

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

---

<b>MARK W. RASMUSSEN, RECEIVER</b>	§	
<b>FOR ARISEBANK,</b>	§	
	§	
<b>Plaintiff,</b>	§	
	§	
<b>vs.</b>	§	
	§	
<b>RICHARD SMITH, JR., and</b>	§	<b>Civil Action No. 3:18-cv-1034</b>
<b>KURT F. MATTHEW, JR.,</b>	§	
	§	
<b>Defendants.</b>	§	
	§	

---

**COMPLAINT**

Mark W. Rasmussen, in his capacity as Court-appointed receiver (“Receiver”) for the estates of Defendant AriseBank and its affiliates (collectively, the “Receivership Entities”), files this Complaint against Richard Smith, Jr., and Kurt F. Matthew, Jr. (collectively, the “Defendants”) and alleges the following:

**SUMMARY**

1. On January 25, 2018, the Securities and Exchange Commission (the “SEC”) commenced a lawsuit in this Court against AriseBank, Jared Rice, Sr., and Stanley Ford (collectively, the “AriseBank Defendants”), captioned *SEC v. AriseBank, et al.*, Civil Action No. 3-18CV-186-M (N.D. Tex.) (the “SEC Action”). On the same date, this Court entered an order freezing all assets, tangible and intangible, that are owned, controlled, or possessed by AriseBank and its affiliates (the “Receivership Assets”) and appointing Mark W. Rasmussen

as Receiver for the Receivership Entities (the “Order Appointing Receiver”). A true and correct copy of the Order Appointing Receiver is attached hereto as Exhibit A.

2. The Order Appointing Receiver authorizes the Receiver “[t]o use reasonable efforts to determine the nature, location, and value of all property interests of the Receivership Entities, including, but not limited to, monies, funds, digital currencies, virtual currencies, cryptocurrencies, securities, . . . and other assets . . . .” Order Appointing Receiver at 3. Further, the Order Appointing Receiver authorizes the Receiver “to sue for and collect, recover, receive and take into possession from third parties all Receivership Property and records relevant thereto[.]” *Id.* Thus, the Order Appointing Receiver authorizes the Receiver to take control of all assets owned by or traceable to the Receivership Entities but fraudulently transferred to or converted by other parties, or otherwise wrongfully in the possession of other parties.

3. To fulfill this mandate, the Receiver files this Complaint to recover the value of 95,000 PIVX coins fraudulently transferred by Rice on behalf of the Receivership Entities to Smith and then, in part, by Smith to Matthew. Rice made the PIVX transfer on or about January 10, 2018. On that date, according to the cryptocurrency market aggregator coinmarketcap.com, the 95,000 PIVX coins were valued at approximately USD \$1.3 million. After converting some of the PIVX coins to cash, Smith then sent at least USD \$123,000 derived from the original PIVX coins by wire transfer to Matthew.

4. The funds transferred to the Defendants by Rice constitute assets contributed by investors in AriseBank. Neither Defendant gave any value at all, much less reasonably equivalent value, to the Receivership Entities in exchange for the funds they received. The Defendants have therefore been unjustly enriched and must return the value of the funds

transferred to the Receivership Entities. Alternatively, the Defendants have converted these funds, or the transfer of these funds to Defendants are fraudulent transfers, and must return the value of the funds transferred to the Receivership Entities.

### **DEFENDANTS**

5. Richard Smith, Jr., is a resident of Syracuse, New York.
6. Kurt F. Matthew, Jr., is a resident of Palm Beach, Florida.

### **JURISDICTION**

7. This Court has subject matter jurisdiction to adjudicate the Receiver's claims against the Defendants pursuant to 28 U.S.C. §§ 1331 and 1367. This Court has original jurisdiction over this case and controversy pursuant to 28 U.S.C. § 1331 because this action is related to and arises out of alleged violations of Sections 5(a), 5(c), and 17(a)(2) of the Securities Act of 1933 [15 U.S.C. §§ 77e(a), 77e(c), and 77q(a)(2)], and Section 10(b) of the Securities Exchange Act of 1934 as amended and Rule 10b-5 thereunder [15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5(b)]. This Court has subject matter jurisdiction over the matters raised by this suit pursuant to 28 U.S.C. § 1367 because this suit is supplemental to the SEC action. Moreover, this Court assumed exclusive jurisdiction to adjudicate claims regarding the Receivership Assets in the Order Appointing Receiver. *See* Order Appointing Receiver at 1.

8. This Court has personal jurisdiction over the Defendants pursuant to 28 U.S.C. §§ 754 and 1692. The territorial jurisdiction of this Court extends to the district courts for the Northern District of New York and Southern District of Florida (the locations of the assets held by Smith and Matthew, respectively) by virtue of the Receiver having complied with the requirements of 28 U.S.C. § 754. Specifically, in compliance with 28 U.S.C. § 754, on April

9, 2018, which was less than ten days after the Receiver was reappointed, the Receiver filed copies of the Complaint in the SEC Action and the Order Appointing Receiver with the clerks of the District Courts for the Northern District of New York and Southern District of Florida. Such timely filing of the pleadings with the district courts of New York and Florida pursuant to 28 U.S.C. § 754 gives this Court *in rem* and *in personam* jurisdiction over the Defendants, which are located in those districts. *See* 28 U.S.C. § 1692.

### **VENUE**

9. Venue is proper in this Court pursuant to the Order Appointing Receiver in which this Court took exclusive jurisdiction of the Receivership Assets and authorized the Receiver, as the Court's agent, to take and have possession of the Receivership Assets. *See* 28 U.S.C. § 754.

