

SEALED

U.S. DISTRICT COURT
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SECURITIES AND EXCHANGE)
COMMISSION,)
)
PLAINTIFF,)
)
v.)
)
PATRICK O. HOWARD;)
HOWARD CAPITAL HOLDINGS, LLC;)
AND OPTIMAL ECONOMICS CAPITAL)
PARTNERS, LLC,)
)
DEFENDANTS.)

Civil Action No.:
8-17CV-420-L
FILED UNDER SEAL

CERTIFICATION UNDER FED.R.CIV.P. 65(b)

I, Barbara Gunn, do hereby declare under penalty of perjury, in accordance with 28 U.S.C. §1746, that the following is true and correct, and further that this declaration is made on my personal knowledge and that I am competent to testify as to the matters stated herein:

1. I am an attorney-at-law.
2. I am currently admitted to practice in Texas.
3. I have worked in the Enforcement Division of the United States Securities and Exchange Commission (“Commission”) for 29 years, including 18 years in the Fort Worth Regional Office. I currently serve as an Assistant Regional Director of Enforcement for the Fort Worth Regional Office.
4. Since 1998 the Fort Worth Office has sought and obtained emergency relief for the protection of defrauded investors in ninety seven cases.¹ In several of those cases, including

¹ SEC v. Ash Narayan, et al., No. 3:16-cv-1417-M (N.D. Tex. 2016)(Lynn, B.)(granting freeze order, temporary restraining order, preservation of documents, expedited discovery, and other emergency relief); SEC v. Crumbley, Jr., et al., No. 3:16-cv-0172-L (N.D. TX. 2016)(Lindsey, S)(granting freeze order, document

