

Exhibit A

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Valentino Holdings, LLC
Valentino Properties, LLC
Vanquish Enterprises, LLC
Vowell, Jason, Assets of
Wealth Matters, LLC

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

FEDERAL TRADE COMMISSION,
Plaintiff,

v.

JEREMY D. JOHNSON, *et al*
Defendant.

Case No. 2:10-cv-02203-RLH-GWF

ORAL ARGUMENT REQUESTED

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1 Jason Vowell, CECJ Enterprises, LLC, Globia Media 7, LLC, Jason T. Vowell Sole Prop.,
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3 Rising, LLC, Robin V Foundation, Inc., ScamVictim Help.com, LLC, Spyglass Enterprises, LLC
4 Spyglass Holdings, LLC, Valentino Holdings, LLC, Valentino Properties, LLC, Vanquish
5 Enterprises, LLC and Vowell, Jason, Assets of Wealth Matters, LLC (referred to hereinafter as the
6 “Vowell Entities”), by and through counsel, file this Memorandum in Opposition to the Receiver’s
7 Motion for Order Clarifying Preliminary Injunction Order and for Further Instructions Regarding
8 the Scope of Receivership Defendants under Preliminary Injunction Order and Report of
9 Receiver’s Financial Reconstruction and Granting Relief from Local Rule 66-5 Pertaining to
10 Notice of Creditors (referred to herein as the “Motion to Expand Receivership”)¹.

12 The Vowell Entities are not named defendants or otherwise parties to the above captioned
13 action. The Vowell Entities have a vested interest in the entities and property the Receiver seeks
14 to encompass within the existing Preliminary Injunction Order. Therefore, the Vowell Entities, by
15 and through counsel enter this limited appearance for the purposes of opposing the Receiver’s
16 motion. *See SEC v. Kirkland*, 6:06-cv-183, 2006 WL 3388463, at *4 (Dec. 8, 2006).

18 INTRODUCTION

19 The Federal Trade Commission (referred to herein as “FTC”) have not alleged that the
20 Vowell Entities have violated any laws or are even considered a target of their investigation into
21 Jeremy Johnson and the listed co-defendants in this matter. More importantly, the Vowell Entities
22 are not alleged to have been involved in the fraudulent conduct alleged in this case, which is the
23 sole basis for the FTC’s jurisdiction to file this matter, the Receiver seeks to take control of all of
24 Jason Vowell’s and the Vowell Entities’ assets and business operations, without affording the
25 constitutional procedural protections enjoyed by those whom allegedly participated in the fraud.
26
27

28 ¹ Although the Receiver euphemistically titles its motion as a motion to “clarify” the preliminary

1 The Receiver seeks to take on the role of the plaintiff, thereby usurping its role and the role of this
2 Court, by attempting to assume control of all of the Vowell Entities' assets without formerly
3 adding Vowell Entities as a party by not filing a complaint and allowing the Vowell Entities to file
4 responsive pleadings, engage in discovery, present their case to a jury or other fact finder, or the
5 opportunity to appeal.

6 The Receiver seeks to take this extreme action based upon an incomplete investigation and
7 the flawed conclusions drawn from one-sided discovery that was deliberately designed to support
8 the Receiver's theories rather than finding the truth. At the outset of this case, Jason Vowell and
9 the Vowell Entities cooperated in the FTC's and Receiver's third-party, discovery efforts,
10 producing thousands of pages of documents and agreeing to be deposed. The FTC and the
11 Receiver then coordinated with criminal authorities and pushed for criminal charges to be brought
12 against Jason Vowell. This is exemplified by the numerous discovery the Receiver has turned over
13 to the Department of Justice even prior to former charges being brought against Johnson. Thus,
14 the Receiver has intentionally put Jason Vowell between the proverbial rock and a hard place.
15 Either Jason Vowell defends himself against the claims made by the Receiver in the civil case
16 (something he initially intended to do) and thereby exposes himself to as of yet unexplained
17 criminal charges unrelated to the claims underlying this action; OR Mr. Vowell can assert his Fifth
18 Amendment rights and the Receiver now asks this Court to draw the most negative possible
19 conclusions as a result of the Mr. Vowell's silence. The Receiver's strategy has also resulted in
20 excluding the Vowell Entities from participating in the discovery process (specifically cross-
21 examining witnesses at depositions) and thereby challenging the Receiver's theories and
22 conclusions. Given that the Vowell Entities, who had a clear interest in contradicting the
23 Receiver's theory, were entirely excluded from the discovery process, it is not surprising that the
24 Receiver claims to have found facts supporting its theory.
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1 In reality, the Receiver's claims are entirely misguided because, as even it admits, the
2 Receiver's investigation is incomplete and both the Second Report and Motion to Expand simply
3 ignore myriad facts that contradict the Receiver's theories and conclusions. For example, the
4 Receiver makes no mention of the fact that Jason Vowell is an independent businessman who
5 engaged in numerous million-dollar ventures, including oil and gas exploration, operating an auto
6 dealership, hard money lending, commercial and residential real estate management and
7 development, operating a restaurant, and operating a home for troubled youth, that have nothing to
8 do with Jeremy Johnson or his Iworks companies. Likewise, the Receiver makes no mention of
9 the fact that Jason Vowell, and his brother Todd, had formed more than 60 companies to house
10 these independent businesses before he was even alleged to have done any business with Jeremy
11 Johnson, demonstrating that the entities formed in recent years were formed a part of an ongoing
12 pattern of business management and not for any nefarious purpose.
13

14
15 The Motion to Expand is unprecedented. Beyond referring to the general equitable power
16 of this Court, the Receiver does not cite any authority for its request. Moreover, this Receiver
17 should know that its request is improper because it attempted a similar action in a different case
18 before the District Court in that matter ruled that the effort was improper. *See CFTC v. Lake Shore*
19 *Asset Mgmt. Ltd.*, No. 07 C 3598, 2011 U.S. Dist. LEXIS 92789 (N.D. Ill. Aug. 19, 2011)
20 (rejecting motion to expand to include nonparty defendants alleged to be alter egos of named
21 defendants).
22

23 Likewise this Court should reject the Receiver's uncircumscribed grab for assets and
24 control in this case. First, the Vowell Entities are not "Receivership Defendants" as defined by the
25 Preliminary Injunction. Second, the Receiver's efforts to obtain control of the Vowell Entities and
26 to seize all assets related to the Vowell Entities without establishing independent jurisdiction over
27 each entity and asset is procedurally improper. Third, the Receiver's Report, which provides the
28

1 bases for the Receiver’s Motion, is incomplete and unreliable, and materially flawed. Finally, co-
2 opting the Vowell Entities as Receivership Defendants will substantially prejudice the Vowell
3 Entities by subjecting them to coordinated parallel civil and criminal proceedings, which prevent
4 the entities’ from fully defending themselves in either action.

5 **FACTUAL BACKGROUND**

6 ***The Subject Matter Jurisdiction and Personal Jurisdiction of this Court, and Correspondingly***
7 ***the Receiver, is Defined by the FTC Action.***

8 1. The scope of the Court’s jurisdiction, and correspondingly the scope of the
9 Receiver’s authority and the receivership estate, is defined by the FTC’s Complaint and the
10 Preliminary Injunction entered in this action. *See Liberty Capital Group., LLC v. Capwell, 462*
11 *F.3d 543, 551 (6th Cir. Ohio 2006) (“As an officer of the court, the reciever’s powers are*
12 *coextensive with his order of appointment.”)*

13
14 2. The FTC’s Complaint is based solely on allegedly deceptive marketing practices.
15 Specifically, in its Complaint, the FTC asserts that Jeremy Johnson² and 9 other individuals and 61
16 corporate defendants (collectively the “Defendants”) “in connection with marketing and sale of
17 Internet-based information products and services,” violated the FTC Act and the Electronic Fund
18 Transfer Act and Regulation E. *See FTC v. Jeremy Johnson, et al.*, No. 2:10-cv-2203 (D. Nev.),
19 Complaint at 6 (ECF No. 1)

20
21 3. The FTC also asserts that the 61 corporate Defendants operated as a common
22 enterprise while engaging in the alleged violations of the FTC Act and the Electronic Fund
23 Transfer Act; therefore, the Defendants were each “jointly and severally liable for the act and
24 practices described in th[e] Complaint.”
25

26
27 ² The FTC named Jeremy Johnson, individually and as an officer of I Work, Inc., Cloud Nine, Inc., CPA Upsell, Inc.,
28 Elite Debit, Inc., Internet Economy, Inc., Market Funding Solutions, Inc., and Success Marketing, Inc.

1 4. In short, the Receiver believes the Defendants operated a “scam” that “tricked
2 consumers into providing their credit and debit card information and has repeatedly billed these
3 consumers for Internet-based memberships they never agreed to join.” Mem. Points & Authorities
4 in Supp. Prelim. Inj. at 1 (ECF 43-2).

5 ***The FTC Pursued a Preliminary Injunction and the Appointment of a Receiver over Jeremy***
6 ***Johnson and the 61 Corporate Defendants.***

7 5. Based exclusively on the named Defendants’ allegedly fraudulent marketing
8 activities, on January 12, 2011, the FTC moved for the entry of a Preliminary Injunction and the
9 Permanent Appointment of the Receiver. *See* Mem. Supp. Prelim. Inj. (ECF No. 43-2).

10 6. The Receiver supported its Motion for Entry of a Preliminary Injunction Order with
11 18 volumes of exhibits, including emails and documents produced by Jeremy Johnson and IWorks
12 in response to interrogatories posed as part of a Civil Investigation Demand. The exhibits also
13 included summaries of business and bank records. Mot. Prelim. Inj. at 1 n.1.

14 7. On February 10, 2011, this Court issued a Preliminary Injunction Order. (ECF No.
15 130).

16 8. As a basis for entering the Preliminary Injunction, this Court found that

17 There is good cause to believe that Defendants have engaged and are likely to
18 engage in acts and practices that violate Section 5(a) of the FTC Act, 15 U.S.C. §
19 45(a), Section 907(a) of EFTA, 15 U.S.C. § 1693e(a), and Section 205.10(b) of
20 Regulation E, 12 C.F.R. § 205.10(b), and that the Commission is therefore likely to
21 prevail on the merits of this action.

