

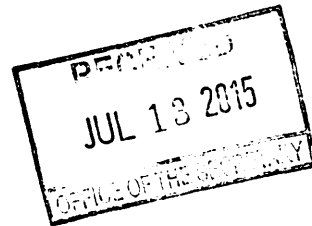
**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-16540**

**In the Matter of**

**STEPHEN L. KIRKLAND,**

**Respondent.**



**DIVISION OF ENFORCEMENT'S MOTION AND MEMORANDUM**  
**OF LAW IN SUPPORT OF SUMMARY DISPOSITION**  
**AGAINST RESPONDENT STEPHEN L. KIRKLAND**

**I. Introduction**

The Division of Enforcement ("Division") moves for summary disposition in this follow-on administrative proceeding. At the prehearing conference held in this matter on June 22, 2015, the Division sought and was granted permission to file this motion. This motion is timely filed pursuant to this Court's Order entered after the prehearing conference dated June 22, 2015.

This proceeding is based upon an *Order of Permanent Injunction As to Defendant Stephen L. Kirkland and Other Relief* ("Order of Permanent Injunction") against respondent Stephen L. Kirkland ("Kirkland") entered by U.S. District Court Judge Mark H. Cohen on April 15, 2015. A true and correct copy of the Order of Permanent Injunction is attached hereto as Exhibit A, and is incorporated herein by reference. A true and correct copy of the *Consent of Defendant Stephen L. Kirkland To Order of Permanent Injunction And Other Relief* ("Consent") is attached hereto as Exhibit B, and

is incorporated herein by reference. In the Consent, Kirkland expressly stated that he understood that “in any disciplinary proceeding before the Commission based on the entry of the injunction” – such as the instant administrative proceeding – he would “not be permitted to contest the factual allegations of the complaint . . .” Exhibit B, ¶10.

The Order of Permanent Injunction enjoins Respondent Kirkland from violations of the antifraud provisions of the federal securities laws, including Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 10b-5 thereunder and Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 (“Advisers Act”). There are no genuine issues of material fact, and the sanctions sought against Kirkland should be initiated as a matter of law, pursuant to Rule 250 of the Commission’s Rules of Practice.

**II. Allegations of the Complaint Against Respondent Kirkland And His Consent to the Permanent Injunction Against Him Establish Kirkland Acted As An Investment Adviser For Purposes Of This Proceeding**

On September 23, 2013, the Commission filed its Complaint in the U.S. District Court for the Northern District of Georgia in *Securities and Exchange Commission v. Stephen L. Kirkland and The Kirkland Organization, Inc.*, Civil Action File No. 1:13-cv-3150-JEC.<sup>1</sup> A true and correct copy of the *Complaint For Injunctive And Other Relief* (“Complaint”) is attached hereto as Exhibit C, and is incorporated herein by reference.

In its Complaint against Kirkland and The Kirkland Organization, Inc. (“TKO”), the Commission specifically alleged that Kirkland and TKO “repeatedly made false and

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<sup>1</sup> During the progress of the litigation in the underlying district court case, the matter was reassigned from Judge Julie E. Carnes (“JEC”) to eventually Judge Mark H. Cohen (“MHC”). The reassignment of judges accounts for the difference in the initials contained within the civil action file number between the time of the filing of the Complaint and the time of the signed Order of Permanent Injunction.

misleading statements to investors and potential investors in the United States and abroad, including but not limited to: (a) if they invested with Kirkland and TKO *through a managed account at Westover Energy Trading Partners, LLC (“Westover”)*, there would be no risk of losing their principal; (b) they would earn 2% to 3% per month; (c) a specified New York real estate developer/owner was a manager of Westover; and (d) the New York real estate developer/owner’s substantial wealth would be used to indemnify investors against loss.” (Exhibit C, Complaint, ¶ 1; emphasis added). The Complaint further alleged that “Kirkland currently holds himself out as an investment consultant, but has never been associated with any entity registered with the Commission.” (Exhibit C, Complaint, ¶ 8). The Complaint also alleged that Westover, the entity for which Kirkland solicited securities investments, “purportedly traded stock index funds and commodities while guaranteeing investors that they had no risk of loss;” that “Westover has never been registered with the Commission or any state securities-related agency;” and that Westover had been the subject of a cease and desist order issued by the State of Alabama Securities Commission in February 2013 “for offering unregistered investment contracts similar to the investments identified in this Complaint.” (Exhibit C, Complaint, ¶ 10). Finally, it should be noted that the Complaint also alleged that “Kirkland told at least one investor that, in exchange for TKO’s<sup>2</sup> role in soliciting investors and directing such investors to Westover, TKO was to be compensated a percentage of profits above the guaranteed minimum of profits each month.” (Exhibit C, Complaint, ¶ 15). Based upon these allegations, the Commission’s Complaint charged Kirkland with, among other

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<sup>2</sup> The Complaint also alleged that Kirkland exercised complete control over TKO with respect to the investment opportunities being sold to the investors. (Exhibit C, Complaint, ¶ 20).

things, acting as an investment adviser who violated Sections 206(1) and 206(2) of the Advisers Act. (Exhibit C, Complaint, ¶¶ 25-27).

Section 203(f) of the Advisers Act authorizes the Commission to institute administrative proceedings to determine whether certain remedial measures are appropriate against any persons associated with an investment adviser at the time of the alleged misconduct. The same proceeding may be brought against individuals whose conduct constitutes acting as an unregistered investment adviser. Specifically, § 202(a)(11) of the Advisers Act defines an investment adviser in relevant part as “any person who, for compensation, engages in the business of advising others . . . as to value of securities or as to the advisability of investing in, purchasing, or selling securities.” The allegations of the Complaint were specific and sufficiently described Kirkland’s conduct to have involved recommending investments of securities in the form of investment contracts to be effectuated through Westover. It also alleged that Kirkland’s company TKO was compensated by Westover for some percentage of profits from those securities investments above certain guaranteed minimum profits each month. Kirkland acted as an unregistered investment adviser.

Based on these facts, the Commission should sanction Kirkland because he is a “person who, for compensation engage[d] in the business of advising others, either directly or through publications or writings, as to the values of securities or as to the advisability of investing in, purchasing, or selling securities,” in violation of Section 202(a)(11) of the Advisers Act, who has now been permanently enjoined by a federal court. This proceeding essentially provides Kirkland notice and the opportunity for a hearing. The evidence produced by the Commission supporting this motion fully

establishes that remedial measures are in the public interest and that Kirkland should be broadly barred from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent or nationally recognized statistical rating organization. *See* § 203(f) of the Adviser's Act.

On April 15, 2015, Kirkland entered into his Consent to the Order of Permanent Injunction for violations of, among other things, the antifraud provisions of the Advisers' Act. (Exhibit B, Consent, ¶ 2). While he consented to the entry of the Order of Permanent Injunction without admitting or denying the allegations of the Commission's Complaint, Kirkland fully knew he had been sued for conduct which amounted to acting as an investment adviser and consented to the entry of the Order which included a permanent injunction for fraud while acting as an investment adviser.

Also in the Consent, Kirkland expressly stated that he understood that "in any disciplinary proceeding before the Commission based on the entry of the injunction" – such as the instant administrative proceeding – he would "not be permitted to contest the factual allegations of the complaint . . ." *Id.*, ¶10.

