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10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**

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13 **SECURITIES AND EXCHANGE**
COMMISSION,

14 Applicant,

15 vs.

16 **SAINT JAMES HOLDING AND**
INVESTMENT COMPANY TRUST
17 and **JEFFRE JAMES** aka **ELDER**
18 **JEFFRE SAINT JAMES,**

19 Respondents.

Case No. 2:18-mc-00135

SECURITIES AND EXCHANGE
COMMISSION'S MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT OF ITS APPLICATION
FOR AN ORDER TO SHOW CAUSE
AND APPLICATION FOR AN
ORDER COMPELLING
COMPLIANCE WITH
INVESTIGATIVE SUBPOENAS

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1 **I. INTRODUCTION**

2 The Securities and Exchange Commission (“SEC”) asks this Court to compel
3 Respondents Saint James Holding and Investment Company Trust (“St. James
4 Trust”) and its sole trustee, Jeffrey James, to produce documents in response to two
5 SEC investigative subpoenas issued on June 21, 2018. These subpoenas relate to an
6 ongoing, nonpublic investigation by the SEC to determine whether certain individuals
7 or entities may have engaged in a potential “pump-and-dump” scheme in the stock of
8 Cherubim Interests, Inc. (“Cherubim”), among other microcap companies.
9 Information obtained in the SEC’s investigation suggests that, to “pump” the price of
10 its stock, Cherubim issued false public statements in January 2018 claiming that the
11 company had executed a \$100,000,000 financing commitment to launch an initial
12 coin offering (“ICO”) for St. James Trust. Cherubim’s stock price and trading
13 volume then soared on this news, as is typical in “pump-and-dump” schemes, and
14 certain individuals associated with the company then “dumped” their overvalued
15 Cherubim stock for significant profits.

16 As part of its investigation, the SEC issued the June 2018 subpoenas to the
17 Respondents to determine, among other things, whether Cherubim’s statements about
18 its \$100 million financing commitment were true or not. The Respondents, however,
19 have not produced a single document to the SEC. Nor have they even attempted to
20 contact SEC counsel to discuss the subpoenas. Instead, despite repeated attempts to
21 contact them, the Respondents have ignored the SEC altogether. Therefore, the SEC
22 now asks the Court to intervene, and compel the Respondents to respond.

23 **II. STATEMENT OF FACTS**

24 **A. The SEC’s Formal Order of Investigation**

25 On March 16, 2018, the SEC issued an Order Directing Private Investigation
26 and Designating Officers to Take Testimony in an investigation titled *In the Matter of*
27 *Cherubim Interests, Inc. and Certain Other Microcap Issuers* (SEC File No. LA-
28 4898) (“Formal Order”). See Declaration of Manuel Vazquez (“Vazquez Decl.”) ¶ 4,

1 Ex. 1. Among other things, the Formal Order empowers the SEC staff to investigate
2 whether certain individuals and entities violated the antifraud and registration
3 provisions of the federal securities laws in connection with numerous penny-stock
4 companies. The order identifies the names of these companies, including Cherubim,
5 whose name is in the order’s caption. The order also designates and authorizes
6 certain SEC staff to issue subpoenas in this investigation to obtain documents and to
7 take testimony. *See id.*; 15 U.S.C. §§ 77s(b), 78u(b).

8 The two June 2018 subpoenas that are the subject of this application were
9 issued pursuant to this Formal Order and are part of the SEC’s investigation of
10 trading in Cherubim stock.

11 **B. Possible “Pump-and-Dump” Scheme in Cherubim Stock**

12 Through its investigation, the SEC staff obtained evidence that certain persons
13 may have carried out a “pump-and-dump” scheme in Cherubim stock. In a pump-
14 and-dump scheme, the fraudsters artificially inflate the price and trading volume of
15 the stock they hold, often by publicly disseminating positive but often false
16 information about a stock to “pump” the price higher. *See* <https://www.sec.gov/fast-answers/answerspumpdumhtml.html>. The operators then “dump” their overvalued
17 shares, earning a profit resulting from their fraudulent conduct. The price of the stock
18 then falls, and those investors who continue to hold the stock lose money.¹

19 The “pump” in the pump-and-dump scheme here was carried out through at
20 least two public announcements by Cherubim—a January 3, 2018 press release and a
21 report on Form 8-K dated January 31, 2018. *See* Vazquez Decl. ¶¶ 7-8, Exs. 2-3.

