

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

SECURITIES AND EXCHANGE COMMISSION)

Plaintiff,)

v.)

TODD ELLIOTT HITT,)
KIDDAR CAPITAL LLC, and)
KIDDAR GROUP HOLDINGS, INC.,)

Defendants,)

CIVIL NO. 1:18-cv-01262

and)

KIDDAR HERNDON STATION LLC,)
KIDDAR HOMEBUILDING FUND I LLC,)
MELBOURNE RETREAT LLC,)
KIDDAR MASS AVE LLC,)
KIDDAR RIDGEVIEW LLC,)
ESA EMERSON LLC,)
ESA HIGHWOOD LLC, and)
KIDDAR AQ LLC a/k/a KIDDAR AQUICORE LLC,)

Relief Defendants.)

**JUDGMENT OF PERMANENT INJUNCTION, ASSET FREEZE AND OTHER RELIEF.
AS TO DEFENDANT TODD ELLIOTT HITT**

Plaintiff Securities and Exchange Commission having filed a Complaint and Defendant Todd Elliott Hit (“Defendant”) having entered a general appearance; consented to the Court’s jurisdiction over him and the subject matter of this action; consented to entry of this Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction and except as otherwise provided herein in Paragraph VII); waived findings of fact and conclusions of law; and waived any right to appeal from this Judgment,

IT IS HEREBY ORDERED AND ADJUDGED that:

I.

PERMANENT INJUNCTION AS TO SECTION 17(a) OF THE SECURITIES ACT

Defendant is permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 (the “Securities Act”), 15 U.S.C. § 77q(a), in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly: (i) to employ any device, scheme, or artifice to defraud; (ii) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or (iii) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

As provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Judgment by personal service or otherwise: (a) Defendant’s officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

II.

**PERMANENT INJUNCTION AS TO
SECTION 10(b) AND RULE 10b-5 OF THE EXCHANGE ACT**

Defendant is permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder, 17 C.F.R. § 240.10b-5, by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security: (i) to employ any device, scheme, or artifice to defraud; (ii) to make any untrue statement of a material fact or to omit to

state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (iii) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

As provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Judgment by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

III.

PERMANENT INJUNCTION AS TO SECTIONS 206(1)-(2) OF THE ADVISERS ACT

Defendant is permanently restrained and enjoined from violating Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 ("Advisers Act"), 15 U.S.C. §§ 80b-6(1) and (2), by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, while acting as an investment adviser: (i) to employ any device, scheme or artifice to defraud any client or prospective client; or (ii) to engage in any transaction, practice or course of business which operates as a fraud or deceit upon any client or prospective client.

As provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Judgment by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

IV.

PERMANENT INJUNCTION AS TO FURTHER CONDUCT

Defendant is permanently restrained and enjoined from directly or indirectly, including, but not limited to, through any entity owned or controlled by Defendant, participating in the

issuance, purchase, offer, or sale of Units of Membership Interests in Limited Liability Companies, General Partnerships, or Limited Partnerships, including Units offered in real estate development companies, provided, however, that such injunction shall not prevent Defendant from purchasing or selling these or any other securities for his own personal account.

As provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Judgment by personal service or otherwise:

(a) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

V.

DISGORGEMENT AND CIVIL PENALTY

Defendant shall pay disgorgement of ill-gotten gains, prejudgment interest thereon, and a civil penalty pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3), and Section 209(e) of the Advisers Act, 15 U.S.C. § 80b-9(e). The Court shall determine the amounts of the disgorgement and civil penalty upon motion of the Commission. Prejudgment interest shall be calculated from September 19, 2018, based on the rate of interest used by the Internal Revenue Service for the underpayment of federal income tax as set forth in 26 U.S.C. § 6621(a)(2). In connection with the Commission's motion for disgorgement and/or civil penalties, and at any hearing held on such a motion: (a) Defendant will be precluded from arguing he and Defendants Kiddar Capital LLC and Kiddar Group Holdings, Inc. did not violate the federal securities laws as alleged in the Complaint; (b) Defendant may not challenge the validity of the Consent or this Judgment; (c) solely for the purposes of such motion, the allegations of the Complaint shall be accepted as and deemed true by the Court; and (d) the Court may determine the issues raised in the motion on the basis of

affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence, without regard to the standards for summary judgment contained in Rule 56(c) of the Federal Rules of Civil Procedure. In connection with the Commission's motion for disgorgement and/or civil penalties, the parties may take discovery, including discovery from appropriate non-parties.