preservation, interim accounting, expedited discovery, alternate service and order appointing receiver); *SEC v. Ascenergy LLC, et al.*, No. 2:15-cv-01974-GMN-PAL (NV 2015)(Navarro, G.)(granting freeze order, interim accounting, and preservation of documents); *SEC v. Sethi Petroleum, LLC, et al.*, No. 4:15-cv-338-ALM (E.D. Tex. 2015)(Mazzant, A.)(granting freeze order, document preservation, interim accounting, expedited discovery and order appointing receiver); *SEC v. Brown, et al.*, No. 6:15-cv-119-WSS (W.D. Tex. 2015)(Smith, W.)(granting order freezing assets, requiring accounting, preserving documents and other emergency relief); *SEC v. Robert A. Helms, et al.*, No. 1:13-cv-01036-LY (W.D. Tex. 2013)(Yeakel, L.)(granting order freezing assets, requiring an accounting, preservation of documents and other emergency relief; granting order appointing receiver); *SEC v. Marco A. Ramirez, et al.*, No. 7:13-cv-531 (S.D. Tex. 2013)(Crane, R.)(granting order freezing assets, appointment of receiver, requiring an accounting, preservation of documents and other emergency relief); *SEC v. Kevin G. White, et al.*, No. 4:13-cv-00383-RAS-DDB (E.D. Tex. 2013)(Schell, R.)(granting order freezing assets, requiring an accounting, preservation of documents and other emergency relief; granting order appointing receiver); *SEC v. Bergin, et al.*, No. 3:13-cv-01940-M (N.D. Tex 2013)(Lynn, B.)(granting order freezing assets, requiring preservation of documents and authorizing expedited discovery); *SEC v. Investment Intelligence Corporation PTY LLC, et al.*, No. 1:12-cv-00863-LY (W.D. Tex 2012)(Yeakel, L.)(granting order freezing assets, granting temporary restraining order and other emergency relief); *SEC v. Usee, Inc., et al.*, No. 3:12-cv-01325-M (N.D. Tex 2012)(Lynn, B.)(granting order freezing assets, requiring accounting, requiring preservation of documents and authorizing expedited discovery); *SEC v. Evolution Capital Advisors, LLC, et al.*, No. H-11-2945 (S.D. TX 2012)(Miller, G.)(granting asset freeze, and appointing receiver); *SEC v. Temme, et al.*, No. 4:11-cv-655 (E.D. Tex.)(Schneider, M.)(granting temporary restraining order, expedited discovery, and appointing receiver); *SEC v. Bjork, et al.*, No. 4:11-cv-02830 (S.D. Tex.)(Ellison, K.)(granting temporary restraining order, order requiring an accounting, expedited discovery, and order appointing receiver); *SEC v. Blackwell, et al.*, No. 3:11-cv-234-L (N.D. Tex.)(Lindsay, S.)(granting temporary restraining order); *SEC v. Smith, et al.*, No.4:10-cv-613-MHS-ALM (E.D. Tex.)(Snyder, M.)(granting temporary restraining order, orders requiring asset freeze, accounting, preservation of documents and expedited discovery); *SEC v. Ginder, et al.*, No. 4:10-cv-02867 (S.D. Tex 2010)(Sim, L.)(granting agreed orders appointing receiver and requiring an accounting); *SEC v. Petrogas Overseas Trading, LP, et al.*, No. 4:10-cv-395-A (N.D. Tex 2010)(McBryde, J.)(granting temporary restraining order, orders freezing assets, requiring and accounting of revenues, expenses and assets, requiring an accounting of revenues, expenses and assets, prohibiting the destruction and/or alteration of documents, requiring surrender of passports, requiring repatriation of assets and authorizing expedited discovery); *SEC v. American Settlement Associates, LLC, et al.*, No. 4:10-cv-912 (S.D. Tex 2010)(Lake, S.)(granting order freezing assets and other emergency relief and order appointing receiver); *SEC v. Alan Todd May, et al.*, No. 3:10-cv-425-L (N.D. Tex 2010)(Lindsey, S.)(granting order freezing assets and other emergency relief and order appointing receiver); *SEC v. Striker Petroleum, LLC, et al.*, No. 3:09cv2304-D (N.D. Tex 2009)(Fitzwater, S.)(granting agreed order freezing assets and appointing receiver); *SEC v. Harris, et al.*, No. 3:09cv1809-M (N.D. Tex 2009)(Boyle, J.)(granting agreed order freezing assets and appointing receiver); *SEC v. Saleh, et al.*, No. 3:09-cv-1778-M, (N.D. Tex. 2009)(Lynn, B.)(granting order freezing assets, requiring an accounting, requiring preservation of documents, and authorizing expedited discovery); *SEC v. Poetter, et al.*, No. 6:09-cv-398, (E.D. Tex. 2009)(Schneider, M.)(granting appointment of receiver and expedited discovery); *SEC v. Tian Wealth Management, et al.*, No. 4:09-cv-418 (E.D. Tex 2009)(Schneider, M.)(granting temporary restraining order, freezing assets, requiring an accounting, requiring preservation of documents, authorizing expedited discovery and granting other equitable relief); *SEC v. Randall, et al.*, No. 3:09-cv-1465-O (N.D. Tex 2009)(O'Connor, R.)(granting temporary order, order freezing assets, requiring accounting, requiring preservation of documents, and authorizing expedited discovery and order appointing receiver); *SEC v. PrivateFX Global One, Ltd., et al.*, No.H-09-cv-1541, (S.D. Tex. 2009)(Lake, S.)(granting asset freeze and other emergency relief, and appointing receiver); *SEC v. Kiselak Capital Group, et al.*, No. 4:09-cv-256-A (N. Tex-Ft. Worth 2009)(McBryde, J.)(granting temporary restraining order and other emergency relief including receiver); *SEC v. Ponta Negra Fund I, LLC, et al.*, No. A09CA-324-SS (W.D. Tex. 2009)(Sparks, B.)(granting temporary restraining order, order freezing assets and granting other emergency relief including receiver); *SEC v. Benny L. Judah and Excel Lease Fund, Inc.*, No. 5:09cv0087-C (N.D. Tex 2009)(S. Cummings)(granting agreed order freezing assets and appointing receiver); *SEC v. Oversea Chinese Fund Limited Partnership, et al.*, No. 3:09-cv0614-B (N.D. Tex 2009)(Boyle, J.)(granting temporary restraining order, order freezing assets, order requiring an accounting, order requiring preservation of documents, and order authorizing expedited discovery, and order appointing receiver); *SEC v. Millennium Bank., et al.*, No. 7-09-cv-050-O (N.D. Tex 2009)(O'Connor, R.)(order granting temporary restraining order, order freezing assets, temporary restraining order, order appointing receiver.); *SEC v. Ray M. White., et al.*, No. 3-09-cv-0407-K (N.D. Tex 2009)(Kinkeade, E.)(granting order freezing assets, temporary restraining order and order appointing

