UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 23-cv-22791-KMW

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

BRENT SEAMAN,
ACCANITO EQUITY, LLC,
ACCANITO EQUITY II, LLC,
ACCANITO EQUITY III, LLC,
ACCANITO EQUITY IV, LLC,
ACCANITO CAPITAL GROUP, LLC,
SURGE, LLC,
ACCANITO HOLDINGS, LLC,

Defendants, and

SURGE CAPITAL VENTURES, LLC, et al,

Relief Defendants.
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SECURITIES AND EXCHANGE COMMISSION'S *UNOPPOSED* MOTION AND MEMORANDUM OF LAW FOR ASSET FREEZE AS TO DEFENDANTS AND RELIEF DEFENDANT SURGE CAPITAL VENTURES, LLC

The Securities and Exchange Commission ("Commission") filed an enforcement action against Accanito Holdings, LLC ("Accanito Holdings"), one of its two managing members, Brent Seaman ("Seaman"), and the companies they controlled: Defendants Accanito Equity, LLC, Accanito Equity II, LLC, Accanito Equity III, LLC, and Accanito Equity IV, LLC (collectively "the Accanito Equity LLCs") Accanito Capital Group, LLC ("Accanito Capital"), and Surge, LLC ("Surge") (collectively "Defendants") and Relief Defendant Surge Capital Ventures, LLC ("Relief Defendant" or "Surge Capital"). The Commission's Complaint alleges that from at least June 2019 until September 2022 (the "Relevant Period"), Seaman and the Accanito Equity LLCs raised

approximately $35 million from about 60 investors, through a fraudulent offering of securities in unregistered transactions.

Defendants Seaman and Accanito Equity LLCs made material misrepresentations to investors about, among other things, the use of investor funds, the safety and profitability of the investments, promising "guaranteed" returns between 8% to 48%. Instead, Seaman directed investors to send their funds to Defendants Accanito Capital and Surge, where Seaman used most of the proceeds to invest in currencies (losing over $15 million), to pay returns to investors in a Ponzi like fashion, and misappropriated millions for his personal use.

As a result of the conduct alleged in the Commission's Complaint, Defendants Seaman and the Accanito Equity LLCs violated Sections 5(a) and (c) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77e(a) and (c)], Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Exchange Act Rule 10b-5 [17 C.F.R. §§ 240.10b-5]. Seaman also violated Section 15(a)(1) of the Exchange Act [15 U.S.C. § 78o(a)(1)]. Finally, Defendants Accanito Capital Group and Surge violated Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], and Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Exchange Act Rule 10b-5 [17 C.F.R. §§ 240.10b-5]. In addition to injunctive relief, the Commission's Complaint requests that Defendants be ordered to disgorge all ill-gotten gains, with prejudgment interest thereon, and to pay a civil penalty.

Concurrently with the filing of its Complaint, the Commission filed consent judgments as to all Defendants, who have settled the liability portion of the Commission's case and consented to entry of injunctive relief (including an officer and director bar as to Defendant Seaman), leaving only the issues of monetary remedies against Defendants. Pursuant to these Consents, the Court shall determine the appropriateness of disgorgement and a civil penalty upon the Commission's

motion. In connection with such motion, the Consents provide that Defendants are prohibited from arguing that they did not violate the securities laws alleged in the Complaint and for purposes of determining disgorgement the allegations of the Complaint shall be accepted as true.[1]

To protect investors and prevent further dissipation of assets, the Commission seeks an asset freeze against each of the Defendants and Relief Defendant Surge Capital.[2] An asset freeze is also appropriate in order to preserve what assets are left to pay disgorgement. Given the potential losses to investors totaling nearly $35 million, an asset freeze will help ensure that some funds can be returned to investors in this case, who are facing staggering losses due to Defendants' misconduct.

MEMORANDUM OF LAW

A. Standard for Obtaining an Asset Freeze Order

The Court may order an asset freeze "as a means of preserving funds for the equitable remedy of disgorgement." *SEC v. ETS Payphones, Inc.*, 408 F.3d 727, 734 (11th Cir. 2005). The Commission's "burden for showing the amount of assets subject to disgorgement (and, therefore available for freeze) is light: a reasonable approximation of a defendant's ill-gotten gains" is all that is required. "Exactitude is not a requirement . . . ." *Id.* at 735 (citation and quotation omitted); *FTC v. IAB Marketing Associates, LP*, 746 F.3d 1228, 1234 (11th Cir. 2014). The Commission's burden to demonstrate the potential for dissipation of funds is even lighter. *FTC v. IAB Marketing Associates*, LP, 972 F. Supp. 2d 1307, 1313 n.3 (S.D. Fla. 2013).

