

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

SECURITIES AND EXCHANGE COMMISSION,

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-RDR

**DECLARATION OF LARRY COOK IN SUPPORT OF MEMORANDUM OF
LAW IN SUPPORT OF JOINT MOTION TO MODIFY JUDGMENT AND
ORDER OF DISGORGEMENT AGAINST DEFENDANT DAVID TANNER**

I, Larry E. Cook, do hereby declare under penalty of perjury, in accordance with 28 U.S.C. Section 1746, that the following is true and correct, I am competent to testify as to matters stated herein, and this declaration is based on personal knowledge.

1. I am over 21 years of age. Since January 2000, I have been employed as a fraud examiner, investigator, and consultant providing investigative and consulting services to private and government clients nationwide. In this capacity, I have been appointed as a Receiver in U.S. District Court in Kansas in civil actions filed by the

Exhibit A

United States Securities and Exchange Commission. I am presently serving as Receiver in the captioned case.

2. During the course of my duties in this case, I learned that Tucker's female companion in St. Maarten was named Elizabeth Alaniz. Upon checking the SEC's litigation database, I located a securities fraud case involving Elizabeth Alaniz and Scott "L" Klion captioned *SEC v. Scott L. Klion d/b/a Cen-Tex Alchemy Guild, et. al.*, Case No. 6:98-CV-186 in the United States District Court for the Western District of Texas. I alerted Timothy P. Davis, former trial attorney for the Commission in charge of this case, of this discovery. Mr. Davis requested and obtained a copy of Scott Klion's Texas driver's license. Upon review of Klion's Texas driver's license, I confirmed Klion's full name was Scott Fraiser Klion and that Klion's middle initial of "L" reported in the Western District of Texas case was inaccurate.

3. I contacted the accountant employed by the *Cen-Tex* case Receiver. During my conversations with the accountant, I learned Klion fled to the Caribbean before the *Cen-Tex* case was completed.

4. During the course of my duties both in this case and in the related case of *SEC v. Seaforth Meridian, et al.*, Case No. 06-4107, I met with and deposed Jerome P. Catuzzi, Jr., former counsel for Seaforth Meridian LTD. On December 7, 2006, my counsel deposed Mr. Catuzzi. Mr. Catuzzi identified a copy of Scott Fraiser Klion's Texas driver's license as the individual who represented himself as James Tucker on St. Maarten. A copy of the Catuzzi deposition excerpt and Scott Fraiser Klion's driver's license is attached to this Declaration as **Exhibit A-1**.

5. In accordance with the Court's order relating to the receivership, I have located the bank accounts that received CEC investor funds. To date, I have obtained the account records for over seventy different domestic and foreign bank accounts in order to trace the source and use of investor funds. In addition, I have examined the account records of six electronic currency providers who facilitated payments to and from investors.

6. On November 20, 2006 the Court reviewed the investor claims and recommendations presented by the Receiver for allowance or disallowance. The Receiver has recommended the allowance of claims totaling \$19,800,974 based on the claims filed by 1146 investors.

7. Based on the Court's recommendation relating to investor claims, the disgorgement calculation reflecting the economic benefit to Defendant Tanner/Klion is the total amount of investor claims, or \$19,800,974.

8. Below, I also calculated prejudgment interest on the disgorgement amount and beginning on the day following the filing of this action May 5, 2005 to November 30, 2006. In calculating the prejudgment interest I used the rates established for interest on tax underpayments under Section 6621 of the Internal Revenue code for the relevant periods. I applied these rates (without the effect of compounding interest) to the net outstanding balance on a daily basis. Based on these calculations I have determined the accrued interest through November 30, 2006 on the investor funds received by Tanner/Klion is \$2,221,136.

