UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

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COMMODITY FUTURES TRADING COMMISSION
Plaintiff,

Civil Action No.:
19-CV-886-T-33SPF

v.

OASIS INTERNATIONAL GROUP, LIMIT ET AL.

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OPPOSITION TO RECEIVER'S MOTION FOR CONTEMPT

I am the appellate attorney for Mr. Michael DaCorta, and I am representing him on the appeal to the 11th Circuit Court of Appeals in the case of *Commodity Futures Trading Commission v. Oasis International Group, et al*. (Civil Action No.: 19-CV-886). My client is Mr. Michael DaCorta, one of the named defendants in that litigation. I make this motion in opposition to the motion for contempt of the receiver, Mr. Burton Wiand (the Receiver).

This Court must deny the receiver's motion for a number of reasons: 1) I have furnished the receiver with all documents concerning my retainer, payment, and all related communications, and the sources of all payments; 2) the documents that the receiver continues to seek have nothing to do with the source of the funds or monies paid to me or my office; rather, the emails in question are communications between two law firms that represent Mr. DaCorta concerning legal arguments and the substance of Mr. DaCorta's appeal to the Eleventh Circuit, and as such they are

protected by attorney-client privilege and they are attorney work product; 2) the receiver's subpoena expressly exempts privileged documents from production; 3) the receiver is acting beyond the scope of his authority as receiver by requesting documents that are privileged; 4) the receiver is acting beyond the scope of his authority as receiver by requesting documents and inquiring about funds that are not Receivership assets or Receivership property pursuant to this Court's order dated July 11, 2019.

Background

In 2019, the Commodity Futures Trading Commission (the "CFTC") brought a civil action against the Oasis International Group (OIG) and a number of named defendants, including Mr. Michael DaCorta. OIG was a company founded by Mr. Michael DaCorta designed to produce revenue streams from a variety of investments, including real estate, precious metals, business purchases, and foreign exchange trading. Mr. DaCorta is one of the named defendants in that case. He operated OIG between 2014 and 2019. The funds that are alleged to have been illegally obtained by Mr. DaCorta were obtained during the years of his operation, i.e. from the relevant time period under the complaint in this litigation, which is 2014 to 2019.

Occurring simultaneously with the civil case against Mr. DaCorta, were criminal charges of mail and wire fraud. Mr. DaCorta was convicted after a jury trial and sentenced to twenty-three years in prison.

The district court appointed Mr. Burton Wiand as receiver in the civil case with the objective of retrieving investor funds alleged to have been taken by Mr. DaCorta in that time frame, i.e. "the Relevant Time Period" (2014-2019) as stated within the complaint filed by the CFTC and the order appointing Mr. Wiand as receiver. (See Exhibit B Order dated April 15, 2019 page 2). The Court subsequently issued an order on July 11, 2019 that outlines the scope of authority of the receiver. (Exhibit C Order dated July 11, 2019).

Motions for summary judgment were made by both the CFTC and Mr. DaCorta. The district court granted the CFTC's motion for summary judgment and denied Mr. DaCorta's motion in December 2023. Mr. DaCorta filed a timely notice of appeal in the civil proceeding and hired Stephen Preziosi (the undersigned attorney to this opposition motion) in February 2024 to appeal the district court's decision granting the CFTC's motion for summary judgment. That appeal was perfected in the Eleventh Circuit on behalf of Mr. DaCorta in June, 2024. (Exhibit J – Appellate Brief filed on behalf of Mr. DaCorta).

Mr. Burton Wiand, the receiver (the "Receiver") appointed by the U.S. District Court for the Middle District of Florida in Tampa, Florida had his process server

contact my office and I agreed to meet the process server at my office to accept service of the subpoena.

The Receiver's Subpoena

First, it must be noted that the undersigned attorney has complied with the subpoena regarding all requests dealing with the funds, sources, and origin and amounts, and all communications concerning my retainer fee for the appeal to the Eleventh Circuit for Michael DaCorta. This includes a check, an electronic transfer document, and emails detailing the names of persons from whom I received the funds. (See Exhibits F, G, H, and I). These documents represent all the funds, their sources, and communications concerning the funding of my legal representation of Michael DaCorta. Second, none of those funds are Receivership Property; they are not Receivership assets, and they were not derived from the activities of the Receivership Entities. The documents I provided to Mr. Wiand prove that the funds are not Receivership Property and not within the scope of authority of the receiver. (Please see my arguments below on the scope of authority of the receiver). Beyond the proof of the funds and their source, Mr. Wiand seeks communications that are privileged.

Mr. Wiand now seeks documents protected by the attorney-client privilege and attorney work product from non-parties outside the litigation in the Middle District of Florida. The documents he seeks have nothing to do with the receivership

estate, and their contents deal exclusively with the legal arguments raised on Mr. DaCorta's appeal to the Eleventh Circuit.

The Receiver's subpoena makes a number of requests for documents. Those requests are as follows:

1. All documents reflecting the source of any funds or other consideration received in connection with your legal representation of Michael DaCorta in any matters, including, but not limited to, the Receivership Matter.
2. Any correspondence or communication relating to Request 1 or your representation of Michael DaCorta (excepting privileged communications between Michael DaCorta and counsel for the purpose of obtaining legal advice).
3. All documents relating to your receipt of funds or other consideration from any person or entity other than Michael DaCorta in connection with your legal representation of Michael DaCorta in any matters, including, but not limited to, the Receivership Matter.
4. Any correspondence, communication, or agreements relating to your retention as counsel for Michael DaCorta (excepting privileged communications between Michael DaCorta and counsel for the purpose of obtaining legal advice).
5. Any and all communications with Brent Winters, Greg Melick, Jason McKee, Intermountain Precious Metals, any person affiliated with the Oasis Replevin Group (a/k/a "Oasis Helpers"), and/or Michelle Utter.
(Exhibit A – Subpoena)

In paragraphs one through four the receiver asked for documents regarding my legal representation of Mr. DaCorta, such as retainer agreement, payment, correspondence regarding payment. I have complied with this portion of the subpoena and forwarded all such documents to the receiver.

Paragraph five of the "Specific Requests" page of the subpoena (Exhibit A pg. 5) asks for "any and all" communications with a series of persons. I communicated to the receiver by phone and by letter and told him that most of those

people I don't know. I have had communications by email with Mr. Greg Melick. Greg Melick is a paralegal at another law firm that also represents Mr. Michael DaCorta.

Stephen Preziosi's Compliance With The Subpoena

There are several false statements made in the receiver's motion for sanctions. I was not served at my office with the subpoena as a consequence of any arrangement made by Mr. Wiand. (See Wiand's motion Doc. 834 pg. 3). I arranged to meet with Mr. Wiand's process server and invited him to my office so that he could give me the subpoena. The process server claimed he was having trouble getting into my building in Manhattan, and I made sure he had access to my building and my office to serve the subpoena. I arranged to personally meet with the process server to accept the subpoena.

Second, Mr. Wiand claims my compliance with the subpoena was "sparse." (See Doc. 834 pg. 3). This is untrue. The first four paragraphs of the subpoena's "Specific Requests" (Doc. 834 pg. 5) request documents relating to the source of funds and consideration received in connection with my representation of Mr. DaCorta and any correspondence. I have provided all documents to Mr. Wiand showing the amounts and sources of funds of my retainer for Mr. DaCorta's appeal to the Eleventh Circuit. Mr. Wiand is familiar with all of those sources.

My Phone Conversation With Mr. Wiand Regarding Subpoena Compliance.

I reached out to Mr. Wiand by phone on July 11, 2024 and had a conversation with him about the subpoena. We went through each item requested in the list of "Special Requests" at page 5 of the subpoena. I went through each of the requests in the subpoena with him line by line, reading each request and recounting to Mr. Wiand the documents that I possessed and would supply in compliance with the subpoena. The entirety of our conversation was cordial and professional.

While I was on the phone with Mr. Wiand, I also went through paragraph 5 of the Special Requests on page 5. In that paragraph Mr. Wiand requests "any and all" communications with a list of people and organizations, including Brent Winters, Greg Melick, Jason McKee, Intermountain Precious Metals, any person affiliated with Oasis Replevin Group, and Michelle Utter. I went through the list of people and organizations with him one by one. In that phone conversation I told Mr. Wiand the following: 1) I had one conversation with Brent Winters; there are no associated documents with that communication; 2) I had one conversation with Jason McKee and other than the email recently furnished and the electronic transfer, there are no documents relating to those communications; 3) I don't know who Michelle Utter is and have never spoken to her; 4) I don't know what Intermountain Precious Metals is and have had no dealings with that organization; 5) I have had many communications with Greg Melick, the paralegal for Brent Winters.

All the emails between Melick and I, which are detailed below, contain legal arguments regarding Mr. DaCorta's appeal to the Eleventh Circuit and as such they are within the attorney-client privilege and protected as attorney work product. I told Mr. Wiand that I would make a motion to modify his subpoena because the communications contain legal argument and legal strategy and they are privileged. (Exhibit K – letter to Mr. Wiand and his attorney Ms. McConnell).

In addition to my phone conversation with Mr. Wiand, I exchanged a series of emails with one of the attorneys that works with Mr. Wiand, a Ms. Maya Lockwood. I forwarded the documents to her email as instructed in the subpoena. Ms. Lockwood reached out to me and asked me the source of the funds of the electronic transfer. I wrote back and said that the source of the funds was a Mr. Jason McKee. (See Exhibit H email chain). From my phone conversation with Mr. Wiand, I knew that he was familiar with Jason McKee and I felt no further explanation was warranted. I believed that no additional documents existed with regard to the wire transfer from Mr. McKee. However, while preparing these opposition papers, I came across one additional email from McKee to me, assuring me of the wire transfer, which Mr. Wiand and Ms. Lockwood already knew about. (Exhibit I – McKee email). I supplied that document to the receiver as soon as I found it.

Before I could file my motion to modify the subpoena, Mr. Wiand filed the instant motion for sanctions against me. I had applied for special admission to the

Middle District of Florida in order to make the motion to modify the subpoena. I informed Mr. Wiand on July 11, 2024, and the attorneys for the CFTC that I was making a motion for special admission in order to make a motion to modify the subpoena. Both Mr. Wiand and the CFTC attorneys consented to my motion for special admission to this Court for that purpose. (See Doc. 823 – Motion for Special Admission on consent and unopposed).

The consent to my application for special admission to the Middle District of Florida renders Mr. Wiand's protestations about not filing a motion to quash sooner a nullity. He knew of my compliance with the subpoena; he knew that I was protesting certain documents; he consented as of July 17, 2024 to my motion for special admission to this Court to make the motion to quash.

This Court granted my motion for special admission, and I was about to make my motion to modify the subpoena. However, as I am not accustomed to civil litigation in the trial courts as my practice is exclusively appeals, I discovered that the motion to modify should have been made in the Southern District of New York where my office is, i.e. the place of compliance. Before I could file my motion to modify the subpoena, Mr. Wiand filed the instant motion on Friday August 16th at 5:15pm.

It is my belief and contention that the emails between Mr. Melick, the paralegal for Mr. Winters, and I all contain legal argument, legal strategy, my partial

drafts of the appellate brief, and exchanges of legal documents that are indicative of the arguments I raised on appeal. As such, all the communications between Mr. Melick and I are communications between two law firms that both represent Michael DaCorta. (Exhibit D – Mr. Melick's affidavit). Those communications are, therefore, protected by attorney-client privilege and constitute attorney work product, and privileged materials are expressly excluded from production in Mr. Wiand's subpoena.

The Receiver Has Not Complied With The Local Rules Of This Court or The Specific Rules of Judge Covington Under Local Rule 3.01(g).

Judge Covington's rule under Local Rule 3.01(g) requires that a moving party confer with opposing counsel in a good faith effort to resolve the issue to be raised in a motion before filing a motion in a civil case. Thus, placing a phone call or sending an email is not sufficient. [emphasis added]…failure to comply with the rule will result in the court denying or striking the motion.

Other than my phone call to Mr. Wiand in which I went through the subpoena with him line by line, Mr. Wiand never indicated that he would bring the instant motion or that he was requesting privileged materials from me. Mr. Wiand is aware that Mr. Melick is an employee of the Law Office of Brent Winters and that communications between the two law offices were likely privileged. Mr. Wiand's failure to reach out to discuss whether the communications between two law firms may have come under the attorney-client privilege is significant in that it disregards

the local rules of the court requiring more than a phone call (which he did not do) or an email. It requires a good faith attempt to resolve the matter before bringing a motion. Mr. Wiand's failure to comply with this Court's local rules and the rules of Judge Covington's chambers as stated on the Judge's web site page [1] means that the instant motion should be denied or stricken.

Wiand's Subpoena Seeks Communications That Fall Within The Attorney-Client Privilege And Are Attorney Work Product.

Mr. Wiand seeks the email communications between the undersigned attorney and a paralegal, Mr. Greg Melick, who works for a law office that also represents Mr. Michael DaCorta. Mr. Wiand's subpoena expressly excludes any privileged materials. Under the specific request for information and documents section of Mr. Wiand's subpoena paragraphs 2 and 4 it states: *(excepting privileged communications between Michael DaCorta and counsel for the purpose of obtaining legal advice).* (Exhibit A pg. 5 paras. 2 and 4).

In Mr. Wiand's motion for sanctions he incorrectly states that "*Critically Mellick is not an attorney or paralegal*." (Doc. 834 pg. 12-13) This is a misstatement and incorrect information. Mr. Greg Melick is a paralegal for the Law Office of Brent Winter. (Exhibit D – Affidavit of Greg Melick) In Mr. Melick's affidavit, he clearly states under oath that he is a paralegal and that he works for the law office of

[1] https://www.flmd.uscourts.gov/judges/virginia-covington

Brent Winters and that firm represents Michael DaCorta. The emails in question between the two law firms, both retained by Mr. DaCorta, are privileged communications that contain discussion of legal arguments raised on the appeal to the Eleventh Circuit.

The Email Communications In Question Between An Attorney And A Paralegal For Another Law Firm.

The communications (emails) in question are between myself and Mr. Greg Melick, a paralegal at the Law Office of Brent Winters. My client, Mr. DaCorta, is also a client of the Law Office of Brent Winters. The documents in question are all email discussions of legal strategy, legal research, and my drafts of the appellate brief in preparation for Mr. DaCorta's appeal. Mr. DaCorta authorized me to communicate with Mr. Melick regarding the appeal, legal issues to be raised, and legal strategy. Thus, the emails in question all deal with Mr. DaCorta's appeal and the legal issues raised in that appeal. Thus, they all fall under the attorney-client privilege and are attorney work product.

The Emails

I have listed all the emails in question, their dates and contents. Each of them are protected by attorney client privilege and contain attorney work product. They all relate to the preparation of the appeal for Mr. DaCorta in the civil case and some discussion of the appeal in the criminal case. In all cases the materials, discussions, notes, thoughts, analyses, exchanges of documents, and conclusions contained

within them, however brief, are protected by attorney-client privilege as they are communications between two law firms, both of which represent Mr. Michael DaCorta. The emails with a summary of their contents are as follows:

Date of Email	From	To	Subject Matter
March 13, 2024	Greg Melick (paralegal to Law Office of Brent Winters)	Stephen Preziosi	Melick supplied documents assisting in preparation for appeal
March 13, 2024	Greg Melick (paralegal to Law Office of Brent Winters)	Stephen Preziosi	Melick supplied documents requested by Preziosi in preparation for appeal to the 11th Circuit.
March 13, 2024	Greg Melick (paralegal to Law Office of Brent Winters)	Stephen Preziosi	Melick supplied documents on motions for summary judgment and his opinion about the motion made on behalf of DaCorta in preparation for appeal to the 11th Circuit.
March 13, 2024	Greg Melick (paralegal to Law Office of Brent Winters)	Stephen Preziosi	Melick supplied requested documents regarding motions made in the district court in preparation for

			appeal to the 11th Circuit..
March 13, 2024d	Greg Melick (paralegal to Law Office of Brent Winters)	Stephen Preziosi	Melick provided documents on motions made in the district court in preparation for appeal to the 11th Circuit.
April 12, 2024	Greg Melick (paralegal to Law Office of Brent Winters)	Stephen Preziosi	Discussion and analysis of the causes of action from the CFTC complaint in the district court. Used to prepare the appeal to the 11th Circuit Court of Appeals.
April 12, 2024	Greg Melick (paralegal to Law Office of Brent Winters)	Stephen Preziosi	Discussion and analysis of transcripts and legal arguments used in preparation for appeal to the 11th Circuit.
April 13, 2024	Greg Melick (paralegal to Law Office of Brent Winters)	Stephen Preziosi	Discussion and analysis of trial transcripts as they apply to the appeal to the 11th Circuit.
April 15, 2024	Greg Melick (paralegal to Law Office of Brent Winters)	Stephen Preziosi	Quoting trial attorney for Mr. DaCorta and discussion of trial transcripts as they relate to the

			appeal to the 11th Circuit.
April 17, 2024	Greg Melick (paralegal to Law Office of Brent Winters)	Stephen Preziosi	Discussion of witness testimony as it relates to the appeal to the 11th Circuit; trial exhibits attached
April 17, 2024	Greg Melick (paralegal to Law Office of Brent Winters)	Stephen Preziosi	Discussion of witness testimony as it relates to the appeal; discussion includes attorney opinion and commentary on witness testimony.
April 17, 2024	Greg Melick (paralegal to Law Office of Brent Winters)	Stephen Preziosi	Discussion of the presentence report and sentencing and witness testimony
April 17, 2024	Stephen Preziosi	Greg Melick (paralegal to Law Office of Brent Winters)	Discussion of another attorney for Mr. DaCorta regarding DaCorta Criminal Appeal
April 17, 2024	Greg Melick (paralegal to Law Office of Brent Winters)	Stephen Preziosi	Acknowledging receipt of previous email
April 18, 2024	Greg Melick (paralegal to Law Office of Brent Winters)	Stephen Preziosi	Discussion and opinion of witness testimony and attorney
April 18, 2024	Greg Melick (paralegal to Law Office of Brent Winters)	Stephen Preziosi	Contains link to statements made by DaCorta and analysis of the

			criminal case against DaCorta
April 18, 2024	Greg Melick (paralegal to Law Office of Brent Winters)	Stephen Preziosi	Summary of research techniques
April 18, 2024	Greg Melick (paralegal to Law Office of Brent Winters)	Stephen Preziosi	Melick supplied documents at Preziosi's request regarding the loan agreement by DaCorta.
April 23, 2024	Greg Melick (paralegal to Law Office of Brent Winters)	Stephen Preziosi	Discussion and analysis of the loan agreement in preparation of the appeal to the 11th Circuit. Includes discussion of witness testimony as relates to the Appeal to the 11th Circuit.
April 25, 2024	Stephen Preziosi	Greg Melick (paralegal to Law Office of Brent Winters)	Discussion of trial transcript as it relates to issue for appeal regarding commodity pool.
April 25, 2024	Greg Melick (paralegal to Law Office of Brent Winters)	Stephen Preziosi	Discussion with notes and case law on motions for summary judgment being appealed to the 11th Circuit.
April 25, 2024	Stephen Preziosi	Greg Melick (paralegal to Law Office of Brent Winters)	Discussion of witness testimony and trial court ruling regarding issue on appeal to

			the 11th Circuit Court of Appeals.
April 25, 2024	Greg Melick (paralegal to Law Office of Brent Winters)	Stephen Preziosi	Discussion and notes from another attorney for Mr. DaCorta regarding motions made in the district court as they relate to the appeal to the 11th Circuit.
April 25, 2024	Greg Melick (paralegal to Law Office of Brent Winters)	Stephen Preziosi	Notes on motions for summary judgment and notes regarding depositions of witnesses; attached documents regarding notes and strategies for motions and depositions used by DaCorta Attorneys.
April 26, 2024	Greg Melick (paralegal to Law Office of Brent Winters)	Stephen Preziosi	Discussion of litigation in lower court and strategy concerning appellate court's decision.
April 26, 2024	Greg Melick (paralegal to Law Office of Brent Winters)	Stephen Preziosi	Discussion of trial transcript and issues concerning the commodity pool central to the Appeal to the 11th Circuit.

April 26, 2024	Greg Melick (paralegal to Law Office of Brent Winters)	Stephen Preziosi	Providing documents from lower court docket
April 26, 2024	Greg Melick (paralegal to Law Office of Brent Winters)	Stephen Preziosi	Providing documents from lower court docket and discussion of those documents and their contents
April 26, 2024	Greg Melick (paralegal to Law Office of Brent Winters)	Stephen Preziosi	Discussion of closing arguments and trial exhibits as they relate to issues being raised on appeal.
May 1, 2024	Stephen Preziosi	Greg Melick (paralegal to Law Office of Brent Winters)	Draft of issue being raised on appeal and discussion and analysis of that issue.
May 1, 2024	Greg Melick (paralegal to Law Office of Brent Winters)	Stephen Preziosi	Discussion and Analysis of one of the elements of the criminal trial as it relates to the civil appeal to the 11th Circuit.
May 1, 2024	Greg Melick (paralegal to Law Office of Brent Winters)	Stephen Preziosi	Discussion of an evidentiary hearing and strategy of DaCorta's attorney and witness testimony
May 2, 2024	Greg Melick (paralegal to Law Office of Brent Winters)	Stephen Preziosi	Comments on issue raised on appeal and draft of appellate brief.

May 2, 2024	Stephen Preziosi	Greg Melick (paralegal to Law Office of Brent Winters)	Acknowledging notes on the partial draft of appellate brief.
May 3, 2024	Greg Melick (paralegal to Law Office of Brent Winters)	Stephen Preziosi	Discussion of appellate brief and strategy concerning a 2255 petition.
May 3, 2024	Greg Melick (paralegal to Law Office of Brent Winters)	Stephen Preziosi	Melick supplying requested documents regarding appeal for DaCorta.
May 3, 2024	Greg Melick (paralegal to Law Office of Brent Winters)	Stephen Preziosi	Melick supplying documents regarding DaCorta Appeal.
June 14, 2024	Greg Melick (paralegal to Law Office of Brent Winters)	Stephen Preziosi	Melick supplying documents from lower court docket and discussion of legal representation of Jason McKee by Brent Winters.
August 15, 2024	Greg Melick (paralegal to Law Office of Brent Winters)	Stephen Preziosi	List of billings by Mr. Wiand.
August 18, 2024	Greg Melick (paralegal to Law Office of Brent Winters)	Stephen Preziosi	Affidavit of Melick

I now protest supplying the receiver this information for two reasons: first, the documents fall within the attorney-client privilege as the two law firms (Law Office

of Brent Winters and Mr. Melick as paralegal for that office and my office) have a common interest and a common client; second, the receiver, Mr. Wiand, has an intimate relationship with opposing counsel in this case and in the criminal case against Mr. DaCorta. Mr. Wiand was a witness for the U.S. Attorney at Mr. DaCorta's criminal trial and was a witness for the Commodity Futures Trading Commission in their motion for summary judgment against my client.

Mr. Wiand's relationship with opposing counsel make this request improper as I would have to divulge legal strategy, argument, and communications concerning the appeal to the receiver who has acted as a witness for opposing counsel. In fact, Mr. Wiand, according to his account of billable hours disclosed in filings with the Middle District of Florida, has spent a considerable amount of time consulting with the attorneys for the U.S. Attorney's Office and the attorneys for the Commodity Futures Trading Commission preparing for his testimony against my client and extensively supplying documents to opposing counsel. (Exhibit E – Mr. Wiand's billing for his testimony at Mr. DaCorta's Criminal Trial and billing for providing the CFTC with affidavits in support of their motion for summary judgment).

Supplying Mr. Wiand with privileged documents would be the same as supplying them to opposing counsel. This makes Mr. Wiand's request regarding privileged documents and attorney work product decidedly improper and unfair.

ARGUMENT

Privileged Documents Are Excluded By The Express Language Of The Subpoena

Mr. Wiand's motion is improper because the privileged documents that were not turned over to him are expressly excluded in his subpoena. The subpoena specifically and expressly states at page 5 paragraphs 2 and 4 as follows: *excepting privileged communications between Michael DaCorta and counsel for the purpose of obtaining legal advice*. [emphasis added]. The emails in question are all Privileged communications and are expressly excluded from production.

The Receiver Is Not Entitled To The Documents In Question As They Fall Within The Attorney Client Privilege Under The Common Interest Doctrine.

The emails that the receiver seeks were exchanged between two law firms; both law firms represent Mr. Michael DaCorta. The emails concern the discussion and development of legal arguments and legal strategy of our common client, Mr. Michael DaCorta. While normally the attorney-client privilege is waived when information is divulged to a third party, the two parties in this case (two law firms) have a common interest, i.e. the protection of our common client. The documents are, therefore, protected by the attorney-client privilege. The attorney client privilege doctrine and the common interest doctrine apply in both the Eleventh Circuit and in the Second Circuit where compliance is being demanded.

The Attorney Client Privilege Extends To Paralegals

The attorney-client privilege extends to paralegals who work for law firms retained by a client. As a paralegal for the Law Office of Brent Winters, the communications with Mr. Melick were privileged. *Cavallaro v. United States*, 284 F.3d 236, 247 (1st Cir. 2002) quoting *United States v. Kovel*, 296 F.2d 918 (2d Cir. 1961) holding that because the complexities of modern existence prevent attorneys from effectively handling clients affairs without the help of others, the attorney-client privileged must included all the persons who act as the attorney's agents. *See also United States v. Krug*, 868 F.3d 82, 87 (2d Cir. 2017) holding that privileged persons include the lawyer, agents of the lawyer and those that facilitate representation. *See also People v. Osorio*, 75 N.Y.2d 80, 84, 549 N.E.2d 1183, 1185-86 (1989) holding that attorney-client privilege extends to attorney's employees. *United States v. Gumbaytay*, 276 F.R.D. 671, 679 (M.D. Alabama 2011).

Because Mr. Melick is a paralegal and employee of the law office of Brent Winters, the attorney-client privilege extends to any communications with him concerning the legal representation of a client common to both law firms. All the emails listed above related to the appeal for Mr. Michael DaCorta and the legal arguments that would be raised on appeal. Those communications are therefore privileged and cannot be disclosed.

The Common Interest Doctrine And Attorney Client Privilege

Not only are the communications between the two law offices protected by the attorney-client privilege directly, but they are protected by the Common Interest Doctrine, an extension of the attorney-client privilege.

The common interest doctrine "is not a separate privilege but 'an extension of the attorney client privilege. *Gulf Islands Leasing, Inc. v. Bombardier Capital, Inc.*, 215 F.R.D. 466, 470 (quoting *United States v. Schwimmer*, 892 F.2d 237, 243 (2d Cir. 1989)). It is "an exception to the general rule that voluntary disclosure of confidential, privileged material to a third party waives any applicable privilege." *Sokol v. Wyeth, Inc.*, No. 07 Civ. 8442 (SHS) (KNF), 2008 WL 3166662, at *5 (S.D.N.Y. Aug. 4, 2008); *In re Photochromic Lens Antitrust Litigation*, 2013 WL12316874 at pg. 2 (M.D. Florida Tampa Div. 2013). "The common interest doctrine precludes a waiver of the underlying privilege concerning confidential communications between the parties 'made in the course of an ongoing common enterprise and intended to further the enterprise,' irrespective of whether an actual litigation is in progress." Id. (quoting *Schwimmer*, 892 F.2d at 243).

