

**IN THE EIGHTEENTH JUDICIAL DISTRICT  
DISTRICT COURT, SEDGWICK COUNTY, KANSAS  
CIVIL DEPARTMENT**

OFFICE OF THE KANSAS )  
SECURITIES COMMISSIONER, *ex rel.* )  
Daniel J. Klucas, Securities Commissioner, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
PREMIER GLOBAL CORPORATION, *et al.*, )  
 )  
Defendants. )  
 )

Case No. 2022-CV-002052-OT

Division 22

Pursuant to K.S.A. 17-12a603

**APPLICATION FOR TEMPORARY RESTRAINING ORDER, ORDER FOR  
NON-DESTRUCTION OF RECORDS, AND ORDER FREEZING ASSETS**

COMES NOW the Plaintiff, the Office of the Kansas Securities Commissioner, *ex rel.* Daniel J. Klucas. (“the KSC”), and pursuant to K.S.A. 17-12a603, respectfully submits this application for a temporary restraining order against defendants Premier Global Corporation, Premier Factoring, LLC, PF-2, LLC, PF-3, LLC, PF-4, LLC, PF-5, LLC, PF-6, LLC, PF-7, LLC, Premier Factoring Group, LLC, KCI Business Services, LLC, DDI Advisory Group, LLC, Steven J. Parish, and Richard D. Dean (collectively “Defendants”), an order for non-destruction of records, an order freezing the assets of the Defendants, and for a temporary injunction against the Defendants.

The KSC incorporates herein by reference the allegations made in the *Verified Petition for Permanent Injunction and Other Equitable Relief, and Civil Penalties* (“*Verified Petition*”), filed on November 1, 2022.

The KSC petitions this Court to prevent continued violations of the Kansas Uniform Securities Act, K.S.A. 17-12a101 *et seq.* (“KUSA”) by the Defendants, to preserve proceeds and assets (including investor funds) for the victims of Defendants’ fraud and prevent their dissipation at the whim of its perpetrators, and to remedy past violations of the KUSA committed by the Defendants. Therefore, the KSC moves this Court to issue, *instanter and without notice*, a temporary restraining order, an order for the non-destruction of records, and an order freezing assets until the Court may afford the parties a hearing, whereupon the KSC further moves the Court to enter a temporary injunction. The entry of such orders is appropriate and necessary for the reasons set forth below.

## **I. NATURE OF THE CASE**

This case involves the Defendants’ violations of the KUSA. Specifically, Defendants offered and sold unregistered securities in violation of K.S.A. 17-12a301, employed or associated with unregistered agents in violation of K.S.A. 17-12a402, and perpetrated fraud in connection with the offer, sale, or purchase of securities in violation of K.S.A. 17-12a501. Since at least 2018, Defendants Steven J. Parish and Richard D.

Dean have operated a massive Ponzi scheme<sup>1</sup> through multiple business entities under their control. The Defendants' violations of the KUSA have resulted in losses of approximately \$80 million to \$100 million for hundreds of investors in at least 15 states.

Premier Global Corporation and a number of its partially-owned subsidiaries known as "Factoring Entities" (altogether referred to as "Premier") are in the business of "invoice factoring," whereby Premier purchases invoices or accounts receivable (hereinafter "Factored Invoices") at a discount from construction subcontractors and a variety of other types of companies (referred to as "Vendors"). After purchasing the Factored Invoices, Premier is entitled to collect the full amount owed for the invoices, thereby generating profits.

Commencing in approximately 2010, Premier began raising capital for its invoice factoring activities through the sale of securities in the form of *Transferee Agreements* and *Promissory Notes*. Through the sales of these securities, Premier raised approximately \$100 million from at least 570 investors from 15 states.

Most *Promissory Note* investors learned about Premier through unregistered agents who had been retained by Richard Dean in his role as co-manager of the Factoring Entities and owner of DDI Advisory. Richard Dean provided these agents with verbal and written information regarding Premier to be provided to prospective investors. All

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<sup>1</sup> A "Ponzi scheme," as the term is generally used, refers to an investment scheme in which returns to investors are not financed through the success of the underlying business venture, but are taken from principal sums of newly attracted investments. Typically, investors are promised large returns for their investments. Initial investors are actually paid the promised returns, which attract additional investors.

but one of these agents was not registered under the KUSA as required, and several have previously been sanctioned for unregistered securities violations. Richard Dean was the subject of a *Consent Order* issued by the KSC in January 2020, which found that Dean had unlawfully sold unregistered securities and acted as an unregistered agent in violation of the KUSA. Even after the January 2020 *Consent Order*, Dean continued to engage unregistered agents to sell the unregistered *Promissory Notes* issued by Premier.

