. As part of their agreement, IFS issued two separate Blanket Performance Bonds to ABC in the amounts of \$50 million and \$20 million. Both bonds were effective as of August 1, 2004, and resulted from consolidated prior bonding commitments. The Blanket Performance Bonds acted as a line of credit, guaranteeing that ABC could purchase numerous smaller bonds as needed up to the limit of the Blanket Performance Bond. When ABC acquired a life insurance policy, it purchased a separate bond under the Blanket Performance Bond commitment for the face amount of that policy’s death benefit. Over time, ABC purchased the following separate bonds:

<u>Bond No.</u>	<u>Bond Amount</u>	<u>Beneficiary</u>
180177	\$5,000,000.00	American Title Company of Orlando
181506	\$24,000,000.00	American Title Company of Orlando
181684	\$20,000,000.00	70069V Life Settlement Trust c/o Mills Potoczak & Co., Trustee
181840	\$4,000,000.00	70064-V Life Settlement Trust c/o Mills Potoczak & Co., Trustee
181841	\$2,000,000.00	70063-V Life Settlement Trust c/o Mills Potoczak & Co., Trustee
181842	\$2,000,000.00	70063-V Life Settlement Trust c/o Mills Potoczak & Co., Trustee
182200	\$5,000,000.00	V-70098 Life Settlement Trust c/o Erwin & Johnson, LLP, Trustee
182201	\$5,000,000.00	V-70099 Life Settlement Trust c/o Erwin & Johnson, LLP, Trustee
185114	\$3,875,000.00	American Title Company of Orlando
185118	\$5,000,000.00	American Title Company of Orlando
185119	\$5,000,000.00	American Title Company of Orlando
185152	\$1,750,000.00	American Title Company of Orlando
185160	\$10,000,000.00	American Title Company of Orlando
185255	\$1,000,000.00	American Title Company of Orlando
185256	\$9,186,500.00	American Title Company of Orlando
185257	\$4,000,000.00	American Title Company of Orlando
185261	\$17,500,000.00	American Title Company of Orlando
185265	\$10,000,000.00	American Title Company of Orlando
<b>TOTAL</b>	<b>\$134,311,500.00</b>	

11. ABC, using investor money, paid substantial premiums for these bonds from IFS. Although the amount often varied, ABC typically paid a premium equal to 2.5% of the bond's face amount. The total known amount that ABC paid for these bonds is \$3,267,037.50, all of which was paid directly to SMS. Defendants Goldenberg and Wolok represented to ABC that they would deduct their commission from the premiums and forward the balance to IFS. That representation was false and known to be false by Goldenberg and Wolok. Instead of forwarding the balance to IFS, they systematically spent or divided it between themselves. A substantial amount of those funds were then diverted to accounts they controlled under their own names or through DAG Investments LLC, WED Marketing, LLC, and Excel Surety Agency. In effect, IFS and ICM are the alter egos for Goldenberg and Wolok and they treated the investor funds received from ABC as their own. Attached as Exhibit "A" to the *Declaration of Michael J. Quilling* filed contemporaneously herewith is a flowchart that shows the funds received by SMS and the subsequent diversions of those funds.

12. SMS, Goldenberg, and Wolok are continuing to use funds in these accounts to perpetuate the fraudulent existence of IFS and ICM. As recently as February 27, 2007, Goldenberg issued a check written on an SMS account to pay the rent on the "offices" maintained by IFS in Connecticut. *See Declaration of Michael J. Quilling*, Exhibit "B", filed contemporaneously herewith.

13. Each of the foregoing bonds provides that the full face amount of the given insurance policy will be paid to ABC ninety days after the end of the insured's life expectancy. Based on these terms, on July 18, 2006, IFS and ICM had a contractual obligation to pay ABC \$44,811,500.00 on various outstanding bonds. Despite demand to do so, IFS and ICM failed to pay those bonds as they became due. Copies of the demand letters (without exhibits) and the response of IFS are collectively attached as Exhibit "C" to the *Declaration of Michael J. Quilling* filed contemporaneously herewith. IFS and ICM will not and cannot pay the claims because they are fraudulent scams that exist only on paper and are really nothing more than Goldenberg and Wolok.