The doctrine "is intended to allow clients to share information with an attorney for another party who shares the same legal interest." *Gulf Islands Leasing, Inc.*, 215 F.R.D. at 471; *see SR Int'l Bus. Ins. Co. v. World Trade Ctr. Props. LLC*, No. 01 Civ. 9291 (JSM), 2002 WL 1334821, at *3 (S.D.N.Y. June 19, 2002) ("The purpose of the common interest privilege is to permit a client to share confidential information

with the attorney for another who shares a common legal interest."). The doctrine therefore "protect[s] the confidentiality of communications passing from one party to the attorney for another party where a joint defense effort or strategy has been decided upon and undertaken by the parties and their respective counsel." *Schwimmer*, 892 F.2d at 243. The privilege serves to protect the confidentiality of communications passing from one party to the attorney for another party where a joint defense effort or strategy has been decided upon and undertaken by the parties and their counsel. *In re Cross Blue Shield Antitrust Litigation MDL 2406*, 85 F.4th 1070, 1096 (11th Cir. 2023).

The party invoking the doctrine to show that the attorney-client privilege was not waived through disclosure to a third party bears the burden of "demonstrating that the parties communicating: (1) have a common legal, rather than commercial, interest; and (2) the disclosures are made in the course of formulating a common legal strategy." *Monterey Bay Military Hous., LLC v Ambac Assur. Corp.*, 19CIV9193PGGSLC, 2023 WL 315072, at *7-8 [SDNY Jan. 19, 2023].

Courts in the Second Circuit do recognize the "common interest rule." The common interest rule is not an independent privilege; rather, it is a limited exception to the general rule that the attorney-client privilege is waived when a protected communication is disclosed to a third party outside the attorney-client relationship. *See Coregis Ins. Co. v. Lewis, Johs, Avallone, Aviles & Kaufman, LLP,* 01 CV

3844(SJ), 2006 WL 2135782 at *15 (E.D.N.Y. July 28, 2006), *citing Bruker v. City of New York,* 93 Civ. 3848(MGC)(HBP), 2002 WL 484843 at *4 (S.D.N.Y. Mar. 29, 2002); *United States v. United Tech. Corp.,* 979 F.Supp. 108, 111 (D.Conn.1997); *see generally United States v. Schwimmer,* 892 F.2d 237, 243–44 (2d Cir.1989). The common interest rule may also apply where multiple parties are represented by multiple counsel so long as the parties share a common interest in a legal matter. *Walsh v. Northrup Grumman Corp.,* 165 F.R.D. 16, 18 (E.D.N.Y.1996).

In this case, while we are not dealing with two parties, we are dealing with two law firms that have a common client, Mr. Michael DaCorta. Those two firms also have a common interest in the best possible outcome of the case for Mr. DaCorta and to that end shared information in the emails outlined above. The purpose of the communications (emails) between the two law firms was to develop the best possible legal strategies and arguments for our common client. The communications therefore, under the common interest doctrine, fall within the attorney-client privilege.

The Receiver Is Not Entitled To The Emails The Undersigned Attorney And Mr. Melick As Those Documents Are Protected By The Work Product Privilege.

The communications in question (all emails) are between the undersigned counsel and the paralegal, Mr. Greg Melick, for the Law Office of Brent Winters. Again, Mr. DaCorta is also a client of attorney Brent Winters. DaCorta, who is now in custody at a federal prison, directed me to consult with Mr. Melick in the

preparation of the appeal, i.e. drafts of the appellate brief were exchanged; legal research was exchanged, documents relevant to the appeal were exchanged and discussed between a paralegal for a firm that represents Mr. DaCorta and the undersigned attorney. This was done at the direction of my client as he is represented by both firms. The contents of those emails is at its very essence attorney work product.

The Supreme Court recognized the right of attorneys to protection of their work product from discovery in *Hickman v. Taylor,* 329 U.S. 495, 510–12, 67 S.Ct. 385, 393–94, 91 L.Ed. 451 (1947) and *Upjohn Co. v. United States,* 449 U.S. 383, 401–02, 101 S.Ct. 677, 688–89, 66 L.Ed.2d 584 (1981). *Matter of Grand Jury Subpoena Duces Tecum Dated Feb. 18, 1988*, 685 F Supp 49, 50 [SDNY 1988]. In *Hickman,* the Supreme Court recognized that "unwarranted inquiries into the files and the mental impressions of an attorney" by the opposing attorney would provide substantial intrusion into the effective preparation of a client's case. Thus, the Court held that the work product of a lawyer reflected in "interviews, statements, memoranda, correspondence, briefs, mental impressions, personal beliefs, and countless other tangible and intangible ways" should be protected from disclosure unless the opposing attorney can show need. The Court also said that oral statements made by witnesses to an attorney in the course of his preparations for trial are

absolutely privileged from disclosure. *Matter of Grand Jury Subpoena Duces Tecum Dated Feb. 18, 1988*, 685 F Supp 49, 50 [SDNY 1988].

Divulging the emails to Mr. Wiand, the receiver, would be improper because of his relationship with opposing counsel, i.e. the CFTC which has yet to file their answering brief. Mr. Wiand appeared at Mr. DaCorta's criminal trial as a witness for the U.S. Attorney, and he provided sworn statements for the Commodity Futures Trading Commission in their motion for summary judgment. He has consistently acted as the agent for opposing counsel throughout this litigation. Providing him with communications containing attorney work product would he highly prejudicial to Mr. DaCorta.

The Work Product Doctrine Applies To All Communications Between The Two Law Firms.

In *Bank Brussels Lambert v Credit Lyonnais (Suisse) S.A.*, 160 FRD 437 [SDNY 1995], the Court explained the distinction between the attorney-client privilege and the attorney work product doctrine: "Notwithstanding waiver of the attorney-client privilege, a letter and a Memorandum might still be protected from discovery by the work product doctrine because waiver principles applicable to the attorney-client privilege are not identical to those that apply to work product.

Generally, disclosure to any third-party will constitute waiver of the attorney-client privilege. *See* 8 Charles A. Wright et al., *Federal Practice & Procedure* § 2016.2, at 238 (1994) ("waiver due to an interaction with one person ordinarily

deprives the privilege-holder of the right to assert the privilege against anyone else"). By contrast, because the purpose of the work product doctrine is to prevent an adversary from taking advantage of an attorney's preparation for litigation, waiver only occurs where disclosure to a third-party substantially increases the likelihood that the work product will fall into the hands of the adversary." *Bank Brussels Lambert v Credit Lyonnais (Suisse) S.A.*, 160 FRD 437, 448 [SDNY 1995].

To qualify as attorney work product, documents must be prepared in anticipation of litigation. See generally *U.S. v. Adlman*, 134 F.3d 1194 (2d Cir. 1998) and FRCP Rule 26(b)(3)(A) and (B). Ordinarily, a party may not discover documents and tangible things that are prepared in anticipation of litigation. The emails in this case occurred in preparation for the appeal. Legal arguments and the phrasing of legal arguments were discussed, modified, and included were the opinions and statements attributed to my client. Discussion of the testimony of witnesses and how they affect the legal issues to be raised on appeal are attorney work product.

There is no question that the work-product doctrine is applicable to the email exchanges with Mr. Melick. It would be especially harmful to Mr. DaCorta to divulge this information to Mr. Wiand at this stage for two reasons: first, he acts as the alter-ego of the Commodity Futures Trading Commission, i.e. opposing counsel; and second, because Mr. DaCorta's brief has been filed and we are now awaiting the CFTC's answering brief in the Eleventh Circuit. Divulging the thoughts, ideas,

strategy, and approach to legal issues to Mr. Wiand would be tantamount to disclosing it to opposing counsel. We, therefore, ask this Court to deny Mr. Wiand's motion for sanctions and modify the subpoena to exclude the email communications with Mr. Melick.

The Subpoena Is Overly Broad, And The Receiver Has Not Shown The Relevance Of The Documents He Seeks.

The receiver's subpoena contains a list of requests at page 5 of the document. (See Exhibit A pg. 5). That list contains five distinct paragraphs. The first four paragraphs request documents relating to my retention as appellate attorney for Mr. DaCorta. I have complied fully with all those requests. Paragraph five requests "any and all" communications with several people and organizations, including communications with a law firm that represents Mr. DaCorta. The "any and all" language regarding communications with another law firm is overly broad, inappropriate, and Mr. Wiand has not shown the relevance for his request of these documents.

Rule 45 does not list irrelevance or overbreadth as reasons for quashing a subpoena. Courts, however, have held that the scope of discovery under a subpoena is the same as the scope of discovery under Rule 26. *See, e.g., Chamberlain,* 2007 WL 2786421, at *1 ("It is well settled that the scope of discovery under a Rule 45 subpoena is the same as that permitted under Rule 26."); *Stewart,* 2002 WL 1558210, at *3 (same); *see also* Advisory Committee Note to the 1970 Amendment of Rule

45(d)(1) (the 1970 amendments "make it clear that the scope of discovery through a subpoena is the same as that applicable to Rule 34 and other discovery rules."); 9A Charles A. Wright and Arthur R. Miller, *Federal Practice and Procedure,* § 2459 (2d ed. 1995) (Rule 45 subpoena incorporates the provisions of Rules 26(b) and 34).

The Court, therefore, must determine whether the subpoenas *duces tecum* at issue seek irrelevant information and/or are overly broad under the same standards set forth in Rule 26(b) and as applied to Rule 34 requests for production. *See Wagner v. Viacost.com,* No. 06-81113-Civ, 2007 WL 1879914 (S.D.Fla. June 29, 2007) (Ryskamp, J.) (applying relevance standard of Rule 26(b) to subpoena *duces tecum* seeking employment records from the plaintiff's current employer in deciding such records were not relevant in a FLSA case).

Rule 26(b)(1) provides in pertinent part that "[p]arties may obtain discovery regarding any nonprivileged matter that is relevant to any parties' claim or defense.... For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action." Further, "[r]elevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence."[4] Fed.R.Civ.P. 26(b)(1).

When discovery appears relevant on its face, the party resisting the discovery has the burden to establish facts justifying its objections by demonstrating that the requested discovery (1) does not come within the scope of relevance as defined under

Fed.R.Civ.P. 26(b)(1) or (2) is of such marginal relevance that the potential harm occasioned by discovery would outweigh the ordinary presumption in favor of broad disclosure.

"However, when relevancy is not apparent, the burden is on the party *seeking* discovery to show the relevancy of the discovery request ." *Dean v. Anderson,* No. 01-2599-JAR, 2002 WL 1377729, at *2 (D.Kan. June 6, 2002) (emphasis in original). *Barrington v Mortage IT, Inc.*, 07-61304-CIV, 2007 WL 4370647, at *3 [SD Fla Dec. 10, 2007]

The subpoenaed requests by the receiver are overly broad and are not relevant. The assets that the receiver seeks to control are not part of the Receivership Estate, and the money spent by the lenders/investors in 2024 are not Receivership assets. The receiver's authority to exercise control over such assets is limited to the authority that the Receivership Entities would have had if they were still operational. Thus, whatever expenditures the investors and lenders are now making would not have come under the control of the Receivership Entities and, therefore, those expenditures are not discoverable by the receiver.

Neither has Mr. Wiand shown the relevance of any evidence he might garner from the subpoenaed requests or how it is within the scope of his authority as receiver or how it might effect the Receivership Estate. Furthermore, it has not been

alleged by the receiver that the assets are Receivership Property or Receivership assets.

The subpoena seeking "any and all" communications between the two law firms (Law Office of Brent Winters, including his paralegal Greg Melick, and the Law Office of Stephen N. Preziosi), especially privileged communications, should be denied to the receiver.

The Receiver's Subpoena Requests Are Beyond The Scope of His Authority As Receiver

The requests made by the receiver in paragraph five of the subpoena at page five are beyond the scope of authority of the receiver. The requests relate indirectly to the receiver's theory that the lenders/investors are now, in 2024, spending money on legal fees at the request of Mr. Brent Winters and an organization known as the replevin group. The receiver's activities in this area are beyond the scope of his authority as receiver and his requests must be denied.

This Court held that the receiver's authority is limited to the powers and rights of the receivership entities. *Commodity Futures Trading Commn. v Oasis Intl. Group Ltd.*, 8:19-CV-886-T-33SPF, 2020 WL 8617558, at *4 [MD Fla Sept. 14, 2020], report and recommendation adopted, 8:19-CV-886-T-33SPF, 2020 WL 8617559 [MD Fla Oct. 19, 2020] holding that the Court's Order provides the Receiver with the powers, authorities, rights, and privileges previously possessed by the Receivership Entities.

The Magistrate's holdings, later adopted by the U.S. District Court, were as follows:

> As is typical, the Order gives the Receiver the same rights or powers to which the Receivership Entities would be entitled. *See Fleming v. Lind-Waldock & Co.*, 922 F.2d 20, 25 (1st Cir. 1990) (It is "well settled that 'the plaintiff in his capacity of receiver has no greater rights or powers than the corporation itself would have.' ") (quoting *McCandless v. Furlaud*, 296 U.S. 140, 148 (1935)); *Phelan v. Middle States Oil Corp.*, 210 F.2d 360, 363 (2d Cir. 1954) ("In short, the [receiver's] 'practice' means the procedure by which he gets the power to do those things which an owner of the property would have without court authorization."). More specifically, the Order states:
>
> The Receiver shall have all powers, authorities, rights and privileges heretofore possessed by the officers, directors, managers, and general and limited partners of the entity Receivership Defendant under applicable state and federal law, by the governing charters, by-laws, articles and/or agreements in addition to all powers and authority of a receiver at equity, and all powers conferred upon a receiver by the provisions of 28 U.S.C. § § 754 and 1692, and Fed. R. Civ. P. 66.

> (Doc. 177 at ¶ 5). In other words, the Receiver stands in the shoes of the Receivership Entities in regard to assets, property, and records and is "authorized to take immediate possession of all assets, bank accounts or other financial accounts, books and records, and all other documents or instruments relating to the Receivership Defendants." (Doc. 177 at ¶ 15). *Commodity Futures Trading Commn. v Oasis Intl. Group Ltd.*, 8:19-CV-886-T-33SPF, 2020 WL 8617558, at *4 [MD Fla Sept. 14, 2020], report and recommendation adopted, 8:19-CV-886-T-33SPF, 2020 WL 8617559 [MD Fla Oct. 19, 2020]

The authority of the receiver is therefore limited to the investigation of Receivership assets and Receivership property. Under Mr. Wiand's theory that the law firm of Brent Winters and the Replevin Group are somehow (he does not state how) influencing the lenders and investors and convincing them to spend money on legal fees in 2024 after the close of the OIG businesses, he is attempting to investigate how the lenders/investors are spending their own money now in 2024. Whatever monies the lenders and investors are spending, those fees or any money that the lenders/investors are spending in 2024 are not part of the Receivership assets and are not Receivership property. In fact, Mr. Wiand does not allege that any of the

assets allegedly spent on legal fees are part of Receivership assets or Receivership property derived from activities of the now defunct Receivership Entities.

The Receivership Entities, and the receiver standing in the shoes of those Entities, therefore have no rights to investigate or control how the lenders/investors are now spending their money. Mr. Wiand should be foreclosed from investigating how or why Mr. Winters, the Replevin Group, and the investors and lenders are interacting as it is beyond the scope of his authority as receiver and this Court's order dated July 11, 2019. The flurry of subpoenas emanating from the receiver, including this one, seek discovery of subject matter beyond the scope of his authority.

This Court should deny the instant motion for sanctions as Mr. Wiand is not entitled to privileged communications and attorney work product, but more importantly, Mr. Wiand must be denied information that is beyond the authority bestowed on him by this Court's order outlining his responsibilities and the scope of his authority as receiver.

Dated: August 22, 2024
New York, New York

Stephen N. Preziosi

Stephen N. Preziosi, Esq.
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New York, New York 10005
212-960-8267
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AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

Middle District of Florida

COMMODITY FUTURES TRADING COMMISSION

Plaintiff

v.

OASIS INTERNATIONAL GROUP, LIMITED, et al.

Defendant

Civil Action No. 19-CV-886-T-33SPF

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Stephen Preziosi, 48 Wall Street, 11th Floor, New York, NY 10005

(Name of person to whom this subpoena is directed)

☑ *Production:* **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material:

Documents specified in Attachment A

Place:	Date and Time:
electronically to mlockwood@guerrapartners.law OR drop off at Veritext Legal Solutions, 7 Times Square, 16th Floor, New York, NY 10036	06/14/2024 12:00 pm

☐ *Inspection of Premises:* **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 05/17/2024

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Chemere Ellis

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Burton W. Wiand, as Receiver, who issues or requests this subpoena, are:

Chemere Ellis, 1408 N. West Shore Blvd., Suite 1010, Tampa, FL 33607, 813-347-5139.

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 19-CV-886-T-33SPF

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____

on *(date)* _____ .

❒ I served the subpoena by delivering a copy to the named person as follows: _____

_____

_____ on *(date)* _____ ; or

❒ I returned the subpoena unexecuted because: _____

_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of $ _____ .

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) ***For a Trial, Hearing, or Deposition.*** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person

(i) is a party or a party's officer; or

(ii) is commanded to attend a trial and would not incur substantial expense.

(2) ***For Other Discovery.*** A subpoena may command:

(A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and

(B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) ***Avoiding Undue Burden or Expense; Sanctions.*** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) ***Command to Produce Materials or Permit Inspection.***

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) ***Quashing or Modifying a Subpoena.***

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) ***Producing Documents or Electronically Stored Information.*** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) ***Claiming Privilege or Protection.***

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013).

ATTACHMENT A

DEFINITIONS

1. The terms "**you**" and "**your**" are used in the broadest and most comprehensive sense and refer to the target of this subpoena; any former or present parent, subsidiary, predecessor, successor, joint venture, partner, affiliate, or otherwise related entity, and any of their or the target's incorporators, principals, members, managers, directors, officers, employees, agents, brokers, or contractors, or anyone else associated with them; and any person or entity controlled by the target of this subpoena, including the target's lawyers and accountants.

2. The term **"document"** or **"documents"** means any written, graphic, electronic, or aural representation of any kind whether produced, reproduced, or stored on paper, cards, tapes, discs, belts, charts, films, computer storage devices or other electronic device, or any other medium including, without limitation, matter in the form of photographs, charts, graphs, plans, drawings, emails, texts, messages, microfiches, microfilms, videotapes, recordings, motion pictures, books, reports, studies, statements, speeches, notebooks, checks, stubs, forms, applications, tickets, ticket stubs, receipts, agreements, appointment calendars, working papers, graphs, manuals, brochures, contracts, memoranda, notes, records, correspondence, diaries, bookkeeping entries, published materials, invoices, letters, messages,

telegrams, drafts, studies, analyses, summaries, magazines, booklets, expense records, appraisals, valuations, estimates, opinions, financial statements, accounting records, income statements, premium notices, forecasts, illustrations, and any nonidentical drafts and copies of the foregoing.

3. The phrase "**Receivership Matter**" refers to Case No. 8:19-CV-886-T-33SPF, *Commodity Futures Trading Commission v. Oasis International Group, Limited, et al.* and any related appeal including United States Court of Appeals for the Eleventh Circuit Case No. 24-140132, *Commodity Futures Trading Commission v. Michael DaCorta.*

4. "**Relating to**," "**reflecting**," or "**evidencing**" means relating to, regarding, indicating, evidencing, constituting, bearing upon, concerning, addressing, discussing, mentioning, describing, reflecting, responding to, identifying, pertaining to, having to do with, criticizing, contradicting, evaluating, analyzing, setting forth, underlying, commenting on, forming the basis for, or otherwise being in any way relevant or having any relationship whatsoever to the subject matter of the request.

5. **"Correspondence"** means any letter, telegram, telex, notice, message, memorandum, email, text, message, or other written communication or transcription or notes of a communication.

6. **"Communication"** means any written or oral transmission of fact, information, or opinion, including any utterance, notation, or statement

of any nature whatsoever, including, but not limited to, documents and correspondence as defined herein.

INSTRUCTIONS

1. You are requested to produce documents that are in your possession, custody, or control as they are kept in the usual course of business (such as hard copies or electronically stored information). In addition, documents are to be produced in full and unexpurgated form. This request is ongoing in nature. Documents created after the date of production may be requested at a later date.

2. If any documents requested were, but are no longer, in your possession, subject to your control, or in existence, and therefore cannot be produced by you, please state whether any such document (a) is missing or lost; (b) has been destroyed; (c) has been transferred voluntarily or involuntarily to others; or (d) is otherwise disposed of, and, in each instance, please explain the circumstances surrounding any such disposition of the document and state the date or approximate date thereof.

3. If any portion of any document responsive to this request is withheld by reason of any assertion of privilege or other protection from discovery, redact and identify such portion and produce the document. As to each document or portion thereof that is withheld, provide the following information: (a) type of document (e.g., letter, memorandum, telegram, chart,

photograph, tape cassette, etc.); (b) date of document; (c) name(s) of its author(s) or preparer(s) and an identification by employment and title of each such person; (d) name of each person who was sent, shown, blind copied, or carbon copied the document, or who has had access to or custody of the document, together with an identification of each such person by employment and title; (e) number of pages, attachments, and appendices; (f) present custodian; (g) subject matter of the document; (h) nature of the privilege or other protection asserted and a statement of the basis for the claim of privilege or other protection; and (i) paragraph(s) of this subpoena to which the document is responsive.

4. In producing documents, all documents which are physically attached to each other when located for production shall be left so attached. Documents which are segregated or separated from other documents, whether by inclusion in binders, files, subfiles, or by use of dividers, tabs, or any other method, shall be left so segregated or separated. Documents shall be retained in the order in which they were maintained, in the file where found, and you shall identify from whose files the document originated. **Unless otherwise specified, this request calls for all documents generated, prepared, or received from the date of filing of the Receivership Matter, April 15, 2019, through the date of production, or which refer to matters occurring through such date.**

SPECIFIC REQUEST FOR INFORMATION AND DOCUMENTS

1. All documents reflecting the source of any funds or other consideration received in connection with your legal representation of Michael DaCorta in any matters, including, but not limited to, the Receivership Matter.

2. Any correspondence or communication relating to Request 1 or your representation of Michael DaCorta (excepting privileged communications between Michael DaCorta and counsel for the purpose of obtaining legal advice).

3. All documents relating to your receipt of funds or other consideration from any person or entity other than Michael DaCorta in connection with your legal representation of Michael DaCorta in any matters, including, but not limited to, the Receivership Matter.

4. Any correspondence, communication, or agreements relating to your retention as counsel for Michael DaCorta (excepting privileged communications between Michael DaCorta and counsel for the purpose of obtaining legal advice).

5. Any and all communications with Brent Winters, Greg Melick, Jason McKee, Intermountain Precious Metals, any person affiliated with the Oasis Replevin Group (a/k/a "Oasis Helpers"), and/or Michelle Utter.

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA, TAMPA DIVISION

COMMODITY FUTURES TRADING COMMISSION, Plaintiff, v. OASIS INTERNATIONAL GROUP, LIMITED; OASIS MANAGEMENT, LLC; SATELLITE HOLDINGS COMPANY; MICHAEL J. DACORTA; JOSEPH S. ANILE, II,; RAYMOND P. MONTIE, III; FRANCISCO "FRANK" L. DURAN; and JOHN J. HAAS, Defendants; and MAINSTREAM FUND SERVICES, INC.; BOWLING GREEN CAPITAL MANAGEMENT LLC; LAGOON INVESTMENTS, INC.; ROAR OF THE LION FITNESS, LLC; 444 GULF OF MEXICO DRIVE, LLC; 4064 FOUNDERS CLUB DRIVE, LLC; 6922 LACANTERA CIRCLE, LLC; 13318 LOST KEY PLACE, LLC; and 4OAKS LLC, Relief Defendants	Case No. 8:19CV886T33SPF Judge:

~~[PROPOSED]~~ ORDER GRANTING PLAINTIFF'S MOTION FOR AN EX PARTE STATUTORY RESTRAINING ORDER, APPOINTMENT OF A TEMPORARY RECEIVER, AND OTHER EQUITABLE RELIEF

Plaintiff Commodity Futures Trading Commission ("CFTC" or "Commission") has filed a Complaint for Injunctive Relief, Civil Monetary Penalties, Restitution, Disgorgement and Other Equitable Relief ("Complaint") and moved, pursuant to Section 6c(a) of the

Commodity Exchange Act ("Act"), 7 U.S.C. § 13a-1(a) (2012), and in accordance with Rule 65 of the Federal Rules of Civil Procedure ("Rule 65"), for an ex parte statutory restraining order freezing assets, allowing inspection of records, and appointing a Temporary Receiver. The Court has considered the pleadings, declarations, exhibits, and memorandum filed in support of the Commission's motion, and finds that:

1. This Court has jurisdiction over this action under 28 U.S.C. § 1331 (2012) (federal question jurisdiction) and 28 U.S.C. § 1345 (2012) (district courts have original jurisdiction over civil actions commenced by the United States or by any agency expressly authorized to sue by Act of Congress). 7 U.S.C. § 13a-1(a) authorizes the Commission to seek injunctive relief against any person whenever it shall appear that such person has engaged, is engaging, or is about to engage in any act or practice that violates any provision of the Act or any rule, regulation, or order promulgated thereunder.

2. Venue lies properly within this District pursuant to 7 U.S.C. § 13a-1(e).

3. The Commission has made a proper prima facie showing that since 2011, Defendants Oasis International Group, Limited ("OIG"), Oasis Management, LLC ("OM"), Satellite Holdings Company ("Satellite Holdings"), Michael J. DaCorta ("DaCorta"), Joseph S. Anile, II ("Anile"), Raymond P. Montie, III ("Montie"), Francisco "Frank" L. Duran ("Duran"), and John J. Haas ("Haas"), (collectively, "Defendants") have engaged, are engaging, or are about to engage in a fraudulent scheme to solicit and misappropriate money from over 700 U.S. residents for pooled investments in retail foreign currency contracts ("forex"). Between mid-April 2014 and the present (the "Relevant Period"), Defendants have fraudulently solicited hundreds of members of the public ("pool participants") to invest

approximately $75 million in two commodity pools—Oasis Global FX, Limited ("Oasis Pool 1") and Oasis Global FX, SA ("Oasis Pool 2") (collectively, the "Oasis Pools")—that purportedly would trade in forex. Rather than use pool participants' funds for forex trading as promised, however, Defendants have traded only a small portion of pool funds in forex—which trading incurred losses—and instead misappropriated the majority of pool participants' funds and issued false account statements to pool participants to conceal their trading losses and misappropriation. In the course of their fraudulent scheme and during the Relevant Period, Defendants made material misrepresentations to pool participants, including that: (1) all pool funds would be used to trade forex; (2) pool participants would receive a minimum 12% guaranteed annual return from this forex trading; (3) the Oasis Pools were profitable and returned 22% in 2017 and 21% in 2018; (4) the Oasis Pools had never had a losing month; (5) money being returned to pool participants was from profitable trading; (6) there was no risk of loss with the Oasis Pools; and (7) pool participants earned extra returns by referring other pool participants to the Oasis Pools. Defendants also omitted to tell pool participants, among other things, that DaCorta—the CEO of OIG and the Oasis Pools' head trader—had been permanently banned from registering with the Commission in 2010 and was prohibited from soliciting U.S. residents to trade forex and from trading forex for U.S. residents in any capacity. Defendants' representations were false. The Defendants have misappropriated the majority of pool funds. Of the approximate $75 million Defendants received from pool participants during the Relevant Period, Defendants deposited only $21 million into forex trading accounts in the names of the Oasis Pools, all of which has been lost trading forex. Defendants misappropriated over $29 million of pool funds to make Ponzi-like payments to

other pool participants. Defendants misappropriated over $18 million of pool funds—at least $7 million of which was transferred to Relief Defendants—for unauthorized personal or business expenses such as real estate purchases in Florida, exotic vacations, sports tickets, pet supplies, loans to family members, and college and study abroad tuition. To conceal their trading losses and misappropriation, Defendants created and issued false account statements to pool participants that inflated and misrepresented the value of the pool participants' investments in the Oasis Pools and the Oasis Pools' trading returns.