Both in written offering documents and in verbal communications to investors, the Defendants and their agents represented that Premier's invoice factoring business was successful and profitable, that since 2018 the company had "revenues" of hundreds of millions of dollars, that the investors' funds would be used to purchase Factored Invoices, and that the investors' returns would be generated by the company's invoice factoring revenues. However, since at least 2018, Premier's invoice factoring business has not generated sufficient revenues to pay investor returns. Instead, Premier has primarily paid investment returns to earlier investors with money raised from later investors, the definition of a classic Ponzi scheme. Premier's actual financial condition was never disclosed to investors.

According to several former employees of Premier, each day Steven Parish personally directed the transfer of funds among Premier Global's Operating Accounts, the Factoring Entity Accounts, and the Transferee Accounts. Further, Steven Parish limited the information available to other individuals working for Premier and was thereby able to conceal that Premier lacked sufficient business revenues to pay investor

returns while disguising that the true source of most funds being transferred among the various accounts was merely funds from new investors.

Luciana Simmons of the Oklahoma Department of Securities has conducted a preliminary financial analysis of Premier's bank records to determine if Premier has had sufficient business revenues to account for the investment return payments Premier has been making to *Transferee Agreement* Investors and *Promissory Note* Investors. Luciana Simmons is a Certified Public Accountant (CPA), Certified Fraud Examiner (CFE), and Certified Anti-Money Laundering Specialist (CAMS). She has 26 years of accounting experience, including 11 years of forensic accounting. She has been employed with the Oklahoma Department of Securities since 2016.

To conduct this preliminary financial analysis, all credits to and debits from Premier Global's Operating Accounts and the Factoring Entity Accounts were categorized as follows:

- a. Transfers: transfers of funds between or among Premier Global's Operating Accounts and the Factoring Entity Accounts were categorized as "Intra-Company/Entity Transfers" and were excluded from the calculations of Premier's revenues (labeled "Deposits") and Expenditures;
- b. Investors: transactions with known or suspected investors were categorized as "Investors" for both Deposits and Expenditures;
- c. Salespeople: transactions with known Agents and DDI Advisory were categorized as "Salespeople" for both Deposits and Expenditures; and

- d. Potential Business: all other Deposits and Expenditures were categorized as “Potential Business” even if the purpose of the transactions were unknown or appeared unlikely to be related to Premier’s invoice factoring business

By assuming that all non-Investor, non-Salespeople, and non-Transfer transactions are “Potential Business,” this preliminary analysis gives Premier “the benefit of the doubt” for these remaining transactions by assuming they are all business related. These remaining transactions were categorized as “Potential Business” even if they were clearly unrelated to Premier’s invoice factoring business.

The table below summarizes the results of this preliminary analysis for the period January 2018 to February 2022:

	2018	2019	2020	2021	2022	Grand Total
<b>Deposits</b>						
Potential Business	\$11,585,039.66	\$14,336,160.39	\$17,256,269.00	\$17,761,613.63	\$3,681,189.33	\$64,620,272.01
Investors	\$77,332,892.65	\$116,882,882.55	\$145,704,234.28	\$170,712,560.33	\$14,211,033.50	\$524,843,603.31
Salespeople	\$28,385.80	\$289,470.71	\$63,895.20	\$331,814.89	\$0.00	\$713,566.60
<b>Total</b>	<b>\$88,946,318.11</b>	<b>\$131,508,513.65</b>	<b>\$163,024,398.48</b>	<b>\$188,805,988.85</b>	<b>\$17,892,222.83</b>	<b>\$590,177,441.92</b>
<b>Expenditures</b>						
Potential Business	(\$39,136,475.26)	(\$49,320,195.01)	(\$33,722,017.90)	(\$29,774,190.11)	(\$4,057,065.20)	(\$156,009,943.48)
Investors	(\$46,298,051.66)	(\$78,703,602.17)	(\$128,465,331.37)	(\$164,314,444.56)	(\$13,763,465.16)	(\$431,544,894.92)
Salespeople	(\$752,849.84)	(\$1,970,129.11)	(\$2,365,098.79)	(\$1,260,889.01)	(\$180,302.88)	(\$6,529,269.63)
<b>Total</b>	<b>(\$86,187,376.76)</b>	<b>(\$129,993,926.29)</b>	<b>(\$164,552,448.06)</b>	<b>(\$195,349,523.68)</b>	<b>(\$18,000,833.24)</b>	<b>(\$594,084,108.03)</b>
Intra-Company Transfers In	\$69,707,806.33	\$161,319,705.17	\$285,398,598.61	\$347,295,097.19	\$10,412,392.35	\$874,133,599.65
Intra-Company Transfers Out	(\$69,359,382.49)	(\$160,222,005.74)	(\$284,782,531.19)	(\$344,469,846.93)	(\$10,529,939.93)	(\$869,363,706.28)