The Court's power to freeze assets extends to relief defendants. *See CFTC v. Walsh*, 618 F.3d 218, 225 (2d Cir. 2010); *SEC v. Cavanagh*, 155 F.3d 129, 136 (2d Cir. 1998); *CFTC v.*

[1] See Consents of Defendants p. 2.
[2] Relief Defendants Jana Seaman and Valo Holdings, LLC have already settled with the SEC and disgorged the funds received to them by Defendants. Thus, the asset freeze should not be extended over their assets. The third Relief Defendant, Surge Capital Ventures, has not agreed to settle the Commission's claims against it.

International Berkshire Group Holdings, Inc., No. 05-61588, 2006 WL 3716390, at *10 (S.D. Fla. Nov. 3, 2006). A relief defendant is a party not charged with wrongdoing who nevertheless "possesses illegally obtained profits but has no legitimate claim to them." *SEC v. Huff*, 758 F. Supp. 2d 1288, 1362 (S.D. Fla. 2010). To obtain a freeze of a relief defendant's assets, the Commission "must demonstrate only that [it] is likely ultimately to succeed in disgorging the frozen funds." *Walsh*, 618 F.3d at 225.

Here, the Commission is likely to succeed in its efforts to obtain a final judgment ordering Defendants to pay disgorgement, with prejudgment interest thereon, and a civil penalty. The Commission has settled liability issues with all of the Defendants and the Defendants have signed consents agreeing to certain relief. Pursuant to the Consents, the Court shall determine the appropriateness of ordering disgorgement and/or a civil penalty upon the Commission's motion. In connection with such motion, the Consents provide that Defendants are prohibited from arguing that they did not violate the securities laws alleged in the Complaint, and for purposes of determining disgorgement the allegations of the Complaint shall be accepted as true. Given the fraudulent conduct alleged in the Complaint and the harm to investors, it would be appropriate for the Court to order Defendants to disgorge their ill-gotten gains, with prejudgment interest, and pay a civil penalty. Thus, an asset freeze and other relief as to Defendants is warranted.

An asset freeze is also appropriate over Relief Defendant Surge Capital Ventures, LLC ("Surge Capital"). Defendant Surge is the manager of Surge Capital. Surge transferred millions of dollars of investors' proceeds emanating from Defendants' securities fraud to Surge Capital for no purpose that benefited investors and those monies should be disgorged to investors. *See* Dee Decl. at 10, Ex. A. As disgorgement is likely as to Surge, the Commission will also likely be

entitled to disgorgement of the funds Surge transferred to Surge Capital without a legitimate purpose. Thus, an asset freeze of Surge Capital's accounts is warranted.

B. A Total Asset Freeze is Appropriate

The Court should freeze Defendants' and Relief Defendant's assets to ensure a disgorgement award can be satisfied and to prevent further dissipation of investor funds.[3] A total asset freeze is warranted when the assets to be frozen are worth less than the likely disgorgement award.[4] *See SEC v. Lauer*, 478 F. App'x 550, 554 (11th Cir. 2012) (unpublished) ("[I]f potential disgorgement is greater than the value of the defendant's assets, the district court can order a full asset freeze."); *ETS Payphones*, 408 F.3d at 735-36 (affirming order that "froze all of [defendant's] assets" when estimated disgorgement and value of frozen assets were comparable); s*ee also FTC v. RCA Credit Services, LLC*, No. 8:08 Civ. 2062-T-27MAP, 2008 WL 5428039, at *4 (M.D. Fla. Dec. 31, 2008) (defendants "may not use their victims' assets to hire counsel to help them retain the fruits of their violations").

Here, of the approximately $35 million Defendants and Relief Defendant received from investors, millions were misappropriated, and millions of funds are unaccounted for. See Dee Decl. at 5-8, Ex. A. For his part, Seaman had access to all of the Defendants' bank and trading accounts, and may still have access to the unaccounted funds. *See* Dee Decl. at 7, Ex. A. Thus, a total asset freeze as to Defendants and Relief Defendant is warranted.

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[3] Should the Court grant the Commission's motion for appointment of a Receiver in this SEC enforcement action – filed contemporaneously with this motion – the asset freeze order should not apply to the activities of the Receiver in connection with marshalling and securing assets, and other Receivership duties provided under this Court's Receivership Order.

[4] The Commission's Complaint seeks disgorgement as against Defendants and Relief Defendants. Disgorgement is warranted because Defendants, directly and indirectly through the Relief Defendants, misappropriated millions from investors. *SEC v. Monterosso*, 756 F.3d 1326, 1337 (11th Cir. 2014) ("Disgorgement is an equitable remedy intended to prevent unjust enrichment.").

CONCLUSION

For the reasons set forth above, the Commission requests that the Court grant the Commission's Unopposed Motion for Asset Freeze as to Defendants and Relief Defendant Surge Capital Ventures, LLC and enter the Commission's proposed Order.

Dated: July 27, 2023

Respectfully submitted,

By: ***s/Alise Johnson***

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