4. Therefore, there is good cause to believe that Defendants—either directly or as controlling persons—have engaged, are engaging, or are about to engage in acts and practices in violation of Sections 4b(a)(2)(A)-(C), 4k(2), 4m(1), 4*o*(1)(A)-(B), and 2(c)(2)(iii)(I)(cc) of the Commodity Exchange Act (the "Act"), 7 U.S.C. §§ 6b(a)(2)(A)-(C), 6(k(2), 6m(1), 6*o*(1)(A)-(B), 2(c)(2)(iii)(I)(cc) (2012), and Commission Regulations ("Regulations") 4.20(b)-(c), 4.21, 5.2(b)(1)-(3), and 5.3(a)(2), 17 C.F.R. § 4.20(b)-(c), 4.21, 5.2(b)(1)-(3), 5.3(a)(2) (2018).

5. There is also good cause to believe that Relief Defendants Bowling Green Capital Management LLC, Lagoon Investments, Inc., Roar of the Lion Fitness, LLC, 444 Gulf of Mexico Drive, LLC, 4064 Founders Club Drive, LLC, 6922 Lacantera Circle, LLC, 13318 Lost Key Place, LLC, and 4Oaks LLC (the "Related Relief Defendants") have received, are receiving, or are about to receive funds, assets, or other property ("assets") as a result of Defendants' violative acts and practices and have been unjustifiably enriched thereby. These Related Relief Defendants do not have any legitimate interest or entitlement to these assets received as a result of Defendants' violative conduct.

6. There is also good cause to belief that Relief Defendant Mainstream Fund Services, Inc. ("Mainstream") has received, is receiving, or is about to receive, directly or indirectly, assets into three Citibank, N.A. bank accounts (-1174, -5606 and -0764) it holds for the benefit of Defendants Oasis International Group, Limited and/or Oasis Management, LLC (hereinafter the "Mainstream f/b/o Oasis Citibank Accounts") as a result of Defendants' violative acts and practices and has been unjustifiably enriched thereby. Relief Defendant Mainstream does not have any legitimate interest or entitlement to these assets received into the Mainstream f/b/o Oasis Citibank Accounts as a result of Defendants' violative conduct.

7. There is also good cause to believe that immediate and irreparable damage to the Court's ability to grant effective final relief for pool participants in the form of monetary or other redress will occur from the withdrawal, transfer, removal, dissipation or other disposition of assets, and/or the destruction, alteration or disposition of books and records and other documents ("records") by Defendants, Related Relief Defendants, and Relief Defendant Mainstream unless they are immediately restrained and enjoined by Order of the Court.

8. Therefore, there is good cause for the Court to freeze assets owned, controlled, managed or held by Defendants and Related Relief Defendants or in which they have any beneficial interest. There is also good cause for the Court to freeze the assets owned, controlled, managed or held by Relief Defendant Mainstream in the Mainstream f/b/o Oasis Citibank Accounts.

9. There is also good cause for the Court to prohibit Defendants, Related Relief Defendants and Relief Defendant Mainstream from destroying, altering or disposing of

records, and/or denying representatives of the Commission access to inspect records, when and as requested, to ensure that Commission representatives have immediate and complete access to those records.

10. There is also good cause for the appointment of a Temporary Receiver to take control of all assets owned, controlled, managed, or held by Defendants and Related Relief Defendants, or in which they have any beneficial interest ("Defendants' Assets" and "Relief Defendants' Assets"), as well as the three Mainstream f/b/o Oasis Citibank Accounts, so that the Temporary Receiver may preserve assets, investigate and determine customer claims, determine unlawful proceeds retained by Defendants, Related Relief Defendants, and Relief Defendant Mainstream, and amounts due to pool participants as a result of Defendants' alleged violations, and distribute remaining funds under the Court's supervision.

11. There is also good cause to require an accounting by Defendants, Related Relief Defendants, and Relief Defendant Mainstream to the Temporary Receiver to determine the location and disposition of pool participant funds and ill-gotten gains.

12. There is also good cause to order repatriation of assets controlled by Defendants, Related Relief Defendants, and Relief Defendant Mainstream so that such assets can be controlled by the Temporary Receiver and to assure payment of restitution and disgorgement as authorized by the Court.

13. In summary, this is a proper case for granting a restraining order ex parte freezing assets, allowing inspection of records and appointing a temporary receiver because the Commission is likely to succeed on the merits. Moreover, there is also a reasonable

likelihood that Defendants will transfer or dissipate assets or destroy or alter records. Therefore, the Court orders the following.

DEFINITIONS

14. For the purposes of this Order, the following definitions apply:

15. The term **"assets"** encompasses any legal or equitable interest in, right to, or claim to, any real or personal property, whether individually or jointly, directly or indirectly controlled, and wherever located, including but not limited to: chattels, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds mail or other deliveries, inventory, checks, notes, accounts (including, but not limited to, bank accounts and accounts at other financial institutions), credits, receivables, lines of credit, contracts (including spot, futures, options, or swaps contracts), insurance policies, retainers held by agents for the provision of professional or other services, and all funds, wherever located, whether in the United States or outside the United States.

16. The term **"record"** encompasses the terms "document" and "electronically stored information" as those terms are used in Fed. R. Civ. P. 34(a), and includes, but is not limited to, all writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or other data compilations—stored in any medium from which information can be obtained or translated, if necessary, into reasonable usable form. The term "record" also refers to each and every such item in Defendants' and Relief Defendants' actual or constructive possession, including but not limited to: (i) all such items within the custody or control of any agents, employers, employees, or partners of the Defendants and Relief Defendants; and (ii) all items which Defendants and Relief Defendants have a legal or

equitable right to obtain from another person. A draft or non-identical copy is a separate item within the meaning of the term. A record also includes the file and folder tabs associated with each original and copy.

17. **"Defendants"** means and refers to Oasis International Group, Limited; Oasis Management, LLC; Satellite Holdings Company; Michael J. DaCorta; Joseph S. Anile, II; Raymond P. Montie, III; Francisco "Frank" L. Duran; and John J. Haas.

18. **"Related Relief Defendants"** means and refers to Bowling Green Capital Management LLC ("Bowling Green"), Lagoon Investments, Inc. ("Lagoon"), Roar of the Lion Fitness, LLC ("Roar of the Lion"), 444 Gulf of Mexico Drive, LLC ("444"), 4064 Founders Club Drive, LLC ("4064 Founders Club"), 6922 Lacantera Circle, LLC ("6922 Lacantera"), 13318 Lost Key Place, LLC ("13318 Lost Key"), and 4Oaks LLC ("4Oaks").

19. **"Mainstream"** means and refers specifically to one Relief Defendant, Mainstream Fund Services, Inc., which, during the Relevant Period, held three (3) accounts at Citibank, N.A. (accounts -1174, -5606, and -0764, the "Mainstream f/b/o Oasis Citibank Accounts"), which received, directly or indirectly, funds from pool participants for investment in the Oasis Pools. Mainstream Fund Services, Inc. was formerly named Fundadministration, Inc., but changed its name to Mainstream Fund Services, Inc. in 2017.

RELIEF GRANTED

IT IS HEREBY ORDERED THAT:

I. Asset Freeze Order Prohibiting the Withdrawal, Transfer, Removal, Dissipation, and Disposal of Assets

20. Defendants and Related Relief Defendants are immediately restrained and enjoined, except as otherwise ordered by this Court, from directly or indirectly withdrawing,

transferring, removing, dissipating or otherwise disposing of any assets, wherever located, including Defendants' and Relief Defendants' assets held outside the United States, except as provided otherwise in Sections IV, V, and VI of this Order, or as otherwise ordered by the Court;

21. Relief Defendant Mainstream is immediately restrained and enjoined, except as otherwise ordered by this Court, from directly or indirectly withdrawing, transferring, removing, dissipating or otherwise disposing of the assets held by it in the Mainstream f/b/o Oasis Citibank Accounts and any other assets that Relief Defendant Mainstream might hold for the Defendants or the Related Relief Defendants;

22. Notwithstanding the provisions of this Section I, at the request of the Temporary Receiver, Defendants, Related Relief Defendants, Relief Defendant Mainstream, and any other person who has possession, custody, or control of any of Defendants' and Related Relief Defendants' funds, assets, or other property shall transfer possession of all assets subject to this Order to the Temporary Receiver in accordance with Section IV, V, and VI of this Order.

23. The assets affected by this Order shall include existing assets and assets acquired after the effective date of this Order.

II. Maintenance of and Access to All Records Relating to the Business Activities and Business and Personal Finances

24. Defendants, Related Relief Defendants, and Relief Defendant Mainstream, are restrained from directly or indirectly destroying, altering, or disposing of, in any manner any records that relate or refer to the business activities or business or personal finances of any

Defendants or Related Relief Defendants, specifically including, but not limited to, the three Mainstream f/b/o Oasis Citibank Accounts.

25. Representatives of the Commission shall be immediately allowed to inspect any records relating or referring to the business activities or business or personal finances of the Defendants and Related Relief Defendants, including, but not limited to, both hard-copy documents and electronically stored information, wherever they may be situated and whether they are in the possession of the Defendants, Related Relief Defendants, Relief Defendant Mainstream, or others. To ensure preservation and facilitate meaningful inspection and review of records, Defendants and Relief Defendants shall allow representatives of the Commission to make copies of said documents and electronically stored information, and if on-site copying of documents and electronically stored information is not practicable, representatives may make such copies off-site. After any such off-site copying, Plaintiff shall promptly return the original documents and devices upon which electronic information is stored.

26. To further facilitate meaningful inspection and review, Defendants, Related Relief Defendants, and Relief Defendant Mainstream shall, absent a valid assertion of their respective rights against self-incrimination under the Fifth Amendment, promptly provide Commission staff with:

a. the location of all records relating or referring to the business activities and business and personal finances of the Defendants and Related Relief Defendants;

b. all identification numbers and other identifying information for websites, cloud storage services, email and smartphone accounts, and all accounts at any bank, financial institution, or brokerage firm (including any introducing broker or futures commission merchant) owned, controlled or operated by Defendants and Related Relief Defendants, or to which the Defendants and Related Relief Defendants have access; and

c. all passwords to, and the location, make and model of, all computers and/or mobile electronic devices owned and/or used by Defendants or Related Relief Defendants in connection with their business activities and business and personal finances.

27. When inspecting records that are subject to this Order, including those contained on computers and/or other electronic devices, the Commission should undertake reasonable measures to prevent review of the Defendants' or Related Relief Defendants' privileged communications and/or other nonbusiness, nonfinancial materials by the Commission's attorneys and other staff who are part of the litigation team in this matter. Moreover, Defendants and Related Relief Defendants (or their counsel) shall promptly contact Plaintiff's counsel to assert any claims of privilege (or other legal objections) relating to the contents of any records that are subject to this Order and promptly cooperate with Plaintiff's counsel to develop reasonable protocols to isolate and prevent disclosure of claimed privileged and/or other nonbusiness, nonfinancial materials to the Commission's attorneys and other staff who are part of the litigation team in this matter. However, nothing herein shall excuse Defendants, Related Relief Defendants, or Relief Defendant Mainstream

from full and immediate compliance with this Court's Order permitting Plaintiff to inspect the books and records which relate to Defendants' or Related Relief Defendants business activities and their business and personal finances.

III. Notice to Financial Institutions and Others that Hold or Control Assets or Records

28. To ensure the effectiveness of the asset freeze and pending further Order of this Court, any financial or brokerage institution, business entity, or person that receives actual notice of this Order and holds, controls, or maintains custody of any account or asset or other property of Defendants or Related Relief Defendants, including, but not limited to the Mainstream f/b/o Oasis Citibank Accounts, shall not, in active concert or participation with Defendants or Relief Defendants, permit Defendants or Related Relief Defendants or other persons to withdraw, transfer, remove, dissipate, or otherwise dispose of any of Defendants' or Related Relief Defendants' assets, except as directed by further order of the Court.

29. Any financial or brokerage institution, business entity, or person that receives notice of this Order by personal service or otherwise shall not, in active concert or participation with any Defendant or Related Relief Defendant, directly or indirectly destroy, alter, or dispose of, in any manner, any records relating to the business activities and business and personal finances of any Defendant or Related Relief Defendant.

30. Furthermore, any such financial or brokerage institution, business entity, or person that receives actual notice of this Order and holds, controls, or maintains custody of any account or asset titled in the name of, held for the benefit of, or otherwise under the control of any Defendants and Related Relief Defendants, or has held, controlled, or

maintained custody of any such account or asset of any Defendants and Related Relief Defendants at any time since **January 2011** shall not, in active concert or participation with Defendants and Related Relief Defendants, deny a request by the Commission to inspect all records pertaining to every account or asset owned, controlled, managed, or held by, on behalf of, or for the benefit of Defendants and Related Relief Defendants, including, but not limited to, originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs. As an alternative to allowing inspection of records, a financial or brokerage institution, business entity or other person may provide copies of records requested by the Commission.

31. Furthermore, any such financial or brokerage institution, business entity, or person that receives actual notice of this Order shall:

a. Within five business days of a request by the Temporary Receiver, or such longer period specified by the Temporary Receiver, provide the Temporary Receiver with copies of all records pertaining to any account or asset owned, controlled, managed, or held by, on behalf of, or for the benefit of Defendants and Related Relief Defendants, either individually or jointly, including, but not limited to, originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs; and

b. Cooperate with all reasonable requests of the Temporary Receiver relating to implementation of this Order, including transferring Defendants' and Related Relief Defendants' funds at the Temporary Receiver's direction, and producing records related to business activities or business or personal finances of Defendants and Related Relief Defendants to the Temporary Receiver.

IV. Order Appointing Temporary Receiver

32. **Burton W. Wiand of Wiand Guerra King PL** is appointed Temporary Receiver, with the full powers of an equity receiver for Defendants and Related Relief Defendants and their affiliates and subsidiaries owned or controlled by Defendants and Related Relief Defendants (hereinafter referred to as the "Receivership Defendants"), and of all the funds, properties, premises, accounts, income, now or hereafter due or owing to the Receivership Defendants, and other assets directly or indirectly owned, beneficially or otherwise, by the Receivership Defendants (hereinafter, the "Receivership Estate"). The Temporary Receiver shall be the agent of this Court in acting as Temporary Receiver under this Order.

30. The Temporary Receiver is directed and authorized to accomplish the following:

a. Assume full control of the Receivership Defendants by removing Defendants Michael J. DaCorta, Joseph S. Anile, II, Raymond P. Montie, III, Francisco "Frank" L. Duran, and John J. Haas, and any officer, independent contractor, employee, or agent of the Receivership Defendants, from control and

management of the affairs of the Receivership Defendants as the Temporary Receiver deems appropriate;

b. Take exclusive custody, control, and possession of the Receivership Estate, which includes but is not limited to complete authority to sue for, collect, receive, and take possession of all goods, chattels, rights, credits, money, effects, land, leases, books, records, work papers, and records of accounts, including electronically-stored information, contracts, financial records, funds on hand in banks and other financial institutions, and other papers and records of the Receivership Defendants and pool participants or clients of any of Receivership Defendants' business activities whose interests are now held by, or under the direction, possession, custody, or control of, the Receivership Defendants;

c. Take all steps necessary to secure the business and other premises under the control of the Receivership Defendants, including but not limited to premises located at:

Premises Address	Description
444 Gulf of Mexico Drive Longboat Key, FL	Defendant OIG's main office Owned by Relief Defendant 444 Gulf of Mexico Drive
4064 Founders Club Drive Sarasota, FL	Defendant Anile's residence Owned by Relief Defendant 4064 Founders Club Drive, LLC
6922 Lacantera Circle Lakewood Ranch, FL	Defendant DaCorta's residence

Premises Address	Description
	Owned by Relief Defendant 6922 Lacantera Circle, LLC
13318 Lost Key Place Lakewood Ranch, FL	Defendant DaCorta's residence Owned by Relief Defendant 13318 Lost Key Place, LLC

d. Perform all acts necessary, including the suspension of operations, to conserve, hold, manage, and preserve the value of the Receivership Estate in order to prevent an irreparable loss, damage, or injury to any pool participants or other investors in any investment opportunity operated by any Receivership Defendant;

e. Prevent the withdrawal or misapplication of assets entrusted to the Receivership Defendants, and otherwise protect the interests of any pool participants or other investors of any of the Receivership Defendants;

f. Manage and administer the Receivership Defendants and the Receivership Estate by performing all acts incidental thereto that the Temporary Receiver deems appropriate, including hiring or dismissing any and all personnel, suspending operations, and/or entering into agreements, including but not limited to: (1) the retention and employment of investigators, attorneys or accountants, appraisers, and other independent contractors and technical specialists of the Temporary Receiver's choice, including without limitation members and employees of the Temporary Receiver's firm, to assist, advise,

and represent the Temporary Receiver; and (2) the movement and storage of any equipment, furniture, records, files or other physical property of the Receivership Defendants;

g. Collect all funds owed to the Receivership Defendants;

h. Initiate, defend, compromise, adjust, intervene in, dispose of, or become a party to, any actions or proceedings in state, federal, or foreign court that the Temporary Receiver deems necessary and advisable to preserve or increase the value of the Receivership Estate or that the Temporary Receiver deems necessary and advisable to carry out the Temporary Receiver's mandate under this Order;

i. Issue subpoenas or letters rogatory to obtain records pertaining to the Receivership and conduct discovery in this action on behalf of the Receivership Estate;

j. Divert mail and take control of all post office boxes, private or commercial mail boxes, or storage units rented or owned by the Receivership Defendants;

k. Open all mail directed to or received by or at the premises, or post office, or private or commercial mail boxes of the Receivership Defendants, and to inspect all mail opened prior to the entry of this Order, to determine whether items or information therein fall within the mandates of this Order. In connection therewith, the Receiver is authorized to instruct the United States Postmaster and anyone in possession or control of a private or commercial mailbox to hold and/or reroute mail directed to any of the Receivership

Defendants. In connection therewith, the Receivership Defendants are directed not to open a new mailbox or take any steps or make any arrangements to receive mail in contravention of this Order, whether through the U.S. mail, a private mail depository, or courier service;

l. Open one or more bank accounts and deposit all funds of the Receivership Estate in such designated accounts and make all payments and disbursements from the Receivership Estate from such accounts;

m. Make payments and disbursements from the Receivership Estate that are necessary or advisable for carrying out the directions of, or exercising the authority granted by, this Order, provided that the Temporary Receiver shall apply to the Court for prior approval of any payment of any debt or obligation incurred by the Receivership Defendants prior to the date of entry of this Order, except for payments that the Temporary Receiver deems necessary or advisable to secure the Receivership Estate from immediate and irreparable loss. The Receiver shall not be responsible for payment or performance of any obligations of the Receivership Defendants that were incurred, by, or for the benefit of, the Receivership Defendants prior to the date of this Order, including but not limited to any agreements with third party vendors, landlords, brokers, purchasers or other contracting parties; Maintain written accounts itemizing receipts and expenditures, describing properties held or managed, and naming the depositories holding funds or other assets of the Receivership Estate; make such written accounts and supporting

documentation available to the Commission for inspection; and, within sixty days of being appointed and periodically thereafter, as directed by the Court, file with the Court and serve on the parties a report summarizing efforts to marshal and collect assets, administer the Receivership Estate, and otherwise perform the duties mandated by this Order; and

n. To cooperate with reasonable requests for information or assistance from any state or federal law enforcement agency.

V. Accounting and Transfer of Funds and Records To The Temporary Receiver

31. Absent a valid assertion by Defendants or Related Relief Defendants of their respective rights against self-incrimination under the Fifth Amendment, each Defendant and Related Relief Defendant shall, within five business days following the service of this Order:

a. Provide the Temporary Receiver with a full detailed accounting of all assets of the Receivership Estate, including the assets inside and outside of the United States, and the location of all records of the Receivership Estate, that are held by each and every Defendant or Related Relief Defendant, for their benefit, or under their direct or indirect control, whether jointly or singly, and the location of all records of the Receivership Estate.

b. Transfer to the territory of the United States and deliver to possession, custody, and control of the Temporary Receiver, all assets of the Receivership Estate (other than real property) and books and records of the Receivership Estate, located outside of the United States that are held by each and every

Defendant and Related Relief Defendant, for their benefit, or under their direct or indirect control, whether jointly or singly.

c. Provide the Temporary Receiver access to all records of the Receivership Estate and all assets of the Receivership Estate held by any financial or brokerage institution, business entity, or other person that receives actual notice of this Order, by personal service or otherwise, located within or outside the territorial United States by signing any necessary consent forms.

32. Absent a valid assertion by Relief Defendant Mainstream of its right against self-incrimination under the Fifth Amendment, Mainstream shall, within five business days following the service of this Order:

a. Provide the Temporary Receiver with a full detailed accounting of all assets, including the assets inside and outside of the United States that it holds for each and every Defendant and Related Relief Defendant, for their benefit, or under its direct or indirect control, whether jointly or singly, and the location of all records of the Receivership Estate, including, but not limited to the Mainstream f/b/o Oasis Citibank Accounts.

b. Transfer to the territory of the United States and deliver to possession, custody, and control of the Temporary Receiver, all records and assets (other than real property) located outside of the United States that it holds for each and every Defendant and Related Relief Defendant, for their benefit, or under its direct or indirect control, whether jointly or singly including, but not limited to the Mainstream f/b/o Oasis Citibank Accounts.

33. Provide the Temporary Receiver access to all records of accounts or assets of the Defendants and Related Relief Defendants held by financial or brokerage institutions located within or outside the territorial United States by signing any necessary consent forms

34. Absent a valid assertion by Defendants or Related Relief Defendants of their respective rights against self-incrimination under the Fifth Amendment, Defendants or Related Relief Defendants shall, within twenty-four hours of the issuance of this Order, cause to be prepared and delivered to the Temporary Receiver, a detailed and complete schedule of all passwords and identification (ID) numbers for all websites, cloud storage services, email and smartphone accounts, and all accounts at any bank, financial institution, or brokerage firm (including any introducing broker or futures commission merchant) controlled or operated by or to which any of the Defendants or Related Relief Defendants have access in connection with their business activities and business and personal finances.

35. Absent a valid assertion by Defendants or Related Relief Defendants of their respective rights against self-incrimination under the Fifth Amendment, Defendants or Related Relief Defendants shall, within twenty-four hours of the issuance of this Order, cause to be prepared and delivered to the Temporary Receiver, a detailed and complete schedule of all passwords to, and the location, make and model of, all computers and mobile electronic devices owned and/or used by Defendants or Related Relief Defendants in connection with their business activities and business and personal finances. The schedules required by this section shall include at a

minimum the make, model and description of each, along with the location, the name of the person primarily assigned to use the computer and/or mobile device, and all passwords necessary to access and use the software contained on the computer and/or mobile device.

VI. Turning Over Assets and Records to the Temporary Receiver

36. Upon service of this Order, and absent a valid assertion by Defendants or Related Relief Defendants of their respective rights against self-incrimination under the Fifth Amendment, Defendants and Related Relief Defendants and any other person or entity served with a copy of this Order, shall immediately or within such time as permitted by the Temporary Receiver in writing, deliver over to the Temporary Receiver:

a. Possession and custody of all assets of the Receivership Defendants, wherever situated, including those owned beneficially or otherwise;

b. Possession and custody of records of the Receivership Defendants in connection with their business activities and business and personal finances, including but not limited to, all records of accounts, all financial and accounting records, balance sheets, income statements, bank records (including monthly statements, canceled checks, records of wire transfers, and check registers), client lists, title documents and other records of the Receivership Defendants;

c. Possession and custody of all assets belonging to members of the public now held by the Receivership Defendants;

d. All keys, passwords, entry codes, and combinations to locks necessary to gain or to secure access to any of the assets or records of the Receivership Defendants related to their business activities and business and personal finances, including, but not limited to, access to the Receivership Defendants' business premises, means of communication, accounts, computer systems, mobile electronic devices, or other property; and

e. Information identifying the accounts, employees, properties or other assets or obligations of the Receivership Defendants.

37. Upon service of this Order, and absent a valid assertion by Relief Defendant Mainstream of its right against self-incrimination under the Fifth Amendment, Relief Defendant Mainstream and any other person or entity served with a copy of this Order, shall immediately or within such time as permitted by the Temporary Receiver in writing, deliver over to the Temporary Receiver:

a. Possession and custody of all assets of the Receivership Defendants, wherever situated, including those owned beneficially or otherwise;

b. Possession and custody of records of the Receivership Defendants in connection with their business activities and business and personal finances, including but not limited to, all records of accounts, all financial and accounting records, balance sheets, income statements, bank records (including monthly statements, canceled checks, records of wire transfers, and check registers), client lists, title documents and other records of the Receivership Defendants;

c. Possession and custody of all assets belonging to members of the public now held by the Receivership Defendants;

d. All keys, passwords, entry codes, and combinations to locks necessary to gain or to secure access to any of the assets or records of the Receivership Defendants related to their business activities and business and personal finances, including, but not limited to, access to the Receivership Defendants' business premises, means of communication, accounts, computer systems, mobile electronic devices, or other property; and

e. Information identifying the accounts, employees, properties or other assets or obligations of the Receivership Defendants.

VII. Directive To Cooperate with Temporary Receiver

38. Absent a valid assertion of their respective rights against self-incrimination under the Fifth Amendment, Defendants, Related Relief Defendants, Relief Defendant Mainstream, and all other persons or entities served with a copy of this order shall cooperate fully with and assist the Temporary Receiver. This cooperation and assistance shall include, but not be limited to, providing any information to the Temporary Receiver that the Temporary Receiver deems necessary to exercising the authority as provided in this Order; providing any password required to access any computer or electronic files in any medium; and discharging the responsibilities of the Temporary Receiver under this Order, and advising all persons who owe debts to the Receivership Defendants that all debts should be paid directly to the Temporary Receiver.