As the table above shows, since at least 2018, the funds being paid to investors each year greatly exceeded potential business revenues. During the period beginning in January 2018 and ending in February 2022, approximately \$525 million of investor money was deposited in at least 21 accounts maintained by Premier Global and the

Factoring Entities at five banks. During the same period, Premier had no more than \$65 million of other monies deposited into those accounts that could possibly be attributed to invoice factoring revenue. During the same period, purported returns paid to investors exceeded \$431 million, a difference of approximately \$366.9 million.<sup>2</sup> The only possible source of funds for these investment return payments was roughly \$524.8 million received from investors from the sale of *Promissory Notes* and repeated transfers of funds from Transferee Accounts.<sup>3</sup>

Thus, Premier has not had sufficient business revenues to account for the investment return payments Premier has been making to investors. Instead, Premier has been operating a Ponzi scheme by relying on new investment funds to make payments to prior or existing investors.

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<sup>2</sup> Premier repeatedly transferred funds back and forth between Transferee Accounts and Factoring Entity Accounts on the one hand and Premier Global's Operating Accounts on the other. However, the Transferee Accounts were held in the name of the investors, while the Factoring Entities Accounts were held in the names of each particular Factoring Entity. Thus, for the purposes of the preliminary analysis of Premier's bank records described herein, deposits from "Investors" includes: (1) funds raised through *Promissory Notes* and deposited into Premier Global's Operating Accounts or the Factoring Accounts; and (2) funds repeatedly transferred from Transferee Accounts to Premier Global's Operating Accounts. Likewise, expenditures to "Investors" includes: (1) funds paid to *Promissory Notes* Investors; and (2) funds repeatedly transferred to Transferee Accounts from Premier Global's Operating Accounts. Because the Factoring Entity Accounts were held in the names of the Factoring Entities and not investors, funds transferred between Premier Global's Operating Accounts and the Factoring Entity Accounts are categorized as "Intra-Company-Entity Transfers."

<sup>3</sup> This figure of roughly \$524.8 million includes the funds repeatedly transferred from Transferee Accounts. Because these funds were repeatedly transferred to and from Premier Global's Operating Accounts, the funds *Transferee Agreement* investors originally deposited into the Transferee Accounts are included an unknown number of times in this figure of roughly \$524.8 million. The amount of investor funds originally deposited into the Transferee Accounts is presently unknown.

## II. VIOLATIONS OF THE KUSA

### A. K.S.A. 17-12a301: Offer and Sale of Unregistered Securities.

The *Transferee Agreements* and *Promissory Notes* constitute securities as defined by K.S.A. 17-12a102(28). K.S.A. 17-12a301 states:

It is unlawful for a person to offer or sell a security in this state unless:

- (1) The security is a federal covered security;
- (2) The security, transaction, or offer is exempted from registration under K.S.A. 17-12a201 through 17-12a203, and amendments thereto; or
- (3) the security is registered under this act.

The *Transferee Agreements* and *Promissory Notes* are not federal covered securities, are not exempt from registration under K.S.A. 17-12a201 through 17-12a203, and are not and have not been registered under the KUSA. By reason of the foregoing and as detailed in the *Verified Petition*, the Defendants have violated, may be violating, and will continue to violate K.S.A. 17-12a301 unless enjoined.