22 The press release and Form 8-K both refer to the Respondent, St. James Trust, and its
23
24

25 ¹ Orchestrators of pump-and-dump schemes generally manipulate the stock of thinly
26 traded companies, like Cherubim. *See* [https://www.sec.gov/reportspubs/investor-
27 publications/investorpubsmicrocapstockhtml.html](https://www.sec.gov/reportspubs/investor-publications/investorpubsmicrocapstockhtml.html). The price of their stock is easier to
28 manipulate than more widely held stock because the volume of trading is generally
lower and there is usually much less reliable information about the stock publicly
available.

1 alleged ICO. An ICO is a way for a company to raise capital by issuing and offering
2 for sale virtual coins or tokens. *See id.* ¶ 9, Ex. 4 (SEC investor bulletin regarding
3 ICOs). According to Cherubim’s January 3rd press release, the company had
4 “executed a financing commitment of \$100,000,000 to launch” that offering for the
5 St. James Trust token, apparently called “The Self Sustaining Intentional
6 Communities Coin.” *See id.* ¶ 7, Ex. 2. Similarly, in a January 31st Form 8-K report
7 filed with the SEC, Cherubim restated its commitment to raise \$100 million for St.
8 James Trust’s ICO, and attached a purported memorandum of understanding with St.
9 James Trust that stated Cherubim would be an “Investor in SJT [St. James Trust]”
10 and had “[a]gree[d] to “[p]urchase \$100,000,000 SJT Coins.” *Id.* ¶ 8, Ex. 3.²

11 According to St. James Trust’s website and “white paper” (a document that
12 often accompanies ICOs and describes the token and business being offered), the St.
13 James Trust token is an investment in cooperative living communities. *See id.* ¶ 10,
14 Ex. 5. As Cherubim’s press release described it, “[t]he St. James Trust
15 Cryptocurrency is designed for cooperative living, working and healthier lives and
16 offers extensible diversity in the use of the coin over current coins like Bitcoins for
17 both financial and societal gain.” *Id.* ¶ 7, Ex. 2. St. James Trust’s ICO materials also
18 claim its token is a revenue-sharing opportunity that can appreciate in value if the
19 tokens are sold on secondary markets. *See id.* ¶ 10, Ex. 5. These materials also state
20 that St. James Trust is offering 500 million coins at \$1 per coin. *See id.*

21 Following the January 3rd press release and the January 31st Form 8-K report,
22 Cherubim’s stock price and trading volume increased. *See id.* ¶ 11. Indeed, after the
23 January 3rd press release, Cherubim’s stock price jumped 250% the next day; the
24 volume of trading in its stock soared 5,168%. *See id.* After the Form 8-K report,
25

26
27 ² The Cherubim press release and Form 8-K also claimed the company had agreed to
28 acquire \$250 million in assets from another entity. *See Vazquez Decl.*, ¶¶ 7-8, Exs.
2-3.

1 Cherubim’s stock price similarly increased 14.3% the next day, and trading volume
2 jumped 237%. *See id.* The SEC has evidence suggesting that soon after these
3 Cherubim stock price increases, individuals associated with Cherubim sold Cherubim
4 stock. *See id.* ¶ 12. Because of the SEC’s concern over the inaccuracy over
5 Cherubim’s disclosures and the possibility that its stock was manipulated in a “pump
6 and dump” scheme, the SEC suspended trading in the securities of Cherubim and
7 other microcap issuers on February 15, 2018 for ten business days. *See id.* ¶ 13, Ex. 6
8 (order suspending trading because of “concerns regarding the accuracy and adequacy
9 of information in the marketplace about, among other things, . . . [Cherubim]’s
10 execution of a financing commitment to launch an initial coin offering”); *see also id.*
11 ¶ 14, Ex. 7 (release).

