

**IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA**

Oklahoma Department of Securities)
ex rel. Irving L. Faught, Administrator,)
)
Plaintiff,)
)
v.)
)
Jerrold Wayne Myers, an individual; and)
Gary Douglas Warlick, an individual;)
)
Defendants.)

Case No.

15
17-2017-587

**APPLICATION FOR TEMPORARY RESTRAINING ORDER,
ORDER FREEZING ASSETS AND TEMPORARY INJUNCTION**

The Oklahoma Department of Securities (“Department”), *ex rel.* Irving L. Faught, Administrator, respectfully submits this application for temporary restraining order, order freezing assets, and temporary injunction, pursuant to the Oklahoma Business Opportunity Sales Act (the “Business Opportunity Act”), Okla. Stat. tit. 71, §§ 801 through 829 (2011), and/or the Oklahoma Uniform Securities Act of 2004 (the “Securities Act”), Okla. Stat. tit. 71, §§ 1-101 through 1-701 (2011 and Supp. 2016). The Department incorporates herein by reference the verified *Petition for Permanent Injunction and Other Relief* (“Verified Petition”) filed contemporaneously with this application. The Department petitions this Court to prevent continued violations of the Business Opportunity Act and the Securities Act (collectively, “Acts”), to protect the rights of the Department in its obligation to protect the public interest, to prevent any dissipation of Defendants’ assets, including investor funds, and to remedy actions that Defendants have already committed.

The Department moves this Court to enter, without notice, a temporary restraining order and an order freezing assets, until the Court may afford the parties a hearing, and further moves for the entry of a temporary injunction at such hearing. The entry of such orders is appropriate and necessary for the reasons set forth below.

I. DEFENDANTS

Jerrold Wayne Myers (“Myers”), an individual, is an Oklahoma resident. At all times material hereto, Myers was a control person for and did business as Manna Source Sustainable; was the managing member of Manna Source Sustainable, LLC; was the President and the registered service agent for Premere Resources Corp.; was a Director of Harris Exploration, Inc.; and was an organizer of Coturnix Survival, LLC. Myers offered and/or sold business opportunities and securities in and/or from Oklahoma as described herein.

Gary Douglas Warlick (“Warlick”), an individual, is an Oklahoma resident. At all times material hereto, Warlick was a control person for and did business as Manna Source Sustainable; was the registered service agent and Executive Director of Manna Source Sustainable, LLC; was Secretary of Premere Resources Corp., Harris Exploration, Inc., and Green Source Sustainable, LLC; and was an organizer of Coturnix Survival, LLC. Warlick offered and/or sold business opportunities and securities in and/or from Oklahoma as described herein.

II. RELEVANT BUSINESSES OF DEFENDANTS

Manna Source Sustainable, LLC, formerly known as Manna Source Sustainable (both hereafter referred to as “Manna”), was an unincorporated association until formed as an Oklahoma limited liability company on May 2, 2016. At all times material hereto, Manna’s

principal place of business was in Bartlesville, Oklahoma.

Premere Resources Corp. (“Premere”) is a Wyoming corporation with its principal place of business in Bartlesville, Oklahoma. On September 20, 2015, Premere became authorized to do business in Oklahoma as a foreign for profit business corporation. At various times, Defendants referred to Manna as a division of Premere.

Green Sustainable Technology, LLC (“GST”) was formed as an Oklahoma limited liability company on November 16, 2015. At all times material hereto, GST had its principal place of business in Bartlesville, Oklahoma.

Coturnix Survival, LLC (“Coturnix”) was organized as a Wyoming limited liability company on September 6, 2016. At all times material hereto, Coturnix had its principal place of business in Bartlesville, Oklahoma.

Harris Exploration, Inc. (“Harris”) is a Nevada corporation with its principal place of business in Bartlesville, Oklahoma. At all times material hereto, Harris was not authorized to do business in the state of Oklahoma.

