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

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SECURITIES AND EXCHANGE COMMISSION,

PLAINTIFF,

v.

VESCOR CAPITAL CORP., a Nevada corporation,  
VESCOR CAPITAL, INC., a Nevada corporation,  
VESCORP CAPITAL, LLC, a Nevada limited liability  
company, VESCORP CAPITAL IV-A, LLC, a Nevada  
limited liability company, VESCORP CAPITAL IV-M,  
LLC, a Nevada limited liability company, a Nevada  
limited liability company, and VAL E. SOUTHWICK,

DEFENDANTS.

Civil No. 1:08cv00012  
Judge Dee Benson

**PLAINTIFF'S  
OPPOSITION TO MOTION  
OF OAK VALLEY  
INVESTMENTS, L.P. AND  
JONATHAN H. HORNE,  
M.D., AS TRUSTEE OF  
THE JONATHAN H.  
HORNE, M.D, P.C.  
RETIREMENT PLAN  
TRUST FUND TO  
INTERVENE**

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Plaintiff Securities and Exchange Commission (“Commission”) hereby submits  
this Memorandum in Opposition to the Motion of Oak Valley Investments, L.P. (“Oak  
Valley”) and Jonathan H. Horne, M.D., as Trustee of the Jonathan H. Horne, M.D., P.C.  
Retirement Plan Trust Fund to Intervene.

## INTRODUCTION

This case commenced on February 6, 2008. Southwick consented to the entry of a judgment enjoining him from future violations of the federal securities laws, and a Judgment was entered on February 26, 2008. This Motion was filed on February 26, 2008.

## ARGUMENT

### **I. SECTION 21(g) OF THE EXCHANGE ACT BARS INTERVENTION WITHOUT THE COMMISSION'S CONSENT**

Oak Valley's attempt to intervene in this action is barred by section 21(g) of the Exchange Act [15 U.S.C § 78u(g)]. Section 21(g) of the Exchange Act states:

Notwithstanding the provisions of section 1407(a) of Title 28, United States Code, or any other provision of law, no action for equitable relief instituted by the Commission pursuant to the securities laws shall be consolidated or coordinated with other actions not brought by the Commission, even though such other actions may involve common questions of fact, unless such consolidation is consented to by the Commission.

Id.

It has long been established that entities wishing to intervene in an action brought by the Commission are "blocked from entering [the] lawsuit by an impenetrable wall, [the] Securities Exchange Act of 1934 . . ." SEC v. Wozniak, No. 92 C 4691, 1993 U.S. Dist. LEXIS 1241, at \*1 (N.D. Ill. Feb. 8, 1993). See also, SEC v. Homa, 99 C 6895, 2000 U.S. Dist. LEXIS 14582. at \* 7 (N.D. Ill. September 29, 2000)(the plain language of Section 21(g) clearly bars intervention in a Commission's enforcement action); SEC v. Egan, 821 F. Supp. 1274, 1275 (N.D. Ill. 1993); SEC v. Thrasher, 92 Civ. 6987, 1995 U.S. Dist. Lexis 10775, at \* 9 (S.D.N.Y. Aug. 2, 1995) (section "21(g) bars Defendant Hirsh's third-party and cross-claims in the absence of the SEC consent.").

In a number of analogous contexts, courts have broadly applied Section 21(g) to preclude any interference by private parties in Commission law enforcement proceedings without Commission consent. See Aaron v. SEC, 446 U.S. 680 at 717, n.9 (1980) (Blackmun, J., concurring in part, dissenting in part); Parklane Hosiery Co. v. Shore, 439 U.S. 322, 332 n. 17 (1979); SEC v. Randy, No. 94C 5902, 1995 U.S. Dist. 15609, at \*3 (N.D. Ill. Oct. 17, 1995 (counterclaims); SEC v. Downe, 92 Civ. 4092, 1994 U.S. Dist. LEXIS 2292, at \*7 (S.D.N.Y. March 3, 1994) (cross-claims); SEC v. Keating, CV91-6785, 1992 U.S. Dist. LEXIS 14630, at \*10 (C.D. Cal. July 23, 1992) (indemnification and contribution); SEC v. American Free Enterprise Institute, 580 F. Supp. 270, 272 (D. Ariz. 1984) (counterclaim).

Section 21(g) was enacted to promote the speedy resolution of enforcement actions. See Parklane Hosiery Co., 439 U.S. at 332 n.17). See also Thrasher 1995 U.S. Dist. Lexis 10775, at \*10. The current case already involves twenty-one defendants. Adding additional claims would only further delay the speedy resolution of this case, complicate the issues and significantly interfere with the Commission's enforcement responsibilities. As such, the Commission has not and does not consent to the filing of any additional claims in this action. Therefore, Oak Valley's Motion for Appointment of Attorney to intervene in this action is barred by statute.

## **II. A STAY OF LITIGATION IS APPROPRIATE AT THIS TIME**

Oak Valley's claim that the Commission's Motion for a Stay is premature is erroneous. Its' contention that a stay favors only Southwick is merely speculative. In fact, the actions taken by Oak Valley and other Southwick creditors or litigants demonstrate that a stay would be in the interest of all of the Southwick investors, not just

a few. While Oak valley claims to want a receiver; but its actions since the filing of this action, they have taken actions which would significantly disadvantage other investors. They have taken these actions despite the knowledge that the Commission is seeking to identify and marshal assets on behalf of all investors. Specifically, Oak Valley has applied for a writ of execution on all funds held in the United States District Court that could benefit all investors, rather than just one investor. (Exhibit "A") The Commission recognizes that Oak Valley was one of the many entities and individuals who were defrauded through Southwick and his entities' actions. A stay would allow a determination of whether one victim, however, should be favored over all others.

