

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
GREENVILLE DIVISION**

In re Receiver for Scott A. Kohn, Future )  
Income Payments, LLC, Joseph P. Hipp, ) Civil Action No. 6:19-cv-01112-BHH  
Kraig S. Aiken, and David N. Kenneally, )  
)

**PETITION FOR A RULE TO SHOW CAUSE**

Counsel for the Receiver, Beattie B. Ashmore, appointed by this Court pursuant to an order amended most recently on July 18, 2019 (“Court Order”) petitions the Court for a Rule to Show Cause why David Valencia (“Valencia”), should not be required to respond to and engage in discovery with the Receiver regarding the approximately \$1.2 million in ill-gotten money he allegedly received from a fraudulent investment scheme orchestrated and carried out by Scott A. Kohn (“Kohn”), Future Income Payments, LLC (“FIP”), Joseph P. Hipp (“Hipp”), Kraig S. Aiken (“Aiken”) and David N. Kenneally (“Kenneally”) (collectively referred to as “FIP Defendants”). The Receiver has made numerous demands for information with no response from Valencia. (*See* Ex. A, Receiver Correspondence.) Based upon the reasons set forth below, the Receiver submits that the Court should grant the Receiver’s Petition for a Rule to Show Cause.

**PROCEDURAL BACKGROUND**

On March 12, 2019, Kohn and FIP were indicted on counts of conspiracy to commit wire and mail fraud stemming from their involvement in an approximately \$300 million criminal Ponzi scheme involving hundreds of victims. *See United States v. Scott A. Kohn, et al*, 6:19-cr-239-BHH. Thereafter, on July 9, 2019, Hipp, Aiken and Kenneally were named

in a Superseding Indictment. Pursuant to the Court Order and related to the above noted criminal matter, the Receiver was tasked with assuming management and control over all the financial and business affairs for the FIP Defendants and a number of other individual companies (collectively referred to as “FIP Receivership Entities”). The Court Order requires the Receiver, among other things, to locate and manage assets previously acquired by and/or in the name/possession of the FIP Receivership Entities. In addition, the Court Order directs the Receiver to take whatever actions necessary for the protection of investors, including, but not limited to, initiating actions against individuals or companies that have received monies or assets that are traceable to the Ponzi scheme. *See* July 18, 2019 Court Order at 3-6.

### **FACTUAL BACKGROUND**

As part of the fraudulent investment scheme, Kohn, through his company FIP, the other FIP Defendants, and other companies and agents, recruited individuals to invest in a fraudulent and unorthodox program whereby an investor would purchase a fixed income stream allegedly backed by FIP’s purchase of government pensions from individuals who sold their pension streams to FIP under undesirable terms. Investors were promised unusually high rates of returns on their investment. In addition, investors were informed and believed that FIP established reserve accounts (long term and short term) to cover the risk of the investment, but these reserve accounts were never funded. In fact, payments by FIP to investors were made with other investors’ money. Many investors lost large sums of money. However, the agents who sold and/or promoted the FIP investments profited in large amounts as they were paid substantial sums by FIP and/or other Receivership Entities who facilitated the Ponzi scheme.

From a review of the records available to the Receiver at this time, it appears Valencia received payments totaling approximately \$1.2 Million from the FIP Receivership Entities, (specifically Hipp (newly indicted in a Superseding Indictment); Agent Alternatives, LLC, and FIP). (*See Ex. B, Excerpt from Spreadsheet obtained from FIP records.*) Valencia was not an investor, but received money either directly or indirectly from FIP Receivership Entities. There are no legal writings, contracts or other binding written instruments that support the transfer of these funds to Valencia. The Receiver has made attempts to contact Valencia but has not received a response. (*See Ex. A.*) The Receiver has been unable to obtain any documentation establishing the legitimacy of the possession of these funds by Valencia. As such, the Receiver wishes to engage in discovery regarding Valencia's receipt, use, and status of these funds, and intends to seek an Order from this Court after discovery is conducted to claw back these funds.

