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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
POST-HEARING STATEMENT**

2:16-cv-00832-JNP

The Honorable Jill N. Parrish

Peggy Hunt, as the Court-Appointed Receiver (the “Receiver”) of Traffic Monsoon, LLC (“Traffic Monsoon”), and the assets of Charles David Scoville (“Mr. Scoville”) (together, the “Defendants”), by and through her counsel of record, hereby files the *Receiver’s Post-Hearing Statement*.

BACKGROUND

Procedural Background

1. On July 26, 2016, the Securities and Exchange Commission (the “SEC”) commenced the above-captioned case against the Defendants. In conjunction therewith, the SEC filed an *Ex Parte Motion for Temporary Restraining Order, Order Appointing Receiver, Freezing Assets and Other Ancillary Relief and Memorandum of Law in Support* (the “Preliminary Injunction Motion”),¹ and an *Ex Parte Motion for Appointment of Receiver*.²

2. Also on July 26, 2016, the Court entered a *Temporary Restraining Order and Order Freezing Assets* (the “Freeze Order”),³ granting the Preliminary Injunction Motion on a temporary basis and scheduling an evidentiary hearing.

3. On July 27, 2016, the Court entered an *Order Appointing Receiver* (the “Receivership Order”),⁴ appointing Ms. Hunt as Receiver and finding: “The Commission has made a sufficient and proper showing that the appointment of a receiver is necessary and appropriate for the purposes of marshaling and preserving all assets of Traffic Monsoon . . . and all assets of Charles D. Scoville”⁵ 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 business records.⁶

¹ [Docket No. 3](#).

² [Docket No. 9](#).

³ [Docket No. 8](#). The Freeze Order was amended on July 28, 2016 and November 2, 2016. [Docket No. 14](#) and [Docket No. 56](#).

⁴ [Docket No. 11](#).

⁵ *Id.* (Receivership Order ¶ 2). Accord [Docket No. 14](#) (Amended Freeze Order ¶ 2 (SEC evidence establishes “a *prima facie* case of and a strong likelihood that the Commission will prevail at trial on the merits” that Traffic Monsoon and Mr. Scoville have violated securities laws.)).

⁶ [Docket No. 11](#) (Receivership Order ¶¶ 8, 10).

4. On September 23, 2016, Mr. Scoville filed an *Opposition* to the SEC's Preliminary Injunction Motion,⁷ and *Motion to Set Aside Receivership* (the "Set Aside Motion").⁸

5. The SEC filed a *Reply* to Mr. Scoville's *Opposition*,⁹ and an *Opposition* to the Set Aside Motion.¹⁰ Mr. Scoville filed a *Reply* to the SEC's Set Aside Motion *Opposition*.¹¹

6. On October 31, 2016, the Receiver filed two Declarations: *Declaration of Receiver Peggy Hunt (Communications)* (the "Communications Declaration");¹² and *Declaration of Receiver Peggy Hunt (Business Operations)* (the "Operations Declaration")¹³ (collectively, the "Receiver Declarations").

7. On November 1, 2016, the Court commenced an evidentiary hearing on the SEC's Preliminary Injunction Motion, and on Mr. Scoville's Set Aside Motion (the "Relevant Motions"). The Receiver and an accountant employed by the Receiver were called as witnesses by the SEC, and were both cross examined by Mr. Scoville's counsel.

8. The evidentiary portion of the hearing on the Relevant Motions concluded on November 3, 2016, and at that time, the Court requested that the parties file post-hearing briefs by November 28, 2016, at 5:00 p.m.

⁷ [Docket No. 32](#).

⁸ [Docket No. 33](#).

⁹ [Docket No. 38](#). A Surreply and a Response to the Surreply was also filed. [Docket No. 47](#), [Docket No. 48](#), [Docket No. 49](#).

¹⁰ [Docket No. 39](#). The SEC filed a Surreply in support of this *Opposition*. [Docket No. 53](#).

¹¹ [Docket No. 45](#).

¹² Prelim. Inj. Hr'g, Nov. 1, 2016, Pl.'s Ex. 3.

¹³ Prelim. Inj. Hr'g, Nov. 1, 2016, Pl.'s Ex. 1.

9. The Receiver requested that she be authorized to file a post-hearing statement, and that request was granted by the Court.¹⁴

10. Argument on the Relevant Motions is scheduled for November 30, 2016.

The Receiver's Investigation

11. Upon being appointed, the Receiver commenced an independent investigation of the Defendants for the benefit of the Receivership Estate of, among other things, Traffic Monsoon's business operations. This investigation is in its preliminary stages and is ongoing.

12. To assist her with her investigation, the Receiver obtained authority from the Court to employ Berkeley Research Group, LLC as her forensic accountants in this case.¹⁵

13. The scope of the Receiver's investigation to date is outlined in ¶¶ 4-5, 10, 18, 24-25, 29, 35 and Exh. 6 of the Receiver's Operations Declaration¹⁶ in the Communications Declaration,¹⁷ in her testimony before the Court,¹⁸ and in the testimony of her forensic accountant, Ray Strong.¹⁹

STATEMENT

The Receiver has a duty to the Court and to the Receivership Estate.²⁰ Pursuant to her duties, the Receiver makes this post-hearing statement.