22 Prelim. Inj. at 4.

23 9. The Court also found that irreparable harm would result from
24 Defendants’ ongoing violations of the FTC Act and Electronic Funds Transfer Act
25 unless the Defendants were restrained and enjoined by the Court. *Id.*
26 ***The Preliminary Injunction Enjoins Conduct Related to Internet Marketing***

27 10. The Preliminary Injunction prohibits the named Defendants from engaging in
28 certain internet marketing conduct, including “advertising, marketing, promoting, offering for sale,

1 selling . . . any Grant Product . . . any Production using a Negative Option Feature, or in which
2 consumers will be entered into a Continuity Plan; and any Forced Upsell.” Prelim. Inj. Order at 11
3 (ECF No. 130).

4 11. The Preliminary Injunction also prohibits the named Defendants from making
5 misleading endorsements of Products and from making other representations regarding Products,
6 including the likelihood of making money or statements that a product is risk free. *Id.*

7
8 12. Similarly, additional restrictions relate to the alleged violations of the FTC Act and
9 the Electronic Funds Transfer Act be met. *Id.* at 13.

10 ***The Preliminary Injunction Imposes an Asset Freeze on Jeremy Johnson and the Corporate***
11 ***Defendants and Appoints a Receiver over the Corporate Defendants and the Assets of Jeremy***
12 ***Johnson.***

13 13. This Court further found that

14 There is good cause to believe that irreparable damage to the Court's ability to grant
15 effective final relief for consumers in the form of monetary redress will occur from
16 the sale, transfer, or other disposition or concealment by Jeremy Johnson and the
17 Corporate Defendants of assets or records *unless Jeremy Johnson and the*
18 *Corporate Defendants are immediately restrained and enjoined by Order of this*
19 *Court.*

20 *Id.* (emphasis added)

21 14. Accordingly, this Court ordered an “asset freeze” of all funds,
22 accounts, real or personal property, or other assets that are “owned or controlled by Jeremy
23 Johnson or any Corporate Defendant, in whole or in part;” whether directly held by
24 Johnson or for the benefit of Johnson or a corporate. *Id.* at 15-17. Until the pending
25 Motion to Expand, the Receiver has never taken the position that any of the Vowell Entities
26 are subject to the freeze order in this action.
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15. The Court also appointed Robb Evans of Robb Evans and Associates, LLC as Receiver of the Corporate Defendants and the assets of Jeremy Johnson. *Id.* at 22.

16. As used by the Preliminary Injunction, the receivership and the term “Receivership Defendants” are limited to “the Corporate Defendants and the assets of Jeremy Johnson.” *See id.* (appointing Receiver “for Corporate Defendants and the assets of Jeremy Johnson” and referring to the same as “Receivership Defendants”); *id.* at 10 (ECF No. 130) (defining Receivership Defendants as “the Corporate Defendants and the assets of Jeremy Johnson”).

17. Under the Order, “Corporate Defendants” means the corporations *named in the FTC suit*, including “whatever other names each may be known, any subsidiaries, affiliates, any fictitious business entities or business names created or used by these entities, or any of them, and their successors and assigns, individually, collectively or in any combination.” *Id.* at 7. (emphasis added).

18. Under the Order, “‘Assets’ means any legal or equitable interest in, right to, or claim to, any real or personal property, including, without limitation, chattels, goods, instruments, equipment, fixtures, general intangibles, leaseholds, mail or other deliveries, inventory, checks, notes, accounts, credits, contracts, receivables, shares of stock, and cash wherever any such asset is located, whether in the United States or abroad. *Id.* at 5.

19. The Preliminary Injunction Order directs the Receiver to “assume full control of the Receivership Defendants,” removing corporate officers, directors, and employees from control, management, or participation in the affairs of the Receivership Defendants; to take exclusive custody, control, and possession of all assets and documents of, or in the possession, custody, or under the control of, the Corporate Defendants.” *Id.* at 23.

1 20. To facilitate the Receiver’s authority, the Court ordered that Defendants and any
2 persons with property relating to the Receivership Defendants must upon notice immediately
3 transfer or deliver to the Receiver “possession, custody and control of . . . “all assets of the
4 Receivership Defendants . . .all documents . . . all computers, mobile phones, and other devices in
5 whatever form used to conduct the business of the Receivership Defendants.” *Id.*

6 ***The FTC and the Receiver Pursued Expedited and Unilateral Discovery***

7
8 21. Two days before the Court entered the Preliminary Injunction Order, the Receiver
9 Released its First Report of Receiver’s Financial Reconstruction. (hereinafter, “First Receiver’s
10 Report”).

11 22. As acknowledged by the Receiver, the First Receiver’s Report identified funds it
12 alleged Triple Seven LP had transferred to or for Jeremy Johnson’s benefit. First Report at 17.
13 The Report also “commented on the \$6.5 million note . . . given by Elite Debit, Inc. . . . and
14 Johnson in favor of Triple Seven . . .” Mem. Supp. Mot. Expand at 4 (discussing Receiver’s First
15 Report).
16

17 23. Shortly thereafter, the Federal Trade Commission served Todd Vowell, Jason
18 Vowell and many of the Vowell entities with subpoenas to produce documents, information or
19 objects. A copy of each subpoena is attached hereto as Exhibit 1.
20

21 24. The subpoenas sought the production of documents relating to ownership and
22 management of and interests in several of the Vowell Entities, as well as agreements with the
23 Defendants in the FTC action. The subpoenas also sought documentation from various financial
24 accounts and documents relating to any use of the entities’ funds by the Defendants in the FTC
25 action. *Id.* In some instances, the subpoenas sought documents related to services provided to the
26 Defendants in the FTC action. *Id.*
27
28

1 25. Jason Vowell and the Vowell Entities spent tens of thousands of dollars to collect
2 and produce documents responsive to the subpoenas. The Vowell Entities produced more than
3 6,000 documents.³

4 26. Using the documents provided by Mr. Vowell and the Vowell Entities, the Receiver
5 and the FTC also deposed Mont Humphries and Stacey Ewell, who are employees of SunFirst
6 Bank. Representatives of SunFirst Bank and other employees of the Bank were represented at the
7 Humphries deposition. CITE. Jeremy Johnson, Andy Johnson, Lloyd Johnston, and Duane
8 Fielding appeared pro se at the Ewell deposition. No other parties or interests were represented at
9 the depositions. Jason Vowell and the Vowell Entities were not apprised of any of the depositions
10 and were not invited to participate. *See* Declaration of Matthew R. Lewis (July 16, 2012), attached
11 hereto as Exhibit 3.
12

13 27. The Receiver's discovery efforts sought to prove its theory that the
14 Vowell Entities and the assets held by the Vowell Entities in fact belong to Jeremy
15 Johnson.
16

17 28. The Receiver pursued lines of questioning attempting to establish its theory that
18 Elite Debit and the Vowell Entities were one in the same. *See, e.g.,* _____.
19
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22 _____
23 ³ Jason Vowell also agreed to sit for a deposition and to answer the Receiver's questions regarding the documents and
24 materials he had provided to the Receiver. The deposition was set for July 22, 2011. However, the night before Jason
25 Vowell was scheduled to sit for the deposition, FBI agents investigating a criminal case in the Southern District of
26 New York arrived at Jason and Todd Vowell's office, seeking to interview them regarding an ongoing investigation
27 into conduct related to online poker websites. These agents ultimately served Jason Vowell with a grand jury
28 subpoena (these were the same FBI agents who detained Jason Vowell at JFK on July, 20, 1010). *See* Grand Jury
Subpoena, CASE, attached hereto as Exhibit _____. Counsel for Jason Vowell was subsequently informed that Jason
Vowell was a potential subject or target in that investigation. Although Jason Vowell does not believe he has engaged
in any wrongful or criminal conduct, caution dictated that he assert his Fifth Amendment rights in response to
potential questions regarding his interactions with Jeremy Johnson, the only FTC Defendant with whom he had a
business relationship. *See* Ex. ____, Vowell Decl. at ¶ _____. Accordingly, his counsel informed the Receiver that if the
deposition continued, Jason Vowell would be asserting his right against self-incrimination, as constitutionally
protected by the Fifth Amendment of the United States Constitution. *Id.* _____.

1 29. The Receiver also issued more than 150 subpoenas, searching for any link between
2 the Vowell Entities and the IWorks enterprise and Jeremy Johnson. *See* Receiver’s Second Report
3 at 3.

4 30. In the depositions, the Receiver pursued lines of questioning attempting to establish
5 its theory that Johnson and/or his related entities actually controlled the Vowell Entities. *See, e.g.,*
6 Exhibit 5, Humphries Depo. at 22:13-21, 49:9-50:15, 208:6-209:3. The Receiver’s discovery
7 efforts also sought to prove its theory that the Vowell Entities and the assets held by the Vowell
8 Entities in fact belong to Johnson.

9
10 ***The Second Receiver’s Report Is Erroneous, Premised on Incorrect Assumptions, and Omits***
11 ***Contradictory Evidence***

12 31. On February 3, 2012, after over a year of formal discovery and more than ____
13 since the FTC first began investigating Jeremy Johnson and his “affiliated” entities, the Receiver
14 filed a Second Report of Receiver’s Financial Reconstruction. In this Second Report, the Receiver
15 claimed to have “discovered approximately \$51.4 million in net processing revenues generated by
16 three primary processing entities, Triple Seven, Powder Monkeys, LLC . . . and Mastery Merchant
17 LLC” and two other payment processing entities, Cerberus Management, LLC . . . and Flying
18 High Enterprises, LLC.”

19
20 32. To lay claim to this large sum of money, the Receiver concluded that based upon
21 the evidence collected “Jeremy Johnson transferred revenue without independent consideration
22 from named Receivership Defendants to affiliated entities that he directly or indirectly controlled
23 and to individuals with whom he colluded.” Receiver’s Second Report at 79. The Receiver further
24 asserts that “all remaining cash generated by and assets acquired from the \$51.4 million which was
25 transferred belongs to the Receivership Defendants and/or Jeremy Johnson and is property of the
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1 receivership estate.” *Id.* This conclusion is erroneous and is based upon fact collection and
2 analysis that is incomplete, riddled with errors and operates on materially flawed assumptions.

