

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 9:15-cv-80446-JIC-COHN

SECURITIES AND EXCHANGE COMMISSION,)
)
Plaintiff,)
v.)
)
ECAREER HOLDINGS, INC., ECAREER, INC.,)
JOSEPH J. AZZATA, DEAN A. ESPOSITO,)
JOSEPH DEVITO, and FREDERICK J. BIRKS,)
)
Defendants,)
)
VIPER ASSET MANAGEMENT, LLC,)
ESPO CONSULTING, LLC,)
DJC CONSULTING, LLC,)
J & D MARKETING, LLC,)
GRYPHON ASSET MANAGEMENT, LLC, and)
CARLA AZZATA,)
Relief Defendants)
_____)

**PLAINTIFF SECURITIES AND EXCHANGE COMMISSION’S UNOPPOSED MOTION
FOR FINAL JUDGMENT AGAINST DEFENDANT FREDERICK J. BIRKS AND
RELIEF DEFENDANT GRYPHON ASSET MANAGEMENT, LLC,
AND NOTICE OF FILING CONSENT**

Plaintiff Securities and Exchange Commission hereby moves for an unopposed Final Judgment Against Defendant Frederick J. Birks and Relief Defendant Gryphon Asset Management, LLC. By the attached Consent of Defendant Birks and Relief Defendant Gryphon Asset Management to a Final Judgment of Permanent Injunction and Other Relief (“Consent”), they have consented to the entry of the attached proposed Order Granting the Commission’s Motion for Final Judgment against Birks and Relief Defendant Gryphon Asset Management (“Final Judgment”). Accordingly, the Commission requests that the Court enter the attached unopposed Final Judgment against Birks and Gryphon Asset Management.

Dated: February 29, 2016

Respectfully submitted,

By: s/ Christopher E. Martin
Christopher E. Martin
Senior Trial Counsel
SD Fla. Bar. No. A5500747
Direct Dial: (305) 982-6386
E-mail: martinc@sec.gov

Linda Schmidt
Senior Counsel
Florida Bar No. 0156337
Direct Dial: (305) 982-6315
E-mail: schmidtls@sec.gov

Attorneys for Plaintiff
SECURITIES AND EXCHANGE COMMISSION
801 Brickell Avenue, Suite 1800
Miami, Florida 33131
Telephone: (305) 982-6300
Facsimile: (305) 536-4154

CERTIFICATE OF SERVICE

I hereby certify that on February 29, 2016, the foregoing document was electronically filed with the Clerk of the Court using CM/ECF. I also certify that on February 29, 2016, the foregoing document and the notice of electronic filing was served via CM/ECF or mailed to the following non-CM/ECF participants:

Mark C. Perry, Esq.
Law Offices of Mark C. Perry, P.A.
2400 East Commercial Blvd., Suite 5111
Fort Lauderdale, FL 33308
Tel. (954) 351-2601
Fax (954) 351-2605
Email: mark@markperrylaw.com
Counsel for Joseph Azzata
Service by CM/ECF

Arthur C. Koski, Esq.
Law Offices of Arthur C. Koski, P.A.
101 N. Federal Highway, Ste. 602
Boca Raton, FL 33432
*Counsel for Dean Esposito, Joseph DeVito,
J & D Marketing LLC, Viper Asset Management LLC,
ESPO Consulting LLC, and DJC Consulting LLC
Service by CM/ECF*

James D. Sallah, Esq.
Sallah Astarita & Cox, LLC
One Boca Place
2255 Glades Road, Suite 300E
Boca Raton, FL 33434
*Counsel for Carla Azzata
Service by CM/ECF*

Frederick Birks, *pro se*
3685 Cassia Drive
Orlando, FL 32828
Service by U.S. Mail

Gryphon Asset Management, LLC
c/o Frederick Birks
3685 Cassia Drive
Orlando, FL 32828
Service by U.S. Mail

David Levine, Esq.
Levine Kellogg Lehman Scheider & Grossman LLP
201 South Biscayne Blvd., 22nd Floor, Miami Center
Miami, FL 33131
*Receiver for eCareer, Inc. and eCareer Holdings, Inc.
Service by CM/ECF*

s/ Christopher E. Martin
Christopher E. Martin, Esq.