III. NATURE OF THE CASE

Tilapia Business Opportunity

Beginning as early as April 2015 and continuing to the present, Defendants conducted business from their offices in Bartlesville, Oklahoma. Defendants advertised the sale of business opportunities, in various publications and websites, to persons interested in breeding and growing tilapia (“Tilapia Purchasers”). In August, 2015, in one such advertisement, Defendants stated:

BREEDERS/GROWERS NEEDED NOW. Manna Source Sustainable, a Premere Resources Corp[.] company, needs breeders/growers for our sustainable living operation. Raise organic tilapia fish and aquaponic vegetables-fruits in the fish water for sustainable living perhaps progressing to six figure income according to capabilities and desires. Use the unused buildings on your property for production. We provide all equipment, tanks, organic feed and stock. You provide facility with utilities, hands on effort, and small investment/deposit for desired level of income. We buy all production under our Breeder/Grower agreement. Free Sustainable Living Workshop at our Bartlesville Oklahoma facility.

Defendants also made group presentations about the tilapia business to prospective Tilapia Purchasers at various sites in Bartlesville, Oklahoma, and made individual presentations to prospective Tilapia Purchasers in other locations in Oklahoma, Arkansas, Kansas, and Missouri.

Defendants utilized promotional materials to entice Tilapia Purchasers. Defendants represented that they had the knowledge to make the business a success. Defendants also represented that they would (a) supply the Tilapia Purchasers with all equipment, tilapia breeder/feeder stock, training and technical support for the business; and (b) set up tanks, filtration systems, and plumbing.

Defendants and Tilapia Purchasers entered into breeder agreements for the production, feeding, and growth of tilapia ("Tilapia Agreements"). Defendants agreed to provide trademarked feed mix that would grow tilapia to a consumable size and weight.

Tilapia Purchasers agreed to provide the facility, including utilities and water, and the labor for the feeding and care of the tilapia.

Defendants agreed to purchase all offspring or "fry" produced by the Tilapia Purchasers for \$0.10 per fry and to pick up the tilapia fry at regular intervals directly from the Tilapia Purchasers. Defendants represented that they would take the fry to existing facilities where the tilapia would be grown to a marketable size.

Defendants represented to Tilapia Purchasers that they had markets for the tilapia in outlets like Whole Foods, Kroger, and/or Costco, pursuant to existing contracts. The tilapia would also be marketed by Defendants to the countries of Dubai and Kuwait, pursuant to existing contracts. Defendants represented to Tilapia Purchasers that existing marketing contracts would support the sale of millions of pounds of tilapia every month.

Defendants solicited between Ten Thousand Dollars (\$10,000) and One Hundred Thousand Dollars (\$100,000) from each Tilapia Purchaser. The Tilapia Agreements were offered and sold based on the commercial production level that was selected by each Tilapia Purchaser. At least one of the Tilapia Purchasers was offered the following options:

<u>Level of Commercial Production</u>	<u>Investment</u>	<u>Expected Production</u>	<u>Projected Income</u>
Upper Level	\$10,000	62,000 frys/month	\$ 62,000/year
Mid Upper Level	\$25,000	138,000 frys/month	\$138,000/year
Large Upper Level	\$50,000	276,000 frys/month	\$276,000/year
Jumbo Upper Level	\$100,000	548,000 frys/month	\$548,000/year

Defendants failed to provide training to Tilapia Purchasers; failed to deliver breeder/feeder stock to some Tilapia Purchasers; failed to pick up and pay for the tilapia fry grown by the Tilapia Purchasers; failed to provide adequate food for the tilapia, particularly trademarked feed mix, to the Tilapia Purchasers; failed to provide functional equipment to the Tilapia Purchasers; and failed to provide technical support to the Tilapia Purchasers.

