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I. PRELIMINARY STATEMENT

For the past several months, the Defendants and their counsel have engaged in a deliberate, systematic, and continuous effort to delay, obfuscate, and avoid compliance with this Court's Special Master Order. During this period, the Defendants and Defendants' Counsel¹, in violation of the Special Master Order, have repeatedly (i) failed to provide the Special Master access to any and all business records of the Defendants, including books and records, client lists and account statements, financial and accounting documents, computers, computer hard drives, computer disks, and other information resources of the Defendants; and (ii) failed to cooperate with the Special Master and his duly authorized agents by promptly and honestly responding to all requests for information regarding W Financial's books and records and the W Financial Assets².

In addition, the Defendants have repeatedly failed (i) to provide the Special Master with all information relating to the negotiation of the sale of any of the W Financial Assets and all documents related thereto, including agreements in principal, correspondence, and emails; (ii) to notify the Special Master of any sale, or agreement to sell, any of the W Financial Assets no less than ten calendar days prior to the closing of such sale; (iii) to provide the Special Master within seven days after the conclusion of each month with an accounting of the Routine Business Expenses or with all records necessary to determine the amount of the Routine Business Expenses for the foregoing month; (iv) to provide the Special Master with such information and documents to enable the Special Master to fully provide the Court with complete reports concerning the disposition of all of the W Financial Assets, and what W Financial Assets, if any,

¹ "Defendants' Counsel" as used herein shall mean John R. Teakell and Stephen M. Komie.

² "W Financial Assets" as used herein shall mean those assets listed on the Liquidation Analysis Report from W Financial Group Management, dated April 9, 2008 [App. at 051-052], together with those assets listed on Exhibit 2 to the March 11, 2008 agreement between the SEC and the Defendants [App. at 033-034].

have been successfully liquidated; (v) to timely proceed with the liquidation of all W Financial Assets in transactions reviewed by the Special Master; (vi) to provide information and documents to enable the Special Master to determine whether the Defendants have engaged in any transactions involving the sale, gift, assignment, transfer, conveyance, encumbrance, or dissipation of the W Financial assets without the express and written consent of the Special Master; (vii) to provide information and documents to enable the Special Master to evaluate and assess the nature, terms, value, and liquidity of all of the W Financial Assets; (viii) to provide information and documents to enable the Special Master to review the terms of all sales of all the W Financial Assets; (ix) to provide information and documents to enable the Special Master to seek relief from the Court in the event that he determines that a transaction is not in the best interests of the investors; and (x) to provide information and documents to enable the Special Master to take immediate custody of all the proceeds from the sale of all the W Financial Assets and deposit these proceeds in a trust account for the purpose of segregating and preserving these proceeds for the investors.

II. THE SPECIAL MASTER ORDER

A. Purpose of the Special Master Order

On March 21, 2008, and in order to provide protection to investors during the ongoing process of Defendants' liquidation of the W Financial Assets, the SEC and Defendants filed a joint motion to appoint a special master to, among other things, monitor the sale of the W Financial Assets. [App. at 007, ¶ 20; App. 035-037]. The Special Master was appointed on March 28, 2008 by this Court's Agreed Order Appointing Special Master to Monitor the Sale of Assets Held by Defendants, docket no. 6, entered on March 28, 2008 (the "Special Master Order") [App. at 007, ¶ 20; App. 038-049].

B. Duties of the Special Master

Under this Court's Special Master Order, the Special Master is delegated the following duties: (i) to monitor the sale of the W Financial Assets; (ii) to secure the funds from the sale of the W Financial Assets; (iii) to timely report on the progress of the sale of the W Financial Assets; (iv) to evaluate and assess the nature, terms, value, and liquidity of the W Financial Assets; (v) to review the terms of any sale of any of the W Financial Assets proposed by Defendants; (vi) to seek relief from the Court in the event he determines that a transaction is not in the best interests of investors; (v) to take immediate custody of the proceeds from the sale of any of the W Financial Assets and deposit these proceeds into a trust account opened in the name of the Special Master for the purpose of segregating and preserving these proceeds; (vi) to review monthly the Defendants' accounting of the Routine Business Expenses for the foregoing month; (vii) to review requests for approval from the Defendants if the Routine Business Expenses for the month are exceeding \$5,000; (viii) to review proof from the Defendants that the Routine Business Expenses fund has fallen below \$10,000; (ix) to review the payments to investors who chose to receive such payments rather than choosing to compound their returns, and to halt such payments if he determines that continuing to pay one group of W Financial investors will be detrimental to an equitable division of funds to all investors following liquidation of the W Financial Assets; (x) to file with the Court, and serve on all parties, requests for approval of reasonable fees to be paid to the Special Master and any person or entity retained by him; (xi) to provide the Court with reports at such intervals as the Court directs and include all information required by the Court; (xii) within 90 days following entry of the Special Master Order, to report to the Court concerning the disposition of the W Financial Assets and what W Financial Assets, if any, have been successfully liquidated; (xiii) if all W Financial Assets in transactions reviewed by the Special Master have not been sold, to make a recommendation to

the Court concerning whether the Court, in the interests of investors, should assume exclusive jurisdiction and take possession of the W Financial Assets, and additional assets, if reasonable and just, by placing these assets in Receivership; and (xiv) to serve the Special Master Order on any person. [App. at 007-008, ¶ 21; App. 039-043].