12 Based on the SEC’s investigation, there is reason to believe that Cherubim’s
13 statements about St. James Trust’s ICO and its \$100 million “financing commitment”
14 for the ICO—the public “pump” of the company’s stock—were false. For one, the
15 St. James Trust coin does not appear to have even existed when Cherubim announced
16 its supposed “financing.” The coin itself does not appear on any websites that track
17 existing cryptocurrency coins in January or February 2018. *See id.* ¶ 15. Moreover,
18 St. James Trust’s own website raises serious questions about whether Cherubim
19 actually invested the \$100 million it claimed it would invest in the St. James Trust
20 coin. On January 23, 2018, the website said that St. James Trust had sold 100 million
21 coins, and a week later said it had only sold 25,600 coins. *See id.* ¶¶ 16-17, Exs. 8-9.
22 But as recently as September 2018, the website says that all 500 million of its coins
23 are still available—that is, not a single coin had yet been sold. *See id.* ¶ 18, Ex. 10.
24 So either Cherubim did not buy any coins at all and thus never invested or, at a price
25 of \$1 per coin, it invested only about \$25,600—a far cry from the \$100 million it had
26 claimed. Finally, the evidence shows Cherubim could not have made this financing
27 even it had wanted to. Its finances are in such disarray that, as of September 2017,
28 and according to its own financial statements, Cherubim only had \$513,411 in assets

1 and incurred a net loss of about \$2.78 million for the nine months ending May 31,
2 2017. *See id.* ¶ 19, Ex. 11.

3 **C. The SEC’s June 2018 Subpoenas**

4 Given Cherubim’s potentially false or misleading statements concerning its
5 financing of St. James Trust’s ICO, the SEC issued document subpoenas to St. James
6 Trust and James, the sole trustee of the trust, on June 21, 2018. *See id.* ¶ 20, Exs. 12-
7 13. The June 2018 subpoenas were signed by SEC staff designated in the Formal
8 Order to investigate Cherubim. *See id.* ¶¶ 3-5. The subpoena to St. James Trust was
9 sent to its business address listed on its website, and a copy of the subpoena was also
10 sent to the address for its registered agent. *See id.* ¶ 20. And the subpoena to James
11 was sent to what SEC counsel understands, based on research conducted by SEC
12 staff, is his home address. *See id.* ¶ 20. All subpoenas were delivered via United
13 Parcel Service (“UPS”) overnight delivery in accordance with the SEC’s Rules of
14 Practice. *See id.* ¶ 21, Ex. 14.

15 The June 2018 subpoenas were tailored directly to find information about St.
16 James Trust. They requested documents concerning: (a) Cherubim’s representations
17 in its press releases and SEC filing concerning St. James Trust and its ICO; (b)
18 financing commitments made by Cherubim to launch the St. James Trust ICO; (c) St.
19 James Trust’s business operations; (d) Respondents’ communications with Cherubim
20 representatives; (e) Respondents’ money or asset transactions concerning Cherubim;
21 and (f) communications to or from Respondents with a specified list of individuals
22 and entities concerning Cherubim. *See id.* ¶ 20, Exs. 12-13.

23 **D. Respondents’ Failure to Produce Any Documents**

24 St. James Trust and James were required to produce all documents responsive
25 to the subpoenas to the SEC by July 6, 2018. *See id.*, ¶ 20, Exs. 12-13.³ The
26

27 ³ Because of a typographical error, the July 2018 subpoenas include a document
28 production deadline of March 3, 2017, instead of July 6, 2018. As explained further
below, all further correspondence with Respondents references the correct July 6,

1 Respondents have yet to produce a single document in response to the subpoenas, and
2 neither of them has contacted SEC counsel. *See id.* ¶ 30.