¹⁴ [Docket No. 58](#) (*Order Granting Motion for Leave to File*) (Docket Text Order).

¹⁵ [Docket No. 25](#) (*Order Granting Receiver's Ex Parte Motion Seeking Authorization To Employ Accountants*).

¹⁶ Prelim. Inj. Hr'g., Pl.'s Ex. 1.

¹⁷ Prelim. Inj. Hr'g., Pl.'s Ex. 3.

¹⁸ *See generally*, Prelim. Inj. Hr'g Tr.; *see also id.* 7-10.

¹⁹ *See generally*, Prelim. Inj. Hr'g Tr., 234-435; *see also id.* 235-244.

²⁰ Prelim. Inj. Hr'g Tr. 11-12, 93-94, & 148-49. *See Sovereign Bank v. Schwab*, [414 F.3d 450, 454](#) (3d Cir. 2005); *see also Covenant Capital, LLC et al. v. Wing (In re Vescor Capital Corp. et al.)*, [599 F.3d 1189](#) (10th Cir. 2010) (in determining that the District Court did not exceed its equitable powers in ordering a litigation stay, the Tenth Circuit recognized: "And, in a case involving a Ponzi scheme, 'the interests of the Receiver are very broad and include not only protection of the receivership *res*, but also protection of defrauded investors and considerations of judicial economy.'" (quoting *SEC v. Universal Fin.*, [760 F.2d 1034, 1038](#) (9th Cir. 1985))).

Mr. Scoville's Set Aside Motion should be denied. Setting aside the receivership and abolishing or limiting the Freeze Order as requested by Mr. Scoville is not appropriate because the Receiver's independent investigation to date²¹ concludes that Traffic Monsoon was operated as a Ponzi scheme by Mr. Scoville. Thus, granting the relief Mr. Scoville seeks will be harmful to investors.

The Tenth Circuit has defined a Ponzi scheme as "an investment scheme in which returns to investors are not financed through the success of the underlying business venture, but are taken from principal sums of newly attracted investments."²² "Payment of new investor money to old investors is the *sine qua non* of a Ponzi scheme."²³ The mere fact that a company had a seemingly legitimate business activity does not preclude a determination that the company operated a Ponzi scheme.²⁴ Where returns to investors are not financed by the success of the underlying business venture, but are instead taken from principal sums of newly attracted investments, the elements of a Ponzi scheme have been met.²⁵

The evidence establishes that, despite representations made by Traffic Monsoon to investors,²⁶ Traffic Monsoon was operated as a Ponzi scheme because earlier investors were paid with new investors' money.²⁷ Mr. Scoville presented *no* evidence to contradict this evidence. In

²¹ See ¶¶ 11-13 above.

²² *Jobin v. McKay (In re M&L Business Machine Co., Inc.)*, [84 F.3d at 1332](#), n.1 (10th Cir. 1996); see also *Miller v. Wulf*, [84 F. Supp. 3d 1266, 1273](#) (D. Utah 2015) (Nuffer, C.J.) (internal citations omitted).

²³ *Miller v. Wulf*, [84 F. Supp. 3d at 1273](#); *Sender v. Heggland Family Trust (In re Hedged-Invs. Assocs., Inc.)*, [48 F.3d 470, 476](#) (10th Cir. 1995).

²⁴ See, e.g., *In re M&L Business Machine Co.*, [84 F.3d at 1332](#); *Sender v. Simon*, [84 F.3d 1299, 1302](#) (10th Cir. 1996); *Miller v. Wulf*, [84 F. Supp. 3d at 1272](#).

²⁵ *In re M&L Business Machine Co., Inc.*, [84 F.3d at 1332](#), n.1; *Miller v. Wulf*, [84 F. Supp. 3d at 1273](#).

²⁶ Prelim. Inj. Hr'g., Pl.'s Ex. 1 (Operations Declaration, Ex. 3 at 18 (Traffic Monsoon Website FAQs (stating Traffic Monsoon is not a "hyip, Ponzi, pyramid scheme or illegal"))).

²⁷ Prelim. Inj. Hr'g Tr. 25-27, 76-77, 90-91, 147, 234-435; Prelim. Inj. Hr'g., Pl.'s Exs. 3-15.

fact, he assumed that new investor money was being used to pay prior investors and made assumptions based on it.²⁸ Yet, the disclosure of the existence of the Ponzi scheme to investors does not legalize or legitimize the fraudulent behavior.²⁹

In addition, Traffic Monsoon's business model was unsustainable. At the evidentiary hearing on the Relevant Motions, Mr. Scoville's counsel spent a significant amount of time trying to show that Traffic Monsoon was a sustainable advertising business using four hypothetical scenarios.³⁰ However, the record makes clear that the hypotheticals used by Mr. Scoville's counsel to argue sustainability are fundamentally flawed and, as is the case with all Ponzi schemes, Traffic Monsoon ultimately was bound to fail.

While Mr. Scoville's four hypotheticals were meant to show that there would always be sufficient cash assets in Traffic Monsoon to pay its customers, they completely ignored the significant liabilities associated with the provision of the advertising services which Mr. Scoville contends are so vital to Traffic Monsoon's customers. These undelivered advertising services are comprised of billions of undelivered clicks and hundreds of millions of undelivered banner ads.

Specifically, for each AdPack sold, Traffic Monsoon was obligated to provide 1,000 clicks and 20 banner ads.³¹ Traffic Monsoon sold 17.45 million AdPacks.³² As a result, Traffic

²⁸ See Prelim. Inj. Hr'g, Def.'s Ex. 112 (Scenarios 2 and 4).

²⁹ See *Miller v. Hatch (In re Randall)*, Adv. Case No. 12-02468, [Docket No. 29](#) (Bankr. D. Utah Feb. 9, 2015) (finding that the Debtors operated as a Ponzi scheme and applying the Ponzi presumption notwithstanding the Debtors' arguments that no fraud occurred because it disclosed its intention to pay old investors with new investors' money).

³⁰ Prelim. Inj. Hr'g, Tr. 359-420; Def.'s Ex. 112.

³¹ See Prelim. Inj. Hr'g, Pl.'s Ex. 1 (Operations Declaration, Ex. 3 at 14 (Traffic Monsoon "Ad Plans" website page)).

Monsoon was obligated to provide approximately 17.45 billion clicks and an approximately 349 million banner ads. Pursuant to the Traffic Monsoon website, only 1.67 billion clicks had been delivered as of September 2016,³³ resulting in undelivered clicks of approximately 15.78 billion. Additionally, there would be hundreds of millions of undelivered banner ads which are still being analyzed.

Assuming, as Mr. Scoville maintains, that Traffic Monsoon members purchased AdPacks in order to receive the related advertising services, Traffic Monsoon would need to satisfy not only the liability associated with member account balances, but also the additional liability associated with undelivered advertising services. In the hypotheticals, Mr. Scoville assumed that member account balances would continue to be rolled over into new AdPacks, thus reducing the amount of cash required to be paid out.³⁴ However, every new AdPack purchased by a rollover would require Traffic Monsoon to provide 1,000 clicks and 20 banner ads, thus increasing Traffic Monsoon's liability for undelivered advertising services. Mr. Scoville's counsel admitted that Traffic Monsoon would be required to provide services to its members,³⁵ but ultimately failed to consider the related liability in any of the hypotheticals.

One way to measure the value of liabilities associated with the undelivered advertising services is to determine the amount that members would assert for the advertising services still owed to them. Using Traffic Monsoon's pricing, 1,000 clicks cost \$5.95 for a cost per click of

³² See Prelim. Inj. Hr'g., Pl.'s Ex. 6.

³³ See Prelim. Inj. Hr'g., Pl.'s Ex. 1 (Operations Declaration, Ex. 3 at 3 (Traffic Monsoon "About" website page)).

³⁴ See Prelim. Inj. Hr'g Tr. 395:6-10, 22; *id.* at 396:2.

³⁵ See Prelim. Inj. Hr'g Tr. 396:9-12.

\$0.00595, and 20 banner ads cost \$5.00 for a cost per banner ad of \$0.250.³⁶ Applying these per click and per banner costs to undelivered clicks and estimated banner ads results in a liability of approximately \$172.8 million.³⁷ This existing liability was not addressed in the hypotheticals, and in accounting for this liability (not to mention other operational costs that were ignored in the hypotheticals) it is clear that Traffic Monsoon was not sustainable.

CONCLUSION

While the appointment of a receiver is extraordinary relief, in this case it is wholly appropriate. As shown by the evidence presented at the hearing on the Relevant Motions, and as Mr. Scoville appears to admit, Traffic Monsoon was operated as a Ponzi scheme. A receiver is therefore necessary to preserve and protect the assets that exist for the benefit of those harmed by this scheme. At this point, it does not appear that there will be sufficient assets to meet all claims that may be asserted against the Receivership Estate. Accordingly, the Receiver respectfully submits that the Set Aside Motion should be denied.

Dated this 28th day of November, 2016.

DORSEY & WHITNEY LLP

/s/ Michael F. Thomson

Peggy Hunt
Michael F. Thomson
Megan K. Baker
*Attorneys for Court-Appointed Receiver,
Peggy Hunt*

³⁶ See Prelim. Inj. Hr'g., Pl.'s Ex. 1 (Operations Declaration, Ex. 3 at 8, 15 (Traffic Monsoon "Ad Plans" website page)).

³⁷ \$93,891,364 (15,780,061,146 estimated remaining clicks x \$0.00595 / click) + \$78,900,306 (348,986,460 estimated remaining banner ads x \$0.250 / banner ad) = \$172,791,670.

CERTIFICATE OF SERVICE

I certify that on November 28th, 2016, the foregoing **RECEIVER'S POST-HEARING STATEMENT** was filed with the Court and served via the Court's CM/ECF system upon the parties that receive electronic notice in the above-captioned case.

/s/ Natasha Asmus