VI.

INCORPORATION OF CONSENT

The Consent is incorporated herein with the same force and effect as if fully set forth herein, and Defendant shall comply with all of the undertakings and agreements set forth therein.

VII.

BANKRUPTCY NONDISCHARGEABILITY

Solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the allegations in the Complaint are true and admitted by Defendant, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Defendant under this Judgment or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Defendant of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

VIII.

CONSENT TO RECEIVERSHIP

Upon the Court's appointment of a receiver for Defendant Kiddar Capital LLC, Defendant Kiddar Group Holdings, Inc., and Relief Defendants Kiddar Homebuilding Fund I LLC, Melbourne Retreat LLC, Kiddar Mass Ave LLC, Kiddar Ridgeview LLC, ESA Emerson LLC, ESA Highwood

LLC, and Kiddar AQ LLC a/k/a Kiddar Aquicore LLC, their subsidiaries, successors and assigns, and any other entity or entities, their subsidiaries, successors and assigns (the “Receivership Entities”), and in connection with such receivership: (a) Defendant will be precluded from arguing he and the Receivership Entities did not violate the federal securities laws as alleged in the Complaint; (b) Defendant, either for himself or on behalf of the Receivership Entities, may not challenge the validity of the receivership; (c) for purposes of the receivership, the allegations of the Complaint and any factual statements in the order appointing the receiver shall be accepted as and deemed true by the Court; (d) Defendant, for himself and on behalf of the Receivership Entities, shall cooperate with the receiver, including, without limitation, by promptly and fully accommodating any request by the receiver for access to or possession, custody or control of any property or items the receiver deems necessary in fulfilling the scope of the receivership; (e) Defendant, for himself and on behalf of the Receivership Entities, is hereby restrained and enjoined from interfering in any respect, directly or indirectly, with the receiver in the performance of his or her duties; and (f) the receiver, among other duties, shall market and sell Defendants’ real properties located at 2901 North Kensington, Arlington, VA (the “North Kensington Property”) and 2940 Penny Lane, Fairfax, VA (the “Penny Lane Property”), as noted further below in Paragraph IX(f).

IX.

ASSET FREEZE

Until further order of this Court:

(a) Except as provided by subparagraph (e) below, Defendant, and his officers, agents, servants, employees and attorneys and those persons in active concert or participation with them who receive actual notice of this Judgment by personal service or otherwise, including, without

limitation, by email, facsimile, United States mail, or commercial delivery service, shall hold and retain funds and other assets of Defendant and presently held by him, for his direct or indirect benefit, under his direct or indirect control or over which he exercises actual or apparent investment or other authority (including assets held in the name of or for the benefit of Defendant), in whatever form such assets may presently exist and wherever located, and shall prevent any withdrawal, sale, payment (including, but not limited to, any charges on any credit card or draws on any other credit arrangement), transfer, dissipation, assignment, pledge, alienation, encumbrance, disposal, or diminution in value of any such funds or other assets, which are hereby frozen, including, but not limited to, funds held in the following accounts:

Institution	Account No.	Account Name
Congressional Bank	XXXXXX0387	Todd Hitt or Susan Hitt
Congressional Bank	XXXXXX1898	Todd Hitt
Eagle Bank	XXXXXX1774	Todd Hitt
Freedom Bank	XXXXXX6714	Todd Hitt
Freedom Bank	XXXXXX4904	Todd Hitt
Freedom Bank	XXXXXX4950	Todd Hitt
TD Bank	XXXXXX2862	Todd Hitt
TD Bank	XXXXXX4103	Todd Hitt
Wells Fargo	XXXXXX2001	Todd Hitt
Wells Fargo	XXXX-0533	Todd Hitt
Wells Fargo	XXXX-2540	Todd E Hitt (IRA)
Wells Fargo	XXXXXXXXXXXX4589	Todd E Hitt
Wells Fargo	XXXXXXXXXXXX5344	Todd E Hitt
Wells Fargo	XXXXXXXXXXXX2265	Todd E Hitt