3 On July 16th, SEC counsel left a message for James at his St. James Trust
4 phone number. *See id.* ¶ 22. In that message, SEC counsel made it clear that no
5 documents had been produced in response to either one of the subpoenas and asked
6 James to return the call. *See id.* SEC counsel made a follow-up call to James later
7 that day, but could not complete the call because counsel received an automated
8 message stating that calls could no longer be made to this number. *See id.* Using a
9 different SEC telephone number immediately after, SEC counsel called James and
10 successfully left another message requesting him to contact SEC counsel. *See id.*
11 The SEC did not receive a response. *See id.* SEC counsel made follow up phone
12 calls to James on July 19th and July 24th, each time leaving a message requesting that
13 James return the call. *See id.* ¶ 23. After these phone calls, on August 8, 2018, the
14 subpoena issued to St. James Trust’s business address was returned to the SEC. The
15 UPS shipping label stated: “RETURN TO SHIPPER,” “RECEIVER DID NOT
16 ORDER, REFUSED.” *Id.* ¶ 24, Ex. 15.

17 On August 14, 2018, SEC counsel emailed James at his St. James Trust email
18 address, which was listed on St. James Trust’s white paper. *See id.* ¶ 25, Ex. 16. In
19 that email, SEC staff explained that if James failed to produce documents responsive
20 to the subpoenas by August 24, 2018, the SEC would proceed to compel production.
21 *See id.* After receiving no response to that email, SEC counsel sent a second email on
22 August 16, to James’s St. James trust email address, and also sent to various other
23 email addresses for James the SEC located, informing James that if he failed to
24 produce the requested documents by the August 24th deadline, the SEC may seek

25
26 2017 deadline. Indeed, the SEC extended the document production deadline several
27 times, and yet Respondents have not contacted SEC counsel and have not produced
28 any responsive documents.

1 court intervention. To date, James has never responded to either email. *See id.*

2 Out of an abundance of caution, on September 4, 2018, SEC counsel had James
3 personally served, in his individual capacity and as St. James Trust's sole trustee,
4 with copies of the June 2018 subpoenas. *See id.* ¶ 26, Exs. 17-18. Additionally, on
5 September 6, 2018, SEC counsel informed James via email and overnight UPS letter
6 that if Respondents failed to produce the requested documents by September 20,
7 2018, the SEC would proceed with a subpoena enforcement action against
8 Respondents. *See id.* ¶ 27, Ex. 19. SEC counsel received a UPS delivery
9 confirmation of its September 6, 2018 letter (*See id.* ¶ 27, Ex. 20), but Respondents
10 did not respond to the email or the letter. *See id.* ¶ 30. As of the date of this filing,
11 neither Respondent has contacted SEC counsel, nor has the SEC received any
12 documents responsive to the June 2018 subpoenas. *See id.*

13 **III. ARGUMENT**

14 Respondents' ongoing and outright refusal to provide documents responsive to
15 the SEC's June 2018 subpoenas is obstructing the SEC's investigation of potential
16 securities laws violations. Accordingly, the SEC asks the Court to compel the
17 Respondents to respond to the subpoenas and produce all responsive documents.

18 **A. This Court Has Jurisdiction to Enforce the SEC's Validly-Issued** 19 **June 2018 Subpoenas in a Summary Proceeding**

20 When subpoenaed parties, such as Respondents, refuse to comply with SEC
21 investigative subpoenas issued in the course of an investigation, the SEC is authorized
22 to seek court orders compelling compliance. *See* 15 U.S.C. § 77v(b); 15 U.S.C.
23 § 78u(c). Section 22(b) of the Securities Act and Section 21(c) of the Exchange Act
24 explicitly grant jurisdiction over these subpoena enforcement proceedings to district
25 courts. *Id.*

