Steven R. Paul (7423)
NELSON SNUFFER DAHLE & POULSEN PC
10885 South State Street
Salt Lake City, Utah 84070
Telephone (801) 576-1400
Facsimile (801) 576-1960

Attorneys for Defendants Patrick Brody and Laura Roser

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, vs. **ART INTELLECT, INC., a Utah corporation, d/b/a Mason Hill and Virtual MG, PATRICK MERRILL BRODY, LAURA A. ROSER, and GREGORY D. WOOD,** Defendants.	**MEMORANDUM IN SUPPORT OF MOTION TO REMOVE RECEIVER** Case No.: 2:11-cv-00357 Judge Tena Campbell

Defendant Laura Roser Brody, through her attorneys, has moved the court to remove the receiver and to either remit the management of Art Intellect, Inc., back to her as its owner during the pendency of this action or appoint a more suitable receiver. By his recent fee application, it seems clear the current receiver may be in over his head, and,

even with counsel assisting him, is either unable, or unwilling, to take a reasonable approach to the receivership reasonably suited to the scope of litigation.

Having separately objected to and opposed the recent fee application made by the receiver, this movant will not repeat the points made therein. But she does make the further supplemental point while apparently engaging in legal work that had no discernible benefit to advancing the matter at hand, the receiver has also neglected a more weighty and emergent matter arising from the fact that this court's asset freeze order and litigation stay in this case does appear to freeze and stay SEC v. Merrill Scott, also assigned to this judge, in light of the presence of Patrick M. [Merrill] Brody as common defendants. Since Art Intellect, Inc., is restrained by this court from appearing in that case and protecting its interests, the receiver in this case ought to have done so, and apparently has not. Since the $4 million in money still in the received kitty in that litigation ought not to be disbursed until its connection with this case is fully and fairly litigated, the receiver in this case should have promptly entered his appearance and intervened in that case to stay all matters.

The receiver's failure to do that is in and of itself sufficient cause to remove him and either remit management of Art Intellect, Inc., back to this movant as its owner or assign a more suitable receiver. Movant suggests the appointment of John L. Brough, a Salt Lake-based CPA/ABV be his replacement (if the court is inclined to replace him as opposed to remitting the management of Art Intellect, Inc., back to Ms. Roser). Mr. Brough is a well-respected "litigation support" CPA who has testified as both a forensic accountant and business valuation expert countless times before a number of judges and

juries both in and out of Utah. He was recently appointed a receiver by a state court when the law firms for both sides submitted his name to the court without even telling him in advance.

Mr. Brough's contact information is *john@broughassociates.com* - telephone (801) 355-1605 - fax (801) 355-1605 - cell (801) 598-8189 - office address Clift Building, 10 West Broadway, Suite 310, SLC UT 84101

This matter is somewhat urgent, since the $4 million is potentially subject to transfer to the United States Treasury to satisfy unpaid corporate taxes [see attached motion and memorandum filed by Patrick Merrill Brody with the Tenth Circuit on August 15, 2011, in Case No. 11-4120] and the apparently responsive motion and memorandum filed by the receiver in SEC v. Merrill Scott on August 16, 2011, [memorandum attached], seeking to suddenly transfer the money out of his control before such a transfer to the United States Treasury can be litigated. The receiver in this case has failed to intervene and protect the $4 million as a potential source from which to satisfy a disgorgement against Patrick Merrill Brody in this case. He should be removed promptly so as to enable either this owner of Art Intellect, Inc., or a new receiver, to so intervene therein.

In litigation under SEC v. Merrill Scott, and appeals from that case, it was established that Estate Planning Institute was a “captive law firm” and a legitimate and profitable part of Merrill Scott. The corporate taxes on those profits were deferred due to the booking of paper losses by Merrill Scott as a whole but appear to have become due and payable in 2002, giving rise to a contingent liability of some $4 million to the IRS.

Mr. Brody sought to reinstate some stricken discovery responses as they related to the facts in the Tenth Circuit ruling that held Estate Planning Institute legitimate and profitable and give rise to a 2002 tax of some $4 million as a contingent liability to the United States Treasury. The SEC opposed that. SEC v. Merrill Scott, dkt. # 1343, pp. 3-4, 11/22/2010:

> Even if the Court were to reinstate Brody's belated discovery responses as they related to the facts in the Tenth Circuit ruling, Brody would reap little benefit. Throughout his sworn responses, Brody acknowledges that EPI was an affiliate of MSA; however, it was a law firm owned and operated by co-defendant Dave E. Ross, II as "The David E. Ross Estate Planning Institute." Subsequently, whether or not EPI – an entity owned and controlled by David E. Ross – operated as a profitable or legitimate part of the MSA scheme is irrelevant to this Court's rulings striking Brody's sworn discovery response and granting the Commission's summary judgment motion.

Even though this court in SEC v. Merrill Scott did not reinstate the discovery, the record in that case is sufficient to create a duty on the part of a prudent receiver in SEC v. Art Intellect Inc., to intervene in SEC v. Merrill Scott, and get an appropriate stay order.

During his deposition in that case on December 15, 2003, Mr. Brody, like a good witness, responded only to the questions that The Commission asked, and the attorney defending the deposition for Mr. Brody, Gifford W. Price, lodged objections to the form of a large number of the questions. The Commission repeatedly tried to get Mr. Brody to invoke his Fifth Amendment privilege as to questions that it had not asked yet. Mr. Brody was careful not to do so and Mr. Price protected Mr. Brody from that.

Typical of that was the exchange on p. 16, lines 16-24:

> Q. Are you going to invoke your Fifth Amendment rights as to any question that I ask you about Exhibit Number 3?

A. Well, it would be difficult to answer a hypothetical question like that, but . . .

Q, Is that a yes or a no? It is a yes or no question.

MR PRICE: I'll object to the form of the question because he doesn't know what the question is you're going to ask.

The Commission would also elicit in invocation of his Fifth Amendment privilege from Mr. Brody as to a question and then attempt to get him to expand that invocation of the Fifth Amendment beyond that question to another question that it had not asked yet.

Typical of that was the exchange on pp. 17-18, lines 22-7:

Q. And you've retained additional counsel, Mr. Robert Copier, to represent you in a contempt action brought by the SEC against you for violations of the asset freeze, haven't you Mr. Brody?

A. I'd invoke my Fifth Amendment rights and decline to answer.

Q. You're declining to answer whether or not you retained counsel in that action?

A. I'm just declining to answer that question.

Apparently dissatisfied with the deposition record because the invocations of the Fifth Amendment were narrowly focused and limited to the questions asked, The Commission pursued additional questions by written interrogatories under the Federal Rules of Civil Procedure. It is the responses to those interrogatories that the pending motion seeks to reinstate into the record and that The Commission now labels as "belated. " But it is undisputed that Mr. Price and the attorneys for The Commission, by agreement, extended the time for the responses. When The Commission finally asked Mr. Price that the responses be made, Mr. Brody was faced with the choice of either answering under oath or seeking the assistance of this court by way of a discovery

protective order in light of the fact that he was anticipating criminal charges arising out of Merrill Scott and had a legitimate claim to a Fifth Amendment privilege until the criminal litigation over the anticipated criminal charges was concluded. Emboldened by the fact that the criminal defense attorney who he had retained for those anticipated criminal charges, Robert Henry Copier, had made an appearance in this civil enforcement action [and successfully defended him in contempt proceedings], Mr. Brody sparingly invoked the Fifth and answered most of the interrogatories under oath in a timely fashion once The Commission sought those answers. His answers were thus not "belated."