3 ***The Receiver’s Second Report Fails to Cite Evidence Indicating That Todd Vowell is an***
4 ***Independent Businessman and Incorrectly Concludes That Todd Vowell Acted at the Direction***
5 ***of Johnson.***

6 33. Jason Vowell is an experienced businessman and entrepreneur. For more than
7 fifteen years Jason Vowell has built, facilitated and operated numerous ventures and businesses,
8 most of which are completely independent of Jeremy Johnson.

9 34. For example, in 1998 Jason Vowell bought into his brother Todd’s business Capital
10 Energy Corporation. This company syndicated oil and gas exploration projects. *Id.* With Jason
11 Vowell serving as vice president, the company syndicated over 130 oil and gas projects in four
12 different states and two different countries. *Id.*

13 35. As part of the management of these numerous projects, Jason assisted Todd Vowell
14 in creating 25 separate entities and raised \$26 million in revenue. *See, e.g.* Corporate Documents,
15 attached hereto as Exhibit 8.

16 36. Organizing and managing the projects through separate entities allows entities to
17 compartmentalize accounting and operations. It also protects differing ventures and interests from
18 potential liabilities that could be incurred by other projects. Finally, the existence of distinct
19 entities simplifies financial reporting and tax return preparation.
20

21 37. For these reasons, Jason Vowell has frequently assisted in creating new entities for
22 differing projects and ventures. As public records demonstrate, prior to 2009, Jason assisted Todd
23 Vowell in creating approximately 62 business entities. *See* Exhibit 8.
24

25 38. These entities were created to facilitate Jason and Todd Vowell’s varying business
26 interests, which include and developing commercial and residential real estate, a car dealership,
27 and a restaurant. Exhibit 8, Vowell Decl.
28

1 39. In 2001, Jason Vowell, through his numerous business contacts, along with the
2 assistance of Todd Vowell and their other partner, founded the Liahona Academy for Youth, LLC.
3 *Id.* This limited liability company operates a residential treatment facility in Washington County,
4 Utah. *Id.*

5 40. Currently the Liahona Academy employs over 53 employees in a 10,000 square
6 foot facility. *Id.* at ¶ 12. Jason Vowell, along with his brother, acquired 3 acres of land in 2004
7 and built the 10,000 square foot facility from which the Academy operates.⁴ *Id.* at ¶ 11.

8 41. Due to Jason Vowell's business success, he quickly became known within the St.
9 George/Washington County business community.⁵

10 42. Due to his financial success, Jason Vowell, being the face of many of the joint
11 Vowell Entities and due to his extensive business networking, was often approached to fund
12 various ventures or provide financial assistance. Jason Vowell was very selective about his
13 involvement in business ventures and commonly opted to only provide hard money loans rather
14 than join the varied business ventures that were presented to him and his brother Todd. *Id.* Over
15 the course of six years, Jason and Todd Vowell extended more than \$8.75 million in 20 separate
16 hard money loans.

17 43. The Receiver fails to mention any of these facts when arguing that Jason and Todd
18 Vowell and the Vowell Entities are controlled by Jeremy Johnson.

19 ***The Receiver's Assertion that Jeremy Johnson Controls Each and Every Business Relationship***
20 ***Between Jason Vowell and Jeremy Johnson Also Ignores the Record Evidence of Johnson and***
21 ***Vowell's Separate and Independent Business Relationships.***

22
23
24
25
26 _____
27 ⁴ Separately represented.

28 ⁵ In 2010, Washington County's total population is was 138,451. Among these residents 1,822
people were involved in the financial activities. See Washington County Facts, available at
<http://jobs.utah.gov/opencms/wi/regions/western/washington/washingtonfs.pdf>. A copy is
attached hereto as Exhibit _____.

1 44. Jason Vowell was a successful businessman long before ever meeting and or doing
2 business with Jeremy Johnson.

3 45. In 1998 Jason Vowell bought into his brother Todd's business Capital Energy Corp.
4 and started up Spyglass Enterprises, LLC and Valentino Properties, LLC in or about 2000.
5 Valentino Properties owns and manages rental properties. Spyglass Enterprises, LLC owns many
6 of the other Vowell Entities. These companies were all successful businesses prior to ever meeting
7 and or doing business with Jeremy Johnson.
8

9 46. Todd Vowell is a successful accountant and provides management and accounting
10 expertise to the Vowell business ventures.

11 47. Jason Vowell provides a face to the Vowell Entities' businesses and provides the
12 majority of the leg-work in terms of sales, negotiations, business and banking relationships, and
13 any offsite management in regards to any construction, zoning, rezoning and parcel development
14 projects undertaken. Jason Vowell oversaw the construction of Executive Plaza and Tabernacle
15 Towers as a couple of examples.
16

17 48. One of these companies owned by Jason Vowell, Scamvictimhelp.com, actually
18 provided help for consumers who felt they were incorrectly charged for any internet-related
19 business transaction they were involved in. Scamvictimhelp.com was a source of contention
20 between Jeremy Johnson and Jason Vowell since a number of Scamvictimhelp.com's clients called
21 regarding some of Jeremy Johnson's internet-based businesses.
22

23 49. In 2001 Jason Vowell started a merchant processing company that processed
24 merchant services for Genesis Media Group. The fees generated from this venture grossed in
25 excess of \$300,000.00. This was accomplished prior to ever meeting and or doing business with
26 Jeremy Johnson.
27
28

1 50. Jason Vowell first did business with Jeremy Johnson in March 2003, when Mr.
2 Johnson applied for and received several hard money loans from Paydirt, LP.

3 51. During that year, Paydirt, LP extended \$783,000 in hard money loans to Jeremy
4 Johnson and his businesses. During 2003, Paydirt, LP collected \$79,878 in interest on Mr.
5 Johnson's loans.

6 52. In 2004, Paydirt extended additional hard money loans totaling \$790,711 to
7 Johnson and his businesses. Paydirt collected \$126,705 in interest on the Johnson loans on those
8 loans. In 2005, Paydirt lent Johnson another \$167,696. Johnson then paid off the outstanding
9 balances for all Paydirt loans in 2005.
10

11 53. During these years, the loans from Paydirt to Jeremy Johnson and his entities were
12 the full extent of the business relations between the Vowell Entities and Mr. Johnson.

13 54. Paydirt and Johnson also engaged in real estate transactions. In 2006, Jeremy
14 Johnson and three other local businessmen partnered with Paydirt on the development of land held
15 by Paydirt. That same year, Jeremy Johnson purchased commercial property from Paydirt
16 Properties, LLC, a company funded and owned by Jason Vowell and his brother, Todd Vowell.
17 See Purchase Agreement attached hereto as Exhibit 9. Johnson purchased another piece of
18 commercial property from Paydirt Properties LLC in 2008. See Purchase Agreement attached
19 hereto as Exhibit 10.
20
21

22 ***The Receiver's Assertion that the Receivership Defendants Initially Owned and Then***
23 ***Transferred Their Interest In Payment Processing to Various Vowell Entities Is Wrong.***

24 55. To establish an interest in this sizable revenue, the Receiver hypothesized and set
25 out to establish these funds belong to Jeremy Johnson and thereby the receivership estate. As a
26 result, the Receiver's core theory is that payment processing revenues shifted "from IWorks to the
27 Payment Processors [Triple Seven, Powder Monkeys, and Mastery Merchant] at Johnson's
28

1 direction to conceal Johnson's interest in the Payment Processors and more important, Johnson's
2 beneficial ownership interest and control over the downstream entities and assets they acquired in
3 an attempt to remove them from the Reach of the [unappointed] Receiver and other creditors."
4 CITE. This fundamental assertion for the Receiver is contradicted by the very evidence in the
5 Receiver's possession.

6 56. First, IWorks did not "shift," "sell," or otherwise "transfer" its processing business,
7 interest or accounts to Triple Seven, Powder Monkeys, or Mastery Merchant. Instead, IWorks and
8 its affiliated companies provided payment processing as part of an entirely separate and distinct
9 business arrangement that involved individuals and entities and products and merchants that are
10 completely distinct from the individuals, entities and products involved in the Triple Seven,
11 Powder Monkeys and Mastery Merchant payment processing business.
12

13 57. As alleged in the FTC's Complaint, IWorks and its affiliated companies provided
14 payment processing for the named Receivership Defendants in connection with an internet
15 marketing scheme. FTC Compl. at 6, 10-12, 14 (ECF No. 1)
16

17 58. In contrast, Triple Seven, Powder Monkeys and Mastery Merchant (referred to
18 hereafter as the "Vowell Processors") provided payment processing for online poker entities. *See*
19 *Second Receiver's Report* at 29 (ECF No. 464); *Mem. Supp. Mot. Expand* at 9; position of Mont
20 Humphries (Aug, 10, 2011) 133:23-134:5. Prior to Jason Vowell creating accounts for the Vowell
21 Processors, SunFirst Bank had not provided payment processing services to IWorks, Elite Debit or
22 any other entity for online poker. *Humphries Depo.* 75:24-76:11, 86:4-7.
23

24 59. The Vowell Processor accounts were created differently from the Elite Debit
25 accounts and "were handled different than the Elite Debit ones." *Humphries Depo.* 113:20-22.
26 Unlike the payment processing accounts associated with IWorks and internet marketing, the
27 Vowell accounts were separate from and not associated with Elite Debit. *Humphries Depo.* 44:10-
28

1 22; 48”4-6. Elite Debit did not have access to these accounts. 46:5-9. Jason Vowell opened and was
2 the signatory for the accounts. *Id.* at 49:12-21.

3 60. In the fall of 2009, Triple Seven contracted directly with SunFirst Bank. *See* FTC-
4 MH-0001-00016; FTC-MH-00017-00032, attached hereto as Exhibit 11.⁶ Thus, Jeremy Johnson,
5 IWorks, and Elite Debit never had an interest in the Vowell Processors and thereby had no
6 account, asset or portfolio to shift, sell or transfer. The Receiver’s assertions to the contrary,
7 which plague the Receiver’s Motion to Expand, are unsupported and contradictory to the factual
8 record. *See, e.g.* Mem. Supp. Mot. Expand 13 (questioning the “purported sale of the processing
9 business to Triple Seven”); 17 (arguing that the “Primary Processors essentially took over the
10 payment processing business of IWorks and other Receivership Defendants . . .” and discussing a
11 “shift in revenues from IWorks to the new entities nominally owned by others”); 19 (suggesting
12 that the alleged “shift of the processing business from I Works, Elite Debit, and Money Harvest
13 were part of a scheme to transfer and conceal funds).

