IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

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| S. GREGORY HAYS, Receiver for Travis E. Correll, et al., | § | |
| Plaintiff, | § | |
| v. | § | Civil Action No. 4:06cv496 |
| KERRY SITTON; KG SITTON AND COMPANY, LLC; and KGS GROUP, LLC | § | |
| Defendants. | § | |



**COMPLAINT FOR APPOINTMENT OF RECEIVER, ASSET FREEZE, DISGORGEMENT OF ILL-GOTTEN GAINS AND OTHER INJUNCTIVE RELIEF**

COMES NOW, S. Gregory Hays ("Receiver"), the court-appointed Receiver for Travis E. Correll ("Correll"), individually and d/b/a Horizon Establishment; Gregory Thompson; Dwight J. Johnson; Harry Robinson "Robbie" Gowdey, individually and d/b/a Atlas and Jericho Productions; Grant Cardno; Neulan D. Midkiff; Travis Correll & Company, Inc.; The Liberty Establishment, Inc.; Sovereign Capital Investments, S.A.; TNT Office Supply, Inc.; Net Worth Group, Inc.; Joshua Tree Group LLC; Banner Shield, LLC; Hospitality Management Group, Inc.; Creative Wealth Ventures, LLC; and JTA Enterprises, LLC (collectively the "Receiver Entities" or the "Receiver Estates") in Civil Action No. 4:05CV472, styled *Securities and Exchange Commission vs. Correll, et. al.* (the "SEC Litigation" or the "Correll Litigation"), and files this complaint against Kerry Sitton ("Sitton"), KG Sitton and Company, LLC, and KGS Group, LLC (the "Sitton Companies"), and respectfully shows the Court as follows:

## JURISDICTION AND VENUE

1. As is alleged, *infra*, this court has jurisdiction over the subject matter of this action, as well as the parties, because this action is ancillary to the Receivership in the SEC Litigation. *In re Alpha Telcom, Inc., et al.*, No. CV 01-1283-PA, 2004 U.S. Dist. LEXIS 20002 (D. Ore. August 18, 2004); *Quilling v. Grand Street Trust, et al.*, No. 3:04 CV 251, 2005 WL 1983879 (W.D.N.C. August 12, 2005).



2, this action arises from and is directly related to the SEC Litigation, which provides for nationwide service of process under federal securities laws. 28 U.S.C. §§ 754 and 1692. Sitton is in possession of assets of the Receivership Estate, as defined in this Court's Order Appointing Receiver in the SEC Litigation dated December 7, 2005.

3. Venue for this action is proper in the Eastern District of Texas because: (1) the SEC proceedings referenced below are pending in this District and this action is ancillary to it; (2) the Receiver was appointed in this District; and (3) this action involves Receivership Assets within the meaning of the Order Appointing Receiver. The Order Appointing Receiver expressly states that all actions to determine disputes relating to Receivership Assets shall be filed in this Court.

## INTRODUCTION

4. This matter involves a fraudulent "high yield investment program" or "prime bank" scheme. Sitton and the Sitton Companies were used by Correll and one or more of the Receiver Entities to act as intermediaries in raising funds for Correll's "high yield investment program" (collectively, "Bank Deposit Programs"). This is the same Bank Deposit Program alleged in the SEC Litigation by the Securities and Exchange Commission (the "Commission").

5. Correll enticed investors by promising monthly returns of 4% to 20%, with "no risk" to their investment principal. Certain investors were also promised and paid "intermediary fees" for referring new investors.

6. In fact, the Bank Deposit Program did not exist. Rather, Sitton and the Sitton Companies were used as part of a massive "Ponzi" scheme with all of the investor funds commingled by Correll and some of the Receiver Entities among various accounts. The "investment returns" paid to investors were derived from the proceeds of more recent investors.



7. The "Ponzi" scheme eventually collapsed. Investors stopped receiving promised monthly returns in September 2005, although Sitton and the Sitton Companies continued to pay some amounts out of other resources. Thereafter, investors were told that the Securities and Exchange Commission ("SEC") froze their bank accounts as a "necessary step" in the process of "registering" the Bank Deposit Programs in accord with the federal securities laws. Other investors were told that the funds were frozen under provisions of the Patriot Act.

8. By reason of these activities, Sitton and the Sitton Companies benefitted from the actions of Correll and the Receiver Entities, which actions violated sections 5(a) and 17(a) of the Securities Act of 1933 ("Securities Act") (15 U.S.C. §§ 77e(a), 77e(c) and 77q(a)), section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") (15 U.S.C. § 78j(b)), and Rule 10b-5 thereunder (17 C.F.R. § 240.10b-5). Sitton and the Sitton Companies, over the time period alleged herein below, received commissions and incentives for the investors that were brought into the Bank Deposit Programs. Such payments are fraudulent transfers as a matter of law, and are voidable under the UFTA. *Securities Exchange Commission v. Cook*, 2001 WL 256172, at 3 (N.D. Tex. 2001).