14. Not only are IFS and ICM scams, SMS is also a house of cards waiting to fall. The entity and its owners are under investigation by a number of state government agencies and civil litigation is starting to be filed.<sup>2</sup> On June 28, 2001, in an administrative proceeding, the Florida Department of Financial Services, Office of Insurance Regulation ("FDFS") (formerly the Florida Department of Insurance) issued an order for IFS to cease and desist from providing insurance as an unlicensed entity based on its involvement with bonding life settlements sold by Future First Financial Group, Inc. Then, on June 3, 2005, the FDFS ordered IFS to cease and

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<sup>2</sup> *See, e.g., National Viatical, Inc. v. United Fidelity Corporation, et al.*, Civil Action No. 2:07-CV-10484-JAC-VMM (E.D. Mich.); *C.F. Jordan, L.P. v. Southern American Insurance Agency, Inc. and C.A. McClure*, Cause No. 2006C111289, pending in the 407<sup>th</sup> Judicial District Court of Bexar County, Texas (IFS added as a third-party defendant).

desist from transacting insurance business in the State of Florida as a result of IFS issuing construction performance bonds to a Florida corporation in July 2002. *In the Matter of IFS, et al.*, Case No. 79842-05-CO. *See Declaration of Michael J. Quilling*, Exhibit “D”, filed contemporaneously herewith.

15. Also, on February 9, 2006, in an administrative proceeding, the Texas Department of Insurance ordered IFS to cease and desist from transacting insurance business in the State of Texas based on its writing of construction performance bonds without being licensed. *In the Matter of IFS, et al.*, Case No. 06-0147. *See Declaration of Michael J. Quilling*, Exhibit “E”, filed contemporaneously herewith. Finally, on December 11, 2006, in a case styled the State of Texas v. International Fidelity & Surety LTD, ICM Group LLC and Melanie Grenwald, the 250<sup>th</sup> Judicial District Court of Travis County, Texas issued a permanent injunction against IFS, enjoining them from engaging in the business of insurance in Texas. *See Declaration of Michael J. Quilling*, Exhibit “F”, filed contemporaneously herewith.

16. Each of the foregoing factual allegations set forth above are supported by the *Declaration of Michael J. Quilling* filed contemporaneously herewith.

17. Accordingly, the Receiver requests that the Court, without notice or hearing, issue a Temporary Restraining Order that freezes each and every account at National City Bank, First Place Bank (a/k/a Franklin Bank), LaSalle Bank (a/k/a Standard Federal Bank), and Bank of Birmingham in the name of David A. Goldenberg, Surety Marketing Source, LLC, DAG Investments LLC, WED Marketing LLC, LPG Investments LLC, Excel Surety Agency, and ICM Group LLC as well as those accounts over which Goldenberg has signatory authority or control.

**II.**  
**APPLICATION FOR TEMPORARY RESTRAINING ORDER**  
**AND PRELIMINARY INJUNCTION**

18. The Receiver files this Motion for Temporary Restraining Order and Preliminary Injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure, Texas Civil Practice & Remedies Code § 65.001 et seq., and Texas common law. All of the facts set forth in Section I as verified by the *Declaration of Michael J. Quilling* filed contemporaneously herewith are fully incorporated for the purpose of supporting this motion.

19. The Receiver seeks a temporary restraining order and preliminary injunction to maintain the status quo and prevent Defendants from depleting and/or hiding those funds that can be traced to ABC investors. As set forth more fully below, evidence before the Court demonstrates that all four factors for injunctive relief weigh heavily in the Receiver's favor. First, bank records show that SMS, Goldenberg, and Wolok distributed investor funds into various personal accounts, which imminently and irreparably puts those funds at risk and leaves the Plaintiff no adequate remedy at law. Second, Plaintiff enjoys a substantial likelihood of success on the merits because those Defendants have failed to timely answer or otherwise defend this lawsuit and are, therefore, subject to default judgment. Furthermore, there is no question that IFS and ICM have failed to honor their obligations and are fraudulent scams that do not really exist. Third, the comparative hardships favor preserving the status quo pending trial. Finally, those members of the public who invested with ABC stand to benefit most from this preliminary injunction because it preserves assets for their benefit.