14 61. On or about July 20, 2010, Jason Vowell, his attorney, John Campos and Jeremy
15 Johnson were at JFK Airport and set to depart for Ireland. Jason Vowell had arraigned meetings
16 with certain processing clients fseveral weeks prior to this trip. During this trip, Homeland
17 Security called Jason Vowell over the intercom. Jason Vowell was subsequently temporarily
18 detained and questioned by the FBI. This temporary detention included questioning as to why
19 Jason Vowell was going to Ireland, and that this detention was arraigned by the Department of
20 Justice in an attempt to dissuade Jason Vowell from providing the merchant processing of online

21
22
23
24 ⁶ The Receiver cites an Agreement to which SunFirst Bank, Triple Seven, and Elite Debit are all
25 parties to suggest that the Vowell Processors originally and continued to be owned and controlled
26 by Johnson. This Agreement is dated nearly a year after Triple Seven contracted with SunFirst
27 and the Vowell Processor merchant accounts were created and started operating. CITE TO TWO
28 OTHER AGREEMENTS. Therefore, it provides no support for the Receiver’s position that the
processing performed by the Vowell Processors was transferred. With respect to ownership the
Agreement supports that Jason Vowell was the controlling party with respect to Triple Seven—not
Jeremy Johnson.

1 businesses overseas. The FBI had prior knowledge that Jason Vowell would be at JFK at this time
2 and for this particular flight beforehand. Jeremy Johnson, who was standing next to Jason Vowell
3 at the airport was never detained or questioned.

4 62. During November 2011, Jason Vowell again traveled to overseas to three different
5 countries to visit and set up banking with a local bank in each country. The purpose of these bank
6 accounts were to facilitate the ease of merchant transactions with Vowell Entities' bank clients
7 who would also bank at these same banks. The main purpose was solely to convert U.S. dollars to
8 Euros. This was done due to Vowell Entitie's bank, Sunfirst Bank, being unable to convert U.S.
9 Currency to Euro currency. This allowed the foreign bank to convert transfer from U.S. currency
10 to Euro currency. During this trip Jason Vowell traveled without any other business partner
11 accompanying him. This was done for the benefit of Jason Vowell and the Vowell Entities alone
12 as it pertained to Jason Vowell's participation.
13

14 63. Jason Vowell did not subject himself to three countries in eight days, an FBI
15 detention and numerous meetings and long hours with Vowell Processor clients for Jeremy
16 Johnson's benefit. Jeremy Johnson, being 50% owner through Elite Debit, did benefit due to his
17 own participation and being the owner of Elite Debit.
18

19 64. The Receiver apparently presumes that because IWorks revenues were gradually
20 diminishing at the same time revenues of the Vowell Processors' increasing monies must have
21 been transferred between the entities. The more logical explanation, however, is that the FTC
22 investigation of IWorks essentially shut IWorks' business down.
23

24 ***The Receiver's Assertion that Jeremy Johnson Owns and Controls the Vowell Processors is Also***
25 ***False.***

26 65. The Receiver also argues that Johnson beneficially owned and controlled the Poker
27 Processors because he had "continued involvement in Triple Seven and its payment processing
28

1 business long after Elite Debit and Johnson supposedly divested their own portfolio.” Memo.
2 Supp. Mot. Expand at 13; Second Receiver’s Report at 26-27.

3 66. To support his argument, the Receiver (and the FTC) point only to a handful of
4 emails selected from the thousands of emails and documents provided to and accessible by the
5 Receiver,, including one on which Johnson was only courtesy copied, to suggest that Johnson
6 enjoyed the sole beneficial interest in the Poker Processors and was an involved “decision maker”
7 in the poker processing. Second Report at 26-27; Mem. Supp. Mot. Expand 11-13. From here, the
8 Receiver jumps to the conclusion that Johnson beneficially owned and controlled the Poker
9 Processors.
10

11 67. Additional emails and other evidence support competing explanations. For
12 instance, with respect to the accounts related to the Poker Processors, documents indicate that Mr.
13 Vowell and Jason Vowell were “decision makers.” *See, e.g.*, Emails from Todd Vowell to Mont
14 Humphries and other SunFirst employees (Nov. 29, 2010), attached hereto as Exhibit 13 (directing
15 SunFirst Bank to consolidate Vowell Processor accounts); Email from Johnson to John Campos
16 (Nov. 3, 2010) (directing Bank to “deal with Todd”), attached hereto as Exhibit 14. Todd Vowell
17 made decisions regarding loan terms and other purchases and investment decisions. *See* Email
18 from Johnson to Todd Vowell (Dec. 9, 2010) (instructing Johnson not to pursue loan as proposed),
19 attached hereto as Exhibit 15; Email from Johnson to Paul T. (Oct. 21, 2010) (instructing Johnson
20 not to pursue loan as proposed), attached hereto as Exhibit 15; Email from Johnson to Paul T. (Oct.
21 21, 2010) (directing merchant to contact Todd Vowell as owner of Mastery Merchant), attached
22 hereto as Exhibit 16. The Receiver fails to mention or refer to any of the emails that suggest the
23 Vowells were at least equal decision makers in connection with the poker processing.
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1 68. The Receiver also cites copies of wire transfers to Johnson in support of its
2 “control” claim, while ignoring that these notices were also sent to Mr. Vowell and Jason Vowell.
3 *See* International Wire Transfer Notice, attached hereto as Exhibit 16.

4 69. To some extent, the Receiver disregards the legitimacy of Elite Debit’s debt based
5 on its conclusion that because Johnson was involved in the poker processing business, he
6 beneficially owns and controls the Vowell Processors and subsequently Johnson owned and has
7 claim to the complete interest in all of the revenue derived from the Vowell processors. *See* Mem.
8 Supp. Mot. Expand 12 & 13.

9 70. This extreme position adopted by the Receiver ignores other, equally plausible
10 explanations and the evidence in the record.

11 71. For example, the testimony of Mont Humphries establishes the Vowell Processor
12 accounts were separate and distinct from Elite Debit and other Johnson accounts. In particular,
13 Mr. Humphries testimony established that the Vowell Processor paid all SunFirst fees related to
14 the entities processing activities from a separate reserve account. Humphries Depo. 165:8-15;
15 167:8-13. This account was funded by the Vowell Processor accounts. *Id.* 168:13-169:4. The
16 Receiver’s assertions to the contrary ignore this evidence. *See* Kane Decl. ¶ 29. Stacy Ewell also
17 testified that Jason and Todd Vowell were the only signatories on the Vowell Processor accounts
18 and therefore the only person with access to the accounts. Deposition of Stacy Ewell (), 65:8-19.

19 72. Out of thousands of emails and documents provided to and accessible by the
20 Receiver, the Receiver (and the FTC) point only to a handful of emails to suggest that Johnson
21 enjoyed the sole beneficial interest in the was an involved “decision maker” in the poker
22 processing. Mem. Supp. Mot. Expand 11-13. From here, the Receiver jumps to the conclusion
23 that Jeremy Johnson beneficially owns and controls the Vowell Processors.
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1 73. Additional emails and other evidence support competing explanations. For instance
2 with respect to the accounts related to the Vowell Processors, Todd Vowell and Jason Vowell were
3 the “decision makers.” *See, e.g.*, Email From Todd Vowell to (date), attached hereto as Exhibit
4 ___)consolidate accounts; deal with Todd. Todd Vowell made decisions regarding loan terms and
5 other purchases and investment decisions. *See* Email from Jeremy Johnson to Todd Vowell (date).
6 The Receiver fails to mention or refer to any of the number of emails that suggest the Vowells
7 were the primary or at least equal decision makers in the poker processing.
8

9 ***The Receiver’s Assertion that the Vowell Entities Are Working With, Assisting, or Otherwise***
10 ***Involved in Transferring or Concealing Funds and Property That Belongs to the Receiver Is***
11 ***Unfounded and Untrue.***

12 74. In addition to the Vowell Processors, the Receiver argues that Jeremy Johnson is
13 the beneficial owner of and controls 80 more Vowell entities. The Receiver seeks to bring these
14 entities and their assets into the receivership estate, as well as the entire assets of Jason Vowell,
15 personally. Dependent on its theory that Jeremy Johnson beneficially owns and controls the
16 Vowel Processors and the revenue derived from the poker processing, the Receiver then argues
17 that the other Vowell entities routed funds and property that originated as revenue from the Vowell
18 Processors. This all or nothing approach relies heavily on the speculative conclusions arrived at by
19 the Receiver and improperly shifts the burden of proof from the Receiver to the Vowells and the
20 Vowell Entities – who aren’t even parties to this action.
21

22 75. In order to bolster this theory, the Motion to Expand points to Jeremy Johnson’s
23 history with family members and employees. However Mr. Johnson’s relatives and family
24 members have conducted business with Mr. Johnson, the Vowell Entities are distinct and
25 independent from Jeremy Johnson as discussed more fully below.
26

27 76. Additionally, the Receiver relies on its Second Receiver’s Report, which is riddled
28 with factual errors, embellishments, and selective unsupported conclusions.

1 77. For example, the Receiver bases many of his conclusions on the premise that Todd
2 Vowell and his related entities have received millions more than they have paid to the Receivership
3 Defendants. However, the Receiver admits that he has yet to identify \$15.4M in disbursements
4 from the Vowell entities and identify \$11.7M in cash receipts from the Vowell entities. CITE.

5 78. These mischaracterizations are designed solely to shock the Court and to
6 manufacture a compelling need to commandeer the real and personal assets of four individuals and
7 the operation and assets of 80 entities.

