UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 05-80128

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

CONCORDE AMERICA, INC.,
ABSOLUTE HEALTH AND FITNESS, INC.,
HARTLEY LORD, DONALD E. OEHMKE,
BRYAN KOS, THOMAS M. HEYSEK,
ANDREW M. KLINE, AND PAUL A. SPREADBURY

Defendants,

DASILVA, SA, VANDERLIP HOLDINGS, NV,
CHIANG ZE CAPITAL, AVV,
RYZCEK INVESTMENTS, GMBH,
BARRANQUILLA HOLDINGS, SA,

Relief Defendants.

CIV-ZLOCH

MAGISTRATE JUDGE SNOW

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF SEC'S *EX PARTE* MOTION FOR ASSET FREEZE ORDER AND OTHER RELIEF

I. INTRODUCTION

Plaintiff Securities and Exchange Commission ("Commission") brings this emergency action to freeze the assets of Defendants Donald E. Oehmke and Bryan Kos, and Relief Defendants DaSilva SA, Vanderlip Holdings NV, Chiang Ze Capital AVV, Ryzcek Investments GMBH and Barranquilla Holdings SA. The Commission seeks this asset freeze to prevent the further dissipation of funds fraudulently raised through two pump and dump schemes involving Concorde America, Inc. and Absolute Health and Fitness, Inc. As explained below, such relief is

necessary because Oehmke and Kos orchestrated two fraudulent promotional campaigns that artificially inflated the price of Concorde and Absolute Health stock when in reality these companies had no assets, no revenues and no business. Once Oehmke and Kos dumped their stock, they diverted their ill-gotten gains to offshore accounts using the Relief Defendants as nominees.

The fact that Oehmke and Kos have used offshore and nominee accounts to attempt to put their assets beyond the reach of the United States government makes an immediate asset freeze even more imperative. Unless this Court imposes a freeze, there is a strong probability that Oehmke and Kos will continue to dissipate fraudulently obtained funds. Therefore, the Commission requests that this Court, on an emergency basis, freeze their assets to preserve funds and maintain the status quo. In addition, the Commission asks the Court to enter an Order requiring Kos, Oehmke, and the Relief Defendants to immediately repatriate any funds or other assets held in foreign accounts or locales.

II. DEFENDANTS AND RELIEF DEFENDANTS

1. Defendants and Relief Defendants Who Are The Subject Of This Motion

Oehmke owns a consulting company through which he purchased 10 million shares of Concorde stock in June 2004. Declaration of Tim Galdencio, Ex. 1 at ¶4; Michigan Certified Corporate Records of Ventana Consultants, Ltd., Ex. 2; MBC Food Corporate Records, Ex. 3; Michael Spadaccini Letter of June 29, 2004 (part of Concorde Regulation D Offering Documents), Ex. 4. In late May 2004, another Oehmke-controlled consulting company acquired 100,000 shares of Absolute Health. Ex. 1 at ¶11. Within one week in June 2004, Oehmke sold all his shares of Absolute Health for a profit of approximately $81,000. Ex. 1 at ¶11 and Ex. Z. In addition, Oehmke controlled a shell corporation that masqueraded as Absolute Health.

Certified Corporate records of Ornate Holdings, Inc., Ex. 5; Ornate Holdings Majority Shareholder Document, Ex. 6. In 1991, the NASD barred Oehmke from association with any member of the NASD for: participating in a fraudulent scheme to make improper use of customer funds, disseminating misleading sales literature, and failing to maintain adequate supervisory procedures, among other things. Oehmke was also fined $150,000. NASD Certified Copies of Web Central Registry Depository Documents, Ex. 7.

Kos hired promoters Thomas Heysek and Andrew Kline to prepare analyst reports to promote Concorde and Absolute Health. Testimony Transcript of Thomas Heysek, Ex. 8 at 69; Testimony Transcript of Andrew Kline, Ex. 9 at 25. Kos hired Paul Spreadbury to prepare press releases, tout sheets, and voice mail scripts. Testimony Transcript of Paul Spreadbury, Ex. 10 at 32-33. In addition, Kos hired Heysek to conduct a video interview touting Absolute Health. Video Transcript, Ex. 11, at 1; Declaration of Thomas Flynn, Ex. 12, at ¶¶6-8.

DaSilva, SA, is a company incorporated in Anguilla in June 2004. Ex. 1 at ¶6(d) and Ex. K. DaSilva maintains a brokerage account at Sunstate Equity Trading, Inc. in Tampa, Florida. Ex. 1 at ¶6(d) and Ex. K. Oehmke had trading authority over this account. Ex. 1 at Ex. K. On June 29, 2004, Oehmke acquired ten million shares of Concorde stock through a reverse merger with Concorde. Ex. 1 at ¶4. He transferred two million shares to an account at Sunstate in DaSilva's name. Ex. 1 at ¶4(d) and Ex. E. From July through August 2004, Oehmke sold the Concorde stock during the promotional campaign, netting DaSilva approximately $1.8 million in illegal profits. Ex. 1 at ¶7(d) and Ex. P.

Vanderlip Holdings, NV, is a company incorporated in Anguilla in June 2004. Ex. 1 at ¶6(b) and Ex. H. Oehmke has trading authority over Vanderlip's brokerage account at Sunstate. Ex. 1 at ¶6(b) and Ex. H. In July 2004, Oehmke transferred approximately two million shares of

Concorde stock for the benefit of the Vanderlip account. Ex. 1 at ¶4(b) and Ex. C. In August 2004, Oehmke ordered the sale of the stock, netting Vanderlip more than $4,330,000 in illegal profits. *Id.* at ¶7(b) and Ex. N.

Chiang Ze Capital, AVV, is a Trinidadian corporation which held accounts at Sunstate as well as Electronic Access Direct, Inc. in Sarasota, Florida. Ex. 1 at ¶6(c) and Ex. I and J. Oehmke and Kos had trading authority over the Chiang Ze accounts. Ex. 1 at ¶6(c) and Ex. I and J. In July 2004, Oehmke transferred one million shares of Concorde stock for the benefit of the Chiang Ze's account at Sunstate. Ex. 1 at ¶4(c) and Ex. D. In August 2004, Oehmke and Kos sold Chiang Ze's shares of Concorde, netting it more than $1,696,600 in profits. Ex. 1 at ¶7(c) and Ex. O. In May 2004, Kos acquired 3.5 million shares of Absolute Health stock for the benefit of Chiang Ze's account at Sunstate and sold more than 500,000 shares, netting approximately $623,000 in profits. Ex. 1 at ¶¶8(c) and 10(c) and Ex. U and Y. In October 2004, Kos transferred the remaining Absolute Health shares to a Chiang Ze account at Electronic Access and then sold the shares, netting approximately $4.5 million. Ex. 1 at ¶10(d) and Ex. Y. In total, Kos sold nearly 3.5 million shares of Absolute Health for a profit of approximately $5.1 million. Ex. 1 at ¶¶10(c) and (d) and Ex. Y.