C. Obligations of the Defendants and Defendants' Counsel Under the Special Master Order

Upon the Defendants' and Defendants' Counsel's³ receipt of actual notice of the Special Master Order, the Special Master Order ordered the Defendants and Defendants' Counsel to do the following: (i) to provide the Special Master, upon reasonable notice, access to any and all business records of the Defendants, including books and records, client lists and account statements, financial and accounting documents, computers, computer hard drives, computer disks, and other information resources of the Defendants; and (ii) to cooperate with the Special Master and his duly authorized agents by promptly and honestly responding to all requests for information regarding W Financial's books and records or assets. [App. at 008-009, ¶ 22; App. at 040, ¶ 3].

In addition, the Special Master Order required the Defendants (i) to provide the Special Master with all information relating to the negotiation of the sale of any of the W Financial Assets and all documents related thereto, including agreements in principal, correspondence, and emails; (ii) to notify the Special Master of any sale, or agreement to sell, any of the W Financial Assets no less than ten calendar days prior to the closing of such sale; (iii) to provide the Special Master within seven days after the conclusion of each month with an accounting of the Routine Business Expenses or with all records necessary to determine the amount of the Routine

³ "Defendants' Counsel" as used herein shall mean John R. Teakell and Stephen M. Komie, who replaced David Fielder, the initial counsel for Defendants, in June 2008.

Business Expenses for the foregoing month; (iv) to provide the Special Master with such information and documents to enable the Special Master to fully provide the Court with complete reports concerning the disposition of all of the W Financial Assets, and what W Financial Assets, if any, have been successfully liquidated; (v) to timely proceed with the liquidation of all W Financial Assets in transactions reviewed by the Special Master; (vi) to provide information and documents to enable the Special Master to determine whether the Defendants have engaged in any transactions involving the sale, gift, assignment, transfer, conveyance, encumbrance, or dissipation of the W Financial assets without the express and written consent of the Special Master; (vii) to provide information and documents to enable the Special Master to evaluate and assess the nature, terms, value, and liquidity of all of the W Financial Assets; (viii) to provide information and documents to enable the Special Master to review the terms of all sales of all the W Financial Assets; (ix) to provide information and documents to enable the Special Master to seek relief from the Court in the event that he determines that a transaction is not in the best interests of the investors; and (x) to provide information and documents to enable the Special Master to take immediate custody of all the proceeds from the sale of all the W Financial Assets and deposit these proceeds in a trust account for the purpose of segregating and preserving these proceeds for the investors. [App. at 009-010, ¶ 23; App. at 040-043].

III. REPEATED VIOLATIONS OF THE SPECIAL MASTER ORDER BY DEFENDANTS AND DEFENDANTS' COUNSEL

A. Nature and Categories of Violations of the Special Master Order

For the past several months, the Defendants and Defendants' Counsel have engaged in a deliberate, systematic, and continuous effort to delay, obfuscate, and avoid compliance with this Court's Special Master Order. [App. at 010, ¶ 24; App. at 054, 056-076, 089-092, 095, 097-098, 100-102]. During this period, the Defendants and Defendants' Counsel, in violation of the

Special Master Order, have repeatedly (i) failed to provide the Special Master access to any and all business records of the Defendants, including books and records, client lists and account statements, financial and accounting documents, computers, computer hard drives, computer disks, and other information resources of the Defendants; and (ii) failed to cooperate with the Special Master and his duly authorized agents by promptly and honestly responding to all requests for information regarding W Financial's books and records and the W Financial Assets. [App. at 010, ¶ 24; App. at 054, 056-076, 089-092, 095, 097-098, 100-102].

In addition, the Defendants have repeatedly failed (i) to provide the Special Master with all information relating to the negotiation of the sale of any of the W Financial Assets and all documents related thereto, including agreements in principal, correspondence, and emails; (ii) to notify the Special Master of any sale, or agreement to sell, any of the W Financial Assets no less than ten calendar days prior to the closing of such sale; (iii) to provide the Special Master within seven days after the conclusion of each month with an accounting of the Routine Business Expenses or with all records necessary to determine the amount of the Routine Business Expenses for the foregoing month; (iv) to provide the Special Master with such information and documents to enable the Special Master to fully provide the Court with complete reports concerning the disposition of all of the W Financial Assets, and what W Financial Assets, if any, have been successfully liquidated; (v) to timely proceed with the liquidation of all W Financial Assets in transactions reviewed by the Special Master; (vi) to provide information and documents to enable the Special Master to determine whether the Defendants have engaged in any transactions involving the sale, gift, assignment, transfer, conveyance, encumbrance, or dissipation of the W Financial assets without the express and written consent of the Special Master; (vii) to provide information and documents to enable the Special Master to evaluate and

assess the nature, terms, value, and liquidity of all of the W Financial Assets; (viii) to provide information and documents to enable the Special Master to review the terms of all sales of all the W Financial Assets; (ix) to provide information and documents to enable the Special Master to seek relief from the Court in the event that he determines that a transaction is not in the best interests of the investors; and (x) to provide information and documents to enable the Special Master to take immediate custody of all the proceeds from the sale of all the W Financial Assets and deposit these proceeds in a trust account for the purpose of segregating and preserving these proceeds for the investors. [App. at 010-011, ¶ 25; App. at 054, 056-076, 089-091, 095, 097-098, 100-102].

