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State Bar No. 7380
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3 PO Box 281
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4 Telephone: (775) 786-5000
5 Attorneys for Larry E. Cook,
Receiver

FILED _____ RECEIVED _____
ENTERED _____ STAYED ON _____
CLERK OF DISTRICT COURT
2005 NOV 15 P 3:22
DISTRICT OF NEVADA
CLERK

7 UNITED STATES DISTRICT COURT
8 DISTRICT OF NEVADA

9 SECURITIES AND EXCHANGE
10 COMMISSION,

CASE NO. CV-S-05-1006-PMP-GWF

11 Plaintiff,
12 vs.

(Formerly MS-S-05-0036)

13 DAVID TANNER, Individually, and dba
CAPITAL ENHANCEMENT CLUB, ROCKY
14 D. SPENCER, MARROC CORP., and
RICHARD P. KRINGEN,

15 Defendants,

16 and

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

19 Relief Defendants.

20
21 **REPLY TO OPPOSITION OF WORLDPLAZA CORPORATION TO**
22 **MOTION OF RECEIVER PENDENTE LITE, LARRY E. COOK, FOR TURNOVER OF**
23 **PROPERTY OF THE RECEIVERSHIP ESTATE TRANSFERRED TO WORLDPLAZA**
24 **CORPORATION**

25 The Receiver Pendente Lite Larry E. Cook (the "Receiver"), by and through his
26 undersigned counsel, and for this Reply to Opposition of WorldPlaza Corporation to Motion of
27 Receiver Pendent Lite, Larry E. Cook, for Turnover of Property of the Receivership Estate
28 Transferred to WorldPlaza Corporation respectfully states as follows:

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I. INTRODUCTION

1. On September 20, 2005, the Receiver filed his Motion of Receiver Pendente Lite, Larry E. Cook, for Turnover of Property of the Receivership Estate Transferred to WorldPlaza Corporation (the "Motion") seeking the turnover of two properties in Lyon County, Nevada (the "Dayton Properties"), described within the Motion, or alternatively, payment of \$286,471 to the Receiver.

2. On October 25, 2005, WorldPlaza Corporation ("WorldPlaza") filed its Opposition to the Motion (the "Opposition").

3. The bases of WorldPlaza's Objection are: (i) the Receiver failed to timely file the underlying Complaint and Order of Appointment pursuant to 28 U.S.C. § 754, (ii) the Receiver did not provide legal authority in support of the Motion in violation of Local Rule 7-2(d), and (iii) WorldPlaza is entitled to a plenary proceeding, as opposed to a summary proceeding, for a determination of its legal rights in the Dayton Properties.

4. For the reasons discussed below, WorldPlaza's Opposition is without merit.

II. LEGAL DISCUSSION

A. The Receiver Timely Registered His Appointment in the District of Nevada in Accordance with 11 U.S.C. § 754.

5. WorldPlaza's first argument is that the Receiver failed to timely register his appointment as Receiver in this District by not doing so within the ten days provided by 11 U.S.C. § 754.

6. WorldPlaza is correct that the Receiver was appointed on May 4, 2005 in the United States District Court for the District of Kansas. However, the underlying Complaint and Order Appointing Receiver were filed with this Court on May 11, 2005, not on May 19, 2005 as WorldPlaza states. A true and correct copy of the first page of the underlying Complaint, Order Appointing Receiver, and the United States District Court for the District of Nevada's receipt of the \$39 filing fee, all three of which reflect a May 11, 2005 filing in the District of Nevada, is attached hereto as **Exhibit A**.

7. Counsel for the Receiver contacted the Clerk's Office and understands the

1 confusion in dates is a product of the District of Nevada's transition to the CM/ECF filing system
2 and the fact that the District of Nevada docketed the May 11, 2005 filing as a "miscellaneous case"
3 until it was assigned a civil case number on or about May 19, 2005.

4 8. Notwithstanding the docketing date, Exhibit A establishes that the underlying
5 Complaint and Order Appointing Receiver were filed in this Court on May 11, 2005, well within
6 the ten day requirement found in 11 U.S.C. § 754.

7 **B. The Receiver Has Provided Legal Authority In Support of the Motion.**

8 9. WorldPlaza's second argument is that the Receiver failed to comply with Local
9 Rule 7-2(d) by failing to cite authority for the relief sought in the Motion.

10 10. Although Local Rule 7-2(d) requires the use of authorities in support of a motion,
11 the Rule does not require that the authorities originate in the Ninth Circuit as WorldPlaza appears
12 to argue. To the contrary, Local Rule 7-3 sets out the proper procedure when citing to "other
13 federal court" opinions that have been reported in the Federal Reporter System.

14 11. Here, the Receiver provided numerous citations to authorities in support of the
15 Receiver's right to possession of the Dayton Properties both within and outside the Ninth Circuit.
16 See Motion ¶¶ 6, 8, and 9.

17 12. WorldPlaza may have intended to argue that the Receiver failed to cite to the
18 appropriate Nevada statutes that define and give rise to a fraudulent transfer claim. However, the
19 Receiver's fraudulent transfer claim on the Dayton Properties does not arise solely under Nevada
20 law, but rather, pursuant to federal common law. The Ninth Circuit, in SEC v. American Capital
21 Investments, Inc., 98 F.3d 1133, 1145 (9th Cir. 1996) recognized the federal common law of
22 receivership and the broad equitable powers of an equity receivership to take possession and
23 ultimately sell property obtained by fraud even though it may impact the rights of innocent parties.

