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

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SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff.

V.

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

Defendants.

**EX PARTE MOTION SEEKING  
AUTHORIZATION FOR RECEIVER TO  
PAY EXPENSES OUT OF THE  
ORDINARY COURSE OF THE  
ADMINISTRATION AND OPERATION  
OF THE RECEIVERSHIP AND  
MEMORANDUM IN SUPPORT**

2:16-cv-00832-JNP

The Honorable Jill N. Parrish

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Peggy Hunt, the Court-Appointed Receiver (the “Receiver”) of Traffic Monsoon, LLC (“Traffic Monsoon”) and the assets of Charles David Scoville (“Scoville”) (together, the “Defendants”), by and through counsel and pursuant to the Memorandum in Support set forth herein, hereby requests that the Court enter an Order authorizing her to pay certain actual, necessary and reasonable expenses from funds of the receivership estate, which may be out of the ordinary course of the administration and operation of the receivership estate, related to

returning Scoville, and possibly members of his family, to Utah from the United Kingdom. A proposed form of Order is attached hereto as **Exhibit A**.

## **MEMORANDUM IN SUPPORT**

### **Jurisdiction and Venue**

1. On July 26, 2016, the SEC commenced the above-captioned action against the Defendants, asserting that (a) this Court has subject matter jurisdiction by authority of Sections 20 and 22 of the Securities Act of 1933 (the “Securities Act”), 15 U.S.C. §§ 77t and 77v, and Sections 21 and Section 27 of the Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. §§ 78u and 78aa; (b) Defendants, directly and indirectly, singly and in concert, have made use of the means and instrumentalities of interstate commerce and the mails in connection with the transactions, acts and courses of business alleged herein, certain of which have occurred within the District of Utah; and (c) venue for this action is proper in the District of Utah under Section 22(a) of the Securities Act, 15 U.S.C. § 77v(a), and under Section 27 of the Exchange Act, 15 U.S.C. § 78aa, because certain of the transactions, acts, practices, and courses of business alleged in this Complaint took place in this district and because the Defendants reside in and transact business in this district.

### **Background**

2. The SEC has alleged in its Complaint that the Defendants have violated numerous securities laws, including operating a Ponzi scheme and engaging in an offering fraud.

3. On July 26, 2016, the Court entered a *Temporary Restraining Order and Order Freezing Assets* [Docket No. 8], which was amended on July 27, 2016 [Docket No. 14] (collectively, the “Freeze Orders”).

4. The Court appointed the Receiver pursuant to an *Order Appointing Receiver* entered herein on July 27, 2016 [Docket No. 11] (the “Receivership Order”). The Receivership Order provides, among other things, that the Receiver will take control and possession of all property of the Defendants, including financial accounts and funds therein.<sup>1</sup> Furthermore, the Receiver is authorized to disburse funds for expenses in the ordinary course of the administration and operation of the receivership estate.<sup>2</sup>

5. Scoville has represented to the SEC and the Receiver that he resided in the United Kingdom when this case was commenced and that he currently resides there now. He also informed the SEC that he would be willing to meet with the SEC to discuss a potential resolution of this case. Additionally, Scoville has represented to the Receiver that he will cooperate with her efforts.

6. The SEC and the Receiver have determined that it would be beneficial to have Scoville voluntarily return to the United States, but Scoville asserts that he does not have the money to do so. Furthermore, Scoville has stated that if he travels to the United States, he will need to bring his 11-year old son, as well as his spouse, who he recently married and who is not the mother of his son.

7. The Receiver submits that, based on the information she has and Scoville’s representations to date, it is in the best interest of all parties in interest that the Receiver be authorized to disburse funds of the receivership estate out of the ordinary course to pay actual, necessary and reasonable costs associated with bringing Scoville back to Utah, as well as certain

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<sup>1</sup> Receivership Order ¶¶ 10-11.

<sup>2</sup> *Id.* ¶ 18.

of his living expenses. It may also be necessary to pay for Scoville's 11-year old son to return with him given his minor status and the fact that his son's mother lives in Utah. Finally, the Receiver is considering proposing an agreement under which the estate would pay for Scoville's spouse to return with him if she agrees to cooperate with the Receiver, including being deposed while she is in Utah.

8. At this time, the Receiver does know the exact amount that will be required for travel expense inasmuch as schedules need to be consulted, and agreements related to cooperation need to be obtained. The Receiver proposes that she be authorized to make necessary expenditures at this time that are related to the costs outlined herein. Once she has determined the amounts at issue, the Receiver will submit a notice outlining the disbursements to the Court.<sup>3</sup>

### **Legal Authority**

#### **I. This Court Enjoys Broad Discretion to Grant the Receiver's Motion**

A district court's power to supervise the administration of an equity receivership is extremely broad. *See, e.g., Klein v. Cornelius*, 786 F.3d 1310, 1315 (10th Cir. 2015); *SEC v. Wing*, 599 F.3d 1189, 1194 (10th Cir. 2010); *accord SEC v. Forex Asset Mgmt., LLC*, 242 F.3d 325, 331 (5th Cir. 2001); *SEC v. Basic Energy & Affiliated Resources*, 273 F.3d 657, 668 (6th Cir. 2001); *SEC v. Wang*, 944 F.2d 80, 85 (2d Cir. 1991); *SEC v. Hardy*, 803 F.2d 1034, 1037 (9th Cir. 1986). The Ninth Circuit stated: "[A] primary purpose of equity receiverships is to

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<sup>3</sup> Just prior to the filing of this Motion, the Receiver was notified that Scoville may retain counsel in this matter. If counsel is retained, the disbursements requested in this Motion may be reconsidered. But, the Receiver nonetheless requests that the Court grant the Motion and authorize the relief sought so that the Receiver has flexibility in evaluating these issues. If it is decided that the disbursements are not necessary, the Receiver will file a notice so stating.

promote orderly and efficient administration of the estate by the district court for the benefit of creditors.” *Hardy*, 803 F.2d at 1038 (citations omitted). The Ninth Circuit also explained:

[A] district court’s power to . . . determine the appropriate action to be taken in the administration of the receivership is extremely broad. . . . The district court has broad powers and wide discretion to determine the appropriate relief in an equity receivership. . . . The basis for this broad deference to the district court’s supervisory role in equity receiverships arises out of the fact that most receiverships involve multiple parties and complex transactions.