Amount received from investors: \$19,800,974

27 days in May 2005 based on IRS Sect 6621 rate of 6%	\$ 89,104
June 1, 2005 to September 30, 2005 at IRS rate of 6%	\$ 399,000
October 1, 2005 to June 30, 2006 at IRS rate of 7%	\$1,064,140

July 1, 2006 to November 30, 2006 at IRS rate of 8%	<u>\$ 668,892</u>
Total Prejudgment Interest	\$2,221,136

9. Tanner/Klion communicated with the investors by emailing newsletters misrepresenting returns on investments, to solicit new investments, and to provide banking instructions for transferring new investment funds to the bank accounts of electronic currency exchangers. The Receiver is aware of at least fifteen newsletters sent to investors in 2004 and 2005.

I declare under penalty of perjury the foregoing is true and correct:

Date: May 9, 2007



Larry E. Cook

1 citizen of another country. But our needs are so
2 great these days, who knows.

3 But that didn't ring true. So after that I
4 went back to CRG and said let's look into this fellow
5 the best you can. Both reports of CRG on Tucker and
6 Zarubi were given to the receiver on request.

7 (Catuzzi Exhibit No. 2 was marked for
8 identification.)

9 BY MR. HOLLAND:

10 Q. Mr. Catuzzi, let me hand you what has been
11 marked Catuzzi Exhibit 2. I placed some Post-it notes
12 covering up some information, but there is a picture
13 of an individual.

14 A. That's the gentleman.

15 Q. Can you identify him?

16 A. That's the fellow that I met in St. Maarten
17 representing himself to be Tucker.

18 Q. James Tucker?

19 A. James Tucker, yeah.

20 Q. And from your reaction, that was an
21 instantaneous recognition of him.

22 A. Oh, yeah, especially the beard.

23 Q. And just for the record, I'm going to pull
24 off the Post-it notes now. I have covered up
25 information on his real identity.

1 Can you identify Exhibit 2? You haven't seen
2 it before, but --

3 A. I have not. I don't know. I didn't know his
4 name Klion, Scott or Frasier. None of those names
5 have been in the files that I know of. I knew him as
6 Tucker. And I think Friedrich knew him as Tucker.
7 Friedrich was the only one that knew him personally,
8 having spent a couple days with him. He and his wife,
9 Friedrich and his wife, spent a couple of days with
10 this gentleman, whatever his name is. Let's call him
11 Tucker. And so he is the only one that personally met
12 him before me.

13 Q. No doubt in your mind that the exhibit that's
14 been marked Exhibit 2 is the individual you knew as
15 James Tucker?

16 A. No. That's him.

17 MR. HOLLAND: Off the record for a second.

18 (Discussion off the record.)

19 BY MR. HOLLAND:

20 Q. To recap, you had a meeting with the man you
21 knew as James Tucker?

22 A. Correct.

23 Q. You came back and obtained reports on him?

24 A. Correct, from CRG.

25 Q. What happened after that?

Texas Department of Public Safety

NAME: KLION, SCOTT FRASIER

NO: **16279895**

CLASS: C DOB: 020168

IMAGE DATE: 02101998 STATION: 628

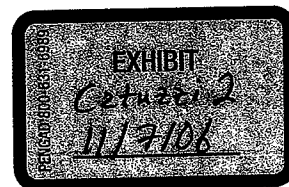
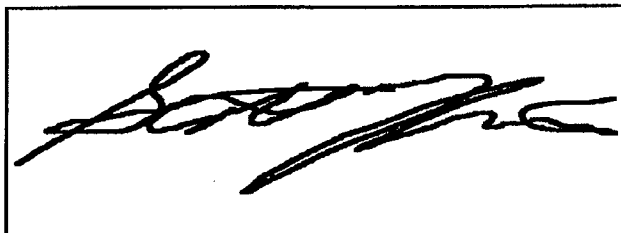
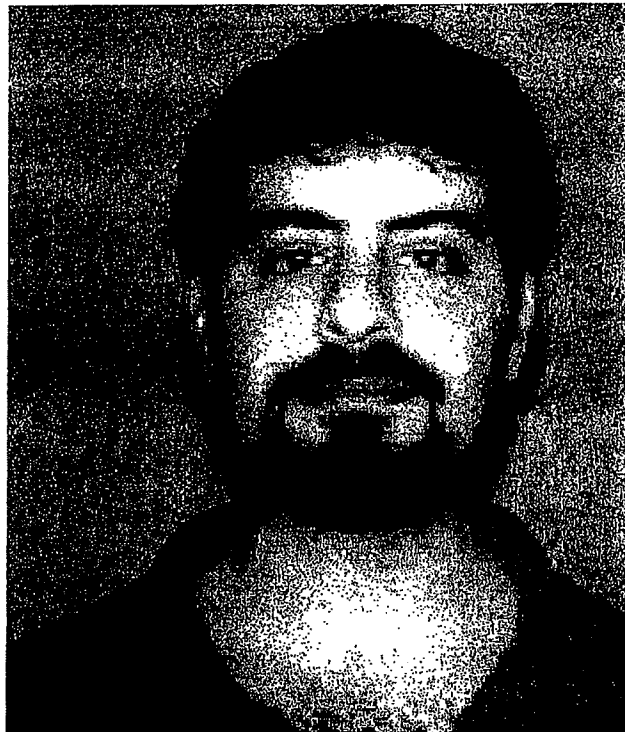
EXPIRATION DATE: 020102