### **FACTUAL ALLEGATIONS**

10. The SEC's Amended Complaint in the SEC Action alleges that the AriseBank Defendants participated in a scheme to defraud investors in violation of federal securities laws. According to the SEC, Rice and Ford allegedly engaged in this fraudulent scheme through AriseBank, purportedly the world's first "decentralized" bank offering various consumer-facing banking products and services and supporting hundreds of different cryptocurrencies as well as traditional fiat currencies. As early as November 2017, the AriseBank Defendants began raising money through an Initial Coin Offering ("ICO") of AriseBank's own cryptocurrency called AriseCoin. According to the SEC, the ICO was an illegal offering of securities because no registration statement was filed or in effect with the SEC and there is no applicable exemption from the registration requirement.

11. As part of the offering, the SEC alleges that the AriseBank Defendants repeatedly made materially false statements and omissions to induce investors to participate in the ICO. Specifically, the SEC has alleged that the AriseBank Defendants made false statements regarding the acquisition by AriseBank of a hundred-year-old, FDIC-insured bank. For example, on January 18, 2018, AriseBank issued a press release declaring it had completed the first-ever acquisition of a traditional bank by a cryptocurrency platform. The press release stated that AriseBank had completed the bank acquisition and now held 100 percent of the equity in KFMC Bank Holding Company (“KFMC”), a commercial bank. AriseBank advertised the purported acquisition as a way for it to comply with industry regulation and allow it to offer its customers FDIC-insured accounts and transactions. In truth, the SEC alleges, the FDIC has no record that either AriseBank or KFMC is FDIC-insured, nor does it have a record of any application for the change in ownership of an FDIC-insured bank or bank holding company involving AriseBank, KFMC, Rice, or Ford.

12. In early December 2017, Rice and Smith began discussing the possibility of Rice acquiring KFMC through a connection of Smith’s. That connection was Matthew, who purportedly owned a bank that he was trying to sell. In reality, as Matthew now admits, he did not own a bank named KFMC nor any other bank; indeed, Matthew has never owned any bank. Nevertheless, Matthew told Smith that he owned a bank that he wanted to sell and the two began discussions about a sale.

13. On or about December 13, 2017, Rice and Smith signed a term sheet outlining preliminary terms and conditions of the bank acquisition. The term sheet indicated that the sale had to be completed in 30 calendar days unless the buyer and seller mutually agreed to an extension. The parties never entered into any such extension.

14. On or about January 10, 2018, Rice transferred 95,000 PIVX coins, a cryptocurrency, to Smith as a down payment on the bank. These funds were assets that were contributed by the investors in AriseBank or its affiliates, and are traceable to the Receivership Entities.

15. Smith subsequently converted a portion of the 95,000 PIVX coins into other cryptocurrencies and cash. Smith then made at least the following transfers to Matthew: USD \$25,000 on January 10, 2018 and USD \$75,000 on January 16, 2018, which Matthew acknowledged were paid “in furtherance of [Smith’s] group’s intention to acquire . . . one of [Matthew’s] US commercial banks . . . for €10,000,000 (ten million EUROS) beginning with your down-payment of 1%.” Smith later sent Matthew an additional USD \$23,000 for a total down payment of USD \$123,000.

16. Rice and AriseBank never completed payment of the purported purchase price of the banks to Smith and/or Matthew, and the purported bank sale transaction never took place. After his appointment, the Receiver provided Smith and Matthew with a copy of the Order Appointing Receiver and notified them that the transaction would not and could not be completed. The Receiver also requested that Smith and Matthew return all funds derived from the Receivership Entities. Neither Defendant has returned any funds.

### **CLAIMS FOR RELIEF**

#### **FIRST CLAIM FOR RELIEF Unjust Enrichment**

17. The Receiver alleges and hereby incorporates by reference each allegation made in Paragraphs 1 through 16 of this Complaint as if each were separately set forth herein.

18. The Defendants have each been unjustly enriched by the funds each received from the Receivership Entities.

19. The funds were transferred by Rice to Smith as a down payment for the bank. There was no understanding or agreement that Smith would have the right to retain the funds in the event the transaction was not consummated. Because the transaction was not consummated, Smith has no right to the down payment, and doing so would be unconscionable. Accordingly, Smith would be unjustly enriched were he permitted to retain the funds.

20. Similarly, Rice caused the funds to be transferred from Smith to Matthew as a down payment for the bank. There was no understanding or agreement that Matthew would have the right to retain the funds in the event the transaction was not consummated. Because the transaction was not consummated, Matthew has no right to the down payment, and doing so would be unconscionable. Accordingly, Matthew would be unjustly enriched were he permitted to retain the funds.

21. Each transfer unjustly enriched the Defendants at the expense of the Receivership Entities, and ultimately, the defrauded investors, and Defendants should make restitution for those funds they received unjustly.

## **SECOND CLAIM FOR RELIEF**

### **Conversion**

22. The Receiver alleges and hereby incorporates by reference each allegation made in Paragraphs 1 through 16 of this Complaint as if each were separately set forth herein.

23. On January 25, 2018, pursuant to this Court's Order Appointing Receiver, Plaintiff Mark W. Rasmussen was given exclusive custody and control of the Receivership Assets, including the funds transferred to Smith and Matthew.

