

D. Loren Washburn (#10993)
lwashburn@smithcorrell.com
SMITH CORRELL, LLP
8 East Broadway, Suite 320
Salt Lake City, UT 84111
Telephone: (801) 584-1800
Facsimile: (801) 584-1820

Attorneys for Charles D. 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.

**[REDACTED] MOTION TO EXCUSE
APPEARANCE OF DEFENDANT
CHARLES SCOVILLE AT UPCOMING
EVIDENTIARY HEARING AND
MOTION TO EXCUSE COMPLIANCE
WITH SUBOPENA**

Civil No. 2:16-cv-00832 JNP

By and through his counsel, Charles Scoville hereby respectfully submits the following Motion to Excuse Appearance of Defendant Charles Scoville At Upcoming Evidentiary Hearing and Motion to Excuse Compliance with Subpoena.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

By order dated March 16, 2018, the Court ordered Mr. Scoville to reply to the Receiver's Motion for an Order to Show Cause and scheduled a hearing on that Order for April 11, 2018. Although the Court's order did not specify that Mr. Scoville's presence at the hearing was required, given the nature of the hearing the undersigned ("Counsel") believed it was prudent to seek leave of the Court to excuse Mr. Scoville from attending the hearing due to his present medical condition.

Further, the Receiver issued a subpoena to Mr. Scoville requiring him to produce various documents related to the transfer at issue in the Receiver's Motion on April 6, 2018.

For the reasons identified below, Counsel also seeks an order excusing compliance with the Subpoena based on Mr. Scoville's current medical condition and inability to assist counsel in preparing the required response.

II. RELEVANT FACTUAL BACKGROUND

[REDACTED]

1

[REDACTED]

[REDACTED]

Counsel has endeavored to represent Mr. Scoville's interests and has received general directions from Mr. Scoville at times in the past few months, but to be clear, the response to the Receiver's Order to Show Cause filed roughly contemporaneously with this Motion was prepared without the opportunity to speak with Mr. Scoville about the underlying matters.

In preparing this Motion, and in preparing the response to the Motion for an Order to Show Cause, Counsel has consulted with Mr. Scoville's family both to be informed of facts and to obtain direction that Mr. Scoville has not been able to provide.

III. ARGUMENT

(a) MR. SCOVILLE SHOULD BE EXCUSED FROM ATTENDING THE APRIL 11, 2018 HEARING.

[REDACTED]

Because the Receiver did not point to any evidence in her motion to establish that Mr. Scoville participated in the transfer of the subject real property—as opposed to this being merely a fraud by third parties against the receivership estate—she has not, and is unlikely to, meet her burden to show that Mr. Scoville violated any order of this Court.

(b) MR. SCOVILLE SHOULD BE EXCUSED FROM COMPLYING WITH THE RECEIVER'S SUBPOENA AT THIS TIME.

Counsel also requests that Mr. Scoville be excused from complying with the subpoena issued by the Receiver. The subpoena requires Mr. Scoville to produce documents related to the Receiver's Motion. The subpoena is not improper, nor is it Counsel's position that Mr. Scoville

could not be compelled to produce such documents if they exist. However, for the reasons cited above, Counsel cannot assist Mr. Scoville in preparing a response to the subpoena, does not know whether any responsive documents exist, and does not know how to obtain such documents if they do exist.

Further, in consultation with Mr. Scoville's family members, Counsel has discovered that they are not aware of any responsive documents and are dubious that Mr. Scoville had anything to do with the transfer. They are even more dubious, given frequent requests for money before, contemporaneous with, and after the transfer took place, that Mr. Scoville received any money from the sale of the property—if he was even aware of it at any time prior to the filing of the Receiver's Motion. As a result, Counsel is neither able to produce documents nor able to certify that no responsive documents exist. Given Mr. Scoville's inability to assist counsel in responding to the subpoena, ordering compliance with the subpoena issued by the Receiver at this time would be a hollow act and would not assist the Receiver or the Court in determining how this asset of the receivership was disposed of without the Receiver's authorization or knowledge.

IV. CONCLUSION

Based on the foregoing, Mr. Scoville respectfully requests: (1) that he be excused from attending the hearing scheduled for April 11, 2018; and (2) that he be relieved from responding to the Receiver's subpoena, at least for the present time.

DATED: April 2, 2018

SMITH CORRELL, LLP

/s/ D. Loren Washburn
D. Loren Washburn
Counsel for Charles Scoville

CERTIFICATE OF SERVICE

I hereby certify that on April 2, 2018, the foregoing [REDACTED] **MOTION TO EXCUSE APPEARANCE OF DEFENDANT CHARLES SCOVILLE AT UPCOMING EVIDENTIARY HEARING AND MOTION TO EXCUSE COMPLIANCE WITH SUBOPENA** was served upon the person(s) named below, at the address set out below by ECF and email:

Daniel J. Wadley
Amy J. Oliver
Alison J. Okinaka
Cheryl M. Mori
SECURITIES EXCHANGE COMMISSION
351 South West Temple, Suite 6.100
Salt Lake City, Utah 84101

Peggy Hunt (Utah State Bar No. 6060)
Michael Thomson (Utah State Bar No. 9707)
John J. Wiest (Utah State Bar No. 15767)
DORSEY & WHITNEY LLP
111 South Main Street, UT 84111-2176
Salt Lake City, UT 84111-2176

/s/ Melina Hernandez