B. Specific Examples of Violations of the Special Master Order

1. Failure to Provide Access to All Business Records

A true copy of the Collections to the Special Master Account through August 29, 2008 is attached. [App. at 007, ¶19; App. at 102]. On April 4, 2008, after the appointment of the Special Master, the amount of \$474,040.93 associated with a home sale (a W Financial Asset) completed on April 3, 2008, was deposited in the Special Master account. [App. at 011, ¶ 26; App. at 102]. The Special Master was not given the opportunity to review the transaction and has never received a closing settlement statement or any other information regarding this transaction. [App. at 011, ¶ 26; App. at 102]. [VIOLATIONS BY DEFENDANTS]

Shortly before the completion of the National Power Company (“NPC”) (a W Financial Asset) purchase transaction, the Special Master made inquiry to Mike Wallens, Sr. regarding the status of both W Financial’s and NPC’s books and records and expressed concern regarding their maintenance and security, particularly after the completion of the transaction. [App. at 011, ¶ 27]. Mr. Wallens assured the Special Master that copies and/or hard drive images would be made and would be stored in his garage. [App. at 011-012, ¶ 27]. Again, given his concern for

the security of these records, the Special Master asked that they be placed in a secure location and suggested that Grant Thornton's Houston office could accommodate such need. [App. at 012, ¶ 27]. Mr. Wallens agreed to promptly schedule a time to make the records (or copies) available for secure storage. [App. at 012, ¶ 27]. The Special Master has never received the records (or copies) as agreed. [App. at 012, ¶ 27]. [VIOLATIONS BY DEFENDANTS]

All of the purchase transaction documents for the NPC purchase were requested in writing on May 6, 2008, and again on May 16, 2008 [App. at 012, ¶ 28], but none were ever received, except the executed purchase agreement, dated May 1, 2008, between David Barrett and W Financial Group, which was received on May 7, 2008. [App. at 012, ¶ 28]. Further, in a meeting with the W Financial principals on May 21, 2008, in which it was first disclosed that W Financial and its principals had provided financial support to NPC, both prior to and after the closing of the transaction, a number of additional requests were made. [App. at 012, ¶ 28]. These included (i) all supporting documentation relative to the financing of the transaction, including that of W Financial or its principals; (ii) all supporting documentation relative to the closing of the transaction; (iii) all supporting documentation relative to the financial support provided to NPC prior to the closing to the transaction; (iv) all supporting documentation or description of any written or oral agreements that were entered into with David Barrett relative to the transaction; and (v) all supporting documentation reflecting the trail of cash transfers that were executed in order to fund the transaction. [App. at 012, ¶ 28]. [VIOLATIONS BY DEFENDANTS]

Although all of the above information was described by the W Financial principals in that meeting as available and to be provided, the Special Master has yet to receive any other

information regarding the NPC purchase transaction since the purchase agreement received on May 7, 2008. [App. at 012, ¶ 29]. [VIOLATIONS BY DEFENDANTS]

At the time of the Special Master's agreement of April 13, 2008 to transfer only \$650,000 of the approximate \$1 million of W Financial cash (a W Financial Asset) to the Special Master account, the Defendants agreed to promptly provide the Special Master with budgets that would outline the ongoing requirements for working capital at the NPC and Texas Auto Pros operations. [App. at 013, ¶ 30]. Those budgets were to allow the Special Master to gauge the ability to make additional cash transfers to the Special Master account. [App. at 013, ¶ 30]. No budgets of working capital requirements were ever provided to the Special Master. [App. at 013, ¶ 30]. [VIOLATIONS BY DEFENDANTS]

In a series of emails on July 9, 2008, between Jeff Norris (of the SEC), the Defendants, Defendants' Counsel, and the Special Master, the Special Master reiterated several of the Defendants' deficiencies in cooperation and in providing information, as well as requested for a specific update on the status of the W Financial bank account. [App. at 013, ¶ 31]. No reply was ever issued to the Special Master's comments and questions. [App. at 013, ¶ 31]. [VIOLATIONS BY DEFENDANTS AND DEFENDANTS' COUNSEL]

In an email, dated August 19, 2008, sent by the Special Master's counsel to Defendants' Counsel, the Defendants and Defendants' Counsel were advised of numerous continuing violations of the Special Master Order and demanded compliance with this Court's Order. None of the requested information has been provided to the Special Master. [App. at 013, ¶ 32; App. at 038-048, 089-093]. Indeed, Defendants' Counsel responded by email, dated August 25, denying any violations and suggesting that the Special Master was exceeding his powers under the Special Master Order by demanding compliance with that Order. [App. at 013, ¶ 32; App. at