Misrepresentations, Omissions and Fraud in Offer and/or Sale of Tilapia Agreements

In connection with the offer and/or sale of Tilapia Agreements, Defendants made untrue statements including, but not limited to:

- a. that upon Defendants' receipt of the Tilapia Purchaser's investment, Tilapia Purchaser would receive tanks, filtration systems, plumbing, and breeder/feeder stock;

- b. that tilapia provided by Defendants would produce offspring of between 62,000 and 548,000 tilapia fries per month;
- c. that Defendants would pick up tilapia fries from the Tilapia Purchasers at regular intervals including a schedule of every 35 days;
- d. that Defendants had facilities where the tilapia fries would be taken and grown to marketable size;
- e. that Tilapia Purchasers would receive profits or returns on the Tilapia Agreements;
- f. that Defendants would provide training in the business to the Tilapia Purchasers;
- g. that Defendants had contracts with Whole Foods, Kroger, Costco, Dubai and Kuwait to purchase the marketable tilapia;
- h. that Tilapia Purchasers did not need a license to operate because Manna had the appropriate licenses for the production, growing and selling of tilapia;
- i. that the tilapia fingerlings provided by Defendants would be organic fish; and
- j. that Defendants would provide and deliver trademarked feed mix to Tilapia Purchasers to feed the tilapia.

In connection with the offer and/or sale of Tilapia Agreements, Defendants omitted to state the following:

- a. any general or specific risk factors associated with the purchase of the Tilapia Agreements;

- b. that the Tilapia Agreements are business opportunities subject to regulation under the Business Opportunity Act;
- c. that the Tilapia Agreements were not registered under the Business Opportunity Act;
- d. that Defendants did not have facilities where the tilapia could be grown to marketable size;
- e. that neither Defendants nor the entities they controlled were licensed with the Oklahoma Department of Agriculture, Food, and Forestry to conduct an aquaculture operation;
- f. that Tilapia Purchasers would be required to be licensed with the Oklahoma Department of Agriculture, Food, and Forestry as an aquaculture operation;
- g. that neither Defendants nor the entities they controlled were licensed with the Oklahoma State Department of Health to operate a food manufacturing establishment or food storage warehouse; and
- h. that Defendants would use Tilapia Purchaser funds for personal expenses and business expenses unrelated to the Tilapia Agreements.

Quail Business Opportunity

Beginning as early as April 2015, and continuing to the present, Defendants advertised the sale of business opportunities, in various publications and websites, to persons interested in breeding and growing quail (“Quail Purchasers”). Defendants also operated this business from their offices in Bartlesville, Oklahoma. In June 2016, in one such advertisement, Defendants stated:

QUAIL EGGERS NEEDED NOW! Manna Source Sustainable, a Premere Resources Company, needs quail eggers for our sustainable living operation. Raise quail eggs for us perhaps progressing to six figure income according to capabilities and desires. Use the unused buildings on your property for production. We supply all cages, stock, and feed. Breeder supplies buy-in amount for desired level of income, indoor facility with heat for the winter, and we buy all egg production under our egger agreement.

Defendants also made group presentations about the quail business to prospective Quail Purchasers at various sites in Bartlesville, Oklahoma, and made individual presentations to prospective Quail Purchasers in other locations in Oklahoma, Kansas, and Missouri.

Defendants utilized promotional materials to entice Quail Purchasers. Defendants represented to Quail Purchasers that they would provide training for the business, had the knowledge to make the business a success, and had the markets in which to sell the quail egg production.

Defendants and Quail Purchasers entered into breeder agreements for the production, feeding, and breeding of quail ("Quail Agreements"). Pursuant to the Quail Agreements, Defendants agreed to provide the Quail Purchasers with all breeding stock and equipment and all training for the business. Defendants agreed to provide feed to produce quail eggs to a consumable size and weight.

Quail Purchasers were to provide the facility for production of quail eggs, including utilities and water, and the labor for the feeding and care of the quail to produce consumable quail eggs.

The Quail Agreements also specified that Defendants would purchase all production of eggs at regular intervals directly from the Quail Purchaser for \$0.10 or \$0.32 per egg, depending on the Quail Agreement. Defendants represented that the quail eggs would be

marketed to cruise lines for salads and that the quail would be processed for meat.