### **III. The Commission Issued the Order Instituting the Instant Proceedings Against Kirkland on May 18, 2015**

On May 18, 2015, the Commission issued an Order Instituting Administrative Proceedings Pursuant to Section 203(f) of the Investment Advisers Act of 1940, And Notice of Hearing ("OIP") initiating these proceedings. The OIP was duly served on Kirkland by the Commission.

The OIP summarized some of the core allegations of the Commission's Complaint in the Injunctive Action, including the Complaint's allegation that from late 2008 through late 2010, Kirkland and TKO repeated made false and misleading

statements to investors and potential investors in the United States and abroad in connection with the sale of securities, including but not limited to: (a) if they invested with Kirkland and TKO through a managed account at Westover, there would be no risk of losing their principal; (b) they would earn 2% to 3% per month; (c) a specified New York real estate developer/owner was manager of Westover; and (d) the New York real estate developer/owner's substantial wealth would be used to indemnify investors against loss. The OIP also stated that the Complaint alleged that investors in the United States and England invested at least \$800,000 with Kirkland and TKO based upon those false representations. OIP, ¶ II.B.3.

The OIP also alleged that, on April 15, 2015, an injunction against future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1) and (2) of the Advisers Act was entered against Kirkland. OIP, pp. 1-2 ¶ II.A.3. The OIP requires the Court to determine whether Respondent has been enjoined within the meaning of Section 203(e)(4) of the Advisers Act and whether it is in the public interest to enter remedial sanctions against him pursuant to Section 203(f) of the Advisers Act on the basis of those injunctions. OIP, p.2 ¶ III.

On June 16, 2015, Kirkland, pro se, filed his Answer to the OIP. In his Answer, Kirkland admitted that he has a degree in "Ophthalmic Dispensing" and that he has in the past been employed as both an Optician and later as a Life and Health Insurance Agent. OIP, p. 1 ¶ 1; Answer, p. 1 ¶ A. 1). Kirkland also admitted to the entry of the Order of Permanent Injunction in the District Court, and admitted that the Commission's Complaint in that matter contained the allegations set forth in Paragraph 3 of the OIP. OIP, p. 1-2 ¶¶ 2-3; Answer, p. 1 ¶ B. 3).

In this case, the Commission has a significant basis under Section 203(f) of the Advisers Act to impose sanctions against Kirkland, by virtue of the Order of Permanent Injunction in the U.S. District Court for the Northern District of Georgia. The public interest is served in instituting remedial measures against Kirkland because of the extensive fraudulent conduct for which he has been permanently enjoined. Since no genuine material issue regarding Kirkland's permanent injunction exists, summary disposition of this matter is appropriate, and the broadest bar allowed by the statute is appropriate.

#### **IV. SUMMARY DISPOSITION IS APPROPRIATE PURSUANT TO RULE 250**

##### **A. Summary Disposition Standard**

Rule 250 of the Commission's Rules of Practice provides that the Division or the Respondent may make a motion for summary disposition subject to leave of Court prior to the presentation of the Division's case in chief. The Rule expressly provides that the Administrative Law Judge ("ALJ") may grant the motion if there is "no genuine issue with regard to any material fact and the party making the motion is entitled to summary disposition as a matter of law." The Court concluded during the prehearing conference on June 22, 2015, that the Division was granted leave to file this motion for summary disposition through July 13, 2015. This motion is timely filed and served.

Under Rule 250 of the Commission's Rules of Practice, summary disposition is appropriate where there is "no genuine issue with regard to any material fact and the party making the motion is entitled to summary disposition as a matter of law." A consent injunction, "no less than one issued after trial upon a determination of the allegations, may furnish the sole basis for remedial action . . . if such action is in the

public interest.” *In re Melton*, 2003 SEC LEXIS 1767, 8 (July 25, 2003), citing *Cortlandt Investing Corp.*, 44 S.E.C. 45, 53 (1969). The mere existence of an injunction may support a revocation of registration and a bar from the securities industry where the nature of the acts and the circumstances indicate that such actions are in the public interest. *Melton*, 2003 SEC LEXIS at 8. The Commission traditionally settles most of its injunctive actions by consent decrees, and the Exchange and Advisers Acts do not distinguish between injunctions entered after such consent agreements and injunctions entered after litigation. *Id.* at 25, citing *SEC v. Clifton*, 700 F.2d 744, 748 (D.C. Cir. 1983). Rather, the entry of the injunction itself serves as the predicate for administrative relief.

Further, where the injunction was entered without findings of fact, “the action required in the public interest may be inferred from all the circumstances surrounding the injunctive action.” *Charles Phillip Elliot*, 50 S.E.C. 1273, 1277 (1992), *aff’d per curiam*, 36 F.3d 86 (11<sup>th</sup> Cir. 1994). *See also Matt Mattson*, 65 SEC Docket 1458, 1461 (Sept. 25, 1997) (determining that it is in the public interest to impose a penny stock bar although the underlying injunction was entered by consent against the Respondent). In administrative proceedings based on consent injunctions, the allegations of the Complaint in the civil injunctive action may be given considerable weight in assessing the public interest. *Samuel O. Forson*, 53 S.E.C. 31, 32 (1997); *Richard J. Puccio*, 52 S.E.C. 1041, 1042 (1996). Further, Kirkland is estopped from contesting the allegations of the Complaint in this proceeding. *Samuel O. Forson*, 65 SEC Docket 24, 25 (July 21, 1997); *see also Steven L. Down*, 1998 SEC LEXIS 1058 (May 7, 1998).



**B. There Is No Genuine Material Issue of Fact**

While Kirkland has not admitted that he acted as an investment adviser or acted as a person associated with an investment adviser, he has been permanently enjoined by the District Court from investment adviser fraud. In September 2013, the Commission sued Kirkland for securities fraud and fraud by an investment adviser based on his solicitations of Americans and Britons to invest in securities through Westover. In April 2015, as Kirkland admits, that lawsuit ended as to liability with the District Court's Order of Permanent Injunction. The terms of the permanent injunction against future violations of multiple antifraud provisions of the federal securities laws, speak for themselves. Finally, Kirkland has admitted in his Answer that the facts charged in the OIP were alleged in the Complaint in the Injunctive Action. OIP, p. 1-2 ¶ 3; Answer, p. 1 ¶ B.3). No genuine material issue of fact exists.

**C. Kirkland Has Been Enjoined Within the Meaning of the Advisers Act and the Public Interest Requires that He be Barred from Association with any Investment Adviser, Broker or Dealer**

Based on the record before it, this Court should conclude as a matter of law that Respondent has been enjoined within the meaning of Section 203(e)(4) of the Advisers Act, and that remedial sanctions are appropriate and in the public interest for the protection of investors pursuant to *Steadman v. SEC*, 603 F.2d 1126, 1140 (5<sup>th</sup> Cir. 1979). *In the Matter of Anderson and Kerns*, Initial Decisions Release No. 166, 2000 SEC Lexis 1092, \*12-13 (May 31, 2000)(ALJ Mahony)(ALJ held that proof that respondent was enjoined by federal district court from violating antifraud provisions of §§ 17(a), 10(b) and Rule 10b-5 thereunder, was sufficient to subject respondent to imposition of sanctions pursuant to § 15(b)(6) under *Steadman*).