20. The purpose of a temporary restraining order is to preserve the status quo pending a preliminary injunction hearing. *Granny Goose Foods, Inc. v. Brotherhood of Teamsters*, 415 U.S. 423, 439, 94 S.Ct. 1113 (1974). Similarly, the purpose of a preliminary injunction is to



prevent irreparable injury and to preserve the trial court's ability to render a meaningful decision on the merits. *University of Texas v. Camenisch*, 451 U.S. 390, 395, 101 S.Ct. 1830 (1981); *Canal Authority of Florida v. Callaway*, 489 F.2d. 567, 576 (5th Cir. 1974).

21. In order to obtain a temporary restraining order or preliminary injunction, the Plaintiff must plead and prove the following:

- a. irreparable harm;
- b. substantial likelihood of success on the merits;
- c. the injury faced by plaintiff outweighs the injury sustained by defendants as a result of the injunctive relief; and
- d. the granting of injunctive relief would not adversely affect public policy or interest.

*Callaway*, 489 F.2d. at 572 (listing elements for preliminary injunction); *see also Clark v. Prichard*, 812 F.2d 991, 993 (5th Cir. 1987) (requiring same elements for temporary restraining order). All four elements are mixed questions of law and fact. *Blue Bell Bio-Medical v. Cin-Bad, Inc.*, 864 F.2d 1253, 1256 (5th Cir. 1989). Each must be considered to determine whether, on balance, they collectively favor granting the injunctive relief requested. *Picker International, Inc. v. Blanton*, 756 F.Supp. 971 (N.D. Tex. 1990).

22. When the District Court issues a temporary restraining order, that decision is not subject to appeal. *In re Lieb*, 915 F.2d 180, 183 (5th Cir. 1990) (noting that, under Fed. R. Civ. P. 65(b), such orders necessarily expire before they could be heard on appeal). A preliminary injunction, on the other hand, may be appealed but is reviewed for abuse of discretion and will only be overturned if clearly erroneous. *Blue Bell Bio-Medical*, 864 F.2d at 1256.

**A. Irreparable Harm**

23. Irreparable harm requires a showing that the harm is imminent, the injury itself would be irreparable, and that plaintiff has no other adequate remedy at law. *See Northern Cal. Power Agency v. Grace Geothermal Corp.*, 469 U.S.1306, 1306, 105 S.Ct. 459, 459 (1984); *Chacon v. Granata*, 515 F.2d 922, 925 (5th Cir. 1975); *DSC Communications Corp. v. DGI Technology, Inc.*, 81 F.3d 597, 600 (5th Cir. 1996).

24. Harm is imminent. Because the Receiver seeks to recover ABC investor funds that have already been diverted to other bank accounts and applied to personal expenditures, the loss of value from the receivership estate has already occurred. That harm is exacerbated every day that Defendants Goldenberg, Wolok, SMS, and ICM have access to those funds and with every transfer or purchase made from those accounts. Without a temporary restraining order and preliminary injunction, further harm to the Receivership Estate is not only imminent, but certain.

25. Harm is irreparable. Harm is irreparable if it cannot be prevented or fully rectified by a final judgment following a trial. *Deerfield Medical Center v. City of Deerfield Beach*, 661 F.2d 328, 338 (5th Cir. 1981). It is not the magnitude of the harm but the irreparability of it that matters for injunctive relief. *Danden Petroleum, Inc. v. Northern Natural Gas Co.*, 615 F.Supp. 1093, 1098-99 (N.D. Tex. 1985). Through this action, the Receiver seeks to recover nearly \$3 million of investor funds that Defendants Goldenberg, Wolok, SMS, and ICM received from ABC. Defendants have already transferred a substantial portion of those funds to other accounts, where they have been used for numerous purchases and other expenses that the Receiver cannot possibly recover. If Defendants are permitted to continue spending from those accounts, it will further dissipate what remains of the investor funds and irreparably impair the Receiver's ability to realize a full recovery in this case.