Ryzcek Investments, GMBH is a Trinidadian corporation which held accounts at Sunstate, Electronic Access and Newbridge Securities Corporation, a brokerage house in Ft. Lauderdale, Florida. Ryzcek Account Documents, Ex. 60. Oehmke had trading authority for the Ryzcek accounts at Sunstate and Newbridge. Ex. 60. In addition, Oehmke is listed as the contact person for Ryzcek at Sunstate. Ex. 60. From May to July 2004, Oehmke acquired 6,055,000 shares of Absolute Health stock for the benefit of the Ryzcek account. Ex. 1 at ¶8(a) and Ex. S. Ryzcek still holds more than six million of those shares. Ex. 1 at ¶8(a) and Ex. S.

Barranquilla Holdings, SA is a company incorporated in Anguilla which held accounts at Newbridge and Electronic Access. Ex. 1 at ¶6(a) and Ex. F and G. Oehmke had trading authority for both Barranquilla accounts. Ex. 1 at ¶6(a) and Ex. F and G. In July 2004, Oehmke transferred one million shares of Concorde stock into the Barranquilla account at Newbridge. Ex. 1 at ¶4(a) and Ex. B. In August 2004, Barranquilla netted approximately $5,233,700 in profits from the sale of Concorde stock. Ex. 1 at ¶7(a) and Ex. M. In addition, Oehmke acquired 4.5 million shares of Absolute Health stock in May 2004 for the benefit of the Barranquilla account at Newbridge. Ex. 1 at ¶8(b) and Ex. T. In August 2004, Oehmke bought and sold more than 20,000 shares of Absolute Health stock through the Barranquilla account at Newbridge for a profit of approximately $11,000. Ex. 1 at ¶10(a) and Ex. X. Oehmke then transferred the remaining shares to a new Barranquilla account at Electronic Access, selling nearly 4.5 million shares of Absolute Health stock in mid-November to early December 2004. Ex. 1 at ¶10(b) and Ex. X. Through these sales, Oehmke realized a net profit of approximately $9.4 million from his sales of Absolute Health. Ex. 1 at ¶10(b) and Ex. X.

2. Other Defendants

Concorde is a Nevada corporation, with its principal place of business in Boca Raton, Florida. Ex. 3; Florida Certified Corporate Records, Ex. 13. In June 2004, Concorde purchased a publicly traded shell corporation, MBC Food Corporation, which Oehmke controlled, and changed its name and ticker symbol to Concorde America, Inc., CNDD. Testimony Transcript of Hartley Lord, Ex. 14 at 52; Testimony Transcript of Mauricio Madero O'Brien, Ex. 15 at 132-36.

Concorde claimed to recruit Latin American workers for employment in Europe; however Concorde had no business operations prior to June 2004 and never placed any workers

there. Concorde Press Release dated August 11, 2004, Ex. 16. Absolute Health is a Nevada corporation with its purported principal place of business in Greensboro, North Carolina. Nevada Certified Corporate Records, Ex. 17. In September 2004, Nevada revoked Absolute Health's corporate status; however, Oehmke reinstated it in December. Ex. 17. On December 15, 2004, the Commission suspended trading of this stock. Trading Suspension Order, Ex. 18.

Hartley Lord is president of Concorde. Ex. 3, 13. He participates in Concorde's day-to-day operations and has authority over all of its activities. Ex. 14 at 38-42; Testimony of Raul Mendez, Ex. 19, at 74-75. In 1981, Lord consented to a permanent injunction against future violations of the anti-fraud provisions of the federal securities laws based on his involvement in a stock manipulation scheme. NASD Certified Documents, Ex. 20. In addition, Lord was barred from the securities industry in the early 1970s. Ex. 20.

Heysek prepared an analyst report for Kos concerning Concorde and participated in a promotional video for Absolute Health. Ex. 8 at 52; Ex. 12 at 6-8. Heysek has been associated with three broker-dealers that terminated him for misconduct ranging from unauthorized trading to improper handling of customer funds. NASD Web Central Repository Document, Ex. 21.

Between May and September of 2004, Kos retained Kline to prepare analyst reports on Concorde and Absolute Health. Ex. 9 at 28-30. Kline previously served a five-year sentence in a Bolivian jail for a drug offense. Ex. 9 at 12-15. Kos retained Spreadbury in April 2004 to prepare press releases, tout sheets and websites promoting Concorde and Absolute Health. Ex. 10 at 32-33; Concorde Tout Sheet, Ex. 22; Absolute Health Tout Sheet, Ex. 23.

III. FACTUAL SUPPORT FOR THE FREEZE

A. Concorde's Reverse Merger

In mid-June 2004, Lord met with Oehmke and Kos to discuss a proposed reverse merger between Concorde and MBC, a publicly traded shell corporation Oehmke owned. Ex. 14 at 47-56; Ex. 15 at 132-36; Oehmke e-mail dated June 13, 2004, Ex. 24. Concorde was purportedly in the business of sending Latin American agricultural workers to Europe. Ex. 16. During that meeting, Oehmke and Kos revealed their plans to promote Concorde, which included a videotaped interview with Lord. Ex. 14 at 50-51; Oehmke e-mail dated June 18, 2004, Ex. 25. Lord told Oehmke and Kos these plans were premature because Concorde had no business operations and had not yet sent any workers to Europe. Ex. 14 at 51.

During that same meeting, after Kos signed a confidentiality agreement with Concorde, Lord provided Kos with portions of an agreement he claimed obligated Concorde to provide 150,000 workers in 2004, and 50,000 workers in 2005, to a Spanish company by the name of Almerimar, S.A. ("Almerimar Agreement"). Almerimar Agreement, Ex. 26; Concorde Confidentiality Agreement, Ex. 27; Ex. 15 at 175. Lord also showed Kos charts depicting Concorde's projected gross income and placement of workers under the Almerimar Agreement for 2004 and 2005. Almerimar Charts, Ex. 28.