Section 203(f) of the Advisers Act provides that the Commission may bar a person from being associated with an investment adviser if that person has been enjoined from engaging in or continuing any conduct or practice in connection with acting as an investment adviser or in connection with the purchase or sale of any security, if such bar is in the public interest. Advisers Act §§ 203(f) and 203(e)(4).

The Commission, in applying the *Steadman v. SEC*, 603 F.2d 1126, 1140 (5<sup>th</sup> Cir. 1979) standards to determine whether a bar is in the public interest, considers: (1) the egregious nature of the respondent's actions; (2) degree of scienter; (3) the isolated or recurrent nature of the infraction; (4) the respondent's recognition of the wrongful nature of his conduct; and (5) the likelihood that his occupation will present opportunities for future violations. *See Galluzzi* (Commission Op), *supra*, at 17 and n. 32 (appropriate under *Steadman* to impose a bar against respondent on basis of criminal conviction for mail and wire fraud and injunction); *In the Matter of Brownson*, 77 SEC Docket 3636, Exchange Act Rel. No. 46116, 2002 SEC Lexis 1715 (July 3, 2002), *aff'g*, Initial Decision Rel. No. 182, 2001 SEC Lexis 537 (March 23, 2001) (ALJ Foelak (same on basis of criminal conviction for securities fraud); *see also In the Matter of Wade*, (ALJ Mahony) Initial Decision Rel. No. 207, 2002 SEC Lexis 1604 (June 24, 2002) (citing *Steadman* and finding a bar in the public interest, where registered representative was enjoined from violations of the federal securities law anti-fraud provisions, due to the egregious nature of his actions, degree of scienter, extensive nature of conduct and failure to admit wrongful nature of conduct); *In the Matter of Harrington*, (ALJ McEwen) Exchange Act Rel. No. 38518, 1997 SEC Lexis 893 (April 17, 1997) (finding a bar in

the public interest against respondent who had been enjoined from anti-fraud violations in underlying injunctive action).

On April 15, 2015, Respondent Kirkland was enjoined in the Commission's Injunctive Action against, inter alia, future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibits fraud in connection with the offer, purchase or sale of securities. In the same Order, he was also enjoined from future violations of Section 206 of the Advisers Act, which prohibits fraud in connection with acting as an investment adviser. Based on the injunctions against him and his underlying misconduct, an order barring Respondent from association with any broker, dealer, or investment adviser is appropriate and in the public interest for the protection of investors.

Kirkland's conduct was egregious, and took place over a long period of time. He obtained \$800,000 in investor funds for investment contract investments in Westover from investors in the U.S. and in Great Britain. Moreover, the conduct took place bit by bit, over a long period of time. His solicitations for investments in securities through Westover began in late 2008, and continued *for two years*. While charged in the Commission's Complaint as a single fraud, this was actually a recurrent pattern of securities investment solicitations based on false representations relating to monthly percentage returns, the touted no risk security of the investment, that a specific wealthy New York real estate developer was a manager at Westover, and that the same wealthy man used his substantial personal wealth to indemnify investors against loss. All were false.

Further, Kirkland acted with a high degree of scienter. By making specific representations about Westover purportedly trading sophisticated instruments like stock

index funds and commodities, these representations served to enhance the purported legitimacy of Westover and thereby secure investments from US and UK investors. Further, Kirkland prepared and distributed documents to potential investors that touted the substantial credit worthiness of the principals at Westover. The documents also included the name of the specified New York real estate developer and identified him falsely as the leader of the principals of Westover. (See ¶¶ 13-14 of Exhibit C, Complaint). Kirkland's high degree of scienter also shows up in the actions he took to give the false impression that the funds were secure and never at risk. Kirkland fully knew at all relevant times that he was engaging in illegal conduct.

The most significant Steadman factor in this case may be the risk that Kirkland's willingness to misrepresent himself as a financial adviser will present opportunities for future wrongdoing. In reality, Kirkland has worked for an ophthalmologist and has previously worked as an insurance agent. He however fancies himself to be a financial advisor. Kirkland is in his early-fifties, apparently at the height of his career. He has used an apparent fluency with financial and investment advisory terms to successfully solicit securities investments from trusting, unsuspecting individuals.

Taken together, the Steadman factors discussed above warrant entry of an order barring Respondent Kirkland from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization...in order to prevent him from defrauding unsuspecting investors in the future.

Moreover, Kirkland is in no way remorseful for his illegal conduct, and appears to exhibit no recognition for the wrongfulness of his acts. Since the injunction is less

than 90 days old, Kirkland cannot seriously contend that enough time has passed to allow that he has remediated or rehabilitated himself, to any meaningful extent. It can reasonably be deduced from the story told in the Complaint to which Kirkland settled, he has completely disregarded all legal requirements that would have been necessary for him to operate as a legitimate registered investment adviser, and that he intentionally defrauded people in both the US and the UK.

Applying this framework to Respondent Kirkland's activities, it is apparent that a bar is warranted in this case. A broad statutory bar against Kirkland is appropriate to protect the public because given his background and the nature of his offense, Kirkland may likely give investment advice and attempt again to sell securities in the future. The broadest bar possible is fully warranted based upon Kirkland's permanent injunction for fraud by an investment advisor.

For all of these reasons, it is appropriate that the Commission impose a bar in this matter. That bar should prohibit Respondent Kirkland from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent or nationally recognized statistical rating organization. *See § 203(f) of the Adviser's Act; See Also e.g. In the Matter of Feeley & Willcox Asset Management Corp., Securities Act Release No. 8249, 2003 WL 22680907 (2003) (imposing bar as to both registered and unregistered investment advisers); In the Matter of Batterman, (ALJ Kelly) Initial Decision Release No. 246, 2004 WL 2387487 (February 12, 2004) (same).*

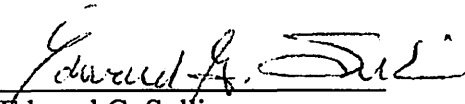
## V. CONCLUSION

Accordingly, for the foregoing reasons, the Division respectfully requests that its motion for summary disposition of this action be granted against Respondent Kirkland

pursuant to Rule 250 of the Commission's Rules of Practice and that he be permanently barred from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent or nationally recognized statistical rating organization.

July 10, 2015

Respectfully submitted,

  
Edward G. Sullivan  
Senior Trial Counsel

Securities and Exchange Commission  
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Atlanta, GA 30326-1382  
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Email: [sullivan@sec.gov](mailto:sullivan@sec.gov)

## Certificate of Service

On July 10, 2015, I served the foregoing by causing to be sent true and correct copies as shown below in sealed envelopes, postage prepaid, addressed to:

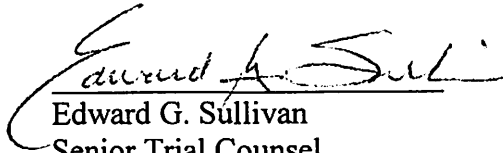
Original and three copies sent to:

Office of the Secretary (Via UPS, for overnight delivery)  
Securities and Exchange Commission  
100 F. Street, N.E.  
Washington, D.C. 20549

And one copy each to:

Honorable James E. Grimes (Via UPS, for overnight delivery)  
Administrative Law Judge  
Office of the ALJs  
100 F Street, N.E., Room 2557  
Washington, D.C. 20549-2557

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

STEPHEN L. KIRKLAND and THE  
KIRKLAND ORGANIZATION, INC.,

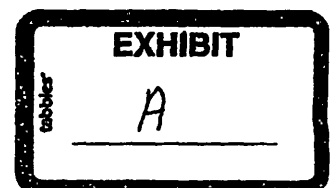
Defendants

Civil Action File No.