EXHIBIT A

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 9:15-cv-80446-JIC-COHN

SECURITIES AND EXCHANGE COMMISSION,)
)
Plaintiff,)
v.)
)
ECAREER HOLDINGS, INC., ECAREER, INC.,)
JOSEPH J. AZZATA, DEAN A. ESPOSITO,)
JOSEPH DEVITO, and FREDERICK J. BIRKS,)
)
Defendants,)
)
VIPER ASSET MANAGEMENT, LLC,)
ESPO CONSULTING, LLC,)
DJC CONSULTING, LLC,)
J & D MARKETING, LLC,)
GRYPHON ASSET MANAGEMENT, LLC, and)
CARLA AZZATA,)
Relief Defendants)

**CONSENT OF DEFENDANT FREDERICK J. BIRKS AND RELIEF DEFENDANT
GRYPHON ASSET MANAGEMENT TO A FINAL JUDGMENT OF PERMANENT
INJUNCTION AND OTHER RELIEF**

1. Defendant Frederick J. Birks (“Birks”) and Relief Defendant Gryphon Asset Management, LLC (“Gryphon Asset Management”) hereby acknowledge having been served with the Complaint, enter a general appearance, and admit the jurisdiction of this Court over them and the subject matter of this action.

2. Defendant Birks and Relief Defendant Gryphon Asset Management state that they have entered into this Consent of Defendant Frederick J. Birks and Relief Defendant Gryphon Asset Management (“Consent”) voluntarily and that no promise, threat, or inducement of any kind, except as stated herein or as stated in the attached proposed Order of Final Judgment of Permanent Injunction and Other Relief against Defendant Frederick J. Birks and Relief Defendant Gryphon

Asset Management, LLC (“Final Judgment of Permanent Injunction”), has been made by the Plaintiff Securities and Exchange Commission (“Commission”), or any member, officer, agent, or representative thereof, to Defendant Birks or Relief Defendants Gryphon Asset Management, or to anyone acting for them or on their behalf, to induce them to enter into this Consent.

3. Defendant Birks and Relief Defendant Gryphon Asset Management, without admitting or denying the allegations of the Complaint, except that they are admitting the allegation as to jurisdiction and as otherwise provided herein, hereby voluntarily consent to the entry of this Final Judgment of Permanent Injunction, in the form annexed hereto and incorporated by reference herein.

4. Defendant Birks and Relief Defendant Gryphon Asset Management agree that the attached proposed Final Judgment of Permanent Injunction, in the form annexed hereto, may be presented by the Commission to the Court for signature and entry, without further notice.

5. Defendant Birks and Relief Defendant Gryphon Asset Management agree that this Consent shall be made a part of the proposed attached Final Judgment of Permanent Injunction, and further agree that this Court shall retain jurisdiction over them and over this matter for the purpose of enforcing the terms of the Final Judgment of Permanent Injunction.

6. Defendant Birks and Relief Defendant Gryphon Asset Management state that they understand that the Commission cannot and does not confer on them or on any person or entity, immunity from any criminal proceedings against them or other persons or entities for any actions related to or arising from this or any other matter.

7. Defendant Birks acknowledges that any civil penalty that he pays in this matter may be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. Regardless of whether any such Fair Fund distribution is made, the civil penalty shall be

treated as a penalty paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Defendant Birks agrees that he shall not, after offset or reduction of any award of compensatory damages in any Related Investor Action based on Defendant's payment of disgorgement in this action, argue that he is not entitled to, nor shall he further benefit by, offset or reduction of such compensatory damages award by the amount of any part of Defendant's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Defendant Birks agrees that he shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this action. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Defendant by or on behalf of one or more investors based on substantially the same facts as alleged in the Complaint in this action.

8. Defendant Birks agrees that he shall not seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made pursuant to any insurance policy, with regard to any civil penalty amounts that he pays in this matter, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors. Defendant Birks further agrees that he shall not claim, assert, or apply for a tax deduction or tax credit with regard to any federal, state, or local tax for any penalty amounts that he pays in this matter, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors.

9. Defendant Birks and Relief Defendant Gryphon Asset Management waive any right they may have to appeal from the entry of the Final Judgment of Permanent Injunction.

10. Defendant Birks and Relief Defendant Gryphon Asset Management waive service of the Final Judgment of Permanent Injunction entered herein upon them and agree that entry of it by the Court and filing with the Clerk in the Southern District of Florida will constitute notice to them of the terms and conditions of the Final Judgment of Permanent Injunction. They further agree to provide counsel for the Commission, within thirty days after the Final Judgment of Permanent Injunction is filed with the Clerk of the Court, with an affidavit or declaration stating that they have received and read a copy of the Final Judgment of Permanent Injunction.