Defendants solicited between Fifteen Hundred Dollars (\$1,500) and Fifty Thousand Dollars (\$50,000) from each Quail Purchaser. The Quail Agreements were offered and sold based on the plan level that was selected by each Quail Purchaser. At least one of the Quail Purchasers was offered the following options:

<u>Plan Levels</u>	<u>Investment</u>	<u>Expected Production</u>	<u>Projected Cash Flow</u>
Starter Setup	\$1,500	1,760 quail/6 months	Personal Use
Lower End Setup	\$10,000	200 eggs/day	\$23,040/year
Middle End Setup	\$25,000	500 eggs/day	\$57,600/year
Higher End Setup	\$50,000	1,000 eggs/day	\$115,200/year

Defendants failed to provide training to Quail Purchasers; failed to deliver quail to Quail Purchasers; and failed to provide functional equipment to Quail Purchasers.

Misrepresentations, Omissions and Fraud in Offer and/or Sale of Quail Agreements

In connection with the offer and/or sale of Quail Agreements, Defendants made untrue statements including, but not limited to: that Defendants had contracts with cruise ships that would purchase the quail eggs daily.

HXPN Stock Sales

Beginning in or about June 2015, Defendant Myers offered and/or sold Harris stock (stock symbol: "HXPN") to Oklahoma residents ("Stock Purchasers"). At least one Stock Purchaser paid approximately \$0.02 per share for the HXPN stock in the summer of 2015. Defendant Myers represented that he was the owner of Harris and that the price of the HXPN stock would reach a value of \$1.00 per share by September 2015, and would reach a value of \$3.00 per share by March 2016.

In September 2016, Defendants offered HXPN stock to the Tilapia Purchasers as a "buyout" of the Tilapia Agreements. Defendants offered "25% added to your original buy-in

amount” and represented “you can hold those publicly traded shares of HXPN for an expected increase in value to increase your return based upon expected acquisition of platinum grade mineral mining operations plus producing oil properties.”

The HXPN stock is currently trading at a value of approximately \$0.01 per share.

Misuse of Investment Proceeds

Tilapia Purchaser funds and Quail Purchaser funds, totaling in excess of One Million Dollars (\$1,000,000), were deposited to bank accounts under the control of Defendants.

Defendants have transferred Tilapia Purchaser funds and Quail Purchaser funds among multiple bank accounts that they control. Defendants have transferred business funds into personal accounts and personal funds into business accounts. Defendants used Tilapia Purchaser funds and Quail Purchaser funds for the payment of personal expenses, and the payment of business expenses unrelated to the Tilapia Agreements.

Additional Misrepresentations, Omissions and Fraud in Offer and/or Sale of Tilapia Agreements, Quail Agreements and HXPN Stock

In connection with the offer and/or sale of Tilapia Agreements, Quail Agreements and HXPN stock, Defendants made untrue statements including, but not limited to: that Defendant Myers had a multi-million dollar public company involved in oil and gas wells and copper mines.

In connection with the offer and/or sale of Tilapia Agreements, Quail Agreements, and HXPN stock, Defendants omitted to state the following:

- a. that Defendant Myers was subject to a federal criminal judgment by the United State District Court for the Northern District of Texas, in January 2005, after being convicted of felony securities fraud, that resulted in his incarceration in federal prison, an order to pay restitution (with his co-defendant) in the sum of

\$532,510.50, and the filing in 2014 of a federal lien for \$532,510.50; and

- b. that in November 2013, E-Trade Bank filed an action to foreclose the mortgage on the home of Defendant Warlick, and that the foreclosure was ordered by the District Court of Washington County, State of Oklahoma, against Defendant Warlick in 2016.

IV. VIOLATIONS

A. Violation of Section 806 of the Business Opportunity Act: Offer and Sale of Unregistered Tilapia Business Opportunities

The Tilapia Agreements are business opportunities as defined by Section 802 of the Business Opportunity Act (“Tilapia Business Opportunities”). The Tilapia Business Opportunities offered and sold by Defendants are not and have not been registered under the Business Opportunity Act. By reason of the foregoing, Defendants have violated, may be violating, and unless enjoined, will continue to violate Section 806 of the Business Opportunity Act.