If the court orders at issue were judgments on jury trial verdicts entered after a trial on the merits, the standard of review argued by The Commission above would have been appropriate, as it has set forth a reasonable argument reconciling "the facts in the Tenth Circuit ruling" to the existing court orders when "the facts in the Tenth Circuit ruling," and the reasonable inferences to be drawn from them, are viewed in the light most favorable to those orders. But since those interlocutory orders were entered as a matter of law under FRCP 56, that standard was incorrect. Instead, since the orders are interlocutory Rule 56 orders that were not certified as final under FRCP 54(b) and were entered as a matter of law with no trial of the facts, Mr. Brody is still entitled to have "the facts in the Tenth Circuit ruling," and the reasonable inferences to be drawn from them, viewed in the light most favorable to him. In light of this, not that FRCP 54(b) has been since applied in that case, a prudent receiver in SEC v. Art Intellect, Inc., would now be intervening for the limited purpose of getting a stay in that case pending a further order.

The failure of the Mr. Klein to so intervene in that case is cause for his removal.

CONCLUSION

Mr. Klein should be removed as receiver. The court should then hold a hearing on whether the management of Art Intellect, Inc., should be remitted back to this movant as its owner during the pendency of this action or if a new receiver should then be appointed, and, if so, to identify a suitable receiver who is willing to reasonably proceed.

Dated this 19th day of August, 2011.

NELSON SNUFFER DAHLE & POULSEN, PC

/s/_____
Steven R. Paul
Attorneys for Defendants and Cross-claim Plaintiffs

- - - - - - - - - - - - - - - - - - - END OF DOCUMENT - - - - - - - - - - - - - - - - - - -

EXHIBIT 1

CASE NO. 11-4120

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff and Appellee,

vs.

PATRICK MERRILL BRODY,

Defendant and Appellant.

MOTION FOR RELEASE, REMAND, AND, RE-SENTENCING

On Appeal from the United States District Court for the District of Utah
The Honorable Clark Waddoups, Presiding

Appellant Patrick Merrill Brody respectfully moves this court to [1] release him pending appeal; [2] retain jurisdiction but remand the case for re-sentencing; and, [3] order the district court to consider *SEC v. Merrill Scott* [dismissed as an appeal (11-4109)] in computing tax loss.

This motion is made on the grounds that the appeal by Merrill Scott & Associates, Inc., and the three other entity defendants in 11-4109 has been dismissed without a motion by them or by Mr. Brody seeking such a dismissal; that said dismissal will frustrate this court's purposes in ordering that 11-4109 and 11-4120 would be assigned to the same appellate panel; and, that the best way to still satisfy those purposes is to now remand to the district court for a re-sentencing.

This motion is made on the grounds that Merrill Scott & Associates, Inc., and the three other entity defendants in 11-4109, are highly unlikely to pursue reinstatement of their appeal due to orders and actions of the district court in *SEC v. Merrill Scott* [and its receiver's stances].

This motion is made on the grounds that such a re-sentencing is likely to lead to a sentence at a low end of a 0-6 month guideline range, perhaps for "time served," making it just and appropriate to now temporarily release Mr. Brody from a 10 month sentence at Lompoc.

This motion is made on the grounds that such relief is the best way to now achieve this court's purposes in ordering that appeals 11-4109 and 11-4120 would be assigned to the same appellate panel, and argued together if appropriate, [now that 11-4109 has been dismissed]; that it was manifest error for the district court to decline to consider the orders in *SEC v. Merrill Scott* in computing tax loss in this case; that a re-sentencing that takes those orders into account is likely to result in a sentence at the low end of the 0-6 month range rather than 10 months; and, that it would be unjust to deny Mr. Brody the benefits of this court's purposes in so ordering.

This motion is made on the grounds that a remand re-sentencing at the low end of the 0-6 month range is likely to moot and terminate this appeal, as this appeal is driven not as much by the misdemeanor conviction as by the 10 month sentence that was imposed on that conviction.

This motion is made on the grounds that a collateral benefit to the United States and to the public from a release, remand, and re-sentencing is that an Article III court will, as part of the re-sentencing, receive briefing as to whether there is a $4 million contingent corporate tax liability owed to the IRS by Merrill Scott & Associates, Inc., collectible out of received funds.

This motion is supported by a memorandum.

The United States opposes any motion that would release Mr. Brody during his appeal.

DATED this 15th day of August, 2011.

ROBERT HENRY COPIER LAW

/s/ Robert Henry Copier

_____

ROBERT HENRY COPIER
Attorney for Patrick Merrill Brody

Robert Henry Copier
ROBERT HENRY COPIER LAW
17 East Fourth South
Salt Lake City UT 84111
Telephone (801) 272-2222

EXHIBIT 2

CASE NO. 11-4120

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff and Appellee,

vs.

PATRICK MERRILL BRODY,

Defendant and Appellant.

MEMORANDUM IN SUPPORT OF MOTION FOR RELEASE, REMAND, AND, RE-SENTENCING

On Appeal from the United States District Court for the District of Utah
The Honorable Clark Waddoups, Presiding

RELIEF SOUGHT

Appellant Patrick Merrill Brody has respectfully moved this court to release him pending appeal; to retain jurisdiction but remand the case for re-sentencing; and, to order the district court to consider *SEC v. Merrill Scott* [dismissed appeal 11-4109] in computing sentencing "tax loss."

ARGUMENT

Had 11-4109 not been dismissed, the primary focus of that appeal would have been a challenge by Merrill Scott & Associates, Inc., and three related entity defendants, [collectively, "MSA"] to the Rule 54(b) judgments entered against MSA. Defendant Patrick Merrill Brody openly claimed a right to perfect and direct the appeals by Merrill Scott & Associates, Inc., and Merrill Scott & Associates, Ltd, which, in turn, claimed the right to perfect and direct the appeals of the two other MSA defendants. Had the appeal by those four entity defendants ["MSA"] proceeded under his direction, MSA would likely have challenged the judgments against MSA as erroneous for failing to take into account the contingent liability of MSA to the IRS for some $4 million in unreported corporate taxes arising in early 2002 as to which the criminal statute of

limitations had not yet run based on the filing date of the 2002 corporate return. While Mr. Brody doubts that there was any criminal intent on the part of the court-appointed receiver and/or his accountants who appear to have underreported the 2002 corporate tax liability by some $4 million, it was nevertheless improper to fail to include that as a contingent liability, at least until the 6-year criminal statute of limitations had run. And under this court's order that 11-4109 and 11-4120 would be assigned to the same appellate panel, and argued together if appropriate, a reversal of the judgments against MSA in 11-4109 for erroneous failure to take the $4 million in contingent tax liability into account would likely have resulted in a reversal in 11-4120 due to the declination by the district court in this misdemeanor tax case to take into account the orders in *SEC v. Merrill Scott* in computing tax loss for sentencing purposes, since the appellate court had effectively ordered that it would do that on appeal. Without re-sentencing, the case would have been in an unjust state where the appellate court had, in essence, ordered it would take civil Article III court orders into account, but where the district court had expressly declined to do so.

Mr. Brody had also appealed in his own right. But his personal appeal faced some challenges, since the civil Rule 54(b) judgment against him personally was based on his invocation of his Fifth Amendment privilege in his civil deposition, and a civil judgment can be the price one pays when resorting to the Fifth Amendment to manage one's criminal exposure.

