

IN THE DISTRICT COURT OF OKLAHOMA COUNTY JUN - 5 2008  
STATE OF OKLAHOMA

PATRICIA PRESLEY, COURT CLERK  
by \_\_\_\_\_  
DEPUTY

Oklahoma Department of Securities )  
*ex rel.* Irving L. Faught, )  
Administrator, )  
 )  
Plaintiff, )

03-2008-5138

v: )

Case No.

Precious Oro Resources, LLC, )  
an Oklahoma limited liability company; )  
Thomas R. Ezell, an individual; and )  
Nolan V. Harris, an individual, )  
 )  
Defendants, )

and )

TMP Metals, LLC, )  
a Texas limited liability company; )  
Don Lynn Nunnally, an individual; )  
Donna F. Elliott, an individual; and )  
Eduwiges Baeza, an individual; )  
 )  
Defendants Solely For )  
Purposes of Equitable Relief. )

**APPLICATION FOR TEMPORARY RESTRAINING ORDER,  
ORDER FREEZING ASSETS AND ORDER FOR ACCOUNTING**

The Oklahoma Department of Securities *ex rel.* Irving L. Faught, Administrator ("Department"), respectfully submits this application for a temporary restraining order against Defendants Precious Oro Resources, LLC, Thomas R. Ezell and Nolan V. Harris ("Defendants"); an order freezing the assets of Defendants; and an order for an accounting by Defendants, pursuant to the Oklahoma Uniform Securities Act of 2004 (the "Act"), Okla. Stat. tit. 71, §§ 1-101 through 1-701 (Supp. 2003). The Department also seeks an order freezing the assets of TMP Metals, LLC, Don Lynn Nunnally, Donna F. Elliott and Eduwiges Baeza (collectively, "Relief

Defendants”). The Department petitions this Court to halt further violations of the Act, to protect the rights of the Department in its obligation to safeguard the public interest, to prevent any dissipation or loss of investor funds and property, and to remedy actions that Defendants have already committed.

The Department moves this Court to issue *instanter* a temporary restraining order, an order freezing assets, and an order for an accounting by Defendants and/or Relief Defendants, until the Court may afford the parties a hearing, and additionally moves for the entry of a temporary injunction at such hearing against Defendants. The entry of such orders are necessary for the reasons set forth below, to preserve the *status quo* and to protect the Department’s rights in enforcing the Act.

#### **I. THE DEFENDANTS**

Precious Oro Resources, LLC (“POR”) is an Oklahoma limited liability company with its principal place of business in Broken Arrow, Oklahoma. At all times material hereto, POR issued, offered and/or sold securities in and/or from Oklahoma as described herein.

Thomas R. Ezell (“Ezell”), an individual and Oklahoma resident, is the registered agent of POR and controls all acts of POR. At all times material hereto, Ezell offered and/or sold securities in and/or from Oklahoma as described herein.

Nolan V. Harris (“Harris”), an individual and Oklahoma resident, is an agent of POR and controls all acts of POR. At all times material hereto, Harris offered and/or sold securities in and/or from Oklahoma as described herein.

## **II. RELIEF DEFENDANTS**

TMP Metals, LLC ("TMP") is a Texas limited liability company with a purported place of business in The Colony, Texas. TMP received cash that is the proceeds, or is traceable to the proceeds, of the unlawful activities of Defendants from POR's bank account ("Investor Assets").

Don Lynn Nunnally ("Nunnally"), an individual and Texas resident, is a managing member and agent of TMP.

Donna F. Elliott ("Elliott"), an individual and Texas resident, is a managing member and agent of TMP.

Eduwiges Baeza ("Baeza"), an individual and Texas resident, is a managing member and agent of TMP.

## **III. NATURE OF THE CASE**

Beginning in or about February 2008, and continuing to the present, Defendants have engaged in the issuance, offer and/or sale of securities in and/or from the state of Oklahoma to investors ("Investors") in the nature of notes the proceeds of which are purportedly used to make investments in "ore concentrate" ("Investment Loans"). Defendants represent to Investors that the ore concentrate is purchased from Precious Oro Resources-Mexico and processed into gold and silver for sale. Defendants represent to Investors that ten percent (10%) interest on the Investment Loan principal will be paid approximately every thirty (30) days. If no ore concentrate is purchased, Defendants represent that the Investor funds will be returned within 30 days.

Investor funds totaling in excess of \$2,300,000 have been deposited into an account at Bank of Oklahoma in the name of Precious Oro Resources. Less than \$1,000,000 remains in the

account. Defendants have withdrawn portions of the Investment Loan proceeds for personal expenses.

In February, 2008, Relief Defendants received Investor Assets from Defendants in the nature of a bank transfer of \$490,000.

