

CALLISTER NEBEKER & McCULLOUGH  
MARK L. CALLISTER, ESQ. (6709)  
Zions Bank Building, Suite 900  
10 East South Temple  
Salt Lake City, Utah 84133  
Phone: (801) 530-7300  
Facsimile: (801) 364-9127  
*Attorneys for Movants Ivan Cannon, et al.*

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

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SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

vs.

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

Defendants.

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**MEMORANDUM IN SUPPORT OF  
MOTION TO CLARIFY THIS  
COURT'S ORDER APPOINTING  
A RECEIVER**

Case No. 1:08-cv-00012 DB

Judge Dee Benson

**INTRODUCTION**

The movants have brought this Motion for an Order clarifying this Court's May 5, 2008 Order Appointing a Receiver in the above-referenced action. Specifically, movants request clarification as to whether or not their separate and independent civil action, currently pending in the Eighth Judicial District Court, State of Nevada, County of Clark, may proceed forward against individual Defendant Bill Hammons, in his individual capacity, or whether that Nevada State Court

action is stayed, pursuant to the language of this Court's Order Appointing a Receiver in this instant action.

**STATEMENT OF PERTINENT FACTS AND PROCEDURAL HISTORY**

1. On November 15, 2007, the Movants herein filed suit in the Eighth Judicial District Court, in and for Clark County, Nevada, against Val E. Southwick and Bill Hammons, in their individual capacities.

2. That action is identified as case number A-551871, currently pending in Department 1 of the Eighth Judicial District Court, in and for Clark County, Nevada.

3. Plaintiffs subsequently filed a First Amended Complaint in that action, which is the operative pleading in that action at this time. A copy of said First Amended Complaint is attached hereto as **Exhibit 1**.

4. In that First Amended Complaint, Plaintiffs have alleged various causes of action against Defendants Southwick and Hammons, as follows:

- A. Federal Civil RICO;
- B. Conspiracy to Commit Federal Civil RICO;
- C. State Civil RICO;
- D. Conspiracy to Commit State Civil RICO;
- E. Theft/Conversion/Embezzlement;
- F. Receiving Stolen Property;
- G. Breach of Fiduciary Duty and Aiding Breach of Fiduciary Duty;
- H. Fraud & Deceit;
- I. Negligent Misrepresentation;
- J. Breach of Contract;
- K. Contractual Breach of Duty of Good Faith and Fair Dealing;

- L. Tortious Breach of Duty of Good Faith and Fair Dealing;
- M. Interference with Contract;
- N. Alter Ego;
- O. Unjust Enrichment;
- P. Negligence;
- Q. Negligence Per Se;
- R. Violation of NRS Chapter 90;
- S. Civil Conspiracy;
- T. Breach of Guaranty;
- U. Declaratory Judgment;
- V. Consumer Fraud/Deceptive Trade Practices;
- W. Elder Abuse;
- X. Constructive Trust;
- Y. Punitive and Exemplary Damages;
- Z. Attorney Fees, Litigation Expenses, and Court Costs;
- AA. Pre-Judgment and Post-Judgment Interest.

5. On May 5, 2008, this Court entered an Order Appointing Robert G. Wing as Receiver in this action, over the Vescor Companies, regarding various terms surrounding seizure and liquidation thereof. A copy of this Order is attached hereto as **Exhibit 2**. This Order was filed with the United States District Court, District of Nevada, on May 14, 2008.

6. On June 10, 2008, counsel for Robert G. Wing, Receiver, sent correspondence to counsel for the Movants, explaining his interpretation of this Court's Order as effectively staying the action pending in the Eighth Judicial District Court, Case No. A-551871. A copy of that correspondence is attached hereto as **Exhibit 3**.

7. Acting under and in accordance with the terms of that Order, counsel for Robert G. Wing, Receiver, filed a Notice of Order Staying Proceeding and Request for Notice in the Eighth Judicial District Court Action, Case No. A-551871, on June 12, 2008. A copy of that Notice of Order is attached hereto as **Exhibit 4**.

8. In the body of the Receiver's Counsel's June 10, 2008 correspondence to Movants, Receiver's counsel further advised that, should Movants disagree with the Receiver's assessment of this Court's Stay Order on the Cannon Action, a Motion for Clarification before this Court was an advisable remedy (*See, Exhibit 3*, pg. 2, paragraph 3).

9. In accordance with the Receiver's suggestion, Movants filed this Motion for Clarification.

#### **ARGUMENT**

Movants respectfully request a ruling from this Court as to whether this Court's Order appointing a receiver over Defendants Southwick and the Vescor Companies stays Movants' claims against Defendant Bill Hammons in the action pending in the Eighth Judicial District Court, Case No. A-551871. Stated another way, the Movants request an order clarifying that they can pursue their causes of action against Bill Hammons in the Eighth Judicial District Court, as and for Clark County, Nevada.

