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*Attorneys for Court-Appointed Receiver Peggy Hunt*

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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.

**RECEIVER'S MOTION TO ESTABLISH  
ADMINISTRATIVE EXPENSE  
PAYMENT PROCEDURES AND  
MEMORANDUM OF LAW IN SUPPORT**

2:16-cv-00832-JNP

The Honorable Jill N. Parrish

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Peggy Hunt, the Court-appointed Receiver in the above-captioned case (the “Receiver”), by and through counsel, hereby submits this *Motion to Establish Administrative Expense Payment Procedures and Memorandum of Law in Support* (the “Motion”), requesting approval of the procedures discussed below for the allowance and payment of fees and expenses incurred by the Receiver, her legal counsel Dorsey & Whitney LLP (“Dorsey”), her accountants Berkeley Research Group (“BRG”), and any other professionals that the Receiver employs with Court approval (collectively, the “Professionals”). The Receiver has informed the Securities and

Exchange Commission (“SEC”) of this Motion and the procedures proposed herein, and the SEC has stated that it has no objection to the relief sought herein.

For the reasons set forth in the *Memorandum of Law* below, the Receiver respectfully requests that this Court grant this Motion. A proposed form of order is attached hereto as **Exhibit A**.

## **MEMORANDUM OF LAW**

### **I. BACKGROUND**

#### **A. Procedural History**

1. On July 26, 2016, the Securities and Exchange Commission (the “SEC”) commenced the above-captioned action against the Defendants, alleging in its Complaint that the Defendants violated numerous securities laws. That same day, the Court entered a *Temporary Restraining Order and Order Freezing Assets*, which was amended on July 27, 2016.<sup>1</sup>

2. On July 27, 2016, the Court appointed the Receiver pursuant to an *Order Appointing Receiver* (the “Receivership Order”).<sup>2</sup>

3. Defendant Charles D. Scoville (“Scoville”) thereafter contested the SEC’s request for entry of a preliminary injunction, and filed a *Motion to Set Aside Receivership*.<sup>3</sup>

4. On March 28, 2017, the Court entered, among other things, a *Preliminary Injunction* and an *Amended Order Appointing Receiver* (“Amended Receivership Order”).<sup>4</sup> As a

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<sup>1</sup> [Docket Nos. 8](#) and [14](#).

<sup>2</sup> [Docket No. 11](#).

<sup>3</sup> [Docket Nos. 32, 33, 45](#); *see also* [Docket Nos. 38, 39, 48, 49, 53](#) (SEC response).

result, Scoville's objections to the SEC's request for the entry of a preliminary injunction were overruled, and Scoville's *Motion to Set Aside Receivership* was denied. Ms. Hunt will continue to serve as receiver.

**B. Relevant Orders Governing Employment and Administrative Expenses**

5. The Receivership Order and the Amended Receivership Order authorize the Receiver to retain Dorsey as her counsel and to retain other professionals with Court approval.<sup>5</sup> On September 6, 2016, the Court entered an *Order Granting Receiver's Ex Parte Motion Seeking Authorization to Employ Accountants*<sup>6</sup>, approving the Receiver's employment of BRG as her accountants.

6. The Receivership Order and Amended Receivership Order further provide that the Receiver and Professionals employed by her with Court approval are entitled to reasonable compensation and expense reimbursement from the Receivership Estate, and that such compensation and reimbursement must be approved by the Court.<sup>7</sup>

**C. Status of Fee Requests To Date**

7. On May 11, 2017, the Receiver filed her *First Interim Fee Application* (the "First Fee Application"), requesting approval of fees and expenses incurred by the Receiver, Dorsey and BRG for the period of July 2016 through March 31, 2017, and authorization to pay the same.<sup>8</sup> No fees have been paid or expenses reimbursed since the commencement of the case.

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<sup>4</sup> [Docket Nos. 80](#) and [81](#).

<sup>5</sup> [Docket Nos. 11](#) and [81](#) (Receivership Order ¶ 19 and Amended Receivership Order ¶ 17).

<sup>6</sup> [Docket No. 25](#).

<sup>7</sup> [Docket Nos. 11](#) and [81](#) (Receivership Order ¶ 20 and Amended Receivership Order at ¶ 18).

<sup>8</sup> [Docket No. 93](#).

8. For the reasons discussed below, the Receiver requests approval of procedures to govern future requests for approval and payment of administrative expenses.