### B. K.S.A. 17-12a401: Acting as an Unregistered Broker-Dealer.

Premier Global and the Factoring Entities are the issuers, as defined by K.S.A. 17-12a102(17), of the *Promissory Notes* described above. Premier Global and the Factoring Entities, while engaged in the offering or selling of the *Promissory Notes*, employed or associated with DDI Advisory. DDI Advisory, by virtue of its efforts and activities in



effecting or attempting to effect purchases or sales of the *Promissory Notes*, is a broker-dealer as defined by K.S.A. 17-12a102(4). K.S.A. 17-12a401(a) states:

It is unlawful for a person to transact business in this state as a broker-dealer unless the person is registered under this act as a broker-dealer or is exempt from registration as a broker-dealer under subsections (b) or (d).

DDI Advisory is not exempt from registration under subsections (b) or (d) of K.S.A. 17-12a401, and DDI Advisory is not and has not been registered under the KUSA. By reason of the foregoing and as detailed in the *Verified Petition*, DDI Advisory has violated, may be violating, and will continue to violate K.S.A. 17-12a401 unless enjoined.

**C. K.S.A. 17-12a402: Acting as an Unregistered Agent**

Richard Dean, by virtue of his efforts and activities in effecting or attempting to effect purchases or sales of the *Promissory Notes*, is an agent as defined by K.S.A. 17-12a102(2). K.S.A. 17-12a402(a) states:

It is unlawful for an individual to transact business in this state as an agent unless the individual is registered under this act as an agent or is exempt from registration as an agent under subsection (b).

Richard Dean is not exempt from registration under subsection (b) of K.S.A. 17-12a402, and is not and has not been registered as an agent under the KUSA. By reason of the foregoing and as detailed in the *Verified Petition*, Richard Dean has violated, may be violating, and will continue to violate K.S.A. 17-12a402 unless enjoined.

**D. K.S.A. 17-12a402: Employment of Unregistered Agents**

Premier Global and the Factoring Entities are the issuers, as defined by K.S.A. 17-12a102(17), of the *Promissory Notes*. The Defendants, while engaged in the offering or selling of the *Promissory Notes*, employed or associated with the Agents described in Paragraph 27 of the *Verified Petition*. The Agents described in Paragraph 27, by virtue of their efforts and activities in effecting or attempting to effect purchases or sales of the *Promissory Notes*, are agents as defined by K.S.A. 17-12a102(2). K.S.A. 17-12a402(d) states:

It is unlawful for a broker-dealer, or an issuer engaged in offering, selling, or purchasing securities in this state, to employ or associate with an agent who transacts business in this state on behalf of broker-dealers or issuers unless the agent is registered under subsection (a) or exempt from registration under subsection (b).

All but one of the Agents described in Paragraph 27 of the *Verified Petition* were not registered as agents under the KUSA and were not exempt from registration as agents under subsection (b) of K.S.A. 17-12a402. By reason of the foregoing and as detailed in the *Verified Petition*, the Defendants have violated, may be violating, and will continue to violate K.S.A. 17-12a402 unless enjoined.

**E. K.S.A. 17-12a501(2): Untrue Statements and Omissions of Material Fact**

The Defendants, in connection with the offer and/or sale of the *Transferee Agreements* and *Promissory Notes*, directly or indirectly made untrue statements of material fact. The Defendants, in connection with the offer and/or sale of the *Transferee Agreements* and *Promissory Notes*, directly or indirectly omitted to state material facts

necessary in order to make statements made, in light of the circumstances under which they were made, not misleading. K.S.A. 17-12a501 states:

It is unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly:

...

(2) to make an untrue statement of a material fact, or omit to state a material fact necessary in order to make a statement made, in the light of the circumstances under which it is made, not misleading[.]

By reason of the foregoing and as detailed in the *Verified Petition*, the Defendants have violated, may be violating, and will continue to violate K.S.A. 17-12a501(2) unless enjoined.

#### **F. K.S.A. 17-12a501: Fraud**

The Defendants, in connection with the offer and/or sale of the *Transferee Agreements* and *Promissory Notes*, directly or indirectly employed a device, scheme, or artifice to defraud. K.S.A. 17-12a501 states:

It is unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly:

(1) to employ a device, scheme or artifice to defraud[.]