But that case had an interesting Fifth Amendment twist. When Mr. Brody was deposed in *SEC v. Merrill Scott*, the SEC had a complete picture of the situation already, as SEC counsel had been present when Mr. Brody subjected himself to immunized questioning from the U.S. Attorney in 2002, represented by the undersigned criminal defense counsel. But this counsel did not represent Mr. Brody at his civil deposition. Mr. Brody was represented by what this counsel deems to be the second-best boutique securities law firm in Salt Lake City. [This counsel confesses bias in that regard, as he was "of counsel" to what he considers to be the best boutique securities law firm in Salt Lake City as his final part-time job before largely retiring from the practice of law entirely and thereafter taking on only a limited number of clients and matters.] It appears that the SEC was surprised when Mr. Brody invoked the Fifth Amendment, as the SEC did not seem to have carefully crafted deposition questions to get maximum inferential benefit by framing highly focused leading questions to which Mr. Brody would then invoke the Fifth.

Apparently because of this, the SEC followed-up the deposition with written discovery demands that appeared more carefully focused on attempting to get maximum inferential benefit from having Mr. Brody invoke his Fifth Amendment privilege as to follow-up written discovery.

But by the time Mr. Brody responded to that written discovery, this counsel had been brought over from the criminal defense side to join as his co-counsel in the SEC civil case to successfully defeat two separate contempt motions against Mr. Brody brought by the SEC.

With his criminal defense counsel now actively onboard in the SEC civil case, Mr. Brody and his counsel decided that he did not need to invoke his Fifth Amendment privilege as to most of the post-deposition discovery, and he answered most of it. That was apparently not what the SEC had planned on. The SEC moved to strike Mr. Brody's answers on grounds that since Mr. Brody invoked the Fifth Amendment at its earlier deposition he could not answer its follow-up.

Mr. Brody's personal appeal issue in 11-4109 would have been that it was error to grant that motion to strike discovery responses [and grant summary judgment based on their absence].

The appeal in 11-4109 also included an appeal by this attorney as an appellant in his own right. Earlier this year, the SEC filed a new civil enforcement action against Mr. Brody, *SEC v. Art Intellect, Inc.*, with a draconian asset freeze order that fully strips Mr. Brody of any ability to reasonably compensate counsel. All of his attorneys in *SEC v. Merrill Scott*, including this one, promptly bolted for the exits with motions to withdraw. The district court granted the one filed by his original SEC civil counsel, but denied the one filed by this counsel, ruling that since Mr. Brody now faced a new motion for a contempt order to show cause in *SEC v. Merrill Scott* arising out the allegations in *SEC v. Art Intellect, Inc*., this counsel ought to stay on and defend him against those, since Mr. Brody faced severe consequences. The district court's choice in that regard made sense, since it is this counsel who successfully defended Mr. Brody against the two prior civil contempt motions and was brought over from the criminal defense side to do just that.

But my personal appeal was to challenge the district court's dragooning, shanghaiing, and press-ganging me into service while fully releasing my co-counsel, as it should have been up to Mr. Brody, not to the district court, to allocate assignments and tasks between his attorneys. The matter became moot when the contempt motion wound up being fully briefed by this attorney and the district court ruled that the motion would be decided on the briefing without any hearing.

This counsel, therefore, filed a suggestion of mootness and withdrawal of his personal appeal in the Tenth Circuit Court of Appeals and filed a waiver of further electronic service in the district court in *SEC v. Merrill Scott*. The Tenth Circuit Court of Appeals misconstrued that as a motion to dismiss the entire appeal, and did so. It does not appear that the four MSA entity defendants will be moving to reinstate their appeal. Since that is the portion of the appeal in 11-4109 that would have been relevant to this criminal appeal and relevant to this court's purposes in ordering that the two appeals would be decided by the same appellate panel, those purposes can now best be achieved by remanding to the district court with an order to re-sentence and to take the orders in *SEC v. Merrill Scott* into account. The reasons that it does not appear that the four MSA entity defendants will be moving to reinstate their appeal are as follows. The district court has stricken this counsel's limited entry of appearance for the limited purpose of appealing on behalf of the two Merrill Scott defendants [which in turn claim a right to perfect and direct the appeal of the two other MSA defendants], and the receiver has argued that an order is still in place in the district court that should be construed as giving him exclusive right to make all appeal decisions. As this counsel aspires to obey all court orders, even the hint of a whisper that further proceeding in 11-4109 could violate a district court order is enough to make him stop immediately, even though it does seem odd that a district court and a district court's receiver can deprive litigants of the right to appeal the very orders that so deprive them. Further, it appears that another attorney who made a "general appearance" for the four MSA defendants has never withdrawn in the district court, at least as far as this counsel can tell. But since that attorney is apparently not on the e-filing service list, and this attorney is the only attorney who has deigned to give him written notice, it appears unlikely said attorney will proceed with trying to reinstate the appeal for the four MSA defendants, especially in light of the receiver's stance as to the receiver's exclusive right to do that, since that would be contrary to the receiver's own interests.

Since this court's order that this appeal of a tax misdemeanor conviction shall be assigned to the same appellate panel as the appeal from the SEC civil enforcement action appears to have already rendered to be manifestly erroneous the district court's opposite declination to similarly fully consider the SEC enforcement action in computing tax loss for purposes of sentencing Mr. Brody, the question before this court is how to now best proceed. Further briefing of the matter

in this court is likely to yield only a remand for re-sentencing, as an appellate court is tasked with deciding only questions of law on a closed record, while the district court, when it is properly ordered by this court to consider the SEC case in computing tax loss, would be able to receive materials not yet in the case record. That appears appropriate in this case, where the district court has already ruled that it is unable to compute the tax loss on the jury trial record or on the arguments made to the jury, and so this court is likely unable to do that as well. The best court to receive additional information is the district court, since a sentencing in the district court need not be limited to the record at jury trial – is usually more expansive – and here the only reason that materials from *SEC v. Merrill Scott* were not presented, briefed, and argued, was that court's ruling at the transcribed April 1, 2011, hearing that it would not consider that civil case. To the extent that ruling meant the district court would not consider the SEC civil enforcement action for purposes of imputing wrongdoing and scienter to Mr. Brody as related conduct, Mr. Brody does not appeal that and the United States did not timely appeal or cross-appeal. But because the portion of that ruling that self-limited the district court from considering said SEC case for purposes of computing tax loss is not consistent with this court's order that said SEC case would be heard by the same panel that hears this criminal appeal, remand to the district court is proper.

Mr. Brody should be ordered temporarily released from serving his 10 month sentence at Lompoc. This court should retain jurisdiction, but remand to the district court with an order to allow the parties to present materials and argument pertaining to the impact of the *SEC v. Merrill Scott* case on the 2001 tax loss, and to then re-sentence Mr. Brody. Mr. Brody anticipates that since the district court already sentenced him to 10 months, which was well below the guideline range under the tax loss as computed without benefit of considering *SEC v. Merrill Scott*, and was also two months below the statutory maximum, that a conclusion that the guideline range is properly 0-6 months will likely lead to a sentence of time served. At that point, Mr. Brody is likely to waive further appeal, even though he does not waive an appeal of his conviction yet.