11. Defendant Birks and Relief Defendant Gryphon Asset Management agree they will not oppose the enforcement of the Final Judgment of Permanent Injunction on the ground that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and hereby waive any objection based thereon.

12. Defendant Birks and Relief Defendant Gryphon Asset Management waive the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

13. Defendant Birks and Relief Defendant Gryphon Asset Management waive the right, if any, to a jury trial and to appeal from the entry of the Final Judgment of Permanent Injunction.

14. Defendant Birks and Relief Defendant Gryphon Asset Management agree that this Consent shall be incorporated into the Final Judgment of Permanent Injunction with the same force and effect as if fully set forth therein.

15. Consistent with 17 C.F.R. 202.5(f), this Consent resolves only the claims asserted against Defendant Birks and Relief Defendant Gryphon Asset Management in this civil proceeding. Defendant Birks and Relief Defendant Gryphon Asset Management acknowledge that no promise or representation has been made by the Commission or any member, officer, employee, agent, or representative of the Commission with regard to any criminal liability that may have arisen or may arise from the facts underlying this action or immunity from any such criminal liability. Defendant Birks and Relief Defendant Gryphon Asset Management waive any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein. Defendant Birks further acknowledges that the Court's entry of a permanent injunction may have collateral consequences under federal or state law and the rules and regulations of self-regulatory organizations, licensing boards, and other regulatory organizations. Such collateral consequences include, but are not limited to, a statutory disqualification with respect to membership or participation in, or association with a member of, a self-regulatory organization. This statutory disqualification has consequences that are separate from any sanction imposed in an administrative proceeding. In addition, in any disciplinary proceeding before the Commission based on the entry of the injunction in this action, Defendant Birks understands that he shall not be permitted to contest the factual allegations of the complaint in this action.

16. Defendant Birks understands and agrees to comply with the terms of 17 C.F.R. § 202.5(e), which provides in part that it is the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaint or order for proceedings," and "a refusal to admit the allegations is equivalent to a denial, unless the defendant or respondent states that he neither admits nor denies


the allegations." As part of their agreement to comply with the terms of Section 202.5(e), Defendant Birks: (i) will not take any action or make or permit to be made any public statement denying, directly or indirectly, any allegation in the complaint or creating the impression that the complaint is without factual basis; (ii) will not make or permit to be made any public statement to the effect that they did not admit the allegations of the complaint, or that this Consent contains no admission of the allegations, without also stating that they did not deny the allegations; (iii) upon the filing of this Consent, they hereby withdraw any papers filed in this action to the extent that they deny any allegation in the complaint; and (iv) stipulate solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, that the allegations in the complaint are true, and further, that any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Birks under the Final Judgment of Permanent Injunction or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Defendant Birks of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19) . If this agreement is breached, the Commission may petition the Court to vacate the Final Judgment of Permanent Injunction and restore this action to its active docket. Nothing in this paragraph affects Birks: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Commission is not a party.

17. Defendant Birks and Relief Defendant Gryphon Asset Management hereby waive any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to seek from the United States, or any agency, or any official of the United States acting in his or her official capacity, directly or

indirectly, reimbursement of attorney's fees or other fees, expenses, or costs expended by any of them to defend against this action. For these purposes, Defendant Birks and Relief Defendant Gryphon Asset Management each agree that neither of them are a prevailing party in this action, since the parties have reached a good faith settlement.

I, Defendant Frederick J. Birks, on behalf of myself and Gryphon Asset Management, LLC, hereby consent to the Court's entry of the foregoing Final Judgment of Permanent Injunction and Other Relief against Defendant Frederick J. Birks and Relief Defendant Gryphon Asset Management, LLC.

Dated: October __, 2015


By: 
Frederick J. Birks, individually and on behalf of Gryphon Asset Management, LLC

STATE OF FLORIDA)
) ss:
COUNTY OF Orange)

On this 05 day of October 2015, before me personally appeared Frederick J. Birks who _____ is personally known to me or X produced a driver's license bearing his name and photograph as identification, and who executed this Consent, and he acknowledged to me that he executed the same.