### **LEGAL DISCUSSION**

"A Receiver may proceed summarily to recover money belonging to the receivership by petition to the appointing court for an order to show cause against a possessor not a party to the original action." *United States v. Arizona Fuels Corp.*, 739 F.2d 455, 458 (9<sup>th</sup> Cir. 1984). "The district court has broad powers and wide discretion to determine the appropriate relief in an equity receivership." *SEC v. Lincoln Thrift Ass'n*, 577 F.2d 600, 606 (9<sup>th</sup> Cir. 1978). "At common law, where property has been obtained by fraud, a court in equity has jurisdiction to reach the property either in the hands of the original wrongdoer, or in the hands of any subsequent holder and to convey that property to the one who is truly and equitably entitled to the same." *FTC v. Network Serv. Depot, Inc.*, 617 F.3d 1127, 1142 (9<sup>th</sup>

Cir. 2010). This Receiver has successfully recovered monies under similar circumstances in other criminal Ponzi schemes in the District of South Carolina.

In *SEC v. Vassallo*, the United States District Court for the Eastern District of California discusses, albeit in an unpublished opinion, the concept of disgorgement in the context of a securities violation case. *See SEC v. Vassallo*, 2011 U.S. Dist. LEXIS 98418 (E.D. Ca. 2011). In so discussing, the court parallels the underlying common law equity principles that provide the foundation for disgorgement actions. Such a discussion is relevant to this petition in that the Receiver seeks to recover funds that flowed from a fraudulent investment scheme to non-parties and those non-parties have no legitimate claim to the funds. *See id.* at \* 9.

As set forth above, Valencia is in possession of funds that flowed directly from the illegal activity that is the subject of the underlying criminal case. Specifically, Receivership Entities, including but not limited to Agent Alternatives, LLC, paid approximately \$1.2 million of investor funds directly to Valencia and received nothing of value in return. (*See* Ex. B.) Therefore, the Receiver asks the Court to issue a Rule to Show Cause why Valencia should not be required to submit to all discovery needed to understand the receipt and use of the monies by Valencia discussed above.

Respectfully submitted,

***THE TOLLISON LAW FIRM, P.A.***

/s/L. Walter Tollison, III

L. Walter Tollison, III

Federal Bar No. 4117

[Walt.tollison@thetollisonlawfirm.com](mailto:Walt.tollison@thetollisonlawfirm.com)

/s/Lauren S. Price

Lauren S. Price

Federal Bar No. 10406

[Lauren.price@thetollisonlawfirm.com](mailto:Lauren.price@thetollisonlawfirm.com)

18-B S. Markley Street

Greenville, South Carolina 29601

Phone: (864) 451-7038

Fax: (864) 451-7591

*Attorneys for the Receiver*

September 13, 2019  
Greenville, South Carolina

**The Tollison Law Firm, P.A.**  
24 Vardry Street, Suite 203  
Greenville, South Carolina 29601  
Tel: 864-451-7038 | Fax: 864-451-7591

L. Walter Tollison, III.  
[walt.tollison@thetollisonlawfirm.com](mailto:walt.tollison@thetollisonlawfirm.com)

Lauren S. Price  
[lauren.price@thetollisonlawfirm.com](mailto:lauren.price@thetollisonlawfirm.com)

June 6, 2019

**VIA UPS**

Valencia Financial Services, LLC  
Attn: David Valencia  
2541 Gaslight Court  
Oshkosh, WI 54904-7309

RE: In Re: Receiver for Scott A. Kohn and Future Income Payments, LLC,  
6:19-cv-01112-BHH

Dear Mr. Valencia,

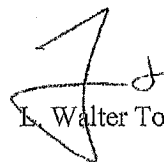
I am counsel to the Receiver, Beattie B. Ashmore, in the above referenced matter. Consistent with the authority set forth in the enclosed United States District Court Order ("Order") amended most recently on April 30, 2019, the Receiver is compelling the return of money obtained from an illegal Ponzi scheme allegedly orchestrated and carried out, in part, by Scott A. Kohn ("Kohn") and Future Income Payments, LLC ("FIP"). Our records indicate that your or your company (including some of your agents) received substantial funds directly or indirectly from FIP.