9. On December 7, 2005 the SEC filed the SEC Litigation. On that same date, this Court entered an order appointing S. Gregory Hays as Receiver for Correll and the Receiver Estates and as Receiver for certain assets of the Relief Defendants described in the SEC Litigation (the "Receivership Order"). Among other things, this Court authorized and directed the Receiver to:

A. Take custody, control and possession of all records, assets, and other property of the Receiver Estate;



B. Administer assets of the Receiver Estate, including the authority to liquidate assets;

C. Perform an accounting of the receipt, disposition and use of the subject investment proceeds; and

D. Investigate any matters that the Receiver deems appropriate in connection with the Receiver Estate.

E. To institute such action or proceedings to impose a constructive trust, obtain possession and/or recover judgment with respect to persons or entities who received assets or funds traceable to investor monies, with all such actions filed in this Court;

10. This action seeks to, *inter alia*, collect Receiver Estate Assets, freeze the Defendants' assets, appoint the Receiver as receiver over said assets, marshal and liquidate said assets and void fraudulent transfers.

## FACTS COMMON TO ALL COUNTS

### A. The Fraudulent Bank Deposit Programs

11. Since at least December 2000, the defendants in the Correll Litigation, offered and sold interests in Bank Deposit Programs to hundreds of investors. In his sales pitch, Correll claimed that he had access to investments in programs involving the overnight trading of bank-issued notes. Correll told prospective investors that he pooled investor funds and then sent them, usually in increments of $5 million to $10 million, to a "trader," who purportedly had contracts with the banks to participate in the purported trading programs.

12. Correll told investors that their principal would not be at risk because it would be deposited in a reserve bank account, where, according to him, it would remain intact.

13. Correll represented to investors that the programs paid a monthly return of 4% to 20% beginning 45 to 70 days after receipt of the principal.

14. In addition to the monthly returns, Correll promised higher returns and intermediary fees to existing investors for inducing new investors to participate in the Bank Deposit Programs. This led certain investors, including Sitton, the Sitton Companies, and others, to become "facilitators" (i.e., sales agents) for Correll and Horizon Establishment.



15. The term of the purported Bank Deposit Programs ranged anywhere from four to twelve months, with most of the programs having twelve-month terms.

16. Some investors received calendars from Correll highlighting the dates upon which they were to receive their monthly payments.

17. To participate in the Bank Deposit Programs, investors typically executed a One Year Funds Management Agreement ("Agreement"). The Agreement, on Horizon Establishment's letterhead, identified Sovereign (subsequently Horizon Establishment) as the "manager" of the funds. Pursuant to the Agreement, Liberty was appointed "Trustee," and Sovereign was authorized to engage transfers to facilitate and effect all types of securities transactions.

18. The Agreement additionally promised that the investors' funds "always stay in the state of non-depletion." Correll and Defendant Sitton repeatedly assured investors that their investment principal would remain safe. To obtain the promised returns, the investors were required only to provide funds directly to Correll or indirectly through Sitton or one of the Sitton Companies. Correll bore the sole responsibility for generating the program's profits.

**B. Representations about the Bank Deposit Programs was False**

19. Representations made to investors by Sitton about the Bank Deposit Programs were materially false and misleading. The investors' funds were not used as promised — they were not transferred offshore for use in a trading program. Sitton structured the Bank Deposit Programs as "loans" promising to pay patently illegal rates of return and usurious interest to the "investors," in order to get them to invest.



20. Representations made to the investors by Sitton concerning the nature of their purported investment returns were materially false and misleading. Investor payments did not derive from earnings, as claimed, but rather were merely distributions from the funds of other investors.

21. Further, Sitton failed to disclose that the Bank Deposit Program they offered to investors did not exist and failed to disclose the true source of returns to investors. All of the above representations were negligently made by Sitton and the Sitton Companies.

**C. Sitton Received Funds from the Fraud**

22. During the relevant period, Sitton and the Sitton Companies received over $14 million from accounts controlled by Correll, less any amounts advanced by Sitton and the Sitton Companies to Correll and the Receiver Entities. Any net gain to Sitton and/or the Sitton Companies was without any apparent consideration and was a fraudulent transfer as a matter of law. *Securities Exchange Commission v. Cook*, 2001 WL 256172, at 3 (N.D. Tex. 2001).