Notary Public

09/25/15
Commission Expires:


 Edwin Gonzalez
Notary Public
State of Florida
My Commission Expires 08/25/2018
Commission No. FF 154264

GRYPHON ASSET MANAGEMENT, LLC
CERTIFICATE OF CORPORATE RESOLUTION

Frederick J. Birks do hereby certify that he is duly qualified to bind and act on behalf of Gryphon Asset Management, LLC (“Gryphon Asset Management”) and in his sole discretion, he is authorized to negotiate, approve, and execute the Consent attached hereto in connection with the civil injunctive action brought by Securities and Exchange Commission against Gryphon Asset Management; and he is authorized to undertake such actions as he may deem necessary and advisable, including the execution of documentation as may be required, in order to carry out the foregoing.


I further certify that the aforesaid Certification has not been amended or revoked in any respect and remains in full force and effect.

IN WITNESS WHEREOF, I have executed this Certification as a sealed instrument this ____ day of October 2015.


By: 
Frederick J. Birks, Managing Member
of Gryphon Asset Management

STATE OF FLORIDA)
)
COUNTY OF Orange) ss:

On this 05 day of October 2015, before me personally appeared Frederick J. Birks who ____ is personally known to me or X produced a driver’s license bearing his name and photograph as identification, and who executed this Consent, and he acknowledged to me that he executed the same.


Notary Public

09/25/15
Commission Expires:

 Edwin Gonzalez
Notary Public
State of Florida
My Commission Expires 08/25/2018
Commission No. FF 154264

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 9:15-cv-80446-JIC-COHN

SECURITIES AND EXCHANGE COMMISSION,)
)
Plaintiff,)
v.)
)
ECAREER HOLDINGS, INC., ECAREER, INC.,)
JOSEPH J. AZZATA, DEAN A. ESPOSITO,)
JOSEPH DEVITO, and FREDERICK J. BIRKS,)
)
Defendants,)
)
VIPER ASSET MANAGEMENT, LLC,)
ESPO CONSULTING, LLC,)
DJC CONSULTING, LLC,)
J & D MARKETING, LLC,)
GRYPHON ASSET MANAGEMENT, LLC, and)
CARLA AZZATA,)
Relief Defendants)
_____)

[Proposed] ORDER GRANTING PLAINTIFF SECURITIES AND EXCHANGE COMMISSION’S MOTION FOR A FINAL JUDGMENT OF PERMANENT INJUNCTION AND OTHER RELIEF AGAINST DEFENDANTS FREDERICK J. BIRKS AND RELIEF DEFENDANTS GRYPHON ASSET MANAGEMENT, LLC

This cause comes before the Court upon the Motion by Plaintiff Securities and Exchange Commission for a Final Judgment of Permanent Injunction and Other Relief against Defendant Frederick J. Birks (“Birks”) and Relief Defendant Gryphon Asset Management, LLC (“Gryphon Asset Management”) (“Motion for Final Judgment of Permanent Injunction”). The Court finds that good cause exists for the Court to grant the Commission’s Motion for Final Judgment of Permanent Injunction. The Commission having filed a Complaint and Defendant Birks and Relief Defendant Gryphon Asset Management having entered a general appearance; consented to the Court’s jurisdiction over them and the subject matter of this action; consented to entry of this Final Judgment of Permanent Injunction without admitting or denying the allegations of the

Complaint (except as to jurisdiction and except as otherwise provided herein); waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment of Permanent Injunction; and Defendant Birks and Relief Defendant Gryphon Asset Management have agreed to the entry of this Final Judgment of Permanent Injunction and Other Relief (“Final Judgment of Permanent Injunction”). Accordingly, the motion is **GRANTED**, and the Court hereby orders as follows:

I.

PERMANENT INJUNCTION

A. Section 17(a) of the Securities Act

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Birks is permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 (the “Securities Act”) [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- (c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser;

by, directly or indirectly (i) creating a false appearance or otherwise deceiving any person, or (ii) disseminating false or misleading documents, materials, or information or making, either orally or in writing, any false or misleading statement in any communication with any investor or prospective investor; about: (A) any investment in or offering of securities, (B) the registration status of such offering or of such securities, (C) the prospects for success of any product or

company, (D) the use of investor funds, or (E) the misappropriation of investor funds or investment proceeds.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Judgment of Permanent Injunction by personal service or otherwise: (a) any of Defendant Birks' officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant Birks or with anyone described in (a).