8
9 ***The Receiver's Motion Seeks to Expand the Receivership By Adding 80 Entities That Are***
10 ***Unrelated to IWorks and Internet Marketing Without Even Adding These Entities as Parties.***

11 79. Now, more than a year after the Receiver filed its First Report and Court entered the
12 governing Preliminary Injunction and nearly four months after the Receiver filed its Second
13 Receiver's Report, the Receiver seeks to dramatically expand the scope of the receivership beyond
14 individuals and entities involved or affiliated with the underlying FTC action and include as
15 "Receivership Defendants" 80 additional entities or assets of individuals who have not been named
16 in the pending FTC action or in a separate ancillary action.

17 80. Specifically, the Receiver requests:

18
19 An order clarifying and confirming that the receivership estate
20 include: (a) as Receivership Defendants under the Preliminary
21 Injunction Order the entities listed on Exhibit A to the Memorandum
22 of Points and Authorities filed in support of this Motion as
23 subsidiaries, affiliates, successors, assigns and/or alter egos of the
24 named Receivership Defendants, (b) as property of the receivership
25 estate ("Receivership Property") under the Preliminary Injunction
26 Order the assets of the individuals listed on Exhibit A, and (c) as
27 Receivership Defendants and Receivership Property all other entities
28 or assets owned or controlled, directly or indirectly, by Jeremy
Johnson ("Johnson"), including but not limited to (i) all assets and
entities held in the name of a third party for the benefit of Johnson
and/or (ii) all assets the source of funding of which came in whole or
in part from funds or assets of the Receivership Defendants as

1 defined in the Preliminary Injunction Order and as clarified pursuant
2 to this Motion . . .

3 Mot. Clarify at 1 (ECF No. 580).

4 81. With respect to the 80 entities identified in Exhibit A, the Receiver seeks unilateral
5 authority to adjudicate whether

6 certain entities, assets, and/or business activities of certain entities
7 are sufficiently independent of and not affiliated with or related to
8 Johnson and/or the other Receivership Defendants and/or which the
9 Receiver believes can be managed, administered and/or operated by
10 the record owners, shareholders, managers or members without
11 interfering with the Receiver's administration of the receivership
12 estate . . . without further order of the Court.

13 *Id.* at 2.

14 82. It is undisputed that the overwhelming majority of the entities listed in Exhibit A
15 have no connection to the IWorks enterprise, including Jeremy Johnson and the Corporate
16 Defendants, or the conduct complained of by the FTC and enjoined by the Preliminary Injunction.

17 ***The Vowell Entities are Not Affiliated with or Related to the Corporate Defendants***

18 83. Among the Vowell Entities only three entities—Cerberus Management
19 (“Cerberus”), Flying High Enterprises, LLC (“Flying High”) and Paydirt Capital —can be linked
20 in any fashion to the named corporate Defendants, the Receivership Defendants, or the conduct at
21 issue in the FTC Action.

22 84. As described in the February 3, 2012 Report of Receiver's Financial Reconstruction
23 (referred to herein as the “Second Receiver's Report”), Paydirt Capital, Cerberus and Flying High
24 purchased billing portfolios from IWorks in June 2010. Second Receiver's Report at ___ (ECF
25 No. 464). Paydirt Capital, Cerberus and Flying High were never involved in product marketing,
26 promotion or sales or any of the conduct addressed in the FTC action. *Id.*

1 85. Moreover, IWorks interest in these portfolios was fully transferred to Paydirt
2 Capital, Cerberus and Flying High, thereby terminating IWorks' interest in the billing portfolios
3 and any revenues gained from these portfolios. See Second Receiver's Report, Tabs 9, 15 IWorks
4 also transferred billing portfolios to Paydirt Capital. The Receiver argues that
5 the connection between the Vowell Entities and Jeremy Johnson is nonexistent in many cases, very
6 limited in most others, and a recognized business relationship in all others.

7
8 ***In Order to Bring the Entities and Assets within the Receiver's Authority (and the Court's***
9 ***Jurisdiction) the Receiver Argues That the Jeremy Johnson is the Beneficial Owner and***
10 ***Controls the Vowell Entities.***

11 86. Faced with the limited connection between the Vowell Entities and
12 the IWorks parties and the IWorks conduct, the Receiver is forced to argue that the Vowell
13 Entities are "beneficially" owned and controlled by Jeremy Johnson and are thereby "assets
14 of Jeremy Johnson" in order to bring the Vowell Entities and their assets under the
15 governance of the Preliminary Injunction. Specifically, in a conclusory fashion, the
16 Receiver argues that the Vowel Entities are "subsidiaries, affiliates, successors, assigns
17 and/or alter egos of the named Receivership Defendants." The Receiver also seeks to add
18 any other entity or asset (whether named in the Motion to Clarify or not) that, in the
19 Receiver's opinion is "beneficially owned" by Jeremy Johnson. Mot. Expand at 1. This
20 conclusion is based on the incomplete and flawed Second Receiver's Report discussed
21 above. As the Receiver candidly acknowledges in its Motion to Clarify – the Receiver still
22 has not established "which entities, or which specific business activities of those entities,
23 are 'legitimate' and independent of Johnson, if any, and which are properly part of the
24 receivership estate . . ." *Id.* at 38.

25
26 ***The Posture of the Case Prevents the Vowell Entities from Explaining the Transactions at Issue.***
27
28

1 87. Acknowledging the shortcomings of its investigation, the Receiver attempts to turn
2 proper process on its head and argue that it should be allowed to assume control over these
3 independent entities until they sufficiently demonstrate – in the Receiver’s biased view – that they
4 should be entitled to retain those assets.

5 88. Of course, at the same time, the FTC and Receiver are pushing criminal authorities
6 to proceed with their investigation into the same facts, thereby placing Jason Vowell in jeopardy.

7 89. But for the existence of a criminal investigation into similar facts, Jason Vowell
8 would welcome the opportunity to explain the true arrangement between the Vowell Entities and
9 Jeremy Johnson and his entities.
10

11 ***The FTC and Receiver Are Coordinating with and Pursuing Overlapping Theories with the***
12 ***Department of Justice and the United States Attorney for the District of Utah***

13 90. Despite protestations to the contrary, it is clear that the FTC, Receiver and criminal
14 authorities are actively coordinating in this case and the criminal investigation being conducted by
15 the Utah United States Attorney’s Office.

16
17 91. Indeed, one need look no further than the criminal Complaint against Jeremy
18 Johnson. This Complaint is a single count complaint alleging one count of Wire Fraud based on
19 one internet marketing transaction. Given the extensive misconduct alleged in this action, one
20 must ask why a single count complaint would be filed.

21 92. The answer is that the FTC urged the U.S. Attorney’s office to file a hasty
22 complaint because it believed that Jeremy Johnson was going to leave the country and wanted to
23 have him arrested in order to assert greater leverage over him in this case.
24

25 93. Moreover, it is clear that the FTC and Receiver are providing discovery materials to
26 criminal authorities and directing criminal authorities regarding interviews that should be
27 conducted.
28

1 freeze and restrictive injunction that governs the conduct of the Defendants in the underlying FTC
2 action. In making this unchecked grasp for assets, the Receiver admits that the supporting factual
3 record and “expert” analysis fails to establish “which entities, or which specific business of those
4 entities, are legitimate and independent of Johnson, . . . and which are properly part of the
5 receivership estate to be maintained and preserved pending the outcome of this litigation.” *See*
6 Receiver’s Mem. Points and Authorities at 38. Still, the Receiver argues that treating the Vowell
7 Entities as Receivership Defendants is possible under an ambiguous but broad authority delegated
8 to Receivers. *Id.* (quoting *SEC v. Hardy*, 803 F.2d 1034, 1037-38 (9th Cir. 1986). The Receiver
9 ignores that before exercising any equitable powers, the Court’s equitable jurisdiction must be
10 properly invoked. *SEC v. Materia*, 745 F.2d 197, 200 (2d Cir. N.Y. 1984) (“Moreover, *once* the
11 equity jurisdiction of the district court properly has been invoked, the court has power to order all
12 equitable relief necessary under the circumstances.” (emphasis added)).
13
14

15 Here, with 61 entities already under the Receiver’s control, the authority of Receiver is not
16 boundless and should be limited to the parties of the FTC action. Accordingly, the Receiver’s
17 motion to add 80 new entities, including the 46 Vowell Entities should be denied. First, the plain
18 language of the Preliminary Injunction Order does not include or apply to the Vowell Entities.
19 Instead, the Receiver improperly seeks to control the Vowell Entities and manage all assets held by
20 the entities, as well as the personal assets of Todd Vowel and his wife, without naming any of the
21 nonparties as defendants, even nominal defendants, in the FTC action or properly serving the
22 entities with process. Aside from denying the Vowell Entities their individual right to due process,
23 the Receiver cannot garner control of the Vowell Entities and their assets cannot be carried out
24 based on the incomplete and inaccurate reports prepared by the Receiver. Additionally, aside for
25 the Reports errors, the improper procedure by which the Receiver has moved to commandeer the
26
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1 Vowell Entities and all of their assets substantially prejudices the Vowell Entities ability to defend
2 their interest in the property.. Thus, the Receiver’s Motion should be denied.

3 **I. THE VOWELL ENTITIES ARE NOT RECEIVERSHIP DEFENDANTS**

4 The Preliminary Injunction does not encompass the Vowell Entities and cannot be
5 “clarified” to do so. The Preliminary Injunction provides the Receiver with authority over 61
6 Corporate Defendants and the assets of Johnson. In an effort to grossly expand the scope of
7 receivership, the Receiver now seeks to add 80 additional entities and the assets of 4 individuals.
8 These entities and individuals are not part of the “I Works enterprise.”. *See* Statement of Facts
9 (herein after “SOF”).
10

11 The Vowell Entities do not fit within the Preliminary Injunction’s parameters for the
12 “Receivership Defendants.” The Vowell Entities have no relationship to the conduct alleged in the
13 Complaint or enjoined by the Preliminary Injunction Order. *Id.* The Vowell Entities are not
14 affiliated with or related to the Corporate Defendants in the Preliminary Injunction
15

16 In the limited instances where the Receiver has alleged a business relationship between the
17 entities, the Receiver has not established the scope of Johnson’s interest. Instead, in instances
18 where the interest of other individuals is documented, the Receiver claims that Johnson
19 “beneficially” controls and owns the entirety of the entity, including all of its revenues and assets.
20 *See* Mem. Supp. Mot. Expand at 5 (noting that Receiver’s Second Report addresses entities “most
21 of which are ‘nominally’ owned and/or managed by third parties, primarily Todd Vowell and/or
22 Jason Vowell, but which are beneficially owned and controlled by Johnson”). Lacking a
23 connection to the Corporate Defendants in the FTC action and short of establishing the specific
24 interest Johnson individually holds in each entity, the Vowell Entities are not “Receivership
25 Defendants” as defined by the Preliminary Injunction proposed by FTC and entered by this Court.
26
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28

1 Falling outside of the Preliminary Injunction Order, the Court and correspondingly the Receiver,
2 does not have jurisdiction over the Vowell Entities.