VIII. Stay on Actions Against the Receivership Defendants

IT IS FURTHER ORDERED THAT:

39. Except by leave of the Court, during the pendency of the receivership ordered herein, the Defendants, Related Relief Defendants, Relief Defendant Mainstream, and all other persons and entities shall be and hereby are stayed from taking any action (other than the present action by the Commission) to establish or enforce any claim, right or interest for, against, on behalf of, in, or in the name of, the Receivership Defendants, the Temporary Receiver, the Receivership Estate, or the Temporary Receiver's duly authorized agents acting in their capacities as such, including but not limited to, the following actions:

a. Petitioning, or assisting in the filing of a petition, that would cause the Receivership Defendants to be placed in bankruptcy;

b. Commencing, prosecuting, litigating, or enforcing any suit or proceeding against any of the Receivership Defendants, or any of their subsidiaries or affiliates, except that such actions may be filed to toll any applicable statute of limitations;

c. Commencing, prosecuting, continuing, or entering any suit or proceeding in the name or on behalf of any of the Receivership Defendants, or any of their subsidiaries or affiliates;

d. Accelerating the due date of any obligation or claimed obligation, enforcing any lien upon, or taking or attempting to take possession of, or retaining possession of, property of the Receivership Defendants, or any of their subsidiaries or affiliates, or any property claimed by any of them, or

attempting to foreclose, forfeit, alter, or terminate any of the Receivership Defendants' interests in property, including without limitation, the establishment, granting, or perfection of any security interest, whether such acts are part of a judicial proceeding or otherwise;

e. Using self-help or executing or issuing, or causing the execution or issuance of, any court attachment, subpoena, replevin, execution, or other process for the purpose of impounding or taking possession of or interfering with, or creating or enforcing a lien upon any property, wherever located, owned by or in the possession of the Receivership Defendants, or any of their subsidiaries or affiliates, or the Temporary Receiver, or any agent of the Temporary Receiver; and

f. Doing any act or thing whatsoever to interfere with the Temporary Receiver taking control, possession, or management of the property subject to the receivership, or to in any way interfere with the Temporary Receiver or to harass or interfere with the duties of the Temporary Receiver; or to interfere in any manner with the exclusive jurisdiction of this Court over the property and assets of the Receivership Defendants, or their subsidiaries or affiliates.

Provided, however, that nothing in this section shall prohibit any federal or state law enforcement or regulatory authority from commencing or prosecuting an action against the Receivership Defendants.

IX. Compensation for Temporary Receiver and Personnel Hired by the Temporary Receiver

40. The Temporary Receiver and all personnel hired by the Temporary Receiver as herein authorized, including counsel to the Temporary Receiver, are entitled to reasonable compensation for the performance of duties pursuant to this Order and for the cost of actual out-of-pocket expenses incurred by them for those services authorized by this Order that when rendered were: (1) reasonably likely to benefit the receivership estate, or (2) necessary to the administration of the estate. However, the Temporary Receiver and any personnel hired by the Temporary Receiver shall not be compensated or reimbursed by, or otherwise be entitled to, any funds from the Court or the Commission. The Temporary Receiver shall file with the Court and serve on the parties periodic requests for the payment of such reasonable compensation, with the first such request filed no more than 60 days after the date of this Order and subsequent requests filed quarterly thereafter. The requests for compensation shall itemize the time and nature of services rendered by the Temporary Receiver and all personnel hired by the Temporary Receiver.

X. Persons Bound By this Order

41. This Order is binding on any person who receives actual notice of this Order by personal service or otherwise and is acting in the capacity of an officer, agent, servant, employee, or attorney of the Defendants or Related Relief Defendants, or is in active concert or participation with the Defendants or Related Relief Defendants.

XI. Bond Not Required of Plaintiff or the Temporary Receiver

42. As Plaintiff Commission has made a proper showing under Section 6c(b) of the Act, 7 U.S.C. § 13a-1(b) (2012), it is not required to post any bond in connection with this Order. The Temporary Receiver similarly is not required to post bond.

XII. Service of Order and Assistance of United States Marshals Service and/or Other Law Enforcement Personnel

43. Copies of this Order may be served by any means, including via email or facsimile transmission, upon any financial institution or other entity or person that may have possession, custody, or control of any records or assets of any Defendant or Related Relief Defendant, or that may be subject to any provision of this Order.

44. Margaret Aisenbrey, J. Alison Auxter, Jennifer Chapin, Lauren Fulks, Rachel Hayes, James Humphrey, Rebecca Jelinek, Jeff Le Riche, Charles Marvine, Jo Mettenburg, Christopher Reed, Peter Riggs, Elsie Robinson, Thomas Simek, Allison Sizemore, Nicholas Sloey, Tiffany Stanphill, and Stephen Turley, and representatives of the United States Marshals Service and the Federal Bureau of Investigation ("FBI") are specially appointed by the Court to effect service.

45. The United States Marshals Service and the FBI are authorized to: a) accompany and assist the Commission representatives in the service and execution of the Summons, Complaint and this Order on the Defendants, Related Relief Defendants, and Relief Defendant Mainstream, and b) help maintain lawful order while Commission representatives inspect records as provided in this Order.[1]

[1] Nothing in this Order shall limit in any way any other lawful activities undertaken by the FBI with respect to Defendants or Relief Defendants in connection with any other proceeding.

XIII. Service on the Commission

46. Defendants, Related Relief Defendants, and Relief Defendant Mainstream shall comply with all electronic filing rules and requirements of the U.S. District Court , Middle District of Florida, Tampa Division, and shall serve all pleadings, correspondence, notices required by this Order, and other materials on the Commission by delivering a copy to **Jo E. Mettenburg, Chief Trial Attorney, Division of Enforcement, Commodity Futures Trading Commission, 4900 Main Street, Suite 500, Kansas City, Missouri 64112**, by electronic filing, e-mail, personal delivery or courier service (such as Federal Express or United Parcel Service) and not by regular mail due to potential delay resulting from heightened security and decontamination procedures applicable to the Commission's regular mail.

XIV. Hearing on Preliminary Injunction and Expedited Discovery

47. Plaintiff's Motion for a Preliminary Injunction is set for hearing on the _____ day of _____, 2019, at _____.m., before the Honorable _____, Courtroom _____ at the United States Courthouse for the Middle District of Florida at 801 North Florida Avenue, Tampa, Florida, 33602. Should any party wish to file a memorandum of law or other papers concerning the issuance of a preliminary injunction against the Defendants, Related Relief Defendants, or Relief Defendant Mainstream, such materials shall be filed, served and received by all parties at least two days before the hearing ordered above.

48. The CFTC's additional request for expedited discovery is granted and in advance of this preliminary injunction hearing, the parties may conduct expedited discovery,

and the prohibition upon discovery before the early meeting of counsel pursuant to Rule 26(f), in accordance with Rule 26(d), is removed. The CFTC may take depositions of Defendants Michael J. DaCorta, Joseph S. Anile, II, Raymond P. Montie, III, John J. Haas, and Francisco "Frank" L. Duran subject to two calendar days' notice pursuant to Rule 30(a), that notice may be given personally, by facsimile, or by electronic mail, and, if necessary, any deposition may last more than seven hours.

XV. Force and Effect

49. This Order shall remain in full force and effect until April 25, 2019 unless extended further by order of this Court pursuant to Rule 65(b)(2), and this Court retains jurisdiction of this matter for all purposes.

IT SO ORDERED, at Tampa, Florida on this 15th day of April, 2019, at 2:30 p.m.

Virginia M. Hernandez Covington
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

COMMODITY FUTURES TRADING COMMISSION,

Plaintiff,

v. Case No. 8:19-cv-00886-VMC-SPF

OASIS INTERNATIONAL GROUP, LIMITED; OASIS MANAGEMENT, LLC; SATELLITE HOLDINGS COMPANY; MICHAEL J. DACORTA; JOSEPH S. ANILE, II; RAYMOND P. MONTIE, III; FRANCISCO "FRANK" L. DURAN; and JOHN J. HAAS

Defendants,

and

MAINSTREAM FUND SERVICES, INC.; BOWLING GREEN CAPITAL MANAGEMENT, LLC; LAGOON INVESTMENTS, INC.; ROAR OF THE LION FITNESS, LLC; 444 GULF OF MEXICO DRIVE, LLC; 6922 LACANTERA CIRCLE, LLC; 13318 LOST KEY PLACE, LLC; and 4OAKS LLC,

Relief Defendants.

_____/

CONSOLIDATED RECEIVERSHIP ORDER

WHEREAS this matter comes before this Court upon Plaintiff Commodity Futures Trading Commission's ("CFTC" or "Commission") Unopposed Motion for Entry of Consent Orders of Preliminary Injunction Against Defendants Raymond P. Montie, III ("Montie"),

John J. Haas ("Haas"), and Satellite Holdings Company ("SHC"), and Consent Order of Amended Preliminary Injunction and Other Equitable Relief Against Defendant Francisco "Frank" L. Duran ("Duran"), and for entry of this Consolidated Receivership Order, which supersedes two prior orders appointing the Receiver and giving the Receiver certain powers in this litigation (the April 15, 2019 Statutory Restraining Order, the "SRO," Doc. #7; and the April 30, 2019 Order Appointing Receiver and Staying Litigation, Doc. #44); and,

WHEREAS the Court finds that, based on the record in these proceedings, the entry of these three orders is necessary and appropriate for the purposes of marshalling and preserving all assets (real, personal, intangible, or otherwise) of the Defendants and the Relief Defendants ("Receivership Assets") as well as the assets of any other entities or individuals that: (a) are attributable to funds derived from pool participants, lenders, investors, or clients of the Defendants and/or Relief Defendants; (b) are held in constructive trust for the Defendants and/or Relief Defendants; (c) were fraudulently transferred by the Defendants and/or Relief Defendants; and/or (d) may otherwise be includable as assets of the estates of the Defendants and/or Relief Defendants (collectively, the "Recoverable Assets") (Receivership Assets and Recoverable Assets, collectively, are referred to herein as "Receivership Property"); and,

WHEREAS this Court has subject matter jurisdiction over this action and personal jurisdiction over the Defendants and the Relief Defendants, and venue properly lies in this district.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. Except as otherwise specified in the Consent Order of Preliminary Injunction Against Defendant Montie, the Consent Order of Preliminary Injunction Against Defendants Haas and SHC, and the Consent Order of Amended Preliminary Injunction Against Duran, the Court hereby takes exclusive jurisdiction and possession of the assets, of whatever kind and wherever situated, of the following Defendants and Relief Defendants: Oasis International Group, Limited; Oasis Management, LLC; Satellite Holdings Company; Michael J. DaCorta; Joseph S. Anile, II; Raymond P. Montie, III; Francisco "Frank" L. Duran; John J. Haas; Bowling Green Capital Management, LLC; Lagoon Investments, Inc.; Roar Of The Lion, Fitness, LLC; 444 Gulf of Mexico Drive, LLC; 4064 Founders Club Drive, LLC; 6922 Lacantera Circle, LLC; 13318 Lost Key Place, LLC; and 4Oaks LLC (collectively, "Receivership Defendants").

2. With respect to Relief Defendant Mainstream Fund Services, Inc., the Court takes exclusive jurisdiction and possession of the Citibank account ending in -0764 as part of the Receivership Property. *See* Doc. #14 (dated April 23, 2019 and releasing the Mainstream f/b/o Oasis Citibank Accounts -1174, -5606 and -0764). The Court expressly reserves the right to determine at a later date whether other assets of Relief Defendant Mainstream Fund Services should be included in the Recoverable Assets.

3. Until further Order of this Court, Burton W. Wiand, Esq. of Wiand Guerra King P.A. is hereby appointed to serve without bond as receiver (the "Receiver") for the estates of the Receivership Defendants. This Order shall also constitute the appointment or re-appointment of the Receiver for purposes of 28 U.S.C. § 754.

I. Asset Freeze

4. Except as otherwise specified in the Consent Order of Preliminary Injunction Against Defendant Montie, the Consent Order of Preliminary Injunction Against Defendants Haas and SHC, and the Consent Order of Amended Preliminary Injunction Against Duran, or except as otherwise specified herein, all Receivership Property remains frozen until further order of this Court. Accordingly, all persons and entities with direct or indirect control over any Receivership Property, other than the Receiver, are hereby restrained and enjoined from directly or indirectly transferring, setting off, receiving, changing, selling, pledging, assigning, liquidating or otherwise disposing of or withdrawing such assets. This freeze shall include, but not be limited to, Receivership Property that is on deposit with financial institutions such as banks, brokerage firms, and mutual funds. This freeze shall also include but not be limited to Receivership Property held as real property, personal property, intangibles, collectibles, metals, and cryptocurrencies.

II. General Powers and Duties of Receiver

5. The Receiver shall have all powers, authorities, rights and privileges heretofore possessed by the officers, directors, managers, and general and limited partners of the entity Receivership Defendants under applicable state and federal law, by the governing charters, by-laws, articles and/or agreements in addition to all powers and authority of a receiver at equity, and all powers conferred upon a receiver by the provisions of 28 U.S.C. §§ 754 and 1692, and Fed. R. Civ. P. 66.

6. The trustees, directors, officers, managers, employees, investment advisors, accountants, attorneys, and other agents of the Receivership Defendants are hereby dismissed

and the powers of any general partners, directors and/or managers are hereby suspended. Such persons and entities shall have no authority with respect to the Receivership Defendants' operations or assets, except to the extent as may hereafter be expressly granted by the Receiver. The Receiver shall assume and control the operation of the Receivership Defendants and shall pursue and preserve all of their claims.

7. No person holding or claiming any position of any sort with any of the Receivership Defendants shall possess any authority to act by or on behalf of any of the Receivership Defendants.

8. Subject to the specific provisions in Sections III through XIV, below, the Receiver shall have the following general powers and duties:

A. To use reasonable efforts to determine the nature, location and value of all property interests of the Receivership Defendants, including, but not limited to: real estate, monies, funds, securities, credits, effects, goods, chattels, lands, premises, leases, claims, rights, and other assets, together with all rents, profits, dividends, interest, or other income attributable thereto, of whatever kind, which the Receivership Defendants own, possess, have a beneficial interest in, or control directly or indirectly (collectively, the "Receivership Estates");

B. To take custody, control and possession of all Receivership Property and records relevant thereto from the Receivership Defendants; to sue for and collect, recover, receive and take into possession from third parties all Receivership Property and records relevant thereto;

C. To manage, control, operate and maintain the Receivership Estates and hold in his possession, custody and control all Receivership Property, pending further Order of this Court;

D. To use Receivership Property for the benefit of the Receivership Estates, making payments and disbursements and incurring expenses as may be necessary or advisable in the ordinary course of business in discharging his duties as Receiver;

E. To take any action which, prior to the entry of this Order, could have

been taken by the officers, directors, partners, managers, trustees and agents of the Receivership Defendants;

F. To engage and employ persons in his discretion to assist him in carrying out his duties and responsibilities hereunder, including, but not limited to, accountants, attorneys, securities traders, registered representatives, financial or business advisers, liquidating agents, real estate agents, forensic experts, brokers, traders or auctioneers;

G. To take such action as necessary and appropriate for the preservation of Receivership Property or to prevent the dissipation or concealment of Receivership Property;

H. To issue subpoenas or letters rogatory to compel testimony of persons or production of records, consistent with the Federal Rules of Civil Procedure, except for the provisions of Fed. R. Civ. P. 26(d)(1), concerning any subject matter within the powers and duties granted by this Order;

I. To bring such legal actions based on law or equity in any state, federal, or foreign court as the Receiver deems necessary or appropriate in discharging his duties as Receiver;

J. To pursue, resist, and defend all suits, actions, claims, and demands which may now be pending or which may be brought by or asserted, directly or indirectly, against the Receivership Estates;

K. To request the assistance of the U.S. Marshals Service, in any judicial district, to assist the Receiver in carrying out his duties to take possession, custody, and control of, or identify the location of, any Receivership Assets, documents or other materials belonging to the Receivership Defendants. In addition, the Receiver is authorized to request similar assistance from any other federal, state, county, or civil law enforcement officer(s) or constable(s) of any jurisdiction; and,

L. To take such other action as may be approved by this Court.

III. Access to Information

9. Absent a valid assertion of their respective rights against self-incrimination under the Fifth Amendment, the individual Receivership Defendants (DaCorta, Anile, Montie, Duran and Haas) and the past and/or present officers, directors, agents, managers,

general and limited partners, trustees, attorneys, accountants, and employees of the entity Receivership Defendants, as well as those acting in their place, are hereby ordered and directed to preserve and, if they have not already done so pursuant to either the April 15, 2019 SRO (Doc. #7) or the April 30, 2019 Order Appointing Receiver and Staying Litigation (Doc. #44), to turn over to the Receiver forthwith all paper and electronic information of, and/or relating to, the Receivership Defendants and/or all Receivership Property; such information shall include but not be limited to books, records, documents, accounts, and all other instruments and papers.

10. If they have not already done so pursuant to either the April 15, 2019 SRO (Doc. #7) or the April 30, 2019 Order Appointing Receiver and Staying Litigation (Doc. #44), then within fourteen (14) days of the entry of this Order, Defendants DaCorta, Anile, Montie, Duran, and Haas shall file with the Court and serve upon the Receiver and the CFTC a sworn statement listing: (a) the identity, location, and estimated value of all Receivership Property; (b) all employees (and job titles thereof), other personnel, attorneys, accountants, and any other agents or contractors of the Receivership Defendants; and, (c) the names, addresses, and amounts of claims of all known creditors of the Receivership Defendants.

11. If they have not already done so pursuant to either the April 15, 2019 SRO (Doc. #7) or the April 30, 2019 Order Appointing Receiver and Staying Litigation (Doc. #44), then within thirty (30) days of the entry of this Order, Defendants DaCorta, Anile, Montie, Duran, and Haas, and Relief Defendant Mainstream Fund Services, Inc. shall file with the Court and serve upon the Receiver and the Commission a sworn statement and accounting, with complete documentation, covering the period from January 1, 2011 to the

present:

A. Identifying every account at every bank, brokerage, or other financial institution: (a) over which Receivership Defendants have signatory authority; and (b) opened by, in the name of, or for the benefit of, or used by, the Receivership Defendants;

B. Identifying all credit, bank, charge, debit, or other deferred payment card issued to or used by each Receivership Defendant, including but not limited to the issuing institution, the card or account number(s), all persons or entities to which a card was issued and/or with authority to use a card, the balance of each account and/or card as of the most recent billing statement, and all statements for the last twelve months;

C. Identifying all assets received by any of them from any person or entity, including the value, location, and disposition of any assets so received; and

D. Identifying all funds received by the Receivership Defendants, and each of them, in any way related, directly or indirectly, to the conduct alleged in Plaintiffs' Complaint. The submission must clearly identify, among other things, all investors, the securities they purchased, the date and amount of their investments, and the current location of such funds.

12. If they have not already done so pursuant to the April 30, 2019 Order Appointing Receiver and Staying Litigation (Doc. #44), then within thirty (30) days of the entry of this Order, Defendants DaCorta, Anile, Montie, Duran, and Haas shall provide to the Receiver and the CFTC copies of the Receivership Defendants' federal income tax returns for 2011 through 2018 with all relevant and necessary underlying documentation.

13. Absent a valid assertion of their respective rights against self-incrimination under the Fifth Amendment, Defendants DaCorta, Anile, Montie, Duran, and Haas, Relief Defendant Mainstream Fund Services, Inc., and the entity Receivership Defendants' past and/or present officers, directors, agents, attorneys, managers, shareholders, employees, accountants, debtors, creditors, managers, and general and limited partners, as well as other

appropriate persons or entities, shall answer under oath to the Receiver all questions which the Receiver may put to them and produce all documents as required by the Receiver regarding the business of the Receivership Defendants, or any other matter relevant to the operation or administration of the receivership or the collection of funds due to the Receivership Defendants. In the event that the Receiver deems it necessary to require the appearance of the aforementioned persons or entities, the Receiver shall make his deposition requests in accordance with the Federal Rules of Civil Procedure.

14. The Receivership Defendants, Relief Defendant Mainstream Fund Services, Inc., or other persons acting or purporting to act on their behalf, are required to assist the Receiver in fulfilling his duties and obligations. As such, they must respond promptly and truthfully to all requests for information and documents from the Receiver.

IV. Access to Books, Records and Accounts

15. Except as otherwise specified in the Consent Order of Preliminary Injunction Against Defendant Montie, the Consent Order of Preliminary Injunction Against Defendants Haas and SHC, and the Consent Order of Amended Preliminary Injunction Against Duran, the Receiver is authorized to take immediate possession of all assets, bank accounts or other financial accounts, books and records, and all other documents or instruments relating to the Receivership Defendants. All persons and entities having control, custody, or possession of any Receivership Property are hereby directed to turn such property over to the Receiver.

16. The Receivership Defendants, and Relief Defendant Mainstream Fund Services, Inc., as well as their agents, servants, employees, attorneys, any persons acting for or on behalf of the Receivership Defendants, and any persons receiving notice of this Order

by personal service, facsimile transmission, or otherwise, having possession of the property, business, books, records, accounts, or assets of the Receivership Defendants are hereby directed to deliver the same to the Receiver, his agents, and/or his employees.

17. All banks, brokerage firms, financial institutions, and other persons or entities that have possession, custody, or control of any assets or funds held by, in the name of, or for the benefit of, directly or indirectly, any of the Receivership Defendants that receive actual notice of this Order by personal service, facsimile transmission, or otherwise shall:

A. Not liquidate, transfer, sell, convey, or otherwise transfer any assets, securities, funds, or accounts in the name of or for the benefit of the Receivership Defendants, except upon instructions from the Receiver;

B. Not exercise any form of set-off, alleged set-off, lien, or any form of self-help whatsoever, or refuse to transfer any funds or assets to the Receiver's control, without the permission of this Court;

C. Within five (5) business days of receipt of such notice, file with the Court and serve on the Receiver and counsel for Plaintiffs a certified statement setting forth, with respect to each such account or other asset, the balance in the account or description of the assets as of the close of business on the date of receipt of the notice; and,

D. Cooperate expeditiously in providing information and transferring funds, assets, and accounts to the Receiver or at the direction of the Receiver.

V. Access to Real and Personal Property

18. The Receiver is authorized to take immediate possession of all personal property of the Receivership Defendants, wherever located, including but not limited to electronically stored information, computers, laptops, hard drives, external storage drives, and any other such memory, media or electronic storage devices, books, papers, data processing records, evidence of indebtedness, bank records and accounts, savings records and

accounts, brokerage records and accounts, certificates of deposit, stocks, bonds, debentures, and other securities and investments, contracts, mortgages, furniture, office supplies, and equipment.

19. Except as otherwise specified in Paragraphs 20 and 21 below, the Receiver is authorized to take immediate possession of all real property of the Receivership Defendants, wherever located, including but not limited to all ownership and leasehold interests and fixtures. Upon receiving actual notice of this Order by personal service, facsimile transmission or otherwise, all persons other than law enforcement officials acting within the course and scope of their official duties, are (without the express written permission of the Receiver) prohibited from: (a) entering such premises; (b) removing anything from such premises; or (c) destroying, concealing or erasing anything on such premises. Real property includes, but is not limited to, premises located at:

Premises Address	**Description**
444 Gulf of Mexico Drive Longboat Key, Florida	Defendant OIG's main office (Owned by Relief Defendant 444 Gulf of Mexico Drive)
4064 Founders Club Drive Sarasota, Florida	Defendant Anile's residence (Owned by Relief Defendant 4064 Founders Club Drive, LLC)
6922 Lacantera Circle Lakewood Ranch, Florida	Defendant DaCorta's residence (Owned by Relief Defendant 6922 Lacantera Circle, LLC)
13318 Lost Key Place Lakewood Ranch, Florida	Defendant DaCorta's residence (Owned by Relief Defendant 13318 Lost Key Place, LLC)
7312 Desert Ridge Glen Lakewood Ranch, Florida	Owned by 7312 Desert Ridge Glen, LLC (of which Defendant DaCorta was a principal)
17006 Vardon Terrace, #105 Lakewood Ranch, Florida	Owned by 17006 Vardon Terrace #105, LLC (of which Defendant OM is a member and DaCorta is the registered agent).

Premises Address	Description
16804 Vardon Terrace, #108 Lakewood Ranch, Florida	Owned by 16804 Vardon Terrace, #108, LLC (of which Defendant OM is a member and DaCorta is the registered agent).
16904 Vardon Terrace, #106 Lakewood Ranch, Florida	Owned by 16904 Vardon Terrace, #106, LLC (of which Defendant DaCorta is the authorized representative).
16804 Vardon Terrace, #307 Lakewood Ranch, Florida	Owned by Vincent Raia (Defendant OM holds a $215,000 mortgage on property).
6300 Midnight Pass Road, No. 1002 Sarasota, Florida	Owned by 6300 Midnight Pass Road, No. 1002, LLC (of which DaCorta is the authorized representative).

20. Defendant Montie owns residences located on Goose Pond Road in Lake Aerial, Pennsylvania; on MacArthur Boulevard in Hauppage, New York; and on New Hampshire Road in Jackson, New Hampshire. Pursuant to Paragraphs 9(i) and 9(j) of Montie's Consent Preliminary Injunction Order, Montie is responsible for making the mortgage, property tax, and insurance payments and for the general upkeep of these residences.

21. Defendant Haas jointly owns a residence, which he previously identified at Doc. #143-1. Pursuant to Paragraph 9(i) of Haas's Consent Preliminary Injunction Order, Haas is responsible for making mortgage, property tax, and insurance payments and for the general upkeep of this residence.

22. In order to execute the express and implied terms of this Order, the Receiver is authorized to change door locks to the premises described above in Paragraph 19. The Receiver shall have exclusive control of the keys. The Receivership Defendants, or any other person acting or purporting to act on their behalf, are ordered not to change the locks in any manner, nor to have duplicate keys made, nor shall they have keys in their possession during

the term of the receivership.

23. The Receiver is authorized to open all mail directed to or received by or at the offices or post office boxes of the Receivership Defendants, and to inspect all mail opened prior to the entry of this Order, to determine whether items or information therein fall within the mandates of this Order.

VI. Notice to Third Parties

24. The Receiver shall promptly give notice of his appointment to all known officers, directors, agents, employees, shareholders, creditors, debtors, managers, and general and limited partners of the Receivership Defendants, as the Receiver deems necessary or advisable to effectuate the operation of the receivership.

25. All persons and entities owing any obligation, debt, or distribution with respect to an ownership interest to any Receivership Defendant shall, until further ordered by this Court, pay all such obligations in accordance with the terms thereof to the Receiver and its receipt for such payments shall have the same force and effect as if the Receivership Defendant had received such payment.

26. The Receiver shall not be responsible for payment or performance of any obligations of the Receivership Defendants that were incurred by, or for the benefit of, the Receivership Defendants prior to the date of this Order, including but not limited to any agreements with third party vendors, landlords, brokers, purchasers, or other contracting parties.

27. In furtherance of his responsibilities in this matter, the Receiver is authorized to communicate with, and/or serve this Order upon, any person, entity, or government office

that he deems appropriate to inform them of the status of this matter and/or the financial condition of the Receivership Estates. All government offices which maintain public files of security interests in real and personal property shall, consistent with such office's applicable procedures, record this Order upon the request of the Receiver or Plaintiff.

28. The Receiver is authorized to instruct the United States Postmaster to hold and/or reroute mail which is related, directly or indirectly, to the business, operations or activities of any of the Receivership Defendants (the "Receiver's Mail"), including all mail addressed to, or for the benefit of, the Receivership Defendants. The Postmaster shall not comply with, and shall immediately report to the Receiver, any change of address or other instruction given by anyone other than the Receiver concerning the Receiver's Mail. The Receivership Defendants shall not open any of the Receiver's Mail and shall immediately turn over such mail, regardless of when received, to the Receiver. All personal mail of any individual Receivership Defendants, and/or any mail appearing to contain privileged information, and/or any mail not falling within the mandate of the Receiver, shall be released to the named addressee by the Receiver. The foregoing instructions shall apply to any proprietor, whether individual or entity, of any private mail box, depository, business or service, or mail courier or delivery service, hired, rented or used by the Receivership Defendants. The Receivership Defendants shall not open a new mailbox, or take any steps or make any arrangements to receive mail in contravention of this Order, whether through the U.S. mail, a private mail depository, or courier service.