B. Violation of Section 808 of the Business Opportunity Act: Failure to Deliver Disclosure Document in Connection with Offer or Sale of Tilapia Business Opportunities

Defendants, in connection with the offer and/or sale of Tilapia Business Opportunities, failed to deliver a written disclosure document to Tilapia Purchasers. By reason of the foregoing, Defendants, have violated, may be violating, and unless enjoined, will continue to violate Section 808 of the Business Opportunity Act.

C. Violation of Section 819 of the Business Opportunity Act: Untrue Statements and Omissions of Material Fact in Tilapia Business Opportunities

Defendants, in connection with the offer and/or sale of Tilapia Business Opportunities, directly and indirectly, made untrue statements of material fact. Defendants, in

connection with the offer and/or sale of Tilapia Business Opportunities, directly and indirectly, omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. By reason of the foregoing, Defendants have violated, may be violating, and unless enjoined, will continue to violate Section 819 of the Business Opportunity Act.

**D. Violation of Section 819 of the Business Opportunity Act:
Fraud or Deceit in connection with Tilapia Business Opportunities**

Defendants, in connection with the offer and/or sale Tilapia Business Opportunities, have engaged in acts, practice, or courses of business that have operated and continue to operate as a fraud or deceit upon Tilapia Purchasers. By reason of the foregoing, Defendants, directly and indirectly, have violated, may be violating, and unless enjoined, will continue to violate Section 819 of the Business Opportunity Act.

**E. Violation of Section 806 of the Business Opportunity Act:
Offer and Sale of Unregistered Quail Business Opportunities**

The Quail Agreements are business opportunities as defined by Section 802 of the Business Opportunity Act (“Quail Business Opportunities”). The Quail Business Opportunities offered and sold by Defendants are not and have not been registered under the Business Opportunity Act. By reason of the foregoing, Defendants have violated, may be violating, and unless enjoined, will continue to violate Section 806 of the Business Opportunity Act.

**F. Violation of Section 808 of the Business Opportunity Act:
Failure to Deliver Disclosure Document in Connection with
Offer or Sale of Quail Business Opportunities**

Defendants, in connection with the offer and/or sale of Quail Business Opportunities, failed to deliver a written disclosure document to Quail Purchasers. By reason of the

foregoing, Defendants have violated, may be violating, and unless enjoined, will continue to violate Section 808 of the Business Opportunity Act.

**G. Violation of Section 819 of the Business Opportunity Act:
Untrue Statements and Omissions of Material Fact in Quail Business Opportunities**

Defendants, in connection with the offer and/or sale of Quail Business Opportunities, directly and indirectly, made untrue statements of material fact. Defendants, in connection with the offer and/or sale of Quail Business Opportunities, directly and indirectly, omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. By reason of the foregoing, Defendants have violated, may be violating, and unless enjoined, will continue to violate Section 819 of the Business Opportunity Act.

**H. Violation of Section 819 of the Business Opportunity Act:
Fraud or Deceit in Connection with Quail Business Opportunities**

Defendants, in connection with the offer and/or sale of Quail Business Opportunities, have engaged in acts, practice, or courses of business that have operated and continue to operate as a fraud or deceit upon Quail Purchasers. By reason of the foregoing, Defendants have violated, may be violating, and unless enjoined, will continue to violate Section 819 of the Business Opportunity Act.

**I. Violation of Section 1-501 of the Securities Act:
Untrue Statements and Omissions of Material Fact
in Connection with HXPN Stock**

Defendants, in connection with the offer and/or sale of HXPN stock, directly and indirectly, made untrue statements of material fact. Defendants, in connection with the offer and/or sale of HXPN stock, directly and indirectly, omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were

made, not misleading. By reason of the foregoing, Defendants have violated, may be violating, and unless enjoined, will continue to violate Section 1-501 of the Securities Act.