1:13-CV-3150-MHC

**ORDER OF PERMANENT INJUNCTION**  
**AS TO DEFENDANT STEPHEN L. KIRKLAND AND OTHER RELIEF**

The Securities and Exchange Commission having filed a Complaint and Defendant Stephen L. Kirkland ("Kirkland") 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 Order of Permanent Injunction without admitting or denying the allegations of the Complaint (except as to jurisdiction); waived findings of fact and conclusions of law; and waived any right to appeal from this Order of Permanent Injunction:





I.

**IT IS HEREBY ORDERED** that Defendant Kirkland and his agents, servants, employees, attorneys and those persons in active concert or participation with them who receive actual notice of this Order of Permanent Injunction by personal service or otherwise, be, and they hereby are, permanently restrained from, directly or indirectly, in connection with the purchase or sale of securities, by use of any means or instrumentalities of interstate commerce or any means or instruments of transportation or communication in interstate commerce, or by the mails or any facility of any national securities exchange, be, and they hereby are, restrained from, directly or indirectly:

- (1) employing any device, scheme or artifice to defraud;
- (2) making any untrue statement of a material fact or omitting to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- (3) engaging in any act, practice, or course of business which operates or would operate as a fraud or deceit on any person, in violation of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Rule 10b-5 [17 C.F.R. § 240.10b-5], thereunder, by directly or indirectly, (i) creating a false appearance or otherwise deceiving any person or (ii) disseminating false or misleading documents, materials,

or information or making either orally or in writing, any false or misleading statement in any communication with any investor or prospective investor, about:

- (A) the use of investor funds;
- (B) the risk of the investment; and
- (C) the existence and/or nature of any profit-generating enterprise.

Further, as the person who, directly or indirectly, controlled the entity defendant The Kirkland Organization, Inc. ("TKO") during the relevant period, Kirkland is also enjoined as a control person of that entity from directly or indirectly inducing the act or acts which constituted violations of TKO of the antifraud provisions of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5(b) thereunder [17 C.F.R. § 240.10b-5] by knowingly, intentionally, and/or recklessly making untrue statements of material facts and omitting to state material facts, such as those enumerated in A-C above.

## II.

**IT IS FURTHER ORDERED** that defendant Kirkland and his agents, servants, employees, attorneys and those persons in active concert or participation with them who receive actual notice of this Order of Permanent Injunction by personal service or otherwise hereby are permanently enjoined and restrained from, directly or indirectly:

- (1) employing devices, schemes, or artifices to defraud clients or prospective clients; or
- (2) engaging in transactions, practices, or courses of business which operated as a fraud or deceit upon clients or prospective clients;

in violation of Sections 206(1) and (2) of the Investment Advisers Act of 1940 [15 U.S.C. § 80b-6(1) and (2)], by making false statements to investors or others about investments or investment proceeds, by taking clients' investment proceeds into Defendant Kirkland's custody, or otherwise converting the investment proceeds of clients to Kirkland's personal benefit.

**III.**

**IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND**

**DECREED** that disgorgement and prejudgment interest thereon against defendant Kirkland is legally appropriate, to the extent it could be shown that he profited from the fraud outlined in the Commission's complaint. However, as the Commission has no evidence that Kirkland profited from the fraud, disgorgement is not ordered against him, and prejudgment interest is therefore moot.

**IV.**

**IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND**

**DECREED** that Defendant Kirkland shall pay a civil penalty pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)] and Sections 209(d) and

209(e) of the Advisers Act [15 U.S.C. §§ 80b-9]. The Court shall determine the amounts of the civil penalty upon motion of the Commission at a later date. In connection with the Commission's motion for a civil penalty, and at any hearing held on such a motion: (a) Defendant Kirkland will be precluded from arguing that he did not violate the federal securities laws as alleged in the Complaint; (b) Defendant Kirkland may not challenge the validity of the Consent or this Order of Permanent Injunction; but may challenge the appropriateness of the amount of the civil penalty to be ordered; (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 testimony or sworn 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 a civil penalty, the parties may take discovery, including discovery from appropriate non-parties.


V.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the Consent of Defendant Kirkland is incorporated herein with the same force and effect as if fully set forth herein, and that Defendant Kirkland shall comply with all of the undertakings and agreements set forth therein.

VI.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Order of Permanent Injunction.

Dated: April 15, 2015

  
\_\_\_\_\_  
Mark H. Cohen, Judge  
United States District Court

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

STEPHEN L. KIRKLAND and THE  
KIRKLAND ORGANIZATION, INC.,

Defendants

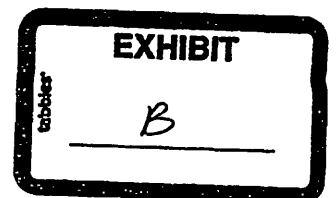
Civil Action File No.

1:13-CV-3150-MHC

**CONSENT OF DEFENDANT STEPHEN L. KIRKLAND TO ORDER OF  
PERMANENT INJUNCTION AND OTHER RELIEF**

1. Defendant Stephen L. Kirkland ("Defendant") having been served with the summons and the complaint in this action and having filed his Answer on October 16, 2013 enters a general appearance, and admits the Court's jurisdiction over Defendant and over the subject matter of this action.

2. Without admitting or denying the allegations of the complaint (except as to personal and subject matter jurisdiction, which Defendant admits), Defendant hereby consents to the entry of the *Order of Permanent Injunction Against Defendant Stephen L. Kirkland And Other Relief* in the form attached hereto (the



"Order of Permanent Injunction") and incorporated by reference herein, which, among other things:

(a) permanently restrains and enjoins Defendant from violations of 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], (individually and for control person violations of Section 10(b) for violations of the antifraud provisions by the entity defendant) and Sections 206(1) and (2) of the Investment Advisers Act of 1940 ("Advisers Act") [15 U.S.C. §§ 80b-6 (1),(2)];

(b) finds that while disgorgement and prejudgment interest thereon against Defendant is legally appropriate, disgorgement is not ordered because the Commission has no evidence that Defendant profited from the fraud, and prejudgment interest thereon is therefore moot; and

(c) leaves open the issue of the amount of a civil penalty that will be imposed against the Defendant, to be resolved upon motion of the Commission at a later date.

3. Defendant agrees that the Court shall order a civil penalty pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)], and Sections 209(d)

and (e) of the Advisers Act [15 U.S.C. § 80b-9(d) and (e)]. Defendant further agrees that the amount of the civil penalty shall be determined by the Court upon motion of the Commission. Defendant further agrees that in connection with the Commission's motion for a civil penalty, and at any hearing held on such a motion:

(a) Defendant will be precluded from arguing that he did not violate the federal securities laws as alleged in the Complaint; (b) Defendant may not challenge the validity of this Consent or the Order of Permanent Injunction; (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 testimony or sworn 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 civil penalties, the parties may take discovery, including discovery from appropriate non-parties.