### **III. VIOLATIONS OF THE ACT**

#### **A. Violation of Section 1-301 of the Act: Offer and/or Sale of Unregistered Securities**

The Investment Loans are securities as defined by Section 1-102 of the Act.

The securities offered and sold by Defendants are not and have not been registered under the Act nor have the securities been offered or sold pursuant to an exemption from registration under Sections 1-201 through 1-203 of the Act.

By reason of the foregoing, Defendants have violated, are violating, and unless enjoined, will continue to violate Section 1-301 of the Act.

#### **B. Violation of Section 1-402 of the Act: Failure to Register as Agents and Employing Unregistered Agents**

POR is an issuer as defined in Section 1-102 of the Act.

Defendants Ezell and Harris are not registered in any capacity under the Act.

Defendants Ezell and Harris, by virtue of their efforts and activities in transacting business in this state, are agents, as defined in Section 1-102 of the Act. Defendants Ezell and Harris transacted and are transacting business in this state as agents without the benefit of registration under the Act.

POR employed at least one unregistered agent.

By reason of the foregoing, Defendants have violated, are violating, and unless enjoined, will continue to violate Section 1-402 of the Act.

**C. Violation of Section 1-501 of the Act:  
Omissions of Material Fact in Connection with the  
Offer, Sale or Purchase of Securities**

Defendants, in connection with the offer and/or sale of securities, directly and indirectly, omitted and are omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were and are made, not misleading including, but not limited to, the following matters:

- a. any general or specific risk factors associated with the Investment Loans;
- b. that the Investment Loans are securities under the Act;
- c. that the Investment Loans have not been and are not registered under the Act, as evidenced by Exhibit A attached hereto;
- d. that the individuals who offer and sell the Investment Loans were not registered at times material hereto and are not registered as agents under the Act, and as evidenced by Exhibit B attached hereto;
- e. that Defendants would use Investor funds for the payment of personal expenses of the Defendants.

By reason of the foregoing, Defendants, directly and indirectly, have violated, are violating, and unless enjoined, will continue to violate Section 1-501 of the Act.

**D. Violation of Section 1-501 of the Act:  
Engaging in any Act, Practice, or Course of Business that Operates  
or Would Operate as a Fraud or Deceit upon any Person**

Defendants, in connection with the offer, sale or purchase of securities, and through the omissions of material fact described above, have engaged and are engaging in an act, practice, or course of business that has operated and continues to operate as a fraud or deceit upon other persons.

By reason of the foregoing, Defendants, directly and indirectly, have violated, are violating, and unless enjoined, will continue to violate Section 1-501 of the Act.

### **E. Relief Defendants**

Relief Defendants have received Investor Assets from one or more of the Defendants.

Relief Defendants have received the Investor Assets as part of and/or in furtherance of the securities violations. Under the circumstances, it is not just, equitable or conscionable for Relief Defendants to retain the Investor Assets at the expense of the Investors.

### **IV. NEED FOR TEMPORARY RESTRAINING ORDER, ASSET FREEZE, ACCOUNTING AND TEMPORARY INJUNCTION**

Section 1-603 of the Act provides:

A. If the Administrator believes that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this act or a rule adopted or order issued under this act or constituting a dishonest or unethical practice or that a person has, is, or is about to engage in an act, practice, or course of business that materially aids a violation of this act or a rule adopted or order issued under this act or a dishonest or unethical practice, the Administrator may, prior to, concurrently with, or subsequent to an administrative proceeding, maintain an action in the district court of Oklahoma County or the district court of any other county where service can be obtained to enjoin the act, practice, or course of business and to enforce compliance with this act or a rule adopted or order issued under this act.

B. In an action under this section and on a proper showing, the court may:

1. Issue a permanent or temporary injunction, restraining order, or declaratory judgment;

2. Order other appropriate or ancillary relief, which may include:

a. an asset freeze, accounting, writ of attachment, writ of general or specific execution, and appointment of a receiver or conservator, that may be the Administrator, for the defendant or the defendant's assets,

b. ordering the Administrator to take charge and control of a defendant's property, including investment accounts and accounts in a depository institution, rents, and profits; to collect debts; and to acquire and dispose of property,

c. imposing a civil penalty up to a maximum of Five Thousand Dollars (\$5,000.00) for a single violation

or up to Two Hundred Fifty Thousand Dollars (\$250,000.00) for more than one violation; an order of rescission, restitution, or disgorgement directed to a person that has engaged in an act, practice, or course of business constituting a violation of this act or the predecessor act or a rule adopted or order issued under this act or the predecessor act, and

d. ordering the payment of prejudgment and postjudgment interest; or

3. Order such other relief as the court considers appropriate.

#### **A. Temporary Restraining Order**

Section 1-603 of the Act specifically grants this Court the power to fashion appropriate equitable relief to provide effective enforcement of the Act. A temporary restraining order has the object of preserving the *status quo*, in order to prevent irreparable injury, until such time as the Court may determine Plaintiff's application for temporary injunction. *Granny Goose Foods, Inc. v. Brotherhood of Teamsters*, 415 U.S. 423, 439, 94 S.Ct. 1113, 1124 (1974); *Morse v. Earnest, Inc.*, 547 P.2d 955 (Okla. 1976). Issuing a temporary restraining order is in the public interest when the failure to grant the relief would allow dishonest businesses and individuals to take advantage of vulnerable investors. The protection of the public interest is paramount in this matter.