24. Smith and Matthew have unlawfully and without authority assumed dominion and control over certain Receivership Assets to the exclusion of and inconsistent with

Plaintiff's rights in such property. More specifically, Rice, himself or through one or more of the Receivership Entities, transferred 95,000 PIVX coins valued at the time at approximately USD \$1.3 million in Receivership Assets to Smith and, in part, by Smith to Matthew, or one or more of their related entities. The Receiver has demanded that Smith and Matthew turn over the Receivership Assets pursuant to this Court's Order Appointing Receiver. However, Defendants have failed and refused to return any monies to the Receiver.

25. The value of the Receivership Assets at the time and place of the conversion is approximately USD \$1.3 million, for which sum Plaintiff sues.

26. Plaintiff is also entitled to interest on the sum from the date of conversion, at the prejudgment rate of interest.

### **THIRD CLAIM FOR RELIEF Fraudulent Transfer**

27. The Receiver alleges and hereby incorporates by reference each allegation made in Paragraphs 1 through 16 of this Complaint as if each were separately set forth herein.

28. Beginning in December 2017 and continuing through at least January 2018, Rice, himself or through one or more of the Receivership Entities, transferred at least 95,000 PIVX coins to Smith. These PIVX coins were and are Receivership Assets. In addition, Smith then transferred at least USD \$123,000 in funds derived from the 95,000 PIVX coins to Matthew. Each of these transfers was fraudulent pursuant to Texas Business and Commerce Code Act § 24.005<sup>1</sup> and was made at the direction and under the control of Rice. Each of the transfers was made with actual intent to hinder, delay, or defraud the creditors of

---

<sup>1</sup> Texas has adopted a form of the Uniform Fraudulent Transfers Act. *See* Tex. Bus. & Comm. Code § 24.001, *et seq.*

the Receivership Entities. Alternatively, each of the transfers was made without reasonably equivalent value in return from Smith or Matthew, and Rice, himself or through one or more of the Receivership Entities, was engaged or was about to engage in a business or transaction for which the remaining assets were unreasonably small in relation to the business or transaction, or intended to incur, or believed or reasonably should have been believed that he would incur, debts beyond his ability to pay as they became due.

29. Accordingly, the Receiver requests the Court set aside each of the transfers from Rice, or any other Receivership Entity to Smith and Matthew and command that such funds be returned to the Receiver.

30. The Receiver is also entitled to costs and reasonable attorneys' fees pursuant to Texas Business and Commerce Code § 24.013.

### **RELIEF REQUESTED**

For these reasons, Receiver Mark. W. Rasmussen respectfully requests the following:

31. Judgment against Richard Smith, Jr. in the amount of at least USD \$1.3 million and judgment against Kurt F. Matthew, Jr. in the amount of at least USD \$123,000 based on Defendants' unjust enrichment;

32. In the alternative, judgment against Richard Smith, Jr. in the amount of at least USD \$1.3 million and judgment against Kurt F. Matthew, Jr. in the amount of at least USD \$123,000 based on Defendants' conversion of such funds;

33. In the alternative, that the transfers of Receivership Assets from Jared Rice, Sr. or any other Receivership Entity to Richard Smith, Jr. and Kurt F. Matthew, Jr. be declared fraudulent and void pursuant to Texas Business and Commerce Code § 24.005, and that the

USD \$1.3 million transferred to Smith, including but not limited to USD \$123,000 transferred to Matthew, be set aside and returned to the Receiver;

34. Prejudgment interest;
35. Post-judgment interest as provided by law from the date of judgment until paid;
36. Attorneys' fees;
37. Costs of suit; and
38. Such other relief as this Court may deem just, proper, and equitable.

Dated: April 24, 2018

Respectfully submitted,

*/s/ James A. Cox*

---

James A. Cox  
Texas Bar No. 04946560  
jacox@jonesday.com  
Richard J. Johnson  
Texas Bar No. 24088799  
rjohnson@jonesday.com  
Jones Day  
2727 North Harwood Street  
Dallas, TX 75201  
Telephone: (214) 220-3939  
Facsimile: (214) 969-5100

COUNSEL FOR COURT-APPOINTED  
RECEIVER

# EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

SECURITIES AND EXCHANGE COMMISSION,	§	
	§	
Plaintiff,	§	
	§	
vs.	§	Civil Action No. 3:18-cv-0186-M
	§	
ARISEBANK,	§	
JARED RICE SR., and	§	FILED UNDER SEAL
STANLEY FORD,	§	
	§	
Defendants.	§	
	§	

**ORDER APPOINTING RECEIVER**

**WHEREAS** this matter has come before this Court upon motion of the Plaintiff U.S. Securities and Exchange Commission (“SEC” or “Plaintiff”) to appoint a receiver in the above-captioned action; and,

**WHEREAS** the Court finds that, based on the record in these proceedings, the appointment of a receiver in this action is necessary and appropriate for the purposes of marshaling and preserving all assets, tangible and intangible, that are owned, controlled, or possessed by Defendant AriseBank (“Receivership Assets”)<sup>1</sup>; and,

**WHEREAS** this Court has subject matter jurisdiction over this action, and venue properly lies in this district.

**NOW THEREFORE, IT IS HEREBY ORDERED AND FOUND AS FOLLOWS:**

1. This Court hereby takes exclusive jurisdiction and possession of the assets, of whatever kind and wherever situated, of Defendant AriseBank and its affiliates (collectively, the

---

<sup>1</sup> As noted below, the receivership encompasses AriseBank and its affiliates.

“Receivership Entities”).

2. Until further Order of this Court, **Mark W. Rasmussen** is hereby appointed to serve without bond as receiver (the “Receiver”) for the estates of the Receivership Entities.