089-093, 095-096]. By email, dated August 26, 2008, Defendants' Counsel, in response to a notice from the SEC of violations of the Freeze Order, again failed to acknowledge violations of that Order, as well as the Special Master Order. [App. at 013, ¶ 32, App. at 097-098]. Just as the Defendants have ignored their obligations under the Special Master Order, they are blatantly and pervasively flaunting the mandates of this Court under the Interlocutory Order. [App. at 013, ¶ 32]. [VIOLATIONS BY DEFENDANTS AND DEFENDANTS' COUNSEL]

Despite repeated requests, the Special Master has not received any statement covering any W Financial, W Custom Builders, or Texas Auto Pros bank account (all W Financial Assets) since June 5, 2008. [App. at 013, ¶ 33]. [VIOLATIONS BY DEFENDANTS AND DEFENDANTS' COUNSEL]

2. Failure to Cooperate With the Special Master by Promptly and Honestly Responding to all Requests for Information

For specific examples of violations under this category, see Section III.B.1 above. [VIOLATIONS BY DEFENDANTS AND DEFENDANTS' COUNSEL AS NOTED IN SECTION II.B.1] In addition, the Defendants failed to promptly inform the Special Master that the sources of funds for David Barrett's purchase of NPC (a W Financial Asset) were the Defendants, using funds believed to have been investor funds. [App. at 014, ¶ 34]. [VIOLATIONS BY DEFENDANTS]

Further, the Defendants have yet to explain the specifics relating to (i) a \$70,000 deposit, on May 16, 2008, from Texas Auto Pros; (ii) a \$168,445.64 deposit on July 3, 2008 from Texas Auto Pros; (iii) a May 1, 2008 transfer of \$63,550.00 by W Financial to NPC, the day of the closing of the NPC transaction; (iv) the \$50,000.00 transfer by W Financial to NPC on April 30, 2008, the day before the pending NPC transaction; (v) the April 24, 2008 W Financial transfer of \$200,000.00 to NPC; (vi) the May 1, 2008 transfer of \$63,550.00 by Texas Auto Pros to

W Financial, the day of the NPC closing (given that the transfer was on the same day and in the same amount, it appears that W Financial subsequently transferred the \$63,550.00 to NPC); (vii) the May 5, 2008 transfer of \$15,000.00 by Texas Auto Pros to W Custom Builders; (viii) the May 1, 2008 transfer of \$301,007.66 from United Acceptance to Texas Auto Pros, of which only \$280,000.00 was deposited into the Special Master account and, even then, not until May 5, 2008 (and the amount that was otherwise able to be deposited into the Special Master account was reduced by the transfers of \$63,550.00 and \$15,000.00 referred to above); (ix) the \$2,600.00 deposit into the Special Master account on June 12, 2008; (x) the \$44,893.25 deposit into the Special Master account on July 3, 2008; (xi) the \$7,935.52 deposit on July 11, 2008; and (xii) the \$12,650.78 deposit on August 5, 2008. [App. at 014, ¶ 35; App. at 102].

[VIOLATIONS BY DEFENDANTS]

3. Failure to Provide the Special Master with All Information and Documents Relating to the Negotiation of W Financial Assets

The Special Master noted apparent changes to the final proceeds of the Starling Stream and Balsam Fir home sales (both W Financial Assets) when compared to the original contract amounts. [App. at 014, ¶ 36]. The Special Master was not provided with a closing settlement statement on either of these transactions or any explanation of what, and the nature of any, additional deductions from the contracted prices that were made. [App. at 014, ¶ 36].

In addition, see the discussions regarding the NPC purchase transaction and the April 1, 2008 home sale in Section III.B.1, and the unexplained Texas Auto Pros transactions discussed in Section III.B.2.

4. Failure to Timely Notify the Special Master of Any Sale or Agreement to Sell Any W Financial Assets

See discussions of the violations regarding the April 3, 2008 home sale in Section III.B.1.

[VIOLATIONS BY DEFENDANTS]

5. Failure to Provide the Special Master With an Accounting of Routine Business Expenses

The Special Master has never received an accounting of the Routine Business Expenses for any month. [App. at 015, ¶ 37]. Neither has the Special Master ever received records necessary to determine the amount of the Routine Business Expenses for any month. [App. at 015, ¶ 37]. [VIOLATIONS BY DEFENDANTS]

6. Failure to Provide the Special Master With Information and Documents Sufficient to Enable the Special Master to Provide the Court With Complete Reports

See August 19, 2008 email discussion and working capital budget discussion in Section III.B.2. [VIOLATIONS BY DEFENDANTS]

7. Failure to Timely Proceed With the Liquidation of all W Financial Assets

As of the filing of this Motion, it appears that the Texas Auto Pros operation (a W Financial Asset) is still in some state of operation, that there remain seven (7) unsold lots in the Benders Landing subdivision (W Financial Assets); that the Wheeler Street property is unsold (a W Financial Asset); and that the status of the potential liquidation of the death benefit life insurance policy is unknown. [App. at 015, ¶ 38]. [VIOLATIONS BY DEFENDANTS]

8. Failure to Provide Information and Documents to Enable the Special Master to Determine Whether Defendants Have Engaged in Improper Transactions With the W Financial Assets

See discussions in Sections III.B.1 and III.B.2. [VIOLATIONS BY DEFENDANTS]

9. Failure to Provide Information and Documents to Enable the Special Master to Evaluate and Assess the Nature, Terms, Value, and Liquidity of the W Financial Assets

See discussions in Sections III.B.1 and III.B.2. [VIOLATIONS BY DEFENDANTS]

10. Failure to Provide Information and Documents to Enable the Special Master to Review the Terms of All Sales of W Financial Assets

See discussions of NPC purchase transaction and April 3, 2008 home sale in Section III.B.1, and of the Starling Stream and Balsam Fir home sales in Section III.B.3.