A few days later, Oehmke and Lord entered into an agreement under which Oehmke, through his consulting company, offered Lord $1 million for 10 million shares of Concorde stock. Ex. 4; Plan of Merger, Ex. 29. Oehmke received all the shares but initially paid Lord only a portion of the $1 million. Ex. 14 at 98-100, 110-19.

B. Pumping the Stock

1. The Analysts' Reports

Even before the June meeting with Lord, Kos retained Heysek and Kline to prepare analyst reports about Concorde. Kline e-mail dated June 16, 2004, Ex. 30; Heysek e-mail dated June 8, 2004, Ex. 31. Despite Lord's misgivings about promoting Concorde, Oehmke and Kos proceeded to coordinate the promotional campaign. Ex. 14 at 93-94, 98. In the course of preparing their analyst reports, Heysek and Kline communicated by phone and e-mail with Lord five to ten times about Concorde's operations and future business. Ex. 8 at 107; Ex. 9 at 64-66. For example, in a June 18, 2004 e-mail to Heysek, Lord cautioned him not to "deviate from the party line," of Concorde providing Spanish-speaking workers to European businesses. Lord e-mail dated June 18, 2004, Ex. 32.

Heysek finished a draft of his report in late June, and sent it to Oehmke, Kos, and Lord for approval. Ex. 14 at 53. The draft report made baseless share price and revenue projections. Heysek Analyst Report, Ex. 33. For example, Heysek predicted Concorde's share price would rise from $3 per share to a $6.69 "near-term target price" and between $25 to $30 within 12 months. Ex. 33. He also estimated revenue and net income for Concorde of $630 million and $399 million, respectively, for 2004, $673 million and $465 million, respectively, for 2005, and $421 million and $289 million, respectively, for 2006. Ex. 33. Heysek based these projections on information Kos provided and the charts Lord gave him. Ex. 8 at 93; Concorde Business Plan, Ex. 34. The Heysek report projected significant revenues in 2006, even though the Almerimar Agreement, Concorde's only actual or purported contract, contemplated the placement of workers only in 2004 and 2005. Ex. 33.

Heysek knew or was reckless in not knowing his Concorde projections were false and misleading. After reviewing Heysek's report, Lord told Heysek his projections were "ridiculous," and that Concorde had not sent any workers to Spain. Ex. 14 at 54. Although Heysek had never seen the Almerimar Agreement, he told Lord he put the numbers in the report to support selling the stock at $3 per share. Ex. 14 at 54. Heysek also knew the charts Lord gave him did not provide any projected revenues or placement of workers for 2006. Ex. 26. Although Lord told Heysek his numbers were ridiculous, Heysek did not change his report. Revised Heysek Analyst Report, Ex. 35.

Lord, even though he knew the projections in Heysek's report were impossible for Concorde to achieve and were not based on realistic numbers, still tacitly approved of the contents of Heysek's report. Ex. 14 at 53-61; Mendez e-mail dated June 18, 2004, Ex. 36; Heysek e-mail dated June 30, 2004, Ex. 37. He knew Kos and Heysek intended to disseminate the report to the investing public and allowed that to occur even though he knew the report was full of false and misleading information. Ex. 14 at 124-26 and 129-30.

Oehmke and Kos reviewed and approved Heysek's report, even though they also knew or were reckless in not knowing the information in it was false and misleading. Mendez e-mails dated July 2 and July 5, 2004, Ex. 38. Both Oehmke and Kos met with Lord and knew Concorde could not achieve the spectacular results Heysek's report touted. Ex. 14 at 47-52.

Heysek's reports appeared on two websites, WinningStockPicks.net and USPennyStocks.com. Declaration of Walter Mathews, Ex. 39 at ¶3. Kos controlled the websites, with Heysek and Kline providing some content. Ex. 8 at 58-59; Ex. 9 at 28-29; Ex. 10 at 34-35. The website featured Concorde as a "winning pick" and a "Strong Buy Recommendation," with a projected price of $30 per share. Ex. 39 at ¶3; Ex. 5; Ex. 7. The

WinningStockPicks.net website contained the same baseless information as did the Heysek report, including the statement that Concorde stock will "see a price of $38.00 per share over the next 6 months." Ex. 39 at ¶1. The website also repeated Heysek's revenue projections. In addition, the website boasted that Concorde had entered into a three-year contract with the Spanish *government* that would "result in $2.6 billion in revenue and earnings aggregating $9.23 a share." Ex. 39 at ¶1.

The USPennyStocks.com, website, which listed Heysek as a Senior Analyst and Editor, repeated virtually every false statement about Concorde found on WinningStockPicks.net, including claiming that Concorde had contracts with European countries and companies to provide a Latin American workforce. Ex. 39 at ¶5; Ex. 4. It also projected a $38 per-share price for Concorde stock in six months. Ex. 39 at ¶5.

Kline also prepared a report he sent to Kos and Lord for approval in June 2004. Kline e-mail dated June 29, 2004, Ex. 40; Kline Draft Analyst Report, Ex. 41. It made outlandish projections similar to those in the Heysek report. For example, Kline said he expected Concorde's share price to rise from $3 to $38 in six months, and to $84 in 12 to 18 months. Ex. 41. Kline used the highest possible number of workers Concorde could have placed with Almerimar to compute these projections. Ex. 41; Ex. 26. However, these figures were not realistic because Concorde had yet to place a single worker anywhere or generate any revenue in 2004. Ex. 9 at 81.

Lord reviewed Kline's report and told him the projections were "ridiculous" because Concorde had not yet placed any workers. Ex. 14 at 54. Lord also told Kline, who had never even seen the Almerimar Agreement, he was falsely assuming Concorde would be able to provide the maximum number of workers specified in the agreement. Ex. 14 at 54.

Just as with Heysek's report, Lord knew the statements in Kline's report were false and the projections were baseless. Ex. 14 at 54. Yet, to assure that Oehmke paid Concorde the balance of the $1 million he had promised to pay for Concorde's stock, Lord initialed and approved Kline's draft report. Ex. 41; Lord e-mail dated June 28, 2004, Ex. 43. Oehmke and Kos received the initialed report and authorized the dissemination of its contents despite knowing or being reckless in not knowing Concorde's prospects were misrepresented because they knew Concorde had no revenues and had not placed any workers anywhere. Testimony Transcript of Donald E. Oehmke, Ex. 44 at 47; Testimony Transcript of Bryan Kos, Ex. 45 at 51-52.