### **I. Asset Freeze**

3. Except as otherwise specified herein, all Receivership Assets are frozen until further order of this Court. Accordingly, all persons and entities with direct or indirect control over any Receivership Assets, other than the Receiver, are hereby restrained and enjoined from directly or indirectly transferring, setting off, receiving, changing, selling, pledging, assigning, liquidating or otherwise disposing of or withdrawing such assets. All persons or entities with direct or indirect control over any Receivership Assets are ordered to relinquish such control to the Receiver. This freeze shall include, but not be limited to, Receivership Assets that are on deposit with or stored at or in financial (or other) institutions such as banks, brokerage firms, mutual funds, coin exchanges, virtual currency accounts, and virtual currency wallets of any type.

### **II. General Powers and Duties of Receiver**

4. The Receiver shall have all powers, authorities, rights, and privileges heretofore possessed by the officers, directors, managers, and general and limited partners of the Receivership Entities under applicable state and federal law, by the governing charters, by-laws, articles and/or agreements in addition to all powers and authority of a receiver at equity, and all powers conferred upon a receiver by the provisions of 28 U.S.C. §§ 754, 959 and 1692, and FED. R. Civ. P. 66.

5. The powers of any general partners, trustees, directors, officers, managers, employees, investment advisors, accountants, attorneys, and other agents of the Receivership Entities are hereby suspended. Such persons and entities shall have no authority with respect to

the Receivership Entities' operations or assets, except to the extent as may hereafter be expressly granted by the Receiver. The Receiver shall assume and control the operation of the Receivership Entities and shall pursue and preserve all of their claims.

6. No person holding or claiming any position of any sort with any of the Receivership Entities shall possess any authority to act by or on behalf of any of the Receivership Entities, unless the Court otherwise orders.

7. Subject to the specific provisions in Sections III through XIV, below, the Receiver shall have the following general powers and duties:

- A. To dismiss all agents, representatives, and employees of the Receivership Entities;
- B. To use reasonable efforts to determine the nature, location, and value of all property interests of the Receivership Entities, including, but not limited to, monies, funds, digital currencies, virtual currencies, cryptocurrencies, securities, credits, effects, goods, chattels, lands, premises, leases, claims, rights, and other assets, together with all rents, profits, dividends, interest or other income attributable thereto, of whatever kind, which the Receivership Entities own, possess, have a beneficial interest in, or control directly or indirectly (“Receivership Property” or, collectively, the “Receivership Estates”);
- C. To take custody, control, and possession of all Receivership Property and records relevant thereto from the Receivership Entities; to sue for and collect, recover, receive and take into possession from third parties all Receivership Property and records relevant thereto;
- D. To manage, control, operate, and maintain the Receivership Estates and hold in the Receiver’s possession, custody and control all Receivership Property, pending further Order of this Court;
- E. To use Receivership Property for the benefit of the Receivership Estates, making payments and disbursements and incurring expenses as may be necessary or advisable in the ordinary course of business in discharging the duties of the Receiver;
- F. To take any action that, prior to the entry of this Order, could have been taken by the officers, directors, partners, managers, trustees and agents of the Receivership Entities;
- G. To engage and employ persons in the Receiver’s discretion to assist the

Receiver in carrying out the duties and responsibilities of the Receiver hereunder, including, but not limited to, accountants, attorneys, securities traders, registered representatives, financial or business advisers, liquidating agents, real estate agents, forensic experts, brokers, traders or auctioneers;

- H. To take such action as necessary and appropriate for the preservation of Receivership Property or to prevent the dissipation or concealment of Receivership Property;
- I. To issue subpoenas for documents and testimony consistent with the Federal Rules of Civil Procedure;
- J. To bring such legal actions based on law or equity in any state, federal, or foreign court as the Receiver deems necessary or appropriate in discharging the duties of the Receiver;
- K. To pursue, resist, and defend all suits, actions, claims and demands which may now be pending or which may be brought by or asserted against the Receivership Estates; and,
- L. To take such other action as may be approved by this Court.

### **III. Access to Information**

8. The Receivership Entities and the past and/or present officers, directors, agents, managers, general and limited partners, trustees, attorneys, accountants and employees of the Receivership Entities, and any other persons who have acted for the Receivership Entities, are hereby ordered and directed to preserve and turn over to the Receiver forthwith all paper and electronic information of, and/or relating to, the Receivership Entities and/or all Receivership Property; such information shall include but not be limited to books, records, documents, accounts, account passwords, encryption passwords, computer passwords, device PINs and passwords, cryptographic keys, and all other instruments, data, and papers.

9. Within seven (7) days of the entry of this Order, the Receivership Entities shall file with the Court and serve upon the Receiver and the SEC a sworn statement, listing: (a) the identity, location, and estimated value of all Receivership Property; (b) all employees (and job titles thereof), other personnel, attorneys, accountants and any other agents or contractors of the

Receivership Entities, who have acted for the Receivership Entities in the last two years; and, (c) the names, addresses and amounts of claims of all known creditors of the Receivership Entities.