**J. Violation of Section 1-501 of the Securities Act:
Fraud or Deceit in Connection with Offer and Sale of HXPN Stock**

Defendants, in connection with the offer and/or sale of HXPN stock, have engaged in acts, practices, or courses of business that operate, or would operate, as a fraud or deceit upon other persons. By reason of the foregoing, Defendants, have violated, may be violating, and unless enjoined, will continue to violate Section 1-501 of the Securities Act.

**V. AUTHORITY FOR TEMPORARY RESTRAINING ORDER,
ASSET FREEZE AND TEMPORARY INJUNCTION**

Section 1-603 of the Securities Act provides:

- A. 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 ... the Administrator may ... maintain an action in the district court of Oklahoma County ... to enjoin the act, practice or course of business and to enforce compliance with this act[.]
- B. 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[.]

* * *

- 3. Order such other relief as the court considers appropriate.

Section 814 of the Business Opportunity Act provides:

A. Whenever it appears to the Administrator that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of the Oklahoma Business Opportunity Sales Act or any rule or order hereunder, the Administrator may:

* * *

2. Prior to, concurrently with, or subsequent to an administrative proceeding pursuant to paragraph 1 of this subsection, bring an action in the district court of Oklahoma County or the district court in any other county where service can be obtained on one or more of the defendants to enjoin the acts or practices and to enforce compliance with the Oklahoma Business Opportunity Sales Act or any rule or order hereunder. Upon a proper showing, a permanent or temporary injunction, restraining order or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets or the court may order rescission, which shall include restitution plus the legal interest rate, for any sales of business opportunities determined to be unlawful pursuant to the Oklahoma Business Opportunity Sales Act or any rule or order hereunder. The court shall not require the Administrator to post a bond. No costs shall be assessed for or against the Administrator in a proceeding under the Oklahoma Business Opportunity Sales Act brought by or against the Administrator in any court except as otherwise provided by law.

Section 826 (B) of the Business Opportunity Act also provides:

The rights and remedies under the Oklahoma Business Opportunity Sales Act are in addition to any other rights or remedies that may exist at law or in equity.

Court Has Broad Discretion to Determine Appropriate Equitable Relief

Section 1-603 of the Securities Act authorizes a district court, in a case involving a violation of the Securities Act, to issue a permanent or temporary injunction, restraining order, or declaratory judgment; to order appropriate or ancillary relief including, but not limited to, an asset freeze, appointment of a receiver, and order of restitution or disgorgement; and to order such other relief as the court considers appropriate.

Section 814 of the Business Opportunity Act authorizes a district court, in a case involving a violation of the Business Opportunity Act, to issue a permanent or temporary injunction, restraining order, or writ of mandamus; to order the appointment of a receiver or conservator for the defendants or their assets; and to order rescission including the payment of restitution. Section 826 specifies that the rights and remedies under the Business Opportunity Act are in addition to any rights or remedies that may exist at law or in equity.

Section 1-608(A) of the Act promotes the goal of state and federal uniformity, and the Oklahoma Supreme Court has acknowledged that the judicial interpretation of the federal securities acts, upon which Oklahoma's securities laws are modeled, is properly considered in the interpretation of similar state securities provisions. *State ex rel. Day v. Southwest Mineral Energy, Inc.*, 1980 OK 118, 617 P.2d 1334, 1339; *Oklahoma Department of Securities ex rel. Faught v. Blair*, 2010 OK 16, 231 P.3d 645, 651.

In *State ex rel. Day v. Southwest Mineral Energy, Inc.*, *supra*, the Oklahoma Supreme Court reviewed a case brought by the Department wherein the defendants were alleged to have violated the Securities Act. In *Day*, the Court considered a United States Supreme Court case wherein the Federal Price Administrator brought suit against the Warner Holding Company for violation of the Emergency Price Control Act of 1942. The Administrator sought to enjoin the Warner Company from collecting rents in excess of established ceiling prices and sought a mandatory injunction requiring the company to disgorge all amounts previously collected in excess of the ceiling price. *Porter v. Warner Holding Company*, 328 U.S. 395, 398, 66 S.Ct. 1086, 90 L.Ed. 1332, 1336-37 (1946). The *Porter* court stated:

Unless otherwise provided by statute, all the inherent equitable powers of the District Court are available for the proper and complete exercise of that jurisdiction. And since the public interest is involved in a proceeding of this nature, those equitable powers assume an even broader and more flexible

character than when only a private controversy is at stake.... Power is thereby resident in the District Court, in exercising this jurisdiction, 'to do equity and to mould each decree to the necessities of the particular case.'