As indicated in the motion itself, appeal counsel for the United States has indicated to this counsel that the United States opposes any order temporarily releasing Mr. Brody. That is to be somewhat expected, as it appears that despite the government's assurances to the jury that it is not acting out of an overzealous obsession with Mr. Brody, the government is willing to walk

away from a possible $4 million in unpaid corporate taxes [that are still readily collectible from a receiver who is sitting on that much money] in order to try to make Mr. Brody serve an extra 4 months of misdemeanor time in a case where the guideline range will probably be 0-6 months. If on remand the order requiring consideration of the impact of *SEC v. Merrill Scott* on the 2001 "tax loss" leads the district court to directly conclude that there are indeed some $4 million in unpaid corporate taxes, and that as an indirect result of that Mr. Brody' misdemeanor conviction for not filing a 2001 personal income tax return is a revenue-neutral technical violation, it may well be that the government's hand will be forced by such a ruling to take some steps to transfer $4 million on which a receiver is sitting to the United States Treasury. And if Mr. Brody does not succeed at that, at least the matter will be put to rest in an Article III court, instead of being ignored by the United States, with plenty of time for a middle-aged Mr. Brody to finish his time.

But since it appears probable that an order requiring the district court to consider *SEC v. Merrill Scott* in computing tax loss will lead to the conclusion that Mr. Brody's conviction for failure to file a 2001 tax return was revenue neutral because he owed no taxes for that year, but that corporate taxes have been underpaid by some $4 million for the 2002 tax year, and since the trial court ruled that the jury trial record and arguments did not allow the trial court to compute tax loss, but then further self-limited its ability to compute tax loss by declining to consider *SEC v. Merrill Scott*, that is something that can no longer be justified now that the appellate court has not so self-limited itself and has ordered that the appeal of *SEC v. Merrill Scott* would be assigned to the same appellate panel as the appeal of *U.S. v. Brody* and if appropriate argued together. Since it is unlikely that the appeal of *SEC v. Merrill Scott* will be reinstated, it would be manifest error and grave injustice to allow an artificial and unjustifiable tax loss estimate to stand as to the 2001 personal tax year without letting *SEC v. Merrill Scott* be considered in some fashion. It appears that the district court is the court best equipped to do that initially and that this court will likely never see this appeal again other than to dismiss it after such a remand.

Since the $500,000 in 2001 gross income from Merrill Scott urged by the government was all "indirect" and was not booked or expensed by Merrill Scott as an expense to itself or recorded by it as direct income to Mr. Brody, and since the jury was properly instructed that such "income from forgiveness of indebtedness" is "gross income," the 2001 tax loss was zero due to

Mr. Brody having been rendered insolvent by *SEC v. Merrill Scott* between the close of the 2001 tax year and the August 15, 2002, due date on which the government relied – and so he therefore could not be taxed on "income from forgiveness of indebtedness" [if it was income at all] to the extent Mr. Brody was, for some reason, not able to defer all but $2900 of it to the 2002 tax year, as no contrary 2001 Merrill Scott corporate return with any different tax treatment is in evidence.

The artificial exclusion of *SEC v. Merrill Scott* from the tax loss computation cannot be allowed to stand now that this court has, correctly, ordered said case should be considered with this case. And as a collateral note, since the district court ruled and ordered that there was to be zero restitution to the United States Treasury from Mr. Brody in this case [a portion of his sentence that Mr. Brody also does not appeal in this appeal and which the government did not timely appeal or cross-appeal], such remand and re-sentencing may well be a catalyst for a $4 million transfer of received funds to the United States Treasury otherwise unlikely to occur in light of a receiver's insistence in *SEC v. Merrill Scott* that he exclusively controls appeal rights.

CONCLUSION

In light of the fact that the orders and actions of the district court in *SEC v. Merrill Scott* and the stances taken by its receiver in that case claiming exclusive right to control appeals mean that it is highly unlikely that the four entity defendants will pursue reinstatement of 11-4109, this court, in this appeal, should enter the following orders as to Mr. Brody: [1] release him pending appeal; [2] retain jurisdiction but remand the case for re-sentencing; and, [3] order the district court to consider *SEC v. Merrill Scott* [dismissed as an appeal (11-4109)] in computing tax loss.

DATED this 15th day of August, 2011.

ROBERT HENRY COPIER LAW

/s/ Robert Henry Copier

_____

ROBERT HENRY COPIER
Attorney for Patrick Merrill Brody

Robert Henry Copier
ROBERT HENRY COPIER LAW
17 East Fourth South
Salt Lake City UT 84111
Telephone (801) 272-2222

David K. Broadbent, 0442
Rebecca A. Ryon, 11761
HOLLAND & HART LLP
222 South Main, Suite 2200
Salt Lake City, Utah 84101
Telephone (801) 799-5800
Facsimile (801) 799-5700

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, vs. MERRILL SCOTT & ASSOCIATES, LTD.; MERRILL SCOTT & ASSOCIATES, INC.; PHOENIX OVERSEAS ADVISERS, LTD.; GIBRALTAR PERMANENTE ASSURANCE, LTD.; PATRICK M. BRODY; DAVID E. ROSS II and MICHAEL G. LICOPANTIS, Defendants.	**MEMORANDUM IN SUPPORT OF MOTION FOR APPROVAL OF RECEIVER'S FOURTH INTERIM DISTRIBUTION** Civil No. 2:02CV-0039C Judge Tena Campbell Magistrate Judge David Nuffer

David K. Broadbent, as Receiver ("Receiver") for Merrill Scott and Associates, Ltd., Merrill Scott & Associates, Inc., Phoenix Overseas Advisors, Ltd., Gibraltar Permanente Assurance, Ltd., and all subsidiaries and affiliated entities, submits this Memorandum in Support of his Motion for Approval of Receiver's Fourth Interim Distribution.

Background Facts

On January 15, 2002, the Securities and Exchange Commission ("SEC") filed a Complaint against Merrill Scott and Associates, Ltd., Merrill Scott & Associates,

Inc., Phoenix Overseas Advisors, Ltd., and Gibraltar Permanente Assurance, Ltd. (collectively "Merrill Scott"), and Patrick Brody, David E. Ross II and Michael G. Licopantis alleging fraud, misrepresentation, and misappropriation of investor funds.

On January 23, 2002, this Court entered an order appointing David K. Broadbent as Receiver for Merrill Scott and all subsidiaries and affiliated entities (the "Receivership Order.") The Receivership Order provides, inter alia, that the Receiver is entitled to "have access to, to marshal and take control of all funds, assets, premises (whether owned, leased, occupied or otherwise controlled), choses in action, papers, books, records in whatever media, and other property, wherever located, belonging to, in the custody, control or possession of Merrill Scott," and to "have control of, and to close, transfer or otherwise take possession of all accounts, securities, funds, or other assets of, or in the name of Merrill Scott at any bank, brokerage firm or financial institution."

Since his appointment as Receiver, the Receiver has been engaged, inter alia, in marshaling assets of the receivership estate, and total cash recoveries through July 31, 2011 are $28,864,904.91. After payment of receivership administrative expenses, carrying costs with regard to certain assets, and the payments made under the first, second and third distributions approved by the Court in the amount of $24,912,530.77, the Receiver has approximately $3,952,374.14 in cash in his receivership account.

By order dated August 2, 2004, the Court approved the Receiver's Motion to Approve Claims Procedure and to Establish a Claims Bar Date for Investors, and the

deadline for submitting the approved claim forms (the "Claim Forms") to the Receiver was set at November 1, 2004.

As provided in the Court's order of August 2, 2004, the Receiver mailed notice of the claims process, including the approved Claim Forms, to known claimants and to all defendants and other parties who had appeared of record in the case, and published notice of the approved claims procedure and claims bar date in the Wall Street Journal and in USA Today.

Approved Distribution Plan

On March 22, 2005, the SEC filed its Motion for Approval of Plan of Partial Distribution (the "Distribution Plan"). Following a hearing in which the Court heard objections to the SEC's Proposed Distribution Plan, the Court entered its Order and Memorandum Decision on January 3, 2007, approving the Distribution Plan.