By reason of the foregoing and as detailed in the *Verified Petition*, the Defendants have violated, may be violating, and will continue to violate K.S.A. 17-12a501(1) unless enjoined.

**G. K.S.A. 17-12a501: Deceit**

The Defendants, in connection with the offer and/or sale of the *Transferee Agreements* and *Promissory Notes*, directly or indirectly engaged in an act, practice, or course of business that operated or would operate as a fraud or deceit upon another person.

K.S.A. 17-12a501 states:

It is unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly:

...

(3) to engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

By reason of the foregoing and as detailed in the *Verified Petition*, the Defendants have violated, may be violating, and will continue to violate K.S.A. 17-12a501(3) unless enjoined.

**III. AUTHORITY FOR RELIEF REQUESTED**

When construing the KUSA, the Kansas Supreme Court instructed as follows in State ex rel. Mays v. Ridenhour, 248 Kan. 919, 934 (1991):

This court noted in State v. Hodge, 204 Kan. 98, 101, 460 P.2d 596 (1969), that the legislative intent and purpose for enacting the Kansas Securities Act was to place the traffic of promoting and dealing in speculative securities under rigid governmental regulation and control to protect investors and to prevent, to the extent possible, the sale of fraudulent or worthless speculative securities. In State ex rel. Owens v. Colby, 231 Kan. 498, 501, 646 P.2d 1071 (1982), this court noted that the Kansas Securities Act was patterned after the Uniform Securities Act that, in turn, copied the Federal Securities Act of 1933 (15 U.S.C. §§ 77a *et seq.* (1975)). Because of the web of Uniform Acts throughout the country and their common history and

theories in regulating securities, the Kansas Act should be developed by court decisions that are firmly grounded on prior state decisions and upon prior decisions of the federal courts and the courts of our sister states. Because securities acts are remedial legislation, they must be liberally construed. Hodge, 204 Kan. At 103, 460 P.2d 596. Cf. Tcherepnin v. Knight, 389 U.S. 332, 336, 88 S.Ct. 548, 553, 19 L.Ed.2d 564 (1967).

*See also* Tcherepnin v. Knight, 389 U.S. 332, 336 (1967) (securities laws are remedial in nature, and as such they should be broadly construed to effectuate their purposes).

Further, Kansas courts have emphasized the importance of interpreting provisions based on the Uniform Securities Act (“the USA”) uniformly across jurisdictions which have adopted the USA’s provisions:

the Kansas Securities Act is patterned on the Uniform Securities Act, which, in turn, is patterned on the Federal Securities Act of 1933. Accordingly, the Uniform Act should be construed in such a way as to make its application uniform in those jurisdictions adopting it. In other words, the Kansas Act should be applied by giving particular attention to federal decisions and decisions of sister states adopting the Uniform Act.

State v. Kershner, 15 Kan. App. 2d 17, 18 (1990).

Concerning the relief requested herein, K.S.A. 17-12a603 provides in pertinent part:

(a) *Civil action instituted by administrator.* If the administrator believes that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this act or a rule adopted or order issued under this act or that the person has, is, or is about to engage in an act, practice, or course of business that materially aids a violation of this act or a rule adopted or order issued under this act, the administrator may maintain an action in any court of competent jurisdiction to enjoin the act, practice, or course of business and to enforce compliance with this act or a rule adopted or order issued under this act.

(b) *Relief available.* In an action under this section and on a proper showing, the court may:

- (1) Issue a permanent or temporary injunction, restraining order, or declaratory judgment;
- (2) order other appropriate or ancillary relief, which may include:
  - (A) An asset freeze, accounting, writ of attachment, writ of general or specific execution, and appointment of a receiver or conservator, that may be the administrator, for the defendant or the defendant's assets[.]

The phrase “on a proper showing” is a term of art adopted by the Uniform Law Commission to incorporate its meaning under federal law and retained by the Kansas Legislature in section 603(b). Unif. Sec. Act § 603 cmt. 3 (2002) (noting that “the term ‘upon a proper showing’ has a settled meaning in the federal securities laws. See, e.g., Securities Act of 1933 Section 20(b).”).