The Court then went on to state:

Moreover, the comprehensiveness of this equitable jurisdiction is not to be denied or limited in the absence of a clear and valid legislative command. Unless a statute in so many words, or by a necessary and inescapable inference, restricts the court's jurisdiction in equity, the full scope of that jurisdiction is to be recognized and applied. 328 U.S. 395, at 388, 66 S.Ct. 1086, at 1089, 90 L.Ed. 1332, at 1337.

The United States Supreme Court affirmed this position in *Mitchell v. DeMario Jewelry, Inc.*, 361 U.S. 288, 80 S.Ct. 332, 4 L.Ed.2d 323 (1960) (dealing with the Fair Labor Standards Act of 1938), by stating:

When Congress entrusts to an equity court the enforcement of prohibitions contained in regulatory enactment, it must be taken to have acted cognizant of the historic power of equity to provide complete relief in light of the statutory purpose. As this Court long ago recognized, 'there is inherent in the Courts of Equity a jurisdiction to ... give effect to the policy of the legislation.' (Emphasis added.) 361 U.S. 288, at 291-2, 80 S.Ct. 332, at 355, 4 L.Ed.2d 323, at 326.

The *Day* decision adopted the reasoning in *Porter v. Warner Holding Company, supra*, and *Mitchell v. DeMario Jewelry, Inc. supra*, finding that Oklahoma districts courts have equitable powers in actions brought under the Securities Act and, by analogy, to the Business Opportunity Act, "[o]nce the equity jurisdiction of the District Court has properly been invoked, the Court possesses the necessary power to fashion appropriate remedies." *Day* at 1338. The *Day* court recognized the authority of the Administrator of the Department to seek injunctions and writs of mandamus, and found:

To say that other equitable remedies were not available to the Administrator in appropriate cases would be to thwart the very purpose of the Act, which is, as stated above, to protect the uninformed from manipulative and deceptive practices when dealing in securities. One of the most effective means to such

an end is to deprive those guilty of such manipulative and deceptive practices of their illegal profits-thus discouraging such activity. *Id.* at 1339.

Because the Business Opportunity Act, likewise authorizes the Administrator to seek injunctions and writs of mandamus, other equitable remedies are also available for an enforcement action for violations of the business opportunities laws.

Temporary Injunction Against Defendants is Appropriate

As previously stated, Section 1-603(B)(1) of the Securities Act and Section 814(A)(2) of the Business Opportunity Act specifically grant this Court the power to issue a temporary injunction. The proper showing required for such injunctive relief under federal securities laws has been defined as “a justifiable basis for believing . . . that the defendants were engaged in violations of the statutes involved.” *SEC v. Gen. Refractories Co.*, 400 F. Supp. 1248, 1254 (D.C. 1975). This standard differs from that applied in private actions for injunctive relief and no showing of irreparable harm is required. *SEC v. Mgmt. Dynamics, Inc.*, 515 F.2d 801, 808 (2nd Cir. 1975); see also *Okla. Sec. Comm’n v. CFR Inter., Inc.*, 622 P.2d 293, 295 (Okla. Civ. App. 1980). Once this proper showing for injunctive relief has been made, the Department need only establish “a reasonable likelihood of a future violation.” *SEC v. Householder*, 2002 WL 1466812 at *5 (N.D. Ill. 2002). In doing so, past violations are “highly suggestive [of] the likelihood of future violations.” *CFR Inter., Inc.*, 622 P.2d at 295 (quoting *Mgmt. Dynamics, Inc.*, 515 F.2d at 807).