The Distribution Plan classifies claims into five categories, in the following descending order of priority: (1) Administrative Expense Claims; (2) Tax Claims; (3) Non-Insider Investor Claims; (4) Non-Participant Claims-loans and accounts payable; and (5) Non-Investor Creditors.

Claims falling within the first two categories, namely Administrative Expense Claims and Tax Claims are not included in the Receiver's Proposed Distribution. The Receiver will seek payment of Administrative Expense Claims by application to the Court for an order approving the payment of such claims as he has done in the past, and will pay Tax Claims if and when due as determined by the Receiver, as he has done in the past.

The claims for which the Receiver proposes to make a distribution all consist of the Class 3 Non-Insider Investor Claims. The Distribution Plan defines the term Investor Claims as "monies deposited with Merrill Scott for investment purposes," and explains that the term "shall be limited to a Claim for the principal balance tendered for investment less all funds returned to the claimant and will not include any claim for interest on the principal sum, or any promised returns on the amount invested." The term "Investor Claims" specifically excludes monies paid to Merrill Scott in the form of fees or other payments for financial advice tax or estate planning, or other non-investment purposes.

Summary of Claim Forms Filed with the Receiver

120 separate Claim Forms were filed with the Receiver under the procedure approved by the Court. The Claim Forms that were submitted included claims for amounts paid by the claimants to Merrill Scott for planning services[1] and for tax shelter or insurance products which, while offered by Merrill Scott, do not qualify as Investor Claims entitled to be included in this proposed distribution. These excluded products were investments made with third parties, such as the Market Linked Deposit ("MLD") tax shelters sold by Merrill Scott, and the Voluntary Employee Benefit Association

[1] Claims were filed by the following for planning fees only: Curtis Adams, Aurora Julianna Ariel, Kristal Ayres (AKA Sharp-Ferguson), Brian Barriger, Bruce BecVar, Beneficial Soil Solutions, W. E. Bright, Chicago Tractor Company, Shay Chin, George W. Dalphon, Eric Dent, Mark Ferganchick, Marilyn E. Harrington, Roger R. Harrington (deceased), Jack Charles Harris, William J. Harrison, Horace Heindel, Jeff Holman, Jeff Holman #2, Fred Ingelhart, Randall S. Lee, Monica K. Lee, Thomas W. Koeppe, John W. Long and Sharon E. Long, MB Electronics/Peter Royal, A. John Merola, Jack T. Mowat, Pierre A. Narath, Paul Nicodemus, Northeastern Ohio Surgical Specialists, Inc., C. Austin Reyes, Randall W. Smith, Richard J. Trevino, Buddy Glen Wellborn, and Daniel Winton.

(VEBA) insurance products promoted by Merrill Scott but obtained from insurance companies not related to Merrill Scott.[2] In the case of the MLD and VEBA products, Merrill Scott did not receive the proceeds of the investment or insurance premium, rather, it received only a commission.

One claimant, Morrow & Millberg, P.A., was a creditor of Merrill Scott and had no Investment Claim, and is therefore categorized as a Class 5 Claimant. Six claimants[3] were initially designated as Class 4 Non-Participants by the Court and were not included in the proposed distribution. The SEC subsequently filed a motion with the Court to change the classification of Glenn Argenbright to that of a Non-Insider Investor, and the Court granted that motion. Accordingly, Mr. Argenbright's claim has been allowed. Two additional claimants, James P. Landis and Steve H. Parker, both former employees of Merrill Scott, submitted claims for indemnification or contribution. The Receiver has not recognized either claim as an allowed claim. Another claimant, Patrick Gallagher, withdrew his $5,000 claim.

Several claimants obtained funds through Merrill Scott's "equity managed mortgage" or "EMM" program, by which loans were made to Merrill Scott clients by

[2] The claims that were based on MLD or VEBA products and were therefore partially or wholly disallowed were filed by Access Telecom Inc., Attn: Bradley Tirpak, Curtis Adams, Richard Boling, Reed M. Bouchey, Jeffrey and Lisa Bowen and affiliates, The Jeffrey & Lisa Bowen Charitable Supporting Organization, Daniel Browning, Jeffrey Cerny, Joseph Dedvukaj, Dr. Rick Delamarter, William Harper, Laurence D. Johns, KDK Upset Forging Company (Mahisekar), Robert and Elizabeth Kelly, Reginal D. King, Michael J. Ling, Richard O'Brien, Mario C. and Elva G. Rapanotti Charitable Support Organization, Jeffrey M. Mowrey, Rapanotti Partners, Ltd., LLP, Matt Reed, Strokirk II, Ltd., and Richard Sweret.

[3] Glenn Argenbright, Michael Licopantis, T. Shelton Powers, David E. Ross, Susan Sermon and Harold Sermon.

Legacy Capital, LLC, a Merrill Scott affiliate. One claimant, Jeffrey Mowrey, obtained a loan for his corporation, Mid-Atlantic Acceptance Corporation, and guarantied the loan. For purposes of calculating the net investment made by claimants, the Receiver has not deduced any sums paid to claimants as EMM loans. Claimants with EMM loans, including loans that they guarantied, are still obligated to repay such loans, and the Receiver has applied and will continue to apply the amounts otherwise distributable to such claimants against the outstanding amount of the claimants' loan obligations until the loans to such claimants are repaid. As of the date of the Motion For Approval of Receiver's Fourth Interim Distribution and this memorandum, only four claimants continue to have EMM obligations, as indicated on Schedule A. The amounts from the fourth proposed distribution to be applied to outstanding loan obligations are also set forth on Schedule A.

Two Claim Forms were received shortly after the Claims Bar Date. The Receiver elected to accept the late Claim Forms, as allowed in the Court's order establishing the claims procedure, inasmuch as there was no prejudice to the Receiver or to the other claimants by virtue of the late filing of such claims.

A third late claim was filed by Joseph Firmage on or about June 26, 2009, long after the Claims Bar Date. Following a hearing on Mr. Firmage's motion to allow his late claim, the Court entered an order that disallowed a portion of Mr. Firmage's claim equal to the pro rata portion of all Allowed Claims paid in the First and Second Interim Distributions, but approved the treatment of the balance of Mr. Firmage's claim as an "Allowed Claim." Payment to Mr. Firmage based on his Allowed Claim was included in the third distribution and is included in this proposed fourth distribution.

Settled Claims

The Receiver has negotiated the settlement of several claims with Merrill Scott clients who had both claims against the Receivership estate and outstanding obligations under their EMM loans.[4] In each such case, the claims of such claimants were withdrawn or reduced or arrangements were made for the payment of the EMM obligations in cash or by applying amounts otherwise distributable to the claimants toward their EMM obligations.

Litigation

At the time the Receiver sought approval of his Third Proposed Distribution, the Receiver was involved in litigation over claims made by Greg and Portia Seely and their related entity, Advantage Software. This Court granted the Receiver's motion to disallow a portion of the Seelys' claim and to allow an offset against the remaining portion (Dkt # 1305). The Seelys appealed the Court's decision to the U.S. Court of Appeals for the Tenth Circuit, which ruled in favor of the Receiver

[4] The claimants whose claims have been settled are Bradley S. Callahan, Travel Advantage Network, Inc., Global Excursions, Inc., Larry and Kelli Cotton, Larry and Kelli Cotton Charitable Supporting Organization, Charles Cozean, John Dowd, Dowd Marketing Inc. and Sylvan Depaul Services, LLC, Douglas Drexler, Robert and Donna Kay Herbolich, KDK Upset Forging Company (Mahisekar), Laxminarayan and Usha Mahisekar Support Organization, Platinum Investment Group, Inc., Platinum Training Center, LLC, Hector and Jeann La Marque, Jon McBride, Stephen M. Serlin, Todd Taskey, Gehrig H. White, The Gehrig and Margaret White Charitable Foundation, Douglas and Valerie Wood, Wood Charitable Supporting Organization, Curt E. Woods, The Curt and Kathy Woods Charitable Support Foundation, Chyrel Stoner and O.E. Stoner, Reed M. Bouchey, Sandy Bouchey and Reed M. Bouchey MD PC, Darrell L. Blegen, and Jeffrey Bowen, Lisa Bowen and the Jeffrey and Lisa Bowen Charitable Support Organization.

and affirmed the Court's decision. Accordingly, the Receiver has not included the Seelys' in the proposed distribution.