Kline then prepared a final version of his report that repeated the misrepresentations and omissions discussed above, and added new false and misleading statements. Final Kline Analyst Report, Ex. 42. For example, Kline predicted Concorde's share price would be $84 in 2006, with estimated revenues of more than $2 billion and a profit margin of 75.3%. Ex. 42. Kline's report falsely told investors that Concorde "is Cash Flow positive now," and "will offer strong profits in its first year of operation." Ex. 42. Finally, like Heysek, Kline failed to disclose that the Almerimar Agreement only contemplated the placement of workers in 2004 and 2005, and therefore his revenue and income projections for 2006 were baseless. Ex. 42. Oehmke and Kos received this version of Kline's report for dissemination to the public. Ex. 44 at 44; Ex. 45 at 46. The report was posted on WinningStockPicks.net and USPennyStocks.com. Ex. 39 at ¶¶4-6.

2. Unauthorized Press Releases

Kos hired Spreadbury to write press releases, tout sheets and content for two websites as well as scripts for a voice-mail campaign to promote Concorde. Ex. 10 at 32-33. On July 28, 2004, Spreadbury issued his first press release via PR Newswire. Press Release dated July 28,

2004, Ex. 46. The Pink Sheets website and other media outlets also circulated this release. Pink Sheets press release, Ex. 46. Spreadbury used the Heysek and Kline reports Kos provided him to prepare the press release. Ex. 10 at 255. The release, entitled "First Global 'Monster' Employment Placement Service Launched – Concorde America to Place approximately 200,000 Workers in Spain," announced Concorde had developed a "unique solution" to the lack of workers in Spain to "perform duties in agriculture, hospitality, sanitation, security and other jobs," and touted a "new agreement with the Spanish government." Ex. 46.

The press release quoted Lord as stating "[t]he recent agreement with Spain is the tip of the proverbial iceberg . . . [o]nce this first contract is underway and others can see for themselves our global solution in action, we anticipate the floodgates to open." Ex. 46. The press release also quoted Julio Aspe, a purported employee of Concorde, claiming that Concorde afforded workers great opportunities. Ex. 46. Aspe explained that while Latin Americans earned about $60 a month in their own countries for domestic or service work "for doing the same work in Spain, Italy or Germany, they can earn over $1000 a month . . . they can provide their families back home with health and dental insurance and even be part of a pension plan." Ex. 46.

Virtually every major fact in this press release was a lie. First, it stated that Concorde had a contract with the Spanish *government*, rather than a Spanish *company*. Ex. 46; Ex. 26. Second, Spreadbury manufactured the quote from Aspe, who is in fact an associate of Lord's, but not employed by Concorde. Ex. 10 at 63-64. Aspe never made the statement attributed to him. Ex. 10 at 63-64. Third, Spreadbury made up the quote from Lord. Ex. 10 at 63-64. In fact, Spreadbury never even spoke to Aspe or Lord before issuing the release, purportedly on behalf of Concorde. Ex. 10 at 63-64.

Oehmke and Kos reviewed and approved the press release. Spreadbury e-mail dated July 28, 2004, Ex. 47. They knew or were reckless in not knowing the information in it was baseless because for starters, Spreadbury had made up quotes. Ex. 10 at 63-65. In addition, even a quick review of the Almerimar Agreement or a brief conversation with anyone at Concorde would have revealed Concorde had no agreement with the Spanish government. Ex. 16; Ex. 14 at 79.

Lord eventually saw the press release and telephoned Spreadbury to ask how it had come to be issued without his approval, and to inform him of the false statements in it. Ex. 10 at 100-108. Spreadbury then called Kos, and the two agreed to publish a second press release, ostensibly to correct the errors in the first. Ex. 10 at 100-108; Press Release dated August 9, 2004, Ex. 48. Twelve days after the first release, Spreadbury published the second one. Ex. 48. He deleted the quotes attributed to Lord and Aspe, and substituted the reference to the government of Spain with "one of Spain's largest agricultural firms." Ex. 48. He also changed Concorde's contact person to John Richey. Ex. 48.

The second release, however, was no more truthful than the first. For example, John Richey did not exist. Ex. 10 at 109. The release also omitted disclosing the fact that Concorde had no revenues and had not placed a single worker anywhere. Ex. 48. Kos knew or was reckless in not knowing the information in the second press release was false and misleading. He received and approved the release before Spreadbury published it, and knew Concorde had no revenues and had yet to send any workers to Spain. Kos e-mail dated July 20, 2004, Ex. 49.

In response to Spreadbury's two press releases, Concorde issued a press release of its own on August 11, 2004, disclaiming them. Ex. 16. Distributed after the market closed that day, Concorde's press release indicated that: no one had contacted Concorde about the information in the first two releases; Spreadbury did not have any relationship with Concorde; Concorde did not

have a contract with the Spanish government; Concorde had not made an announcement about its future earnings; and it had not specified the number of workers it could supply under any contract. Ex. 16. On August 12, 2004, Concorde's stock plummeted, closing at $2.51 per share. Ex. 1 at ¶14 and Ex. 61. Although the stock's price and volume later fluctuated due to further touting, it has since declined in price and volume, and presently trades at approximately $0.20 per share. However before this precipitous drop in price, Oehmke and Kos had dumped their shares. Ex. 1.

3. Tout Sheets and Voice Mails

Concurrently with the unauthorized press releases, Kos coordinated a massive tout sheet and voice-mail campaign to promote Concorde. Kos paid Spreadbury to prepare the tout sheets, published under the banner of "The Best Penny Stock Picks!" Ex. 10 at 72-73; Ex. 22. Spreadbury used the false and misleading information from the Heysek report and his press releases to create the tout sheets. Ex. 10 at 80-81. They contained extraordinary predictions concerning Concorde's revenues and stock price potential. Ex. 22. One tout sheet projected Concorde's price to rise from $4.50 per share to $38 in 6 months and $84 in 12 months. Ex. 22. That same tout sheet declared that its projections "seem almost conservative" with Concorde having a "market value" of $1.2 billion. Ex. 22.