11. Failure to Provide Information and Documents to Enable the Special Master to Seek Relief from the Court in the Event He Determines the Transaction is Not in the Best Interests of the Investors

See discussion of August 19, 2008 email in Section III.B.2.

12. Failure to Provide Information and Documents to Enable the Special Master to Take Immediate Custody of All Proceeds of Sales of W Financial Assets and Preserve for the Investors

While the closing of the NPC purchase transaction was represented to be May 1, 2008, the proceeds were not deposited into the Special Master account until May 5, 2008. [App. at 015, ¶ 39]. This transaction was so poorly transmitted by Defendants that immediately after the money was deposited (and prior to disclosure that the transaction was a sham) Defendant Wahab called the Special Master and wanted him to return \$150,000 that Wahab said was intended for the 15% minority owner of NPC (whose representative was calling the Special Master at the same time claiming a larger ownership and price). [App. at 015, ¶ 39]. See also the discussion of the August 19, 2008 email in Section III.B.2.

C. Adverse Consequences for Investors Caused by Defendants and Defendants' Counsel's Recalcitrance and Violations of the Special Master Order

As a direct result of the aforementioned violations of this Court's Special Master Order by Defendants and Defendants' Counsel, the investors have been deprived of vital protections which the Special Master was appointed by this Court to provide. [App. at 015, ¶ 40]. In

addition, such recalcitrance deprives the Court of a full and complete report from the Special Master as to the status of the sale efforts and preservation of sale proceeds. [App. at 015, ¶ 40]. The following is a sampling of the harm done by Defendants and Defendants' Counsel's disregard of the Special Master Order:

1. Unsold/Unaccounted for W Financial Assets

Several W Financial Assets remain either unsold or unaccounted for by Defendants and Defendants' Counsel. [App. at 015-016, ¶¶ 40-41; App. at 069-076, 055-066, 100-102]. The Special Master's Liquidation Analysis Report of September 2, 2008 sets forth in detail those W Financial Assets with an estimated value of between \$1.6 million and \$2 million, or 36%, which remain either unsold or unaccounted for to date; which assets include (i) unknown value of potential interest in residual receivables from sham transaction with National Power Company; (ii) unknown value of undisclosed assets at Texas Auto Pros, which appears to have ongoing business; (iii) the four (4) unit rental property at 2506 Wheeler St. in Houston, Texas with an estimated value of \$167,125; (iv) the \$250,000 Hartford Life Settlement Policy; and (v) seven (7) unimproved lots in Benders Landing (in Spring, Texas) with a collective value estimated at \$1 million. [App. at 016, ¶41; App. at 100-102].

2. Inability to Adequately Inform the Investors and the Court of the Status of Liquidated W Financial Assets

The failure of Defendants and Defendants' Counsel to honestly and promptly cooperate with the Special Master and comply with this Court's Special Master Order has also impeded the Special Master's ability to fully and adequately inform the investors and the Court as to the disposition of the W Financial Assets and what W Financial Assets have been successfully liquidated. [App. at 016, ¶ 42; App. 055-066, 069-076].

3. Substantial Risk of Diversion of W Financial Assets

Because of Defendants and Defendants' Counsel's failure to comply with the Special Master Order, there is a substantial risk that W Financial Assets have already been diverted by Defendants and sequestered beyond the reach of the investors. [App. at 016, ¶ 43; App. at 102; 055-066, 069-076]. Because Defendants remain in control of the W Financial Assets and fail to cooperate with either the Special Master, or the accounting firm brought in to examine the flow of funds between the Defendants and from W Financial to the Defendants, such risk of diversion remains alarmingly high. [App. at 016, ¶ 43; App. at 102, 055-066, 069-076]. It is for this and the other reasons set forth herein that the Special Master, pursuant to his authority under paragraph 14 of the Special Master Order recommends to the Court that, in the interests of the investors, the Court should assume exclusive jurisdiction and take possession of the W Financial Assets by placing the W Financial Assets in Receivership. [App. at 016-016, ¶ 43; App. at 102, 055-066, 069-076].