**II. RELIEFF REQUESTED AND PROPOSED MONTHLY PAYMENT PROCEDURES**

**A. Relief Requested**

9. To conserve resources pending resolution of Scoville's request to set aside the receivership, the Receiver postponed filing the above-referenced First Fee Application until May 11, 2017. Accordingly, the First Fee Application covers a period of a little over seven months, containing a large amount of information for the Court, and has resulted in a delay in the payment of the Receiver and her professionals for services rendered during period covered by the First Fee Application.

10. The Receiver proposes to streamline this process going forward by seeking approval of the payment procedures outlined below.

11. The SEC has reviewed the proposed procedures and has no objection thereto.

12. Such procedures are proposed primarily for the purposes of judicial economy and to aid in the efficiency of the administration of the Receivership Estate, including by providing for the timely payment of the Professionals and avoiding the filing of lengthy fee requests.

13. The Receiver believes that the proposed procedures set forth below are fair and reasonable and in the best interests of the Receivership Estate and parties in interest. They will allow the Court and all parties in interest to timely and closely monitor administrative expenses incurred while at the same time allowing for timely payment of the Professionals.

14. The procedures proposed herein would not apply to the First Fee Application, but are only meant to apply to fees and expenses incurred on and after April 1, 2017.

**B. Proposed Monthly Payment Procedures**

15. Interim Requests. Each Professional who has rendered services to the Receivership Estate in a given month will submit to the Receiver and the SEC a *Notice of Request for Payment* (“Request”) seeking interim payment as outlined below.

16. Content of Request. A Request may seek interim payment of no more than eighty percent (80%) of the total fees for actual and necessary services rendered during the month in question, and one hundred percent (100%) of the out-of-pocket expenses incurred by the Professional in rendering such services. The Request must summarize the total time expended by the Professional, the total amounts being billed, and the amounts sought for interim payment pursuant to these monthly procedures. The Professional must attach to each Request “Invoices” that include a detailed and chronological listing of the services provided, identify the persons providing the services, state the time expended by the Professionals who performed the services, and describe the expenses incurred. Unless ordered otherwise, Invoices may be redacted for public filing as deemed necessary in the sole discretion of the Receiver. In such instances, the Professional will submit unredacted invoices to the SEC and the Court, but file redacted Invoices with the Court.

17. Filing of Request. A Request may be filed with the Court after the earlier of (a) approval of the Request by the SEC and the Receiver, and (b) ten (10) days after the date that the Request is submitted to the SEC and the Receiver.

18. Service of Request. A Request that is filed with the Court must be served by the Professional via email on the SEC, the Receiver, and counsel for the Receiver at the addresses

listed below, and by ECF on the same parties and counsel for any other party who files a notice specifically seeking copies of such Requests (collectively, the “Notice Parties”).

19. Interim Objection Period. An objection to the payment of fees or reimbursement of expenses in a Request must be filed with the Court and served on the Notice Parties within ten (10) calendar days of the date the Request was filed with the Court (the “Interim Objection Period”).

20. Required Objection Content. Each objection must specifically describe the specific subject matter in dispute, identify the line items in the Invoices that are objectionable, and state the total amount in dispute. It will not be sufficient to make a blanket objection to all fees and expenses.

21. Objection Procedures. If an objection is timely filed and served prior to the expiration of the Interim Objection Period, the objection shall be considered at the “Fee Application Hearing” on the Interim Fee Application (as defined below) for that period. The party in interest making the objection, or its counsel, must attend the Fee Application Hearing or the objection will be deemed waived.

22. Interim Payment. If no objection to a Request is timely filed and served within the Interim Objection Period, the Receiver is authorized to make payment as requested in the Request on an interim basis promptly upon the expiration of the Interim Objection Period. If an objection is timely filed and served within the Interim Objection Period, the Receiver is authorized to make interim payment of the Request of the fees and expenses that are not in dispute. If there is no objection to any line item, then the fee or expense that accompanies that line item shall be paid as described herein. No disputed amount may be paid until the objection

is considered by the Court and an order is entered allowing the disputed fees and expenses.

Interim payments pursuant to these procedures will be made only if the Receiver determines, in her sole discretion, that sufficient funds are available to make payment. To the extent that the Receiver determines there are funds available for interim payments for any month, but that such funds are insufficient to pay all Requests in accordance with these procedures, the Receiver may make interim payments in accordance with the procedures herein on a *pro rata* basis from funds that the Receiver determines, in her sole discretion, are available for distribution.

