

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS
TOPEKA DIVISION**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

DAVID TANNER, Individually, and d/b/a
CAPITAL ENHANCEMENT CLUB,
ROCKY D. SPENCER,
MARROC CORP., and
RICHARD P. KRINGEN,

Defendants,

and

MARGARET F. SPENCER,
OMNIBUS LLC,
VECTRA RESOURCES, LLC, and
DYNAMIC ENVIRONMENTAL SOLUTIONS, INC.,

Relief Defendants.

Civil Action No.
05-4057-SAC

**JOINT MOTION TO ENTER AGREED ORDER OF PERMANENT INJUNCTION
AND ORDER OF DISGORGEMENT AGAINST DAVID TANNER**

The Securities and Exchange Commission (“Commission”), joined by Defendant David Tanner, d/b/a Capital Enhancement Club (“Defendant” or “Tanner”), move the Court to enter an order permanently enjoining Tanner from violations of the federal securities laws and other equitable relief and respectfully shows the Court as follows:

1. On May 4, 2005, the Commission filed suit against Defendant Tanner and others alleging that Tanner engaged in violations of the federal securities laws.
2. Defendant has offered to consent to some of the relief sought by the Commission in its Complaint. Specifically, Tanner, without admitting or denying the

allegations in the Commission's Complaint, has agreed to the entry of an order permanently enjoining him from violations of Sections 5 and 17(a) of the Securities Act [15 U.S.C. §§ 77(e) and 77q(a)] and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder [15 U.S.C. §78j(b) and 17 C.F. R. §240.10b-5]. Tanner has further offered to consent to the entry of an order directing him to disgorge \$15 million. With respect to these two remedies, Tanner has offered to consent to the full relief sought by the Commission.

3. Tanner understands, and the parties agree that, although \$15 million represents the full amount of disgorgement currently sought in the Commission's Complaint, the court-appointed Receiver may later seek to modify and increase the amount of disgorgement from Tanner pending the completion of his investigation of Tanner's and the Capital Enhancement Club's financial activities. The Receiver may make this application to the Court at any time prior to his completion and ultimate discharge from this matter. In response to any such application by the Receiver, Tanner may assert any legally permissible defense. Solely for purposes of determining Tanner's compliance with the order of disgorgement, Tanner shall receive credit for any funds in the Receivership Estate collected from Seaforth Meridian and/or VEF Bank.

4. Accordingly, the parties have prepared the form of an Agreed Order of Permanent Injunction and Order of Disgorgement against David Tanner ("Agreed Order") for the Court's entry and tender it along with this motion for the Court's consideration.

5. The form of the Agreed Order, beyond ordering the injunctive relief described above, also modifies the Order Appointing Receiver entered by this Court on

May 4, 2005, and the Order of Preliminary Injunction, Order Freezing Assets and Granting Other Relief entered on May 17, 2005 (the "Freeze Order"). A substantial portion of the funds intended to be used to satisfy the Agreed Order are currently frozen in interest bearing accounts created pursuant to the Freeze Order and Order Appointing Receiver. Any funds obtained by the Receiver in which Tanner or CEC had a beneficial interest shall be paid into the receivership estate and any right, title or interest Defendant Tanner or CEC may have in the monies paid into the Receivership Estate are hereby terminated. The Commission may enforce the Court's judgment for disgorgement by moving for civil contempt and through other collection procedures authorized by law. In response to any such civil contempt motion by the Commission, Tanner may assert any legally permissible defense.

6. Tanner's offer to agree to the foregoing relief leaves two claims sought by the Commission unresolved. Specifically, the Commission has a claim against Tanner for prejudgment interest on the amount disgorged and a claim for a civil monetary penalty. The Commission may, at its discretion and at any time prior to the completion of this matter against all parties, petition the court to set appropriate amounts of prejudgment interest and a civil money penalty. If such a motion is filed, Tanner shall have the opportunity to challenge both the award and amount of any prejudgment interest and civil penalties.

7. The Receiver has reviewed this motion and concurs in the relief sought.

Respectfully submitted,

DATED: September 9, 2005.

By: **s/ ROBERT L. HERSKOVITS**
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CERTIFICATE OF SERVICE

I hereby certify that on September 9, 2005, I electronically filed the foregoing **JOINT MOTION TO ENTER AGREED ORDER OF PERMANENT INJUNCTION AND ORDER OF DISGORGEMENT AGAINST DAVID TANNER** with the Clerk of the Court for the District of Kansas, Topeka Division, by using the CM/ECF system which will send a notice of electronic filing to the following CM/ECF participants:

Michael Bachner, Robert L. Herskovits and Thomas D. Haney, Counsel for Defendant Tanner;

Christopher M. Joseph & Stephen M. Joseph, Counsel for Spencer Defendants;

Roger N. Walter and Christopher Bebel, Counsel for Relief Defendant Vectra Resources, LLC;

Kenneth L. Weltz & Brian M. Holland, Counsel for Receiver.

s/ TIMOTHY P. DAVIS

Timothy P. Davis