26 The court may grant an application to enforce an investigative subpoena in a
27 summary proceeding, like the one sought here by the SEC. *EEOC v. St. Regis Paper*
28 *Co.-Kraft Div.*, 717 F.2d 1302, 1304 (9th Cir. 1983) (“[a] subpoena enforcement action

1 is a summary procedure” with no discovery absent “exceptional circumstance”); *see*
2 *also SEC v. McCarthy*, 322 F.3d 650, 655-59 (9th Cir. 2003) (Section 21(e) of the
3 Exchange Act permits court to enforce a SEC subpoena in summary proceeding “upon
4 application from the Commission”); *SEC v. Sprecher*, 594 F.2d 317, 319-20 (2d Cir.
5 1979) (Section 22(b) of the Securities Act permits courts to enforce a subpoena in
6 summary proceeding “upon application by the Commission”); *United States v. Church*
7 *of Scientology of Cal.*, 520 F.2d 818, 821 (9th Cir. 1975) (“a district court may limit the
8 application [of the Federal Rules of Civil Procedure] in a proceeding to enforce a
9 summons which is intended to be a summary proceeding”). This summary procedure,
10 rather than an action instituted by complaint, is appropriate because investigative
11 agencies, like the SEC, “must be free without undue interference or delay to conduct an
12 investigation which will adequately develop a factual basis for a determination as to
13 whether particular activities come within the Commission’s regulatory authority.” *SEC*
14 *v. Brigadoon Scotch Distrib. Co.*, 480 F.2d 1047, 1053 (2d Cir. 1973).

15 Moreover, a SEC subpoena enforcement action may be brought in any federal
16 court “within the jurisdiction of which such investigation or proceeding is carried on.”
17 15 U.S.C. § 78u(c). Therefore, even though the Respondents appear to be located in
18 Louisiana, venue is proper in this district because the SEC’s Los Angeles Regional
19 Office is exclusively carrying out the investigation and issued the subpoenas that are the
20 subject of this application. *See In the Matter of an Application to Enforce Admin.*
21 *Subpoena of the SEC v. Bobby Jones*, Case No. CV 13-08314 DDP (Ex), 2013 WL
22 6536085, at *2 (C.D. Cal. Dec. 13, 2013) (denying motion to change venue in subpoena
23 enforcement action); *see also Resolution Trust Corp. v. Feffer*, 795 F. Supp 1223, 1224
24 (D.D.C. 1992) (denying motion to change venue for subpoena enforcement
25 proceeding); *U.S. v. Firestone Tire & Rubber Co.*, 455 F. Supp 1072, 1078 (D.D.C.
26 1978) (similar); *FTC v. Carter*, 464 F. Supp. 633, 637 (D.D.C. 1979) (similar).

27 **B. The SEC’s June 2018 Subpoenas Should Be Enforced**

28 For an administrative agency’s investigation subpoena to be judicially enforced,

1 the agency must show: (1) its “investigation will be conducted pursuant to a legitimate
2 purpose,” (2) the subpoena seeks information that “may be relevant to the purpose,” (3)
3 “the information sought is not already within the [SEC’s] possession,” and (4) all
4 “administrative steps required ... have been followed.” *United States v. Powell*, 379
5 U.S. 48, 57-58 (1964) (enforcing IRS subpoena); *see also United States v. Jose*, 131 F.
6 3d 1325, 1327-28 (9th Cir. 1997) (quoting *Powell*); *SEC v. Blackfoot Bituminous, Inc.*,
7 622 F.2d 512, 513-14 (10th Cir. 1980). Courts routinely grant relief in SEC subpoena
8 enforcement proceedings upon the requisite showing. *See, e.g., SEC v. Bobby Jones*,
9 2013 WL 6536085, at *2; *In the Matter of an Application to Enforce Administrative*
10 *Subpoena of the SEC v. Alicia Bryan*, Case No. CV13-1870-GAF (C.D. Cal. May 6,
11 2013), Dkt. No. 14, Vazquez Decl., ¶ 28, Ex. 21 (ordering compliance with SEC
12 administrative subpoena); *In the Matter of an Application to Enforce Administrative*
13 *Subpoena of the SEC v. Concept Capital Group, Inc. et al.*, Case No. 13 CV 116-GMN
14 (D. Nev. Mar. 12, 2013), Dkt. No. 16, Vazquez Decl., ¶ 28, Ex. 22 (same).