4. Defendant waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

5. Defendant waives the right, if any, to a jury trial and to appeal from the entry of the Order of Permanent Injunction.



6. Defendant enters into this Consent voluntarily and represents that no threats, offers, promises, or inducements of any kind have been made by the Commission or any member, officer, employee, agent, or representative of the Commission to induce Defendant to enter into this Consent.

7. Defendant agrees that this Consent shall be incorporated into the Order of Permanent Injunction with the same force and effect as if fully set forth therein.

8. Defendant will not oppose the enforcement of the Order of Permanent Injunction on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and hereby waives any objection based thereon.

9. Defendant waives service of the Order of Permanent Injunction and agrees that entry of the Order of Permanent Injunction by the Court and filing with the Clerk of the Court will constitute notice to Defendant of its terms and conditions. Defendant further agrees to provide counsel for the Commission, within thirty days after the Order of Permanent Injunction is filed with the Clerk of the Court, with an affidavit or declaration stating that Defendant has received and read a copy of the Order of Permanent Injunction.

10. Consistent with 17 C.F.R. 202.5(f), this Consent resolves only the claims asserted against Defendant in this civil proceeding. Defendant

acknowledges that no promise or representation has been made by the Commission or any member, officer, employee, agent, or representative of the Commission with regard to any criminal liability that may have arisen or may arise from the facts underlying this action or immunity from any such criminal liability. Defendant waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein. Defendant further acknowledges that the Court's entry of a permanent injunction may have collateral consequences under federal or state law and the rules and regulations of self-regulatory organizations, licensing boards, and other regulatory organizations. Such collateral consequences include, but are not limited to, a statutory disqualification with respect to membership or participation in, or association with a member of, a self-regulatory organization. This statutory disqualification has consequences that are separate from any sanction imposed in an administrative proceeding. In addition, in any disciplinary proceeding before the Commission based on the entry of the injunction in this action, Defendant understands that he shall not be permitted to contest the factual allegations of the complaint in this action.

11. Defendant understands and agrees to comply with the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaint or order for

proceedings." 17 C.F.R. § 202.5. In compliance with this policy, Defendant agrees: (i) not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any allegation in the complaint or creating the impression that the complaint is without factual basis; and (ii) that upon the filing of this Consent, Defendant hereby withdraws any papers filed in this action to the extent that they deny any allegation in the complaint. If Defendant breaches this agreement, the Commission may petition the Court to vacate the Order of Permanent Injunction and restore this action to its active docket. Nothing in this paragraph affects Defendant's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Commission is not a party.

12. Defendant hereby waives any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to seek from the United States, or any agency, or any official of the United States acting in his or her official capacity, directly or indirectly, reimbursement of attorney's fees or other fees, expenses, or costs expended by Defendant to defend against this action. For these purposes, Defendant agrees that he is not the prevailing party in this action since the parties have reached a good faith settlement.

13. Defendant agrees that the Commission may present the Order of Permanent Injunction to the Court for signature and entry without further notice.

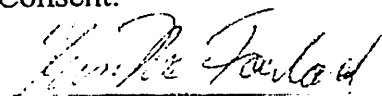
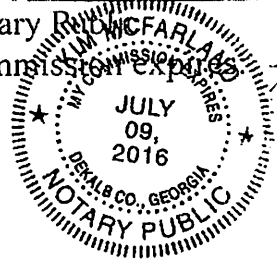
14. Defendant agrees that this Court shall retain jurisdiction over this matter for the purpose of enforcing the terms of the Order of Permanent Injunction.

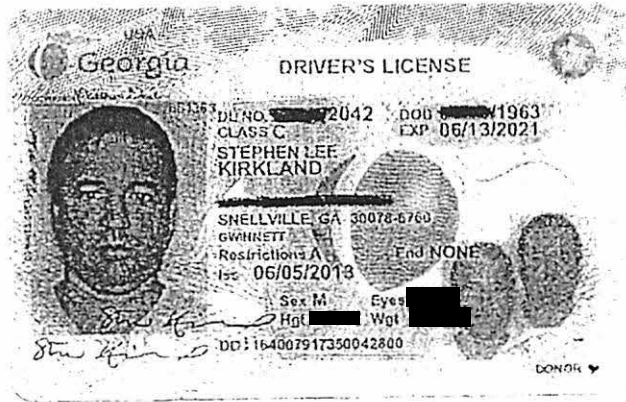
Dated: 4/15/2015

  
Stephen L. Kirkland

State of Georgia  
County of Fulton

On APRIL 15, 2015, Stephen L. Kirkland who presented identification in the form of DRIVER'S LICENSE, personally appeared before me and acknowledged executing the foregoing Consent.

  
Notary Public  
Commission Expires 7/9/2016  




**IN UNITED STATES DISTRICT COURT  
FOR NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

**SECURITIES AND EXCHANGE  
COMMISSION,**

**Plaintiff,**

**v.**

**STEPHEN L. KIRKLAND and  
THE KIRKLAND ORGANIZATION,  
INC.,**

**Defendants**

**Civil Action File No.**

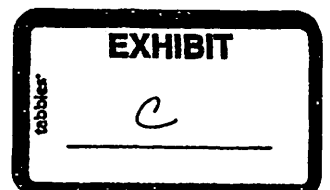
**1:13-CV- 3150-JEC**

**COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF**

The plaintiff, Securities and Exchange Commission (“Commission”), files this Complaint and alleges the following:

**SUMMARY**

1. Between late 2008 and late 2010, Stephen L. Kirkland (“Kirkland”) and The Kirkland Organization, Inc. (“TKO”) have repeatedly made false and misleading statements to investors and potential investors in the United States and abroad, including but not limited to: (a) if they invested with Kirkland and TKO through a managed account at Westover Energy Trading Partners, LLC (“Westover”), there would be no risk of losing their principal; (b) they would earn



2% to 3% per month; (c) a specified New York real estate developer/owner was a manager of Westover; and (d) the New York real estate developer/owner's substantial wealth would also be used to indemnify investors against loss.

2. Investors in the United States and England have invested at least \$800,000 with the defendants based upon those false representations. Some of the investors have demanded a return of their principal, but defendants have ignored these requests.

### **VIOLATIONS**

3. Defendants Kirkland and TKO, by virtue of their conduct, directly or indirectly, have engaged in and unless enjoined, will engage in violations of 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] and Sections 206(1) and (2) of the Investment Advisers Act of 1940 ("Advisers Act") [15 U.S.C. §§ 80b-6 (1),(2)]. In addition, Defendant Kirkland is also liable as a "control person" under Section 20(a) of the Exchange Act for TKO's violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

### **JURISDICTION AND VENUE**

4. The Commission brings this action pursuant to Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§ 78u(d)-(e)], and Sections 209(d) and 209(e) of the Advisers Act [15 U.S.C. §§ 80b-9(d)-(e)] to enjoin the defendants from

engaging in the transactions, acts, practices and courses of business alleged in this Complaint, and transactions, acts, practices and courses of business of similar purport and object, for disgorgement of illegally obtained funds and other equitable relief, and for civil money penalties.

