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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

SECURITIES AND EXCHANGE COMMISSION,

CV09-075-S-EJL

PLAINTIFF,

v.

DAREN L. PALMER and TRIGON GROUP, INC., a
Nevada Corporation,

DEFENDANTS.

**MOTION FOR
ORDER TO SHOW
CAUSE WHY DAREN
L. PALMER SHOULD
NOT BE HELD IN
CONTEMPT**

The Securities and Exchange Commission (the “Commission”), by and through its counsel of record, hereby moves this Court for an Order to Show Cause why Daren L. Palmer should not be held in Contempt of previously issued Orders of this Court. Daren L. Palmer (“Palmer”) transferred, or assisted in the transfer, of funds that were frozen pursuant to this Court’s Order Freezing Assets and Prohibiting Destruction of Documents (“Order Freezing Assets”) dated February 26, 2009. See SEC v. Palmer, et al., CV09-075-S-EJL, No. 9 (D. Idaho, filed Feb. 26, 2009). Palmer deliberately transferred and encumbered property belonging to Trigon in violation of the Court’s Order Appointing a Receiver and Staying Litigation (“Order Appointing a Receiver”). See Docket No. 8.

This Motion is brought pursuant to 18 U.S.C. §§ 401 and 402, and Rule 70, Fed. R. Civ. P. The Commission respectfully requests that the Court order Palmer to take all steps necessary to release and satisfy liens on the property located at 2670 South Eagle Road, Meridian ID (“Southstone Property”) within thirty (30) days. The Commission next requests a judicial declaration that the Beacon Light Capital, LLC (“Beacon Light”) lien on the Southstone Property is unenforceable, and a declaration that the letters signed by Palmer and his wife, Michelle Palmer, releasing Sight & Sound, LLC from financial obligations are unenforceable. The Commission also requests the Court require Palmer to provide the Receiver and counsel for the Commission with a sworn accounting of all accounts over which he now has, or has ever had, control. The accounting should be filed and delivered to the Receiver and counsel for the Commission within ten (10) business days. Finally, the Commission requests that the Court find Palmer in contempt of its prior Orders.

DATED this 17th day of July 2009.

/s/ Karen L. Martinez

Karen L. Martinez
Thomas M. Melton
Tanya Beard
Attorneys for Plaintiff
Securities and Exchange Commission

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of July 2009, I caused to be sent via 1st class mail, postage prepaid, a true and correct copy of the foregoing **MOTION FOR ORDER TO SHOW CAUSE WHY DAREN L. PALMER SHOULD NOT BE HELD IN CONTEMPT** and accompanying pleadings to,

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/s/ Karen L. Martinez

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**MEMORANDUM IN
SUPPORT OF
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DAREN L. PALMER
SHOULD NOT BE
HELD IN CONTEMPT**

Plaintiff, Securities and Exchange Commission (the “Commission”), by and through its counsel of record, hereby submits this Memorandum in Support of Motion for an Order to Show Cause why Daren L. Palmer should not be held in contempt.

I. INTRODUCTION

Daren L. Palmer (“Palmer”) engaged, and may be continually engaging, in conduct constituting a violation of this Court’s Order Appointing a Receiver and Staying Litigation (“Order Appointing a Receiver”) and Order Freezing Assets and Prohibiting Destruction of Documents, (“Order Freezing Assets”). SEC v. Palmer et al., CV09-075-S-EJL, Docket Nos. 8,

9 (D. Idaho, filed Feb. 26, 2009). This Court's Order Freezing Assets prohibits "the withdrawal, removal, transfer, or other disposal of any [] assets, funds, or other properties" directly or indirectly benefitting Palmer, Trigon Group, Inc. ("Trigon"), and affiliate entities. The Order Appointing a Receiver charges the Receiver with marshalling and conserving the assets of Trigon. Within months of these orders, Palmer directed the transfer of \$62,826.15 obtained from a loan secured with Trigon assets. Palmer evaded the Order Appointing a Receiver and violated the Order Freezing Assets by agreeing to accept commercial property in lieu of repayment, transferring that property to a personal friend, and orchestrating a loan against that property. As such, Palmer is in Contempt of this Court's Order Appointing a Receiver and Order Freezing Assets.