26. No adequate legal remedy. For purposes of injunctive relief, there is no adequate remedy at law if the legal remedy is merely illusory, if the damages cannot be calculated, if the defendant is incapable of responding in damages, or if effective legal relief cannot be obtained in a single lawsuit. *Wilson v. Illinois S. Ry.*, 262 U.S. 574, 577, 44 S.Ct. 203, 204 (1924); *Dresser-Rand Co. v. Virtual Automation, Inc.*, 361 F.3d 831, 848 (5th Cir. 2004); *Winston v. General Drivers, Warehousemen & Helpers Local 89*, 879 F.Supp. 719, 725 (W.D. Ky. 1995). Even though damages could probably be calculated in this case, it is exceedingly unlikely that Defendants could respond in damages should the Court enter a final disgorgement order for the full amount sought—totaling nearly \$3 million. Given the sheer amount of investor funds at issue in this case, injunctive relief is necessary just to protect the receivership estate’s right to collect a money judgment in this case. *Productos Carnic, S.A. v. Cent. Am. Beef & Seafood Trading Co.*, 621 F.2d 683, 686 (5th Cir. 1980) (even where money damages are the appropriate remedy, an injunction may be necessary to protect that remedy); *see also Roland Mach. Co. v. Dresser Indus., Inc.*, 749 F.2d 380, 386 (7th Cir. 1984) (preliminary injunction appropriate if damages will be seriously deficient as a remedy for the harm suffered). The need to preserve these assets is underscored by the Defendants’ apparent efforts to quickly transfer or spend the funds at issue in this case. For example, the SMS account where Defendants received nearly \$3 million in premiums from ABC, as of the end of November, 2006, had a balance of \$89.41. In fact, of the accounts known to the Receiver, the Receiver is not aware of any account at issue that has a current balance exceeding \$1,500.00. It is the Receiver’s belief that to the extent the funds are recoverable, they have been diverted to other accounts unknown to the Receiver at National City Bank, First Place Bank a/k/a Franklin Bank), LaSalle Bank (a/k/a Standard Federal Bank), and Bank of Birmingham.

**B. Likelihood of Success on the Merits**

27. Because Defendants Goldenberg, Wolok, and SMS have failed to timely answer or otherwise defend this lawsuit, the Receiver clearly enjoys a likelihood of success on the merits. The Receiver currently has requests pending with the Court Clerk to have those parties declared in default, so that he may seek judgment immediately under Fed. R. Civ. P. 55.

28. Even if default is not entered in this case, the Receiver has a substantial likelihood of succeeding on the merits. In his Complaint, the Receiver has stated causes of action for fraudulent transfer and constructive trust and disgorgement, among other things. *Complaint* [Dkt. No. 1] at ¶¶ 48-51. It is not necessary that the Receiver prove with certainty that he will prevail, he must simply show that there is a likelihood of success on the merits based on a “sliding scale” taking into account the intensity of this factor (in conjunction with the other three factors) in any given factual situation. *State of Texas v. Seatrain International, S.A.*, 518 F.2d 175, 180 (5th Cir. 1975); *Doran v. Salem Inn, Inc.*, 422 U.S. 922, 931, 95 S.Ct. 2561, 2568 (1975).

29. The Receiver is entitled to his requested relief by establishing that a fraudulent transfer occurred under the Texas Uniform Fraudulent Transfer Act (the “UFTA”) or the supplemental provisions of common law. Tex. Bus. & Com. C. § 24.008, § 24.011, § 24.013. The transfers at issue unquestionably involved assets originating from ABC’s accounts and/or those of trustees who held investor money. Bank records show that ABC’s accounts were funded solely by the principal investment of innocent parties. Those funds were not placed in separate escrow accounts and, instead, ABC paid its obligations to earlier investors from the contributions of later investors. ABC was, therefore, insolvent and operated as a fraudulent investment scheme at all times.