IV. THE FREEZE ORDER SUPPLEMENTS, NOT SUPPLANTS, THE SPECIAL MASTER ORDER

After having repeatedly ignored this Court's Special Master Order and the Special Master's pleas for compliance for months, when confronted by a demand for compliance, Defendants and Defendants' Counsel blandly deny that such violations have ever occurred and, in the ultimate demonstration of gall and diversionary tactics, accuse the Special Master of exceeding his powers in making such demand for compliance with the Special Master, suggesting that such order has been supplanted by this Court's July 30, 2008 Freeze Order (as defined herein). [App. at 095-098]. The March 28, 2008 Special Master Order governs the liquidation of the W Financial Assets under the monitoring of the Special Master; whereas the Freeze Order governs the accounting to be provided by Max Wayman & Associates to permit a

full understanding of the flow of funds relating to the activities alleged in the Complaint. [App. at 038-047, 078-088]. These are two distinct and separate functions. [App. at 038-047, 078-088]. There is no overlap, and there certainly is no supplanting of the Special Master Order mandates by the Freeze Order. [App. at 038-047, 078-088]. Indeed, the Freeze Order (in paragraph 16) expressly acknowledges that “the assets of W Financial Group are to be sold in accordance with the terms of the March 28, 2008 order appointing the Special Master.” [App. at 086, ¶ 16]. In addition, even if Defendants and Defendants’ Counsel’s argument was correct (which it is not), this would not in any way excuse their repeated violations of the Special Master Order which were committed prior to the July 30, 2008 entry of the Freeze Order.

By Agreed Interlocutory Order, entered on July 30, 2008, docket no. 75 (the “Freeze Order”), the Court ordered that Max Wayman & Associates (“Wayman”) prepare an accounting no later than August 20, 2008. [App. at 017, ¶ 44; App. at 078-088]. The accounting was to detail by amount, date, method, and location of transfer, payee and payor, purpose of payment or transfer: (i) all monies and other benefits Defendants received, directly and indirectly, as a result of the activities alleged in the Complaint or thereafter transferred; (ii) their current assets wherever they may be located and by whomever they are being held, and their current liabilities; and (iii) account identifying information sufficient to permit a full understanding of the flow of funds relating to the activities alleged in the Complaint. [App. at 017, ¶ 44; App. at 084-085, ¶ 10].

By email, dated August 19, 2008, demand was made on Defendants and Defendants’ Counsel by the Special Master for the immediate compliance with the Special Master Order. [App. at 017, ¶ 45; App. at 089-093]. The August 19 demand set forth specific violations of the Special Master Order that Defendants and Defendants’ Counsel had and continued to commit,

including the failure to honestly and promptly provide sufficient information and documents to enable the Special Master to effectively monitor the sale of the W Financial Assets. [App. at 017, ¶45; App. at 089-093]. The August 19 demand sought, among other things, information and documents regarding the \$1.6 million to \$2 million of estimated unliquidated and unaccounted for W Financial Assets, information Defendants and Defendants' Counsel were required to provide to the Special Master pursuant to paragraphs 3 and 4, and Defendants were further required to provide pursuant to paragraphs 6, 7, 8, 9, 14, and 15 of the Special Master Order. [App. at 017, ¶ 45; App. at 089-093]. Defendants' Counsel, forwarded a reply on August 25, 2008. [App. at 017-118, ¶ 45; App. at 095-096]. The August 25, 2008 reply is typical of the tactics and dishonesty the Special Master and SEC has faced in dealing with Defendants and Defendants' Counsel. [App. at 018-019, ¶ 47]. In that reply, Defendants and Defendants' Counsel vigorously disagree with the contention that they have violated the terms of the Special Master Order and have failed to provide timely information or cooperation with the Special Master. [App. at 017-018, ¶45]. As demonstrated herein, that contention was baseless and false. [App. at 018, ¶ 45]. They go on to claim that Defendants are "cooperating fully" with the accounting ordered by the Court in the Freeze Order. [App. at App. at 018, ¶ 45; App. 095]. This is likewise false. The Freeze Order required Defendants and Defendants' Counsel to cooperate and provide specific information and documents to Wayman to enable him to submit an accounting to the Court no later than August 20, 2008. [App. at 084, ¶ 10]. As of August 20, 2008, Wayman had not even commenced the accounting process because of Defendants and Defendants' Counsel's failure to provide any meaningful information and documentation by that date. Indeed, they still have not cooperated with Wayman, and no accounting has yet been delivered or any schedule for its delivery provided.

Defendants and Defendants' counsel go on to voice concerns that the Special Master was exceeding the powers provided to him under the Special Master Order by making the demands set forth in the August 19 email, demands for information and documentation specifically ordered by the Court for Defendants and Defendants' Counsel to produce to the Special Master. [App. at 018, ¶ 46; App. 095]. Defendants and Defendants' Counsel implied that the Special Master Order had been superseded by the Freeze Order. [App. at 018, ¶ 47, App. at 095-098]. Indeed, in their August 26, 2008 email to the SEC, Defendants, through Defendants' Counsel, argued that the "Special Master should be phasing out as most of the property has now been sold and the funds transferred to the Special Master. [App. at 018, ¶ 47; App. 097-098].