29. Subject to payment for services provided, any entity furnishing water, electric, telephone, sewage, garbage, or trash removal services to the Receivership Defendants shall

maintain such service and transfer any such accounts to the Receiver unless instructed to the contrary by the Receiver.

30. The Receiver is authorized to assert, prosecute, and/or negotiate any claim under any insurance policy held by or issued on behalf of the Receivership Defendants, or their officers, directors, agents, employees ,or trustees, and to take any and all appropriate steps in connection with such policies.

VII. Injunction Against Interference with Receiver

31. The Receivership Defendants, Relief Defendant Mainstream Fund Services, Inc., and all persons receiving notice of this Order by personal service, facsimile or otherwise, are hereby restrained and enjoined from directly or indirectly taking any action or causing any action to be taken, without the express written agreement of the Receiver, which would:

A. Interfere with the Receiver's efforts to take control, possession, or management of any Receivership Property; such prohibited actions include but are not limited to, using self-help or executing or issuing or causing the execution or issuance of any court attachment, subpoena, replevin, execution, or other process for the purpose of impounding or taking possession of or interfering with or creating or enforcing a lien upon any Receivership Property;

B. Hinder, obstruct or otherwise interfere with the Receiver in the performance of his duties; such prohibited actions include but are not limited to concealing, destroying, or altering records or information;

C. Dissipate or otherwise diminish the value of any Receivership Property; such prohibited actions include but are not limited to releasing claims or disposing, transferring, exchanging, assigning, or in any way conveying any Receivership Property, enforcing judgments, assessments, or claims against any Receivership Property or any Receivership Defendant, attempting to modify, cancel, terminate, call, extinguish, revoke, or accelerate the due date of any lease, loan, mortgage, indebtedness, security agreement, or other

agreement executed by any Receivership Defendant, or which otherwise affects any Receivership Property; or,

D. Interfere with or harass the Receiver, or interfere in any manner with the exclusive jurisdiction of this Court over the Receivership Estates.

32. The Receivership Defendants and Relief Defendant Mainstream Fund Services, Inc., or any person acting or purporting to act on their behalf shall cooperate with and assist the Receiver in the performance of his duties.

33. The Receiver shall promptly notify the Court and the CFTC's counsel of any failure or apparent failure of any person or entity to comply in any way with the terms of this Order.

VIII. Stay of Litigation

34. As set forth in detail below, the following proceedings, excluding the instant proceeding and all police or regulatory actions and actions of the CFTC or the Receiver related to the above-captioned enforcement action, are stayed until further Order of this Court:

> All civil legal proceedings of any nature, including, but not limited to, bankruptcy proceedings, arbitration proceedings, foreclosure actions, default proceedings, or other actions of any nature involving: (a) the Receiver, in his capacity as Receiver; (b) any Receivership Property, wherever located; (c) any of the Receivership Defendants, including subsidiaries and partnerships; or, (d) any of the Receivership Defendants' past or present officers, directors, managers, agents, or general or limited partners sued for, or in connection with, any action taken by them while acting in such capacity of any nature, whether as plaintiff, defendant, third-party plaintiff, third-party defendant, or otherwise (such proceedings are hereinafter referred to as "Ancillary Proceedings").

35. The parties to any and all Ancillary Proceedings are enjoined from commencing or continuing any such legal proceeding, or from taking any action in connection with any such proceeding, including, but not limited to, the issuance or

employment of process.

36. All Ancillary Proceedings are stayed in their entirety, and all Courts having any jurisdiction thereof are enjoined from taking or permitting any action until further Order of this Court. Further, as to a cause of action accrued or accruing in favor of one or more of the Receivership Defendants or the Receiver against a third person or party, any applicable statute of limitation is tolled during the period in which this injunction against commencement of legal proceedings is in effect as to that cause of action.

IX. Managing Assets

37. The Receiver shall establish one or more custodial accounts at a federally insured bank to receive and hold all cash equivalent Receivership Property (the "Receivership Funds").

38. The Receiver may, without further Order of this Court, transfer, compromise, or otherwise dispose of any Receivership Property, other than real estate, in the ordinary course of business, on terms and in the manner the Receiver deems most beneficial to the Receivership Estate, and with due regard to the realization of the true and proper value of such Receivership Property.

39. Subject to Paragraph 40, immediately below, the Receiver is authorized to locate, list for sale or lease, engage a broker for sale or lease, cause the sale or lease, and take all necessary and reasonable actions to cause the sale or lease of all real property in the Receivership Estates, either at public or private sale, on terms and in the manner the Receiver deems most beneficial to the Receivership Estate, and with due regard to the realization of the true and proper value of such real property.

40. Upon further Order of this Court, pursuant to such procedures as may be required by this Court and additional authority such as 28 U.S.C. §§ 2001 and 2004, the Receiver will be authorized to sell, and transfer clear title to, all real property in the Receivership Estates. The parties agree the Receiver can move the Court to waive strict compliance with 28 U.S.C. §§ 2001 and 2004.

41. The Receiver is authorized to take all actions to manage, maintain, and/or wind-down business operations of the Receivership Defendants, including: (i) furloughing, terminating, and/or engaging employees on a contract basis; (ii) closing the business; and (iii) making legally required payments to creditors, employees, and agents of the Receivership Estates and communicating with vendors, investors, governmental and regulatory authorities, and others, as appropriate.

42. The Receiver shall take all necessary steps to enable the Receivership Funds to obtain and maintain the status of a taxable "Settlement Fund," within the meaning of Section 468B of the Internal Revenue Code and of the regulations, when applicable, whether proposed, temporary or final, or pronouncements thereunder, including the filing of the elections and statements contemplated by those provisions. The Receiver shall be designated the administrator of the Settlement Fund, pursuant to Treas. Reg. § 1.468B-2(k)(3)(i), and shall satisfy the administrative requirements imposed by Treas. Reg. § 1.468B-2, including but not limited to: (a) obtaining a taxpayer identification number; (b) timely filing applicable federal, state, and local tax returns and paying taxes reported thereon; and (c) satisfying any information, reporting, or withholding requirements imposed on distributions from the Settlement Fund. The Receiver shall cause the Settlement Fund to pay taxes in a manner

consistent with treatment of the Settlement Fund as a "Qualified Settlement Fund." The Receivership Defendants and Relief Defendant Mainstream Fund Services, Inc. shall cooperate with the Receiver in fulfilling the Settlement Funds' obligations under Treas. Reg. § 1.468B-2.

X. Investigate and Prosecute Claims

43. Subject to the requirement in Section VIII above, that leave of this Court is required to resume or commence certain litigation, the Receiver is authorized, empowered, and directed to investigate, prosecute, defend, intervene in or otherwise participate in, compromise, and/or adjust actions in any state, federal or foreign court or proceeding of any kind as may in his discretion, and in consultation with the CFTC's counsel, be advisable or proper to recover and/or conserve Receivership Property.

44. Subject to his obligation to expend receivership funds in a reasonable and cost-effective manner, the Receiver is authorized, empowered, and directed to investigate the manner in which the financial and business affairs of the Receivership Defendants were conducted and (after obtaining leave of this Court) to institute such actions and legal proceedings, for the benefit and on behalf of the Receivership Estate, as the Receiver deems necessary and appropriate. The Receiver may seek, among other legal and equitable relief, the imposition of constructive trusts, disgorgement of profits, asset turnover, avoidance of fraudulent transfers, rescission and restitution, collection of debts, and such other relief from this Court as may be necessary to enforce this Order. Where appropriate, the Receiver should provide prior notice to counsel for the CFTC before commencing investigations and/or actions.

45. The Receiver hereby holds, and is therefore empowered to waive, all privileges, including the attorney-client privilege, held by all entity Receivership Defendants.

46. The Receiver has a continuing duty to ensure that there are no conflicts of interest between the Receiver, his Retained Personnel (as that term is defined below), and the Receivership Estate.

XI. Bankruptcy Filing

47. The Receiver may seek authorization of this Court to file voluntary petitions for relief under Title 11 of the United States Code (the "Bankruptcy Code") for the Receivership Defendants. If a Receivership Defendant is placed in bankruptcy proceedings, the Receiver may become, and may be empowered to operate each of the Receivership Estates as, a debtor in possession. In such a situation, the Receiver shall have all of the powers and duties as provided a debtor in possession under the Bankruptcy Code to the exclusion of any other person or entity. Pursuant to Paragraph 5 above, the Receiver is vested with management authority for all entity Receivership Defendants and may therefore file and manage a Chapter 11 petition.

48. The provisions of Section VIII above bar any person or entity, other than the Receiver, from placing any of the Receivership Defendants in bankruptcy proceedings.

XII. Liability of Receiver

49. Until further Order of this Court, the Receiver shall not be required to post bond or give an undertaking of any type in connection with his fiduciary obligations in this matter.

50. The Receiver and his agents, acting within scope of such agency, are entitled

to rely on all outstanding rules of law and Orders of this Court and shall not be liable to anyone for their own good faith compliance with any order, rule, law, judgment, or decree. In no event shall the Receiver or his agents be liable to anyone for their good faith compliance with their duties and responsibilities.

51. This Court shall retain jurisdiction over any action filed against the Receiver or Retained Personnel based upon acts or omissions committed in their representative capacities.

52. In the event the Receiver decides to resign, the Receiver shall first give written notice to the CFTC's counsel of record and the Court of its intention, and the resignation shall not be effective until the Court appoints a successor. The Receiver shall then follow such instructions as the Court may provide.

XIII. Recommendations and Reports

53. The Receiver is authorized, empowered, and directed to develop a plan for the fair, reasonable, and efficient recovery and liquidation of all remaining, recovered, and recoverable Receivership Property (the "Liquidation Plan").

54. The Receiver has filed and the Court has approved a Liquidation Plan. Doc. ##103, 112.

55. Within thirty (30) days after the end of each calendar quarter, the Receiver shall file and serve a full report and accounting of his activities (the "Quarterly Status Report"), reflecting (to the best of the Receiver's knowledge as of the period covered by the report) the existence, value, and location of all Receivership Property, and of the extent of liabilities, both those claimed to exist by others and those the Receiver believes to be legal

obligations of the Receivership Estate. The Receiver filed his first Status Report on June 14, 2019. Doc. #113. His next Status Report shall be due within thirty (30) days of September 30, 2019, which is the end of the third calendar quarter for 2019.

56. The Quarterly Status Report shall contain the following:

A. A summary of the operations of the Receiver;

B. The amount of cash on hand, the amount and nature of accrued administrative expenses, and the amount of unencumbered funds in the estate;

C. A schedule of all the Receiver's receipts and disbursements (attached as Exhibit A to the Quarterly Status Report), with information for the quarterly period covered and information for the entire duration of the receivership;

D. A description of all known Receivership Property, including approximate or actual valuations, anticipated or proposed dispositions, and reasons for retaining assets where no disposition is intended;

E. A description of liquidated and unliquidated claims held by the Receivership Estate, including the need for forensic and/or investigatory resources; approximate valuations of claims; and anticipated or proposed methods of enforcing such claims (including likelihood of success in: (i) reducing the claims to judgment; and, (ii) collecting such judgments);

F. The status of creditor claims proceedings, after such proceedings have been commenced; and,

G. The Receiver's recommendations for a continuation or discontinuation of the receivership and the reasons for the recommendations.

57. On the request of the CFTC, the Receiver shall provide the CFTC with any documentation that the CFTC deems necessary to meet its reporting requirements, that is mandated by statute or Congress, or that is otherwise necessary to further the CFTC's mission.

XIV. Fees, Expenses and Accountings

58. Subject to Paragraphs 59–65 immediately below, the Receiver need not obtain Court approval prior to the disbursement of Receivership Funds for expenses in the ordinary course of the administration and operation of the receivership. Further, prior Court approval is not required for payments of applicable federal, state, or local taxes.

59. Subject to Paragraph 60 immediately below, the Receiver is authorized to solicit persons and entities ("Retained Personnel") to assist him in carrying out the duties and responsibilities described in this Order. The Receiver shall not engage any Retained Personnel without obtaining an Order of the Court authorizing such engagement.

60. The Receiver and Retained Personnel are entitled to reasonable compensation and expense reimbursement from the Receivership Estates. The Receiver and Retained Personnel shall not be compensated or reimbursed by, or otherwise entitled to, any funds from the Court or the CFTC. Such compensation shall require the prior review by the CFTC and approval of the Court.

61. Within forty-five (45) days after the end of each calendar quarter, the Receiver and Retained Personnel shall apply to the Court for compensation and expense reimbursement from the Receivership Estates (the "Quarterly Fee Applications"). At least thirty (30) days prior to filing each Quarterly Fee Application with the Court, the Receiver will serve upon counsel for the CFTC a complete copy of the proposed Quarterly Fee Application, together with all exhibits and relevant billing information in a format to be provided by the CFTC's staff. The Receiver filed his first fee application on June 14, 2019. Doc. #114. The next fee application shall be due within forty-five (45) days after September

30, 2019, which is the end of the third calendar quarter for 2019..

62. All Quarterly Fee Applications will be interim and will be subject to cost benefit and final reviews at the close of the receivership. At the close of the receivership, the Receiver will file a final fee application, describing in detail the costs and benefits associated with all litigation and other actions pursued by the Receiver during the course of the receivership.

63. Quarterly Fee Applications may be subject to a holdback in the amount of 20% of the amount of fees and expenses for each application filed with the Court. The total amounts held back during the course of the receivership will be paid out at the discretion of the Court as part of the final fee application submitted at the close of the receivership.

64. Each Quarterly Fee Application shall:

A. Comply with the terms of the CFTC billing instructions agreed to by the Receiver; and,

B. Contain representations (in addition to the Certification required by the Billing Instructions) that: (i) the fees and expenses included therein were incurred in the best interests of the Receivership Estate; and (ii) with the exception of the Billing Instructions, the Receiver has not entered into any agreement, written or oral, express or implied, with any person or entity concerning the amount of compensation paid or to be paid from the Receivership Estate, or any sharing thereof.

65. At the close of the Receivership, the Receiver shall submit a Final Accounting as well as the Receiver's final application for compensation and expense reimbursement.

IT IS SO ORDERED, this 11th day of July, 2019, at Tampa, Florida.

Hon. Virginia M. Hernandez Covington
United States District Judge

Hon. Sean P. Flynn
United States Magistrate Judge

Affidavit of Fact by Gregory Melick

Introductory Certification

I, Gregory Melick, the Undersigned Affiant (hereinafter as "Affiant"), do hereby solemnly attest, declare, and state as follows:

1. Affiant is at least 21 years of age, of sound mind and body, and competent to state the matters set forth herewith.
2. Affiant has personal knowledge of the facts stated herein.
3. All the facts stated herein are true, correct, and complete in accordance with Affiant's best firsthand knowledge and understanding, and if called upon to testify as a witness Affiant shall so state.

Plain Statement of Facts

1. Commencing 17 March 2020, up to and including the instant date, I have been and yet remain engaged by the Law Offices of Attorney Brent Allan Winters, Attorney at Law ("Mr. Winters", "Attorney") as paralegal assistant.
2. Mr. Winters has, without interruption, under the terms set forth in a notarized Attorney-Client Representation Agreement ("the Agreement") represented Mr. Michael J. DaCorta ("Client") as attorney-at-law since 30 November 2021.
3. The Scope of Mr. Winters' representation of Mr. DaCorta as set forth in Section II of the Agreement states in pertinent part that, "Client hereby retains Attorney's legal representation to commence, prosecute, discontinue, or defend all actions or other legal proceedings touching upon Client's property, real or personal, or any part thereof, or related to any matter in which Client or Client's property, real or personal, may in any way be concerned with legal actions in *Commodity Futures Trading*

Commission v. Oasis International Group, LTD [*et al*] in the United States District Court for Middle District of Florida, Tampa Division and to any appeal that may arise therefrom in any United States Circuit Court of Appeals or in the Supreme Court of the United States."

4. Pursuant to the terms of the Agreement with Mr. Winters, under Section X. Co-Counsel Relationships, "Client may have consulted or retained another attorney and may be simultaneously represented by another law firm in addition to Attorney in connection with this matter. Attorney has, or may have, relationships with other law firms. This contract shall not replace any agreement that Client or Attorney may have with any other attorney(s)."
5. Fulfillment of my role as paralegal requires substantial support of work performed by the Law Offices of Attorney Brent Allan Winters or Attorney Winters himself in the defense of his Client, Michael J. DaCorta.

Verification

The Undersigned Affiant, Gregory Melick, does herewith solemnly attest, declare, and affirm that Affiant issues this Affidavit of Fact with sincere intent, that Affiant is competent to state the matters set forth herein, that the contents are true, correct, complete, and certain, admissible as evidence, and reasonable and just in accordance with Affiant's best firsthand knowledge and understanding.

Reserving all rights without prejudice. This Affidavit of Fact is dated the Nineteenth Day of the Eighth Month in the Year of our Lord Two Thousand Twenty-Four.

Gregory Melick

Gregory Melick

Notary Public's Jurat

State of New Hampshire)
) ss.
County of Carroll)

BEFORE ME, the undersigned authority, a Notary Public, of the County: Carroll, State: New Hampshire, this 19th day of August 2024 A.D, **Gregory Melick,** did personally appear and was known to me (or proved to me on the basis of satisfactory evidence of identification) to be the living man whose name is subscribed on this **Affidavit of Fact**, and who, upon first being duly sworn or affirmed, deposes and says that the foregoing declarations in this **Affidavit of Fact** respecting the certain facts described are true to the best of his knowledge and belief.

WITNESS my hand and official seal.

/s/ Diane F Hutchinson

SEAL NOTARY PUBLIC

My Commission Expires On: **Notary Seal**

Diane F. Hutchinson
Notary Public, State of New Hampshire
My Commission Expires Mar 23 2027

Guerra King P.A.

1408 N. Westshore Blvd., Suite 1010
Tampa, FL 33607
Telephone: 813-347-5100
Facsimile: 813-347-5198

Federal Tax ID # 27-0937962

Burton W. Wiand
Attention: Burton W. Wiand, as Receiver
Burton W. Wiand PA
114 Turner Street
Clearwater, FL 33756

February 14, 2023
Client: 025305
Matter: 001921
Invoice #: 20809

Page: 1

RE: CFTC Oasis Receivership - Receiver
Travel is half rate outside of 20 miles.

For Professional Services Rendered Through December 31, 2022

SERVICES

Date	TKPR	Description of Services	Hours	Amount
ASSET		**Asset Analysis and Recovery**		
10/1/2022	BWW	Review Court's decision dismissing case against ATC and Spotex (.5).	0.5	$180.00
10/4/2022	BWW	Telephone conference with J. Sallah and J. Katz regarding ATC/Spotex decision, progress of case, and possible appeal (.3).	0.3	$108.00
10/6/2022	BWW	Meet with J. Perez regarding representation of Receivership (.2).	0.2	$72.00
10/19/2022	BWW	Telephone conferences and emails with R. Bedke of DOJ and A. Auxter of CFTC regarding M. DaCorta's upcoming sentencing hearing (1.5).	1.5	$540.00
10/20/2022	BWW	Prepare for and testify at M. DaCorta's sentencing hearing (3.5); telephone conferences and emails with R. Bedke with DOJ and A. Auxter with CFTC regarding same (1.5); confer with L. Dougherty regarding same (.1).	5.1	$1,836.00
10/24/2022	BWW	Arrange for victim list to be provided to DOJ (.2).	0.2	$72.00
10/25/2022	BWW	Work with J. Sallah on ATC appeal issue (.7); telephone conference with L. Dougherty to schedule case status meeting (.1).	0.8	$288.00

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SERVICES

Date	TKPR	Description of Services	Hours	Amount
ASSET		**Asset Analysis and Recovery**		
10/26/2022	BWW	Review documents regarding ATC appeal issue (.1); prepare emails to P. Rengstl and J. Katz regarding same (.1); telephone conference with NAFER member N. Reid regarding ATC decision (.3); conference call with L. Dougherty, M. Lockwood and J. Perez regarding progress of matter (.4).	0.9	$324.00
10/27/2022	BWW	Review pleadings for default judgment in Wiand v. Clark Asset Management and Douglas Clark matter (.5); confer with L. Dougherty regarding same (.1); telephone conference with B. McConnell regarding same (.2).	0.8	$288.00
10/28/2022	BWW	Work on motion for default judgment against Clark defendants (.2); telephone conference with L. Dougherty regarding same (.1); communicate with L. Dougherty regarding same (.2); attend to correspondence relating to Belize bank recovery (.2).	0.7	$252.00
10/31/2022	BWW	Work on motion for default judgment against Clark defendants (.5); review, revise and execute affidavit (.2); telephone conference with L. Dougherty regarding same (.1); telephone conference with B. McConnell (.2); review prior pleadings (.1).	1.1	$396.00
11/9/2022	BWW	Examine information from Maples Group regarding OIG corporate matters (1.5); review and revise J. Sallah's draft motion to approve pursuing appeal in ATC/Spotex matter (.8).	2.3	$828.00
11/10/2022	BWW	Confer with J. Perez regarding motion for appeal in ATC/Spotex matter (.2); telephone conference with J. Sallah regarding same (.2).	0.4	$144.00
11/16/2022	BWW	Telephone conference with A. Auxter of CFTC regarding various issues including appeal (.8).	0.8	$288.00
11/21/2022	BWW	Work on motion to approve first distribution, resolution of objections, and additional claim determinations (1.0); communicate with J. Perez regarding same (.5).	0.5	$180.00
11/22/2022	BWW	Telephone conference with J. Sallah and J. Perez regarding appeal of ATC/Spotex case (.5).	0.5	$180.00
12/1/2022	BWW	Work on corporate documents for Oasis Global FX SA (.8); telephone conference with L. Dougherty regarding same (.2).	1.0	$360.00
12/13/2022	BWW	Exchange emails with W. Piper regarding Belize refund issues (.2); review issues relating to trial extension (.1).	0.3	$108.00
12/14/2022	BWW	Telephone conference with L. Dougherty regarding A. Auxter's inquiry regarding investigation (.1).	0.1	$36.00
12/15/2022	BWW	Attend to damages request from CFTC (.5); communicate with L. Dougherty regarding same (.2).	0.7	$252.00

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SERVICES

Date	TKPR	Description of Services	Hours	Amount
ASSET		**Asset Analysis and Recovery**		
12/16/2022	BWW	Participate in portion of conference call with L. Dougherty and A. Auxter (.1).	0.1	$36.00
		Total: Asset Analysis and Recovery	**18.80**	**$6,768.00**
BUSIN		**Business Operations**		
11/9/2022	BWW	Review and approve invoices (1.0); telephone conference with L. Dougherty regarding third-quarter invoices (.1); prepare email to L. Dougherty and M. Lockwood regarding approval of and additional edits to fees motion (.1).	1.2	$432.00
12/2/2022	BWW	Work on bank accounts and make payments on approved invoices (2.0).	2.0	$720.00
12/5/2022	BWW	Work on making additional payments (.5); work on completing revised corporate documents for Oasis Global FX (.5).	1.0	$360.00
12/7/2022	BWW	Retrieve utility bill for L. Dougherty to submit with registered agent documents for Oasis Global FX S.A. (.2).	0.2	$72.00
12/27/2022	BWW	Work on setting up eServer for Oasis bank accounts (.2).	0.2	$72.00
		Total: Business Operations	**4.60**	**$1,656.00**
CASE		**Case Administration**		
10/20/2022	BWW	Review and revise release for Receivership website regarding M. DaCorta's sentencing (.4); confer with L. Dougherty regarding same (.1).	0.5	$180.00
10/21/2022	BWW	Review DOJ's release regarding M. DaCorta's conviction (.2); further revise release for Receivership website (.3).	0.5	$180.00
10/31/2022	BWW	Review draft of 14th interim report (1.0).	1.0	$360.00
11/1/2022	BWW	Complete review of and comments on draft interim report (.3).	0.3	$108.00
		Total: Case Administration	**2.30**	**$828.00**
CLAIM		**Claims Administration and Objections**		
10/2/2022	BWW	Telephone conference with M. Lockwood regarding resolving numerous claims issues (.4).	0.4	$144.00
10/20/2022	BWW	Review status of remission of DOJ funds (.4); review email to Assistant US Attorney A. Cream regarding same (.1).	0.5	$180.00
10/24/2022	BWW	Review spreadsheets in preparation for telephone conference with M. Lockwood (.3); telephone call with M. Lockwood regarding status of claims motion and distributions (.2).	0.5	$180.00

SERVICES

Date	TKPR	Description of Services	Hours	Amount
CLAIM		**Claims Administration and Objections**		
10/25/2022	BWW	Work on remission transfer (.1); telephone conference with R. Bedke regarding same (.1).	0.2	$72.00
10/27/2022	BWW	Telephone conference with M. Lockwood regarding claims determinations (.6).	0.6	$216.00
10/31/2022	BWW	Attend to remission of funds from DOJ (.3); research history of remission request (.3); communicate with W. Newbold of US Marshals Service (.2); prepare email to A. Cream regarding same (.2); prepare emails to J. Perez and L. Dougherty regarding same (.2).	1.2	$432.00
11/1/2022	BWW	Exchange emails with M. Lockwood regarding investor L.J. and responding to same (.1).	0.1	$36.00
11/1/2022	BWW	Work with M. Lockwood regarding provision of information to DOJ to support remission (.2); telephone conference with assistant US attorney S. Nebesky regarding same (.1); prepare response to assistant US attorney A. Cream regarding claimants list from Receivership (.6); prepare email to A. Cream regarding same (.1); prepare emails to M. Lockwood regarding same (.1); communicate with M. Lockwood regarding same (.2).	1.3	$468.00
11/2/2022	BWW	Prepare email to M. Lockwood and J. Perez regarding claims motion (.1).	0.1	$36.00
11/9/2022	BWW	Work on motion for determination of claims and distribution (.5).	0.5	$180.00
11/10/2022	BWW	Work on motion for claims determinations and distribution (.7); telephone conference with J. Perez regarding same (.2); prepare email to J. Perez regarding same (.1); work on completion of form for remission (1.0).	2.0	$720.00
11/11/2022	BWW	Continue working on documentation for remission of funds from DOJ (1.0).	1.0	$360.00
11/14/2022	BWW	Work on remission of funds from DOJ (.3); telephone calls with P. Truong with U.S. Marshals office (.2); telephone calls to J. Lee of DOJ (.2); review remissions documentation (.4); exchange emails with E. Tate regarding same (.1).	1.2	$432.00
11/15/2022	BWW	Work on issues regarding DOJ remission of funds (.3); exchange emails with J. Lee (.1); telephone conference with US Marshals Service regarding same (.1); telephone conference with M. Lockwood regarding claims motion (.1).	0.6	$216.00
11/16/2022	BWW	Work on motion to approve first distribution, resolution of objections, and additional claim determinations (1.0); communicate with J. Perez regarding same (.5).	1.5	$540.00
11/21/2022	BWW	Work on remission of funds from DOJ (.3).	0.3	$108.00
11/25/2022	BWW	Exchange emails with claimant R.R. (.1).	0.1	$36.00

SERVICES

Date	TKPR	Description of Services	Hours	Amount
CLAIM		**Claims Administration and Objections**		
12/1/2022	BWW	Telephone conference with L. Dougherty regarding distribution (.1).	0.1	$36.00
12/4/2022	BWW	Review distribution letters (.3).	0.3	$108.00
12/5/2022	BWW	Attend to agenda for distribution prior to meeting with J. Perez and M. Lockwood (.7); attend Zoom conference with M. Lockwood and J. Perez regarding completion of distribution motion and various claim decisions (.8).	1.5	$540.00
12/7/2022	BWW	Telephone conference with investor regarding claims process (.4); review and approve distribution motion (1.0); communicate with W. Price regarding IRS issue concerning distributions of qualified money (.2); attend to remission payment (.2); attend to matters relating to distribution (.1); email to J. Perez regarding same (.1).	2.0	$720.00
12/9/2022	BWW	Exchange emails with M. Lockwood regarding approval of revised cover letters for distribution (.1).	0.1	$36.00
12/13/2022	BWW	Review procedures for initial distribution (.2).	0.2	$72.00
12/14/2022	BWW	Review final distribution documents from J. Perez (.3).	0.3	$108.00
12/19/2022	BWW	Exchange emails with A. Stephens regarding call from investor (.1).	0.1	$36.00
		Total: Claims Administration and Obj	**16.70**	**$6,012.00**
		Total Professional Service	42.4	**$15,264.00**

DISBURSEMENTS

Date	Description of Disbursements	Amount
E123	**Web-Related Expenses**	
10/1/2022	GoDaddy - Web Hosting Plus Renewal (1 month) oasisgloballimited.com	$29.99
10/2/2022	Amazon Web Services - Web Services	$254.34
11/1/2022	GoDaddy - Web Hosting Plus Renewal (1 month) oasisgloballimited.com	$29.99
11/2/2022	Amazon Web Services - Web Services	$257.59
12/1/2022	GoDaddy - Web Hosting Plus Renewal (1 month) oasisgloballimited.com	$29.99
12/2/2022	Amazon Web Services - Web Services	$254.34
12/15/2022	GoDaddy - oigconsulting.com - domain renewal, full domain privacy and protection (1 year)	$30.16

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DISBURSEMENTS

Date	Description of Disbursements	Amount
E124 Other		
10/20/2022	Xpress Storage - storage unit rental and insurance	$541.72
11/20/2022	Xpress Storage - storage unit rental and insurance	$541.72
12/20/2022	Xpress Storage - storage unit rental and insurance	$541.72
	Total Disbursements	**$2,511.56**

Total Services	$15,264.00	
Total Disbursements	$2,511.56	
Total Current Charges		$17,775.56
Previous Balance		$73,302.22
PAY THIS AMOUNT		**$91,077.78**

February 14, 2023
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TASK RECAP

Services

Project No.	Hours	Amount
ASSET - ASSET	18.80	$6,768.00
BUSIN - BUSIN	4.60	$1,656.00
CASE - CASE	2.30	$828.00
CLAIM - CLAIM	16.70	$6,012.00
	42.40	$15,264.00

Disbursements

Project No.	Amount
Web-Related Expenses	$886.40
Other	$1,625.16
	$0.00
	$0.00
	$2,511.56

BREAKDOWN BY PERSON

Person		Project No.	Hours	Amount
BWW	Burton W. Wiand	ASSET - ASSET	18.80	$6,768.00
BWW	Burton W. Wiand	BUSIN - BUSIN	4.60	$1,656.00
BWW	Burton W. Wiand	CASE - CASE	2.30	$828.00
BWW	Burton W. Wiand	CLAIM - CLAIM	16.70	$6,012.00
			42.40	$15,264.00

BONNIE L REMICK
1411 BOROUGH RD.
CHARLESTOWN, NH 03603-4596

54-7027/2117

538

DATE Feb. 16, 2024

PAY TO THE ORDER OF City Stephan N. Pregiosi $80,000.00

Eighty Thousand 00/100 DOLLARS

Security Features Included. Details on Back.