3
4 **II. THE COURT DOES NOT HAVE JURISDICTION
OVER THE VOWELL ENTITIES**

5 “The requirement that a court have personal jurisdiction ‘represents a restriction on
6 judicial power not as a matter of sovereignty, but as a matter of individual liberty.’ *Ross*, 504 F.3d
7 at 1138 . “Without a proper basis for jurisdiction, or in the absence of proper service of process,
8 the district court has no power to render any judgment against a . . . person or property” *SEC*
9 *v. Ross*, 504 F.3d 1130, 1139 (9th Cir. 2007). In the context of a receivership, to establish
10 jurisdiction over the Vowell Entities, the Receiver must name and properly serve the Vowell
11 Entities as defendants in the FTC action, as nominal defendants in receivership, or file and serve
12 an ancillary complaint against them. *See SEC v. Kirkland*, No. 6:06-cv-183, 2006 U.S. Dist.
13 LEXIS 84522, at *4 (noting that nonparty had not been named as a defendant, nominal defendant,
14 or in an ancillary complaint and concluding that court did not have personal jurisdiction over
15 nonparty).

16
17
18 Here, the Receiver’s Motion to Expand seeks complete possession and control of the
19 Vowell Entities and all of their property without establishing a proper basis for jurisdiction. This
20 improper pursuit of judicial control over the Vowell Entities violates their due process rights. *See*
21 *Ross*, 504 F.3d 1130 (9th Cir. 2007) (concluding that exercising personal jurisdiction over
22 defendant without naming him as Defendant and properly serving process or properly pursuing as
23 nominal defendant violated his due process rights). Accordingly, the Receiver’s Motion to Expand
24 should be denied; the Receiver has not and cannot establish *in personam* jurisdiction over the
25 Vowell Entities and has not and cannot establish *in rem* jurisdiction over the Vowell Entities’
26 property.
27
28

1 A. *The Court, and Correspondingly the Receiver, Does Not Have In Personam Jurisdiction*
2 *over the Vowell Entities.*

3 To obtain *in personam* jurisdiction over the Vowell Entities, the Court must name and
4 serve the Vowell Entities as defendants and provide them with an opportunity to oppose the
5 Preliminary Injunction. “It is elementary that one is not bound by a judgment *in personam*
6 resulting from litigation in which he is not designated as a party or to which he has not been made
7 a party by service of process.” *Zenith Radio Corp. v. Hazeltine Research*, 395 U.S. 100, 110 (U.S.
8 1969). “The consistent constitutional rule has been that a court has no power to adjudicate a
9 personal claim or obligation unless it has jurisdiction over the person of the defendant.” *Id.*; *Ross*,
10 504 F.3d at 1138. Limited exceptions are provided by Rule 65(d), but here Receiver has failed to
11 satisfy these exceptions. *See id.*; *FTC v. Productive Mktg.*, 136 F. Supp. 2d 1096, 1104 (C.D. Cal.
12 2001).

13
14 Under Rule 65(d) “an injunction is binding upon ‘the parties to the action, their officers,
15 agents, servants, employees, and attorneys, and upon those persons in active concert or
16 participation with them who receive actual notice of the order by personal service or otherwise.’”
17 *Id.* (quoting Fed. R. Civ. P. 65(d)). Thus, a contempt order can only be asserted against conduct
18 occurring after the entry of a injunction and only against a non-party “legally identified” with the
19 enjoined party. *Id.*; *G&C Merriam Co. v. Webster Dictionary Co.*, 639 F.2d 29, 35 (1st Cir. 1980).
20 To be clear, “[h]aving a relationship to an enjoined party of the sort set forth in Rule 65(d) exposes
21 a non-party to contempt for assisting the party to violate the injunction, but does not justify
22 granting injunctive relief against the non-party in its separate capacity.” *Id.*; *Kirkland*, 2006 U.S.
23 Dist. LEXIS 84533 (concluding that Court did not have personal jurisdiction over defendant’s
24 former spouse when spouse had not been named in action or served with process and no evidence
25 that spouse acted in active concert with Defendant).
26
27
28

1 The recent case of *U.S. CFTC v. Lake Shore Asset Mgmt. Ltd.*, No. 07 C 3598, 2011 U.S.
2 Dist. LEXIS 92789, at *11 (N.D. Ill. Aug. 19, 2011), illustrates the limits of the Court's *in*
3 *personam* jurisdiction. In *Lake Shore* the Receiver moved to expand the receivership to include an
4 entity referred to as "FTG." *Id.* at 2-3. In support the Receiver argued that expanding the
5 receivership to include FTG did not constitute a new action against a nonparty because FTG was
6 an affiliate or alter ego of at least one receivership defendant. *Id.* at 9-10. Additionally, the
7 Receiver argued that FTG was "inextricably intertwined" with two of the receivership defendants.
8 *Id.* at 10. Still, the Receiver was not pursuing FTG as a defendant or coconspirator, but instead
9 sought to recover funds that were allegedly wrongfully paid to it by two receivership defendants.
10 *Id.* at 9-10. The Receiver also sought to take over FTG "and use FTG's funds to benefit defrauded
11 Lake Shore investors." *Id.*

12
13 Setting aside Receiver's alter ego arguments, the District Court for the Northern District of
14 Illinois denied the Receiver's motion. The Court concluded that a "a district court may not issue
15 an order specifically directed at an alleged alter ego unless that party is first named as a defendant
16 and served with process." *Id.* at 16. The Court noted that while it "appreciate[d] the receiver's
17 efforts to obtain funds for the defrauded investors . . . [the receivership defendant's] alter egos
18 must be formally named as defendants and served before being subject to this court's direct orders
19 regarding their assets. *Id.* at 20-21.
20
21

22 Here, like in *Lake Shore*, without establishing a proper basis for jurisdiction, the Receiver
23 in a conclusory fashion, asserts that the Vowell Entities are intertwined with Johnson and in effect
24 Johnson's alter egos. As in *Lake Shore*, such assertions fail to support jurisdiction over the Vowell
25 Entities. The Receiver has not named one of the Vowell Entities as a defendant in the FTC action
26 nor has it served any of the entities with process pursuant to Rule 4 of the Federal Rules of Civil
27 Procedure. Without proper process, the Court does not have personal jurisdiction over any of the
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1 Vowell Entities. Absent this jurisdiction, the Court and correspondingly the Court cannot include
2 in the receivership estate “as Receivership Defendants under the Preliminary Injunction order the
3 entities listed on Exhibit A . . . as subsidiaries, affiliates, successors, assigns and/or alter egos of
4 the named Receivership Defendants.” *See* Mot. Expand at 1 ¶ 2.

5 Aside from the procedural impediments to the Receiver’s efforts to add the Vowell Entities
6 and to obtain *in personam* jurisdiction over the entities, the Receiver has also failed to establish
7 that any of the entities are “alter egos” of Johnson. “To invoke the [alter ego] doctrine against a
8 party, [the court] must find that the party was an actor in the course of conduct constituting the
9 abuse of corporate privilege—[the court] may not apply the doctrine to prejudice an innocent third
10 party.” *SEC v. Elmas Trading Corp.*, 620 F.Supp. 231, 233 (D. Nev. 1985). Here, the Receiver has
11 not established that Jeremy Johnson had access to or control over any of the Vowell Entities, let
12 alone, that he abused the corporate form of these entities. Jeremy Johnson was not a corporate
13 officer of any of the Vowell Entities; therefore, he was not in the position to abuse the corporate
14 form. SOF ¶ **Error! Reference source not found.** Moreover, Todd Vowell and the other
15 members or managers of the Vowell entities observed corporate formalities such as regular
16 meetings and proper corporate filings, maintained corporate records including regular accounting
17 records and active involvement by corporate officers. SOF ¶ **Error! Reference source not**
18 **found.**; *see Elmas Trading Corp.*, 620 F.Supp.at 233-34 (setting forth factors considered by
19 federal court when determining whether the form of a corporate entity should be disregarded).
20 Given the Vowell Entities’ efforts to maintain the integrity of the corporate forms and the
21 continuing purpose and structure of each entity, it would be unfair and unjust to set aside the
22 corporate nature of these entities in favor of the unrelated estate of Jeremy Johnson. *See id.* (“The
23 conclusion to disregard the corporate entity does not . . . rest on a single factor, but often involves
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1 a consideration of the mentioned factors; the particular situation must generally present an element
2 of injustice or fundamental unfairness.”).