Spreadbury also authored the script for the voice-mail campaign promoting Concorde as a "hot stock pick," with contracts valued at "over $1 billion," and a projected price of $30 per share. Ex. 10 at 258-59. Kos coordinated the voice-mail campaign, suggesting language such as "Winning Stock Picks Presents 'Concorde' 1000% Profit Potential!" Kos e-mail dated July 28, 2004, Ex. 50; Ex. 10 at 205. Kos hired a production company to record the voice messages and disseminate them. Ex. 10 at 175. Kos knew or was reckless in not knowing the voice-mail

scripts were false because Lord had told him Concorde had no revenues and had yet to place any workers. Ex. 14 at 50-51. Kos nevertheless reviewed and approved the scripts. Kos e-mail dated July 28, 2004, Ex. 51.

4. Effect on the Market

Investors responded to the unauthorized press releases, tout sheets, faxes, e-mail spams, and voice-mail advertising campaign. In just one week in early August 2004, Concorde's stock price rose from $3.70 to $8.90 per share. Ex. 1 at ¶12.

Oehmke, through his consulting company, paid Concorde $1 million for 10 million shares of its common stock. Ex. 4. Concorde's transfer agent issued the company the 10 million shares without a restrictive legend through six third-party nominee entities Oehmke and Kos controlled. Ex. 1 at ¶4; Oehmke e-mails dated June 23 and July 13, 2004, Ex. 52. These third parties are the Relief Defendants. Ex. 1 at ¶¶4, 8. Between late July and mid-August 2004, Oehmke and Kos sold those shares to the public over the Pink Sheets. Ex. 1 at ¶¶6-7. Oehmke reaped profits of approximately $7.5 million. Kos received approximately $1.5 million by dumping his shares of Concorde. Ex. 1 at ¶¶6-7.

C. The Absolute Health Scheme

In early 2004, Kos and a business associate, Jeremy Jaynes, met with Randall Rohm, the majority owner of two holding companies that own and operate several fitness centers in North Carolina. Declaration of Randall Rohm, Ex. 53 at ¶3. Jaynes proposed that Rohm merge his business with a shell company. Ex. 53 at ¶3. They also discussed initiating a public offering of the proposed new company's stock. Ex. 53 at ¶3. Declaration of Thomas Flynn, Ex. 12 at ¶3. Rohm, however, never agreed to the merger and ceased discussions with Kos and Jaynes. Ex. 53 at ¶¶6, 8. But that did not deter Kos and Oehmke from perpetrating their next fraudulent

scheme. They began acting as if the merger had occurred, changing the name of the shell company to Absolute Health, and listing it on the Pink Sheets. Ex. 53 at ¶¶10, 13. Furthermore, while a signature appears under Rohm's name on this supposed agreement, Rohm never executed any agreement to merge either of his holding companies with Absolute Health. Ex. 53 at ¶¶8, 9.

1. Pumping the Stock

Oehmke and Kos engaged Heysek, Kline and Spreadbury to promote Absolute Health's stock by creating tout sheets, faxes, websites, voice mail spams and a promotional video. Ex. 10 at 39-40, 156-57, 169-76, 250-52; Spreadbury e-mail dated July 12, 2004, Ex. 54; Ex. 8 at 161-70; Ex. 9 at 29. At Kos' direction, Spreadbury promoted Absolute Health through tout sheets titled "The Best Penny Stock Picks!" Ex. 10 at 263-65; Ex. 23. Spreadbury claimed Absolute Health was a "strong buy recommendation" because Absolute Health owned several fitness centers in the Southeast and was a regional leader in the health and fitness industry. Ex. 23. This was false because Absolute Health did not own any fitness centers and had no business operations or revenues. Ex. 53 at ¶14.

Spreadbury also made outrageous statements about Absolute Health's growth and financial picture, claiming it would be expanding its operations by 300% and tripling in size from four to twelve fitness centers. Ex. 23. In addition, he projected Absolute Health's stock would "jump almost 300%" in price and that its revenues would double within a year. Ex. 23. Spreadbury sent the proposed tout sheets to Kos, who approved them and arranged to disseminate them to the public through unsolicited mass faxing campaigns. Ex. 10 at 263-65; Spreadbury e-mails dated June 21 and June 23, 2004, Ex. 55.

In addition, Kos orchestrated a voice-mail spam campaign to promote Absolute Health. Spreadbury created the scripts for the voice messages and Kos approved them. Ex. 10 at 250-52. The scripts contained the same false and misleading information about Absolute Health's operations as the tout sheets. Voice Mail Transcripts, Ex. 56. For example, one message said Absolute Health's stock price would rise to $4 a share and urged investors to consult the WinningStockPicks.net website Kos controlled. Ex. 56; Ex. 10 at 160-176; Ex. 45 at 54. That website featured Spreadbury's tout sheets promoting Absolute Health. Ex. 10 at 258-60; Ex. 39.

Kos simultaneously engaged Heysek and Kline to promote Absolute Health on WinningStockPicks.net and USPennyStocks.com. Ex. 45 at 54, 57-59; Ex. 9 at 29-30, 49-53; Ex. 39. Information about the company also appeared on two other websites, Pennystockpro.com and Hotstockfinder.com. Declaration of Paul Anderson, Ex. 57 at ¶3. Heysek claimed on WinningStockPicks.net that Absolute Health's "revenues and earnings are expected to at least double every year through 2006," and touted a 12-month target stock price of $5 per share. WinningStockPicks.net Website, Ex. 58. In addition, the website stated Absolute Health was in the process of acquiring and consolidating health clubs, and expected to generate revenue of $10 million per year. Ex. 58.

Pennystockpro.com contained similar outrageous claims about Absolute Health. The website trumpets a "600% Profit Potential in 6 Months," with incredible revenue predictions of $1.6 million for 2004, $4.9 million for 2005, and $13.5 million for 2006. Ex. 57. Similarly, it touted a stock price increase from $1.30 per share to $10 in six months. Ex. 57. Hotstockfinder.com repeated the same baseless assertions, stating that "revenues and earnings are expected to double every year through 2006." Ex. 57. Kline echoed these extraordinary numbers on USPennyStocks.com. USPennyStocks.com Website, Ex. 59.

Finally, Kos retained Heysek to participate in an internet video broadcast about Absolute Health. Ex. 8 at 104. Heysek provided a script to two of Rohm's fitness center employees who Jaynes selected to appear in the video. Ex. 12 at ¶¶4-7, 9. The employees, following Heysek's script, falsely said Absolute Health owned and operated three fitness centers and was considering buying eight more. Ex. 12 at ¶10. The video also claimed Absolute Health would generate more than $23 million in revenue in 2004 and possibly $100 million in three years. Ex. 11 at 3. This projection was baseless because Absolute Health owned no fitness centers. Ex. 53 at ¶8. It had no revenue, no clients, no employees and no prospects. Ex. 53 at ¶8.