Contrary to Defendants and Defendants' Counsel's insinuations, the Freeze Order did not supplant the Special Master Order. [App. at 018, ¶ 47]. Indeed, the Freeze Order makes this fact clear in paragraph 16, where it provides that "the assets of W Financial Order are to be sold in accordance with the terms of the March 28, 2008 order appointing the Special Master." [App. at 086, ¶ 16]. Thus, Defendants and Defendants' Counsel's insinuation that the Freeze Order somehow supplants the Special Master Order is false. [App. at 018, ¶ 47]. In addition, Defendants and Defendants' Counsel nowhere address the non-accounting demands set forth in the August 19, 2008 demand letter. [App. at 018, ¶ 47; App. 095-098]. Instead, they try to characterize all demands as "accounting" issues that are somehow exclusively within the jurisdiction of Wayman. [App. at 018-019, ¶ 47; App. 095-098]. Such mischaracterization is typical of what the Special Master and SEC have had to deal with for months with these Defendants and Defendants' Counsel. [App. at 019, ¶ 47].

The accounting requirement of the Freeze Order does not in any way relieve the Defendants and Defendants' Counsel of the obligation to give full and honest cooperation to the

Special Master and to otherwise fully comply with the mandates of the Special Master Order. [App. at 019, ¶ 48]. One set of obligations does not supplant the other; they exist concurrently. [App. at 019, ¶ 48]. Indeed, nowhere in the Freeze Order is Wayman delegated any of the duties which the Special Master has been delegated under the Special Master Order. [App. at 019, ¶ 48; App. at 078-088]. It is the Special Master, and the Special Master alone, who is responsible to monitor the sale of the W Financial Assets and to seek and obtain all necessary information and documentation to enable the Special Master to fully and adequately report on the status of such liquidation to the Court, and receive and preserve the proceeds from such sales for the benefit of the investors. [App. at 038-049]. Wayman has no function in this regard. [App. at 078-088].

V. **REMEDIES SOUGHT**

A. **Declare Defendants and Defendants' Counsel in Contempt of this Court's Special Master Order**

“A party commits contempt when he violates a definite and specific order of the court requiring him to perform . . . a particular act or acts with knowledge of the court’s order.” *Travelhost, Inc. v. Blandford*, 68 F.3d 958, 961 (5th Cir. 1995) (quoting *Securities & Exchange Commission v. First Financial Group of Texas, Inc.*, 659 F.2d 660, 669 (5th Cir. 1981)). Intent is not an issue in civil contempt proceedings; rather, “the question is not one of intent but whether the alleged contemnors have complied with the court’s order.” *Jim Walter Resources, Inc. v. International Union*, 609 F.2d 165, 168 (5th Cir. 1980). Willfulness is not an element of civil contempt. *Petroleos Mexicanos*, 826 F.2d 392, 401 (5th Cir. 1980). “Once the movant has established the failure to comply with an order, then the respondent bears the burden of showing mitigating circumstances that might permit the court to withhold exercising its contempt power.” *In re Rodriguez*, No. SA-06-CA-323-XR, 2007 U.S. Dist. LEXIS 11858, at *21 (W.D. Tex. Feb. 20, 2007) (citing *Whitfield v. Pennington*, 832 F.2d 909, 914 (5th Cir. 1987)).

“To support a finding of civil contempt, the Court must find evidence that (1) a court order was in effect; (2) the order required certain conduct; and (3) the respondent failed to comply with the order.” *In re Rodriguez*, at *45 (citing *Piggy Wiggly Clarksville, Inc. v. Mrs. Baird’s Bakeries, Inc.*, 177 F.3d 380, 382 (5th Cir. 1999)). “Though knowledge of the court’s order is required to find an individual in contempt, intent to violate that order is not necessary to support a finding of civil contempt.” *In re Rodriguez*, at *46 (citing *Jim Walter Resources*, 609 F.2d at 168).

It is clear from the record before this Court that (i) the Special Master Order has been in effect at all times between its effective date on March 28, 2008 and the current date; (ii) the Special Master Order required Defendants and Defendants’ Counsel to comply with those provisions set forth in Section II.C. above; and that (iii) Defendants and Defendants’ Counsel failed to comply with the Special Master Order, all as set forth in Sections III.A and III.B above. [App. at ____]. It is also evident that Defendants and Defendants’ Counsel had knowledge of the Special Master Order at all relevant times with respect to violations relating to them.

Accordingly, the Special Master and SEC request that the Court declare Defendants and Defendants’ Counsel in civil contempt of this Court’s Special Master Order.

B. Incarceration Pending Compliance with the Special Master Order

“The Court may incarcerate a party found in civil contempt for up to 18 months.” *In re Rodriguez*, at *21 (citing 28 U.S.C. § 1826(a)).

Accordingly, the Special Master and SEC request that the Court order that Defendants and Defendants’ Counsel be incarcerated until they comply with the Special Master Order in all respects.