15 All four requirements are met in this case. First, this investigation is being
16 conducted pursuant to a lawfully authorized and legitimate purpose. “The provisions
17 vesting the SEC with power to issue and seek enforcement of subpoenas are
18 expansive.” *SEC v. Jerry T. O’Brien, Inc.*, 467 U.S. 735, 743 (1984). To help protect
19 investors, Congress “vested the [SEC] with broad authority to conduct investigations
20 into possible violations of the federal securities laws and to demand production of
21 evidence relevant to such investigations.” *Id.* at 741. This authority includes the power
22 to “subpoena witnesses, compel their attendance, take evidence, and require the
23 production of any books, papers, correspondence, memoranda, or other records which
24 the Commission deems relevant or material to the inquiry.” 15 U.S.C. § 78u(b); *see*
25 *also* 15 U.S.C. § 77t(a).

26 Here, the SEC has exercised its broad statutory authority to investigate, among
27 other things, whether the antifraud or other provisions of the federal securities laws
28 have been or are being violated in connection with potentially false or misleading

1 public statements in Cherubim’s public statements. On March 16, 2018, the SEC issued
2 a Formal Order, authorizing the investigation. On June 21, 2018, in the course of the
3 investigation, the SEC subpoenaed the Respondents, seeking evidence relevant to the
4 investigation. The SEC’s investigation and these subpoenas are thus within the scope
5 of the Formal Order and the SEC’s authorized law-enforcement powers.

6 Second, the information sought by the June 2018 subpoenas is relevant to the
7 SEC’s investigation. The subpoenas seek information relating to whether Cherubim
8 made false or misleading statements about St. James Trust, including in an SEC filing,
9 as part of a potential “pump and dump” scheme, and whether the Respondents had any
10 involvement in such scheme. To subpoena documents as it conducts an investigation,
11 the SEC need not make out a “probable” or “reasonable” cause showing. *SEC v.*
12 *Howatt*, 525 F.2d 226, 229 (1st Cir. 1975); *see also Church of Scientology of Cal.*, 520
13 F.2d at 821 (federal agency “need not meet any standard of probable cause to obtain
14 enforcement of its summons”). In the context of an administrative investigation, “the
15 notion of relevancy is a broad one. An agency can investigate merely on the suspicion
16 that the law is being violated, or even just because it wants assurance that it is not. So
17 long as the material requested touches a matter under investigation, an investigative
18 subpoena will survive a challenge that the material is not relevant.” *Flatt v. SEC*, 2010
19 U.S. Dist. LEXIS 48571, at *11 (S.D. Fla. Apr. 14, 2010); *see also Neuhaus v. SEC*,
20 2007 WL 1322340, at *3 (E.D. Cal. May 4, 2007); *Rosiere v. SEC*, 2010 WL 489526, at
21 *3 (D. Nev. Feb. 5, 2010).

22 The relevancy required to enforce an investigative subpoena is therefore much
23 broader than in litigation. *See Nelson v. SEC*, 2008 U.S. Dist. LEXIS 51035, at *4-5,
24 2008 WL 244794, at *2 (N.D. Cal. June 16, 2008). The Ninth Circuit has noted that
25 “[t]he scope of the judicial inquiry in an . . . agency subpoena enforcement proceeding
26 is quite narrow.” *EEOC v. Karuk Tribe Hous. Auth.*, 260 F.3d 1071, 1076 (9th Cir.
27 2001) (quoting *EEOC v. Children’s Hosp. Med. Ctr. of N. Cal.*, 719 F.2d 1426, 1428
28 (9th Cir. 1983) (en banc)). Thus, a court “must enforce investigative subpoenas unless

1 the evidence sought by the subpoena [is] plainly incompetent or irrelevant to any lawful
2 purpose of the agency.” *Endicott Johnson v. Perkins*, 317 U.S. 501, 509 (1943); *see*
3 *also Adm’r, U.S. EPA v. Alyeska Pipeline Serv. Co.*, 836 F.2d 443, 447 (9th Cir. 1998);
4 *Brigadoon Scotch Distrib.*, 480 F. 2d at 1055.