Oehmke and Kos knew or were reckless in not knowing the entire promotional campaign they orchestrated was false and misleading. They knew the Absolute Health tout sheets, faxes, websites and video were factually baseless because Absolute Health did not own any fitness centers or generate any revenues. Ex.53 at ¶8. They knew Rohm never agreed to the proposed merger and that Absolute Health was merely a successor to a shell corporation controlled by Oehmke. Ex. 53 at ¶14; Ex. 6.

2. Effect on the Market

Investors responded to Absolute Health's tout sheets, website, spam voice mails and video promotion. From early June to December 2004, the stock price rose from 55 cents to more than $5 per share with heavy fluctuation during the time periods when Oehmke and Kos traded. Ex. 1 at ¶12; Ex. 61. For example, Absolute Health's stock sank to a 52-week low of 55 cents on October 21, 2004, then spiked to a high of $5.09 during trading on December 1, 2004. Ex. 1 at ¶12; Ex. 61. Oehmke and Kos sold their Absolute Health stock during the fraudulent touting, reaping approximately $14.4 million in illegal profits. Ex. 1. Both Oehmke and Kos funneled the proceeds of their fraud to offshore bank accounts in the name of third-party nominees. Ex. 1.

IV. LEGAL ARGUMENT

A. Oehmke And Kos Violated The Anti-Fraud Provisions Of The Securities Laws

1. Violations of Section 10(b)

The Commission's Complaint alleges Oehmke and Kos violated Section 10(b) of the Exchange Act and Rule 10b-5, which proscribe fraudulent conduct in connection with the purchase or sale of securities. *U.S. v. Naftalin*, 441 U.S. 768, 773 (1979). The statute prohibits the making of any untrue statement of material fact or omitting to state material facts in connection with the purchase or sale of securities. A fact is material under the securities laws if a "reasonable man would attach importance to the fact misrepresented or omitted in determining his course of action." *SEC v. Carriba Air, Inc.* 681 F.2d 1318, 1327 (11th Cir. 1982). The Commission must also show Oehmke and Kos acted with scienter. *SEC v. Chemical Trust,* No. 00-8015-CIV-Ryskamp, 2000 WL 33231600 at *9 (S.D. Fla. Dec. 19, 2000)(defendants' knowing distribution of offering materials they knew contained false and misleading information established requisite scienter).

2. Oehmke and Kos Made False Statements And Omissions

A defendant makes a false statement when he "acting alone or with others, creates a misrepresentation." *In re Enron Corp. Sec. Litig.*, 235 F.Supp.2d 549, 588 (S.D. Tex. 2002). Section 10(b) and Rule 10b-5 permit violations to be established against defendants who, with scienter, participate in a course of business or a "device, **scheme**, or artifice" that operates as a fraud on sellers or buyers of stock, even if the defendants did not make a false statement. *Id.* (emphasis added); *Affiliated Ute Citizens v. United States*, 406 U.S. 128, 152-53 (1972). *See also SEC v. Zandford*, 535 U.S. 813, 819-22 (2002) (continuous series of unauthorized sales of securities and personal retention of proceeds without client's knowledge properly viewed as a

course of business that operated as a fraud in connection with the sale of securities); *Santa Fe Indus. v. Green*, 430 U.S. 462, 475-76 (1977) (Section 10(b) covers deceptive practices and conduct).

Here, Oehmke and Kos made false statements and omissions within the meaning of Section 10(b) and Rule 10b-5 by orchestrating two multi-media campaigns endorsing companies that had little, if any, business. They executed this plan by directing promoters to tout Concorde and Absolute Health stock through factually baseless analyst reports, tout sheets, press releases and the internet, knowing that the information was false and misleading.

More specifically, Oehmke and Kos approved analyst reports that Heysek and Kline wrote for dissemination to the public in various forms, including on websites, through Spreadbury's press releases and tout sheets, and in voice messages. They did the same with Absolute Health, even producing a video broadcast on the internet. They approved widespread distribution of these materials even though they knew (1) Concorde was a fledgling company with no revenues, no profits and not even one worker in Spain or anywhere else in the world, and (2) Absolute Health had absolutely no business and only existed as a renamed shell company.

This conduct makes them liable under Section 10(b) and Rule 10b-5 because they were involved in creating, editing and/or reviewing false statements that reached investors. *SEC v. First Jersey Sec., Inc.*, 101 F.3d 1450, 1471 (2nd Cir. 1996) ("primary liability may be imposed not only on persons who made fraudulent misrepresentations **but also on those who had knowledge of the fraud and assisted in its perpetration**") (internal quotation marks and citation omitted) (emphasis added); *Enron*, 235 F. Supp. 2d at 588 (adopting Commission's definition that to "make" a false statement under Rule 10b-5, a person "can be a primary violator if he or she writes misrepresentations for inclusion in a document to be given to investors, even if

the idea for those misrepresentations came from someone else") (emphasis added); *McNamara v. Bre-X Minerals Ltd.*, 57 F.Supp.2d 396, 426 (E.D. Tex. 1999) ("if a defendant played a 'significant role' in preparing a false statement actually uttered by another, primary liability will lie"); *In re Sunbeam Sec. Litig.*, 89 F. Supp. 2d 1326, 1342 (S.D. Fla. 1999) (any complex securities fraud case is likely to have "multiple violators" who each participated at some level in creating a misrepresentation). Accordingly, Oehmke and Kos made false statements and omissions within the meaning of the federal securities laws.

3. Oehmke's and Kos' False Statements And Omissions Were Material

An omission is material if there is "a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available." *Basic, Inc. v. Levinson*, 485 U.S. 224, 231-32 (1988). *See also Carriba Air*, 681 F.2d at 1323.

Here, Oehmke and Kos approved Concorde promotional materials that:

- Misrepresented that Concorde had contracts with European countries and the Spanish government, when, in reality, all Concorde had was a single contract with a Spanish company;
- Projected hundreds of millions of dollars in revenue and profits for Concorde based on workers the company was going to send to Europe while neglecting to mention that Concorde in reality had never placed a worker and had no revenue;
- Projected astronomical share price increases for Concorde based on projections the company president classified as "ridiculous" and impossible to achieve; and
- Made up people and quotes.

With regard to Absolute Health, Oehmke and Kos approved and disseminated promotional materials to the investing public that falsely stated:

- Absolute Health owned and was in the process of acquiring fitness centers when, in fact, it owned nothing and had no prospects of acquiring any fitness

centers; and

- Absolute Health had revenues when it did not.