*Id.* at 1037; *Accord CFTC. v. Topworth Int’l, Ltd.*, 205 F.3d 1107, 1115 (9th Cir. 1999) (“This court affords ‘broad deference’ to the court’s supervisory role, and ‘we generally uphold reasonable procedures instituted by the district court that serve th[e] purpose’ of orderly and efficient administration of the receivership for the benefit of creditors.”).

Thus, the Court has the power to grant the Receiver’s present Motion. Furthermore, it is respectfully submitted that granting this Motion will aid in an efficient administration of this receivership estate. Scoville has informed the Receiver and the SEC that he is willing to travel to Utah to cooperate in this case, but that he does not have the money to do so inasmuch as his assets have been frozen. While the Receiver has interviewed Scoville over the telephone, she is hopeful that in person discussions with Scoville will be productive, assist her in her duty to investigate the assets of the estate, and contain some of the costs of doing so. Furthermore, the Receiver believes that paying for Scoville’s spouse’s travel may be helpful if the spouse agrees to cooperate as noted. Finally, the Receiver maintains that making the expenditures described herein may aid in progressing the SEC’s case inasmuch as Scoville has said that his main purpose for returning to Utah will be to attempt to work out a settlement. The Receiver therefore respectfully requests that the Court authorize her to make disbursements as discussed herein.

## II. The Receiver's Recommendation Is Entitled to Significant Deference

In the estate administration context, courts are deferential to the business judgment of bankruptcy trustees, receivers, and similar estate custodians. *See, e.g., In re JL Bldg., LLC*, 452 B.R. 854, 859 (Bankr. D. Utah 2011) (“Courts should show deference to a trustee’s decision making, where there is no showing of an abuse of discretion”); *In re Curlew Valley Associates*, 14 B.R. 506 (Bankr. D. Utah 1981) (“The court will not entertain objections to a trustee’s conduct of the estate where that conduct involves a business judgment made in good faith, upon a reasonable basis, and within the scope of his authority under the code.”); *see also Bennett v. Williams*, 892 F.2d 822, 824 (9th Cir. 1989) (“[W]e are deferential to the business management decisions of a bankruptcy trustee.”); *Southwestern Media, Inc. v. Rau*, 708 F.2d 419, 425 (9th Cir. 1983) (“The decision concerning the form of ... [estate administration] ... rested with the business judgment of the trustee.”); *In re Thinking Machines Corp.*, 182 B.R. 365, 368 (D. Mass. 1995) (“The application of the business judgment rule ... and the high degree of deference usually afforded purely economic decisions of trustees, makes court refusal unlikely.”), *rev’d on other grounds, In re Thinking Machines Corp.*, 67 F.3d 1021 (1st Cir. 1995).

Here, as detailed above, the Receiver has determined, in an exercise of her reasonable business judgment, that it is in the best interest of all parties if the proposed disbursements be authorized.

### CONCLUSION.

For the foregoing reasons, the Receiver respectfully requests that the Court enter an Order authorizing her to make disbursements outlined herein. All disbursements will only be for actual, necessary and reasonable costs, and the Receiver will file a notice of the amounts at issue

when these costs have been fully identified. A proposed form of Order is attached hereto as

**Exhibit A.**

Dated this 2nd day of August, 2016.

**DORSEY & WHITNEY LLP**

/s/ Nathan S. Seim

Michael F. Thomson

Nathan S. Seim

*Attorneys for Court-Appointed Receiver,  
Peggy Hunt*

**CERTIFICATE OF SERVICE**

I hereby certify that on August 2, 2016, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which sent notification of such filing to the following:

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/s/ Nathan S. Seim



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SECURITIES AND EXCHANGE  
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V.

TRAFFIC MONSOON, LLC, a Utah Limited  
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SCOVILLE, an individual,

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**ORDER GRANTING EX PARTE  
MOTION SEEKING AUTHORIZATION  
FOR RECEIVER TO PAY EXPENSES  
OUT OF THE ORDINARY COURSE OF  
THE ADMINISTRATION AND  
OPERATION OF THE RECEIVERSHIP  
AND MEMORANDUM IN SUPPORT**

2:16-cv-00832-JNP

The Honorable Jill N. Parrish

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The matter before the Court is the *Ex Parte Motion Seeking Authorization for Receiver to Pay Expenses Out of the Ordinary Course of the Administration and Operation of the Receivership and Memorandum in Support* (the “Motion”), filed by Peggy Hunt, the Court-appointed receiver (the “Receiver”) of Traffic Monsoon, LLC and the assets of Charles David Scoville (“Scoville”). The Court, having considered the Motion and applicable law, and finding good cause showing,

**IT IS HEREBY ORDERED THAT:**

- (1) The Motion is **GRANTED**;
- (2) The Receiver is **AUTHORIZED** to make disbursements from funds of the receivership estate relating to the matters outlined in the Motion; and
- (3) No later than September 15, 2016, the Receiver will file a Notice with the Court outlining the disbursements made or to be made from funds of the receivership estate relating to the matters outlined in the Motion.

DATED this \_\_\_\_ day of August, 2016.

**BY THE COURT**

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The Honorable Jill N. Parrish