3 *B. The Vowell Entities are Not Nominal Defendants.*

4 Short of naming a non-party as a defendant in the underlying FTC action, “[a] Court can
5 obtain equitable relief from a non-party against whom no wrongdoing is alleged if it is established
6 that the non-party possesses *illegally obtained profits but has no legitimate claim to them.*” *SEC v.*
7 *Cherif*, 933 F.2d 403 (7th Cir. 1991) (emphasis added); *SEC v. Colello*, 139 F.3d 674, 677 (9th
8 Cir. Cal. 1998) (“[W]e emphasize that in the typical case, the creditor plaintiff must show that the
9 nominal defendant has received ill gotten funds and that he does not have a legitimate claim to
10 those funds.”). Typically, as was the case in *Cherif*, the Complaint will name a party as a nominal
11 defendant. *See id.* The purpose of pursuing a nominal defendant is “to effect full relief in the
12 marshalling of assets that are the fruit of the underlying fraud.” *SEC v. Ross*, 504 F.3d 1130, 1141
13 (9th Cir. 2007) (quoting *Colello*, 139 F.3d at 677). Accordingly, “lack of a legitimate claim to the
14 funds is the defining element of a nominal defendant.” *Colello*, 139 F.3d at 677.
15
16

17 Here, the Receiver has failed to identify the Vowell Entities as nominal defendants.
18 Moreover, the Receiver cannot pursue the assets of the Vowell Entities under a nominal defendant
19 theory because none of the assets held by the Vowell Entities are “fruit of the underlying fraud.”
20 *See Ross*, 504 F.3d at 1141. Indeed, the Vowell Entities are not connected or affiliated with the I
21 Works Enterprise nor did they receive any funds or other transfer of assets from the I Works
22 Enterprise or any Receivership Defendant. SOF ¶¶ **Error! Reference source not found.-Error!**
23 **Reference source not found.** Instead, the Vowell Entities were funded through separate and
24 independent business ventures that operated in industries entirely independent and unique from the
25 internet marketing and other enterprises undertaken by I Works and the related entities. SOF
26 ¶¶ **Error! Reference source not found.-Error! Reference source not found.** Additionally, the
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1 owners and officers and employees of the Vowell Entities, as well as the entities themselves, have
2 legitimate claims to the funds and assets held by the entities as distribution of their ownership
3 interest in the companies, partnership income and/or payment for services performed. *See Ross*,
4 504 F.3d at 1142 (9th Cir.) (noting that salesman had presumptive title to commissions and
5 therefore not a nominal defendant). Thus the Receiver cannot avoid formal jurisdiction
6 requirements by naming (let alone alleging) the Vowell Entities as “nominal defendants.” Instead,
7 the Receiver must prove that the Vowell Entities have violated the trade laws or identify the
8 specific interest owned by the Receivership Defendants and how and where it is held by each
9 Vowell entity.
10

11 *C. The Court Does Not Have In Rem Jurisdiction Over the Vowell Entities.*

12 In a receivership, the Court’s *in rem* jurisdiction is limited to the receivership estate as
13 defined by the Court. The authority for this jurisdiction and the Receiver’s authority arises from
14 28 U.S.C. § 754. “[S]ection 754 deals exclusively with *in rem* jurisdiction over the receivership
15 property, it is insufficient, standing alone, to serve as the basis for jurisdiction with regard to an
16 individual defendant” and all of its assets. *Terry v. June*, 2003 U.S. Dist. LEXIS 12873, 10 (W.D.
17 Va. July 21, 2003).

18 Here the Receiver argues that the Court has “broad supervisory powers to determine the
19 scope of assets and entities subject to the Court’s receivership authority.” In support the Receiver
20 cites several SEC cases addressing the Court’s authority and the importance of granting equitable
21 relief. *See* Mem. Supp. Mot. Expand at 42 (citing *In re San Vicente Medical Partners, Ltd.*, 962 F.
22 2d 1402 (9th Cir. 1992); *SEC v. Elmas Trading Corp.*, 620 F. Supp. 231 (D. Nev. 1985), *aff’d* 805
23 F. 2d 1039 (9th Cir. 1986); *SEC v. Private Equity Mgmt. Grp., Inc.* 2009 WL 1941400 at *1 (C.D.
24 Cal. July 2, 2009) and related decisions at 2009 WL 2488044 at *1(C.D. Cal. August 10, 2009)
25 and 2009 WL 3074604 at *1 (C.D. Cal. September 21, 2009)). Importantly, “language about the
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1 importance of granting complete equitable relief, . . . must be read in context.” *SEC v Cherif*, 933
2 F.2d 403, 413 (7th Cir. 1991). As the Seventh Circuit explained in *Cherif*, “[u]sually the language
3 advocates that all equitable powers residing in the district court be visited upon defendant or
4 violator before the court” not a nonparty *Id.*; *SEC v. Black*, 163 F.3d 188, 196-197 (3d Cir. 1998)
5 (determining that ex parte freeze of assets was improper where in every case cited by the SEC all
6 assets were the “property, or deemed property, of a defendant or of a culpable third party”)
7 (collecting and distinguishing case law cited in support of ex parte freeze of assets⁷). *In rem*
8 jurisdiction is no different. That is, while the Court’s authority may be broad, it is still limited to
9 the pursuing the rights and interests of the receivership estate. *See SEC v. Ross*, 504 F.3d 1130,
10 1145 (9th Cir. 2007). (noting that by enacting § 754, “Congress has authorized receiver’s to
11 exercise broad powers in administering, retrieving, and disposing of assets *belonging to the*
12 *receivership.*.)

13
14 Relying on *Productive Marketing*, the Receiver argues that this authority is so broad as to
15 permit the Receiver to extend “the scope of the receivership estate . . . to non-parties” not just the
16 receivership estate. This position far exceeds the holding in *Productive Marketing* and the scope
17 of the *in rem* jurisdiction. In *Productive Marketing*, the Central District of California District
18 Court concluded that based on “the court’s inherent authority to fashion equitable relief” the Court
19 and the Receiver could assert in rem jurisdiction over the assets of a nonparty that held identified
20 receivership assets. *FTC v. Productive Mktg.*, 136 F.Supp.2d 1096, 1105 (C.D. Cal. 2001).⁸

21
22
23 ⁷ Two of the cases cited by the SEC and distinguished by the Court in *Black* are cited by the
24 Receiver in this case: *SEC v. Wencke*, 783 F.2d 829 (9th Cir. 1986) and *In re San Vicente Medical*
25 *Partners Ltd*, 962 F.2d 1402 (9th Cir. 1992).

26 ⁸ In *In re San Vicente Medical Partners, Ltd*, 962 F.2d 1402 (9th Cir. 1992) the Ninth Circuit
27 indicated that by adding an entities’ property to the Receivership the Court was exercising “quasi
28 in rem” jurisdiction over the nonparty subsidiary of the named defendant and that to do so, the
nonparty must meet the minimum contacts standard of *International Shoe* and receive actual notice
and opportunity for a hearing. *See also Productive Marketing*, 136 F.Supp. 2d 1096, 1103 (C.D.
Cal. 2001) (applying minimum contacts analysis to

1 Critically, in *Productive Marketing*, the nonparty contested only the court’s jurisdiction; it did “not
2 contest that it [held] receivership assets . . .” *FTC v. Productive Mktg.*, 136 F.Supp.2d at 1107.
3 Here, the Receiver’s attempt to expand its authority beyond the receivership estate should be
4 denied.

5 The general rule is that a receiver acquires no greater rights in property’ than the
6 receivership entities had previously.” *FTC v. NHS Sys.*, 708 F. Supp. 2d 456, 464 (E.D. Pa. 2009)
7 (quoting *Javitch v. First Union Secs., Inc.*, 315 F.3d 619, 625 (6th Cir. 2003)). In this case, the
8 receivership estate encomposes only the assets of the Johnson and the Corporate Defendants.
9
10 **SOF ¶ Error! Reference source not found.** Thus to bring any property into the receivership, the
11 Receiver must show that the Johnson or the Corporate Defendants have a defined interest in the
12 property and define with some specificity what that interest is. *See, e.g., FTC v. Productive*
13 *Marketing*, 136 F.Supp.2d 1096, 1108 (C.D. Cal. 2001) (discussing two types of assets at issue
14 misdirected deposits and reserve funds and noting that funds are “documented and readily
15 ascertainable.”).

16
17 To date, the Receiver has failed to do so. Instead, with the pending motion, the Receiver
18 seeks control and possession of not just Johnson’s and the Corporate Defendants’ assets– but all
19 assets of the Vowell Entities, including the personal assets of Todd Vowell and his wife Sheree
20 Vowell. **SOF ¶¶ Error! Reference source not found.-Error! Reference source not**
21 **found.Error! Reference source not found.** However, the Receiver has “not yet determined
22 which entities, or which specific business activities of those entities are legitimate and independent
23 of Johnson, if any. . . .” *Mem. Supp. Mot. Expand* at 38. The Receiver has neither jurisdiction nor
24 an equitable claim to the Vowell Entities. *Cf. In re Paddock of California*, 226 F. Supp. 43, 45
25 (S.D. Cal. 1964) (collecting cases where the absence of debtor’s interest in property prevented
26 jurisdiction). Prior to depriving the Vowell Entities of their rights to their property and interests,
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1 the Receiver must properly sort and identify its claims and the scope of its interest. And these
2 claims must be supported; that is, “the Receiver must show beyond mere speculation that these
3 entities should be brought within the receivership.” *SEC v. Elmas Trading Corp.*, 620 F.Supp.
4 231, 233 (D. Nev. 1985).

5 Where the Receiver claims certain transfers or transactions were made based on inadequate
6 consideration and efforts to defraud the Receivership estate, such claims may involve an ancillary
7 action based on the applicable state’s fraudulent transfer act.⁹ The Receiver recently filed such an
8 action against Kerry Johnson, Barbara Johnson and KB Family Limited Partnership—Johnson’s
9 mother and father and their family partnership. *See Robb Evans v. Kerry Johnson, et al.*, No. 2:12-
10 cv-1053 (ECF No. 10). “However the Receiver or the [FTC] choose to proceed,” they cannot deny
11 the Vowell Entities their due process rights by invoking “improper shortcuts.” *Ross*, 504 F.3d at
12 1151.
13

14 III. THE RECEIVER’S REPORT IS FLAWED AND THEREFORE UNRELIABLE

15 The Receiver relies heavily on the Second Receiver’s Report to roundly assert that Johnson
16 is the beneficial owner of and controls the 46 Vowell Entities and all of their assets and thereby
17 request that these entities be subject to the Preliminary Injunction Order, including the Order’s
18 turnover and asset freeze requirements. This drastic relief is not warranted when the incomplete
19 and erroneous Second Receiver’s Report ultimately fails to identify, let alone, prove the
20 receivership estate’s interest in the Vowell Entities and their assets. *See Mem. Supp. Mot. Expand*
21 *at 38*
22

23 A. *The Receiver’s Report Is Incomplete, Inaccurate and Fundamentally Flawed.*

24 Critically, with respect the Vowell Entities, the Second Receiver’s Report is built upon the
25 erroneous conclusion that the Receivership Defendants initially owned and then transferred their
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28 ⁹ The Vowell Entities do not waive any defense to such actions.