30. For purposes of the UFTA, the mere existence of an insolvent and fraudulent investment scheme establishes that all transfers were made with fraudulent intent as a matter of law. *Warfield v. Byron*, 436 F.3d 551, 558 (5th Cir. 2006); *SEC v. Cook*, 2001 WL 256172, \*2 (N.D. Tex. Mar. 8, 2001); *In re Ramirez Rodriguez*, 209 B.R. 424, 434 (Bankr. S.D. Tex. 1997); *In re Indep. Clearinghouse Co.*, 77 B.R. 843 (Bankr. D. Utah 1987). Accordingly, all payments from ABC to Defendants are fraudulent transfers that can be traced directly to the investment scheme. As such, the Receiver is entitled to disgorgement, fees, costs, and interest under the UFTA as well as other equitable relief including imposition of a constructive trust. *See U.S. v. Durham*, 86 F.3d 70, 72 (5th Cir. 1996) (imposition of constructive trust is within Court's equitable powers); *see also* Tex. Civ. Prac. & Rem. C. § 24.008(a)(3) (allowing Court to remedy fraudulent transfers with injunctive relief or "any other relief the circumstances may require").

### **C. Balance of Hardship**

31. Because the Receiver enjoys a substantial likelihood of success on the merits, it is the receivership estate that will suffer most if this motion is not granted. In pursuing injunctive relief, the Receiver must show that the injury faced by him outweighs the injury that would be sustained by Defendants as a result of the injunction. *Yakus v. U.S.*, 321 U.S. 414, 440, 64 S.Ct. 660, 675 (1944). In balancing the relative hardships between the parties, the Receiver may also address the effect of the requested injunctive relief on nonparties. *See, e.g., Ward v. Walsh*, 1 F.3d 873, 878 (9th Cir. 1993). Where assets from a fraudulent investment scheme are involved, the harm to the Receiver—and consequently the receivership estate, the defrauded investors, and the public's interest in general—is far greater than any potential harm to the recipients of investor funds. *See, e.g., F.T.C. v. Affordable Media*, 179 F.3d 1228, 1237 (9th Cir. 1999)

(noting the “important public interest in preserving the [transfers] from the Ponzi scheme was more important than the private interests”).

32. Obviously, the Receiver has a duty to recover as much money as possible for the receivership estate. Without a restraining order or injunction, however, Defendants Goldenberg, SMS, ICM and the related entities will continue depleting the receivership estate’s assets with every transfer or purchase made from their accounts. Furthermore, it is hard to imagine that those Defendants could claim a legitimate hardship in being denied the benefit of nearly \$3 million that they raised through misrepresentations and the sale of fraudulent bonds. In that those Defendants never actually purchased or backed any of the bonds sold to ABC, there was no exchange of value between the parties and an injunction would simply return everyone to the same position held before the fraudulent conduct giving rise to this suit.

#### **D. Effect on Public Interest**

33. The Receiver must establish that this injunctive relief would not adversely affect public policy or the public’s interest in general. *DSC Comm. Corp. v. DGI Tech., Inc.*, 81 F.3d 597, 600 (5th Cir. 1996). Again, in weighing this factor, the Court appropriately considers the impact on non-parties. *See, e.g., Sammartano v. First Judicial Dist. Ct.*, 303 F.3d 959, 974 (9th Cir. 2002).

34. Without question, the defrauded investors have an interest in preserving the assets claimed by the receivership estate because they will be the ultimate beneficiaries of this injunction. The Court has charged the Receiver with the duty to collect and preserve those assets with the ultimate goal of distributing them to members of the public who lost their savings to the ABC investment scheme. These victims can typically expect to receive only a fraction of their initial investment, so the amount of funds frozen at the beginning of a receivership proceeding

greatly impacts the amount ultimately distributed. Furthermore, it is hard to imagine that any public interest is served by allowing recipients of funds obtained by fraud to continue using those assets during the course of these proceedings.

35. The Court should, therefore, preserve the status quo by granting this Motion for Temporary Restraining Order and Preliminary Injunction and enjoining Defendants Goldenberg, SMS, ICM and all the related entities from further depleting Receivership Estate assets.