This Court's Order of May 5, 2008 reads, in pertinent part:

#### **VI.**

The following acts are stayed pending further order of this Court:

- (i) the commencement or continuation, including the issuance or employment of process, of any judicial, administrative, or other action or proceeding, other than the actions of the Commission related to the above-captioned enforcement action, against the Companies;
- (ii) the enforcement against the Companies against property now held in the name of or by the

Companies, of any judgment obtained before the filing of the Complaint in this action;

- (iii) any act to obtain possession of property held by the Entities or Southwick or to exercise control over property held by the Entities of Southwick;
- (iv) any act to create, perfect or enforce any lien against property held by the Entities or Southwick;
- (v) **any act to collect, assess or recover any claims related to the Companies, or against property held by the Companies**; and
- (vi) the exercise of any rights of setoff or recoupment.

*See, Exhibit 2*, pg. 7-8 (Emphasis Added).

Movants do not dispute that they are stayed from pursuing Val E. Southwick in the Eighth Judicial District Court action, in and for Clark County, Nevada, Case. No. A-551871. However, Movants respectfully submit that the Court's Order of May 5, 2008 does not expressly stay the continuation of actions that have been instigated against Bill Hammons. There is no mention of Bill Hammons in that Order, nor any ruling as to the actions that may or may not be stayed as to Hammons, in his individual capacity. It also appears that Bill Hammons is not a party to the Utah action.

As a result of Hammons' omission from this Court's May 5, 2008 Order, Movants posit that the most applicable section of the Court's Order of stay, as relates to Bill Hammons, is section 6(vi). As cited, that section stays any act to collect, access or recover any claims *related to the Companies*. Id. (Emphasis Added). However, Movants contend that actions against Bill Hammons individually, and against the personal assets of Bill Hammons, are not related to the Vescor companies, and are thus not stayed by this Order. Movants further contend that the individual assets and property of Bill Hammons are not, by nature, property of the Companies, and thus fall outside of the purview of this Court's Order of Stay.

Finally, the Movants contend that, as stated in their First Amended Complaint, attached hereto and on file with the Eighth Judicial District Court, as and for Clark County, Nevada, that the intentional tort claims filed against Hammons fall outside of the purview of this Court's Orders, as relates to the Vescor Companies. Stated another way, the Movants' claims against Hammons for fraud, RICO, Theft, Receiving Stolen Property and Elder Abuse fall outside of any act that is or can be construed as, "related to the Companies," as stated in section 6(vi) of this Court's Order of Stay.

As a result, Movants contend that they should be able to proceed with their action, pending in the Eighth Judicial District Court, Case No. A-551871, against Bill Hammons, in his individual capacity. Nevertheless, the Movants do not want to pursue Bill Hammons in Clark County, Nevada, in violation of this Court's Order. Further, the Movants do not want to be in a potentially adverse or legally combative position with the Receiver, based upon a difference in interpretation of this Court's Order by the Receiver and by the Movants. As such, Movants seek a clarification of this Court's Order as to whether Movants are effectively stayed from pursuing Bill Hammons in his individual capacity in the Eighth Judicial District Court, as and for Clark County, Nevada, Case No. A-551871.

### **CONCLUSION**

Based upon the foregoing, Movants hereby request that this Honorable Court issue an Order clarifying its May 5, 2008 Order Appointing a Receiver to specifically state: (1) whether or not the Movants herein are effectively stayed from pursuing Bill Hammons, in his individual capacity, in Eighth Judicial District Court, Case No. A-551871; and (2) which operative section of this Court's Order of May 5, 2008, in fact stays such pursuit of Bill Hammons, in his individual capacity, in Eighth Judicial District Court, Case No. A-551871.

Dated this 1st day of August, 2008.

/s/Mark L. Callister  
MARK L. CALLISTER  
CALLISTER NEBEKER & McCULLOUGH  
*Attorneys for Movants Ivan Cannon, et al.*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 1st day of August, 2008, a copy of the foregoing was delivered electronically to the following individuals via the U.S. District Court's ECF system:

Rodney R. Parker, Esq.  
SNOW CHRISTENSEN & MARTINEAU  
P.O. Box 45000  
Salt Lake City, Utah 84145-5000  
*Attorneys for Val Southwick*

Michael C. Dunn, Esq.  
DUNN LAW FIRM  
P.O. Box 2318  
St. George, Utah 84771  
*Attorney for Bill Hammons*

Sally B. McMinimee, Esq.  
Andrew B. Clawson, Esq.  
PRINCE, YEATES & GELDZAHLER  
City Center I, Suite 900  
175 East 400 South  
Salt Lake City, Utah 84111  
*Attorneys for Receiver*

Karen L. Martinez, Esq.  
SECURITIES AND EXCHANGE COMMISSION  
15 West South Temple, Suite 1800  
Salt Lake City, Utah 84101  
*Attorney for Securities and Exchange Commission*

Jerome Romero, Esq.  
JONES WALDO HOLBROOK & MCDONOUGH  
170 South Main Street, Suite 1500  
Salt Lake City, Utah 84101  
*Attorney for Jonathan H. Horne and Oak Valley Investments*

/s/ Mark L. Callister

**EXHIBITS**

- Exhibit 1 Plaintiff's First Amended Complaint
- Exhibit 2 May 5, 2008 Order Appointing A Receiver
- Exhibit 3 June 10, 2008 Letter from Counsel for Receiver to Counsel for Movants
- Exhibit 4 June 10, 2008 Notice of Order Staying Proceeding and Request for Notice