

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
Alexandria Division**

**UNITED STATES SECURITIES AND  
EXCHANGE COMMISSION,** )  
 )  
 )  
 **Plaintiff,** )  
 )  
 **v.** )  
 )  
 **INTERNATIONAL FIDUCIARY CORP., S.A.,** )  
 **DANIEL ERIC BYER,** )  
 **MALCOLM CAMERON BOYD STEVENSON,** )  
 **PRESTON DAVID PINKETT, II,** )  
 )  
 **Defendants.** )

**CASE NO. 1:06cv01354-GBL**  
  
**Hon. Gerald Bruce Lee  
United States District Judge**

**RECEIVER'S REBUTTAL TO DEFENDANT PRESTON DAVID PINKETT II'S  
OPPOSITION TO RECEIVER'S MOTION FOR SHOW CAUSE ORDER**

Roy M. Terry, Jr. as duly appointed receiver ("Receiver") for International Fiduciary Corp., S.A. ("IFC"), by counsel, files his Rebuttal to Defendant Preston David Pinkett, II's ("Pinkett") Opposition to Receiver's Motion for Show Cause Order (the "Opposition"), and in support thereof, respectfully states as follows:

1. The Receiver's Motion for Show Cause Order (the "Motion") should be granted because: (1) pursuant to this Court's Order Directing Appointment of Receiver Over Defendant International Fiduciary Corp., S.A. (the "Appointment Order") and Fourth Circuit precedent, the Receiver has standing to seek enforcement of this Court's Preliminary Injunction Order; (2) Pinkett has not furnished the accounting required by this Court's Preliminary Injunction Order; and (3) without the required accounting the Receiver cannot adequately fully his duty to collect

and distribute funds, to manage and operate the Receivership Estate, and to meet his burden to perform an accounting as required by the Appointment Order.

### **ARGUMENT**

#### **1. Standing**

2. Pursuant to the Appointment Order, this Court retains jurisdiction over this action for all purposes and the Receiver is “authorized, empowered and *directed* to apply to this Court, with notice to the [SEC] and the Defendants, for issuance of such other orders as *may be necessary and appropriate in order to carry out the mandate of this Court.*” See Appointment Order, § XVIII (emphasis added), Docket No. 25.

3. Further, the Fourth Circuit has held that receivers are ministerial officers and agents of the court and represent the court and not the parties in the matter in which they are appointed. See Ledbetter v. Farmers Bank & Trust Co., 142 F.2d 147, 150 (4th Cir. 1944); Powell v. Maryland Trust Co., 125 F.2d 260, 271 (4th Cir. 1942). Thus, the Receiver is the agent of this Court and represents this Court in this matter. The Appointment Order further provides that the assets of IFC have vested in the Court, not the Receiver. The Receiver does not stand in the shoes of any party, including IFC, as alleged by Pinkett.

4. As the duly appointed representative of this Court, the Receiver is both empowered and required by this Court to seek the relief sought by the Motion.

#### **2. Pinkett has Not Turned Over or Filed the Required Accounting**

5. The informal “accounting” referenced in the Opposition presents, at best, a partial subset of the records of IFC and does not come close to meeting the accounting<sup>1</sup> required by this

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<sup>1</sup> The Preliminary Injunction Order, entered December 12, 2006 (docket # 14), states as follows:

Court's Temporary Restraining Order, Asset Freezes and Order to Show Cause Re: Preliminary Injunction (the "Preliminary Injunction Order").

6. Contrary to the representations made by Pinkett in the Opposition, Pinkett has never turned over the required accounting for himself, IFC or any of its affiliates. The ten (10) boxes produced to the Receiver from Pinkett's prior counsel contained primarily investor files. The accounting information which was included in the 10 boxes indicates that there were computerized accounting records (i.e., included in the boxes were print outs of adjusting journal entries), but despite a thorough review of the hard drives recovered, the Receiver has been unable to locate any accounting records for Pinkett, IFC, or IFC's affiliates. See Affidavit of Harold G. Martin, Jr., MBA, CPA, ABV, ASA, CFE, Accountant to the Receiver for International Fiduciary Corp., S.A. In Support of the Receiver's Motion for Show Cause Order attached hereto as Exhibit A.