Rejected Claims

The Receiver rejected the claim of Ralf Leszinski and his related entities Labbie Holdings and the Leszinski Family Support Organization because his claims were incomplete and largely without merit, and because of a fraud perpetuated against the Receivership by Mr. Leszinski. As detailed in the declaration of the Receiver that accompanied his motion for approval of the second interim distribution, Mr. Leszinski refused to provide additional information requested by the Receiver. He also sold the property in Atlanta, Georgia that constituted security for his $1,000,000 EMM loan from Legacy Capital, and diverted the loan payoff proceeds that should have been paid to Legacy Capital to an entity he created by the same name. That transaction resulted in a claim by the Receiver against the title company that handled the sale and loan payment and a recovery by the Receiver in the amount of $1,000,000.

First, Second and Third Interim Distributions

The Receiver filed his first Proposed Interim Distribution with the Court on June 20, 2007. Following a hearing in which the Court heard objections to the proposed distribution, the Court entered its Order Regarding Interim Distribution and Objections dated October 30, 2007, in which it approved the Proposed Interim Distribution. The Receiver then made the distributions listed on Schedule A attached hereto under the heading "First Distribution Amount."

The Receiver filed his Motion for Approval of Second Interim Distribution with the Court on August 22, 2008. The Court entered its Order Approving Receiver's Second Interim Distribution on August 26, 2008; and the Receiver then made the distributions shown under the heading "Second Distribution Amount" on Schedule A.

The Receiver filed a Motion for Approval of Third Interim Distribution with the Court on November 20, 2009. Following the entry of the Court's Order Approving Receiver's Third Interim Distribution on January 4, 2010; the Receiver made the distributions shown under the heading "Third Distribution Amount" on Schedule A.

The first, second and third distributions were made in cash and, for claimants who had outstanding amounts due under their EMM loans, by crediting the amount of the distributions toward their outstanding loan obligations.

Schedule A attached to this memorandum shows the amount of Allowed Claim for each claimant. The schedules attached to the memoranda in support of the Receiver's prior motions for approval of the first and second interim distributions provided detailed information about the total amounts claimed by the claimants and the amounts returned to claimants by Merrill Scott that were, therefore, deducted from their claims. The schedules also identified and explained rejected portions of claims that did not constitute "Investor Claims" as provided in the Distribution Plan. That detail is not repeated on Schedule A attached to this memorandum.

Proposed Interim Distribution Amount

The Receiver proposes that $3,944,543.65 be distributed to the holders of approved Class 3 Non-Insider Investor Claims as shown on Schedule A. This amount

represents 10.75 percent of each Allowed Claim. A distribution of this amount will leave an adequate reserve for ongoing administrative expenses, taxes, and a contingency fund to deal with unresolved claims.

As provided in the Distribution Plan, the Receiver will make the distributions by sending a check to the name of the claimant to the last known address of said claimant or to the address specified by any change of address notices received by the Receiver before the funds are distributed.

As further provided in the Distribution Plan, in the event a claimant fails to negotiate the claimant's check within 90 days after the date the check is mailed to the last known address for said claimant, the claimant's claim against the receivership estate shall be considered abandoned and disallowed in its entirety. The funds which would otherwise be distributed to such claimant shall revert to the Receivership estate.

The Receiver has, concurrently with filing his Motion for Approval of Receiver's Fourth Interim Distribution, provided notice of this proposed distribution to the parties identified on the attached certificate of service, which include parties to whom notice is required to be sent as provided in the Distribution Plan, namely, the SEC, those parties in interest who have already filed a notice of appearance in this case, and to all claimants holding Allowed Claims, as defined in the Distribution Plan.

Conclusion

The Receiver believes that the interim distribution he proposes is consistent with the previous orders of the Court and the approved Distribution Plan, and respectfully requests that the Court approve the Proposed Fourth Interim Distribution.

Dated this 16th day of August, 2011.

/s/David K. Broadbent
David K. Broadbent, Receiver
Rebecca A. Ryon
222 South Main, Suite 2200
Salt Lake City, UT 84101
(801) 799-5800

CERTIFICATE OF SERVICE

I hereby certify that on August 16, 2011, I have mailed, by United States Postal Service, the document to the following non-CM/ECF participant:

James P. Landis
105 W. Woodlawn
San Antonio, TX 78212

John W. and Sharon E. Long
P.O. Box 273
Carlsborg, WA 98324

Fred Inglehart
2307 154 Rd.
Glenwood Springs, CO 81601

Robert Lorente
130 Cadycentre
Northville, MI 84167

Jeff Holman
c/o Edisto Orthopedics
311 Wade Hampton
Walterboro, SC 29488

A. John Merola
5100 W. Taft Rd., Suite 5C
Liverpool, NY 13088

Vance Yoakum
2025 Church Ridge
Wasilla, AK 99654

Paul Nicodemus
5636 Corporate Ave.
Cypress, CA 90630

Thomas W. Koeppe
P.O. Box 5128
Hercules, CA 94547

Randall W. Smith
3325 Willis Drive
Birmingham, AL 35243

Daniel Winton
110 Standish Lane
Mooresville, NC 28117

Brian Barriger
18044 Blue Heron Drive West
Northville, MI 48167

Curtis Adams
One Cedro Place
Dallas, TX 75230

Michael G. Licopantis
2222 Nantucket Dr.
Houston, TX 77057

Patrick Gallagher
6305 Park Meadow Lane
Plano, TX 75093

W. E. Bright
1503 Scenicview Drive
San Leandro, CA 84577

Randall S. and Monika K. Lee
1039 Rockingham Run
Brentwood, TN 37027

Aurora Juliana Ariel
25 Apuhihi Lane, Apt. 16M
Kihei, HI 96753-6078

Jeffrey Cerny
351 Radcliffe Way
Hinsdale, IL 60521

Jack T. Mowat
431 N. State Street, #5
Bellingham, WA 98225

Jeffrey Solla
12836 West Micheltorena Court
Sun City West, AZ 85375

Kristal Ayres (AKA Sharp-Ferguson)
28043 Eastbrook Drive
Bonita Springs, FL 34135

Mark Ferganchick
c/o Hugh M. Caldwell, Jr.
Williams Centre 8th Floor
5210 East Williams Circle
Tucson, AZ 85711

Eric Bliss
7606 Overlook Hills Lane
Cincinnati, OH 45244

Robert W. Buechner, Esq.
105 East Fourth St., Suite 300
Cincinnati, OH 45202

William Harper
1021 Talbotton Rd.
Columbus, GA 31904

Jack Charles Harris
P.O. Box 20803
Milwaukee, WI 53220

Michael J. Ling
13 Loreys Drive
Florham Park, NJ 07932

Soho Condos
Attn: Jeffrey Nourse
36 Blue Jay Way, Unit 1314
Toronto, Ontario
Canada M5V3T4

