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

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

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, and VAL E. SOUTHWICK,

Defendants.

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: **REPLY MEMORANDUM IN SUPPORT**
: **OF MOTION FOR RELIEF AND/OR**
: **MODIFICATION OF STAY**

:
: Civil No. 1:08cv00012

:
: Honorable Dee Benson

Movants, 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 (collectively “Movants”), by and through
counsel of record, hereby submit this reply memorandum in support of their motion to modify or to

obtain relief from the stay allowing them to proceed to recover claims against Val Southwick (“Southwick”). In support of their motion, Movants represent as follows:

1. Movants have already been permitted a limited right of intervention. While Movants respect the Commission’s objection to intervention in its action against Southwick and the VesCor entities, Movants have no interest in that broad action. Movants are only interested in a limited intervention for the purposes of addressing the scope and breadth of the stay imposed by this Court which directly impacts Movants. Moreover, the Court has already granted Movants a limited intervention to address this narrow issue when the Court agreed with Movants and denied the Commission’s first attempt to secure the imposition of a stay.

2. The Commission has presented no legal justification for the imposition of a stay of creditors pursuing claims against Southwick. In attempting to justify the imposition of a stay, the Commission relies on authorities in which authorize the imposition of a stay in conjunction with the appointment of a receivership. Here, however, the Commission did not seek and has not appointed a receiver to manage the personal assets of Southwick. Moreover, the assets of Southwick have not been seized or frozen by this action. While the Commission sought and obtained the appointment of a receiver to take control of the assets of the VesCor entities, the receiver does not have any control over Southwick’s personal assets. Accordingly, if Southwick’s personal assets are not frozen or placed into a receivership, there is no legal or equitable basis for the imposition of a stay preventing creditors from pursuing claims against Southwick.

3. The Commission has no factual basis to assert that Southwick has no assets. The Commission take the position that the stay should not be modified because Southwick has no recoverable assets. Movants would look forward to seeing evidence from the Commission reflecting

that Southwick has no recoverable assets. Bear in mind, Southwick is accused in this very action of having defrauded investors of nearly \$200,000,000. While the Commission is welcome to rely on Southwick's assertions of impecuniosity, Movants are not so inclined.

In any event, if the Commission is correct and Southwick has no recoverable assets, there is no reason for the Commission to insist that a stay remain in place, preserving assets that do not exist. If Southwick in fact has no assets, the only possible reason for the continuation of the stay is to avoid any inconvenience to Southwick having to deal with claims against him by Movants and other defrauded investors. Such inconveniences are the cost of defrauding investors.

4. Movants have not recovered payments in excess of their investments. Finally, the Commission's assertion that Movants have received more in payments from the VesCor entities than they invested is patently false and offensive. The exhibit the Commission references more accurately reflects that the Movants invested \$2,765,000, representing investments on five separate occasions. The Movants received from VesCor ten payments totaling \$111,616.44. Thus, Movants made a net investment, excluding interest and attorneys' fees of \$2,653,383.56 into Southwick's Ponzi scheme. The Commission's suggestion that the Movants benefitted from Southwick's fraud is patently false.

In any event, this issue is irrelevant. The stay applies to all parties having a claim against Southwick, not merely the Movants. The stay would thus operate to bar pursuit of claims by any creditor of Southwick, including his mortgage lender, car lender, credit card lender, or in the present case, tort victim.

5. Movants' ability to recover more against Southwick than other Southwick creditors is irrelevant. Finally, the Commission raises a nonsensical argument that the stay is proper because otherwise it would allow Movants an opportunity to recover against Southwick when others choose to

remain on the sidelines. This assertion, however, is fundamentally irrelevant. Since the Commission has not chosen to extend the scope of the receivership to encompass Southwick's personal assets, the Court has no ability or interest in overseeing an equitable allocation of Southwick's personal assets. This allocation is and should remain a matter of concern between Southwick and his creditors. Preventing all of his creditors from pursuing Southwick only serves to benefit Southwick. It is therefore not surprising that Southwick opposes the present motion.

CONCLUSION

For the above reasons, Movants request that the Court amend the stay to allow creditors of Southwick to pursue claims against Southwick and his personal assets. Alternatively, Movants request that the stay be modified to permit Movants to pursue recovery of their judgment against Southwick and his personal assets.

Dated this 15th day of July, 2008.

JONES WALDO HOLBROOK & McDONOUGH PC

By /s/ Jerome Romero

Jerome Romero
Attorneys for 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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 15th day of July, 2008, I electronically filed the foregoing
REPLY MEMORANDUM IN SUPPORT OF MOTION FOR RELIEF AND/OR MODIFICATION OF
STAY with the Clerk of Court using the CM/ECF system which sent notification of such filing to the
following:

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/s/ Jerome Romero

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