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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.

**PLAINTIFF'S
SUPPLEMENTAL
MEMORANDUM IN
SUPPORT OF
MOTION FOR
CONTEMPT
AGAINST DAREN L.
PALMER**

The Securities and Exchange Commission (the "Commission"), by and through its counsel of record, hereby submits this Supplemental Memorandum in Support of Its Motion for Contempt against Daren L. Palmer ("Palmer"). Since the filing of its memorandum in support of the order to show cause as to why Palmer should not be held in contempt, additional facts have come to the attention of the Commission further demonstrating that Palmer transferred 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 Docket # 8. Palmer transferred funds held in his

name in violation of the Court's Order Appointing a Receiver and Staying Litigation ("Order Appointing a Receiver") by forging his wife's signature on a stock redemption request to a real estate investment trust ("REIT") and a check Palmer received from the REIT as a result of the redemption.

SUPPLEMENTAL FACTS

1. On March 20, 2007, Daren Palmer and his wife Michelle Palmer purchased 500 shares of TRT common stock for \$5,000 pursuant to the TRT Subscription Agreement. Declaration of M. Kirk Scott ("Scott Decl.") attached hereto as Ex. 1 at ¶ 3 and Ex. B.
2. The Palmers purchased the TRT common stock with funds from their personal account. Those funds were transferred to the Palmers' personal account from Trigon. In March 2007, Palmer had no source of income other than the funds he raised in his Ponzi scheme by investors. Declaration of Wayne Klein ("Klein Decl."), attached hereto as Ex. 3, at ¶ 9.
3. At the time of the Palmers' purchase, TRT shares were valued at \$10.00 per share and paid an annual dividend of \$0.60 per share. Ex. 1 at ¶ 4.
4. As TRT is a non-traded REIT, the share price and the dividend are set by its board of directors, and, to date, the board of directors has not changed either the share price or the annual dividend payment. Id. at ¶ 5.
5. Between March 20, 2007 and April 15, 2009, the Palmers participated in TRT's dividend reinvestment plan ("DRIP Plan") as outlined in the Prospectus. Id. ¶ 6.
6. Each quarter, the Palmer's dividend payment was allocated to the purchase of additional TRT shares at a discounted price. During this time, the Palmers'

participation in the DRIP Plan netted them an additional 67.80211 TRT shares.

Ex. 1 at ¶ 7.

7. On or about April 27, 2009, The Bank of New York, TRT's transfer agent, received a Non-Qualified Redemption of Shares Form signed by the Palmers requesting full redemption of their 567.80211 TRT shares. Id. at ¶ 9 and Ex. C.
8. Michelle Palmer did not sign the Non-Qualified Redemption of Shares Form. The signature of Michelle Palmer that appears on the Non-Qualified Redemption of Shares Form was not authorized by Mrs. Palmer and is a forgery. Declaration of Michelle Palmer ("Michelle Decl.") attached hereto as Ex. 2 at ¶ 3.
9. At the time of Palmers' request, neither The Bank of New York nor TRT had been alerted as to the Preliminary Injunction filed against Mr. Palmer on February 26, 2009 in the United States District Court for the District of Idaho. Thus, the Palmers' redemption request was honored on a pro-rata basis on June 30, 2009 pursuant to the terms and conditions of TRT's Second Amended Restated Share Redemption Program (the "Redemption Program"). Ex. 1 at ¶ 10.
10. Since the total redemption requests submitted to TRT prior to the end of the second quarter of 2009 exceeded the Redemption Cap, TRT was able to redeem only 22.79% of the shares tendered in the second quarter of 2009. Id. at ¶ 11.
11. As a result, of the 567.80211 TRT shares tendered for redemption by the Palmers during the second quarter of 2009, 129.39557 were redeemed by TRT at 95% of the par value for a total payment to the Palmers of \$1,229.26 in accordance with the terms of the Redemption Program. Id. at ¶ 12.

12. A check in the amount of \$1,229.26 was delivered to the Palmers on or about June 30, 2009 to the address provided in the Non-Qualified Redemption of Shares Form. Ex. 1 at ¶ 13 and Ex. D.
13. The check was negotiated on July 13, 2009 at Wal-Mart #5494 and purportedly signed by both Daren and Michelle Palmer. Id. at Ex. D.
14. Michelle Palmer did not sign the redemption check from TRT. She did not authorize anyone to sign the check on her behalf and the signature that appears on the check is a forgery. Ex. 2 at ¶ 5.