**D. Lulling Activities**

23. The Bank Deposit Program has collapsed. The last monthly payments to investors were made by Sitton or the Sitton Companies in October 2005.

24. Since payments stopped, Sitton, in response to investor complaints, relayed to such persons whatever information was given to him by Correll. These lulling activities' effectiveness

to allay investors' concerns has and continues to wane dramatically, if not completely. Neither Correll nor Sitton made any attempt to register the alleged securities offering or class of securities with the Commission.

**E. Collection Activity**

25. Since the filing of the Correll Litigation, at least three law suits have been filed against Sitton, seeking to enforce the patently usurious loan transactions described herein above.



Additionally, some potential claimants have resorted to self help and have seized or otherwise appropriated property belonging to Sitton, without judicial process or contractual right. Receivership Estate assets are thus being seized by third parties, and their certain whereabouts are unknown. State court proceedings threaten to further denude the Receivership Estate. New lawsuits against Defendants are sure to arise as additional investors realize Defendants' fraud.

26. As was alleged herein above, many of Sitton's assets are the result of his commissions and other profits from the Ponzi scheme. As such, they are Receiver Estate assets as those are described in the Receiver Order in the Correll Litigation. Unless immediate action is undertaken, some investors will seek to obtain Receiver Estate assets, to the exclusion of others. This would confound and thwart the methodology envisioned in the Correll Litigation of orderly marshaling the assets in the Receiver Estate and creating an orderly process for the application, adjustment and payment of claims. The Receiver needs extraordinary and immediate equitable relief in order to stop the prosecution of actions against the Defendants and the self-help measures being taken against Receivership Estate assets now in Defendants' possession. In order that the marshaling of Receivership Estate assets, accounting and eventual liquidation and distribution of those assets proceed in an orderly fashion, injunctive and equitable relief to preserve the *status quo*, as set forth below, is necessary.

## COUNT I

### (Accounting and Interim Asset Freeze)

The allegations of paragraphs 1 through 26 are incorporated into this Count as if fully set forth herein.

27. As of the date of the filing of this Complaint, the Receiver has performed and continues to perform an investigation and analysis of the use of the proceeds of the fraudulent investment offering, including the payments to Sitton and the Sitton Companies.



28. As a part of his investigation and analysis, the Receiver has endeavored to determine how much money was actually paid to Sitton and the Sitton Companies. Based upon the information currently available to him, the Receiver has made an initial calculation and allocation of the amounts paid to Defendants.

29. The Receiver is entitled to a full and accurate accounting of all assets from Defendants, including the return of all monies received, directly or indirectly, from Correll and Correll-controlled entities.

30. In order to preserve the *status quo*, protect the Receivership Estate assets and to render the requested accounting accurate and effective, the Receiver seeks all assets belonging to Defendants herein be frozen on an interim basis pending completion of the accounting and subsequent audit and investigation by the Receiver of same, as well as a determination as to the disposition of such assets.

31. Additionally, the Receiver requests that Defendants be restrained and enjoined from destroying, removing, mutilating, altering, concealing or disposing of, in any manner, any of their books and records or documents relating to the matters set forth in this Complaint, or the books and

records and such documents of any entities under their control or in their possession, until further order of this Court.

32. The Receiver is entitled to recover prejudgement interest from Defendants from the date of the receipt of each payment.

## COUNT II



## (Unjust Enrichment/Constructive Trust and Disgorgement)

The allegations of paragraphs 1 through 26 are incorporated into this Count as if fully set forth herein.

33. The payments received by Defendants are proceeds that were unlawfully obtained from investors by means of artifice and fraud. These payments constitute Receivership Estate assets. Accordingly, those proceeds received by Defendants are impressed with a constructive trust. Defendants should be required to disgorge their ill-gotten gains in the form of the Receivership Estate assets.

34. Defendants have been unjustly enriched.

35. The Receiver is entitled to recover the payments made to Defendants. Defendants should be required to disgorge their ill-gotten gains.

36. The Receiver is entitled to recover prejudgment interest from Defendants from the date of the receipt of each payment.

## COUNT III

## (Fraudulent Conveyance)

The allegations of paragraphs 1 through 26 are incorporated into this Count as if fully set forth herein.

37. The payments to Defendants are fraudulent conveyances.

38. The Receiver is entitled to recover those payments to Defendants.

39. The Receiver is entitled to recover prejudgment interest from Defendants from the date of the receipt of each payment.

**COUNT IV**

**(Receivership)**



The allegations of paragraphs 1 through 26 are incorporated into this Count as if fully set forth herein.