10. Within thirty (30) days of the entry of this Order, the Receivership Entities shall file with the Court and serve upon the Receiver and the SEC a sworn statement and accounting, with complete documentation, covering the period from January 1, 2017 to the present:

- A. Of all Receivership Property, wherever located, held by or in the name of the Receivership Entities, or in which any of them, directly or indirectly, has or had any beneficial interest, or over which any of them maintained or maintains and/or exercised or exercises control, including, but not limited to: (a) all securities, investments, funds, digital currencies, virtual currencies, cryptocurrencies, real estate, automobiles, jewelry and other assets, stating the location of each; and (b) any and all accounts, including all funds held in such accounts, with any bank, brokerage, coin exchanges, or financial (or other) institution held by, in the name of, or for the benefit of any of them, directly or indirectly, or over which any of them maintained or maintains and/or exercised or exercises any direct or indirect control, or in which any of them had or has a direct or indirect beneficial interest, including the account statements from each bank, brokerage, coin exchange, or financial (or other) institution;
- B. Identifying every account at every bank, brokerage, coin exchange, or financial institution, depository (or other) institution: (a) over which Receivership Entities have signatory authority; and (b) opened by, in the name of, or for the benefit of, or used by, the Receivership Entities;
- C. Identifying all credit, bank, charge, debit or other deferred payment card issued to or used by each Receivership Entity, including, but not limited to, the issuing institution, the card or account number(s), all persons or entities to which a card was issued and/or with authority to use a card, the balance of each account and/or card as of the most recent billing statement, and all statements for the last twelve months;
- D. Of all assets received by any of them from any person or entity, including the value, location, and disposition of any assets so received;
- E. Of all funds received by the Receivership Entities, and each of them, in any way related, directly or indirectly, to the conduct alleged in the SEC's Complaint. The submission must clearly identify, among other things, all investors, the investments they purchased, the date and amount of their investments, and the current location of such funds;
- G. Of all expenditures exceeding \$1,000 made by any of them, including those made on their behalf by any person or entity; and

H. Of all transfers of assets made by any of them.

11. Within thirty (30) days of the entry of this Order, the Receivership Entities shall provide to the Receiver and the SEC copies of the Receivership Entities' federal income tax returns for 2017, whether in draft or final form, with all relevant and necessary underlying documentation.

12. The Receivership Entities' past and/or present officers, directors, agents, attorneys, managers, shareholders, employees, accountants, debtors, creditors, managers and general and limited partners, and other persons or entities with a significant role for any of the Receivership Entities shall answer under oath to the Receiver all questions which the Receiver may put to them and produce all documents as required by the Receiver regarding the business of the Receivership Entities, or any other matter relevant to the operation or administration of the receivership or the collection of funds due to the Receivership Entities. Notwithstanding the foregoing, this Order shall not prevent the good faith assertion of any legitimate privilege or exemption from discovery. In the event that the Receiver deems it necessary to require the appearance of the aforementioned persons or entities, the Receiver shall make its discovery requests in accordance with the Federal Rules of Civil Procedure.

13. The Receivership Entities are required to assist the Receiver in fulfilling the Receiver's duties and obligations. As such, they must respond promptly and truthfully to all requests for information and documents from the Receiver.

#### **IV. Access to Books, Records, and Accounts**

14. The Receiver is authorized to take immediate possession of all assets, bank accounts or other financial accounts, books and records and all other documents or instruments relating to the Receivership Entities. All persons and entities having control, custody, or

possession of any Receivership Property are hereby directed to turn such property over to the Receiver.

15. The Receivership Entities, as well as their agents, servants, employees, attorneys, any persons acting for or on behalf of the Receivership Entities, and any persons receiving notice of this Order by personal service, facsimile transmission or otherwise, having possession of the property, business, books, records, accounts, account passwords, encryption passwords, computer passwords, device PINs and passwords, cryptographic keys, and all other instruments, data, papers or assets of the Receivership Entities are hereby directed to deliver the same to the Receiver, the Receiver's agents and/or employees.

16. All banks, brokerage firms, financial (or other) institutions, and other persons or entities which have possession, custody or control of any assets or funds held by, in the name of, or for the benefit of, directly or indirectly, the Receivership Entities that receive actual notice of this Order by personal service, facsimile transmission, or otherwise shall:

- A. Not liquidate, transfer, sell, convey, or otherwise transfer any assets, securities, funds, or accounts in the name of or for the benefit of the Receivership Entities except upon instructions from the Receiver;
- B. Not exercise any form of set-off, alleged set-off, lien, or any form of self-help whatsoever, or refuse to transfer any funds or assets to the Receiver's control without the permission of this Court;
- C. Within five (5) business days of receipt of that notice, file with the Court and serve on the Receiver and counsel for the SEC a statement, under oath, setting forth, with respect to each such account or other asset, the balance in the account or description of the assets as of the close of business on the date of receipt of the notice; and
- D. Cooperate expeditiously in providing information and transferring funds, assets and accounts to the Receiver or at the direction of the Receiver.

#### **V. Access to Real and Personal Property**

17. The Receiver is authorized to take immediate possession of all personal property of the Receivership Entities, wherever located, including, but not limited to, electronically stored

information, computers, laptops, hard drives, external storage drives, and any other such memory, media or electronic storage devices, books, papers, data processing records, evidence of indebtedness, bank records and accounts, savings records and accounts, brokerage records and accounts, certificates of deposit, stocks, bonds, debentures, and other securities and investments, contracts, mortgages, furniture, office supplies and equipment.

18. The Receiver is authorized to take immediate possession of all real property of the Receivership Entities, wherever located, including, but not limited to, all ownership and leasehold interests and fixtures. Upon receiving actual notice of this Order by personal service, facsimile transmission or otherwise, all persons other than law enforcement officials acting within the course and scope of their official duties, are (without the express written permission of the Receiver) prohibited from: (a) entering such premises; (b) removing anything from such premises; or, (c) destroying, concealing or erasing anything on such premises.

19. In order to execute the express and implied terms of this Order, the Receiver is authorized to change door locks to the premises described above. The Receiver shall have exclusive control of the keys. The Receivership Entities, or any other person acting or purporting to act on their behalf, are ordered not to change the locks in any manner, nor to have duplicate keys made, nor shall they have keys in their possession during the term of the receivership.