II. FACTS

A. ORDERS

On February 26, 2009, this Court issued an Order Freezing Assets of Trigon and affiliated entities. The Order Freezing Assets provides that Palmer, Trigon, and affiliates retain assets, funds, and properties including those in which they have a direct or indirect beneficial interest reads as follows:

Defendants Daren L. Palmer and Trigon Group, Inc. (collectively, the "Defendants"), their agents, servants, employees, attorneys, and those persons in active concert or participation with them, including but not limited to Palmer Trading & Investments, LLC, Blackrock Limited, LLC, Pinnacle Company LLC, and Canterbury Court Properties, LLC who receive actual notice of such Order by personal service, facsimile service, or otherwise, and each of them, hold and retain within their control, and otherwise prevent any withdrawal, transfer, pledge, encumbrance, assignment, dissipation, concealment, or other disposal of any assets, funds, or other properties (including money, real or personal property, securities, chooses in action or property of any kind whatsoever) of the Defendants currently held by them or under the control, whether held in the name of the Defendants, or each of them, or for their direct or indirect beneficial interest wherever situated, and directing each of the financial or brokerage institutions, debtors, and bailees, or any other person or entity holding such assets, funds or other properties of the Defendants to hold or retain within its control and prohibit the

withdrawal, removal, transfer, or other disposal of any such assets, funds, or other properties.

Docket No. 9. Also, on February 26, 2009, this Court issued an Order Appointing a Receiver, which appointed a Receiver, R. Wayne Klein of Lewis B. Freeman & Partners, Inc., to marshal the assets of the Trigon organization for ultimate distribution to victims in this case.

Palmer received notice of the above Orders. Palmer's attorney received the Notice of Lawsuit and Request for Waiver of Service of Summons that was mailed by the Commission on March 4, 2009. See Waiver of Service of Summons, attached hereto as Exhibit A ("Ex. A"). Also, the Commission personally served Palmer on March 29, 2009. See Affidavit of Service, attached hereto as Exhibit B ("Ex. B"). Despite sufficient notice of these Orders, Palmer violated the Orders by transferring Trigon assets under his control.

B. PALMER'S VIOLATION OF THE ORDER

1. Quit Claim of the Southstone Property.

Palmer violated the Order Appointing a Receiver and Order Freezing Assets by directing the transfer of property from a debtor to a close, personal friend. Between December 6, 2004 and February 12, 2008, Palmer paid Sight & Sound, Inc. ("Sight & Sound") approximately \$450,000 with checks written on Trigon and Palmer's personal bank accounts to install a state-of-the-art customized audio/video system (the "Sound System"). See Shari Lewis Deposition, 18:16-20; 25: 11; 96: 11-16 and at Exhibits 5, 14, attached hereto as Exhibit C ("Ex. C"). At the time of the purchase, Palmer's only source of income was Trigon investor funds. See Daren L. Palmer Deposition, 11: 14-13: 3, 18: 14-21, 118: 2-24, attached hereto as Exhibit D ("Ex. D"). As of February 2009, Sight & Sound had only partially completed installation of the equipment in the Palmer mansion at 330 Sheffield Circle in Idaho Falls. See Ex. C at 28: 19-29: 15. Despite the Order Freezing Assets dated February 26, 2009, Palmer contacted William J. Lewis

(“Mr. Lewis”) and Shari Lewis (“Mrs. Lewis”), owners of Sight & Sound, about returning the unused funds. See id. at 11: 1-8. In lieu of repaying the unused funds, Mrs. Lewis suggested transferring a vacant commercial lot located at 2670 South Eagle Road, Meridian ID, (the “Southstone Property”) owned by Lewis Family Properties, LLC (“Lewis Family Properties”). See id. at 40: 1-15. Mr. and Mrs. Lewis are the sole owners of Lewis Family Properties, an entity under which they lease commercial property. See Ex. C at 11: 9-12: 3; 40: 7-15; 42: 17-22 and at Exhibit 7: 5.