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IT IS FURTHER ORDERED that defendants Daniel Eric Byer, Malcolm Cameron Boyd Stevenson, Preston David Pinkett II, and International Fiduciary Corp., S.A., and each of their subsidiaries and affiliates, shall within seven business days of the service of this order, file with this Court, and serve on the Commission, at the address of its counsel of record, a sworn accounting of:

A. All securities, funds, real estate, and other assets held in their names or the names of any subsidiary or affiliate, or under their direct or indirect control or in which they have or have had since July 1, 2003, a direct or indirect beneficial interest, stating a description and location of such assets;

B. Each account, including safe deposit boxes, with any financial institution or brokerage firm or otherwise maintained in the names of defendants Daniel Eric Byer, Malcolm Cameron Boyd Stevenson, Preston David Pinkett II, and International Fiduciary Corp., S.A., or in which they have direct or indirect control or beneficial interest or have had any direct or indirect beneficial interest since July 1, 2003; and

C. Every transaction in which any funds or other assets of any kind whereby ownership, direction and control, whether, indirect or direct, have since July 1, 2003, been transferred to or from defendants Daniel Eric Byer, Malcolm Cameron Boyd Stevenson, Preston David Pinkett II, and International Fiduciary Corp., S.A.

Preliminary Injunction Order, § V.

7. Upon information and belief, there is a further computer drive belonging to TWA Financial Network, LLC, not IFC, which may which include information related to the accounting. The Receiver just received a copy of this drive from the SEC and has not yet completed a review of its contents. In his review of the items obtained from IFC's office, the Receiver recovered flash drive paraphernalia (i.e., thumb drive USB covers, Scandisk neck strap) indicating that IFC used flash drives, but no such hardware was surrendered or recovered from Pinkett or IFC.

8. The "accounting" referenced by Pinkett relates only to debits and credits of IFC's accounts at United Bank and shows that Pinkett himself received \$5 million, as admitted in the Opposition. Further, upon information and belief, Pinkett received three checks totaling \$2,831,704.86 on or about November 7, 2006 upon the closing of IFC's accounts at Great Florida Bank. Where did these funds go? The information and records produced by Pinkett do not even approach meeting the requirements set forth by the Preliminary Injunction Order.

**3. Pinkett's Accounting is Necessary for the Receiver to Fulfill His Duties Set Forth in the Appointment Order**

9. Pursuant to the Appointment Order, the Receiver is charged with, *inter alia*, the duty of taking all steps reasonably necessary to learn the disposition of funds traceable to investor monies; to administer and manage the Receivership Estate; and performing an accounting of the offer and sale of investment contracts, bank deposit programs, or other securities that is outlined in the SEC's Complaint including, but not limited to, the Defendants' solicitation, receipt, *disposition and use of the proceeds*.

10. Upon information and belief, Pinkett would not and did not let Mr. Waz Abraham, of TWA Financial Network, LLC, IFC's accountant, know the details of transfers involving funds

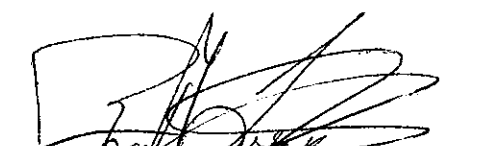
originating from IFC's investors beyond those specifically related to accounts held at United Bank. Therefore, upon information and belief, Pinkett is the only party to know the details of those transactions and what Pinkett, IFC, and/or IFC's affiliates did with the funds involved in those transactions. Without disclosure of information solely held by Pinkett, it will be impossible for the Receiver to meet his duties and otherwise comply with his responsibilities as set forth in the Appointment Order.

**CONCLUSION**

**WHEREFORE**, for the reasons stated herein and in the Motion, the Receiver prays that the Court enter an order for Preston David Pinkett, II to show cause why he should not be held in contempt of court for failure to obey the order of this Court to produce Accountings for Preston David Pinkett, II and International Fiduciary Corp., S.A., and each of their subsidiaries and affiliates and to take whatever steps are necessary to obtain compliance with this Court's Preliminary Injunction Order.

Respectfully submitted this 17<sup>th</sup> day of May, 2007.

Roy M. Terry, Jr.  
Receiver



~~Roy M. Terry, Jr., VSB No. 17764~~  
~~John C. Smith, VSB No. 44556~~  
Elizabeth L. Gunn, VSB No. 71044  
DuretteBradshaw, PLC  
600 E. Main St., 20<sup>th</sup> Floor  
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804.775.6900 (telephone)  
804.775.6911 (facsimile)

**CERTIFICATE OF SERVICE**

I hereby certify that on this 17<sup>th</sup> day of May, 2007, a true copy of the foregoing Rebuttal was served by e-mail to:


A. David Williams, Esquire  
U.S. Securities and Exchange Commission  
Division of Enforcement  
**WilliamsDav@SEC.GOV**  
*Assistant Chief Litigation Counsel for Securities and Exchange Commission*

Larry P. Ellsworth, Esquire  
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*Counsel for Preston D. Pinkett, II and International Fiduciary Corp., S.A.*