In accord with this understanding of the requirements for injunctive relief, the Oklahoma Court of Civil Appeals in the CFR case found that proof of the offer and sale of unregistered securities by unregistered agents was all that was necessary for the issuance of a temporary injunction. *Id.* at 296.

As described above and in the Verified Petition, the Department has a justifiable basis for believing that Defendants have violated both registration and fraud provisions of the Acts. Such past violations, in addition to the fact that Defendants continue to offer business opportunities and securities, are highly suggestive of a reasonable likelihood of future violations. A temporary injunction is therefore appropriate.

Temporary Restraining Order Should be Issued Against Defendants

Section 1-603(B)(1) of the Act and Section 814(A)(2) of the Business Opportunity Act also specifically grant this Court the power to issue a temporary restraining order. A temporary restraining order is intended to preserve the *status quo* and prevent irreparable injury until a hearing can be held on a temporary injunction. *Granny Goose Foods, Inc. v. Bhd. of Teamsters*, 415 U.S. 423, 439 (1974); see also *Morse v. Earnest, Inc.*, 547 P.2d 955, 957 (Okla. 1976). The temporary restraining order may be issued without notice where “it clearly appears . . . that immediate and irreparable injury, loss, or damage will result” before the hearing can be held. Okla. Stat. tit. 12, § 1384.1 (2012). Such irreparable injury exists where there is a continuing violation of a state statute. *Semke v. State ex rel. Okla. Motor Vehicle Comm’n*, 465 P.2d 441, 445 (Okla. 1970).

As described above and in the Verified Petition, Defendants continue to offer business opportunities and securities in violation of the Acts. Accordingly, a temporary restraining order should be issued without notice to preserve the *status quo* and prevent the irreparable injury caused by continued violations of the Acts until a hearing can be held on a temporary injunction.

Asset Freeze Provides Appropriate Equitable Relief When Restitution May Be Required

Section 1-603(B)(1) of the Securities Act specifically grants this Court the power to order an asset freeze. An asset freeze is appropriate when restitution may be required. *Inter Controls Corp. v. Vesco*, 490 F.2d 1334, 1347 (2nd Cir. 1974) (finding that “an asset freeze may be appropriate to assure compensation to those who are victims of a securities fraud”); *SEC v. Unifund SAL*, 910 F.2d 1028, 1041 (2nd Cir. 1990) (noting that “the [SEC] should be able to preserve its opportunity to collect funds that may yet be ordered disgorged”). The asset freeze will also be a necessary equitable remedy to provide for the payment of restitution if the Defendants are found to have engaged in violations of the Business Opportunity Act.

A proper showing for an asset freeze under federal securities law requires only (1) “a concern that defendants will dissipate their assets” and (2) “a basis to infer” defendants violated the statutes involved. *SEC v. Gonzalez de Castilla*, 145 F.Supp. 2d. 402, 415 (S.D.N.Y. 2001) (citing *Unifund SAL*, 910 F.2d at 1041). An asset freeze may be granted even where a proper showing for injunctive relief cannot be made. *Unifund SAL*, 910 F.2d at 1041.

As described above and in the Verified Petition, Defendants have engaged in acts and practices in violation of the Acts and, as a result of these activities, have received a substantial amount of money from investors. The whereabouts of all of the money received by Defendants is not known at this time. As also described above and in the Verified Petition, Defendants have already misused a substantial amount of investor funds, raising a concern that Defendants will further dissipate their assets to the detriment of the purchasers of the business opportunities and shareholders. An order for an asset freeze is therefore

appropriate and necessary to preserve remaining assets should the prayed for restitution be granted.

VI. CONCLUSION

In light of the facts presented and authorities cited, the Department respectfully requests that this Court enter, without notice, a temporary restraining order and an order freezing assets, until the Court may afford the parties a hearing, and moves for the entry of a temporary injunction against Defendants at such hearing.

Respectfully submitted,

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