23. Court Order Required. No portion of funds paid to a Professional pursuant to a Request will be deemed to have been allowed by the Court unless and until the Court enters an order expressly allowing the Professional's fees and expenses after the filing of an Interim Fee Application (defined below).

24. Interim Fee Application Required. Each Professional filing Requests during any part of a calendar quarter is required to file an "Interim Fee Application" within thirty (30) days after the close of the quarter. If a Professional does not timely file an Interim Fee Application, it shall not be permitted to submit and file additional Requests until it has filed the required Interim Fee Application.

25. Content of Interim Fee Application. Each Interim Fee Application must include a summary of the Requests made during the quarter, the interim payments that were made to the Professional, the reason for any holdback over twenty (20) percent of fees requested, and may contain a response to any pending objection filed during the applicable Interim Objection Period. The Interim Fee Application also must request allowance by the Court of 100% of the fees

incurred and expenses paid, and seek authorization from the Court for the Receiver's payment of all allowed fees and expenses from funds of the Receivership Estate.

26. Service of Interim Fee Application. No later than ten (10) days prior to the filing of the Interim Fee Application, the Professional must serve the proposed Interim Fee Application by email on the SEC and the Receiver at the addresses set forth below. Upon filing the Interim Fee Application with the Court, the service requirements set forth above for service of Requests on Notice Parties apply to the Interim Fee Application.

27. Fee Application Hearing. After the filing of Interim Fee Applications each quarter, the Court may schedule and conduct a Fee Application Hearing. Such a Hearing will be set if there have been timely objections filed during the applicable Interim Objection Periods. If no objections have been filed during the Interim Objection Periods or within 14 days of the filing of the Interim Fee Application, the Court may enter orders approving uncontested Interim Fee Applications either with or without holding a Fee Application Hearing.

28. Payment. The Receiver is not authorized to pay any unpaid fees or expenses requested in an Interim Fee Application unless and until she is authorized to do so by the Court. In the event that the Professional has been paid fees or expenses on an interim basis that are subsequently disallowed by the Court, the Professional must, unless otherwise ordered by the Court, return the funds to the Receivership Estate.

29. Service Addresses. For purposes of service required pursuant to the proposed procedures, the follow addresses apply:



The Receiver

Peggy Hunt  
Michael F. Thomson  
John J. Wiest  
DORSEY & WHITNEY LLP  
136 South Main Street, Suite 1000  
Salt Lake City, UT 84101-1685  
[hunt.peggy@dorsey.com](mailto:hunt.peggy@dorsey.com)  
[thomson.michael@dorsey.com](mailto:thomson.michael@dorsey.com)  
[wiest.john@dorsey.com](mailto:wiest.john@dorsey.com)

The SEC

Daniel Wadley  
Amy J. Oliver  
Cheryl M. Mori  
Alison J. Okinaka  
Securities and Exchange Commission  
351 S West South Temple, Suite 6.100  
Salt Lake City, UT 84101  
[wadleyd@sec.gov](mailto:wadleyd@sec.gov)  
[olivera@sec.gov](mailto:olivera@sec.gov)  
[moric@sec.gov](mailto:moric@sec.gov)  
[okinakaa@sec.gov](mailto:okinakaa@sec.gov)

30. Final Fee Application. At the conclusion of the receivership, final fee applications must be filed for each Professional seeking final allowance of all fees and expenses requested. All fees and expenses allowed and paid prior to the entry of an order approving such final fee applications are interim in nature.

**III. APPLICABLE LAW**

The Court has broad powers and wide discretion to determine the appropriate relief in an equity receivership.<sup>9</sup> This authority extends to procedures meant to aid in the efficient

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<sup>9</sup> See, e.g., *Wing v. Gillis*, [525 F. App'x 795, 798](#) (10th Cir. 2013); *United States v. Gibas*, [2007 U.S. Dist. LEXIS 35176, at \\*7](#) (D. Utah May 11, 2007); *S.E.C. v. Capital Consultants, LLC, et al.*, [397 F.3d 733, 738](#) (9th Cir. 2005); *S.E.C. v. Forex Asset Management LLC, et al.*, [242 F3d 325, 331](#) (5th Cir. 2001); *S.E.C. v. Fischbach Corp.*, [133](#)

administration of a receivership estate, including procedures for the payment of administrative expenses of an estate.<sup>10</sup> Procedures similar to those requested herein have been approved in other receivership cases filed in the District of Utah.<sup>11</sup>