40. As shown by the facts set forth hereinabove, appointment of a receiver is necessary to preserve Receivership Estate assets and the *status quo* pending completion of the requested accounting, as well as to investigate, secure, marshal, consolidate and, eventually, direct an orderly distribution of funds back to defrauded investors in the *Ponzi* scheme.

41. As the Defendants were involved in the same scheme as the defendants in the ongoing SEC Litigation, involving the same defrauded investor pool, it only makes sense that the same Receiver be appointed to proceed with this acquisition, securing and distribution of assets in Defendants' possession as in the SEC Litigation. The Defendants herein could have been named Defendants in the SEC Litigation had their identities and/or extent of their involvement in the *Ponzi* scheme been better known when it was filed. The Receiver and his team have spent the last few months successfully performing their duties and amassing a sizeable Receivership Estate for the benefit of defrauded investors.

42. Absent appointment of a Receiver, empowered to take immediate physical control of, secure and liquidate Receivership Estate assets, harm to the investors in the scheme could result as such assets are stolen, hidden, or depreciate. A receiver is uniquely positioned to facilitate a

speedy and equitable resolution of this case and the SEC Litigation and preserve assets for the benefit of the investors.

## COUNT V

## (General Injunctive Relief)

The allegations of paragraphs 1 through 26 are incorporated into this Count as if fully set forth herein.



43. Based on the facts set forth hereinabove, the following general injunctive relief is necessary to enable the Receiver to complete his duties expeditiously and effectively:

a. an injunction to prevent third-party claimants from denuding the estate from filing suits against Defendants and from filing suits and/or exercising any alleged "self-help" remedies touching or concerning Receivership Estate assets outside the instant proceeding; and

b. an injunction preventing the Defendants from destroying, removing, mutilating, altering, concealing or disposing of, in any manner, any of their books and records or documents relating to the matters set forth in this Complaint, or the books or records and such documents of any entities under their control, until further order of this Court.

## COUNT VI

## (Fees, Expenses, Cost and Interest)

44. The allegations of paragraphs 1 through 26 are incorporated into this Count as if fully set forth herein.

45. As a direct result of the conduct of the Defendants, as alleged above, it has been necessary for the Receiver to file this action. The Receiver sues for all costs, expenses, attorney's fees, as well as pre-judgment and post-judgment interest, to which he is entitled under the law or at equity.

## JURY DEMAND

46. The Receiver respectfully requests that this case be tried before a jury.

WHEREFORE, S. Gregory Hays, Receiver, requests and demands the entry of a judgment in his favor as follows:

A. On Count I, that the Court temporarily freeze all assets of Defendants, and further, that Defendant be required by the Court to provide an accounting of all payments received as a result of the sale of subject investments;



B. On Count II, that the Court order that all of Defendants' assets be placed into a constructive trust for the benefit of the defrauded investors, and further, require that such amounts be disgorged and turned over to the Receiver, along with prejudgment interest;

C. On Count III, that damages be awarded to the Receiver against Defendant in an amount equal to all payments received, plus prejudgment interest;

D. On Count IV, that the Court appoint S. Gregory Hays as Receiver for all the named Defendants herein;

E. On Count V, that the Court grant the Receiver injunctive relief enjoining Defendants from continued or further violations of securities laws; enjoining third parties from engaging in self-help against Receivership Estate assets or filing lawsuits or making claims against Defendants other than in the instant proceeding; and enjoining Defendants from destroying or altering their books and records relating to Receivership Estate assets;

F. On Count VI, that the Receiver be awarded all of his costs, expenses and attorney's fees incurred herein; and

G. That the Court award such other and further relief as is deemed just, equitable and proper.

Respectfully submitted,

QUILLING, SELANDER, CUMMISKEY & LOWNDS, P.C.
2001 Bryan St., Suite 1800
Dallas, Texas 75201
(214) 871-2100 (Telephone)
(214) 871-2111 (Telecopier)

By: 
Clark B. Will, SBN 21502500
cwill@qsclpc.com
Michael D. Clark, SBN 00798108
mclark@qsclpc.com



AND

J. David Dantzler, Jr.
Georgia Bar No. 205125
david.dantzler@troutmansanders.com
Merle R. Arnold, III
Georgia Bar No. 023503
merle.arnold@troutmansanders.com
TROUTMAN SANDERS LLP
600 Peachtree St., NE, Suite 5200
Atlanta, GA 30308-2216
(404) 885-3000
(404) 885-3995 (Telecopier)

ATTORNEYS FOR RECEIVER
S. GREGORY HAYS