5. This Court has jurisdiction over this action pursuant to Sections 21(d), 21(e) and 27 of the Exchange Act [15 U.S.C. 78u(d), 78u(e) and 78aa], and Section 214 of the Advisers Act [15 U.S.C. §80b-14].

6. The Defendants, directly and indirectly, have made use of the mails, and the means and instrumentalities of interstate commerce, in connection with the transactions, acts, practices, and courses of business alleged in this Complaint.

7. Venue lies in this Court pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa], and Section 209 of the Advisers Act [15 U.S.C. § 80b-9], because certain of the transactions, acts, practices and courses of business constituting violations of the Exchange Act and the Advisers Act have occurred within the Northern District of Georgia. Moreover, Kirkland resides within and conducted his business within the Northern District of Georgia.

#### **DEFENDANTS AND RELATED COMPANIES**

8. Kirkland, 49, resides in Marietta, Georgia. He has a degree in ophthalmology from DeKalb Technical College, and purports to have worked as an optician and an independent insurance agent. Kirkland currently holds himself out



as an investment consultant, but has never been associated with any entity registered with the Commission. Kirkland filed a Chapter 13 voluntary petition for bankruptcy in the Northern District of Georgia in September 2012, which was thereafter converted to non-asset Chapter 7 (In re Stephen Lee Kirkland, 1:12-BK-71914 (N.D. Ga. Bkr.)).

9. TKO was a for-profit corporation organized in Georgia in 1992 by Thomas W. Kirkland (“Thomas Kirkland”), Kirkland’s father. It had no business or revenue for most of its existence. Between 2005 and 2010, Thomas Kirkland upon information and belief used the entity to conduct educational seminars involving identity theft or as an investment club. TKO has never been registered with the Commission or any state securities-related agency. TKO was administratively dissolved in 2011.

10. Westover Energy Trading Partners, LLC, (“Westover”) is a Delaware limited liability company with its principal place of business in New York, NY. Westover purportedly traded stock index funds and commodities while guaranteeing investors that they had no risk of loss. Westover has never been registered with the Commission or any state securities-related agency. Westover and several of its known associates are the subject of a cease-and-desist order issued by the State of Alabama Securities Commission in February 2013 for

offering unregistered investment contracts similar to the investments identified in this Complaint.

### **FACTS**

11. Beginning as early as late 2008, TKO and Kirkland began soliciting investors for a program supposedly run by Westover that traded U.S. listed securities, primarily index funds, exchange traded funds, and commodities funds. In soliciting investors, Kirkland represented to some investors that investments in this program would earn 2% to 3% each month.

12. Kirkland further represented that TKO would reimburse investors for losses up to \$5,000 incurred in a single trading day and that Westover would reimburse them for any losses that exceeded \$5,000 on any trading day.

13. In addition, documents given to some potential investors represented that investors' principal would be further protected by "the substantial credit worthiness of the principals of Westover." The documents included the name of a specified New York real estate developer/owner and identified him as the leader of the principals of Westover. The documents also included the biography of the real estate developer/owner with the documents.

14. Documents that Kirkland gave to some investors represented that the New York real estate developer/owner was "the most visible" of three managers of Westover who "imparts his knowledge and expertise and lends his financial

support, as well as the benefit of his numerous real estate industry and financial market connections....”

15. Kirkland told at least one investor that, in exchange for TKO’s role in soliciting investors and directing such investors to Westover, TKO was to be compensated a percentage of profits above the guaranteed minimum profits each month.

16. Although the New York real estate developer/owner at one time was a client of Westover, he was never upon information and belief a principal of that firm and never had any affiliation with Kirkland or TKO.

17. Kirkland’s representations regarding the guarantee by Westover were false. In truth, Kirkland was not authorized to represent that Westover guaranteed any losses.

18. Between late 2008 and 2010, Kirkland and TKO raised at least \$800,000 from at least 10 investors in the United States and Great Britain.

19. At least some of the investors have demanded a return of their principal from Kirkland and TKO, but have not received such funds.

20. Although Thomas Kirkland created and was the CEO of TKO, Kirkland exercised complete control over TKO with respect to the investment opportunities described herein.

**COUNT I--FRAUD**

**Violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)]  
and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]**

21. Paragraphs 1 through 20 are hereby re-alleged and are incorporated herein by reference.

22. From at least late 2008 through at least late 2010, Defendants Kirkland and TKO, in connection with the purchase and sale of securities described herein, by the use of the means and instrumentalities of interstate commerce and by use of the mails, directly and indirectly:

- a) employed devices, schemes, and artifices to defraud;
- b) made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and
- c) engaged in acts, practices, and courses of business which would and did operate as a fraud and deceit upon the purchasers of such securities, all as more particularly described above.

23. Defendants Kirkland and TKO knowingly, intentionally, and/or recklessly engaged in the aforementioned devices, schemes and artifices to defraud, made untrue statements of material facts and omitted to state material facts, and engaged in fraudulent acts, practices and courses of business. In engaging in such

conduct, the Defendants acted with scienter, that is, with an intent to deceive, manipulate or defraud or with a severe reckless disregard for the truth.

24. By reason of the foregoing, Defendants Kirkland and TKO, directly and indirectly, have violated and, unless enjoined, will continue to violate Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

**COUNT II—FRAUD BY INVESTMENT ADVISER**

**Violations of Sections 206(1) and 206(2) of the Advisers Act**  
**[15 U.S.C. § §80b-6(1), (2)]**

25. Paragraphs 1 through 20 are hereby re-alleged and are incorporated herein by reference.

26. From at least late 2008 through at least late 2010, Defendants Kirkland and TKO while acting as an investment adviser, directly or indirectly, by the use of the mails or any means or instrumentality of interstate commerce: (a) acted knowingly or recklessly, have employed devices, schemes, or artifices to defraud; and (b) have engaged in transactions, practices, or courses of business which operated as fraud or deceit upon a client or prospective client.

27. By reason of the transactions, acts, omissions, practices and courses of business set forth herein, Defendants Kirkland and TKO violated, and unless enjoined will violate Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1),(2)].

**COUNT III—CONTROL PERSON LIABILITY**

**Control Person Violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5(b) thereunder [17 C.F.R. § 240.10b-5], Pursuant to Section 20(a) of the Exchange Act**

28. Paragraphs 1 through 20 are hereby re-alleged and are incorporated herein by reference.

29. As the person who, directly or indirectly, controlled TKO during the relevant period, Kirkland is liable jointly and severally and to the same extent as the entity that he controlled for the violations of the antifraud provisions committed by that entity.

30. As the control person of TKO, Kirkland directly or indirectly induced the act or acts which constituted violations by TKO of the antifraud provisions of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5(b) thereunder [17 C.F.R. § 240.10b-5] by knowingly, intentionally, and/or recklessly making untrue statements of material facts and omitting to state material facts.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff Commission respectfully prays for:

**I.**

Findings of Fact and Conclusions of Law pursuant to Rule 52 of the Federal Rules of Civil Procedure, finding that the Defendants named herein committed the violations alleged herein.