BNH
Bank of New Hampshire

MEMO

Bonnie L. Remick

⑆211770271⑆ 824967152⑈ 0538

CHASE for BUSINESS®

Printed from Chase for Business

$75,450.00

Incoming wire transfer

Feb 5, 2024
Posted date

undefined
undefined
Account name

0867961036FF
Transaction ID

0205QMGFT003001520
SWIFT/FED/CHIP ID

Beneficiary information

Account	1348
Name	STEPHEN N PREZIOZI, ESQ , P C
Address	OPERATING ACCOUNT 48 WALL ST FL 11 NEW YORK NY 10005-2887 US

Bank information

Related references	O/B FREEDOM NW C
Bank reference number	FED OF 24/02/05

Additional information

Additional information	--

For transaction details, please refer to the periodic statement for the official record of this transaction.

Gmail **Stephen Preziosi <appealslawfirm@gmail.com>**

CFTC v. Oasis Int'l Ltd Group, et al - Subpoena

6 messages

Maya Lockwood <mlockwood@guerrapartners.law> Wed, May 22, 2024 at 11:14 AM
To: "info@appealslawfirm.com" <info@appealslawfirm.com>
Cc: Alana Avery <aavery@guerrapartners.law>

Dear Mr. Preziosi, please see the attached subpoena. Please advise as soon as possible if you agree to accept service of this subpoena by this email. As you do not appear to have a physical office address where we may serve you, your acceptance of service by this email would avoid us serving you at your personal residence. If I do not hear back from you by Friday May 24, we will proceed with in person service.

Sincerely,

Maya Lockwood

Guerra & Partners, P.A.

The Towers at Westshore

1408 N. West Shore Blvd., Suite 1010

Tampa, FL 33607

Phone: 813.347.5108

mlockwood@guerrapartners.law

www.guerrapartners.law

GUERRA & PARTNERS

Disclaimer under IRS Circular 230: Unless expressly stated otherwise in this transmission, nothing contained in this message is intended or written to be used, nor may it be relied upon or used, (1) by any taxpayer for the purpose of avoiding penalties that may be imposed on the taxpayer under the Internal Revenue Code of 1986, as amended and/or (2) by any person to support the promotion or marketing of or to recommend any Federal tax transaction(s) or matter(s) addressed in this message.

If you desire a formal opinion on a particular tax matter for the purpose of avoiding the imposition of any penalties, we will discuss the additional Treasury requirements that must be met and whether it is possible to meet those requirements under the circumstances, as well as the anticipated time and additional fees involved.

Subpoena to Produce Documents - Stephen Preziosi (00922938xBCD72).PDF
329K

Stephen Preziosi <stephenpreziosi@appealslawfirm.com> Thu, May 23, 2024 at 12:16 PM
To: Maya Lockwood <mlockwood@guerrapartners.law>

Ms. Lockwood, my physical office address is 48 Wall Street, 11th Floor New York, New York 10005. Please serve your subpoena at my office address.
Stephen Preziosi

The Appellate Law Office of Stephen N. Preziosi P.C.
48 Wall Street, Eleventh Floor
New York, New York 10005
1-800-APPEALS (1-800-277-3257)
www.FederalAppealsLawFirm.com
www.NewYorkAppellateLawyer.com

[Quoted text hidden]

Maya Lockwood <mlockwood@guerrapartners.law> Fri, May 24, 2024 at 9:14 AM
To: Stephen Preziosi <stephenpreziosi@appealslawfirm.com>
Cc: Alana Avery <aavery@guerrapartners.law>

Mr. Preziosi,

Thank you for the response. We will serve the subpoena at the address you provided below. The process server had previously informed us that he would not be able to serve the subpoena at that address. I will contact you again if there is an issue.

[Quoted text hidden]

Maya Lockwood <mlockwood@guerrapartners.law> Tue, Jul 2, 2024 at 12:42 PM
To: Stephen Preziosi <stephenpreziosi@appealslawfirm.com>

Mr. Preziosi, this past Friday (June 28) was the deadline to respond to the subpoena served on you. Please let me know if I missed you providing responsive documents or any other information. If you have not yet responded, please advise as to when you will provide the requested documents.

Sincerely,

Maya Lockwood

Guerra & Partners, P.A.

The Towers at Westshore

1408 N. West Shore Blvd., Suite 1010

Tampa, FL 33607

Phone: 813.347.5108

mlockwood@guerrapartners.law

www.guerrapartners.law

Disclaimer under IRS Circular 230: Unless expressly stated otherwise in this transmission, nothing contained in this message is intended or written to be used, nor may it be relied upon or used, (1) by any taxpayer for the purpose of avoiding penalties that may be imposed on the taxpayer under the Internal Revenue Code of 1986, as amended and/or (2) by any person to support the promotion or marketing of or to recommend any Federal tax transaction(s) or matter(s) addressed in this message.

If you desire a formal opinion on a particular tax matter for the purpose of avoiding the imposition of any penalties, we will discuss the additional Treasury requirements that must be met and whether it is possible to meet those requirements under the circumstances, as well as the anticipated time and additional fees involved.

From: Stephen Preziosi <stephenpreziosi@appealslawfirm.com>
Sent: Thursday, May 23, 2024 12:16 PM
To: Maya Lockwood <mlockwood@guerrapartners.law>
Subject: Re: CFTC v. Oasis Int'l Ltd Group, et al - Subpoena

Ms. Lockwood, my physical office address is 48 Wall Street, 11th Floor New York, New York 10005. Please serve your subpoena at my office address.

[Quoted text hidden]
[Quoted text hidden]

Stephen Preziosi <info@appealslawfirm.com> Tue, Jul 2, 2024 at 1:28 PM
To: Maya Lockwood <mlockwood@guerrapartners.law>

Ms. Lockwood, I was under the impression that I would have 30 days to respond. I am gathering all information and will have it to you by next week. Please advise if you prefer hard copy or electronic copies of documents.
Stephen Preziosi

The Appellate Law Office of Stephen N. Preziosi P.C.
48 Wall Street, Eleventh Floor
New York, New York 10005
1-800-APPEALS (1-800-277-3257)
www.FederalAppealsLawFirm.com
www.NewYorkAppellateLawyer.com

[Quoted text hidden]

Maya Lockwood <mlockwood@guerrapartners.law> Tue, Jul 2, 2024 at 9:32 PM
To: Stephen Preziosi <info@appealslawfirm.com>

Next week is fine. Electronic copies are preferred. Please let me know if you have any other questions or concerns.

[Quoted text hidden]

Gmail

Stephen Preziosi <appealslawfirm@gmail.com>

Wire transfer for Micheal DaCorta

1 message

jason mckee <jmckee573@gmail.com> Tue, Feb 6, 2024 at 1:00 PM
To: info@appealslawfirm.com

Hello Stephen,
Hope you are having a wonderful day. Sorry for the delay and difficulties getting funds wired to your account. According to our bank the wire transfer of $75,450 should land in your account yesterday or today. I have not received any confirmations as of this time.

Thank you in advance for the help with Mike's fight against injustice. We are very grateful and thankful for your help. If you could please send me a confirmation when funds are received. Not sure what is going on with our banks?????

Jason McKee

No. 24-10132

IN THE

United States Court of Appeals

FOR THE ELEVENTH CIRCUIT

COMMODITY FUTURES TRADING COMMISSION,

Plaintiff-Appellee,

against

OASIS INTERNATIONAL GROUP, LIMITED, et al.,

Defendants,

MICHAEL J. DACORTA,

Defendant-Appellant.

On Appeal from the United States District Court
for the Middle District of Florida
Honorable Sean P. Flynn
Case No. 8:19-cv-00886-VMC-SPF

BRIEF FOR DEFENDANT-APPELLANT

LAW OFFICE OF STEPHEN N. PREZIOSI PC
Attorneys for Defendant-Appellant
48 Wall Street, 11th Floor
New York, New York 10005
212-960-8267

U.S. COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT (CIP)

CFTC *vs.* DACORTA Appeal No. 24-10132

11th Cir. R. 26.1-1(a) requires the appellant or petitioner to file a Certificate of Interested Persons and Corporate Disclosure Statement (CIP) with this court within 14 days after the date the case or appeal is docketed in this court, and to include a CIP within every motion, petition, brief, answer, response, and reply filed. Also, all appellees, intervenors, respondents, and all other parties to the case or appeal must file a CIP within 28 days after the date the case or appeal is docketed in this court. **You may use this form to fulfill these requirements.** In alphabetical order, with one name per line, please list all trial judges, attorneys, persons, associations of persons, firms, partnerships, or corporations that have an interest in the outcome of this case or appeal, including subsidiaries, conglomerates, affiliates, parent corporations, any publicly held corporation that owns 10% or more of the party's stock, and other identifiable legal entities related to a party. ***(Please type or print legibly)***:

J. Alison Auxter, attorney for CFTC in U.S. District Court

Joseph Anile, co defendant last known to be in custody.

Francisco Duran, co defendant, address unknown.

John Haas, co defendant, address unknown.

Honorable William Jung, trial judge U.S. District Court Middle District of Florida

RONALD KURPIERS defense attorney in US District Court 805 W. Azeele St. Tampa, Fl 33606

Jeffery C. Le Riche, attorney for CFTC in U.S. District Court

Raymond Montie, co defendant, address unknown.

Burton Wiand, receiver in lower court. 5505 W.Gray St. Tampa, FL 33609

Submitted by:

Signature: _____

Name: Stephen N. Preziosi Prisoner # (if applicable): _____

Address: 48 Wall Street, 11th Floor New York, New York 10005

Telephone #: 212-960-8267

Statement Regarding Oral Argument

The Appellant, Michael J. DaCorta, requests that oral argument be granted. Because of the complexity of the issues and the detail of the facts of the case, oral argument would be beneficial to the parties and this Court as a full discussion with the attorneys would assist the Court in its decision.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Statutes and Regulations:

JURISDICTIONAL STATEMENT

This case involves an appeal after the district court granted summary judgment pursuant to Fed. R. Civ. P. 56. This Court has appellate jurisdiction under 28 U.S.C. §1291. This appeal was taken from the district court's decision to grant summary judgment in favor of Plaintiff on December 6, 2023 by the Honorable Virginia Hernandez Covington. The notice of appeal was timely filed on January 5, 2024.

STATEMENT OF THE ISSUES

The principal issue in this case is whether there exist genuine issues of material fact that preclude summary judgment. The issues, dealt with in one legal point in this brief, can be placed into two sub-categories:

The first legal issue is whether the loan agreements and risk disclosure agreements that existed between the Oasis International Group and each lender created a legally distinct entity that traded in commodities on its own behalf and not on behalf of the lenders, precluding a finding that Mr. DaCorta solicited funds from persons for the purpose of trading in commodities on their behalf.

The second legal issue is whether, under the statutes and related regulations of the Commodity Exchange Act, there existed within Mr. DaCorta's business (the Oasis entities), a commodity pool and whether Oasis was a commodity pool operator or retail forex commodity pool operator, and whether Mr. DaCorta was an associated person of a commodity pool operator.

STATEMENT OF THE CASE

The District Court's Order.

The district court granted summary judgment in favor of the Commodity Futures Trading Commission on five causes of action, holding that: 1) defendants, in connection with retail forex transactions cheated or defrauded pool participants and deceived pool participants; 2) the Oasis entities created a commodity pool and

acted as commodity pool operators and that Mr. DaCorta acted as an associated person of a commodity pool operator; 3) defendants failed to register as commodity pool operators and as associated person of a commodity pool operator; 4) defendants failed to receive pool funds in pools' name and commingled pool funds; and 5) defendants failed to provide pool disclosures. The district court issued an injunction against Mr. DaCorta; ordered restitution in the amount of $53,270,336.08; and ordered a civil penalty in the amount of $2,817,876.16.

Neither DaCorta Nor Oasis Ever Traded Commodities On Behalf Of Other Persons.

Mr. DaCorta and the Oasis entities, Oasis International Group (OIG) and Oasis Management (OM), never traded in commodities on behalf of any of the lenders to Oasis, rather they established a loan program where lenders entered into a Promissory Note Agreement and Agreement with Risk Disclosures. The lenders were promised repayment of principal and interest or transaction fees. No trading of commodities (no forex trading) was ever done on their behalf and Mr. DaCorta and Oasis only traded on their own accounts. The lenders have a contractual agreement with the Oasis entities and Oasis has a continuing legal obligation to repay the lenders principal and interest on those loans.

The Promissory Notes And Risk Disclosure Agreements.

The Promissory Notes and Agreement with Risk Disclosures between the lenders and Oasis are binding legal contracts and have legal force and effect. It was

agreed between the parties and understood that each lender was contributing a loan to the Oasis entities; a loan that was to be repaid including both principal and interest or transaction fees. No commodities were traded on behalf of any other person by Oasis or by Mr. DaCorta. Therefore, no commodity pools existed, and Oasis was not a commodity pool operator or retail forex commodity pool operator, and Mr. DaCorta was not an associated person of a commodity pool operator.

SUMMARY OF THE ARGUMENT

Introduction

The lawsuit is predicated on the assertion that Mr. DaCorta and the Oasis entities were soliciting funds from customers for the purpose of investing those funds in a forex exchange and pooling these funds into commodity pools. The CFTC begins with the assumption that there existed commodity pools; that the Oasis entities were commodity pool operators (CPOs) or retail forex commodity pool operators; and that Mr. DaCorta was an associated person (AP) of a CPO. However, while the entire premise of the CFTC's lawsuit is that there existed commodity pools, commodity pool operators and associated persons, there is no factual basis to support these assertions. The supporting documentation relied on by the CFTC and the district court lacks any genuine analysis and proof that commodity pools existed or that Mr. DaCorta and the Oasis entities solicited funds and then purchased commodities on behalf of other people.

Thus, the CFTC was not authorized to bring the action against Mr. DaCorta or the Oasis entities. Each of the persons providing funds to Mr. DaCorta and the Oasis entities was a lender. They each signed a loan agreement to which was attached three things: 1) a Promissory Note, promising to payback each person in principal, interest, and fees; 2) an Agreement setting forth the terms of the loan, explaining that payments to lenders were not tied or related to profits or losses in any Oasis investments; 3) finally, the documents contained a lengthy Risk Disclosures section, explaining all the risks that their loans were subject to, along with a description of the types of investments that Oasis would be making. Each of the lenders was required to sign both the Promissory Note and the Risk Disclosure Agreement before they were permitted to enter into the loan transaction with Oasis.

RELEVANT FACTS AND CIRCUMSTANCES

Michael DaCorta incorporated Oasis Management, LLC (OM) in November 2011. (Doc. #750 at ¶ 11). From November 11, 2011 to April 15, 2019, he was a General Partner and Chief Executive Officer of OM. (Doc. #750 at ¶ 11). With the assistance and legal direction of attorney Joseph Anile, he formed Oasis International Group (OIG), Limited and served as a member of that entity as well as serving on OIG's board of directors and as CEO. (Doc. # 750 at ¶ 12)

OIG and OM (the "Oasis entities") are diversified corporations engaged in investments designed to produce varied revenue streams from real-estate purchases

and sales; business purchases, operations, and sales; Foreign Exchange (Forex) Trading; precious metal investing, along with other business endeavors. (Doc. # 750 at ¶ 17).

OIG was the sole customer of Broker-Dealers OG Ltd and OGSA. OIG did not trade for any individual resident of the United States or any group of residents in the United States in any capacity. (Doc. #750 at ¶ 19). All of the people referenced by the CFTC were lenders who all signed Promissory Notes and Loan Agreements along with Agreements with Risk Disclosures. (Doc. #750 at ¶¶ 19, 20).

The Legal Distinction: The Promissory Notes And Loan Agreement Are Legally Distinct From Sales Of Commodities On Behalf Of Any Person.

Both the CFTC and the district court fail to recognize the legal distinction between the lenders associated with the Oasis entities and the existence of commodity pools, commodity pool operators, retail forex commodity pool operators, and associated persons and whether OIG was an Eligible Contract Participant (ECP), operating outside the scope of CFTC authority. Most importantly, Oasis did not trade in commodities *on behalf* of the lenders. The lenders were compensated by repayment of principal and interest or transaction fees. Their compensation was never tied to profits and losses from the sale of commodities.

This is a legal distinction that makes a difference. Because DaCorta and Oasis were not trading in commodities *on behalf* of any person, but solely for a corporate ECP, and because the lenders were not compensated based on profits and losses,

they were not investors in commodity pools; Oasis was not a commodity pool operator; DaCorta was not an associated person of a commodity pool operator, and neither Oasis nor DaCorta were required to register as such.

All the people referred to by the CFTC as investors were not investors at all; they were lenders. Each of them signed a promissory note for any and all monies lent to OIG and OM. Each of them also signed an Agreement and Risk Disclosure document, describing the risks associated with lending OIG money. (Doc. #750 at ¶ 22).

The first paragraph of the Promissory Note and Loan Agreement states the following:

PROMISSORY NOTE AND LOAN AGREEMENT

> *FOR VALUE RECEIVED, the undersigned, Oasis International Group, Ltd., a Cayman Island corporation having its registered office at 309 Ugland House, Grand Cayman, KY1- 1104, Cayman Islands (the "Maker"), hereby promises to pay to (the "Payee"): (i) in lawful monies of the United States, in immediately available funds, the principle sum of LOAN AMOUNT ( ) (the "Loan Amount") in one (1) installment or as otherwise directed by Payee pursuant to the terms hereof.*
> (See Doc. 750-1 at 1)

Each of the lenders involved in this case signed the agreement, stating that they were lenders, not investors, and that they would be paid back in a combination of principle and interest or transaction fees. The Promissory Note and Loan

Agreement stated the following repayment terms for each of the lenders in paragraph one of the Agreement:

> ***Interest***. *Any unpaid Loan Amount due hereunder shall receive the greater of (a) interest calculated at the rate of twelve percent (12.00%) per annum, or (b) twenty-five percent (25.00%) of the Transaction Fees (as hereinafter defined), provided, that upon the occurrence of an Event of Default (as hereinafter defined), the unpaid Loan Amount hereof shall bear interest at the maximum rate of interest permitted by the law of the jurisdiction of the Payee from the date of such Event of Default until the default is cured.*
> (See Doc. #750-1 at 1)

The Promissory Note and Loan Agreement makes clear that the Lenders are to be paid back in interest, as is customary in lending agreements. Most importantly, nothing in the agreement states that any Oasis entity or Michael DaCorta is investing on behalf of the Lenders, and it is expressly clear that repayment to each of the lenders is in interest or fees collected. Each of the people referred to in the district court's decision and in the CFTC's amended complaint and motion for summary judgment as investors were not investors; they were lenders.

The Agreement And Risk Disclosures

In addition to signing a Promissory Note and Loan Agreement, the lenders signed an Agreement and Risk Disclosure document, which set forth the terms of the loan that each of them was making, along with all risks. (Doc. 750-1 at 4). The Agreement expressly described the transaction as a loan. It stated in part: ***Short-Term Unsecured Loan.*** *By signing the Promissory Note and Loan Agreement,*

Lender is loaning Oasis money on a short-term unsecured basis. (Doc. #750-1 at 4). These signing documents made clear to every lender that this was a loan that would be paid back with a combination of principal, interest, and fees. It was not money given to any of the Oasis entities and Michael DaCorta for the purpose of investing on their behalf in commodities, and repayment was never associated or tied to profits and losses.

The Agreement and Risk Disclosures document described the transaction as follows in paragraph one, page one:

AGREEMENT AND RISK DISCLOSURES

> *This Agreement sets forth the terms and conditions governing your Loan Account ("Account") at Oasis International Group, Ltd. ("Oasis"), and all agreements and any transactions in this Account with Oasis. In this Agreement, the undersigned lender is referred to as "Lender" or "You".*
> (Doc. #750-1 at 4)

The first sentence of the document on page one defines the transaction between OIG and the lenders as a "Loan Account." The parties giving OIG money are defines as "Lenders." The document defines the transaction as a "Short-Term Unsecured Loan.":

> ***Short-Term Unsecured Loan**. By signing the Promissory Note and Loan Agreement, Lender is loaning Oasis money on a short-term unsecured basis. There is no collateral provided by Oasis to the Lender in connection with any money, including any interest thereon, loaned to Oasis by Lender. if Oasis becomes insolvent and You have a claim for amounts loaned or interest earned on transactions with Oasis, your*

> *claim may not receive a priority. Without a priority, You are a general creditor and your claim will be paid, along with the claims of other general creditors, from any monies still available after priority claims are paid.*
> (Doc. #750-1 at 4)

The Risk Disclosures document stated that any money or payments given to OIG were short-term unsecured loans that would be paid back with interest. Additionally, lenders were informed that in the event that OIG becomes insolvent, the lenders would become general creditors:

> ***Loans and Withdrawals***. *Any loan made by You will require that You complete (or update) the information on the Application so that a Promissory Note and Loan Agreement can be generated for acceptance by Oasis. Payments from an Account require a withdrawal request form signed by all required account holders and submitted in writing to Oasis. A withdrawal of any loan principal amount will be made, in accordance with the terms and conditions of the Promissory Note and Loan Agreement, upon ninety (90) days advance written notice from Lender to Oasis. A withdrawal of any unpaid interest amount may only be made by Lender on or by the last day of a calendar month.*
> (Doc. #750-1 at 4).

In addition to defining the transaction between the lenders and OIG as an unsecured loan, the Risk Disclosure, on page one of the document, describes in detail how OIG intends to use the loaned funds. OIG will use "*any or all of the money loaned by Lender*" at its discretion to invest in a variety of things. It stated:

> ***Use of Funds***. *At any time, in Oasis' sole discretion and without prior demand or notice, Oasis may use any or all money loaned by Lender, including any interest thereon, for any purpose whatsoever including without limitation any investment; the purchase or sale of foreign exchange products, securities or commodities, exchange or off-exchange products; the purchase or sale of any businesses assets or*

> *liabilities, the purchase or sale of any real estate; or for any other purpose, including any general company use or payment, any company payment or loans to any company affiliate, officer, employee, or third party, any company indebtedness or other company obligations. Lender hereby agrees that Oasis may, at any time and from time to time, in the sole discretion of Oasis, apply and transfer from any of Lender's funds with Oasis to any of Oasis' other accounts, whether held at Oasis or other individuals or entities in connection with any Oasis investment. Lender hereby authorizes Oasis to sell, pledge, rehypothecate, assign, invest, commingle and otherwise use any money loaned to it by Lender, including any interest thereon. Where Lender's Loan Account consists of more than one loan, this authorization shall apply to all loans, including any interest thereon.*
> (Doc. # 750-1 at 4-5).

The Use of Funds clause of the document, set out on page one of Risk Disclosures, continued to emphasize that the monies given to OIG were loans and the people entering into these transactions were lenders who would be paid back with interest. The money made by lenders was never tied to profits and losses and OIG was not investing on their behalf.

OIG and Michael DaCorta Were Certain That Each Signer Understood That They Were Lenders Not Investors – Is 216 Times Enough?