In an apparent attempt to evade the Receiver, Palmer requested that Mr. and Mrs. Lewis transfer the Southstone Property to Resource Solutions, LLC (“Resource Solutions”)—a member-managed limited liability company owned by Palmer’s close friend, Stan Mills (“Mills”). See Ex. C at 55: 20-25; Stan Mills Deposition at 8: 15-23; 10: 20-11: 5; 23: 6-19, attached hereto as Exhibit E (“Ex. E”). Mills loaned Palmer \$68,000 in October to November of 2008. See Ex. E at 70: 15-17. Palmer told Mills that the Southstone Property could be sold “fairly quickly,” which Mills took to mean in eight (8) to ten (10) months, and would serve as repayment for the personal loan. Ex. E at 23: 7-10; 46: 16-17. Mills knew of Palmer’s legal trouble through newspaper reports and expressed concern about receiving the Southstone Property. Id. at 14: 4-18; 23: 10-12. Palmer assured Mills that Sight & Sound owed him money personally and that the Southstone Property transfer was unrelated to his legal difficulties. See id. at 35:8-36: 7. As such, Mills agreed to accept the property on Palmer’s behalf as eventual repayment on the personal loan. See id. at 31: 21-23; 35: 20-36:4. Mills never met with or spoke directly to anyone at Sight & Sound. See id. at 40: 20-41:2. Also, Mills never received a signed and recorded copy of the quit claim from Palmer or Sight & Sound. See id. at 102: 17-103:4.

Mrs. Lewis refused to transfer the property directly to Resource Solutions without Palmer's approval. See id. at 96: 24-97:16 and at Exhibit 10:2; Ex. C at 48: 16-20. For example, Lewis emailed Mills on March 12, 2009, stating: "I will need Daren [Palmer] to communicate with me to ensure that all the legal t's and I's are crossed and dotted." Ex. C at Exhibit 10: 1. Further, on March 19, 2009, Lewis emailed Mills again:

Stan, can you get hold of Daren for me and have him contact me? I've got a few more questions. I also need written instruction from him on how he would like us to communicate with him and/or you and how he'd like us to proceed.

Thanks so much.

Shari

Ex. E at Exhibit 10: 3. Also, prior to executing the quit claim, Sight & Sound requested that Palmer and his wife, Michelle Palmer ("Michelle Palmer") draft and sign letters authorizing the transfer of the Southstone Property to Resource Solutions (the "Palmer Releases"). See Ex. C at 56: 21-58: 6; 72: 17-25 and at Exhibit 7: 1-2. Palmer's release states:

I am writing to notify all parties that I accept the quit claim deed from Sight and Sound by Design, an Idaho Company as proposed and agreed upon in our discussions. In doing so, this will satisfy any an [sic] all returns to Daren and Michelle Palmer. . . .

This act will exempt Sight and Sound by Design from any other claim for refund pertaining to the transactions between them and the Palmer's and any parties related thereto.

See Ex. C at Exhibit 1: 1. Similarly, Michelle's release states: "This act will exempt me from any other claim pertaining to the transaction between Sight and Sound, Inc. and Resource Solutions and any parties related thereto." See id. at 2. Michelle did not draft her release, and her signature on the letter was forged. See Declaration of Michelle Palmer, attached hereto as Exhibit F ("Ex. F").

On May 4, 2009, Lewis Family Properties executed a Quit Claim Deed transferring all ownership interest in the Southstone Property to Resource Solutions. See Ex. C at Exhibit 7: 5.

Thus, Palmer, not Mills, clearly orchestrated this specious transfer of property, thereby violating this Court's Order Freezing Assets and Order Appointing a Receiver.

2. Palmer's Loan on the Southstone Property.

Palmer violated this Court's Order Freezing Assets and Order Appointing a Receiver, by explicitly arranging for and directing the proceeds of a loan secured by the Southstone Property. In an email to Mrs. Lewis dated April 27, 2009, Palmer indicated that he intended to use the land as collateral for a loan. See Ex. C at Exhibit 7: 3. Palmer wrote: "Let me know when [the Southstone Property] is recorded so I can begin working on obtaining some funding from it." See id. In approximately mid-May 2009, Palmer approached Mills about obtaining a loan against the Southstone Property. See Ex. E at 23: 22-24: 4. Palmer told Mills the property appraised for \$128,000. See id. As Palmer owed Mills only \$68,000, Palmer convinced Mills to obtain a loan for the additional value so that Palmer would have "some money to live off of and to work from." See id. Mills agreed, and Palmer arranged a hard money loan from Beacon Light Capital, LLC ("Beacon Light") for \$62,000 on June 5, 2009. See id. at 24: 5-14; Exhibit 7.