receiver); *SEC v. Stanford International Bank, Ltd., et al.*, No. 3:09-cv-0298-N (N.D. Tex. 2009)(Godbey, D)(order granting temporary restraining order, order freezing assets, order requiring an accounting, order requiring preservation of documents, and order authorizing expedited discovery, and order appointing receiver); *SEC v. Rod Cameron Stringer, et al*, No. 5:09cv0009-C (N.D. Tex. Lubbock 2009)(Cummings, S.)(order appointing receiver); *SEC v. Star Exploration, Inc., et al*, No. 3:08-cv-2248-O (N.D. Tex. 2008)(O'Connor, R.)(order appointing receiver); *SEC v. Delta Onshore Management, LLC, et al*, No. 08-1278-MLB (D. Kan. Wichita 2008)(Belot, M.)(order freezing assets and order appointing receiver); *SEC v. Patrick Henry Haxton, et al.*, No. 3-08CV1467-L (N.D. Tex. 2008)(Lindsay, J.)(granting asset freeze, temporarily restraining order, requiring accountings; prohibiting document alteration or destruction, authorizing expedited discovery; and authorizing alternative methods of service); *SEC v. W Financial Group, LLC, et al.*, No. 3:08-CV-499-N (N.D. Tex. 2008)(Godbey, D.)(granting temporary restraining order, order freezing assets, requiring preparation of sworn accountings, prohibiting document alteration or destruction, authorizing expedited discovery, repatriating all funds and assets and authorizing alternative methods of service, and receiver); *SEC v. McNaul, II, et al.*, No.08-1159-JTM (D. Kan. 2008)(Marten, J.)(granting order freezing assets and requiring preservation of documents, and order appointing receiver); *SEC v. T-Bar Resources, LLC, et al.*, No. 3-07-CV-1994 (N.D. Tex. 2007)(Boyle, J.)(granting agreed preliminary injunction and emergency asset freeze, and appointment of receiver); *SEC v. Terax Energy, Inc.*, No. 3-07-CV-1554 (N.D. Tex. 2007)(Lynn, B.) (granting temporary restraining order, order freezing assets, requiring an accounting, requiring preservation of documents, and authorizing expedited discovery); *SEC v. Roberts, et al.*, No. 4:07-CV786-JLH (E.D. AR. 2007)(Holmes, J.)(granting agreed order of preliminary injunction, order freezing assets, requiring an accounting, and requiring preservation of documents); *SEC v. AmeriFirst Funding, et al.*, No. 3-07-CV-1188 (N.D. Tex. 2007)(Fitzwater, S.)(granting temporary restraining order, order freezing assets, requiring an account, requiring preservation of documents, requiring repatriation of assets and authorizing expedited discovery, and order appointing temporary receiver); *SEC v. Longs, et al.*, No. 4-07-cv-537-SWW (E.D. AR, Western Div.)(Wrights, S.)(agreed order of preliminary injunction, order freezing assets, requiring an accounting, requiring repatriation of assets, and requiring preservation of documents); *SEC v. One or More Unknown Purchasers of Call Options for the Common Stock of TXU Corp, et al.*, No. 01-07-CV-1208 (N.D. Tex. 2007)(Lindberg, G.) (granting temporary restraining order and order freezing assets); *SEC v. ABC Viaticals, et al.*, No. 3-06-CV-2136-P (N.D. Tex. 2006) (Solis, J.)