ARGUMENT

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 Insurance 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.

A valid court order existed. On February 26, 2009, this Court entered an Order freezing Palmer’s assets. Docket # 8. Palmer received notice of the order freezing his assets. See Waiver of Service of Summons, Docket # 12 and Affidavit of Service, Docket # 14. Nonetheless, Palmer determined to disobey this Court’s valid order.

In 2007, Palmer purchased \$5,000 in TRT common shares. Palmer used investor funds transferred from Trigon’s bank account to Palmer’s personal account to purchase the TRT shares. After the asset freeze was in place, on April 27, 2009, Palmer contacted TRT and requested redemption of the shares he and his wife purchased in 2007. Palmer

forged his wife's signature on the Non-Qualified Redemption Form needed to redeem the shares. Palmer received a check in the amount of \$1,229.26 from TRT which Palmer cashed at a Wal-Mart forging his wife's signature to negotiate the check. These facts further demonstrate Palmer's blatant disregard for this Court's orders.

CONCLUSION

Based on the forgoing, the Commission respectfully requests that this Court find Palmer in contempt of this Court's order freezing his assets and order Palmer to return \$1,229.26 to the Court-appointed receiver within 10 days of the issuing an order finding Palmer in contempt.

DATED this 7th day of August 2009.

/s/ Karen L. Martinez

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

DECLARATION

I, M. Kirk Scott, make the following declaration to the Securities and Exchange Commission and to Mr. Wayne Klein, Receiver for Trigon Group, Inc., to the best of my personal knowledge, according to the records of Dividend Capital Total Realty Trust Inc. ("TRT"), and without further independent inquiry or investigation on my part, and, if called to testify on the date of this declaration, I could and would testify as follows:

1. I am the Chief Financial Officer of TRT.
2. TRT is a non-traded real estate investment trust ("REIT") that is currently engaged in a public offering of its shares, which offering is registered with the Securities and Exchange Commission ("SEC") on SEC Registration Statement No. 333-143662. The most recent effective prospectus for the offering is dated July 24, 2009 (as amended from time to time, the "Prospectus"). Historical copies of the Prospectus and TRT's other public filings are available at www.sec.gov. A copy of the Prospectus is attached hereto as Exhibit A.
3. On March 20, 2007, Daren Palmer and Michele Palmer (the "Palmers") purchased 500 shares of TRT common stock for \$5,000 pursuant to the TRT Subscription Agreement attached hereto as Exhibit B.
4. At the time of the Palmers' purchase, TRT shares were offered to the public under the Prospectus at \$10.00 per share and paid an annual dividend of \$0.60 per share.
5. Since TRT is a non-traded REIT, the offering price per share and the dividend are set by TRT's board of directors, and, as of the time of the Palmers' purchase, the board of directors of TRT had not changed either the per share offering price or the annual dividend payment.
6. Between March 20, 2007 and April 15, 2009, the Palmers participated in TRT's dividend reinvestment plan ("DRIP Plan") as outlined in the Prospectus.
7. Each quarter during such time, the Palmers' dividend payment was allocated to the purchase of additional TRT shares at a discounted price of \$9.50 per share. Between March 20, 2007 and April 15, 2009, the Palmers' participation in the DRIP Plan netted them an additional 67.80211 TRT shares.