Palmer, not Mills, directed the loan with Beacon Light. David Eldredge, Jr., principal and manager of Beacon Light ("Eldredge") contacted Palmer based on a referral from an insurance agent. See David Eldredge, Jr. Declaration, 9: 4-14; 12: 4-23, attached hereto as Exhibit G ("Ex. G"). On or about June 1 or 2, 2009, Palmer spoke with Eldredge approximately six to seven times to procure the loan. See id. at 6: 8; 18: 15-16. Palmer maintained contact with Eldredge until the day before closing. See id. at 12: 1-14: 9. As a result, Eldredge reasonably, but incorrectly, assumed Palmer was affiliated with Resource Solutions. See id. Eldredge discovered Palmer had no connection to Resource Solutions after reviewing the Alliance Title & Escrow Corporation ("Alliance Title") Title Report. See id. at 13: 18-23. Despite not having an

interest in Resource Solutions, Palmer negotiated the terms of the loan with Eldredge, including reviewing and agreeing to the terms of the “expensive” hard money loan, offering a deed in lieu of foreclosure instead of a personal guaranty, and indicating that the loan would be paid back in 90 days. See id. at 14: 10-15; 18: 6-11; 30: 8-11. By contrast, Mills had no contact with Beacon Light regarding the loan until the day before closing, and spent only 30 minutes minimally reviewing and signing the documents at Alliance Title. See Ex. E at 49: 20-50: 17; 57: 15-16.

Although the Commission does not currently know the details of the entities to which the proceeds of the loan were directed, the Commission is working to determine the exact nature of the transfers. Regardless, it is apparent that Palmer, not Mills, directed all proceeds of the loan in violation of the Court’s Order Freezing Assets and Order Appointing a Receiver. In an email to Mills, Palmer instructed, “two wires need to be sent. . . . [t]he proceeds to be issued to Resource Solutions.” Ex. E at Exhibit 10: 4. At Palmer’s direction, Alliance Title wired \$24,000 to Southern Cross Partners in Florida, and \$6,900 to SAC Financial Group in Palmer, MA. See id. at Exhibits 9, 10: 4. Beacon Light received \$7,691.06 in closing costs, and Alliance Title wired the remaining \$23,408.94 to Resource Solutions. See Ex. E at 55: 20-21; 60: 3-14 and at Exhibits 8, 9. Alliance Title addressed emails regarding the status of the wire transfers to both Palmer and Mills. See Ex. E at 61: 10-62:2 and at Exhibit 9.

Resource Solutions divided the remaining \$23,408.94 proceeds as per Palmer’s instruction, memorialized by Mills in handwritten notes during a phone conversation on June 8, 2009. See Ex. E at 61: 1-5 and at Exhibit 11. At Palmer’s request, Mills gave \$10,000 in cash to Palmer, along with a \$1,100 cashiers check to Egan Metcalf Leavett, and a \$2,500 cashiers check to Mitchell Barker’s law office. See Ex. E at 60: 15-23. Resource Solutions deposited \$9,808.94 in a Money Market account (“Mills MMA”) to make the monthly interest payments on the

Beacon Light loan. See Ex. E at 63: 10-64: 17 and at Exhibit 8. In approximately the third week of June, 2009, Palmer approached Mills about withdrawing another \$5,000 from the Mills MMA. See Ex. E at 64: 18-65: 10. Mills declined. See id. Based on the facts above, Palmer clearly arranged the loan with Beacon Light and directed the transfer of the proceeds in violation of the Court's Order Freezing Assets and Order Appointing a Receiver.

III. ARGUMENT

A. PALMER IS IN CONTEMPT OF THIS COURT'S ORDERS

This Court has the inherent authority to enforce compliance with its lawful orders through the process of civil contempt. Shillitani v. United States, 384 U.S. 364, 370 (1966). These powers are “governed not only by rule or statutes but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.” Chambers v. NASCO, Inc., 501 U.S. 32, 43 (1991) (quoting Link v. Wabash R.R. Co., 370 U.S. 626, 631 (1962)). “Civil contempt proceedings may yield a conditional jail term or fine.” Hutto v. Finley, 437 U.S. 678, 690 (1973); Shillitani, 384 U.S. at 370. See generally International Union v. Bagwell, 512 U.S. 821, 826-30 (1994).

Moreover, contempt sanctions may be imposed “to coerce the defendant into compliance with the court's order, and to compensate.” United States v. United Mine Workers, 330 U.S. 258, 303 (1947). Where the court's purpose is to make the defendant comply with its orders, “[i]t must then consider the character and magnitude of the harm threatened by the continued contumacy, and the probable effectiveness of any suggested sanction in bringing about the result.” Id. at 304. See also SEC v. Credit Bancorp, Ltd., et al., 2000 LEXIS 9755 (SDNY 2000).