(granting temporary restraining order and order appointing receiver); *SEC v. Seaforth Meridian, LTD., et al.* (No. 06-4107-RDR)(D. Kan. 2006)(granting ex parte order freezing assets, requiring repatriation of assets, authorizing expedited discovery, order requiring preservation of documents and order appointing receiver); *SEC v. Integrated Equities, Inc., et al.*, No. 2:06-CV-00779-RCJ-GWF (D. Nevada 2006)(Jones, R.)(granting preliminary injunctions and order appointing temporary receiver), *SEC v. Sunray Oil Company, Inc., et al.*, No. 3:06-CV-1097-R (N.D. Tex. 2006)(Buchmeyer, J.)(granting temporary restraining order, order freezing assets, and order appointing temporary receiver), *SEC v. EFS, LLC, et al.*, No. 3-06CV0793-M (N.D. Texas 2006)(Sanders, B)(granting ex parte temporary restraining order and order freezing assets and order appointing temporary receiver), *SEC v. ATM Alliance, et al.*, No.A-05-CA-190-LY (W.D. Tex. 2005)(granting ex parte temporary restraining order, order freezing assets, and order appointing temporary receiver); *SEC v. Travis Correll, et al.*, No. 4:05-CV-472 (E.D. Tex. 2005)(Schell, R.)(granting ex parte temporary restraining order, order freezing assets and order appointing temporary receiver), *SEC v. Allixon International Corp., et al.*, No. 3:05-CV-2260-P (N.D. Tex. 2005)(Godbey, D)(granting temporary order freezing assets); *SEC v. Nelson, et al.*, No. 5:05-CV-0266-C (N.D. Tex. 2005)(Cummings, S.)(granting ex parte order freezing asset and order appointing temporary receiver); *SEC v. Megafund, Inc.*, No. 3:05-CV-1328-L (N.D. Tex. 2005)(Lindsey, J.)(granting ex parte temporary restraining order, order freezing assets and order appointing receiver); *SEC v. David Tanner*, No. 05-4057-SAC (D. Kan. 2005)(Crow, J.)(granting ex parte temporary restraining order and asset freeze order); *SEC v. Philip D. Phillip*, No. 2-05CV-107-J (N.D. Tex. 2005)(Robinson, J.)(granting temporary restraining order and order freezing assets); *SEC v. Jack A. Brown*, No. 6:04-CV-537 (E.D. Tex. Dec. 2004)(Schneider, J.)(granting ex parte order freezing assets and order appointing receiver); *SEC v. Kaye*, No. 04-1275-MLB (D. Kan. 2004) (Belot, J.) (granting ex parte temporary restraining order, order freezing assets and order appointing receiver); *SEC v. Kings Real Estate Inv. Trust*, No. 5:04-04006-RDR-KGS (D. Kan. 2004) (Rogers, J.) (granting ex parte temporary restraining order, order freezing assets and order appointing receiver); *SEC v. Cash Link Systems Inc.*, No. 3-04-CV-1573-L (N.D. Tex. 2004) (Lindsay, J.) (granting ex parte temporary restraining order, order freezing assets and order appointing receiver); *SEC v. Levy*, No. 304-CV- 00351-N (N.D. Tex. 2004) (Godbey, J.) (granting order freezing assets); *SEC v. Montana*, No. CIV-04-542 (S.D. Tex. 2004) (Kent, J.) (granting ex parte temporary restraining order, order freezing assets and order appointing receiver); *SEC v. Holt*, No. Civ-03-1825 (D. Ariz. 2003) (Rosenblatt, J.) (granting ex parte temporary restraining order, order freezing assets and order appointing receiver); *SEC v. Henderson*, No. 3-03-