C. Payment of Attorneys Fees Incurred in Securing Compliance

“The Court may order payment of actual damages, including attorney’s fees, from one party to another as a civil contempt sanction.” *In re Rodriguez*, at *21 (citing *Petroleos Mexicanos*, 826 F.2d at 399 (“sanctions for civil contempt are meant to be wholly remedial and serve to benefit the party who has suffered injury or loss at the hands of the contemnor”)); and *In re Musselwhite*, 270 B.R. 72, 78 (S.D. Tex. 2000) (affirming bankruptcy court’s civil contempt sanction awarding attorney’s fees to party)). “Compensatory damages awarded as a sanction for violation of a court order are to [reimburse] the injured party for the losses and expenses incurred because of his adversary’s noncompliance.” *In re Rodriguez*, at *22 (citing *Norman Bridge Drug Co. v. Banner*, 529 F.2d 822, 827 (5th Cir. 1976)).

Accordingly, the Special Master and the SEC request that the Court order the Defendants and Defendants’ Counsel to reimburse the investors for the legal fees and expenses incurred by their estate as a result of Defendants and Defendants’ Counsel’s noncompliance with the Special Master Order.

D. Additional Per Diem Monetary Sanctions to Secure Compliance

The Court also has authority to order additional monetary sanctions to secure compliance with the Special Master Order. *Lamar Financial Corp. v. Adams*, 918 F.2d 564, 567 (5th Cir. 1990) (imposing as a civil contempt sanction a prospective per diem fine payable to the Court to coerce compliance with a court order requiring prospective performance of an affirmative act). In setting a prospective per diem fine amount to coerce compliance with a Court Order, the Court should consider the following factors: (1) the harm from noncompliance; (2) the probable effectiveness of the sanction; (3) the financial resources of the contemnor and the burden the sanctions may impose; and (4) the willfulness of the contemnor in disregarding the court’s order. *In re Rodriguez*, at *22-23 (citing *Adams*, 918 F.2d at 567).

Application of the aforementioned factors to this case reveals that (i) the harm to the investors from continued noncompliance is substantial (an estimated \$1.6 million to \$2 million of unliquidated W Financial Assets remain under Defendants' control); (ii) a substantial per diem sanction would have probable effectiveness; (iii) Defendants and Defendants' Counsel have financial resources to satisfy the monetary sanctions; and (iv) the willfulness of Defendants and Defendants' Counsel's disregard of this Court's Special Master Order is quite evident from a review of this record. [App. at ___]

Accordingly, the Special Master and SEC request this Court to assess an appropriate per diem monetary sanction against Defendants and Defendants' Counsel to sufficiently motivate them to comply with this Court's Special Master Order.

E. Appointment of a Receiver Over the W Financial Assets

As is evident from this record, Defendants and Defendants' Counsel have repeatedly demonstrated through their violations of the Special Master Order (and now the Freeze Order) that they do not and will not act in the investors' best interests. It is for this and the other reasons set forth herein that the Special Master, pursuant to his authority under paragraph 14 of the Special Master Order, and joined by the SEC, recommends to the Court that, in the interests of the investors, the Court should assume exclusive jurisdiction and take possession of the W Financial Assets by placing the W Financial Assets in Receivership.

VI. CONCLUSION

Defendants and Defendants' Counsel have flouted and flagrantly disregarded this Court's Special Master Order repeatedly for months, notwithstanding repeated pleas for compliance from the Special Master. Their recalcitrance continues and expands with their violations of the Freeze Order, notwithstanding pleas for compliance from the SEC. Contrary to their assertions, the Freeze Order supplements, rather than supplants, the Special Master Order. Enough is enough.

If a Federal Court Order is to mean anything, it must be obeyed. Defendants and Defendants' Counsel have consistently, and with impunity, disobeyed and disregarded the Special Master Order (and now more recently, the Freeze Order), to the prejudice of this Court, the investors, the Special Master, and the SEC. The Special Master and the SEC jointly move this Court to grant this Motion and provide the relief requested in order to protect both the investors and the integrity of this Court's Special Master Order.

Dated: September ^{16th} 2008.

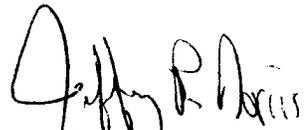
Respectfully submitted,

/s/ John S. Brannon

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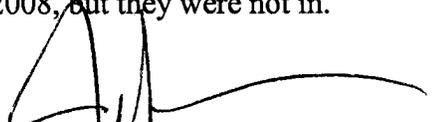



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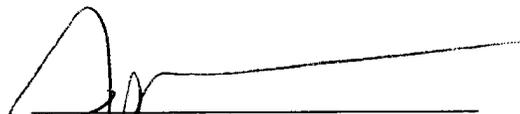
CERTIFICATE OF CONFERENCE

I certify that on August 19, 2008, August 25, 2008, and August 26, 2008, I conferred by email with Stephen Komie, counsel for the Defendants, with respect to this Emergency Motion to Show Cause. Agreement could not be reached because Mr. Komie asserts that the Defendants have fully complied with the Special Master Order. I also attempted to confer with Mr. Komie and Mr. Teakell by phone on September 4, 2008, but they were not in.


John S. Brannon

CERTIFICATE OF SERVICE

I certify that on the 16th day of September, 2008, I served a copy of the aforementioned pleading by messenger (hand delivery) or federal express overnight, as reflected below, to the following persons:


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VIA FEDERAL EXPRESS OVERNIGHT

ATTORNEY FOR DEFENDANTS