In order to evaluate the appropriate future action, The Commission has requested a brief stay of litigation. While a bankruptcy trustee has been appointed, the trustee's powers are limited, and they have been unable to identify significant liquid assets. If Oak valley's writs are honored, there may be no liquid assets remaining to provide for the appointment of a receiver.

### **CONCLUSION**

The court should deny Oak Valley's Motion to Intervene and enter a stay of litigation for a period of 90 days.

DATED this 24<sup>th</sup> day of March 2008.

/s/ Thomas M. Melton

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Thomas M. Melton  
Karen L. Martinez  
Attorneys for Plaintiff  
United States Securities & Exchange  
Commission

*Writ issued*

Jerome Romero (USB #5139)  
JONES WALDO HOLBROOK & McDONOUGH, PC  
Attorneys for Plaintiffs  
170 South Main Street, Suite 1500  
Salt Lake City, UT 84101  
Telephone: (801) 521-3200  
Facsimile: (801) 328-0537

FILED  
U.S. DISTRICT COURT  
2008 MAR 21 P 12:24  
DISTRICT OF UTAH  
BY: \_\_\_\_\_  
DEPUTY CLERK

**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH**  
**CENTRAL DIVISION**

OAK VALLEY INVESTMENTS, L.P., and :  
JONATHAN H. HORNE, M.D., a Trustee for :  
Jonathan H. Horne, M.D., P.C. Retirement Plan :  
Trust Fund, :

**APPLICATION FOR WRIT OF  
EXECUTION**

Plaintiffs, :

vs. :

Case No. 2:06cv00737 DB

VAL E. SOUTHWICK, VESCOR CAPITAL :  
CORP., APEX HOLDING 1, LLC, APEX :  
HOLDING 2, LLC, APEX HOLDING 3, LLC, :  
APEX HOLDING 4, LLC, APEX :  
HOLDING 5, LLC, APEX HOLDING 6, LLC, :  
APEX HOLDING 23, LLC, VEGAS VISTA 6, :  
LLC, APEX MM INC., and VESCORP :  
CAPITAL LLC, :

Defendant. :

The Plaintiff hereby applies for a writ of execution on the following grounds:

1. That judgment has been entered in the above-cited action requiring the payment of money in the amount of \$2,995,441.00. The amount that remains due on the judgment is \$2,995,441.00.
2. That the property to be seized consists of:

All of Vescor Capital Corp.'s right, title, and interest to any account, general intangible, chose in action, contract right, right to be paid, or claim to or from those funds held by the Clerk

of the District Court for the District of Utah, in an interpleader account, and subject to an interpleader action pending before the Court, case no. 2:07cv00363.

*(If known, list the nature, location, account number and estimated value of the property)*

held by:


Vescor Capital Corp., 4590 Harrison Blvd, Suite 200, Ogden, UT 84403

*(List name, address and phone number of the person holding the property)*

3. That the following persons are known to claim an interest in property:

DATED this 21st day of March, 2008.

JONES WALDO HOLBROOK & McDONOUGH PC

By 

Jerome Romero  
Attorneys for Plaintiffs Oak Valley Investments,  
L.P. and Jonathan H. Horne, M.D., as Trustee for  
the Jonathan H. Horne, M.D., P.C. Retirement Plan  
Trust Fund

Jerome Romero (USB #5139)  
JONES WALDO HOLBROOK & McDONOUGH PC  
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Facsimile: (801) 328-0537

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

**CENTRAL DIVISION**

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OAK VALLEY INVESTMENTS, L.P., and :  
JONATHAN H. HORNE, M.D., a Trustee for :  
Jonathan H. Horne, M.D., P.C. Retirement Plan :  
Trust Fund, :

**WRIT OF EXECUTION**

Plaintiffs, :

Case No. 2:06cv00737

vs. :

VAL E. SOUTHWICK, VESCOR CAPITAL :  
CORP., APEX HOLDING 1, LLC, APEX :  
HOLDING 2, LLC, APEX HOLDING 3, LLC, :  
APEX HOLDING 4, LLC, APEX :  
HOLDING 5, LLC, APEX HOLDING 6, LLC, :  
APEX HOLDING 23, LLC, VEGAS VISTA 6, :  
LLC, APEX MM INC., and VESCORP :  
CAPITAL LLC, :

Defendants. :

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TO THE SHERIFFS OF SALT LAKE COUNTY AND/OR DAVIS COUNTY, STATE OF UTAH:

Judgment was rendered in the action by the above court on the date of February 13, 2008, against defendants Val E. Southwick, Vescor Capital Corp., Apex Holding 1, LLC, Apex Holding 2, LLC, Apex

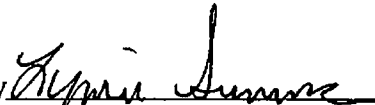
Holding 3, LLC, Apex Holding 4, LLC, Apex Holding 5, LLC, Apex Holding 6, LLC, Apex Holding 23, LLC, Vegas Vista 6, LLC, Apex MM Inc., and Vescorp Capital LLC and in favor of plaintiffs Oak Valley Investments, L.P., and Jonathan H. Horne, M.D., a Trustee for Jonathan H. Horne, M.D., P.C. Retirement Plan Trust Fund in the amount of \$2,995,441.00.

YOU ARE COMMANDED to collect the judgment, with costs, interest, and fees, and to sell enough of the defendant's non-exempt personal property, or if enough non-exempt personal property cannot be found, then of defendant's non-exempt real property to satisfy the same. This shall be your sufficient warrant for so doing. Within sixty (60) days after your receipt of this writ, return this writ with a statement and a certificate of your doings in completing the service.

Issued under the seal of this court this 21 day of March, 2008.

Clerk of the District Court

(Seal)

By  \_\_\_\_\_  
Deputy Clerk