Mark Crosby
740 E. Ridge Crest Court
Alpine, UT 84004

Steven W. Call
Ray Quinney & Nebeker
36 South State, Suite 1400
Salt Lake City, UT 84111

Richard Sweret
P.O. Box 27
Centerport, NY 11721

David Deary
Shore Deary LLP
2515 McKinney Ave., Suite 1865
Dallas, TX 75201-1908

Val & Jana Eylands
RAS 621
444 Brickell Ave., Suite 81
Miami, FL 33131

Val & Jana Eylands
Mud Hole Road
Roatan, Honduras, Central America

Pierre A. Narath
4 Great Down Dr.
Buxford, MA 01921

Daniel Browning
3133 Wesson Gap Road
Attalla, AL 35954

Buddy Glenn Wellborn
1429 Harris Road
Lawrenceville GA 30043

Wendewell Construction, Inc.
P.O. Box 1050
Dacula, GA 30019

Beneficial Soil Solutions
1471 Elk Forest Road
Elkton, MD 21921

George W. Dalphon
1471 Elk Forest Road
Elkton, MD 21921

Roger R. Harrington (deceased)
500 South Main Street
Morton, IL 61550-1941

Mario E. and Elva G. Rapanotti
Charitable Support Organization
16202 Huebner Rd.
San Antonio, TX 78248-0985

Pacific Coast Venture Corporation
3082 White Sulphur Springs Road
St. Helena, CA 94574

Richard Boling
30006 Hickory Lane
Elkhart, IN 46514

Gwen D. Skinner
Feld Hyde
2000 Southbridge Pkwy., Suite 500
Birmingham, AL 35209

Brad Carr
Anderson Tate Mahaffey & McGarity
1505 Lakes Parkway, Suite 100
Lawrenceville, GA 30043

Melton J. and Lorraine B. Horwitz
4902 Braesheather Dr.
Houston, TX 77096

Jeff Holman
c/o Edrsto Ortho
311 Wade Hampton
Walterboro, SC 29

Marilyn Harrington
500 South Main Street
Morton, IL 61550-1941

Enterplex LP
c/o Ronald C. Malone
9953 E. Balancing Rock Road
Scottsdale, AZ 85262

Stanley Blend
Oppenheimer, Blend, Harrison & Tate
711 Navarro, 6th Floor
San Antonio, TX 78205

Chicago Tractor Company
3142 Lincoln Hwy.
Lynwood, IL 60411

Mark K. Boling, Esq.
829 Jaquet
Bellaire, TX 77401

Rapanotti Partners, Ltd, LLP
16202 Huebner Rd.
San Antonio, TX 78248-0985

Access Telecom, Inc.
c/o Bradley M. Tirpak
48 Orchard Street, Apt. 5A
New York, NY 10002

Duane Gillman
Durham Jones
111 East Broadway, Suite 900
Salt Lake City, UT 84111

John Dowd
264 Hichland Park Blvd.
Wilkes Barre, PA 18702

Elliott Cowan, Esq.
Gordon, Feinblatt, Rothman, Hoffberger & Hollander, LLC
233 E. Redwood Street
Baltimore, MD 21202

Bruce BecVar
3350 L Honoapiilani Road
#215-108
Lahaina, HI 96761

Darrell Blegen
13526 160th Ave. NE
Redmond, WA 98052

Patrick and Janet Hayes
c/o Hutton Sentell
3636 Maple Ave.
Dallas, TX 75219

Hutton W. Sentell
Law Offices of Joseph E. Ashmore, Jr. P.C.
3636 Maple Ave.
Dallas, TX 75219

Greg Seely
925 Central Park Way
Stuart, FL 34994

Bryce D. Panzer
Blackburn & Stoll, LC
257 East 200 South, Suite 800
Salt Lake City, UT 84111

MB Electronics
Peter Royal
100 Cummings Center, Suite 339 C
Beverly, MA 01915

Jeffrey and Lisa Bowen and Affiliates
The Jeffrey & Lisa Bowen Charitable Supporting Organization
5 Chaville Way
Greenville, DE 19807

Ian M. Comiksy
Blank Rome LLP
One Logan Square
Philadelphia, PA 19103

Bradley S. Callahan
672 Old Mill Road, PMB 311
Millersville, MD 21108

Jeffrey Mowrey
Ober, Kaler, Grimes & Shriver
c/o Gary M. Hyman
120 East Baltimore Street
Baltimore, MD 21202-1643

Gary M. Hyman, Esq.
Ober Kaler Grimes & Shriver, P.C.
120 E. Baltimore Street
Baltimore, MD 21202

Labbie Holdings
815 Fairfield Road
Atlanta, GA 30327

Richard G. Cook
2425 Catalina Drive
Salt Lake City, UT 84121

The Curt & Kathy Woods Charitable
Support Foundation
2406 Panorama Court
Arlington, TX 76016-6439

Shelton Powers, M.D.
c/o Richard G. Cook
Cook & Co., PLLC
2425 Catalina Drive
Salt Lake City, Utah 84121

Jon McBride
1062 East Homestead Lane
Kaysville, UT 84037

David Ross
2105 Bear Hollow Dr.
Park City, UT 84098

Reed M. Bouchey MD PC
23 Park Plaza, Suite 501 S. White
Mount Pleasant, IA 52641

Ralf Leszinski
Leszinski Family Support Organization
815 Fairfield Road
Atlanta, GA 30327

Valley Christian Schools
100 Skyway Drive
San Jose, CA 95111

Richard Trevino
12500 Poppy Lane
San Jose, CA 95127

Curt W. Woods
2406 Panorama Court
Arlington, TX 76016-6439

Stacey Barnes
Barnes & Associates, PLLC
4801 Woodway Dr. #300
Houston, TX 77056

Michael C. Walch
Walch & Smurthwaite, LLP
10 East South Temple, Suite 900
Salt Lake City, UT 84133

Max Wheeler
Snow Christensen & Martineau
10 Exchange Place
Salt Lake City, UT 84111

Steven A. Sents
Newell & Sents Law Office
213 Main Street
Columbus Junction, IA 52738-0188

Kenneth D. Perkins
409 Broad Street, Suite 220
Seweckley, PA 15143

William J. Puetz
c/o VHobbies.com, LLC
8118 Datapoint Drive
San Antonio, TX 78229

Scott and Deborah Kyle
1005 Ogden Drive
Austin, TX 78733

Laurence D. Johns, DDS, MSA
8632 W. Clara Lane
Peoria, AZ 85382

Horace Heindel
4455 Mt. Pisgah Road
York, PA 17406-8329

Charles Cozean
330 Canterwood Lane
Great Falls, VA 22066

Mary C. Gordon
Manning Curtis Bradshaw & Bednar LLC
Third Floor Newhouse Building
10 Exchange Place
Salt Lake City, UT 84111

Charles C. Mason, Jr., Esq.
1001 Courtyard Plaza
Latrobe, PA 15650

Morrow & Milberg, P.A.
499 NW 70th Ave., Suite 108
Plantation, FL 33317

John T. Brennan
The Brennan Law Firm, LLC
2127 Espey Court, Suite 110
Crofton, MD 21114

Eric Gould
O'Connor & Craig, P.C.
2500 Tanglewilde, Suite 222
North Houston, TX 77063

Tom Virr
Blazier, Christensen, Bigelow & Virr
221 West Sixth Street, Suite 1500
Austin, TX 78701