**II.**

Permanent injunctions enjoining Defendants Kirkland and TKO, their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of the order of injunction, by personal service or otherwise, and each of them, whether as principals or as aiders and abettors, from violating, directly or indirectly, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] promulgated thereunder, and Sections 206(1) and (2) of the Advisers Act [15 U.S.C. §§ 80b-6 (1),(2)] and with respect to defendant Kirkland, from, while acting as a control person, inducing violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] .

**III.**

An order directing Defendants Kirkland and TKO to pay disgorgement of all ill-gotten gains or unjust enrichment and to pay prejudgment interest on the amount ordered to be disgorged, to effect the remedial purposes of the federal securities laws.

**IV.**

An order pursuant to 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)] imposing civil penalties against Defendants Kirkland and TKO.

**V.**

Issue an Order that retains jurisdiction over this action in order to implement and carry out the terms of all orders and decrees that may have been entered or to entertain any suitable application or motion by the Commission for additional relief within the jurisdiction of this Court.

**VI.**

Grant such other and further relief as this Court may deem just, equitable, and appropriate in connection with the enforcement of the federal securities laws and for the protection of investors.

RESPECTFULLY SUBMITTED,

/s/Edward G. Sullivan  
Edward G. Sullivan  
Senior Trial Counsel  
Georgia Bar No. 691140

COUNSEL FOR PLAINTIFF  
U. S. SECURITIES AND EXCHANGE COMMISSION  
950 East Paces Ferry Road, N.E., Suite 900  
Atlanta, Georgia 30326  
(404) 842-7612  
sullivan@sec.gov



**CIVIL COVER SHEET**

The JS44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form is required for the use of the Clerk of Court for the purpose of initiating the civil docket record. (SEE INSTRUCTIONS ATTACHED)

<p><b>I. (a) PLAINTIFF(S)</b> Securities and Exchange Commission</p> <p><b>(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF</b> (EXCEPT IN U.S. PLAINTIFF CASES)</p>	<p><b>DEFENDANT(S)</b> Stephen L. Kirkland and The Kirkland Organization, Inc.</p> <p><b>COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT</b> <u>Cobb County</u> (IN U.S. PLAINTIFF CASES ONLY)</p> <p><small>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED</small></p>
<p><b>(c) ATTORNEYS</b> (FIRM NAME, ADDRESS, TELEPHONE NUMBER, AND E-MAIL ADDRESS) Edward G. Sullivan, Securities and Exchange Commission, 950 E. Paces Ferry Road, NE Suite 900, Atlanta, GA 30326 (404) 842-7612 sullivan@sec.gov</p>	<p><b>ATTORNEYS</b> (IF KNOWN) Mark C. Perry, PA, Coastal Building, 2400 East Commercial Blvd., Suite 201, Ft. Lauderdale, FL 33308 (954) 351-2601, markperryesq@yahoo.com</p>

**II. BASIS OF JURISDICTION**  
(PLACE AN "X" IN ONE BOX ONLY)

- |   |  |
|---|--|
| <input checked="" type="checkbox"/> 1 U.S. GOVERNMENT PLAINTIFF | <input type="checkbox"/> 3 FEDERAL QUESTION (U.S. GOVERNMENT NOT A PARTY)          |
| <input type="checkbox"/> 2 U.S. GOVERNMENT DEFENDANT            | <input type="checkbox"/> 4 DIVERSITY (INDICATE CITIZENSHIP OF PARTIES IN ITEM III) |

**III. CITIZENSHIP OF PRINCIPAL PARTIES**  
(PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)  
(FOR DIVERSITY CASES ONLY)

- | PLF                        | DEF                        |   | PLF                        | DEF                        |   |
|----------------------------|----------------------------|---|----------------------------|----------------------------|---|
| <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | CITIZEN OF THIS STATE                   | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 | INCORPORATED OR PRINCIPAL PLACE OF BUSINESS IN THIS STATE     |
| <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | CITIZEN OF ANOTHER STATE                | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 | INCORPORATED AND PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE |
| <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | CITIZEN OR SUBJECT OF A FOREIGN COUNTRY | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 | FOREIGN NATION  |

**IV. ORIGIN** (PLACE AN "X" IN ONE BOX ONLY)

- |   |   |  |   |   |   |  |
|---|---|--|---|---|---|--|
| <input checked="" type="checkbox"/> 1 ORIGINAL PROCEEDING | <input type="checkbox"/> 2 REMOVED FROM STATE COURT | <input type="checkbox"/> 3 REMANDED FROM APPELLATE COURT | <input type="checkbox"/> 4 REINSTATED OR REOPENED | <input type="checkbox"/> 5 TRANSFERRED FROM ANOTHER DISTRICT (Specify District) | <input type="checkbox"/> 6 MULTIDISTRICT LITIGATION | <input type="checkbox"/> 7 APPEAL TO DISTRICT JUDGE FROM MAGISTRATE JUDGE JUDGMENT |
|---|---|--|---|---|---|--|

**V. CAUSE OF ACTION** (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE - DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]; Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. § §80b-6(1), (2)]

(IF COMPLEX, CHECK REASON BELOW)

- |   |  |
|---|--|
| <input type="checkbox"/> 1. Unusually large number of parties.            | <input type="checkbox"/> 6. Problems locating or preserving evidence                             |
| <input type="checkbox"/> 2. Unusually large number of claims or defenses. | <input checked="" type="checkbox"/> 7. Pending parallel investigations or actions by government. |
| <input type="checkbox"/> 3. Factual issues are exceptionally complex      | <input type="checkbox"/> 8. Multiple use of experts.   |
| <input type="checkbox"/> 4. Greater than normal volume of evidence.       | <input type="checkbox"/> 9. Need for discovery outside United States boundaries                  |
| <input type="checkbox"/> 5. Extended discovery period is needed.          | <input type="checkbox"/> 10. Existence of highly technical issues and proof.                     |

CONTINUED ON REVERSE

FOR OFFICE USE ONLY

RECEIPT # _____	AMOUNT \$ _____	APPLYING IFP _____	MAG. JUDGE (FP) _____
JUDGE _____	MAG. JUDGE _____ (Referral)	NATURE OF SUIT _____	CAUSE OF ACTION _____

**VI. NATURE OF SUIT** (PLACE AN "X" IN ONE BOX ONLY)

**CONTRACT - "0" MONTHS DISCOVERY TRACK**

- 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT
- 152 RECOVERY OF DEFAULTED STUDENT LOANS (Excl. Veterans)
- 153 RECOVERY OF OVERPAYMENT OF VETERANS BENEFITS

**CONTRACT - "4" MONTHS DISCOVERY TRACK**

- 110 INSURANCE
- 120 MARINE
- 130 MILLER ACT
- 140 NEGOTIABLE INSTRUMENT
- 151 MEDICARE ACT
- 160 STOCKHOLDERS' SUITS
- 190 OTHER CONTRACT
- 195 CONTRACT PRODUCT LIABILITY
- 196 FRANCHISE

**REAL PROPERTY - "4" MONTHS DISCOVERY TRACK**

- 210 LAND CONDEMNATION
- 220 FORECLOSURE
- 230 RENT LEASE & EJECTMENT
- 240 TORTS TO LAND
- 245 TORT PRODUCT LIABILITY
- 290 ALL OTHER REAL PROPERTY