The words "loan" and "lender" appear in the Promissory Note And Loan Agreement and Risk Disclosure documents a total of two hundred and sixteen (216) times. The document imposes obligations on the lenders as well. Each of the lenders had to assure OIG and Mr. DaCorta that they had read and understood the documents and that they knew the money they were lending OIG was to be used in a variety of ways. Paragraph four of the Risk Disclosure document states:

> *Lender has read and understands the provisions contained in this Agreement, including, without limitation, Oasis' risk disclosure statements herein contained. Lender will review the Agreement each time it is amended, as provided herein. Lender will not lend Oasis any money unless Lender understands Oasis' revised Agreement, and Lender agrees that in effecting any continuation of a loan or any interest thereunder, Lender is deemed to represent that Lender has read and understands Oasis' revised Agreement as in effect at the time of such loan.*
> (Doc. #750-1 at 5)

The acceptance of the loans was conditioned upon the signed assurance of each lender, promising OIG and Mr. DaCorta that they understood that they were lenders and not investors, and that they were to be repaid in principal, interest, and fees collected. Furthermore, they knew that the types of products being invested in by OIG were high risk in nature. This was expressly stated on page one of the Risk Disclosure document.

The Criminal Case Against Mr. DaCorta

The district court relied heavily on the transcripts in Mr. DaCorta's criminal trial, asserting that he was foreclosed under the principal of collateral estoppel from arguing that he defrauded investors. (Doc. 780 at pgs. 14, 25).

Michael DaCorta was indicted on December 17, 2019 charging him with three counts: 1) conspiracy to commit wire fraud and mail fraud under 18 U.S.C. §§ 1349, 1343, and 1341; 2) money laundering under 18 U.S.C. § 1957; and 3) false and fraudulent statement on income tax return under 26 U.S.C. § 7206(1) and 18 U.S.C. § 2. (Doc. 749-11).

At a jury trial, the government never proved that there existed a commodity pool, a commodity pool operator, a retail forex commodity pool, associated persons, or that OIG was not an eligible contract participant, or that any retail commodity transactions occurred on behalf of any person. This was significant because the CFTC and the district court later assert that these facts were established in the criminal trial.

Because the district court's decision to grant summary judgment in favor of the CFTC relies heavily on the criminal trial transcripts and the declarations of two experts, Ms. Elsie Robinson and Ms. Melissa Davis, as well as the declaration of the receiver, Burton Wiand, it is necessary to discuss the shortcomings of that evidence.

The District Court Relies on Five Factual Sources In Its Motion for Summary Judgment

The district court relies on five factual sources in its decision for summary judgment. The first two sources are the declarations of Burton Wiand (the appointed receiver in the case below) (Doc. #165-1) , and Elsie Robinson (a Futures trading investigator in the division of enforcement of the Commodity Futures Trading Commission) (Doc. #4-1). Although widely cited in the CFTC's motion for summary judgment and adopted by the district court in its decision to grant summary judgment, neither support a finding of the existence of a commodity pool, commodity pool operators or associated persons as defined under the Commodity

Exchange Act. Ms. Robinson was not a witness in the court below and was never cross-examined by defense counsel in the civil case.

The third source in the CFTC's motion is the report of the accountant Ms. Melissa Davis. (Doc. #439-7) Ms. Davis was not a witness at the criminal trial and was not deposed in the civil case. Fourth, the district court indirectly relies on the transcribed phone calls of Mr. DaCorta (as they are cited in both Robinson's and Wiand's declaration) and several other people involved in the criminal case. Some of those transcripts are attached to Mr. Wiand's declaration. No transcripts of phone calls are attached to Ms. Robinson's declaration and are not attached to the CFTC's motion. Finally, the main source of facts in the CFTC's motion were the trial transcripts from Mr. DaCorta's criminal trial.

Source of CFTC Information Relied Upon By The District Court: Ms. Robinson's Written Declaration

Ms. Robinson's declaration is cited extensively in the CFTC's motion and by reference to that motion is widely cited by the district court in its decision. (See Doc. # 749 CFTC Motion for Summary Judgment ¶¶ 4, 9, 10, 11, 20, 21, 22, 26, 27, 28, 35, 38, 40, 48, 49 51, 52, 62, 70). Ms. Robinson's statement relies mainly on recorded phone calls with Mr. DaCorta and other Oasis employees. No recording of the phone calls cited or transcript of the phone calls were attached or provided in conjunction with her declaration.

Ms. Robinson assumes in her declaration that there existed commodity pools and that Mr. DaCorta and the Oasis entities were commodity pool operators. (Doc. 4-1 at 13). Robinson takes great pains to repetitively and heavy-handedly use the terms Oasis pools, pool funds, and pool investors to refer to money deposited in Oasis accounts (she uses these terms 99 times in her declaration). No fact-based explanation or analysis is provided in her declaration as to how she made the determination that these funds were pool funds of commodity pools. Ms. Robinson also, without analysis or explanation, uses the terms "Oasis pool participants" and "pool participants" and "Oasis pools" with gay abandon, providing no fact-based or legal explanation for these conclusions.

In fact, throughout Robinson's declaration there is no legal analysis or fact based explanation for the conclusion that there existed commodity pools, pool funds, or pool participants.

Robinson cites secondhand information from an interview with a financial advisor in Wisconsin who claimed to have participated in a conference call with Mr. Ray Montie, another named defendant. (Doc. # 4-1 at 13). No recording or transcript of the conversation was provided and none of the people who participated in the call are identified.

Robinson also states that she listened to a number of recorded calls in which members of the Oasis entities were speaking with prospective lenders. Robinson

refers to the lenders as prospective pool participants, inferring without explanation or analysis that there existed commodity pools and that DaCorta and Oasis were commodity pool operators. She cites to several such recorded conversations (Doc. # 4-1 at pgs. 14-22); no transcripts of those recordings are attached to her declaration.

While cited extensively by the CFTC and the district court in support of the proposition that there existed commodity pools, commodity pool operators, retail forex commodity pool operators, and associated persons, the Robinson Declaration contains no legal analysis or explanation as to how DaCorta and Oasis meet these legal definitions.

The CFTC claims that Ms. Robinson listened to phone calls with one of the co-defendants of Mr. DaCorta and claims that he used the term "pool participants" in his phone call with lenders. The recordings referenced by Ms. Robinson in her declaration were not provided to the district court and have not been provided to defense counsel. However, in one conversation that Ms. Robinson alleges that she listened to between Mr. DaCorta and one of the lenders, it becomes clear that Ms. Robinson is deliberately altering the language used by DaCorta, changing his words from "lender" to "pool participant". The quoted conversation from Ms. Robinson's declaration is as follows:

> *On April 8, 2019 I listened to a recorded telephone conversation between Person 2 and Defendants Duran and DaCorta that occurred in April 2019 during which DaCorta stated the following:*

> *a. DaCorta is Oasis's principal and signs the loan agreements with Oasis pool participants;*
> *b. new Oasis pool participants are approved by "Deb or Joe Paniagua;"*
> *c. new Oasis pool participants are approved once the pool participant sends the money and Joe Paniagua "will see that and approves your status;"*
> *d. new Oasis pool participants' notes and other documents "will be automatically be uploaded into our system .. .it's called the back office;"*
> *e. accounts can't be activated until Oasis receives funds from pool participants;*
> *f. Joe Anile "gets all of the wires, he checks the bank accounts and lets Joe Paniauga know" that a new Oasis pool participant is approved*
> (Doc. #4-1 at 20)

The transformation of language by Ms. Robinson is significant. In this conversation, Mr. DaCorta is talking to a prospective lender about a loan agreement, yet Ms. Robinson's chooses to use the term "pool participant" repeatedly, a term DaCorta never used in any of the transcribed conversations.

Source of CFTC Information Relied Upon By The District Court: Burton Wiand's Declaration.

On April 15, 2019, Burton Wiand was appointed receiver by the district court. His declaration is cited numerous times in the CFTC motion and by reference adopted by the district court in its decision. (See Doc. 749 at ¶¶ 4, 8, 13, 14, 15, 19, 26, 27, 29, 30, 31, 32, 33, 34, 39, 44, 46).

Mr. Wiand states in his declaration that he listened to several phone calls where Mr. DaCorta and other Oasis members speak with lenders. (Doc. 165-1 at 7). Mr. Wiand attached as exhibits to his declaration transcripts of the phone calls that

he uses as support for his conclusions. Wiand's conclusions were used in the CFTC's motion and in the district court's decision, but are not supported by the transcripts of the phone calls between Mr. DaCorta and the lenders to Oasis.

For example, Mr. Wiand concludes that the people Mr. DaCorta spoke to were potential "investors" and that "profits" are purportedly generated from trading currencies. (Doc. #165-1 at ¶15) The transcripts of the phone calls do not support these conclusions. In fact, in each phone call DaCorta makes clear that the transaction is that of lender-borrower and that the lenders will be paid in interest, not in profits from currency trading. (Doc. 165-5 at 26-29). Mr. Wiand concludes that the phone calls were for the purpose of soliciting "pool participants." (Doc. 165-1 at 8). However, in each transcript of the phone calls it is made clear to the prospective lenders that they would be lending money to Oasis and would be paid in principal, interest or fees. (Doc. 165-5 at 26-29).

Source of CFTC Information Relied Upon By The District Court: Expert Report of Melissa Davis.

The CFTC and the district court relied in part on the expert report of Ms. Melissa Davis, a CPA for the accounting firm of Kapila Mukamal. (Doc. # 439-7).

While Ms. Davis concludes that the Oasis entities acted as a Ponzi scheme based on her analysis of the financials, her conclusions regarding any commodities violations are drawn exclusively from the CFTC's complaint. She states that Oasis operated as a commodity pool operator by soliciting, receiving, and accepting funds

for trading in forex. (Doc. 439-7 at 6) The support for this conclusion in Ms. Davis' report is a citation to the CFTC's complaint. No other independent analysis is offered. Ms. Davis also asserts the following: 1) the Oasis entities offered securities for sale to investors; 2) investors were guaranteed an annual rate of return of 12%; 3) Oasis represented to investors that their money would be used to trade in forex contracts; Oasis pools would earn substantial income. The support for these conclusions in Ms. Davis' report was a reference to the CFTC's complaint. (Doc. 439-7 pg. 7) No other independent source or analysis for these conclusions was offered by Ms. Davis.

Ms. Davis' report is as significant for what it omits as it is for what it includes. Davis refers to the Promissory Note offered by Oasis and makes assertions that are contradicted by the plain language in the Promissory Note and Risk Disclosure documents.[1] For example, she asserts that the lenders were told that Oasis did not lose money in the forex trading activity, referring to the promissory note. (See Doc. 439-7 at 12). However, the Promissory Note and Risk Disclosure both go into great detail about the risks involved in forex trading and state that each lender could lose the entirety of their money. Davis also asserts that lenders were told that their money would be used for forex trading exclusively. (Doc. 439-7 pg. 13). This statement is

[1] Ms. Davis adopts the language used by the CFTC in their complaint and generally refers to the lenders as investors. (See Doc. 439-7 generally).

contradicted directly by the Promissory Note and Risk Disclosure Agreement wherein Oasis described at length the variety of investments for which lenders' money would be used.

Source of CFTC Information Relied Upon By The District Court: The District Court's Reliance On The Criminal Proceedings.

The district court's reliance on the CFTC's assertions and conclusions from the criminal court proceedings is misplaced. At no time during the criminal proceedings was it proven, or even mentioned, that there existed investor pools, commodity pools, retail forex commodity pools, commodity pool operators, associated persons of commodity pool operators, or the investments or solicitation of funds on behalf of another person, as is required under the Commodity Exchange Act for the existence of such entities and for a finding of summary judgment. Asserting that Oasis solicited funds from pool participants, the CFTC directs the district court's attention to Days 10 and 11 of Mr. DaCorta's criminal trial (Doc. # 749-5 at pgs. 248 to 255; Doc. # 749-3 at pgs. 45, 46, 50, 52, and 204).

There are no facts in those transcripts that demonstrate that Mr. DaCorta or Oasis solicited any funds for foreign exchange trading on behalf of any person.

Source of CFTC Information Relied Upon By The District Court: Testimony of Michael DaCorta.

To support the contention that Mr. DaCorta solicited money from "pool participants", the CFTC cites to Mr. DaCorta's testimony at his criminal trial

misrepresenting the actual words that Mr. DaCorta used. (Doc. # 749 at pg. 10). The cited testimony of Mr. DaCorta is as follows:

Q You would at least agree with me, would you not, that all the trading money in the ATC account was lender money, correct?
A It all came through the loan program, yes.

(Doc. # 749 at pg. 10)

The CFTC cited to the preceding testimony and claims in their motion for summary judgment that Mr. DaCorta said that he was receiving money from pool participants. Again, consistent with Ms. Robinson's misrepresentations, the CFTC misquoted Mr. DaCorta to conform to their contention that the actions of Mr. DaCorta fall within the regulatory ambit of the CFTC.

Furthermore, the CFTC contends in their motion for summary judgment at Doc. # 749 at ¶ 25 that Mr. DaCorta was sharing in profits and losses with the people who were lenders. They cite to Mr. DaCorta's testimony at his criminal trial:

> *So, the back office was all Oasis International Group accounts. The subaccounts were all Oasis's accounts, but what we had to do if 100 people loan you money and it's all different amounts and every single person is being allocated spreads on a daily basis, the only way to keep that accurate is to have that ledger in the back office that accounts for each and every transaction every single day. At the end of the month, your loan to me was a hundred thousand dollars. I still owe you a hundred thousand dollars plus whatever that spread was. So, if you withdrew your interest, you now have principal only back there. If we had a profit one month, it had to be reduced. If we had a loss, it had to be put back.*
> *So, in other words, the only way to keep the integrity of how much everybody's loan represented and how much interest they were being allocated on a daily and monthly basis was the end of the month that*

> *number had to be brought back to the principal amount of their loan.* ***The P&L shifted to our side, whether it was profitable or whether it was a loss.*** *That was the company responsibility as we stated many times. But for each person, in order for us to keep track of that loan, we needed the actual amount we owed them, the principal amount, plus any accrued interest, if they left it there, added together to come up with the amount that we now had to put into the PAMM account which then received all the spreads based on the transaction fees.*
> (Doc. # 749-3 at pg. 160) [emphasis added].

"*The P&L shifted to our side, whether it was profitable or whether it was a loss.*" Mr. DaCorta did not testify that lenders were paid according to profits and losses. He stated that they were paid in principal and interest or transaction fees according to the loan agreement. To support the contention that the lenders to OIG were paid in profits and losses, the CFTC also makes a partial citation at Doc. # 749 at ¶ 25 to Mr. Paniagua's testimony at the criminal trial:

> *Q Okay. Let me ask it this way. On a given day if the foreign currency trading resulted in a hundred thousand dollars in profit, would that profit show up in the PAMM subaccounts that belonged to the lenders?*
> *A Yes, it should show up. It should show up in that PAMM account but remember it's a loan program. And the funds are loans to Oasis. So, it's different. The P&L was just Oasis, belonged to Oasis itself.*
> (Doc. # 749-7 at pg. 196).

The P&L, or profits and losses, were attributed to Oasis – *they belonged to Oasis itself*. The lenders money was never impacted by profits and losses. Mr. Paniagua's testimony at the criminal trial does not support the contention made by the CFTC in their motion for summary judgment and relied upon by the district court. He testified that any profits or losses were attributed to Oasis and never

devolved to the lenders. The CFTC chose to omit this part of his testimony in their motion for summary judgment.

The CFTC asserted in their motion for summary judgment at Doc. # 749 at ¶ 26 that Mr. DaCorta routinely participated in conference calls to solicit prospective pool participants to join the Oasis pools. To support this assertion, they cite to Mr. Burton Wiand's declaration (Doc. # 165-1 at ¶ 18) and Ms. Robinson's declaration (Doc. # 4-1 at ¶ 42).

The noticeable distinction between the statements of Wiand and Robinson as compared to Anile (the government cooperator) and Mr. DaCorta is the obsessive use by Wiand and Robinson of the terms "pool" and "pool participant." Anile and DaCorta never use the words "pool," "pool participant," or investor even once, even though Anile is a government cooperator and testifying on behalf of the government.

In Mr. Wiand's declaration, he refers to transcripts of phone calls of Mr. DaCorta speaking to prospective lenders. While Mr. Wiand refers to commodity pools and solicitation of funds to invest in pools quite liberally in his declaration, a review of the transcripts of phone calls attached to his declaration shows that there was no mention of pools, commodity pools, or investments. Instead, in each of those recorded phone calls, Mr. DaCorta explains to the people that they are "lenders" and that they would be lending money to Oasis pursuant to a Loan Agreement and that they would be paid back in principal and interest or transaction fees. In each

transcript, Mr. DaCorta makes clear to the lenders that their money is not impacted by profits and losses. (Doc. # 165-5 and Doc. # 165-6 Exhibits 1-D and 1-E to Wiand declaration).

Source of CFTC Information Relied Upon By The District Court: Mr. Joseph Anile's Testimony.

The CFTC's motion for summary judgment included excerpts from the criminal trial of Mr. DaCorta's former business partner and attorney, Mr. Joseph Anile. Mr. Anile had pleaded guilty to all charges in the indictment and was to receive a lesser sentence for his testimony against Mr. DaCorta and cooperation with the U.S. Attorney's office.

In the CFTC's motion for summary judgment, they assert that there was evidence of "pool participants" sending funds to OIG. They cite to Mr. Anile's testimony at the criminal trial in support of this contention. (Doc. # 749-2 at pgs. 153-157) In the cited pages, there is no testimony regarding pool participants by Mr. Anile and there is no mention of any pool participants. The terms pool, commodity pool, pool participant do not appear anywhere in Mr. Anile's testimony.

At paragraph 17 of the CFTC's motion for summary judgment they assert that payments made to OIG accounts were funds from pool participants (Doc. # 749 at ¶ 17). In Mr. Anile's testimony, he makes the important distinction between lenders and investors. He states that after 2018, the people paying money into OIG accounts were lenders, not investors. He testified as follows:

Q Where did the deposits into the OIG account held by Mainstream Fund Services come from?
A At this point in time in '18 and '19 they were coming from lenders to the company.
Q Were they coming from any other source other than lenders?
A No.
Q What about prior to 2018 and 2019, where did the money that was deposited into -- I guess it would have been the Fund Administration account then; is that right?
A Well, the period which we acted as broker to self-traded accounts or managed accounts, they would have been from investors.
Q Is there any other source of deposits into that account other than investors?
A No.

(Doc. # 749-2 at pgs. 159-160)

This was significant testimony for two reasons: first, there was no mention of pools, commodity pools, or pool investors. Second, it is demonstrative of the changed nature of the business after 2018 where any payments made to OIG were loans and not investments. All those payments were pursuant to a loan agreement where the lenders were paid back and earned according to the agreed upon interest rate; no payments from OIG to lenders were tied to profits or losses.

Source of CFTC Information Relied Upon By The District Court: The Criminal Trial

At no point during the criminal trial was it proven that there existed commodity pools, a commodity pool operator, a retail forex commodity pool operator, or an associated person of any such entity. There was, in fact, significant testimony to the contrary.

During the trial, the government called witness Jennifer Sunu, an employee at the National Futures Association, which is a regulatory organization for U.S. futures and forex trading markets. During Ms. Sunu's testimony, a disagreement about an exhibit led to an argument at side-bar where it was disclosed by the government that no one was going to testify that Mr. DaCorta was a commodity pool operator. Mr. DaCorta's attorney argued as follows:

> *MR. ROSENTHAL: The problem -- I mean, there's multiple problems. Number 1 is -- our objection is she is not going to testify, again, that Mr. DaCorta was operating a commodity pool. So therefore, it's not relevant on that ground and that ground alone. So, it's not relevant whether the National Futures Association, at least through her testimony, regulates commodity pools. She's not going to give further testimony, which we have been assured that she won't, that Mr. DaCorta was operating a commodity pool.*
> (Doc. 749-6 at pg. 97)
> *THE COURT: And why is it relevant? Why is commodity pools relevant? Is someone going to say he's a pool operator?*
> *MR. MURRAY: No, Your Honor. So, the reason it's relevant, again I'll start by saying we disclosed this in our expert disclosure saying she is testifying to exactly this. The reason it's relevant is because Mr. DaCorta structured the Oasis companies to avoid NFA regulation because he couldn't register as an NFA member based on his settlement.*
> (Doc. # 749-6 at pg. 98)

In short, it was never proven at Mr. DaCorta's criminal trial that he was an associated person of a commodity pool operator or that Oasis was a commodity pool operator or that there existed commodity pools at all.

POINT I

THE DISTRICT COURT ERRED WHEN IT GRANTED THE MOTION FOR SUMMARY JUDGMENT IN FAVOR OF THE COMMODITY FUTURES TRADING COMMISSION ON ALL COUNTS BECAUSE THERE EXIST ON ALL COUNTS GENUINE ISSUES OF MATERIAL FACT.

Introduction

The district court erred when it granted summary judgment in favor of the Commodity Futures Trading Commission because there exist genuine issues of material fact on all counts. The material issues of fact here are: 1) whether Mr. DaCorta and Oasis entered into forex transactions and/or retail forex transactions on behalf of other people; 2) whether the CFTC had authority to bring suit against DaCorta and Oasis; 3) whether, under the Commodity Act ("the Act"), there existed a commodity pool (i.e. whether the funds lent to Oasis through promissory notes can be classified as the existence of a commodity pool); 4) whether, under the Act, Mr. DaCorta and the Oasis entities were commodity pool operators; 5) whether, under the Act, Mr. DaCorta was an associated person of a commodity pool operator; 6) whether, under the Act, Mr. DaCorta was an Eligible Contract Participant; and 7) whether the funds from lenders were given to Mr. DaCorta for the purpose of trading in commodity interests.

None of the sources of information referenced by the district court in its order show that there is no issue of material fact as to whether there existed a commodity pool, or whether Mr. DaCorta and Oasis were commodity pool operators, or whether

Mr. DaCorta was an associated person, or whether there were forex and retail forex transactions. The lack of proof of any of these material facts precludes a finding of summary judgment.

The Standard of Review

The Eleventh Circuit reviews the district court's ruling on a motion for summary judgment *de novo*, applying the same legal standards that bound the district court. *Seamon v. Remington Arms Co., LLC*, 813 F.3d 983, 987 (11th Cir. 2016).

Legal Standard For Summary Judgment

Motions for summary judgment should be granted only when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c) *Seamon v. Remington Arms Co., LLC*, 813 F.3d 983, 987-88). Genuine, triable issues of fact will preclude summary judgment. *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986).

The party seeking summary judgment bears the initial burden of demonstrating to the Court, by reference to the record, that there are no genuine issues of material fact to be determined at trial. *Clark v. Coats & Clark, Inc.*, 929 F.2d 604, 608 (11th Cir. 1991). "When a moving party has discharged its burden, the non-moving party must then go beyond the pleadings, and by its own affidavits,

or by depositions, answers to interrogatories, and admissions on file, designate specific facts showing that there is a genuine issue for trial." *Jeffery v. Sarasota White Sox, Inc.*, 64 F.3d 590, 593–94 (11th Cir. 1995) (internal citations and quotation marks omitted). Substantive law determines the materiality of facts, and "[o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248 (1986). In determining whether summary judgment is appropriate, a court "must view all evidence and make all reasonable inferences in favor of the party opposing summary judgment." *Haves v. City of Miami*, 52 F.3d 918, 921 (11th Cir. 1995). *U.S. Commodity Futures Trading Commission v. Allied Markets LLC*, 371 F.Supp.3d 1035, 1043–44 (M.D.Fla., 2019).

If there is a conflict between the parties' allegations or evidence, the non-moving party's evidence is presumed to be true, and all reasonable inferences must be drawn in the non-moving party's favor. *Shotz v. City of Plantation*, 344 F.3d 1161, 1164 (11th Cir. 2003). If a reasonable fact finder evaluating the evidence could draw more than one inference from the facts, and if that inference introduces a genuine issue of material facts, the court should not grant summary judgment.

The District Court Erred When It Granted Summary Judgment In Favor Of The CFTC Under Count One Of The Complaint: Forex Fraud By Misrepresentation, Omissions, False Statements, And Misappropriation.

The district court erred in granting summary judgment on count one in favor of the CFTC by using Mr. DaCorta's criminal trial as its main source of factual findings and the principal of collateral estoppel.

In count one it is alleged that Mr. DaCorta violated 7 U.S.C. §6b(a)(2)(A)-(C) and Regulation 17 C.F.R. §5.2. The statute, 7 U.S.C. §6b, is entitled "Contracts designed to defraud or mislead. It states the following:

It shall be unlawful—

> (2) for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, or swap, that is made, or **to be made, for or on behalf of**, or with, any other person, other than on or subject to the rules of a designated contract market--
> **(A)** to cheat or defraud or attempt to cheat or defraud the other person;
> **(B)** willfully to make or cause to be made to the other person any false report or statement or willfully to enter or cause to be entered for the other person any false record;
> **(C)** willfully to deceive or attempt to deceive the other person by any means whatsoever in regard to any order or contract or the disposition or execution of any order or contract, or in regard to any act of agency performed, with respect to any order or contract for or, in the case of paragraph (2), with the other person
> [emphasis added]

A violation of this statute requires that there be an order to make a contract of sale of a commodity for future delivery, or swap *be made for or on behalf of any other person* and to cheat, defraud, make false reports or records, and willfully

deceive the other person in regard to any order or contract. Regulation 5.2 pertains to retail forex transactions and is consistent with §6b. It states: § 5.2 Prohibited transactions.

> (a) Scope. The provisions of this section shall be applicable to any retail forex transaction.
>
> (b) Fraudulent conduct prohibited. It shall be unlawful for any person, by use of the mails or by any means or instrumentality of interstate commerce, directly or indirectly, in or in connection with any retail forex transaction:
>
> (1) To cheat or defraud or attempt to cheat or defraud any person;
>
> (2) Willfully to make or cause to be made to any person any false report or statement or cause to be entered for any person any false record; or
>
> (3) Willfully to deceive or attempt to deceive any person by any means whatsoever.

(See 17 C.F.R. §5.2)

With regard to count one, material issues of fact exist. Neither Mr. DaCorta nor Oasis entered into forex transactions and/or retail forex transactions *on behalf of* the lenders for the purchase of any commodity. (Doc. 750 at pg. 38 and ¶ 44) DaCorta motion). The transaction between the Oasis entities and the lenders was a loan agreement. (Doc. 750 at pg. 38). Neither Oasis nor DaCorta ever entered into a forex or retail forex transaction that was *made for or on behalf of any other person*. There were never any contracts or agreements that either DaCorta or Oasis would purchase commodities or enter into forex or retail forex transactions on behalf of the people that were lenders. (Doc. # 750 at ¶ 38 DaCorta Motion). The loan agreements

were clear. The lenders were to be paid back with principal and interest based on a variety of investments that Oasis would make independently, not investments on behalf of anyone. (Doc. # 750 at pgs. 30-31 DaCorta Motion).

The District Court's Decision To Grant Summary Judgment

The district court erroneously held that, under count one, the CFTC was required to prove three elements to show liability for fraud under 7 U.S.C. §6b(a)(2)(A)-(C). The district court stated that the CFTC must prove 1) the making of a misrepresentation, misleading statement, or a deceptive omission; 2) scienter; and 3) materiality. (Doc. # 780 at pg. 24).

However, the district court truncated drastically that which was required to prove count one in the CFTC's complaint. The CFTC must also prove that DaCorta and Oasis entered into forex transactions and retail forex transactions *on behalf* of other persons and that Oasis was not an Eligible Contract Participant. In other words, the CFTC was required to show that there was a contract between DaCorta/Oasis and the lenders specifically for the purpose of a sale of a commodity, in this case the forex transactions and retail forex transactions. Furthermore, the CFTC was required to prove in this case that there existed commodity pools, commodity pool operators, and that DaCorta was an associated person of a commodity pool operator. No such proof exists in this case and these points are all genuine issues of material fact, precluding a finding of summary judgment.