1 interest in the Poker Processors or the poker processing accounts. SOF ¶ **Error! Reference**
2 **source not found.** This assertion is unsupported and contrary to the undisputed evidence that the
3 Poker Processors are the only entities that serviced the poker processor accounts at SunFirst and
4 that these accounts were kept and handled separately from I Works' internet-marketing-related
5 accounts. SOF ¶ **Error! Reference source not found.-Error! Reference source not found.**
6 This fundamental misunderstanding provides the foundation (albeit a very unsound one) for the
7 Receiver's position that Johnson is entitled to all of the Poker Processor's revenue. In short, the
8 Receiver seems to believe that I Works was the original owner of the poker accounts and never
9 received a commercially reasonable payment for the transfer of these valuable accounts; therefore
10 the transfers were invalid. There is no support for this position. SOF ¶ **Error! Reference source**
11 **not found.**

12
13 The Second Receiver's Report also asserts that Johnson controlled the Poker Processors
14 and the other Vowell Entities. SOF ¶ 65. In support the Receiver references a handful of email
15 correspondence that claims shows that Johnson was the decision maker, while ignoring an
16 equivalent amount of email correspondence that suggests that Todd and/or Jason Vowell were also
17 decision makers. SOF ¶¶ 66-68. This conclusion also ignores Todd Vowell's professional
18 background and expertise, SOF ¶¶ **Error! Reference source not found.-Error! Reference**
19 **source not found.**, and Todd Vowell's past business relationships and partnerships with Johnson.
20 SOF ¶¶ **Error! Reference source not found.-Error! Reference source not found.**

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22
23 The inadequacies and inaccuracies of the Receiver's Report are the consequence of one-
24 sided, self-fulfilling discovery. See SOF ¶¶ **Error! Reference source not found.-Error!**
25 **Reference source not found.** Had the Vowell Entities been included in the Receiver's discovery
26 efforts, including the depositions of the SunFirst Bank employees, the Vowell Entities could have
27 clarified through questioning many of the Receiver's inaccurate assumptions and inferences.
28

1 B. *The Vowell Entities Have Voluntarily Participated in Discovery and to the Extent Possible,*
2 *Will Continue to Do So.*

3 Aware of the shortcomings of its Report, the Receiver argues that the Vowell Entities
4 should be brought *in custodia legis* so that the Receiver can continue its investigation, including
5 seeking additional records. Mem. Supp. Mot. Expand at 6-7, 38. In light of the Vowell Entities’
6 voluntary participation in discovery, such extreme relief is unwarranted. To date, at great personal
7 expense, the Vowell Entities have already turned over to the Receiver more than 6,000 pages of
8 documents. SOF ¶ **Error! Reference source not found.** It is unclear what additional records the
9 Receiver requires to complete its “investigation.” The FTC has been investigating Johnson for
10 more than two years and the FTC and the Receiver have been aware of the Poker Processors and
11 many of the Vowell Entities for well over a year. SOF ¶¶ **Error! Reference source not found.,**
12 **Error! Reference source not found.** To the extent the Receiver requires greater “access” to
13 records or additional information, the Vowell Entities remain willing to respond to the Receiver’s
14 requests. There has not been a change in the custody of such records or the Vowell’s position with
15 respect to discovery to necessitate the Receiver commandeering possession and control of these
16 nonparties. Regardless of whether they are governed by the Preliminary Injunction Order or not,
17 the Vowell Entities’ 5th Amendment concerns will remain so long as a parallel criminal case is
18 pending.
19
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21 IV. THE RECEIVER IS UNFAIRLY USING CIVIL PROCEEDINGS AND AN ADVERSE
22 INFERENCE BASED ON THE VOWELL ENTITIES EXERCISE OF THEIR
23 CONSTITUTIONAL RIGHTS TO PURSUE ENTITIES UNRELATED TO THE
RECEIVERSHIP ESTATE

24 Knowing that the entities and individuals it seeks to add to the Receivership question the
25 accuracy and completeness of the Receiver’s Second Report and knowing that the Vowell Entities
26 have already asserted their right to avoid self-incrimination, the Receiver asserts without support
27 that “unless plausible, justifiable explanations are given to account for these transactions far
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1 outside the bounds of normal business activities, the relief sought by the Receiver herein is
2 mandated.” Mem. Supp. Mot. Clarify at 6. This assertion is directly counter to the Receiver’s
3 burden of “proving that the maintenance of jurisdiction is proper.” *SEC v. Heartland Grp.*, No. 01
4 C 1984, 2003 U.S. Dist. LEXIS 7478, at *22 (N.D. Ill. May 2, 2003). As discussed above, to
5 support jurisdiction over the assets of Todd Vowell and the Vowell Entities, the Receiver must
6 establish that either the Corporate Defendants to the FTC Action or Johnson has an interest in the
7 assets of Todd Vowell, Sheree Vowell, or the Vowell Entities. *See* ____, *supra*. The Receiver has
8 failed to do so. *See* ____, *supra*.

10 At its core, the Receiver’s statement evidences the manner in which the Receiver has
11 cornered Todd Vowell and the Vowell Entities. The Receiver is pursuing the entities and all assets
12 of the entities related to the “primary payment processors,” while knowing of an active criminal
13 prosecution against individuals with whom the Poker Processors contracted and a separate active
14 criminal investigation based on accusations similar to the Receivers’ and in which Todd Vowell is
15 a target. In doing so, the Government is intentionally taking advantage of the broad scope of civil
16 discovery and the adverse inference of claims of Fifth Amendment privilege in civil cases. Indeed,
17 the FTC and the Receiver’s pursuit of Todd Vowell as a nonparty in a civil proceeding while a
18 criminal prosecution of and a criminal investigation are pending puts Todd Vowell and the Vowell
19 Entities at gross disadvantage and is inherently unfair.

22 “Courts have for many years recognized the inherent unfairness a defendant faces when he
23 must proceed in a civil action while a parallel criminal action is pending.” *Blinder v. Robinson &*
24 *Co. v. Meyer Blinder*, 135 B.R. 892, 897 (D. Colo 1991) (noting that defendant’s “claim that he
25 will be prejudiced by being forced to invoke his Fifth Amendment privilege in the Alter Ego action
26 is not insubstantial.”) Forcing a party to defend a civil action involving the same matter at issue in
27 a pending criminal proceeding or investigation in many cases will unfairly disadvantage the
28

1 defendant. *SEC v. Dresser Indus.*, 628 F.2d 1368, 1376 (D.C. Cir. 1980). “The noncriminal
2 proceeding, if not deferred, might undermine the party's Fifth Amendment privilege against self-
3 incrimination, expand rights of criminal discovery beyond the limits of Federal Rule of Criminal
4 Procedure 16(b), expose the basis of the defense to the prosecution in advance of criminal trial, or
5 otherwise prejudice the case.” *Id.*

6 Here, if added to the civil proceedings in this case, Todd Vowell and the Vowell
7 Entities will be substantially prejudiced. To protect his interest in the assets and operations of the
8 Vowell Entities, Todd Vowell will be forced to choose between waiving his right against self-
9 incrimination and defending his financial and business interests in the Vowell Entities –indeed his
10 very livelihood. Where Mr. Vowell is not a party to the underlying FTC action, it is unfair to place
11 him in this defensive box. However, this seems to be the Receiver’s intention.

12 Indeed, the Receiver is already attempting to use Todd Vowell’s indication that he would
13 assert the Fifth Amendment to obtain an adverse inference. In its Memorandum in Support of the
14 Motion to Clarify, the Receiver explains that it “expects those opposing the Motion to simply
15 assert the Receiver’s findings are in error and to refuse to provide evidence or testimony to support
16 their position based on a claim that the pending threat of criminal investigation prevents them from
17 doing so.” Mem. Supp. Mot. Expand at 6. In response the Receiver suggests that unless
18 “plausible, justifiable explanations are given” the “relief sought by the Receiver herein is
19 mandated.” That is, the court should apply an adverse inference from the Vowell Entities “failure
20 of proof.” *See SEC v. Collelo*, 139 F.3d 674, 677 (9th Cir. 1998).

21 The Ninth Circuit in *Collelo* acknowledged that “there must be evidence in addition to an
22 adverse inference to support a court’s ruling.” *Id.* At 678; *Doe ex rel, Rudy-Glanzer v. Glanzer*,
23 232 F.3d 1258, 1264 (9th Cir. 2000). Here, before the Receiver makes claim to any assets of Jason
24 Vowell or any of the Vowell Entities, the Receiver must identify the specific assets and provide
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1 evidence beyond “mere speculation” that these assets belong to Johnson. Absent this showing,
2 “the court’s ruling [cannot] turn on the Vowell’s silence alone. *Id.*

3 **CONCLUSION**

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10 Respectfully submitted by:

11
12 /s/ Theadore J. Besen

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ScamVictim Help.com, LLC
Spyglass Enterprises, LLC
Spyglass Holdings, LLC
Valentino Holdings, LLC
Valentino Properties, LLC
Vanquish Enterprises, LLC
Vowell, Jason, Assets of
Wealth Matters, LLC

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INDEX OF EXHIBITS

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Exhibit 2	Notice of Deposition of Todd Vowell
Exhibit 3	Declaration of Matthew R. Lewis (July 16, 2012).
Exhibit 4	Notice for Todd Vowell to testify before grand jury
Exhibit 5	Mont Humphries Deposition (August ___, 2011)
Exhibit 6	Deposition of Allison McCoy
Exhibit 7	Capital Energy Corp Documents (public search)
Exhibit 8	Declaration of Todd L. Vowell (July 16, 2012).
Exhibit 9	January 3, 2006 Purchase agreement between Johnson and Paydirt
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Exhibit 11	SunFirst Bank merchant agreement between Triple 7 and Elite Debit
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Exhibit 13	January 19, 2011 Johnson email to Todd Vowell
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CERTIFICATE SERVICE

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24 Phoenix Rising, LLC
25 Robin V Foundation, Inc.
26 ScamVictim Help.com, LLC
27 Spyglass Enterprises, LLC
28 Spyglass Holdings, LLC
Valentino Holdings, LLC
Valentino Properties, LLC
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