Here, the Receiver's proposed procedures are fair and reasonable, and implementation of the procedures would be in the best interests of the Receivership Estate and parties in interest. Specifically, the proposed procedures are designed to allow the Court and all parties in interest to timely and closely monitor the costs of administration. Also, they permit for the timely payment of the Professionals who are necessarily providing services to the Receivership Estate. Finally, approval of the proposed procedures serves interests of judicial economy and administrative efficiency by avoiding lengthy and delayed requests for the allowance of administrative expenses.

### **CONCLUSION**

For all of the reasons stated above, the Receiver respectfully requests that this Motion be granted and that the Court enter the proposed order attached hereto as **Exhibit A** approving the payment procedures set forth herein. The Receiver has informed the SEC of this Motion and the proposed procedures, and the SEC has stated that it has no objection to the relief sought herein.

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[F.3d 170, 175](#) (2d Cir. 1997); *United States v. Vanguard Investment Co., Inc.*, [6 F3d 222, 227](#) (4th Cir. 1993); *S.E.C. v. Elliott, et al.*, [953 F.2d 1560, 1569-70](#) (11th Cir. 1992).

<sup>10</sup> See, e.g., *Wing v. Gillis*, [525 F. App'x 795, 799](#) (10th Cir. 2013); *SEC v. Hardy*, [803 F.2d 1034, 1038](#) (9th Cir. 1986); *United States v. Gibas*, [2007 U.S. Dist. LEXIS 35176, at \\*9](#) (D. Utah May 11, 2007).

<sup>11</sup> See, e.g., *S.E.C. v. Management Solutions, Inc., et al.*, Case No. 2:11-cv-01165BSJ (D. Utah), [Docket. No. 1986](#) (Order Granting Receiver's Motion for Order Establishing Monthly Fee and Expense Reimbursement Procedures).

DATED this 12<sup>th</sup> day of May, 2017.

**DORSEY & WHITNEY LLP**

*/s/ Peggy Hunt*

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Peggy Hunt

Michael F. Thomson

Nathan S. Seim

*Attorneys for Receiver, Peggy Hunt*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 12<sup>th</sup> day of May, 2017, I caused the foregoing **RECEIVER'S MOTION TO ESTABLISH ADMINISTRATIVE EXPENSE PAYMENT PROCEDURES AND MEMORANDUM OF LAW IN SUPPORT** 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/ Candy Long

*Prepared and submitted by:*

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Michael F. Thomson (Utah State Bar No. 9707)  
John J. Wiest (Utah State Bar No. 15767)  
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*Attorneys for Court-Appointed Receiver Peggy Hunt*

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**IN THE UNITED STATES DISTRICT COURT  
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SECURITIES AND EXCHANGE  
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V.

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

Defendants.

**ORDER GRANTING RECEIVER'S  
MOTION TO ESTABLISH  
ADMINISTRATIVE EXPENSE  
PAYMENT PROCEDURES**

2:16-cv-00832-JNP

The Honorable Jill N. Parrish

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The matter before the Court is the *Receiver's Motion to Establish Administrative Expense Payment Procedures and Memorandum of Law in Support* [Docket No. \_\_\_\_] (the "Motion") filed by Receiver Peggy Hunt, requesting approval of certain procedures set forth in paragraphs 15 through 30 of the Motion (the "Procedures") for the allowance and payment of fees and expenses incurred by the Receiver, her legal counsel Dorsey & Whitney LLP, her accountants Berkeley

Research Group, and any other professionals that the Receiver employs with Court approval (collectively, the “Professionals”).

The Court has reviewed the Motion, the applicable law, and for good cause appearing,

**IT IS HEREBY ORDERED THAT:**

1. The Motion is **GRANTED**;
2. The Procedures are **APPROVED** and shall apply to all fees and expenses incurred by the Professionals on or after April 1, 2017; and
3. The Receiver is **AUTHORIZED** to make payments to the Professionals in accordance with the Procedures.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2017.

**BY THE COURT**

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The Honorable Jill N. Parrish  
United States District Court Judge