#### **A. Temporary Restraining Order**

K.S.A. 17-12a603(b)(1) also grants the Court the power to issue a restraining order. “[T]he purpose of such [an] order is to restrain a defendant for a very brief period, pending a hearing on the application for a temporary injunction. The restraining order can go no further than to preserve the status quo until the hearing is held for the temporary injunction, the status quo being the last actual, peaceable, noncontested position of the parties which preceded the pending controversy.” State v. Alston, 256 Kan. 571, 579 (1994).

A temporary restraining order is essential to preserve the status quo and halt dissipation of assets acquired through Defendants' fraud and unregistered activity until a hearing on the KSC's application for a temporary injunction can be held.

### **B. Temporary Injunction**

K.S.A 17-12a603(b)(1) grants the Court the power to issue a temporary injunction in civil actions brought pursuant to K.S.A. 17-12a603. Generally, a movant seeking a temporary injunction in a civil case must demonstrate (1) a substantial likelihood of success on the merits, (2) there is a reasonable probability of irreparable future injury to the movant; (3) an action at law will not provide an adequate remedy; (4) the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and (5) the injunction, if issued, would not be adverse to the public interest. Steffes v. City of Lawrence, 284 Kan. 380, 395 (2007).

However, “[w]hen an injunction is authorized by statute, relief is not precluded because other remedies at law may be available. In addition, the movant may not be required to demonstrate that the threatened injury outweighs whatever damage may be caused to the opposing party.” State ex rel. Stovall v. Cooper, No. 00-C-1394, 2001 WL 34117813, at \*21 (Kan. Dist. Ct. May 15, 2001.) Moreover, the “proper showing” for a temporary injunction under K.S.A 17-12a603(b) is unique to securities cases, in which the KSC, unlike a private litigant, need not show risk of irreparable injury or unavailability of remedies at law. SEC v. Unifund SAL, 910 F.2d 1028, 1036 (2d Cir.

1990); SEC v. McGinnis, No. 13-CV-1047 AVC, 2013 WL 6500268, at \*3 (D. Conn. Dec. 11, 2013); SEC v. AmeriFirst Funding, Inc., No. CIV A 307-CV-1188-D, 2007 WL 2192632, at \*2 n.7 (N.D. Tex. July 31, 2007); see also United States v. Odessa Union Warehouse Co-op, 833 F.2d 172, 175 (9th Cir. 1987) (“Where an injunction is authorized by statute, and the statutory conditions are satisfied . . . the agency to whom the enforcement of the right has been entrusted is not required to show irreparable injury.”); Arizona State Bd. of Dental Examiners v. Hyder, 562 P.2d 717, 719 (Ariz. 1977) (“Where a state agency has been authorized to institute proceedings in equity to prevent and restrain specified violations of the law, irreparable injury need not be shown.”); Semke v. State ex rel. Oklahoma Motor Vehicle Comm'n, 465 P.2d 441, 445 (Okla. 1970) (“violation of a state statute is an injury to the State and its citizens, and a continuing violation is an irreparable injury for which injunctive relief is available”). Thus, in order to justify the issuance of a temporary injunction here, the KSC need demonstrate only (1) a substantial likelihood of success on the merits, and (2) the requested injunction would not be adverse to the public interest.

The KSC is substantially likely to succeed on the merits of this action. Moreover, this action and the relief sought herein lie in the core of the public interest sought to be protected by the enactment, administration, and enforcement of the KUSA. The “legislative intent and purpose for enacting” the KUSA and its predecessors is to regulate and control the offer, sale, and purchase of securities in Kansas “to protect investors and to prevent, to the extent possible, the sale of fraudulent or worthless speculative



securities.” State ex rel. Mays, 248 Kan. at 934. A temporary injunction, alongside the other relief sought by KSC in this action, is vital to preserving the status quo and beginning the process by which Defendants’ ill-gotten gains can be returned to innocent investors by operation of law and equity.

### C. Asset Freeze

K.S.A. 17-12a603(b)(2) explicitly grants the Court the power to order ancillary relief in the form of an asset freeze. An asset freeze is appropriate where restitution or disgorgement may be required. SEC v. Unifund SAL, 910 F.2d at 1041 (asset freeze vital to preserve opportunity to collect funds that may be ordered disgorged); SEC v. ETS Payphones, Inc., 408 F.3d 727, 734 (11th Cir. 2005) (“asset freeze is justified as a means of preserving funds for the equitable remedy of disgorgement”); Fed. Sav. & Loan Ins. Corp. v. Dixon, 835 F.2d 554, 560 (5th Cir. 1987) (law allows preliminary injunction freezing assets to secure an equitable remedy such as restitution); Sargeant v. Al Saleh, 512 S.W.3d 399, 415 (Tex. App. 2016) (permissible to freeze assets unrelated to the subject matter of the suit when the assets would be subject to a pleaded equitable remedy (citing cases)).