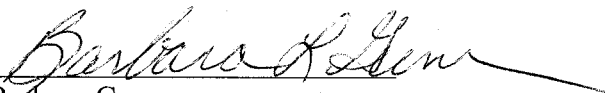
ones in which the asset freeze was granted *ex parte*, one or more defendants or relief defendants violated the asset freeze.

CV-2661-K (N.D. Tex. 2003) (Kinkeade, J.) (granting *ex parte* temporary restraining order, order freezing assets, and order appointing receiver); *SEC v. IPIC Int'l, Inc.*, No. 3-03-CV-2781-P (N.D. Tex. 2003) (Solis, J.) (granting *ex parte* temporary restraining order, order freezing assets and order appointing receiver); *SEC v. Rocky Mountain Energy Corp.*, No. H-03-1133 (S.D. 2003) (Lake, J.) (granting *ex parte* temporary restraining order, order freezing assets and order appointing receiver); *SEC v. United States Reservation Bank and Trust*, No. CIV-02-0581 (D. Ariz. 2002) (Carroll, J.) (granting *ex parte* temporary restraining order, order freezing assets, and order appointing receiver); *SEC v. Southmark Advisory, Inc.*, No. 02CV-830E-(M) (N.D. Okla. 2002) (Ellison, J.) (granting *ex parte* temporary restraining order, order freezing assets, and order appointing receiver); *SEC v. Tyler*, No. 3-02-CV-0282-P (N.D. Tex. 2002) (Solis, J.) (granting preliminary injunction, order freezing assets and order appointing receiver); *SEC v. Res. Dev. Int'l, L.L.C.*, No. 3-02-CV-0605-H (N.D. Tex. 2002) (Buchmeyer, J.) (granting *ex parte* temporary restraining order, order freezing assets and order appointing receiver); *SEC v. Dillie*, No. Civ-01-2493 (D. Ariz. 2001) (Teilborg, J.) (granting *ex parte* temporary restraining order, order freezing assets and order appointing receiver); *SEC v. Stroud*, No. Civ-01-999-L (W.D. Okla. 2001) (West, J.) (granting *ex parte* temporary restraining order, order freezing assets and order appointing receiver); *SEC v. English*, No. Civ-01-223-W (W.D. Okla. 2001) (West, J.) (granting *ex parte* temporary restraining order, order freezing assets and order appointing receiver); *SEC v. Hill*, No. 3-01-CV-2189-X (N.D. Tex. 2001) (Fitzwater, J.) (granting *ex parte* temporary restraining order, order freezing assets and order appointing receiver); *SEC v. C-Tech, L.L.P.*, No. 3-01-CV-2542-P (N.D. Tex. 2001) (Solis, J.) (granting order freezing assets and an order appointing a receiver); *SEC v. First Americap Corp.*, No. H-01-1153 (S.D. Tex. 2001) (Buchmeyer, J.) (granting *ex parte* temporary restraining order and an order freezing assets); *SEC v. Perennial Fund I LP*, No. C00-21181 (N.D. Cal. 2000) (Ware, J.) (granting *ex parte* temporary restraining order, order freezing assets and order appointing receiver); *SEC v. Broadband Wireless Int'l Corp.*, No. Civ-00-1375 (W.D. Okla. 2000) (Russell, J.) (granting *ex parte* temporary restraining order, order freezing assets and order appointing receiver); *SEC v. Garland*, No. 3-00-CV-1149-X (N.D. Tex. 2000) (Kendall, J.) (granting temporary restraining order and order freezing assets); *SEC v. New World Web Vision.Com, Inc.*, No. 4-00-CV-0231-Y (N.D. Tex. 2000) (Means, J.) (granting temporary restraining order, order freezing assets and order appointing receiver); *SEC v. Stadtt Media, L.L.C.*, No. 3-00-CV-1489-P (N.D. Tex. 2000) (granting temporary restraining order, order freezing assets and order appointing receiver); *SEC v. Ellis*, No. 3-00-CV-1040-P (N.D. Tex. 2000) (Solis, J.) (granting *ex parte* temporary restraining order and an order freezing assets); *SEC v. Le Club Prive, S.A.