20. The Receiver is authorized to open all mail directed to or received by or at the offices or post office boxes of the Receivership Entities, and to inspect all mail opened prior to the entry of this Order, to determine whether items or information therein fall within the mandates of this Order.

21. Upon the request of the Receiver, the United States Marshal Service, in any judicial district, is hereby ordered to assist the Receiver in carrying out the Receiver's duties to

take possession, custody, and control of, or identify the location of, any assets, records or other materials belonging to the Receivership Estate, to the extent permitted by law.

#### **VI. Notice to Third Parties**

22. The Receiver shall promptly give notice of the Receiver's appointment to all known officers, directors, agents, employees, shareholders, creditors, debtors, managers and general and limited partners of the Receivership Entities, as the Receiver deems necessary or advisable to effectuate the operation of the receivership.

23. All persons and entities owing any obligation, debt, or distribution with respect to an ownership interest to any Receivership Entity shall, until further ordered by this Court, pay all such obligations in accordance with the terms thereof to the Receiver and its receipt for such payments shall have the same force and effect as if the Receivership Entity had received such payment.

24. In furtherance of the Receiver's responsibilities in this matter, the Receiver is authorized to communicate with, and/or serve this Order upon, any person, entity or government office that he deems appropriate to inform them of the status of this matter and/or the financial condition of the Receivership Estates. All government offices that maintain public files of security interests in real and personal property shall, consistent with such office's applicable procedures, record this Order upon the request of the Receiver or the SEC.

25. The Receiver is authorized to instruct the United States Postmaster to hold and/or reroute mail which is related, directly or indirectly, to the business, operations or activities of any of the Receivership Entities (the "Receiver's Mail"), including all mail addressed to, or for the benefit of, the Receivership Entities. The Postmaster is not to comply with, and shall immediately report to the Receiver, any change of address or other instruction given by anyone other than the Receiver concerning the Receiver's Mail. The Receivership Entities shall not open

any of the Receiver's Mail and shall immediately turn over such mail, regardless of when received, to the Receiver. All personal mail of any individual Receivership Entity, and/or any mail appearing to contain privileged information, and/or any mail not falling within the mandate of the Receiver, shall be released to the named addressee by the Receiver. The foregoing instructions shall apply to any proprietor, whether individual or entity, of any private mailbox, depository, business or service, or mail courier or delivery service, hired, rented, or used by the Receivership Entities. The Receivership Entities shall not open a new mailbox, or take any steps or make any arrangements to receive mail in contravention of this Order, whether through the U.S. mail, a private mail depository or courier service.

26. Subject to payment for services provided, any entity furnishing water, electric, telephone, sewage, garbage or trash removal services to the Receivership Entities shall maintain such service and transfer any such accounts to the Receiver unless instructed to the contrary by the Receiver.

#### **VII. Injunction Against Interference with Receiver**

27. The Receivership Entities and all persons receiving notice of this Order by personal service, facsimile, email, or otherwise, are hereby restrained and enjoined from directly or indirectly taking any action or causing any action to be taken, without the express written agreement of the Receiver, which would:

- A. Interfere with the Receiver's efforts to take control, possession, or management of any Receivership Property; such prohibited actions include, but are not limited to, using self-help or executing or issuing or causing the execution or issuance of any court attachment, subpoena, replevin, execution, or other process for the purpose of impounding or taking possession of or interfering with or creating or enforcing a lien upon any Receivership Property;
- B. Hinder, obstruct or otherwise interfere with the Receiver in the performance of the Receiver's duties; such prohibited actions include, but are not limited to, concealing, destroying or altering records or information;

- C. Dissipate or otherwise diminish the value of any Receivership Property; such prohibited actions include, but are not limited to, releasing claims or disposing, transferring, exchanging, assigning or in any way conveying any Receivership Property, enforcing judgments, assessments or claims against any Receivership Property or any Receivership Entity, attempting to modify, cancel, terminate, call, extinguish, revoke or accelerate (the due date), of any lease, loan, mortgage, indebtedness, security agreement or other agreement executed by any Receivership Entity or which otherwise affects any Receivership Property; or,
- D. Interfere with or harass the Receiver, or interfere in any manner with the exclusive jurisdiction of this Court over the Receivership Estates.

28. The Receivership Entities shall cooperate with and assist the Receiver in the performance of the Receiver's duties.

29. The Receiver shall promptly notify the Court and SEC counsel of any failure or apparent failure of any person or entity to comply in any way with the terms of this Order.

#### **VIII. Stay of Litigation**

30. As set forth in detail below, the following proceedings, excluding the instant proceeding and all law enforcement or regulatory actions and actions of the SEC related to the above-captioned enforcement action, are stayed until further Order of this Court:

All civil legal proceedings of any nature, including, but not limited to, bankruptcy proceedings, arbitration proceedings, foreclosure actions, default proceedings, or other actions of any nature involving: (a) the Receiver, in the Receiver's capacity as Receiver; (b) any Receivership Property, wherever located; (c) any of the Receivership Entities, including subsidiaries and partnerships; or, (d) any of the Receivership Entities' officers, directors, managers, agents, or general or limited partners sued for, or in connection with, any action taken by them while acting in such capacity (such proceedings are hereinafter referred to as "Ancillary Proceedings").

31. The parties to any and all Ancillary Proceedings are enjoined from commencing or continuing any such legal proceeding, or from taking any action, in connection with any such proceeding, including, but not limited to, the issuance or employment of process.