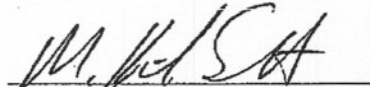
8. TRT presently offers its stockholders a limited right to request redemptions of their TRT shares on a quarterly basis, pursuant to the terms and conditions of TRT's Second Amended Restated Share Redemption Program (the "Redemption Program") as outlined in the Prospectus. Among other things, the Redemption Program intends to limit the number of shares to be redeemed during any consecutive twelve-month period to no more than five percent of the number of shares of common stock outstanding at the beginning of such twelve-month period (the "Redemption Cap") in order to comply with certain federal securities laws. The Redemption Program may be amended or terminated at any time, and TRT's board of directors reserves the right to reject any request for redemption for any reason or no reason.
9. The Bank of New York, TRT's transfer agent, generally informs TRT or its affiliates of all TRT share redemption requests received in any given quarter. On or about April 27, 2009, The Bank of New York received a Non-Qualified Redemption of Shares Form signed by the Palmers requesting a full redemption of their 567.80211 TRT shares (*i.e.*, the total number of TRT shares owned at that time by the Palmers). A copy of that Non-Qualified Redemption of Shares Form is attached hereto as Exhibit C.
10. Until TRT's receipt of a letter dated July 15, 2009 from Wayne Klein, Receiver for Trigon Group, Inc., TRT had not been alerted to the Preliminary Injunction filed against Mr. Palmer on February 26, 2009 in the United States District Court for the District of Idaho. Therefore, the Palmers' redemption request was honored by TRT on a pro-rata basis on June 30, 2009, as further described below.
11. Since the total redemption requests submitted to TRT prior to the end of the second quarter of 2009 exceeded the Redemption Cap, TRT was able to redeem only 22.79% of the shares tendered for redemption in the second quarter of 2009.
12. As a result, of the 567.80211 TRT shares tendered for redemption by the Palmers during the second quarter of 2009, TRT redeemed 129.39557 TRT shares at a discounted price of \$9.50

for a total payment to the Palmers of \$1,229.26, all in accordance with the terms and conditions of the Redemption Program.

13. A check in the amount of \$1,229.26 was sent to the Palmers on or about June 30, 2009 to the address provided in the Non-Qualified Redemption of Shares Form. A copy of the canceled check is attached hereto as Exhibit D.

I declare under penalty of perjury that the forgoing is true and correct as of the date hereof to the best of my knowledge, according to TRT's records, and without further independent inquiry or investigation on my part.

Dated this 5 day of August 2009.

A handwritten signature in dark ink, appearing to read 'M. Kirk Scott', is written over a horizontal line.

M. Kirk Scott
Chief Financial Officer
Dividend Capital Total Realty Trust Inc.


DECLARATION OF MICHELLE PALMER

I, Michelle Palmer, make the following declaration based upon my personal knowledge and, if called upon to testify, I could and would testify as follows:

1. I am the former wife of Daren L. Palmer, who was running Trigon Group, Inc.
2. On July 30, 2009, Wayne Klein, the Receiver appointed over the assets of Trigon Group, Inc. and assets of Daren L. Palmer, provided me a copy of two documents from Dividend Capital Total Realty Trust ("TRT").
3. The first document, attached hereto as Exhibit A, is a "Non-Qualified Quarterly Redemption of Shares Form" dated April 27, 2009 (with Bates #700878). This form purports to contain my signature. The signature of my name on this form is a forgery. I did not sign it. I had never seen this form before July 30, 2009.
4. The second document, attached hereto as Exhibit B, is a copy of the front and back of a check from Dividend Capital Total Realty Trust, Inc. drawn on the Bank of New York Mellon in the amount of \$1,229.26 and dated June 30, 2009 (with Bates #700890). This check is made payable to both Daren L. Palmer and Michelle Palmer.
5. The reverse side of this check has the signature of my former husband, Daren Palmer, and a signature that purports to be mine. I did not endorse this check and had never seen it before July 30, 2009. I did not receive any proceeds from this check and was not even aware of its existence until the copy of the check was sent to me by the Receiver.

I verify under penalty of perjury that the foregoing is true and correct.

DATED this 30 day of July, 2009.


MICHELLE PALMER

EXHIBIT

“A”

2455/256



DIVIDEND CAPITAL
TOTAL REALTY TRUST

Non-Qualified Quarterly Redemption of Shares Form

CURRENT SUBSCRIBER INFORMATION (Please print name in which shares are registered)

Daren L Palmer

Investor Name

Michelle Palmer

Co-Investor Name

JTWROS

208-528-9213

Home Telephone

208-524-4496

Business Telephone

darenpalmer@cablenet.net

Email Address

519-06-7097

Investor Social Security/ Taxpayer ID #

10/24/1968

Birth Date/Articles of Incorporation (MM/DD/YY)