It is the Receiver's duty to seek the return of this money. For this reason, I am reaching out to you in hopes of reaching a resolution with regard to the repayment of funds that you or your company received from Kohn/FIP.

Please contact my office immediately regarding the repayment and disgorgement of monies. Additionally, please provide a list, if any, of lawsuits in which you or your company has been named as a party that relates to Kohn or FIP or related entities.

If we do not hear from you, we will seek relief in the United States District Court, District of South Carolina for the repayment of monies you or your company received from Kohn/FIP. In addition, consistent with the directives set forth in the Order, you and your company are prohibited from transferring or encumbering any money or other assets received directly or indirectly from Kohn, FIP or any other Receivership Entities set forth in the Order without Court approval.

Sincerely,



L. Walter Tollison, III

LWT/afi  
Enclosure  
CC: Beattie B. Ashmore, Receiver Kohn-FIP

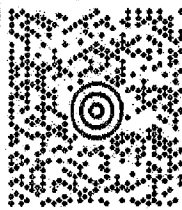
**EXHIBIT A**

6/25/2019

PAM OSBORNE  
8644517038  
THE TOLLISON LAW FIRM  
24 VARDRY STREET  
GREENVILLE SC 29601

0.0 LBS LTR 1 OF 1

**SHIP TO:**  
ATTN: DAVID VALENCIA  
VALENCIA FINANCIAL SERVICES, LLC  
2541 GASLIGHT COURT  
OSHKOSH WI 54904

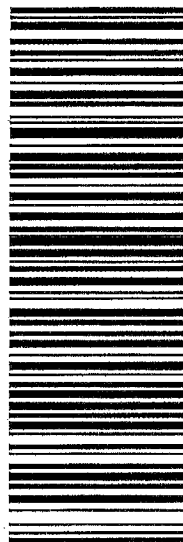


**WI 549 9-30**



**UPS 2ND DAY AIR A.M. 2A**

TRACKING #: 1Z RUS 0T1 18 2621 9721



BILLING: P/P

303.19.04.02 NW45 12.0A 04/2019



**The Tollison Law Firm, P.A.**  
24 Vardry Street, Suite 203  
Greenville, South Carolina 29601  
Tel: 864-451-7038 | Fax: 864-451-7591

L. Walter Tollison, III.  
[walt.tollison@thetollisonlawfirm.com](mailto:walt.tollison@thetollisonlawfirm.com)

Lauren S. Price  
[lauren.price@thetollisonlawfirm.com](mailto:lauren.price@thetollisonlawfirm.com)

June 25, 2019

**VIA UPS**

Valencia Financial Services, LLC  
Attn: David Valencia  
2541 Gaslight Court  
Oshkosh, WI 54904-7309

RE: In Re: Receiver for Scott A. Kohn and Future Income Payments, LLC,  
6:19-cv-01112-BHH

Dear Mr. Valencia,

This letter is in follow up my previous letter mailed to you dated June 6, 2019, attached hereto. I am writing one last time in order to reach a possible resolution before I will seek relief in the United States District Court for repayment of all monies Paramount Financial Services, Inc. received from Scott Kohn and/or Future Income Payments, LLC. If I do not hear from you, we will assume you have no interest in a prefiling discussion and will proceed accordingly.

Sincerely,

  
L. Walter Tollison, III

LWT/msc  
Enclosure  
CC: Beattie B. Ashmore, Receiver Kohn-FIP



Agent 1099	Tax ID	Address	City	State	Zip	Agent 1099	Total \$
David Valencia	██████████	920 Saratoga Ave Ste 209	San Jose	CA	95129	David Valencia	\$ 1,205,458.37
Valencia Financial Services, LLC	██████████	175 Bernal Rd. Suite 8	San Jose	CA	95119	Valencia Financial Services, LLC	\$ 32,100.40

EXHIBIT B