*, No. 3-00-CV-1851-R (N.D. Tex. 2000) (Buchmeyer, J.) (granting *ex parte* temporary restraining order, order freezing assets, and order appointing receiver); *SEC v. Houston Texans NFL Football Team Holding Co.*, No. H-00-3072 (S.D. Tex. 2000) (Rainey, J.) (granting *ex parte* temporary restraining order and order freezing assets); *SEC v. Oracle Trust Fund*, No. 99-1483-MLB (D. Kan. 1999) (Belot, J.) (granting *ex parte* temporary restraining order, order freezing assets, and order appointing receiver); *SEC v. Cornerstone Prodigy Group, Inc.*, No. 4-99-CV-0978-Y (N.D. Tex. 1999) (Means, J.) (granting order freezing assets and order appointing receiver); *SEC v. Highland Financial Corp.*, No. 4-99-CV-0719-D (N.D. Tex. 1999) (granting *ex parte* restraining order, order freezing assets and order appointing a receiver); *SEC v. Brooks*, No. 3-99-CV-1326-D (N.D. Tex. 1999) (Fitzwater, J.) (granting *ex parte* temporary restraining order and order freezing assets); *SEC v. Redbank Petroleum, Inc.*, No. 3-99-CV-1267-T (N.D. Tex. 1999) (granting *ex parte* temporary restraining order, order freezing assets, and order appointing receiver); *SEC v. Cook*, No. 3-99-CV-051-X (N.D. Tex. 1999) (Buchmeyer, J.) (granting *ex parte* temporary restraining order, order freezing assets, and order appointing receiver); *SEC v. Inverworld, Inc.*, No. SA-99-CA-0822-FB (W.D. Tex. 1999) (Biery, J.) (granting order freezing assets and order appointing receiver); *SEC v. Great White Marine and Recreation, Inc.*, No. W-99-CA-230 (W.D. Tex. 1999) (Smith, J.) (granting temporary restraining order); *SEC v. Sunpoint Securities, Inc.*, No. 6-99-CV-667 (E.D. Tex. 1999) (Hannah, J.) (granting *ex parte* temporary restraining order, order freezing assets, and order appointing receiver); *SEC v. American Automation, Inc.*, No. 3-98-CV-1596-D (N.D. Tex. 1998) (Fitzwater, J.) (granting *ex parte* temporary restraining order and order freezing assets); *SEC v. Trinity Gas Corp., et al.*, No. 4:97-cv-01018 (N.D. Tex. 1997) (Means, J.) (granting temporary restraining order, order freezing assets, order for accounting, order prohibiting destruction, order granting expedited discovery, order setting hearing date for preliminary hearing and appointing receiver).

5. Based on those experiences and the information I have reviewed about Defendants Patrick O. Howard, Howard Capital Holdings, LLC, and Optimal Economics Capital Partners, LLC (collectively “Defendants”), I believe that irreparable injury and loss is likely to occur if the Court requires notice and a hearing before deciding the Commission’s Motion for Preliminary Injunction, *Ex Parte* Temporary Restraining Order, Asset Freeze, Appointment of a Receiver, and Other Emergency and Ancillary Relief.

6. In this case, the Commission has made no effort to give notice to Defendants because doing so would give them an opportunity – before the Court enters the asset freeze and other relief the Commission is seeking – to dissipate, secrete, encumber, and place outside the Court’s jurisdiction assets they obtained in the fraudulent scheme described in the Complaint filed herewith, as similarly situated Defendants have done in the past.

SIGNED this 13th day of February, 2017.


Barbara Gunn