

1 LYNN M. DEAN (Cal. Bar No. 205562)
Email: deanl@sec.gov
2 KATHRYN WANNER (Cal. Bar No. 269310)
Email: wannerk@sec.gov
3 Attorneys for Plaintiff
Securities and Exchange Commission
4

5 Michele Wein Layne, Regional Director
Alka N. Patel, Associate Regional Director
6 Amy J. Longo, Regional Trial Counsel
444 S. Flower Street, Suite 900
7 Los Angeles, California 90071
Telephone: (323) 965-3998
8 Facsimile: (213) 443-1904

9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**
11 **SOUTHERN DIVISION**

12
13 SECURITIES AND EXCHANGE
COMMISSION,

14 Plaintiff,

15 vs.

16 JUSTIN ROBERT KING; AND
17 ELEVATE INVESTMENTS LLC,

18 Defendants,

19 SHANNON LEIGH KING,

20 Relief Defendant.
21
22
23
24
25
26
27
28

Case No. SACV 20-02398 JVS (DFMx)

**REPLY MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT
OF PLAINTIFF SECURITIES AND
EXCHANGE COMMISSION
APPLICATION FOR A CIVIL
CONTEMPT ORDER AGAINST
DEFENDANT JUSTIN ROBERT
KING AND RELIEF DEFENDANT
SHANNON LEIGH KING**

Date: March 15, 2021

Time: 1:30 p.m.

Judge: Hon James V. Selna

1 In response to plaintiff Securities and Exchange Commission's ("SEC's")
2 contempt motion, Defendant Justin Robert King ("JKing") and Relief Defendant
3 Shannon Leigh King's ("SKing") have filed an opposition that simultaneously denies
4 that either party was ever in contempt, but also insists that their contempt has been
5 cured.

6 As set forth in the SEC's Application for an Order to Show Cause:

7 1) After the TRO and the PI Order were granted, JKing falsely told at least two
8 investors that there were sufficient Elevate funds to repay all of the investors;

9 2) JKing interfered with the Receiver by

10 a) filing an Answer on behalf of Elevate, and

11 b) telling investors that there are Elevate assets the Receiver does not
12 know about; and

13 3) Neither JKing nor SKing had filed with the Court their Court-ordered
14 accountings, and the accounting that they provided to the SEC was incomplete and
15 omitted assets.

16 Despite the Kings' denials, the SEC has provided evidence that they were
17 indeed in contempt of this Court's Temporary Restraining Order ("TRO") entered
18 December 28, 2021 (Dkt. No. 12) and Preliminary Injunction entered January 19,
19 2021 (Dkt. No. 26) (the "PI"). SKing and JKing's violated the provisions of the TRO
20 and PI that require them to file and serve accountings and not to conceal assets. Dkt.
21 No. 12, ¶¶ V, VII; Dkt. No. 26, ¶¶ V, VII. In addition, JKing violated the provisions
22 of the TRO and PI Order that require him, among other things, not to interfere with
23 the Receiver or act on Elevate's behalf, and he violated the injunctions forbidding him
24 from violating Section 17(a) of the Securities Act of 1933 ("Securities Act"), Section
25 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5
26 thereunder, and Section 206(4) of the Investment Advisers Act of 1940 ("Advisers
27 Act") and Rule 206(4)-8 thereunder. Dkt. No. 12, ¶ II-IV, XIII, XV; Dkt. No. 26, ¶ II-
28 IV, XI, XIII.

1 Because the SEC has shown the Kings to be in contempt of the Court's orders
 2 by clear and convincing evidence, the Court should find them in contempt and impose
 3 appropriate sanctions.

4 **I. ARGUMENT**

5 **A. JKing Has Made Material Post-filing Misrepresentations to**
 6 **Investors**

7 The SEC has provided evidence that JKing violated the provisions of the TRO
 8 and the PI enjoining him from violating Securities Act Section 17(a), Exchange Act
 9 Section 10(b), and Advisers Act Section 206(4) by telling at least two investors that
 10 there was enough money to repay them. Harmon Decl., ¶¶ 6, 11; Dkt. No. 40-1
 11 (Declaration of Naomi Hazen ¶ 8). Those injunctions forbid JKing from making
 12 material misrepresentations to investors. Dkt. No. 12, ¶ II-IV; Dkt. No. 26, ¶ II-IV.
 13 In response to the SEC's evidence, JKing has submitted two self-serving declarations
 14 denying that he ever made such statements. Dkt. No. 38-1 ¶ 16; Dkt No. 49-1 at ¶¶
 15 18-20. He also argues that the SEC's evidence is hearsay and the Hazen and Harmon
 16 declarations are in conflict. Dkt. No. 49 at pp. 5-6.