In sum, Oehmke and Kos were intricately involved in producing and distributing materials about the two companies that misstated virtually every relevant fact about them. On their face, these misrepresentations and omissions were material. A reasonable investor would certainly consider in deciding whether to buy the stock of Concorde and Absolute Health the fact that both companies did not have the business the promotional materials claimed. A reasonable investor obviously would want and need to know that Absolute Health did not own any fitness centers. A reasonable investor would further consider it relevant to know that the president of Concorde had rejected the factual bases of the revenue and stock price projections about the companies as baseless. It is hard to imagine misrepresentations and omissions being more material.

4. Oehmke and Kos Acted With Scienter

The evidence establishes that Oehmke and Kos acted with scienter, which the courts have defined as either knowing misconduct or severe recklessness – extreme departure from the standards of ordinary care. *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 (1976); *Carriba Air*, 681 F.2d at 1322.

Here, the evidence overwhelmingly shows Oehmke and Kos knew or were severely reckless in not knowing the entire promotional campaign they orchestrated was false and misleading. Kos reviewed and approved the public distribution of the analyst reports Heysek and Kline prepared about Concorde, and the tout sheets and press releases Spreadbury created. The analyst reports and Spreadbury's first press release both said Concorde had a three-year contract with the Spanish *government*, which Kos knew or was extremely reckless in not

knowing was false. The analyst reports also contained revenue and share-price projections for Concorde based on figures Kos knew Concorde's president had termed ridiculous, yet he publicly distributed the reports. The analyst reports further stated Concorde would have extraordinary revenues and profits in 2006, when Kos knew or was reckless in not knowing Concorde had not a single contract to support **any** revenue or profit projections for that year.

With regard to Absolute Health, Kos knew because he was involved in meetings between the principals that no merger between Oehmke's company and the holding companies that actually owned fitness centers ever occurred. Therefore, he knew that Absolute Health's promotion as an up-and-coming fitness center owner was a complete sham. There is no doubt under these circumstances that Kos acted with the requisite scienter.

Similarly, Oehmke knew because he also was involved in meetings between the principals that his company had never acquired any fitness centers. Yet he knew Kos and others were distributing promotional materials to the public that falsely claimed Absolute Health was a fitness center owner. And, as with Kos, he knew Concorde had no business, no revenues and had not yet placed workers anywhere in the world, yet he reviewed and in some cases approved of promotional materials containing revenue and profit projections in the hundreds of millions of dollars. He also knew Concorde did not have contracts with European countries or the Spanish government. Therefore he, also, plainly acted with scienter.

5. The Conduct Was In Connection With The Purchase And Sale Of Securities

The Commission must show that the fraudulent conduct of Oehmke and Kos occurred in connection with the purchase or sale of securities. The Supreme Court has held that the federal courts should broadly interpret this "in connection with" requirement of the securities laws to effectuate their remedial purpose. *Zandford,* 535 U.S. at 819. Statements or omissions made

with regard to trading in general, not just particular transactions, meet the "in connection with" requirement. *In re Carter-Wallace Sec. Litig.*, 150 F.3d 153, 156 (2nd Cir. 1998) (company statements in technical medical journals were in connection with trading of securities); *SEC v. Rana Research,* 8 F.3d 1358, 1362 (9th Cir. 1993) (press releases were in connection with stock trading); *In re Ames Dep't Stores Sec. Litig.*, 991 F.2d 953, 966 (annual reports and Commission filings met "in connection with" test).

The omissions and misrepresentations Oehmke and Kos made were in connection with securities trading. They approved distributing promotional materials about Concorde and Absolute Health rife with omissions and misrepresentations for the express purpose of interesting investors in buying the stock of both companies. Their long-term goal, of course, was to drive up the stock prices of both companies so they could, in turn, sell their own shares (or those of the Relief Defendants) for the highest price possible. Thus, their conduct was in connection with the purchase and sale of securities. *SEC v. Corporate Relations Group*, No. 6:99-cv-1222, 2003 U.S. Dist. Lexis 24925 at *31 (M.D. Fla. March 28, 2003) (promoters' conduct was in connection with the purchase and sale of securities because it acquired and sold stock it recommended that others buy); *SEC v. Blavin*, 557 F. Supp. 1304, 1310-11 (E.D. Mich. 1983) (statements were made in connection with the purchase and sale of securities because sole purpose of newsletter was to recommend stock the promoter-defendant sold).

B. An Order Freezing Assets Is Warranted To Preserve Investor Funds

In its Complaint, the Commission seeks injunctive relief, disgorgement of the Defendants' ill-gotten gains, repatriation of foreign funds, prejudgment interest and civil penalties. The ancillary remedy of an asset freeze is appropriate here to prevent Oehmke and Kos from dissipating the proceeds of their fraudulent scheme and to ensure sufficient funds are

ultimately available to satisfy any final judgment the Court might enter ordering the payment of disgorgement, prejudgment interest or civil penalties.

Pursuant to their general equity powers, federal courts may order ancillary relief to effectuate the purposes of the federal securities laws. *See, e.g., SEC v. Unifund SAL*, 910 F.2d 1028, 1041 (2nd Cir. 1990); *SEC v. Wencke*, 622 F.2d 1363, 1369 (9th Cir. 1980); *SEC v. Manor Nursing Centers, Inc.*, 458 F.2d 1082, 1103-04 (2nd Cir. 1972). When there are concerns that defendants might dissipate assets, or transfer them beyond the jurisdiction of the Court, the Court need only find some basis for inferring a violation of the federal securities laws in order to impose an asset freeze. *Unifund SAL*, 910 F.2d at 1041-42. *See also SEC v. Margolin*, 1992 U.S. Dist. LEXIS 14872 at *19-*20 (S.D.N.Y. Sept. 30, 1992) (court issued freeze order based on "sufficient showing" that an asset freeze was necessary to prevent defendants from "secreting or dissipating" assets); *SEC v. Grossman*, 1987 U.S. Dist. LEXIS 1666, at *35-*36 (S.D.N.Y. Feb. 17, 1987) ("[a]n order freezing assets may be imposed even in the absence of a preliminary injunction").