539-04-8375

Co-Investor Social Security/ Taxpayer ID #

12/5/1971

Co-Investor Birth Date (MM/DD/YY)

3995 Canterbury Way

Street Address

IDaho Falls

City

ID

State

83404

ZIP

REDEMPTION REQUEST

☒ Full redemption

☐ Partial redemption, number of shares

Non-Custodial Ownership

Redemption proceeds will be paid by check

Custodial Ownership

Redemption proceeds will be sent to the C

SUBSCRIBER SIGNATURES

Dividend Capital Total Realty Trust is not intends to limit the number of shares to be common stock outstanding at the beginning, expected to exceed the aggregate proceeds received from the sale of shares pursuant to the distribution reinvestment plan. However, to the extent that the aggregate proceeds received from the sale of shares pursuant to the distribution reinvestment plan are not sufficient to fund redemption requests pursuant to the five percent limitation outlined above, the board of directors may, in its sole discretion, choose to use other sources of funds to redeem shares of Total Realty Trust common stock.

Redemption of shares of Total Realty Trust common stock will be made quarterly upon written notice received by Total Realty Trust in good order at least 15 days prior to the end of the applicable quarter. Redemption requests will be honored approximately 30 days following the end of the applicable quarter (the "Redemption Date"). Stockholders may withdraw their redemption request at any time up to three business days prior to the Redemption Date.

Daren L Palmer

Signature of Investor or Trustee

Michelle Palmer

Signature of Co-Investor or Trustee, if applicable

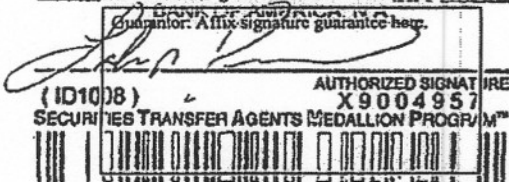
4-27-08

Date

SIGNATURE GUARANTEED

A Medallion Signature Guarantee is required. A notary public is not an acceptable guarantor.

Guarantor: Affix signature guarantee here.



Please mail completed Non-Qualified Quarterly Redemption of Shares Form to: Dividend Capital Total Realty Trust, Inc.

Direct Overnight Mail:
The Bank of New York
101 Barclay Street
A Level
New York, NY 10286
Attn: Dividend Capital - Total Realty Trust

P.O. Box:
Dividend Capital
The Bank of New York
P.O. Box 890
New York, NY 10008-0890

Dividend Capital Total Realty Trust Contact Information

Phone
866.DCG.REIT (324.7348)

Fax
646.835.8476

Web Site
dividendcapital.com

Email
info@dividendcapital.com

Account Information
For account service, call Bank of New York at 866.702.5030 or email dividendcapital@bankofny.com.

IMAGING OPERATIONS
2008 APR 30 A 11:11

700878

TRT-RET-45Q-NOV06

EXHIBIT

“B”

Account No: 6302699419

CPCS No: 62291673

Posting Date: 07/15/2009

VERIFY THE AUTHENTICITY OF THIS MULTI-TONE SECURITY DOCUMENT.

CHECK BACKGROUND AREA CHANGES COLOR GRADUALLY FROM TOP TO BOTTOM.

Dividend Capital Total Realty Trust Inc.

C/O BNY MELLON SHAREOWNER SERVICES
P.O. BOX 7090
TROY, MICHIGAN 48007-7090

THE BANK OF NEW YORK MELLON

NO. 00047114

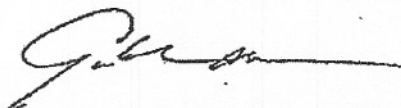
VOID AFTER 6 MONTHS

| DATE | CHECK NO. | AMOUNT |
|------------|-----------|----------|
| 06/30/2009 | 00047114 | 1,229.26 |

PAY ONE THOUSAND TWO HUNDRED TWENTY-NINE AND 28 / 100 DOLLARS

PAY
TO
THE
ORDER
OF

DAREN L PALMER AND
MICHELLE PALMER JTWROS
3995 CANTERBURY WAY
IDAHO FALLS, ID 83404



AUTHORIZED SIGNATURE

471140 10210000181 6302699419*

0000122926

127

THE ORIGINAL DOCUMENT HAS A WHITE REFLECTIVE WATERMARK ON THE BACK

HOLD AT AN ANGLE TO SEE THE MARK WHEN CHECKING THE ENDORSEMENTS.