5 The minimal relevance required to enforce these investigative subpoenas is easily
6 satisfied here. The SEC is investigating whether there have been violations of the
7 federal securities laws when parties disseminated false or misleading public statements
8 in Cherubim’s press releases and in an SEC filing about St. James Trust. These
9 subpoenas seek the basic information necessary to determine whether there was fraud
10 and, if so, who was involved in it and how it was conducted. Given Cherubim’s
11 potentially false or misleading statements concerning its financing of St. James Trust’s
12 ICO, the SEC June 2018 subpoenas meet the relevance requirement to its lawful
13 investigation.

14 Third, the documents sought are not in the SEC’s possession. Despite several
15 requests by SEC counsel, the Respondents have produced no documents. St. James
16 Trust and James have possession of their communications with specific individuals or
17 entities, their documents regarding their business operations, and any money or asset
18 transactions concerning Cherubim.

19 Fourth, the SEC has satisfied all of the administrative prerequisites. The federal
20 securities laws authorize the SEC to require the production of any books, papers, or
21 other documents which the SEC deems relevant or material to its investigation. *See* 15
22 U.S.C. § 77s(c), 15 U.S.C. § 78u(b). Here, the June 2018 subpoenas were issued
23 pursuant to a Formal Order and signed by an SEC attorney who is specifically
24 designated by the Formal Order to issue subpoenas. *See* 17 C.F.R. § 200.30-4(a)(1).
25 The SEC delivered multiple copies of the June 2018 subpoenas to the Respondents—
26 once by UPS, another by email, and a third time by process server. Yet the
27 Respondents failed to respond.
28

1 **C. Respondents Have No Valid Basis for Their Refusal to Comply with**
2 **the June 2018 Subpoenas**

3 Because the SEC has established that its subpoenas were lawfully issued, the
4 burden shifts to Respondents to establish an affirmative defense for failing to comply
5 with the subpoenas. The Respondents bear a heavy burden when “the agency inquiry
6 is authorized by law and the materials sought are relevant to the inquiry.” *Brigadoon*
7 *Scotch Distrib.*, 480 F.2d at 1056; *see also United States v. Jose*, 131 F.3d at 1328
8 (after *prima facie* case made to enforce investigative summons, heavy burden fell on
9 respondent); *Blackfoot Bituminous*, 622 F.2d at 515 (respondent has burden of
10 showing a defense to enforcement).

11 The Respondents will not be able to meet this high burden. There is simply no
12 justifiable excuse for not responding in any way to the SEC or its subpoenas, other
13 than returning one copy of the subpoena package to the SEC because Respondent
14 “REFUSED” the subpoena.

15 **IV. CONCLUSION**

16 Accordingly, the SEC requests that the Court grant this application and issue:
17 (i) an order, in the form submitted, requiring Respondents to show cause for why they
18 should not be ordered to comply with the subpoenas; (ii) if Respondents fail to show
19 adequate cause to support their refusal to comply with the subpoenas, an order
20 requiring them to immediately comply with the subpoenas to produce all responsive
21 documents; and (iii) such other and further relief as may be necessary and appropriate
22 to achieve compliance with the subpoenas directed to Respondents.

23
24 Dated: October 5, 2018

Respectfully submitted,

25 /s/ Manuel Vazquez

26 John W. Berry
27 Manuel Vazquez
28 *Attorneys for Plaintiff*
Securities and Exchange Commission