In addition, no injury will befall Defendants by granting such relief since Defendants have no right to act in the state of Oklahoma in violation of the Act, to include engaging in fraudulent conduct in connection with securities activities. The interference with Defendants' rights by granting the temporary restraining order will be minimal, if any, while protecting the public from immediate and irreparable injury or loss.

#### **B. Asset Freeze and Accounting**

Section 1-603 of the Act specifically grants this Court the power to order equitable relief, in addition to a restraining order, and once the equity powers of the court are invoked, the court possesses the power to fashion appropriate interim remedies. *SEC v. Manor Nursing Centers*, 458 F. 2d 1082, 1103 (2nd Cir. 1972). Within this power is the authority to grant effective equitable relief by temporarily freezing specific assets. *SEC v. General Refractories Co.*, 400 F.Supp. 1248, 1259 (D.D.C. 1975); *SEC v. International Swiss Investments Corp.*, 895 F.2d 1272, 1276 (9th Cir. 1990); *SEC v. Manor Nursing Centers*, 458 F.2d at 1105-06. Also within the equity power of the court is the authority to order an accounting by the Defendants. *SEC v. R.J. Allen & Associates*, 386 F. Supp. 866, 880 (S.D.N.Y. 1974); *SEC v. Manor Nursing Centers*, *supra* at 1103-1104.

Defendants have engaged in acts and practices in violation of the Act and have, as a result of these activities, received a substantial amount of money from numerous Investors. The whereabouts of all of the money raised by Defendants through violations of the Act is not known at this time. A danger exists that the money received from the Investors and/or held by Defendants and/or Relief Defendants will be lost, removed or transferred. An order to issue *instanter* against Defendants and/or Relief Defendants is necessary to preserve these funds and the records relating thereto, to prevent the dissipation of assets, to account for the money raised through violations of the Act, and to prevent further violations of the Act.

### **C. Temporary Injunction**

Once the plaintiff has shown the Defendants' past conduct is in violation of the Act, the proper test for the issuance of a statutory injunction is whether there is a reasonable expectation of future violations by Defendants. *SEC v. Manor Nursing Centers, Inc.*, *supra*; *SEC v. Culpepper*, 270 F.2d 241, 249 (2d Cir. 1959). In considering this issue, past illegal conduct is

strong support for the likelihood of future violations. *Oklahoma Securities Commission v. CFR International, Inc., supra.* Here, the Defendants have violated the Act which creates a presumption of likelihood of future violations. Because the Plaintiff has conclusively demonstrated the existence of past violations, injunctive relief is appropriate and the burden of showing there is no reasonable expectation of future violations will shift to the Defendants and their burden "is a heavy one." *SEC v. Culpepper, supra; Oklahoma Securities Commission v. CFR International, Inc., supra.*

Unlike private actions for injunctions, the Department's action is based on statute and no showing of irreparable injury or the inadequacy of other remedies is required. *Oklahoma Securities Commission v. CFR International, Inc., 622 P.2d 293, 295 (Okla. Ct. App. 1980) (citing Bradford v. SEC, 278 F.2d 566 (9th Cir. 1960)).* Although not required, the Department has also shown that the public will suffer irreparable injury if Defendants are not enjoined from further violations of the Act.

#### **D. An Ex Parte Order Should be Issued**

While courts have been cautious with the use of ex parte orders, they are approved in appropriate cases. *Covington, Knox Inc. v. Texas, 577 S.W. 2d 323 (Tex. App. Houston [14th Dist.] 1979, no writ).* The Department alleges facts that demonstrate a strong likelihood of ongoing violations of the Act by Defendants.

In addition, there is a great risk that Defendants will take measures to dissipate assets if provided notice of this action before a temporary restraining order is issued and assets are frozen. Providing notice of this action to Defendants and Relief Defendants could lead to loss of Investor funds, and consequently cause irreparable injury to the Department's ability to safeguard the public interest by *inter alia* providing monetary redress. The issuance of an ex parte temporary

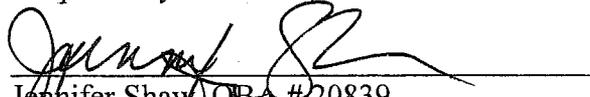
restraining order, asset freeze, and order for an accounting against the Defendants and/or Relief Defendants will help maximize the relief to Investors and protect the public interest.