The District Court Erroneously Relied Exclusively On The Principal Of Collateral Estoppel

The district court, relying on the principal of collateral estoppel, held that the jury in the criminal proceeding found that Mr. DaCorta committed wire fraud and mail fraud and is, therefore, precluded from arguing the elements of scienter and materiality and that the criminal trial proved that he made misrepresentations. (Doc. # 780 at pgs. 14, 25). However, in no part of the criminal trial was there proof that either DaCorta or the entity Oasis entered into contracts with other people for the purpose of the sale of a commodity or for making forex transactions or retail forex transactions on behalf of others. The district court omitted the requirement that any fraud or misrepresentation must have been in relation to a contract for the sale of a commodity. This was a material fact that was never demonstrated by the CFTC.

This legal distinction was never recognized by the district court: no agreement or contract or transaction to trade in currency was ever offered by DaCorta or Oasis or entered into with any person by DaCorta or Oasis. The Promissory Note and Risk Disclosures Agreement were legally distinct and materially different than offering a forex transaction or retail forex transaction to another person or entering into a foreign currency transaction with another person. The district court ignored the legal distinction between a loan program with a Promissory Note and offering or entering into a foreign currency transaction.

In fact, the district court's decision begins with the assumption that *"OIG 'solicited, received, and accepted funds' for foreign exchange ("forex") trading."* (Doc. 780 at pg. 3). As support for this proposition the district court cites to CFTC's motion for summary judgment (Doc. 749 ¶ 9) and to Mr. DaCorta's testimony at his criminal trial (Doc. 749-3 at 50:5-10). The cited materials do not support the district court's conclusion that either DaCorta or Oasis solicited funds for foreign exchange trading.

The district court cites to the CFTC's motion for summary judgment (Doc. 749 ¶ 9), which in turn cites to Ms. Robinson's declaration Exhibits H and I (Doc. 4-1; Doc. # 4-11; Doc. #4-12). Those exhibits to Robinson's declaration merely list expenses incurred by the Oasis entities; they do not assert or prove that DaCorta or Oasis solicited funds for forex transactions. Additionally, the trial court cites to Mr. DaCorta's trial testimony to support the contention that he solicited funds for forex trading. The excerpted testimony is as follows:

> *Q. What were the funds that would be loaned to OIG be used for?*
> *A. A percentage would be used for collateral deposit for foreign exchange trading, and the balance of it could be used for pretty much any investment decision we decided we would like to make.*
> (Doc. 749-3 at 50: 5-10)

The limited excerpt from DaCorta's testimony makes clear that the funds were borrowed. However, what both the district court and the CFTC omitted was the testimony that showed that the funds were borrowed pursuant to a loan program

and that Oasis never entered into forex transactions on behalf of the lenders. The entirety of the testimony was as follows:

> *Q Either way, were there documents that those investors had to agree to move forward with the 2017 loan program?*
> *A Yes, absolutely.*
> *Q What were the funds that would be loaned to OIG be used for?*
> *A A percentage would be used for collateral deposit for foreign exchange trading, and the balance of it could be used for pretty much any investment decision we decided we would like to make.*
> (Doc. 749-3 at 50: 2-10)

The documents referred to were the Promissory Note and the Risk Disclosure Agreement, which explained to the lenders that Oasis was not offering or entering into forex transactions on the lenders' behalf. (Doc. 750-1 Promissory Note, Loan Agreement and Risk Disclosures).

Whether the loaned money was a forex transaction and whether DaCorta and Oasis offered to or entered into foreign currency transactions with other persons is a genuine issue of material fact that was not proven by the cited materials in the district court's decision. Forex transaction and a retail forex transaction have very specific statutory definitions under 7 U.S.C. § 2(c)(2)(B) and 7 U.S.C. §2(c)(2)(C) that were never proven and no evidence supports the district court's decision.

The Promissory Note and Risk Disclosure Agreement Renders The Transaction Legally Distinct and Beyond the Reach of the CFTC Regulation.

The agreements between DaCorta, Oasis and the lenders are legally distinct from contracts to enter into sales of commodities or for forex transactions or retail

forex transactions. This is a material fact in issue. The district court's reliance on the principal of collateral estoppel is misplaced because nowhere in the criminal proceedings was it ever proven that DaCorta or Oasis entered into contracts with other persons for the purpose of retail forex transactions.

The District Court Erred When It Granted Summary Judgment In Favor Of The CFTC Under Count Two Of The Complaint As There Existed Genuine Issues Of Material Fact As To The Terms Commodity Pool Operator, Associated Person, Retail Forex Commodity Pool Operator, And Retail Forex Transactions.

The CFTC alleged under count two of the complaint that Mr. DaCorta and the Oasis entities violated 7 U.S.C. §6o(1)(A)-(B), where they assert that Mr. DaCorta and the Oasis entities, acting as commodity pool operators and associated persons of commodity pool operators, solicited funds for the purpose of trading in commodities and that they pooled these investments while acting as associated persons of a retail forex commodity pool.

The district court decision in support of the holding that the Oasis entities solicited, received, and accepted funds for foreign exchange trading as commodity pool operators and associated persons of commodity pool operators cites to the sources listed in the statement of facts: the declaration of Ms. Robinson; declaration of Mr. Wiand; the criminal trial. None of those sources prove that DaCorta or Oasis acted as either commodity pool operators, associated persons, or that they engaged in forex trading on behalf of anyone.

The district court's analysis begins on page 3 (Doc. # 780 at 3) of its opinion where it states that OIG solicited, received, and accepted funds for foreign exchange. To support this finding, the district court cites to the CFTC motion for summary judgment (Doc #749 at ¶ 9) and Mr. DaCorta's testimony at his trial (Doc. #749-3 at 50:5-10). (Doc. 780 pg. 3). Neither of these sources support the contention that OIG or DaCorta or the Oasis entities solicited, received, and accepted funds for foreign exchange.

Paragraph nine of the CFTC's motion asserts that they did solicit funds for foreign exchange, citing to Ms. Robinson's declaration (Doc. #4-1 ¶¶ 56-64) and trial transcripts from Mr. DaCorta's criminal trial. Ms. Robinson's declaration at paragraphs 56 to 64 and Exhibits H and I (Doc. # 4-11; Doc. #4-12) are merely a list of deposits and withdrawals. The actual source of those deposits and withdrawals is not listed and how the funds were obtained is not stated. While Ms. Robinson has an extreme penchant for using the term "pool funds" and "Ponzi payments" to describe those funds, she does no analysis and cites no authority as to why she believes that these were pool funds and Ponzi payments. She merely adopts this language as a presumption without supporting evidence that there existed a commodity pool.

The district court also cites transcript from Mr. DaCorta's criminal trial to support the contention that funds were solicited for foreign exchange. (Doc. 749-3 at 50:5-10). That excerpt from the transcript says nothing about Mr. DaCorta

soliciting funds for foreign exchange and the district court's decision is based on faulty information.

Additionally, the CFTC at paragraph nine of its motion cites transcripts from day 10 of Mr. DaCorta's criminal trial. (Doc. #749-5 pgs. 248-255). The transcript at pgs. 248 to 255 says nothing about soliciting funds for foreign exchange. The CFTC's assertion (cited to by the district court) is wrong. The CFTC also cites to day 11 transcripts of the DaCorta criminal trial. (Doc. #749-3) The CFTC in paragraph nine cites to Doc. #749-3 pgs. 45-46, 50, 52, and 204 to support their assertion that DaCorta solicited funds for foreign exchange trading.

None of the transcripts cited supports the contention that Mr. DaCorta solicited funds for forex transactions. DaCorta's testimony is a description of the loan program that he instituted.

The Loan Programs Are Legally Distinct From The Sale Of A Commodity On Behalf Of Another Person.

Both the CFTC and the district court consistently skip over this essential legal distinction and fail to recognize that the loans made to Oasis are not the same as an investment in a commodity. The Promissory Notes and Risk Assessment Agreement were the basis for the loans made to Oasis. The lenders were promised repayment with interest. This loan transaction is legally distinct from a contract of sale for the purchase of a commodity on behalf of an investor. In the case of the loan agreement, the principle of the investor is protected by the promissory note and the legal

obligation to repay the principle with interest, despite the fluctuations of the market. The contract of sale for the purchase of a commodity on behalf of an investor is quite different in that the investor fully absorbs the risk of the fluctuations and instability of the market. (See Doc. # 750 at pg. 38 DaCorta Motion).

Both the CFTC's motion and the district court's decision fail to show any evidence that DaCorta or Oasis ever solicited funds from anyone for the purpose of entering into commodity sale agreements on behalf of other people, as is required under the statute (See 7 U.S.C. §6b(a)(2)).

Commodity Pool And Count Two: There Is A Genuine Issue Of Material Fact Regarding The Existence Of A Commodity Pool.

As part of the district court's decision under count one, the CFTC is obligated to prove that the Oasis entities constituted a commodity pool and that they were commodity pool operators. The CFTC failed to provide such evidence and the district court erred when it granted summary judgment.

In support of its decision to find that there existed commodity pools in this case, the district court makes four assertions: 1) investor's funds were aggregated into a single account; 2) funds were invested for the purpose of trading in commodity interests; 3) the lenders participation based on a promissory note system as opposed to direct investing does not effect whether Oasis should be classified as a commodity pool; 4) the Oasis entities are not qualified as Eligible Contract Participants (ECPs)

– meaning they are exempt from CFTC regulation – because the lenders, which the district court calls investors, are not ECPs. (Doc. 780 at pgs. 18-19).

Count Two: The District Court Erred In Finding The Existence of a Commodity Pool Asserting That Investor Funds Were Aggregated Into A Single Account

The district court asserts that the aggregation of investors' funds into a single account is an aspect of a commodity pool, citing to *Commodity Futures Trading Comm'n v. Amerman*, 645 F. App'x 938, 941-42 (11th Cir 2016). However, the facts of the *Amerman* case are distinguishable from this case because in *Amerman* the investors shared the profits and losses from commodity trading on a pro rata basis. In the case *sub judice*, the lenders did not share profits and losses but were promised repayment of a loan with interest.

The *Amerman* court held that while the aggregation of investors' funds into a single account is certainly one of the criteria for a commodity pool; however, the relevant feature of the pooling of such funds is to limit the liability of individual investors such that each investor shares the profits and losses on a pro rata basis. Conversely, Oasis did not pool funds to limit the liability of investors; Oasis issued promissory notes to repay the investors.

The district court's superficial recognition of the pooling of funds, once again, fails to perceive the distinction. The pooling of funds in a commodity pool is for the purpose of spreading risk and sharing in pro rata profits and losses. The Oasis lenders did not enter into a pool for the purpose of spreading risk and they did not share in

the pro rata distribution of profits and losses. The district court's reliance on the *Amerman* case is misplaced and it should not have granted summary judgment on count two.

Count Two: The District Court Erred In Holding That A Commodity Pool Existed Asserting That Funds Were Invested For The Purpose Of Trading In Commodity Interests.

The district court erred when it held that the "investor" funds were invested for the purpose of trading in commodities and, therefore, there existed a commodity pool. First, there were no investors; there were only lenders, each having signed a promissory note. Second, the lenders did not invest in commodities but were promised repayment of their principal plus interest or transaction fees. Principal and interest are two components of a loan repayment, not an investment in the sale of a commodity.

To support the holding that funds were invested for the purpose of trading in commodity interests, the district court cites to the CFTC motion for summary judgment (Doc. 749 at ¶¶ 9, 11); the trial testimony of Joseph Anile, the attorney for Oasis (Doc. 749-2 at 94:1-8); and DaCorta's trial testimony (Doc. 749-3 at 50:5-10). None of these sources supports the contention that funds were invested for the purpose of trading in commodity interests.

Paragraphs nine and eleven of the CFTC's motion, already discussed above, contain no relevant evidence that Oasis traded in commodities (forex exchange or retail forex exchange) on behalf of any of the lenders – again See 7 U.S.C. §6b(a)(2).

The district court also cites to the testimony of Joseph Anile at the criminal trial. This citation is deliberately deceptive because in that excerpt, Mr. Anile is discussing the state of Mr. DaCorta's company, Oasis, prior to 2012, which is prior to the time frame being discussed in this lawsuit and prior to any of the lenders or "investors" in question being involved with Oasis. Finally, the district court again cites to the same testimony of Mr. DaCorta, in which he never states that he was accepting funds for the purpose of trading in commodity interests on behalf of others. The district court's holding that *the record is clear that such funds were invested for trading in commodity interests* (Doc. #780 at 18) is false and summary judgment should not have been granted.

Count Two: The District Court Erred When It Asserted That Lenders Participation Based On A Promissory Note System As Opposed To Direct Investing Does Not Effect Whether Oasis Should Be Classified As A Commodity Pool.

The district court erred when it held that the promissory note system does not effect the classification of Oasis as a commodity pool. To support this assertion, the district court cites to *Commodity Futures Trading Comm'n v. Collins*, No. 94 C 4375, 1997 WL 106135, at *2 (N.D. Ill. Feb. 10, 1997). (See Doc. 780 at 18).

However, the district court's reasoning is faulty as the Northern District never held that.

In *Collins*, the Northern District of Illinois found that the investors believed that they were investing in commodities but were told that the transactions were loans and that borrowers would share in the profits from the commodities transactions. See *Collins*, 1997 WL 106135 at 1. The facts of *Collins* are distinguishable in that the investors believed they were investing in commodities and sharing in profits from the trade in commodities. However, here, the lenders were loaning money with a contractual promise to receive re-payment.

Count Two: The District Court Erred When It Held That The Oasis Entities Are Not Qualified As Eligible Contract Participants (ECPs) – Meaning They Are Exempt From CFTC Regulation – Because The Lenders, Which The District Court Calls Investors, Are Not ECPs Because That Holding Is Based Purely On The Fictionalized Existence Of Commodity Pools.

The district court erroneously held that the Oasis entities and Mr. DaCorta are not Eligible Contract Participants under 7 U.S.C. §1a(18)(A)(iv)(II), which states that a *The term eligible contract participant means—(A) acting for its own account—(iv) a commodity pool that—(II) is formed and operated by a person subject to regulation under this chapter or a foreign person performing a similar role or function subject as such to foreign regulation (regardless of whether each investor in the commodity pool or the foreign person is itself an eligible contract participant) provided, however, that for purposes of section 2(c)(2)(B)(vi) of this title and section*

2(c)(2)(C)(vii) of this title, the term "eligible contract participant" shall not include a commodity pool in which an participant is not otherwise an eligible contract participant.

The district court's analysis assumes incorrectly two things: 1) that the Oasis entities and Mr. DaCorta were commodity pools; and 2) that the Oasis entities were not ECPs under 7 U.S.C. §1a(18)(A)(v)(III)(aa) and (bb), which states *The term eligible contract participant means—(A) acting for its own account—(v) a corporation, partnership, proprietorship, organization, trust, or other entity—(III) that – (aa) has a net worth exceeding $1,000,000; and (bb) enters into a an agreement, contract, or transaction in connection with the conduct of the entity's business or to manage the risk associated with an asset or liability owned or incurred or reasonable likely to be owned or incurred by the entity in the conduct of the entity's business.*

As has been previously discussed, neither the Oasis entities nor Mr. DaCorta acted as a commodity pool or a commodity pool operator. The lack of any evidence to the contrary means that there is a genuine issue of material fact with regard to the existence of a commodity pool. Additionally, the district court's limited analysis tortures the definition of Eligible Contract Participant by constricting it to one of the many possible definitions of Eligible Contract Participant. In this case, the district court's faulty assumption under §1a(18)(A)(iv) is that Oasis is a commodity pool

and that Mr. DaCorta is a commodity pool operator and that both are subject to regulation. Additionally, the district court does no analysis of any of the other means of becoming an Eligible Contract Participant under 7 U.S.C. §1a.

Mr. DaCorta asserted in his motions that OIG was an Eligible Contract Participant under the subsection cited above. (See Doc. #750 at ¶¶ 30-36). Thus, whether Oasis and Mr. DaCorta were Eligible Contract Participants and, therefore, exempt from regulation under a separate sub-section as they asserted was never addressed by the district court and there remains an undecided genuine issue of material fact, precluding the granting of summary judgment.

Under Count Two, The District Court Erred When It Held That The Oasis Entities Were Commodity Pool Operators, Retail Forex Commodity Pool Operators, And That DaCorta Was An Associated Person Thereof.

The district court erred when it held, under count two, that *there is no genuine dispute of material fact that both OIG and OM* (the Oasis entities) *were both CPOs and retail forex CPOs* (Doc. 780 at 30) and that *there is no genuine dispute of material fact that DaCorta was both an AP* (associated person) *of a CPO and an AP of a retail forex CPO*. (Doc. 780 at 30). The district court's reasoning, once again, was based on the unproven assertion that the Oasis entities operated commodity pools and that DaCorta solicited investment for the purpose of investing in commodities on behalf of others. Mr. DaCorta negated the assertion that there existed commodity pool operators or associated persons (Doc. #750 at ¶ 40 and pgs.

37-38 DaCorta motion) and it remains an outstanding issue of material fact precluding a finding of summary judgment.

In support of this contention, the district court cites to the CFTC's motion for summary judgment (Doc. #749 at ¶ 68), which merely states that DaCorta was responsible for all investment decisions, as well as managing a relationship with an outside broker, citing to the testimony of Joseph Anile at the criminal trial. Additionally, the district court cites Mr. DaCorta's trial testimony (Doc. 749-3 at 205:4-11, 206:8-15), which merely states that DaCorta managed a relationship with an outside broker and at one point changed brokers. The excerpts cited by the district court were a very limited window of information concerning one fraction of the activities of Mr. DaCorta. The information in no way proves that Mr. DaCorta ran a commodity pool, was a commodity pool operator or a retail forex commodity pool operator or an associated person of either such entity.

While the district court cites the statutory definition of commodity pool operator under 7 U.S.C. §1a(11)(A), which states that "*the term "commodity pool operator" means any person ---(i) engaged in a business that is of the nature of a commodity pool…*" and the regulatory definition of a retail forex commodity pool operator under 17 C.F.R. §5.1(d)(1), which states "*Commodity pool operator, for purposes of this part, means any person who operates or solicits funds, securities, or property for a pooled investment vehicle that is not an eligible contract*

participant as defined in section 1a(18) of the Act, and that engages in retail forex transactions," the district court's analysis is, once again, faulty and there remain issues of material fact that remain outstanding.

The district court merely states that DaCorta solicited funds on behalf of the Oasis entities as the definitive support for both of these contentions. (Doc.# 780 at 30-31). This does not prove that such pools existed as defined by statute or that Oasis was a commodity pool operator or retail forex commodity pool operator and that remains a genuine issue of material fact, precluding a finding of summary judgment.

The District Court Erred When It Granted Summary Judgment On Count Three Because The Oasis Entities Were Not Commodity Pool Operators And Mr. DaCorta Was Not An Associated Person Of A Commodity Pool Operator.

Under count three of the amendment complaint, the CFTC alleged violations of 7 U.S.C. §§ 2(c)(2)(C)(iii)(1)(cc), 6k(2), 6m(1), and 17 C.F.R. §5.3(a)(2), by failing to register as a CPO and retail forex CPO and Associated Person of a CPO and Associated Person of a retail forex CPO.

Each of the allegations require the existence of a commodity pool, that the Oasis entities were commodity pool operators and retail forex commodity pool operators, and that Mr. DaCorta was an associated person of a commodity pool operator or retail forex commodity pool operator, and that none were Eligible Contract Participants. The existence of any type of commodity pool or commodity pool operator remains an outstanding issue of material fact because the CFTC has

failed to put forth any evidence that Oasis and Mr. DaCorta offered to, or entered into any agreement contract or transaction in foreign currency with any of the lenders in this case. Thus, the requirement to register as such cannot be imposed.

Title 7 U.S.C. §2(c)(2)(C)(iii)(1)(cc) states: A person, unless registered in such capacity as the Commission by rule, regulation, or order shall determine and a member of a futures association registered under section 21 of this title, shall not-- **(cc)** operate or solicit funds, securities, or property for any pooled investment vehicle that is not an eligible contract participant in connection with agreements, contracts, or transactions described in clause (i) of this subparagraph entered into with or to be entered into with a person who is not described in item (aa), (bb), (ee), or (ff) of subparagraph (B)(i)(II). Relevant to this section is 7 U.S.C. §2(c)(2)(C)(i)(I), which states that §2 (c)(2)(C)(iii)(1)(cc) is applicable to any agreement, contract, or transaction in foreign currency that is—(aa) offered to, or entered into with, a person that is not an eligible contract participant.

Neither DaCorta nor the Oasis entities ever *entered into* a contract or transaction in foreign currency with any of the lenders in this case and neither was such a contract for the sale in foreign currency *offered to* them. None of the lenders ever entered into any contract for the sale or the purchase of a commodity and DaCorta and Oasis never contracted to purchase commodities on their behalf.

Each of the statutes and regulations cited by the district court require that in order to violate said statute, one must be acting as a commodity pool operator and soliciting funds for participation in a commodity pool. No such evidence was offered by the CFTC or cited to by the district court. Whether the Oasis entities were commodity pool operators and whether DaCorta was an associated person both remain outstanding issues of material fact.

The district court erroneously held that there was no genuine dispute of material fact that the Oasis entities were CPOs and retail forex CPOs or that DaCorta was an associated person of those CPOs. (Doc. #780 at 32). The district court makes no citations to any additional factual support for this conclusion. As previously stated, the district court's flawed assessment of the existence of commodity pools and commodity pool operators is based on the unsound opinions of Ms. Robinson, Ms. Davis, and Mr. Wiand. None of these declarations/statements relied upon by the CFTC and the district court contain a sound analysis of the statutes involved here or of the facts of this case. The declarations begin with the assumption that there exist commodity pools and commodity pool operators without explanation or analysis. Those faulty assertions were relied upon by the district court.

The District Court Erred When It Granted Summary Under Counts Four And Five Of The Amended Complaint As Oasis And DaCorta Never Received Pool Funds And Never Commingled Funds Regarding Pools That Never Existed.

Under count four, the CFTC alleged that Mr. DaCorta and the Oasis entities violated regulation 17 C.F.R. §4.20(b)-(c) (2018) in that Mr. DaCorta and the Oasis entities, acting as commodity pool operators and associated persons of commodity pool operators received funds from pool participants, did not receive the funds in the name of the pool, and commingled the Oasis pool property with the property of other persons.

The district court granted summary judgment (Doc. #780 at 33), citing to Ms. Robinson's declaration (Doc. #4-1 at ¶ 30, 44, 45); the CFTC's motion (Doc. 749 at ¶ 50); Mr. Anile's testimony (Doc. #749-2 at 153:5-157:13); and Mr. DaCorta's motion (Doc. 757 at ¶50).

Ms. Robinson's declaration (Doc. #4-1 at ¶ 30, 44, 45) is, again, an accounting of funds going in and out of accounts without any analysis as to whether the accounts were "pooled funds" and whether the activity by Oasis subjected them to regulation by the CFTC. The district court's reliance on that declaration is faulty in that it does not prove the existence of pooled funds.

The district court also cited to the CFTC's motion (Doc. 749 at ¶ 50) where the CFTC asserted that Mr. DaCorta paid for a personal residence with Oasis funds. This was a misrepresentation to the court because DaCorta did not own the home but purchased it as an investment for Oasis and intended to flip the house for the company's profit. Thus, the CFTC's representation that DaCorta paid for two

personal residences is false. The investments in real estate were consistent with the loan agreement signed with each of the lenders. They were made aware, *ab initio*, that Oasis would invest in real estate. (Doc. # 750-1 at pg. 4). The Agreement and Risk Disclosures statement signed by each of the lenders permitted Oasis to use funds for various investments, including real estate. (Doc. #750-1 at pg. 4).

Furthermore, the CFTC citing to Mr. DaCorta's testimony mentions that he took a trip on a private plane; however, the CFTC leaves out the fact that Mr. DaCorta testified that the majority of the time he flew coach; the district court fails to mention that Mr. DaCorta testified that he rarely went on vacation (about 2.5 days per year over the last ten years See Doc. 749-3 at 125). The CFTC makes grandi60-8267ose representations of a luxurious lifestyle that are untrue and inexistent. The district court's reliance on these assertions is a failure to look at all the facts.

Count Five

Under count five, the CFTC alleged a violation of 17 C.F.R. §4.21 (2018), stating that Mr. DaCorta and the Oasis entities, acting as commodity pool operators and associated persons of commodity pool operators failed to provide pool disclosures. It was again alleged that Mr. DaCorta and the Oasis entities operated as commodity pool operators relating to forex transactions and that they were required to register as commodity pool operators and failed to deliver to pool participants a disclosure document.

Here again, the requirement to deliver such disclosures is dependent upon the finding that there existed commodity pools, that Oasis acted as a commodity pool operator, and that DaCorta was an associated person thereof, and that trades were not executed by an Eligible Contract Participant. No such evidence exists, precluding a finding of summary judgment.

CONCLUSION

The district court's decision granting summary judgment must be vacated and the consequent remedies imposed by the district court must be reversed and vacated as well, including the injunctive relief, restitution, and civil penalty.

Dated: June 25, 2024

/s/ Stephen N. Preziosi
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CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT

1. This brief complies with the type-volume limit of Fed. R. App. P. 32(a)(7)(B) because, excluding the parts of the brief exempted by Fed. R. App. P. 32(f), this document contained 12,938 words.

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in proportionally spaced typeface using Microsoft Word in Times New Roman typeface and 14-point font size.

/s/ Stephen N. Preziosi

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Dated: June 25, 2024

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August 8, 2024

Re: Your letter dated August 6, 2024

Dear Ms. McConnell,

I am in receipt of your letter dated August 6, 2024. In your letter you state that I somehow failed to properly respond to the subpoena after I agreed to accept service on June 7, 2024. You also mention objections and logs that should be provided.

I spoke to Mr. Wiand on the phone regarding the documents that I provided and each part of the subpoena that I complied with. I provided all documents with regard to remuneration and the fees that I charged for my legal services, including retainer agreement and payment.

As I told Mr. Wiand over the phone and later communicated with him by letter, the documents that will be the subjection of my motion to modify the subpoena are emails that contain discussions of legal strategy and legal argument for the appeal presently pending before the Eleventh Circuit. They will be the subject of a motion to modify the subpoena. As you seem to be the third law firm I am dealing with, perhaps you are not aware of my communications, both verbal and written, with the receiver.

Shortly after speaking with Mr. Wiand I moved the U.S. District Court in the Middle District of Florida for special admission and that was granted. Neither Mr. Wiand nor the CFTC objected to my motion for special admission to the Middle District of Florida. Therefore, I am slightly puzzled that while Mr. Wiand and the CFTC attorneys had no objection to me making a motion to modify the subpoena, you seem to be seeking a list of objections and logs. The communications regarding legal argument and strategy on appeal will be the subjection of my motion. With regard to the logs that you mention, I do not possess any logs, and, as far as I am aware, none exist.

The District Court processed my request for electronic filing registration today, and I will be filing my motion to modify on or before Monday August 12, 2024.

Respectfully,

Stephen N. Preziosi, Esq.