(b) Except as provided by subparagraph (e) below, all banks, brokerage and other financial institutions and other persons or entities which receive actual notice of this Judgment by personal service or otherwise, including, without limitation, by email, facsimile, United States mail, or commercial delivery service, holding any funds or other assets in the name, for the direct or indirect benefit, or under the direct or indirect control of Defendant or over which Defendant exercises actual or apparent investment or other authority (including assets in the name of Defendant), in whatever form such assets may presently exist and wherever located, including but

not limited to all such funds held in the accounts listed above, shall hold and retain within their control and prohibit the withdrawal, removal, sale, payment (including, but not limited to, any charges on any credit card or draws on any other credit arrangement), transfer, dissipation, assignment, pledge, alienation, encumbrance, diminution in value, or other disposal of any such funds or other assets; and that such funds and assets are hereby frozen.

(c) Except as provided by subparagraph (e) below, all persons who hold or possess the direct or indirect proceeds of the misconduct described in the Complaint, in whatever form such funds or other assets may presently exist, who receive actual notice of this Judgment, by personal service or otherwise, including, without limitation, by email, facsimile, United States mail, or commercial delivery service, shall hold and retain such funds and assets and shall prevent any withdrawal, sale, payment (including, but not limited to, any charges on any credit card or draws on any other credit arrangement), transfer, dissipation, assignment, pledge, alienation, encumbrance, disposal, or diminution in value of any such funds or other assets, which are hereby frozen.

(d) Except as provided by subparagraph (f) below, as to any real property in the name, for the direct or indirect benefit, or under the direct or indirect control of Defendant or over which Defendant exercises actual or apparent investment or other authority, wherever located, any sale, transfer, dissipation, assignment, pledge, alienation, encumbrance, disposal, or diminution in value of any such property, whether in whole or in part, is prohibited, such property being hereby frozen.

(e) Notwithstanding the provisions of subparagraphs (a) through (c) above, Defendant shall be entitled to the release of frozen funds in the total monthly amount of \$15,815.87 for payment of the following expenses:

(1) The mortgage payment for the North Kensington Property to Freedom Bank (Account No. XXXX4904) in the amount of \$5,826.88;

(2) The line of credit payment for the North Kensington Property to Freedom Bank (Account No. XXXX4950) in the amount of \$1,843.75;

(3) The line of credit payment for the Penny Lane Property to Freedom Bank (Account No. XXXX4480) in the amount of \$3,540.24;

(4) Utilities for the North Kensington Property and the Penny Lane Property in the amount of \$2,125;

(5) Real estate taxes for the North Kensington Property and the Penny Lane Property in the amount of \$2,180; and

(6) Homeowners insurance premiums for the North Kensington Property and the Penny Lane Property in the amount of \$300.

For payment of these expenses: TD Bank shall release \$15,815.87 in frozen funds from Account No. XXXX4103) on or before the first day of each calendar month to the trust account of counsel for Defendant, Schertler & Onorato, LLP, and counsel shall pay the expenses enumerated in the immediately preceding paragraph from its trust account directly to the payees on or before the due dates set forth by the payees. Counsel also shall provide written proof of each payment to the Commission and to the court-appointed Receiver in this matter within two (2) calendar days of making the payment. This fund release shall not be considered a violation of this Asset Freeze/Judgment, and shall continue until such time as the North Kensington Property and the Penny Lane Property are sold by the Receiver as set forth in Paragraph VIII(f) above and subparagraph (f) below and the closing on the properties takes place. Aside from this fund

release, no other funds shall be released from this Asset Freeze/Judgment at any time without prior written order of this Court.

(f) Notwithstanding the provisions of subparagraph (d) above, the Receiver in this matter is authorized and empowered to market and sell the North Kensington Property and the Penny Lane Property and collect and use the proceeds for payment toward the disgorgement and prejudgment interest Defendant owes in this matter pursuant to Paragraph V above and/or to distribute to injured investors as part of the receivership. The proceeds will be credited against the Final Judgment for disgorgement and prejudgment interest to be entered against Defendant.

X.

RETENTION OF JURISDICTION

This Court shall retain jurisdiction of this matter and of Defendant for the purposes of enforcing the terms of this Judgment.

DONE AND ORDERED in Alexandria, Virginia, this 17th day of October, 2018.



T. S. Ellis, III
United States District Judge

Copies to:

Counsel of Record (via CM-ECF)

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Counsel for Defendant Todd Elliott Hitt in his capacity as registered agent for Relief Defendant Kiddar Herndon Station LLC