**PORTS - PERSONAL INJURY - "4" MONTHS DISCOVERY TRACK**

- 310 AIRPLANE
- 315 AIRPLANE PRODUCT LIABILITY
- 320 ASSAULT, LIBEL & SLANDER
- 330 FEDERAL EMPLOYERS' LIABILITY
- 340 MARINE
- 345 MARINE PRODUCT LIABILITY
- 350 MOTOR VEHICLE
- 355 MOTOR VEHICLE PRODUCT LIABILITY
- 360 OTHER PERSONAL INJURY
- 362 PERSONAL INJURY - MEDICAL MALPRACTICE
- 365 PERSONAL INJURY - PRODUCT LIABILITY
- 367 PERSONAL INJURY - HEALTH CARE/ PHARMACEUTICAL PRODUCT LIABILITY
- 368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY

**TORTS - PERSONAL PROPERTY - "4" MONTHS DISCOVERY TRACK**

- 370 OTHER FRAUD
- 371 TRUTH IN LENDING
- 380 OTHER PERSONAL PROPERTY DAMAGE
- 385 PROPERTY DAMAGE PRODUCT LIABILITY

**BANKRUPTCY - "0" MONTHS DISCOVERY TRACK**

- 422 APPEAL 28 USC 158
- 423 WITHDRAWAL 28 USC 157

**CIVIL RIGHTS - "4" MONTHS DISCOVERY TRACK**

- 441 VOTING
- 442 EMPLOYMENT
- 443 HOUSING/ ACCOMMODATIONS
- 444 WELFARE
- 440 OTHER CIVIL RIGHTS
- 445 AMERICANS with DISABILITIES - Employment
- 446 AMERICANS with DISABILITIES - Other
- 448 EDUCATION

**IMMIGRATION - "0" MONTHS DISCOVERY TRACK**

- 462 NATURALIZATION APPLICATION
- 465 OTHER IMMIGRATION ACTIONS

**PRISONER PETITIONS - "0" MONTHS DISCOVERY TRACK**

- 463 HABEAS CORPUS- Alien Detainee
- 510 MOTIONS TO VACATE SENTENCE
- 530 HABEAS CORPUS
- 535 HABEAS CORPUS DEATH PENALTY
- 540 MANDAMUS & OTHER
- 550 CIVIL RIGHTS - Filed Pro se
- 555 PRISON CONDITION(S) - Filed Pro se
- 560 CIVIL DETAINEE: CONDITIONS OF CONFINEMENT

**PRISONER PETITIONS - "4" MONTHS DISCOVERY TRACK**

- 550 CIVIL RIGHTS - Filed by Counsel
- 555 PRISON CONDITION(S) - Filed by Counsel

**FORFEITURE/PENALTY - "4" MONTHS DISCOVERY TRACK**

- 625 DRUG RELATED SEIZURE OF PROPERTY 21 USC 881
- 690 OTHER

**LABOR - "4" MONTHS DISCOVERY TRACK**

- 710 FAIR LABOR STANDARDS ACT
- 720 LABOR/MGMT. RELATIONS
- 740 RAILWAY LABOR ACT
- 751 FAMILY and MEDICAL LEAVE ACT
- 790 OTHER LABOR LITIGATION
- 791 EMPL. RET. INC. SECURITY ACT

**PROPERTY RIGHTS - "4" MONTHS DISCOVERY TRACK**

- 820 COPYRIGHTS
- 840 TRADEMARK

**PROPERTY RIGHTS - "8" MONTHS DISCOVERY TRACK**

- 830 PATENT

**SOCIAL SECURITY - "0" MONTHS DISCOVERY TRACK**

- 861 HIA (1395(f))
- 862 BLACK LUNG (923)
- 863 DIWC (405(g))
- 863 DIWW (405(g))
- 864 SSJD TITLE XVI
- 865 RSI (405(g))

**FEDERAL TAX SUITS - "4" MONTHS DISCOVERY TRACK**

- 870 TAXES (U.S. Plaintiff or Defendant)
- 871 IRS - THIRD PARTY 26 USC 7609

**OTHER STATUTES - "4" MONTHS DISCOVERY TRACK**

- 375 FALSE CLAIMS ACT
- 400 STATE REAPPORTIONMENT
- 430 BANKS AND BANKING
- 430 COMMERCE/ICC RATES/BTC.
- 460 DEPORTATION
- 470 RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS
- 480 CONSUMER CREDIT
- 490 CABLE/SATELLITE TV
- 891 AGRICULTURAL ACTS
- 893 ENVIRONMENTAL MATTERS
- 895 FREEDOM OF INFORMATION ACT
- 950 CONSTITUTIONALITY OF STATE STATUTES
- 890 OTHER STATUTORY ACTIONS
- 899 ADMINISTRATIVE PROCEDURES ACT / REVIEW OR APPEAL OF AGENCY DECISION

**OTHER STATUTES - "8" MONTHS DISCOVERY TRACK**

- 410 ANTI TRUST
- 850 SECURITIES / COMMODITIES / EXCHANGE

**OTHER STATUTES - "0" MONTHS DISCOVERY TRACK**

- 896 ARBITRATION (Confirm / Vacate / Order / Modify)

**\* PLEASE NOTE DISCOVERY TRACK FOR EACH CASE TYPE. SEE LOCAL RULE 26.3**

**VII. REQUESTED IN COMPLAINT:**

CHECK IF CLASS ACTION UNDER F.R.Civ.P. 23 DEMAND \$ \_\_\_\_\_

JURY DEMAND  YES  NO (CHECK YES ONLY IF DEMANDED IN COMPLAINT)

**VIII. RELATED/REFILED CASE(S) IF ANY**

JUDGE \_\_\_\_\_ DOCKET NO. \_\_\_\_\_

CIVIL CASES ARE DEEMED RELATED IF THE PENDING CASE INVOLVES: (CHECK APPROPRIATE BOX)

- 1. PROPERTY INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
- 2. SAME ISSUE OF FACT OR ARISES OUT OF THE SAME EVENT OR TRANSACTION INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
- 3. VALIDITY OR INFRINGEMENT OF THE SAME PATENT, COPYRIGHT OR TRADEMARK INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
- 4. APPEALS ARISING OUT OF THE SAME BANKRUPTCY CASE AND ANY CASE RELATED THERETO WHICH HAVE BEEN DECIDED BY THE SAME BANKRUPTCY JUDGE.
- 5. REPETITIVE CASES FILED BY PRO SE LITIGANTS.
- 6. COMPANION OR RELATED CASE TO CASE(S) BEING SIMULTANEOUSLY FILED (INCLUDE ABBREVIATED STYLE OF OTHER CASE(S))

7. EITHER SAME OR ALL OF THE PARTIES AND ISSUES IN THIS CASE WERE PREVIOUSLY INVOLVED IN CASE NO. \_\_\_\_\_, WHICH WAS DISMISSED. This case  IS  IS NOT (check one box) SUBSTANTIALLY THE SAME CASE.

*[Handwritten Signature]*  
SIGNATURE OF ATTORNEY OF RECORD

23 September 2013  
DATE