“To prevail in a civil contempt proceeding, the plaintiff has the burden of proving, by clear and convincing evidence, [cite omitted] that a valid court order existed, that the defendant had knowledge of the order, and that the defendant disobeyed the order.” Reliance Ins. Co. v. Mast Constr. Co., 159 F.3d 1311, 1315 (10th Cir. 1998), citing Roe v. Operation Rescue, 54 F.3d 133, 137 (3d Cir. 1995); FTC v. Affordable Media, 179 F.3d 1228, 1239 (9th Cir. 1999). “Civil contempt may be used ‘to compensate the contemnor’s adversary for injuries resulting from the contemnor’s noncompliance’ with a court order.” Shuffler v. Heritage Bank, 720 F.2d 1141, 1147 (9th Cir. 1983). See also O’Connor v. Midwest Pipe Fabrications, Inc., 972 F.2d 1204, 1211 (10th Cir. 1992); Reliance, 159 F.3d at 1318. Furthermore, “[i]n a civil contempt proceeding, once a plaintiff has established the elements of contempt by clear and convincing evidence, it need only prove damages by a preponderance of the evidence.” Id.

Palmer’s failure to comply with this Court’s Orders certainly meets the clear and convincing standard for civil contempt. First, this Court issued a valid Order Freezing Assets and a valid Order Appointing a Receiver. Next, Palmer had knowledge of these Orders as Palmer’s attorney received a waiver of service and the Commission personally served Palmer. Finally, Palmer disobeyed the Order Freezing Assets and the Order Appointing a Receiver. Palmer mendaciously circumvented the Court’s Orders by asking Mrs. Lewis to deed the Southstone Property to Resource Solutions in lieu of returning the deposits for the audio/visual equipment. Palmer knew that he paid for the Sight & Sound equipment with Trigon funds as he wrote and signed the checks to Sight & Sound. Palmer knew that the \$450,000 paid to Sight & Sound belonged to Trigon because he used investor funds paid out of Trigon and personal accounts to purchase the Sound System. Palmer then encumbered a Trigon asset by obtaining a high-interest rate loan against the Southstone Property. Furthermore, Palmer released the debt

owed to Trigon by executing the Palmer Releases. This is clear and convincing evidence that Palmer disobeyed the Court's Order Freezing Assets and Order Appointing a Receiver.

Palmer never sought leave of this Court for authority to transfer assets frozen by this Court, and the assets transferred may be lost to this Court's jurisdiction. There is no exception in the Order Freezing Assets or Order Appointing a Receiver for any of the transactions Palmer orchestrated and benefited. Therefore, Palmer is in contempt of this Court's Order Freezing Assets and Order Appointing a Receiver as the Court issued valid orders, Palmer knew of the orders, and Palmer clearly disobeyed the orders. As such, the Commission has met its burden.

B. RELIEF REQUESTED

Palmer's contempt of this Court's Orders is plain and warrants immediate sanction. The Commission respectfully requests that the Court issue an Order (a) finding Daren L. Palmer in contempt of this Court's previously issued Orders; (b) requiring Palmer to take all steps necessary to release and satisfy liens on the Southstone Property within 30 days; (c) entering a declaratory judgment stipulating that Beacon Light's lien on the Southstone Property is unenforceable as it violates this Court's Asset Freeze; and (d) entering a declaratory judgment that the Palmer Releases are unenforceable as (1) they violate the Court's Order Appointing a Receiver, and (2) Michelle's signature on the Palmer Release is forged; and (e) requiring Palmer to provide the Receiver and the Commission with a sworn statement of all accounts over which he now has, or has ever had, control or signatory authority, related in any way, directly or indirectly, to Trigon, or any subsidiary, affiliate, related company or person. The accounting should be filed and delivered to the Receiver and counsel for the Commission within ten

(10) business days. In the event Palmer fails to comply with the above, the Court should incarcerate Palmer to coerce him into compliance.

Dated this 17th day of July 2009.

Respectfully Submitted,

/s/ Karen L. Martinez

Karen L. Martinez
Thomas M. Melton
Tanya Beard
Attorneys for Plaintiff
Securities and Exchange Commission