123000226 07142009 0633
S/T 037 ID 97 FK 3
ACCT 09153910161212

3435369316

07/13/09
FOR RETURN ITEMS
>242170248<
*5494 UNL-NFT 262153
->242170248<

FOR DEPOSIT ONLY UNL-NFT *5494
TEF 02 TR 0892 0900000875 TITL 4:36
H ID 1064125891 07/13/09
ABE # 021000018
CK ACCT 6302699419
CK # 47114 AMT \$1,229.26
APPROVAL # PVT2407
BANK ABE # 121000948
BANK ACCT # 15310161212
FEDERAL GOVERNMENT CHECK
LICENSED CHECK CASHIER

Daren L. Palmer
Michelle Palmer

700890

DECLARATION OF R. WAYNE KLEIN, RECEIVER

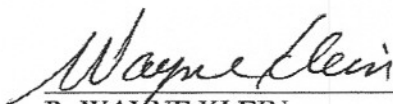
I, R. Wayne Klein, make the following declaration and, if called upon to testify, could and would testify as follows:

1. I am the Receiver for Trigon Group, Inc. and the assets of Daren L. Palmer, having been appointed by the U.S. District Court of Idaho on February 26, 2009 (Civil No's. 09-075-S-EJL and 09-076-S-EJL).
2. I carrying out my role as Receiver, I have received bank records of Trigon Group and personal bank accounts of Daren Palmer. I have caused analyses to be performed of those bank records, including analysis of account #473324580 at Zions Bank ("Zions Account") in the name of Daren and Michelle Palmer.
3. The Zions Account was opened by Daren and Michelle Palmer in May 2006.
4. On February 5, 2007, check #1298 was drawn on the Zions Account, made payable to Dividend Capital Total Realty Trust, in the amount of \$5,000.
5. On February 5, 2007, the Zions Account had an account balance of \$19,441.78.
6. From the time the Zions Account was opened in May 2006 until the date this check was written (February 5, 2007), a total of \$281,844.50 had been deposited into the Zions Account. These deposits came from the following sources:
 - a. \$16,500.00 Cash
 - b. \$5,000.00 U.S. Bank (the prior personal bank account used by the Palmers)
 - c. \$231,365.08 Trigon Group, Inc.
 - d. \$9,979.00 Interbank FX
 - e. \$18,525.89 U.S. Treasury
 - f. \$474.53 Miscellaneous sources.
 - g. **\$281,844.50 Total**

7. In the 60 days prior to the February 5, 2007 check to Dividend Capital, all but \$1.59 of the \$91,679.59 deposited into the Zions Account came from Trigon Group, Inc.
8. The deposits from sources other than Trigon (other than the miscellaneous deposits totaling \$474.53) appear to have been derived originally from Trigon:
 - a. For the period before February 5, 2007, \$1,500 had been withdrawn from the primary Trigon bank account in cash. Another \$3,359,614.21 in checks from Trigon had been made payable to Daren Palmer. An additional \$13,500 in checks from Trigon had been made payable to Michelle Palmer. These are likely the sources of the cash deposited into the Zions Account.
 - b. The U.S. Bank account was funded almost exclusively with checks from Trigon Group.
 - c. The Interbank FX deposit appears to be a partial withdrawal of a \$20,000 deposit made by Trigon to Interbank FX on April 28, 2006.
 - d. The deposits from the U.S. Treasury appear to be a partial refund of the \$68,907.00 paid to the U.S. Treasury from the Palmers' bank account at U.S. Bank on April 13, 2006.
9. I have found no indication that Daren Palmer had employment or sources of income other than Trigon since at least 2000. His former wife, Michelle Palmer, told me she was unaware of any employment or source of income for Daren, other than Trigon, subsequent to approximately 1997.

I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge as of the date hereof.

DATED This 6th day of August, 2009.

A handwritten signature in cursive script, reading "Wayne Klein", written in dark ink. The signature is positioned above a horizontal line.

R. WAYNE KLEIN

Receiver for Trigon Group, Daren Palmer assets.