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*Counsel for Preston D. Pinkett, II and International Fiduciary Corp., S.A.*

Daniel Eric Byer  
**twoedged@shaw.ca**  
*Defendant*

Malcolm C. Stevenson  
**midiansal@shaw.ca**  
*Defendant*



Roy M. Terry, Jr., Receiver

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
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UNITED STATES SECURITIES AND  
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DANIEL ERIC BYER,  
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PRESTON DAVID PINKETT, II,

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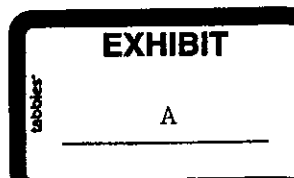
**AFFIDAVIT OF HAROLD G. MARTIN, JR., MBA, CPA, ABV, ASA, CFE,  
ACCOUNTANT TO THE RECEIVER FOR INTERNATIONAL FIDUCIARY CORP.,  
S.A. IN SUPPORT OF THE RECEIVER'S MOTION FOR SHOW CAUSE ORDER**

**I. Introduction**

1. My firm, Keiter, Stephens, Hurst & Shreaves, P.C. ("Keiter Stephens"), and I were retained by Roy M. Terry, Jr. and the law firm of DuretteBradshaw, PLC ("Receiver") in the matter of *Securities and Exchange Commission v. International Fiduciary Corp., S.A., et al.*, Case No. 1:06v01354-GBL (E.D. Va.), pursuant to the Court order entered April 9, 2007, to provide certain professional services, including but not limited to, accounting, tax, forensic accounting, and forensic computer analysis.

**II. Assignment**

2. I have been requested by the Receiver to render an independent and objective opinion about whether or not certain information produced to Keiter Stephens by the Securities and Exchange Commission ("SEC") included the accounting by defendant Preston David Pinkett, II ("Pinkett") as described in the Preliminary



Injunction Order entered December 12, 2006. As set forth in the Preliminary Injunction Order, Pinkett was to provide an accounting of the following:

- A. All securities, funds, real estate, and other assets held in their names or the names of any subsidiary or affiliate, or under their direct or indirect control or in which they have or have had since July 1, 2003, a direct or indirect beneficial interest, stating a description and location of such assets;
- B. Each account, including safe deposit boxes, with any financial institution or brokerage firm or otherwise maintained in the names of defendants Daniel Eric Byer, Malcolm Cameron Boyd Stevenson, Preston David Pinkett II, and International Fiduciary Corp., S.A., or in which they have direct or indirect control or beneficial interest or have had any direct or indirect beneficial interest since July 1, 2003; and
- C. Every transaction in which any funds or other assets of any kind whereby ownership, direction and control, whether, indirect or direct, have since July 1, 2003, been transferred to or from defendants Daniel Eric Byer, Malcolm Cameron Boyd Stevenson, Preston David Pinkett II, and International Fiduciary Corp., S.A.

### **III. Summary of Findings**

3. Based on my analysis of the information produced to Keiter Stephens by the SEC, it is my professional opinion that Pinkett did not produce the accountings required by the Preliminary Injunction Order.

### **IV. Information Reviewed and Scope of Analysis Performed**

4. The SEC produced to Keiter Stephens eight original computer hard disk drives that the SEC obtained from computers located on the premises of International Fiduciary Corp., S.A. ("IFC").
5. Keiter Stephens created copies of the eight computer hard disk drives and retained the originals under lock and key. Keiter Stephens then searched each of the copies of the computer hard disks drives in an attempt to locate electronic files containing the information required for the aforementioned accounting.

6. In performing its analysis, Keiter Stephens identified Microsoft Excel spreadsheets containing certain investor information; however, these spreadsheets did not contain the required information.

Respectfully Submitted, this the 16<sup>th</sup> day of May, 2007.

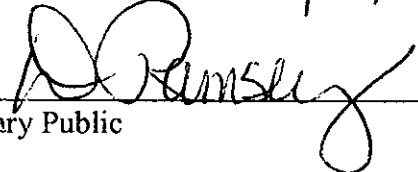
By: 

Harold G. Martin, Jr., MBA, CPA, ABV, ASA, CFE  
Principal, Business Valuation, Forensic and Litigation Services  
Keiter, Stephens, Hurst, Gary & Shreaves, P.C.

COMMONWEALTH OF VIRGINIA  
COUNTY OF HENRICO, to wit:

The foregoing Affidavit was executed before me, a Notary Public for the aforesaid jurisdiction, this 16<sup>th</sup> day of May, 2007 by Harold G. Martin, Jr.

My Commission expires: 12/31/08

By:   
Notary Public