B. Section 10(b) and Rule 10b-5 of the Exchange Act

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant Birks is permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person;

by (i) creating a false appearance or otherwise deceiving any person, or (ii) disseminating false or misleading documents, materials, or information or making, either orally or in writing, any false or misleading statement in any communication with any investor or prospective investor, about: (A) any investment in or offering of securities, (B) the registration status of such offering

or of such securities, (C) the prospects for success of any product or company, (D) the use of investor funds, or (E) the misappropriation of investor funds or investment proceeds.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Judgment of Permanent Injunction by personal service or otherwise: (a) any of Defendant Birks' officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant Birks or with anyone described in (a).

C. Section 5(a) and 5(c) of the Securities Act

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Birks is permanently restrained and enjoined from violating Section 5 of the Securities Act [15 U.S.C. § 77e] by, directly or indirectly, in the absence of any applicable exemption:

- (a) Unless a registration statement is in effect as to a security, making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise;
- (b) Unless a registration statement is in effect as to a security, carrying or causing to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale; or
- (c) Making use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security, unless a registration statement has been filed with the Commission as to such security, or while the registration statement is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding or examination under Section 8 of the Securities Act [15 U.S.C. § 77h].

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Judgment of Permanent Injunction by personal service or otherwise: (a) any of Defendant Birks' officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant Birks or with anyone described in (a).

D. Section 15(a) of the Exchange Act

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Birks is hereby permanently restrained and enjoined from violating Section 15(a) of the Exchange Act, 15 U.S.C. § 78o(a), by using any means or instrumentality of interstate commerce, the mails, or any facility of any national securities by acting as broker or dealer by effect transactions in securities, or to induce or attempt to induce the purchase or sale of securities, without being associated with a broker or dealer that was registered with the Commission in accordance with Section 15(b) of the Exchange Act [15 U.S.C. § 78o(b)].

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Judgment of Permanent Injunction by personal service or otherwise: (a) any of Defendant Birks' officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant Birks or with anyone described in (a).

II.

COMMAND TO COMPLY WITH PRIOR ORDERS

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that pursuant to Section 20(c) of the Securities act and/or Section 21(e) of the Exchange Act, Defendant Birks: (a) is commanded to comply with the February 7, 2011, order for him to not associate with any broker or dealer. *In the Matter of Frederick J. Birks*, Exchange Act Release

No. 63862, Administrative Proceeding File No. 3-14240 (Feb. 7, 2011); and (b) is commanded to comply with the August 18, 2010, final district court judgment entered against him in *SEC v. Frederick J. Birks*, Case No. 8-80130-CIV (S.D. Fla., Feb. 7, 2008) enjoining him from future violations of Section 5 of the Securities Act and Sections 10(b) and 15 of the Exchange Act and Rule 10b-5 thereunder, and permanently barring him from participating in any penny stock offering.

III.

DISGORGEMENT, PREJUDGMENT INTEREST THEREON & CIVIL PENALTY

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Birks and Relief Defendant Gryphon Asset Management shall, jointly and severally, pay disgorgement of \$288,247 and pay \$12,312 of prejudgment interest thereon. In addition, Defendant Birks shall pay a \$150,000 civil money penalty, pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21A of the Exchange Act. [15 U.S.C. § 78u-1].

IV.

SECURITIES SALES

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that within thirty days from the date of the Order, the Court appointed Receiver, David Levine, shall in a reasonable and prudent fashion sell all securities and close out all existing positions or margin loans in Gryphon Asset Management's brokerage account held at OptionsHouse (acct. # xxxxx1031), and distribute the proceeds of the OptionsHouse account as follows: (1) Defendant Birks or Relief Defendant Gryphon Asset Management shall receive \$10,000 from the proceeds of OptionsHouse (acct. # xxxxx1031); and (2) all remaining funds in the OptionsHouse (acct. # xxxxx1031) will be paid in partial satisfaction of the Final Judgment and held by the Receiver in a segregated account until further Order of this Court. Moreover, Defendant Birks and Relief

Defendant Gryphon Asset Management shall cooperate with the Court appointed Receiver and within ten days from the date of this Order, Birks shall execute any required paperwork, including a power-of-attorney, for the Receiver to sell all securities and close out all existing positions or margin loans in Gryphon Asset Management's brokerage account held in the OptionsHouse (acct. # xxxxx1031).

In addition, within ten days from the date of the Order, Defendant Birks shall provide the Receiver with original share certificates evidencing 55,000 shares of Continental Rail Corp. (ticker symbol CRCX) and 30,000 shares of Train Travel Holdings Inc. (ticker symbol TTX), and execute all necessary paperwork to allow the Receiver, in a reasonable and prudent fashion, including a power-of-attorney to sell these securities.