### V. Conclusion

The Department, pursuant to Section 1-602 of the Act, conducted an investigation into Defendants' activities in and/or from the state of Oklahoma. The investigation produced evidence that clearly indicates Defendants have issued, offered and/or sold unregistered securities in and/or from this state. Such activity is continuing. The investigation also revealed the following fraudulent practices of Defendants, in connection with the offer, sale and/or purchase of securities: (1) omitted, and are omitting, to state certain material facts; and (2) engaged, and are engaging, in a course of business that has operated and continues to operate as a fraud or deceit upon other persons. The Department submits that the evidence firmly establishes a *prima facie* case for the issuance of a temporary restraining order, an asset freeze, an accounting, and a temporary injunction.

In light of the facts presented and the authorities cited, the Department respectfully requests that this Court issue a temporary restraining order and an order freezing assets of Defendants and Relief Defendants, until such time as the Court may afford the parties a hearing on the Plaintiff's motion for temporary injunction, and an order for an accounting, all to halt Defendants' unlawful practices and to provide effective relief to Investors and to the Department.

Respectfully submitted,



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Oklahoma Department of Securities  
120 North Robinson, Suite 860  
Oklahoma City, Oklahoma 73102  
Telephone (405) 280-7700  
Fax (405) 280-7742

## CERTIFICATE OF MAILING

The undersigned certifies that on the 5th day of June, 2008, a true and correct copy of the foregoing was mailed via certified mail, return receipt requested, delivery restricted to addressee, to the following:

Precious Oro Resources, LLC  
Thomas R. Ezell, Registered Agent  
1604 S. Desert Palm Avenue  
Broken Arrow, OK 74012

Thomas R. Ezell,  
1604 S. Desert Palm Avenue  
Broken Arrow, OK 74012

Nolan V. Harris  
8405 E. 134th St., #A  
Bixby, OK 74008

Nolan V. Harris  
413 N. Forest Ridge Blvd., #B  
Broken Arrow, OK 74014

TMP Metals, LLC  
Corporation Service Company, Registered Agent  
701 Brazos, Ste. 1050  
Austin, TX 78701

TMP Metals, LLC  
6910 Windhaven Parkway, #201  
The Colony, TX 75056

Donald Lynn Nunnally  
2030 Shenandoah Dr.  
Carrollton, TX 75007

Donna F. Elliott  
2030 Shenandoah Dr.  
Carrollton, TX 75007

Eduwiges Baeza  
925 N. Zaragoz Rd., Apt 245N  
El Paso, TX 79907

Brenda London

AFFIDAVIT

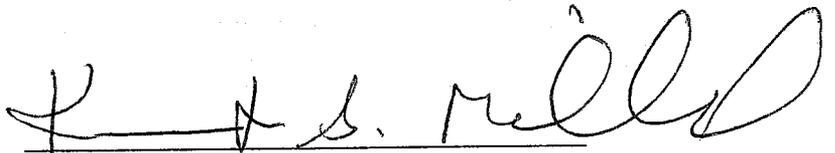
STATE OF OKLAHOMA     )  
  ) SS.  
COUNTY OF OKLAHOMA    )

I, Kenneth G. Maillard, Director of Registrations of the Oklahoma Department of Securities (the "Department"), swear that I have conducted an examination of the registration files of the Department pertaining to current and past registrations for the offer or sale of securities in Oklahoma and that nowhere therein was found a record of an application for the registration of securities pursuant to the Oklahoma Uniform Securities Act of 2004, OKLA. STAT. tit. 71, §§1-101 to 1-701 (Supp. 2007), or the predecessor Oklahoma Securities Act repealed effective July 1, 2004 (the "Acts"), for Precious Oro Resources, LLC.

I further swear that nowhere within the registration files of the Department was found a record of a registration of securities for the entity mentioned above, pursuant to the Acts.

I further swear that nowhere within the exemption files of the Department was found a record of a notice of intent to claim exemption from registration of securities for the entity mentioned above, pursuant to the Acts.

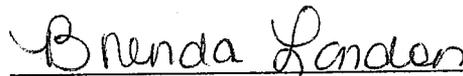
(SEAL)



Kenneth G. Maillard  
DIRECTOR OF REGISTRATIONS  
OKLAHOMA DEPARTMENT OF SECURITIES  
First National Center, Suite 860  
120 North Robinson  
Oklahoma City, Oklahoma 73102  
(405) 280-7700

Subscribed and sworn to before me this 5th day of June, 2008.

(NOTARIAL SEAL)

  
\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:

 BREANDA LONDON  
Notary Public  
State of Oklahoma  
Commission # 05009046 Expires 09/28/09

**EXHIBIT**  
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