The evidence the Commission has presented in the exhibits supporting the motion for an asset freeze provides more than sufficient basis for inferring that Oehmke and Kos violated the federal securities laws by fraudulently promoting the stock of Concorde and Absolute Health stock to drive up the price of both for their own gain. As set forth above, Oehmke and Kos orchestrated two multi-media campaigns endorsing companies that had little, if any, business. They executed this plan by directing promoters to tout Concorde and Absolute Health stock through factually baseless analyst reports, tout sheets, press releases and the internet, knowing the information was false and misleading.

An asset freeze is also appropriate to maintain the status quo and to prevent Oehmke and Kos from dissipating funds. Having received more than $27.2 million in ill-gotten gains through

their fraudulent schemes, they are facing substantial liability for disgorgement and civil penalties. Courts have frequently recognized that an order requiring disgorgement will be rendered meaningless unless they impose an asset freeze prior to the entry of final judgment. *See, e.g. United States v. Cannistraro*, 694 F. Supp. 62, 71 (D.N.J. 1988), *aff'd in part and vacated in part*, 871 F.2d 1210 (3rd Cir. 1989); *International Controls Corp. v. Vesco*, 490 F.2d 1334, 1347 (2nd Cir. 1974), *cert. denied*, 417 U.S. 932 (1974); *SEC v. Vaskevitch*, 657 F. Supp. 312, 315 (S.D.N.Y. 1987); *R.J. Allen & Assocs., Inc.*, 386 F. Supp. 866, 881 (S. D. Fla. 1974) ("[a]s to the issue of an asset freeze, the court certainly has the ability to ensure that the defendants' assets are not secreted or dissipated before entry of final judgment concluding this action"). An asset freeze "facilitate[s] enforcement of any disgorgement remedy that might be ordered" and may be granted "even in circumstances where the elements required to support a traditional Commission injunction have not been established." *Unifund SAL*, 910 F.2d at 1041. In addition, courts in Commission enforcement cases have also issued such orders to preserve assets for payment of monetary penalties, *Unifund SAL*, 910 F.2d at 1042, *citing United States v. First National City Bank*, 379 U.S. 378, 385 (1965), and for payment of prejudgment interest. *SEC v. Bremont*, 954 F. Supp. 726, 733 (S.D.N.Y. 1997).

Here, there is a well-founded basis for concluding that, absent an asset freeze, Oehmke and Kos will continue to dissipate investor funds. For example, Oehmke has already funneled at least $20,774,377 of trading profits into offshore accounts. Ex. 1. Specifically, he traded his Concorde stock through the DaSilva account, reaping $1.8 million in gains. Oehmke also profited by trading Concorde through the Vanderlip account, netting $4,330,000. In addition, Oehmke made $5,233,700 in profits from his sale of Concorde stock through the Barranquilla account. He also used that same account to sell Absolute Health stock, netting approximately $9.5 million. An

immediate order freezing Oehmke's assets is needed to prevent him from further transferring funds so as not to render any order for disgorgement, prejudgment interest and civil penalties meaningless.

Similarly, Kos has funneled approximately $6,748,333 of trading profits into offshore accounts. For example, Kos sold Absolute Health shares through Chiang Ze, netting approximately $5.1 million. An asset freeze order will also prevent Kos from dissipating those funds. In addition, Oehmke and Kos together made approximately $1,696,600 trading shares of Concorde through that same nominee account. Ex. 1.

Because Oehmke and Kos used Relief Defendants' accounts to shelter the proceeds of their fraud, the Relief Defendants' assets should also be frozen in order to effectuate relief. *See SEC v. Hickey*, 322 F.3d 1123 (9th Cir. 2003) (court's broad power to reach assets of third parties in order to effect order in securities fraud actions authorized the freeze of non-parties' assets to protect and give life to disgorgement and contempt orders); *SEC v. Cherif*, 933 F.2d 403, 414, n.11 (7th Cir. 1991) (equitable relief from a non-party is available if non-party possesses illegally obtained profits but has no legitimate claim to them). Here, the trading records show Oehmke and Kos reaped profits from their pump and dump schemes by effectuating trades and then transferring the proceeds to their nominee offshore accounts. Ex. 1 at ¶7, 9-12. In a mere two months, Oehmke and Kos profited from their fraud, transferring more than $27 million of illicit gains to offshore, nominee accounts beyond the reach of this Court. Thus, this Court should freeze the assets of Oehmke, Kos and the Relief Defendants to prevent their dissipation and allow recovery of these ill-gotten gains.

C. An Order Requiring Repatriation Of Funds

The Commission may seek repatriation of the proceeds of illegal securities transactions. *See FTC v. Affordable Media, LLC*, 179 F.3d. 1228 (9th Cir. 1999); *SEC v. Antar*, slip op., No. 89 Civ. 3773 (D.N.J. January 24, 1990). Here, the Commission has identified at least five offshore nominee

accounts in the Bahamas through which Oehmke and Kos have conducted their trading and dumping of Concorde and Absolute Health stock. In addition, the Commission has unverified information identifying bank accounts in Curacao, which may contain proceeds of this fraud. Therefore, an order repatriating from abroad all funds resulting from the fraudulent conduct is appropriate. If the Commission obtains a money judgment against the proposed defendants, all of the illegally obtained assets they control should be available to satisfy that judgment. Accordingly, the Commission requests authorization to seek a repatriation order against the proposed defendants.

D. An Order Prohibiting Destruction Or Alteration Of Records And Requiring Sworn Accountings

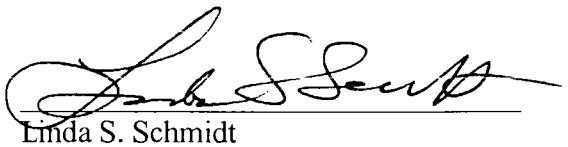
The Commission also seeks an immediate order prohibiting all of the Defendants and Relief Defendants from destroying or altering records. This order will prevent the disappearance or destruction of documents before investors' claims can be adjudicated and help assure that whatever equitable relief might ultimately be appropriate is available. *R.J. Allen*, 386 F. Supp. at 866. The Commission also seeks an Order requiring Oehmke and Kos to file with this Court, within twenty days, sworn written accountings, signed by Oehmke and Kos under penalty of perjury.

V. CONCLUSION

For the foregoing reasons, the Court should grant the Commission's motion for an order freezing Defendants Oehmke's and Kos' and Relief Defendants assets, repatriation, an order preventing the destruction or alteration of documents and any other relief this Court deems appropriate. For the Court's convenience, a proposed order is attached.

February 14, 2005

Respectfully submitted,

By: 

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