ADDRESS: 931 HOLLY STREET
COPPERAS COVE, TX 76522

IMAGE INDEX:
D1001307

LEFT FINGERPRINT: RIGHT FINGERPRINT:
THUMB THUMB

CONFIDENTIAL UNDER PROVISION OF
SECTION 730.010, TRANSPORTATION CODE



AFFIDAVIT

My name is Bettie Revada; I am over the age of 21 years of age, of sound mind and capable of making this Affidavit, and personally acquainted with the facts herein stated:

I am a deputy custodian for the Driver Records Bureau of the Texas Department of Public Safety located in Austin, Texas. In my capacity as stated heretofore I am in custody and control of driving records of motorists who are issued a Texas driver's license to operate a motor vehicle in the State of Texas, and of records pertaining to personal identification cards and certificates issued by the Department. The information recorded in the files of the Texas Department of Public Safety concerning such records is required by law to be filed by this Department, and such records are compiled from documents required by law to be filed with this Department, and such records set forth matters observed pursuant to duty imposed by law as to which matters there was and duty to report. Such information is an integral part of the official records of the Texas Department of Public Safety.

In Testimony Whereof, I hereunto set my hand and affix the seal of the Department of Public Safety of the State of Texas. Done at my office in the city of Austin, this 2nd day of August, 2006.



Bettie Revada, Deputy Custodian
Driver Records Bureau
Texas Department of Public Safety
Austin, Texas

STATE OF TEXAS }

COUNTY OF TRAVIS }

Pursuant to the authority contained in Texas Rules of Evidence 902 Section 4, and Transportation Code, Section 521, I, Joyce E. Stevens, do hereby certify that I am the custodian of driver records of the Driver Records Bureau, Texas Department of Public Safety. The information contained herein is true and correct as taken from our official records.

This is to further certify that the records of the Driver Records Bureau show that on February 10, 1998, a Texas Driver License was originally issued to SCOTT FRASIER KLION, who is described as a male with brown eyes, born on February 1, 1968. This license was last issued on February 10, 1998, as a Texas C License number 16279895 to expire on February 1, 2002. On April 10, 2004, Texas Driver License number 16279895 was purged from our files due to no renewal activity.

In Testimony Whereof, I hereunto set my hand and affix the Seal of the Department of Public Safety of the State of Texas. Done at my office, in the City of Austin, this 2nd day of August A.D., 2006.

Joyce E. Stevens

Joyce E. Stevens, Manager
Driver Records Bureau
Texas Department of Public Safety



I CERTIFY THIS IS A TRUE AND CORRECT COPY
AS TAKEN FROM OFFICIAL STATE RECORDS, AS
OF August 2, 2006

JOYCE E. STEVENS
CUSTODIAN OF DRIVER RECORDS

BY Bettie Revada
BETTIE REVADA, DEPUTY CUSTODIAN
OF DRIVER RECORDS