K. Layne Morrill
Morrill & Aronson, PLC
One East Camelback Rd., Suite 340
Phoenix, AZ 85012

Randall P. Andreozzi, Esq.
Edward D. Fickess, Esq.
6255 Sheidan Drive, Suite 302
Williamsville, NY 14221

James R. Hagerty
Brawner Building
888 17th Street, N. W., Suite 1000
Washington, D.C. 20006-3967

Douglas J. and Valerie D. Wood
Douglas and Valerie Wood Charitable
Supporting Organization
31 Tall Trees Circle
Greensburg, PA 15601

Eric Dent
6101 W. Yellowstone, LL-17
Cheyenne, WY 82009

Thomas J. Mynar
1500 State Park Rd.
Lockhart, TX 78644

WCD Enterprises, Inc.
Henry J. Freeman, III
1 Main Street
Keyport, NJ 07735

John A. Snow
Van Cott, Bagley, Cornwall & McCarthy
50 South Main Street, Suite 1600
Salt Lake City, UT 84144

Tolman Construction, Inc.
334 North Marshall Way, Suite E
Layton, UT 84041

Stephen G. Stoker
Stoker & Swinton
311 South State Street, Suite 400
Salt Lake City, UT 84111

Richard O'Brien
12170 Mt. Albert Road
Ellicott City, MD 24042

Glenn Argenbright
17401 S. E. 102nd St.
Renton, WA 98059

Bob Kane
LeSourd 7 Patton
2401 One Union Square
600 University Street
Seattle, WA 98101

C. Dean Little
Blank Law & Technology P.S.
2001 Western Avenue, Suite 250
Seattle, WA 98121

Matt Reed
8015 Royal Lane
Sandy, UT 84093

C. Agustin Reyes
16000 Villa Yorba #711
Huntington Beach, CA 92647

Steve Kray
Stephens & Kray
5000 Birch Street, Suite 410
Newport Beach, CA 92660

Mark Wheeler
4840 Fish Hatchery Road
Grants Pass, OR 97527

Steve H. Parker
9641 W. 153rd Street, Suite 46
Orland Park, IL 60462

Steven A. Sinkin
Sinkin & Barreto, PLLC
105 W. Woodlawn
San Antonio, TX 78212

James P. Landis
6765 Wellington Place
Castle Rock, CO 80108

Daryl Buddemeyer
c/o Catherine K. Kohn, Esq.
7800 Maryland Avenue
St. Louis, MO 63105

Catherine K. Kohn, Esq.
7800 Maryland Avenue
St. Louis, MO 63105

Scott and Diana Haskins
6812 Shadowbrook Dr.
Goleta, CA 93117

Jack Wells, Jr.
c/o Novilogic, Inc.
2472 Arbor Dr.
Fort Lauderdale, FL 33312

Jay R. Sharp, Jr.
2338 Immokalee Rd., Suite 126
Naples, FL 34110

Joe B. Cox
Cox & Nici
1185 Immokalee Road
Naples, FL 34110

The Joseph Dedvukaj Firm, P.C.
c/o Joseph Dedvukaj
26555 Evergreen Road, Suite 1510
Southfield, MI 48075

Edward Sedacca
Cantley & Sedacca
5220 Spring Valley Road, Suite 610
Dallas, TX 75254

Shay Chin
603 N. Buena Vista Street
Burbank, CA 91505

Strokirk II Ltd.
c/o Goran Strokirk
1949 N. Larrabee
Chicago, IL 60614

Todd Taskey
12621 Tribunal Lane
Potomac, MD 20854

Jeffrey Bermant
5383 Hollister Avenue, #150
Santa Barbara, CA 93111

Lon A. Jenkins
Ray Quinney & Nebeker
36 South State, Suite 1400
Salt Lake City, UT 84111

Northeastern Ohio Surgical Specialists, Inc.
Thomas Wehman, Officer
1860 State Road, Suite C
Cuyahoga Falls, OH 44223

Thomas J. Mynar
Estate of Helen F. Mynar as Assignee of
Thomas Shelton Powers and
Thomas Shelton Powers, MD, Inc.
5310 Tartan Circle
Corpus Christi, TX 78413

Erik Kooba, P.C.
108 SW Madison Ave.
Peoria, IL 61602

Reid W. Lambert
Woodbury & Kesler, P.C.
265 East 100 South, Suite 300
Salt Lake City, UT 84111

Larry and Kelli Cotten
Larry and Kelli Cotten Charitable
Supporting Organization
500 Throckmorton St., Apt.1612
Forth Worth, TX 76102-3801

Robert and Elizabeth Kelly
2995 Van Buren Blvd., Ste. A13
PMB 213
Riverside, CA 92503

Gehrig H. White
The Gehrig & Margaret White
Charitable Foundation
6207 Glynmoor Lakes Drive
Charlotte, NC 28277

Lewis E. Hassett, Est.
Morris Manning & Martin
3343 Peachtree Rd. NE, Suite 1600
Atlanta, GA 30326-1044

David Gourevitch, Esq.
950 Third Ave. 15th Floor
New York, NY 10022

Laxminarayan Mahisekar
Usha Mahisekar
14724 Crystal Tree Drive
Orland Park, IL 6046

Douglas MacKinnon
23310 Oak Hollow Lane
Tomball, TX 77377

Richard Gerber
2324 Tracy Place, NY
Washington, DC 20008

Alan Cohoon
6327 South 104th
Omaha, NE 98127

Christopher Harrison
AntiGravity, Inc.
484 West 43rd Street, Suite 46L
New York, NY 10036

Jay Sharp
11516 Quail Village Way
Naples, FL 34119

William Harrison
347 Old Quarry Road North
Larkspur, CA 94939

Stephen Serlin
3232 Lake Shore Drive
Lake George, NY 12845

KDK Upset Forging Company
2625 West 139th Street
Blue Island, IL 60406

Don Kang
1870 Capri Circle
Costa Mesa, CA 92626

Duane B. and Geraldine Asp
Asp Family Trusts, Corp. and LPs
10607 W. Tropicana Circle
Sun City, AZ 85351

Michael G. and Cassandra S. Williams
47 Sunset Drive
North Salem, NY 10560

Douglas Drexler
7759 Tall Oaks Drive
Park City, UT 84098

Robert and Donna Kay Herbolich
2287 Kate Circle
Hudson, OH 44236

Rick Delamarter
3396 Stoneridge
Los Angeles, CA 90077

William Harrison
Clinton Group
9 West 57th Street, Floor 26
New York, NY 10019-2701

David L. Mortensen
Stoel Rives LLP
201 South Main, Suite 1100
Salt Lake City, UT 84111

Reginal King
702 North 29 St.
Baton, Rouge, LA 70802

F. Thomas Rafferty
Ober Kaler
120 East Baltimore Street
Baltimore, MD 21202-1643

Joe Firmage
2171 Arbor Lane
Holladay, UT 84117

Platinum Investment Group, Inc.
Platinum Training Center, LLC
Hector and Jann La Marque
3 Collins Is.
Newport Beach, CA 92662-1003

Val and Jana Eylands
c/o Kurt Eylands
2098 S. 38th Street
Grand Forks, ND 58201

Michael P. Lane, Trustee
Lane & Nash, P.C.
2025 North Third Street
The Brookstone, Suite 157
Phoenix, AZ 85004-1218

Joe Firmage
c/oDavid Slaughter
Tammy Georgelas
Snow, Christensen & Martineau
10 Exchange Place, 11th Floor
P.O. Box 45000
Salt Lake City, UT 84145-5000

/s/ David K. Broadbent

5201070_1.DOC