32. All Ancillary Proceedings are stayed in their entirety, and all Courts having any jurisdiction thereof are enjoined from taking or permitting any action until further Order of this

Court. Further, as to a cause of action accrued or accruing in favor of one or more of the Receivership Entities against a third person or party, any applicable statute of limitation is tolled during the period in which this injunction against commencement of legal proceedings is in effect as to that cause of action.

### **IX. Managing Assets**

33. For each of the Receivership Estates, the Receiver shall establish one or more custodial accounts at a federally insured bank to receive and hold all cash equivalent Receivership Property (the “Receivership Funds”).

34. The Receiver's deposit account shall be entitled “Receiver's Account, Estate of AriseBank” together with the name of the action.

35. The Receiver may also establish one or more virtual or digital wallets to hold all virtual currency, digital currency, or cryptocurrency that is Receivership Property.

36. The Receiver may, without further Order of this Court, transfer, compromise, or otherwise dispose of any Receivership Property, other than real estate, in the ordinary course of business, on terms and in the manner the Receiver deems most beneficial to the Receivership Estate, and with due regard to the realization of the true and proper value of such Receivership Property.

37. Subject to Paragraph 38, immediately below, the Receiver is authorized to locate, list for sale or lease, engage a broker for sale or lease, cause the sale or lease, and take all necessary and reasonable actions to cause the sale or lease of all real property in the Receivership Estates, either at public or private sale, on terms and in the manner the Receiver deems most beneficial to the Receivership Estate, and with due regard to the realization of the true and proper value of such real property.

38. Upon further Order of this Court, pursuant to such procedures as may be required

by this Court and additional authority such as 28 U.S.C. §§ 2001 and 2004, the Receiver will be authorized to sell, and transfer clear title to, all real property in the Receivership Estates.

39. The Receiver is authorized to take all actions to manage, maintain, and/or wind-down business operations of the Receivership Estates, including making legally required payments to creditors, employees, and agents of the Receivership Estates and communicating with vendors, investors, governmental and regulatory authorities, and others, as appropriate.

40. The Receiver shall take all necessary steps to enable the Receivership Funds to obtain and maintain the status of a taxable “Settlement Fund,” within the meaning of Section 468B of the Internal Revenue Code and of the regulations.

#### **X. Investigate and Prosecute Claims**

41. The Receiver is authorized, empowered, and directed to investigate, prosecute, defend, intervene in, or otherwise participate in, compromise, and/or adjust actions in any state, federal, or foreign court or proceeding of any kind as may in the Receiver’s discretion, and in consultation with SEC counsel, be advisable or proper to recover and/or conserve Receivership Property.

42. Subject to the Receiver’s obligation to expend receivership funds in a reasonable and cost-effective manner, the Receiver is authorized, empowered and directed to investigate the manner in which the financial and business affairs of the Receivership Entities were conducted and (after obtaining leave of this Court) to institute such actions and legal proceedings, for the benefit and on behalf of the Receivership Estate, as the Receiver deems necessary and appropriate; the Receiver may seek, among other legal and equitable relief, the imposition of constructive trusts, disgorgement of profits, asset turnover, avoidance of fraudulent transfers, rescission and restitution, collection of debts, and such other relief from this Court as may be necessary to enforce this Order. Where appropriate, the Receiver should provide prior notice to

Counsel for the SEC before commencing investigations and/or actions.

43. The Receiver hereby holds, and is therefore empowered to waive, all privileges, including the attorney-client privilege, held by all Receivership Entities.

44. The receiver has a continuing duty to ensure that there are no conflicts of interest between the Receiver, the Receiver's Retained Personnel (as that term is defined below), and the Receivership Estate.

## **XII. Bankruptcy Filing**

45. The Receiver may seek authorization of this Court to file voluntary petitions for relief under Title 11 of the United States Code (the "Bankruptcy Code") for the Receivership Entities. If a Receivership Entity is placed in bankruptcy proceedings, the Receiver may become, and may be empowered to operate each of the Receivership Estates as, a debtor in possession. In such a situation, the Receiver shall have all of the powers and duties as provided a debtor in possession under the Bankruptcy Code to the exclusion of any other person or entity. Pursuant to Paragraph 4 above, the Receiver is vested with management authority for all entity Receivership Entities and may therefore file and manage a Chapter 11 petition.

46. The provisions of Section VIII above bar any person or entity, other than the Receiver, from placing any of the Receivership Entities in bankruptcy proceedings.

## **XII. Liability of Receiver**

47. Until further Order of this Court, the Receiver shall not be required to post bond or give an undertaking of any type in connection with the Receiver's fiduciary obligations in this matter.

48. The Receiver and the Receiver's agents, acting within scope of such agency ("Retained Personnel") are entitled to rely on all outstanding rules of law and Orders of this Court and shall not be liable to anyone for their own good faith compliance with any order, rule,

law, judgment, or decree. In no event shall the Receiver or Retained Personnel be liable to anyone for their good faith compliance with their duties and responsibilities as Receiver or Retained Personnel.

49. This Court shall retain jurisdiction over any action filed against the Receiver or Retained Personnel based upon acts or omissions committed in their representative capacities.

50. In the event the Receiver decides to resign, the Receiver shall first give written notice to the SEC's counsel of record and the Court of its intention, and the resignation shall not be effective until the Court appoints a successor. The Receiver shall then follow such instructions as the Court may provide.

### **XIII. Recommendations and Reports**

51. The Receiver is authorized, empowered, and directed to develop a plan for the fair, reasonable, and efficient recovery and liquidation of all remaining, recovered, and recoverable Receivership Property (the "Liquidation Plan").