An asset freeze may be granted even where an injunction cannot be and requires only a showing that (1) there is a “basis to infer” defendants violated the KUSA, and (2) there is a risk that the defendants will dissipate assets that could be used to refund investors’ money. SEC v. Unifund SAL, 910 F.2d at 1041; SEC v. Byers, No. 08

CIV.7104 (DC), 2009 WL 33434, at \*3 (S.D.N.Y. Jan. 7, 2009) (“To obtain an asset freeze either against a party accused of actual wrongdoing or a relief defendant, the SEC must show either a likelihood of success on the merits, or that an inference can be drawn that the party has violated the federal securities laws.”); SEC v. Manor Nursing Centers, Inc., 458 F.2d 1082, 1105-06 (2d Cir. 1972); SEC v. Am. Bd. of Trade, Inc., 830 F.2d 431, 439 (2d Cir. 1987) (no abuse of discretion in freeze of personal assets in light of clear danger of depletion); see also Micro Signal Research, Inc. v. Otus, 417 F.3d 28, 31 (1st Cir. 2005) (upholding injunction ordering assets paid into court where there is a strong indication that the defendant may dissipate or conceal assets). “A freeze order can apply to non-parties, such as relief defendants allegedly holding the funds of defendants.” SEC v. Heden, 51 F. Supp. 2d 296, 299 (S.D.N.Y. 1999) (citing U.S. v. First National City Bank, 379 U.S. 378, 384, (1965)).

The primary purpose of this *Application* is to segregate and secure Defendants’ assets and the proceeds of their Ponzi scheme that will be subject to the Court’s judgment and order of restitution and disgorgement sought in the *Verified Petition*. An asset freeze is necessary to preserve Defendants’ remaining assets, to determine the whereabouts of money received, and to ensure Defendants’ ability to repay investors according to the requested judgment of the Court.

#### IV. RELIEF REQUESTED

WHEREFORE, the Plaintiff moves the Court to issue the following orders *instanter and without notice*:

##### I.

An order temporarily restraining the Defendants, their agents, servants, employees, assigns, and all those persons, directly or indirectly, acting on their behalf, under their direction or control, and/or in active concert or participation with them, from offering or selling any security in this state, and from transacting business in this state as an issuer, broker-dealer, agent, investment adviser, or investment adviser representative, until further order of this Court.

##### II.

An order prohibiting the Defendants, their agents, servants, employees, assigns, and all those persons, directly or indirectly, acting on their behalf, under their direction or control, and/or in active concert or participation with them, from tampering with, mutilating, altering, erasing, concealing, removing, destroying or otherwise disposing of any and all books, records, documents, files, correspondence, computer disks, tapes or other data recordings of any type, pertaining to or referring to the Defendants, the *Transferee Agreements* or *Promissory Notes* as described in the *Verified Petition*, or any other financial transactions by Defendants or to which Defendants were, are, intended, or intend to become parties.

### III.

An order freezing the assets of the Defendants, including funds, securities, properties real and personal, tangible and intangible, of whatever kind and description, and wherever situated, held by or under their direct or indirect control, whether held in the name of the Defendants or for the direct or indirect beneficial interest of the Defendants, in whatever form such assets may presently exist (“Assets”)

### IV.

An order restraining the Defendants, their agents, servants, employees, assigns, and all those persons, directly or indirectly, acting on their behalf, under their direction or control, and/or in active concert or participation with them, from withdrawing, transferring, assigning, pledging, selling or otherwise disposing of any Assets of the Defendants held by them, for their benefit, or under their control.

### V.

An order scheduling this matter for a hearing at which time the Defendants may seek the dissolution of the orders described above and Plaintiff may seek a temporary injunction, a continuation of the orders described above, and other equitable relief.

Respectfully submitted,

/s/ Thomas E. Knutzen

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