All payments made by Defendant Birks or Relief Defendant Gryphon Asset Management, including the funds held by the Receiver shall first go towards payment of any accrued post-judgment interest, if any; then towards the disgorgement, and prejudgment interest thereon, obligation of Defendant Birks and Relief Defendant Gryphon Asset Management; and then any remaining funds shall go towards the payment of the civil money penalty against Defendant Birks.

V.

PAYMENT PLAN

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED the total amount owed by Defendant Birks and Relief Defendant Gryphon Asset Management shall be reduced by payments the Receiver receives from the OptionsHouse (acct. # xxxxx1031) and the above referenced securities sales less the \$10,000 paid to Birks. Defendant Birks and Relief Defendant Gryphon Asset Management shall pay to the Receiver the remaining amount of

disgorgement, prejudgment interest, plus any accrued post-judgment interest, within 180 days from the date of this Order, and Defendant Birks shall pay to the Receiver the remaining amount of civil money penalty, plus any accrued post-judgment interest, within 180 days from the date of this Order. Defendant Birks and Relief Defendant Gryphon Asset Management shall request payment instructions from the Receiver or the SEC. The Receiver shall hold all funds he receives from Defendant Birks or Relief Defendant Gryphon Asset Management in a segregated account and shall periodically report to the Court the amount of funds he has received. When making payment, Defendant Birks and Relief Defendant Gryphon Asset Management shall also simultaneously transmit photocopies of evidence of payment and case identifying information to Christopher E. Martin, Esq, the Commission's counsel in this action.

Defendant Birks and Relief Defendant Gryphon Asset Management relinquishes all legal and equitable right, title, and interest in any payment they make to the Receiver or the SEC and no part of the funds shall be returned to either of them.

The Commission may enforce the Court's judgment for disgorgement and prejudgment interest by moving for civil contempt (and/or through other collection procedures authorized by law) at any time after 30 days after the unpaid amount becomes due. Beginning thirty days after entry of this Order, Defendant Birks and Relief Defendant Gryphon Asset Management shall pay post-judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

Defendant Birks shall not seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made pursuant to any insurance policy, with regard to any civil penalty amount he pays pursuant to this Final Judgment, regardless of whether such penalty amounts or any party thereof are added to a distribution fund or otherwise used for the benefit of investors. Defendant Birks further shall not

claim, assert, or apply for tax deduction or tax credit with regard to any federal, state, or local tax for any penalty amounts he pays pursuant to this Final Judgment, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors.

VI.

RECORDS PRESERVATION

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Birks and Relief Defendant Gryphon Asset Management, any of their directors, officers, agents, servants, employees, attorneys, depositories, banks, and those persons in active concert or participation with any one or more of them, and each of them, be and they hereby are restrained and enjoined from, directly or indirectly, destroying, mutilating, concealing, altering, disposing of, or otherwise rendering illegible in any manner, any of the books, records, documents, correspondence, brochures, manuals, papers, ledgers, accounts, statements, obligations, files and other property of or pertaining to any of the Defendants or Relief Defendants, wherever located and in whatever form, electronic or otherwise.

VII.

BANKRUPTCY NONDISCHARGEABILITY

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the allegations in the complaint are true and admitted by Defendant Birks, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by either of them under this Final Judgment of Permanent Injunction or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Defendant Birks of the federal securities laws or any regulation or order

issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

VIII.

INCORPORATION OF THE CONSENT

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent of Defendant Birks and Relief Defendants Gryphon Asset Management to a Final Judgment of Permanent Injunction and Other Relief is incorporated herein with the same force and effect as if fully set forth herein, and that each of them shall comply with all of the undertakings and agreements set forth therein.

IX.

RETENTION OF JURISDICTION

IT IS HEREBY FURTHER ORDERED that this Court shall retain jurisdiction over this matter and Defendant Birks and Relief Defendant Gryphon Asset Management in order to implement and carry out the terms of all Orders and Decrees that may be entered and/or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court, and will order other relief that this Court deems appropriate under the circumstances.

X.

RULE 54(b) CERTIFICATION

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment of Permanent Injunction forthwith and without further notice.

DONE AND ORDERED this ____ day of ____ 2016, at Fort Lauderdale, Florida.

**UNITED STATES DISTRICT JUDGE
JAMES I. COHN**

Copy to all counsel and parties of record