52. Within thirty (30) days of the entry date of this Order, the Receiver shall file a status report with the Court. The status report will include a summary of receivership activities to date. It will also include a proposed plan for administering the receivership going forward, as well as a proposed deadline by which the Receiver will submit the Liquidation Plan. The Receiver's fees—including all fees and costs for the Receiver and others retained to assist in the administration and liquidation of the Receivership estate—are capped at \$125,000 during the initial 30-day period. Further fee limitations, if any, will be set by the Court after the Receiver submits the status report.

53. Within thirty (30) days after the end of each calendar quarter, the Receiver shall file and serve a full report and accounting of the Receivership Estates (the "Quarterly Status Report"), reflecting (to the best of the Receiver's knowledge as of the period covered by the

report) the existence, value, and location of all Receivership Property, and of the extent of liabilities, both those claimed to exist by others and those the Receiver believes to be legal obligations of the Receivership Estates.

54. The Quarterly Status Report shall contain the following:
- A. A summary of the operations of the Receiver;
  - B. The amount of cash and any other currency on hand, the amount and nature of accrued administrative expenses, and the amount of unencumbered funds in the estate;
  - C. A schedule of all the Receiver's receipts and disbursements (attached as Exhibit A to the Quarterly Status Report), with one column for the quarterly period covered and a second column for the entire duration of the receivership;
  - D. A description of all known Receivership Property, including approximate or actual valuations, anticipated or proposed dispositions, and reasons for retaining assets where no disposition is intended;
  - E. A description of liquidated and unliquidated claims held by the Receivership Estate, including the need for forensic and/or investigatory resources; approximate valuations of claims; and anticipated or proposed methods of enforcing such claims (including likelihood of success in: (i) reducing the claims to judgment; and, (ii) collecting such judgments);
  - F. A list of all known creditors with their addresses and the amounts of their claims;
  - G. The status of Creditor Claims Proceedings, after such proceedings have been commenced; and,
  - H. The Receiver's recommendations for a continuation or discontinuation of the receivership and the reasons for the recommendations.

55. On the request of the SEC, the Receiver shall provide the SEC with any documentation that the SEC deems necessary to meet its reporting requirements, that is mandated by statute or Congress, or that is otherwise necessary to further the SEC's mission.

#### **XIV. Fees, Expenses, and Accountings**

56. Subject to Paragraphs 57 – 63 immediately below, the Receiver need not obtain Court approval prior to the disbursement of Receivership Funds for expenses in the ordinary course of the administration and operation of the receivership. Further, prior Court approval is not required for payments of applicable federal, state, or local taxes.

57. Subject to Paragraph 58 immediately below, the Receiver is authorized to solicit persons and entities (“Retained Personnel”) to assist the Receiver in carrying out the duties and responsibilities described in this Order. The Receiver shall not engage any Retained Personnel without first obtaining an Order of the Court authorizing such engagement.

58. The Receiver and Retained Personnel are entitled to reasonable compensation and expense reimbursement from the Receivership Estates as described in the “Billing Instructions for Receivers in Civil Actions Commenced by the U.S. Securities and Exchange Commission” (the “Billing Instructions”) agreed to by the Receiver. Such compensation shall require the prior approval of the Court.

59. Within forty-five (45) days after the end of each calendar quarter, the Receiver and Retained Personnel shall apply to the Court for compensation and expense reimbursement from the Receivership Estates (the “Quarterly Fee Applications”). At least thirty (30) days prior to filing each Quarterly Fee Application with the Court, the Receiver will serve upon counsel for the SEC a complete copy of the proposed Application, together with all exhibits and relevant billing information in a format to be provided by SEC staff.

60. All Quarterly Fee Applications will be interim and will be subject to cost benefit and final reviews at the close of the receivership. At the close of the receivership, the Receiver will file a final fee application, describing in detail the costs and benefits associated with all litigation and other actions pursued by the Receiver during the course of the receivership.

61. Quarterly Fee Applications may be subject to a holdback in the amount of 20% of the amount of fees and expenses for each application filed with the Court. The total amounts held back during the course of the receivership will be paid out at the discretion of the Court as part of the final fee application submitted at the close of the receivership.

62. Each Quarterly Fee Application shall:

- A. Comply with the terms of the Billing Instructions agreed to by the Receiver; and,
- B. Contain representations (in addition to the Certification required by the Billing Instructions) that: (i) the fees and expenses included therein were incurred in the best interests of the Receivership Estate; and, (ii) with the exception of the Billing Instructions, the Receiver has not entered into any agreement, written or oral, express or implied, with any person or entity concerning the amount of compensation paid or to be paid from the Receivership Estate, or any sharing thereof.

63. At the close of the Receivership, the Receiver shall submit a Final Accounting, in a format to be provided by SEC staff, as well as the Receiver's final application for compensation and expense reimbursement.

**IT IS SO ORDERED**, this 25th day of January, 2018.

  
BARBARA M. G. LYNN  
CHIEF JUDGE

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Mark W. Rasmussen, Receiver for AriseBank

(b) County of Residence of First Listed Plaintiff Dallas (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) James A. Cox, Esq., Jones Day, 2727 N. Harwood St., Dallas, TX 75201, (214) 220-3939

DEFENDANTS

Richard Smith, Jr., and Kurt F. Matthew, Jr.

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause: Unjust enrichment; fraudulent inducement; conversion

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE Barbara M.G. Lynn DOCKET NUMBER 3:18-CV-00186

DATE 04/24/2018 SIGNATURE OF ATTORNEY OF RECORD /s/ James A. Cox

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE