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*Attorneys for Traffic Monsoon, LLC, and
Charles Scoville*

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

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

Defendants.

**DEFENDANTS' OPPOSITION TO
RECEIVER'S MOTION SEEKING
AUTHORIZATION (1) TO TERMINATE
MONTH-TO-MONTH SERVICES OF
SNOORK LLC AND RETURN SERVERS
TO SNOORK LLC; AND (2) TO PAY
SNOORK LLC AND MEMORANDUM IN
SUPPORT**

Civil No. 2:16-cv-00832 JNP

Defendant Scoville objects to this motion as filed and the proposed order as written because it does not provide sufficient requirements that the Receiver protect the data and it does not require the Receiver to preserve the data in a format that will allow it to be readily used by Defendant Scoville in the event that he prevails, in whole or in part, on the SEC's Motion for Preliminary

Injunction, Scoville's Motion to Dismiss, or Scoville's Motion to Set Aside the Receivership. Scoville does not object to the main relief the Receiver asks for, to make alternative arrangements for storing the data that will conserve resources, but merely asks that the Court explicitly require protections beyond what is covered in the Receiver's motion and the Receiver's proposed order.

ARGUMENT

THE RECEIVER'S SNOORK MOTION MISSTATES THE RECEIVERS AUTHORITY AND OBLIGATIONS IN THE PRESENT MATTER.

a. Scoville Has No Objection to Preserving Assets So Long as all the Assets are Preserved and Attended to In Accordance with the Law.

When a district court creates a receivership, the focus is intended "to safeguard the assets, administer the property as suitable, and to assist the district court in achieving a final, equitable distribution of the assets if necessary." *See S.E.C. v. Vescor Capital Corp.*, 599 F.3d 1189, 1194 (10th Cir. 2010) *citing Liberte Capital Group, LLC v. Capwill*, 462 F.3d 543, 551 (6th Cir.2006). (Emphasis added). Given the novel legal issues in this matter that have not been ruled on at the preliminary injunction stage, much less reached a final judgment in this Court, the receivership should be conducted conservatively and should not prejudice any party, including Scoville. *See Sec. & Exch. Comm'n v. Glenn W. Turner Enterprises, Inc.*, 348 F. Supp. 766, 777 (D. Or. 1972), aff'd, 474 F.2d 476 (9th Cir. 1973) (a Receivership order unnecessary when it may have a drastic effect upon defendants' business, especially when the decision rests in part on relatively untried legal theories and where the SEC has not shown that the corporate defendants are insolvent or that the appointment of a receiver is otherwise appropriate).

While Scoville does not object to breaking the lease and removing the Traffic Monsoon from the Snoork servers, it is imperative in this litigation that the data be preserved in its native format. While the Court has broad powers and wide discretion to determine relief in an equity receivership under the temporary order for injunctive relief, removing the data from the Snoork

servers without adequate protections may deny the parties to the litigation due process by destroying evidence. *See Fuentes v. Shevin*, 407 U.S. 67, 80–82, 92 S.Ct. 1983, 1994–95, 32 L.Ed.2d 556 (1972) (discussing generally when due process requires hearing *before* deprivation of significant property interest). Because the litigation in this matter concerns the operation of Traffic Monsoon, and because the business operated largely through the website captured in the data on the Snoork servers, preservation of the Snoork data in a format useable by all parties to the litigation is imperative.

Other courts have agreed with this logic: “an order imposing a temporary freeze of assets is often necessary simply to preserve the status quo while an investigation is conducted to clarify the sources of various funds” and that “an order imposing a temporary freeze is not be tantamount to an order of attachment.” *See Commodity Futures Trading Comm'n v. Morgan, Harris & Scott, Ltd.*, 484 F. Supp. 669, 678-679 (S.D.N.Y. 1979) (internal citation omitted). Because the data from the Snoork websites would be used to reconstitute the Traffic Monsoon website if Mr. Scoville prevails, the Court should require the Receiver to maintain the data in a format that will not prejudice his ability to restart his business, regardless if it is on the Snoork Servers or another web hosting provider in another country, if the Court rules in his favor, in whole or in part.

b. The Court Should Grant an Order that Save Cost and Preserves the Assets.

The data on the Snoork Servers is important to be preserved. However, it can be, if preserved properly, equally useful in a format other than as currently constituted on the Snoork servers. Thus, Scoville asks this Court to enter an order allowing the Receiver to remove the data from the Snoork servers but requiring that:

1. The data is maintained in a manner that ensures that all data on the Snoork Servers at the time the Receivership Order was entered be preserved as they were at the time the Order was entered; and,

2. Upon the proper order, opinion or other ruling from this Court relating to the Receiver's control of the Receivership Estate that explicitly returns the Receivership Estate to Scoville or that allows Scoville to operate Traffic Monsoon in whole or in part (including an order allowing the operation of Traffic Monsoon outside the territory of the United States), the Receiver will, along with the other property of the Receivership Estate, provide Scoville with the data from the Snoork server in a format that will allow Scoville to operate the Traffic Monsoon business without cost or improper delay.

CONCLUSION

Based on the above stated facts and legal precedent provided, Scoville has no substantive opposition to this Court supporting an effort to reduce unnecessary cost. However, Scoville merely asks that this Court uphold his due process rights and enter an order that requires the Receiver to preserve the data in a format that can be used by Scoville both for litigation and, upon prevailing, to restart his business including outside of the United States.

DATED: March 10, 2017

WASHBURN LAW GROUP, LLC

/s/ D. Loren Washburn
D. Loren Washburn

CERTIFICATE OF SERVICE

I hereby certify that on March 10, 2017, the foregoing **DEFENDANTS' OPPOSITION TO RECEIVER'S MOTION SEEKING AUTHORIZATION (1) TO TERMINATE MONTH-TO-MONTH SERVICES OF SNOORK LLC AND RETURN SERVERS TO SNOORK LLC; AND (2) TO PAY SNOORK LLC AND MEMORANDUM IN SUPPORT** was served upon the person(s) named below, at the address set out below by CM/ECF:

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