24 **C. This Dispute May Be Resolved By Summary Proceedings.**

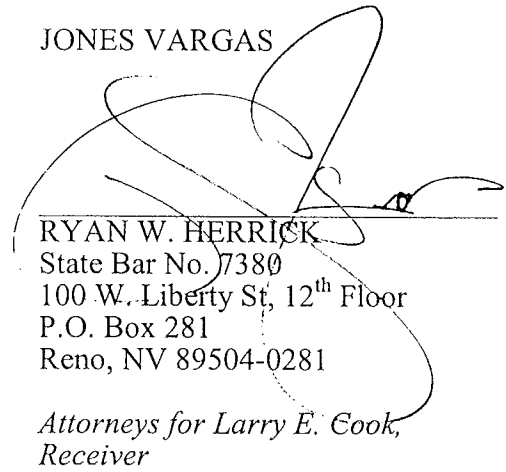
25 13. WorldPlaza relies upon Arizona Fuels for its third argument that it is entitled to
26 plenary proceedings "when, for example, a receiver asks the court to determine the ultimate merits
27 of the parties' claims to the property." US v. Arizona Fuels Corp., 739 F.2d 455, 458 (9th Cir.
28 1984).

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DATED this 15 day of November, 2005.

JONES VARGAS



RYAN W. HERRICK
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*Attorneys for Larry E. Cook,
Receiver*

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CERTIFICATE OF SERVICE

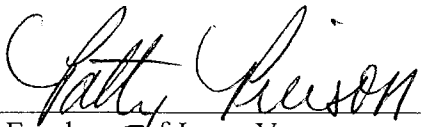
I certify that I am an employee of Jones Vargas, and that on this date, pursuant to FRCP 5(b), I am serving the attached **Reply to Opposition of Worldplaza Corporation to Motion of Receiver Pendente Lite Larry E. Cook, for Turnover of Property of the Receivership Estate Transferred to Worldplaza Corporation** on the party(s) set forth below by:

- Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at ~~Reno~~, Nevada, postage prepaid, following ordinary business practices *Las Vegas*
- Certified Mail, Return Receipt Requested
- Via Facsimile (Fax)
- Placing an original or true copy thereof in a sealed envelope and causing the same to be personally Hand Delivered
- Federal Express (or other overnight delivery)

addressed as follows:

| | |
|--|---|
| Jack E. Kennedy Jack E. Kennedy & Assocs. 425 W. Plumb Lane Reno, NV 89509 <i>Attorneys for Sean McPhail</i> | Robert L. Herskovits, Esq. Bachner & Herskovits, P.C. 26 Broadway, Suite 2310 New York, NY 10004 (212) 344-7778 <i>Attorneys for WorldPlaza</i> |
| | Kelly A. Evans, Esq. Snell & Wilmer, LLP 3800 Howard Hughes Parkway, Suite 1000 Las Vegas, NV 89109 (702) 784-5200 <i>Attorneys for WorldPlaza Corporation</i> |

DATED this 15th day of November, 2005.



An Employee of Jones Vargas

EXHIBIT

A

ORIGINAL

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

FILED
ENTERED
2005 MAY -4 A 9 20
2005 MAY 11 A 11: 59
RALPH L. DeLOACH
CLERK
DEPUTY
AT TOPEKA, KS.
CLERK US DISTRICT COURT
DISTRICT OF NEVADA
BY _____ DEPUT

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

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

MS-S-05-0036-N/A-NA

COMPLAINT

Plaintiff Securities and Exchange Commission alleges:

SUMMARY

1. From at least October 2004, Defendants defrauded investors of \$15 million through their fraudulent offer and sale of securities referred to as a "private joint venture investment."
2. Operating under the name Capital Enhancement Club ("CEC"), Defendants falsely claim that CEC will pay monthly interest of approximately 7% to 11% (120% to 260% annually) from "trading in international markets." In reality, CEC's trading

**ECF
DOCUMENT**

I hereby attest and certify this is a printed copy of a document which was electronically filed with the United States District Court for the District of Kansas.

Date Filed: 5-4-05
RALPH L. DeLOACH, CLERK

By: [Signature] Deputy Clerk

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

FILED RECEIVED
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FILED
U.S. DISTRICT COURT
DISTRICT OF KANSAS
2005 MAY 11 A 11:59 2005 MAY -4 A 11:56

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.

CLERK U.S. DISTRICT COURT
DISTRICT OF NEVADA
RALPH L. DELCACH
CLERK
BY B. L. [Signature] DEPUTY

Civil Action No.
05-4057-SAC

MS-S-05-0036-N/A-NA

ORDER APPOINTING RECEIVER

This matter came on before me, the undersigned United States District Judge, on May 4th, 2005, on the application of Plaintiff Securities and Exchange Commission ("Commission") for the appointment of a Receiver for Defendants David Tanner, individually and d/b/a Capital Enhancement Club; Rocky D. Spencer; Marroc Corp. and Richard P. Kringen and Relief Defendants Margaret F. Spencer; Omnibus LLC.; Vectra Resources, LLC and Dynamic Environmental Solutions, Inc. It appears that this Order Appointing Receiver is both necessary and appropriate to prevent waste and dissipation of the assets of Defendants and Relief Defendants to the detriment of investors.

**ECF
DOCUMENT**

I hereby attest and certify this is a printed copy of a document which was electronically filed with the United States District Court for the District of Kansas.

Date Filed: 5-4-05
RALPH L. DELCACH, CLERK

By: [Signature] Deputy Clerk

UNITED STATES
U.S. District Court
District of Nevada
Southern Division

00085063 - JR
May 11, 2005

| Code | Case # | Qty | Amount |
|----------|--------|-----|----------|
| MISC. CA | | 1 @ | 39.00 |
| | | | 39.00 CK |

TOTAL → 39.00

FROM: LATHROP & GAGE L.C.
2345 GRAND BLVD
KANSAS CITY, MO 64108