### **III. Injunctive Relief Requested**

36. The Receiver requests that the Court consider this motion immediately and on an *ex parte* basis. As explained above, the Defendants have already moved substantial amounts of these funds to numerous bank accounts under their control, including some offshore accounts. The reality is that, once the Defendants have notice of this motion, they can remove all funds from their known accounts almost instantaneously. Therefore, the only meaningful remedy in this case is an immediate order issued *ex parte* that freezes those accounts before the Defendants have notice and an opportunity to respond. A hearing date in the very near future can then be established to allow each of them an opportunity to respond.

37. Accordingly, the Receiver hereby requests a temporary restraining order and preliminary injunction concerning receivership assets possessed and controlled by Defendants Goldenberg, SMS, ICM and the related entities. Such relief is appropriate to freeze assets that (1) are the subject of the underlying litigation and (2) are traced to ill-gotten gains fraudulently transferred or subject to a constructive trust. *See In re Fredeman Litigation*, 843 F.2d 821, 827 (5th Cir. 1988).

38. The Receiver, therefore, prays for *ex parte* consideration of this motion and issuance of a temporary restraining order directing that:

a. Defendants David A. Goldenberg, Surety Marketing Source LLC, DAG Investments LLC, WED Marketing LLC, LPG Investments LLC, Excel Surety Company, International Fidelity and Surety Limited, ICM Group LLC, and their agents, servants, employees, attorneys, family members, and persons in active concert or participation with them shall not transfer, spend, or otherwise diminish the value of funds held in any account, wherever situated, including but not limited to accounts at National City Bank, First Place Bank (f/k/a Franklin Bank), LaSalle Bank (f/k/a Standard Federal Bank), and Bank of Birmingham.

b. National City Bank, First Place Bank (a/k/a Franklin Bank), LaSalle Bank (a/k/a Standard Federal Bank), and Bank of Birmingham shall freeze all accounts held by or for the benefit of David A. Goldenberg, Surety Marketing Source LLC, DAG Investments LLC, WED Marketing LLC, LPG Investments LLC, Excel Surety Agency, International Fidelity and Surety Limited, and ICM Group LLC as well as any other accounts for which Goldenberg has signatory authority until further ordered by this Court.

c. The Temporary Restraining Order shall be binding upon all persons, including financial institutions, who receive actual notice of it by personal service or otherwise.

39. The Receiver also requests that the Court set a date for a preliminary injunction hearing within ten days of issuing the temporary restraining order. Following that hearing, the Receiver prays that a preliminary injunction issue directing that:

a. Defendants David A. Goldenberg, Surety Marketing Source LLC, DAG Investments LLC, WED Marketing LLC, LPG Investments LLC, Excel Surety Agency, International Fidelity and Surety Limited, ICM Group LLC, and their agents, servants, employees, attorneys, family members, and persons in active concert or participation with them shall not transfer, spend, or otherwise diminish the value of funds held in any account, wherever



situated, including but not limited to accounts at National City Bank, First Place Bank (f/k/a Franklin Bank), LaSalle Bank (f/k/a Standard Federal Bank), and Bank of Birmingham.

b. National City Bank, First Place Bank (a/k/a Franklin Bank), LaSalle Bank (a/k/a Standard Federal Bank), and Bank of Birmingham shall freeze all accounts held by or for the benefit of David A. Goldenberg, Surety Marketing Source LLC, DAG Investments LLC, WED Marketing LLC, LPG Investments LLC, Excel Surety Agency, International Fidelity and Surety Limited, and ICM Group LLC, as well as any other accounts for which Goldenberg has signatory authority until further ordered by this Court.

c. The preliminary junction shall be binding upon all persons, including financial institutions, who receive actual notice of it by personal service or otherwise.

#### IV. CONCLUSION AND PRAYER

WHEREFORE, PREMISES CONSIDERED, the Receiver prays as follows: (1) that the Court immediately issue an *ex parte* temporary restraining order as requested above; (2) that it set this matter for preliminary injunction hearing at its earliest convenience; (3) that after reviewing the arguments and evidence presented, either in writing or at the hearing, the Court issue a preliminary injunction as requested above; and (4) for such other and further relief, general or special, at law or in equity, to which the Receiver may show himself entitled.

Respectfully submitted,

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