17 JKing's testimony is directly contradicted by the Hazen and Harmon
 18 Declarations. Ms. Hazen has declared under penalty of perjury that JKing told her on
 19 January 21, 2021 that her "investments were generating positive returns and that there
 20 was enough money to pay all of the investors. He said that the money was 'all
 21 there.'" Dkt, No. 40-1 at ¶ 8. JKing's argument that the Hazen declaration
 22 contradicts the Harmon declaration is based not on a conflict, but from an immaterial
 23 omission from Ms. Hazen's declaration. Ms. Hazen could not recall if JKing had said
 24 the specific phrase "from Elevate funds or "from those funds," so that phrase does not
 25 appear in her declaration. But far from conflicting with the Harmon declaration, Ms.
 26 Hazen's declaration that JKing told her money was "all there" and she would be
 27 repaid is consistent with the statements made by investors Brian Bowen and Estera
 28 Bogdan to the Receiver's agent. Mr. Bowen stated that JKing told him that "there are

1 other bank accounts where more money is located and that everyone will be paid
 2 back.” Dkt. No. 37-2 at ¶ 11. Mr. Bowen was so convinced that there were other
 3 accounts that were unknown to the Receiver that he planned to ask JKing “to arrange
 4 a call” to “tell the Receiver where these other funds are.” *Id.* Ms. Bogdan told the
 5 Receiver’s agent that “Mr. King told them that this was all a big misunderstanding
 6 and that he will just pay a fine when this is all over.” *Id.* at ¶ 8. In any case, although
 7 he denies that he told investors there was enough money to make them whole, JKing
 8 admits that he told “told those investors that there were two other personal accounts
 9 that contained funds that were frozen and that were not identified by the Receiver in
 10 [his] email.” Dkt. No. 38-1 ¶ 15; Dkt. No. 49-1 ¶ 19. He further admits that he “was
 11 referring to my and Shannon’s personal accounts at Schwab.” *Id.* These statements
 12 are consistent with the statements investors made to the Receiver’s agent and in the
 13 Hazen Declaration. Dkt. No. 37-2 at ¶¶ 6, 11; Dkt. No. 40-1 at ¶ 8.

14 The Court need not credit JKing’s self-serving denials in the face of all the
 15 evidence to the contrary. *F.T.C. v. Neovi, Inc.*, 604 F.3d 1150, 1159 (9th Cir. 2010)
 16 (“[s]pecific testimony by a single declarant can create a triable issue of fact, but the
 17 district court was correct that it need not find a genuine issue of fact if, in its
 18 determination, the particular declaration was ‘uncorroborated and self-serving.’”);
 19 *Batiz v. Am. Commer. Sec. Servs.*, 776 F. Supp. 2d 1087, 1098 (C.D. Cal. 2011)
 20 (granting summary judgment where opposing deposition testimony and declaration
 21 were self-serving and uncorroborated). JKing violated the injunctions in the TRO
 22 and the PI when he lied to investors and stated that there were sufficient assets to
 23 repay them. Harmon Decl. ¶¶ 6-11; Dkt. No. 40-1 at ¶ 8. JKing has admitted that he
 24 made statements to investors that there were additional funds in two personal
 25 accounts at Schwab. Dkt. No. 38-1 at ¶ 15; Dkt. No. 49-1 at ¶ 19. But the total
 26 current balance in all three of the Schwab accounts is \$1,693,297.54. Dkt. No. 37-1
 27 at p. 9; Dkt. No. 37-2, ¶ 13. This is far less than the amount necessary to make all
 28 Elevate investors whole. Just the investors interviewed by the Receiver’s staff and

the SEC to date invested over \$3 million between them. Dkt. No. 37-1 at p. 9; Dkt No. 37-2 at ¶ 12; Dkt. Nos. 20 and 21. Indeed, even JKing now admits that Elevate investors suffered losses. Dkt. No. 38-1 at ¶¶ 16, 18; Dkt. No. 49-1 at ¶¶ 20, 22.

JKing was the principal of Elevate and had control over the Schwab accounts. Dkt. No. 6 at ¶¶ 14-15. JKing therefore knew or should have known that his statements to investors that there were sufficient funds to repay them in these accounts were false. His misrepresentations to the contrary are clear violations of the provisions of the TRO and the PI that enjoin JKing from violating the antifraud provisions of the Securities Act, Exchange Act, and Advisers Act. Dkt. No. 12, ¶ II-IV; Dkt. No. 26, ¶ II-IV. The SEC has shown by clear and convincing evidence that JKing violated the injunctive orders of the Court and he should be held accountable for his contempt.

B. JKing Purported to Act on Behalf of Elevate and Interfered With the Receiver

The SEC has also submitted clear and convincing evidence that JKing violated the provisions of the TRO and the PI that prohibit him from acting on behalf of Elevate and from interfering with the Receiver. Dkt. No. 12, ¶ XIII, XV; Dkt. No. 26, ¶ X, XII. In its application, the SEC provided evidence that JKing violated these provisions when his counsel purported to answer the Complaint on Elevate's behalf, when he spoke to investors and told them that there were assets in other accounts sufficient to repay investors and the Receiver did not know about them, and when he offered to repay an investor. Dean Decl. Ex. 1; Harmon Decl. ¶¶ 6, 11. In response, JKing now admits that he told investors there were other accounts, but he never said there were sufficient funds to repay investors. As set forth above, that assertion is simply not credible. At least two investors say that he did, and one of them was convinced by JKing's statements that the Receiver did not know where these funds were located. Dkt. No. 37-2 at ¶¶ 6, 11; Dkt. No. 40-1 at ¶ 8. JKing also attempts to split hairs about whether he told Investor Hazen that he would pay her back out of

1 funds from the Schwab accounts, but he does not argue that he didn't tell her he
2 would pay her back. Dkt. No. 38 at p. 3, lines 17-24; Dkt. No. 38-1, ¶ 18.¹

3 Moreover, there is other evidence that JKing was purporting to act on Elevate's
4 behalf after the TRO. In January, 2021, when Ms. Hazen asked JKing where her
5 December 2020 Elevate statement was, JKing did not tell her that Elevate was in
6 receivership and he could not act on its behalf, he told her that he had been ill, and
7 that he would be sending out statements shortly. Dkt. No. 40-1 at ¶ 7.

8 Finally, JKing's argument that he did not instruct his counsel to file an Answer
9 on behalf of Elevate and that he cannot instruct her to withdraw it is now is nonsense.
10 Dkt No. 38, Section III; Dkt. No.49 at p. 6. Whether he instructed her to do so or not,
11 JKing retained that lawyer on behalf of Elevate. It was and is within his power to
12 direct her actions. She has been informed that the Answer was improper, but it has
13 not been withdrawn, and there is no evidence that JKing instructed her to do so, nor
14 does he say he has done so. *See* Dkt. No. 49-1. Instead he argues that he cannot
15 instruct his prior counsel and that it is up to the Receiver to withdraw the Answer.
16 Dkt. No.49 at p. 6. Surely the Court does not want to entertain a motion to strike
17 when JKing could simply instruct his prior attorney to simply withdraw the improper
18 filing.

19 JKing has purported to act on behalf of Elevate and he has interfered with the
20 Receiver. He should be held in contempt for those violations.

21 **C. The Kings' Tardy Accountings**

22 The Kings failed to file accountings with the Court as required by paragraph
23 VII of the TRO and PI. Dkt. No. 12, ¶ VII; Dkt. No. 26 ¶ VII. In response to the
24 SEC's motion, the Kings have now belatedly filed an accounting that lists new bank
25 and credit card accounts that were not previously disclosed. Dkt. No. 48. Because
26

27 ¹ JKing also argues that Ms. Hazen never told *him* that she wanted to invest more
28 money in Elevate. Dkt. No. 38-1 ¶ 18. This is irrelevant. Ms. Hazen told others that
she was thinking about investing more money and that is the point made in the SEC's
application for an OSC. Dkt. No. 37-2 at ¶ 6.

1 the accounting was not timely, the SEC has not had an opportunity to send
2 appropriate subpoenas to test its veracity, but for purposes of this motion, the Kings
3 admit that they failed to file their prior disclosure and that that disclosure was
4 incomplete.

5 In their defense, they offer a litany of excuses for their failure to comply with
6 the Court's orders that run the gamut from "I forgot" to irrelevant arguments
7 regarding the source of funds in SKing's account, and frankly silly arguments about
8 the value of their household goods.² Dkt. No. 49, pp. 2-3; Dkt. No. 489-1 at ¶ 4.

9 The explanation "I forgot" does not excuse the Kings' contempt. Moreover, the
10 Kings explanation for their failure to list any furniture or household goods on their
11 joint accounting continues to strain credulity. The Kings admit that on October 31,
12 2021 they wrote a check to their landlord for \$6000.00 for "furniture," but they ask
13 this Court to believe that they didn't buy the furniture; the check was an advance for
14 furniture they then sold sometime between October 31, 2020 and December 28, 2020.
15 Dkt. No. 37-3, Ex. 4; Dkt. No. 38-1 ¶ 29. This explanation ignores the fact that they
16 still paid \$6000 for the furniture, and if they sold it, they pocketed the proceeds of that
17 sale. Further, the Kings admit that their accounting omits a Fidelity brokerage
18 account that became known to the SEC based upon its review of the King's personal
19 bank accounts obtained pursuant to subpoena. Dkt. No. 38-1, ¶ 25. JKing cycled
20 \$30,000 through that account in the months immediately preceding the filing of this
21 action (Dkt. No. 37-3 at ¶ 9), but JKing's explanation for omitting the account from
22 the accounting is that it had less than \$5,000 in it as of December 28, 2020. Dkt. No.
23 38-1, ¶ 25. That may explain its omission from the accounting, but it cannot explain
24 the Kings' failure to disclose the existence of the account at all, since paragraph V of
25 the TRO and the PI require the Kings not to conceal assets, without limitation. Dkt.

26
27 ² The SEC does not contend that the purported sale of the Kings' furniture was itself a
28 violation of the Court's Orders. It has merely argued that the proceeds of that sale
should have been accounted for, if such a sale indeed took place.

1 No. 12, ¶ V; Dkt. No. 26 ¶ V.

2 The Kings were in contempt of the TRO and the PI and should be held
3 accountable for that contempt.

4 **D. SKing's Schwab Account**

5 Once again, the Kings use their opposition to make arguments regarding
6 SKing's Schwab account that are irrelevant to the SEC's motion, and appear to be
7 directed at asking the Court to release that account from the asset freeze. Dkt. No.
8 38, Section VI. These arguments are improper and should be the subject of a
9 separate motion, but the SEC will briefly address them again.

10 Defendants argue that the only deposit ever made into the SKing account came
11 from the proceeds of the sale of a home that the Kings owned in Arizona and that the
12 account contains no investor funds. Dkt. No. 38, Section VI; Dkt. No. 38-1 ¶¶ 7-9.
13 Whether or not those statements are true, it would not be appropriate to release the
14 SKing account from the asset freeze until the Receiver has completed his Court-
15 ordered accounting. The reasons for this are simple. The JKing declaration states
16 that the account was funded in July 2020 with partial proceeds from the sale of a
17 home that the King's had owned in Arizona. Dkt. No. 38-1, ¶¶ 7-12. Based on the
18 title settlement statement attached to the JKing Declaration, the house had a mortgage
19 of over \$245,000 at the time it was sold. Dkt. No. 38-5, Ex. D at pp. 3-5. The Kings
20 routinely paid their personal expenses with Elevate investor money. The Kings used
21 those funds to pay the \$7000 monthly rent on the Kings' home in California, and the
22 monthly lease payments on a Toyota Tundra driven by JKing and a Mercedes Benz
23 SUV driven by SKing. Dkt. No. 43-1 at ¶¶ 2-6; *see also* Dkt. No. 37-3, Ex 5
24 (identifying auto loan payments totally \$1,685 per month). In addition, the SEC's
25 accountant has previously documented thousands of dollars of payments to Chase
26 bank card, Capital One, Nordstrom, American Express, Citibank, and Discover. Dkt.
27 No. 19 at ¶¶ 8-12. Given this pattern, it is not unreasonable to assume that the Kings
28 used investor money to make their mortgage payments, too. Until the accounting is

complete, we will not know if investor funds were used to pay the mortgage on the Arizona home. If it was used to make the payments, then at least some portion the proceeds of the sale rightly belong to the investors, and not the Kings. No matter how vigorously the Kings urge the Court to ignore these facts (Dkt. No. 49 at pp. 4-5), the freeze over an account containing the proceeds from the home sale continues to be appropriate.

E. A Contempt Finding and Sanctions Are Warranted

The Court should find the Kings in contempt and impose sanctions sufficiently coercive to compel SKing and JKing's compliance with its orders. "The standard for finding a party in civil contempt is well settled: The moving party has the burden of showing by clear and convincing evidence that the contemnors violated a specific and definite order of the court." *F.T.C. v. Affordable Media*, 179 F.3d 1228, 1239 (9th Cir. 1999). "The burden then shifts to the contemnors to demonstrate why they were unable to comply." *Id.* The SEC has met its burden here, and the Defendants have admitted their failure to comply. Their belated efforts to evade responsibility while denying culpability should not shield them from a contempt finding. *Fish v. Kobach*, 294 F. Supp. 3d 1154, 1165–66 (D. Kan. 2018) (hearing testimony and belated affidavits of intended compliance were "too little, too late" to avoid a contempt finding). JKing should be ordered to instruct his lawyer to withdraw the improper Answer she filed, and both JKing and SKing should be found to be in contempt and should be held accountable accordingly.

II. CONCLUSION

The Kings have violated the specific and definite orders of this Court. Accordingly, for all the foregoing reasons, the SEC requests that the Court hold them in civil contempt and issue remedial sanctions.

Dated: March 8, 2021

Respectfully submitted,

/s/ Lynn M. Dean

Lynn M. Dean
Kathryn Wanner
Attorneys for Plaintiff Securities
and Exchange Commission

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

I am over the age of 18 years and not a party to this action. My business address is:

U.S. SECURITIES AND EXCHANGE COMMISSION,
444 S. Flower Street, Suite 900, Los Angeles, California 90071
Telephone No. (323) 965-3998; Facsimile No. (213) 443-1904.

On March 8, 2021, I caused to be served the documents entitled **REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF SECURITIES AND EXCHANGE COMMISSION APPLICATION FOR A CIVIL CONTEMPT ORDER AGAINST DEFENDANT JUSTIN ROBERT KING AND RELIEF DEFENDANT SHANNON LEIGH KING** on all the parties to this action addressed as stated on the attached service list:

☐ **OFFICE MAIL:** By placing in sealed envelope(s), which I placed for collection and mailing today following ordinary business practices. I am readily familiar with this agency's practice for collection and processing of correspondence for mailing; such correspondence would be deposited with the U.S. Postal Service on the same day in the ordinary course of business.

☐ **PERSONAL DEPOSIT IN MAIL:** By placing in sealed envelope(s), which I personally deposited with the U.S. Postal Service. Each such envelope was deposited with the U.S. Postal Service at Los Angeles, California, with first class postage thereon fully prepaid.

☐ **EXPRESS U.S. MAIL:** Each such envelope was deposited in a facility regularly maintained at the U.S. Postal Service for receipt of Express Mail at Los Angeles, California, with Express Mail postage paid.

☐ **HAND DELIVERY:** I caused to be hand delivered each such envelope to the office of the addressee as stated on the attached service list.

☐ **UNITED PARCEL SERVICE:** By placing in sealed envelope(s) designated by United Parcel Service ("UPS") with delivery fees paid or provided for, which I deposited in a facility regularly maintained by UPS or delivered to a UPS courier, at Los Angeles, California.

☒ **ELECTRONIC MAIL:** By transmitting the document by electronic mail to the electronic mail address as stated on the attached service list.

☒ **E-FILING:** By causing the document to be electronically filed via the Court's CM/ECF system, which effects electronic service on counsel who are registered with the CM/ECF system.

☐ **FAX:** By transmitting the document by facsimile transmission. The transmission was reported as complete and without error.

I declare under penalty of perjury that the foregoing is true and correct.

Date: March 8, 2021

/s/ Lynn M. Dean

Lynn M. Dean

SEC v. Justin Robert King, et al.
United States District Court—Central District of California
Case No. 8:20-cv-02398-JVS-DFM

SERVICE LIST

Kyra E. Andrassy (by ECF)
SMILEY WANG-EKVALL
3200 Park Center Drive, Suite 250
Costa Mesa, CA 92626
714-445-1000 Phone
714-445-1017 Fax
kandrassy@swelawfirm.com
Counsel for Receiver for Defendant Elevate Investments LLC

Justin Robert King (by email)
10639 W. Chestnut Street
Marana, AZ 85653
JRKing80@gmail.com
Pro Se Defendant

Shannon Leigh King (by email)
10639 W. Chestnut Street
Marana, AZ 85653
SLKing311@gmail.com
Pro Se Relief-Defendant

Michael J. Quinn, Esq. (by email)
Vedder Price
1925 Century Park East, Suite 1900
Los Angeles, CA 90067
mquinn@vedderprice.com
Courtesy Copy