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Utah Department of Commerce
Division of Securities

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BEFORE THE DIVISION OF SECURITIES OF THE
DEPARTMENT OF COMMERCE OF THE STATE OF UTAH

IN THE MATTER OF: MICHAEL SHAUN KIRBY, GREENFOLDERS, INC., Respondents.	: : : : : :	**RESPONSE OF MICHAEL SHAUN KIRBY AND GREENFOLDERS, INC. TO ORDER TO SHOW CAUSE** Docket No. SD-13-0005 Docket No. SD-13-0006

Respondents Michael Shaun Kirby and GreenFolders, Inc. ("Respondents") hereby respond to the Order to Show Cause issued by the Director of the Utah Division of Securities ("Division"), as follows:

RESPONSE

1. Admit.

2. Admit.

3. Admit.

4. In response to paragraph 4, Respondents admit only that Harvey and Dixie Pulley (the "Pulleys") purchased 150,000 shares of GreenFolders stock for $375,000. Respondents assert that the stock was sold to the Pulleys as a result of their solicitations to Respondents

seeking an investment opportunity, and the Pulleys committed to make the investment in February 2009. Respondents deny the remaining allegations.

5. Admit.

6. For the reasons set forth below, Respondents deny paragraph 6.

7. Deny. The Pulleys did not lose their investment. They continue to own 150,000 shares of stock in GreenFolders, now known as Emageo Holding Company, Inc. The Pulleys and HDP Properties have brought a civil action in federal court against Respondents and others. The Pulleys and their daughters, Julie Taylor and DeAnn Backus, have all testified in depositions. The assertion in paragraph 7 is inconsistent with the Pulleys' testimony. In September 2011, GreenFolders' assets were acquired by First American Professional Real Estate Services, Inc. ("First American"), which is a wholly owned subsidiary of First American Financial Corporation. First American agreed to pay $3.95 million for GreenFolders' assets, with $1.5 million paid at the time of closing and $2.45 million to be paid contingent upon revenue targets. GreenFolders used the initial down payment to pay off debts, including secured debts, and the balance of the funds received will be distributed to shareholders. Sales of GreenFolders' product are on track to reach the revenue targets such that the full earnout is expected. With respect to the First American acquisition and its impact upon the Pulleys as shareholders, Harvey Pulley testified in his deposition as follows:

> Q. And you were able to look at the agreement and figure out how much you would receive from the asset purchase agreement as a shareholder in GreenFolders?
>
> A. That's, in essence, what I said. I calculated that I would be a short comer.
>
> Q. As you sit here today, do you still believe you're going to get something if GreenFolders has the sales that it hopes to have?
>
> A. I will get something, yes.

(Deposition of Harvey Pulley, p. 198.)

8. In response to paragraph 8, Respondents assert that Kirby met Julie Taylor, the Pulleys' daughter, in 2004, and dated Julie Taylor for approximately four years, from June 2005 through July 2009. Kirby went on numerous trips with Julie Taylor, and they discussed marriage. Kirby also attended many Pulley family gatherings and went on vacation with the Pulley family, and knew the Pulleys very well. The Pulleys knew Kirby's background as the owner and manager of Integrated Title Services, Inc. ("ITS"). The Pulleys made various loans secured by real property to parties referred to the Pulleys by Kirby. Respondents deny the remaining allegations in paragraph 8.

9. In response to paragraph 9, Respondents assert that Kirby met with Harvey Pulley, his daughter Julie Taylor, and his son Jeff in February 2010. The purpose of the meeting was to demonstrate the office software product developed by GreenFolders. Kirby arranged the meeting after Harvey Pulley, without any solicitation from Respondents, informed Kirby that he no longer wanted to do real estate loans, and wanted to be involved as an investor in GreenFolders. Kirby arranged the meeting in response to Harvey Pulley's request. The Pulleys knew that Kirby had become the CEO of GreenFolders in July 2008. Respondents deny the remaining allegations in paragraph 9.

10. Deny. Paragraph 10 is even inconsistent in material respects with Harvey Pulley's deposition testimony. Kirby arranged a meeting at the offices of ITS to demonstrate GreenFolders software product after Harvey Pulley, with no solicitation from Respondents, had expressed an interest in becoming involved with the company. Kirby arranged for the meeting to

be held at ITS because it was using the software. The meeting took place in early February, shortly before the Pulleys' first investment on February 11, 2009.

Kirby demonstrated the product and showed the Pulleys how it was used in the title and escrow business. (The Pulleys' daughter DeAnn, who was employed in the title business at that time, had already seen a demonstration of the product and had expressed excitement over its potential.) Kirby explained that the software was nearly ready for marketing to customers, and no sales had yet been made. Kirby explained that the company was finalizing the software, and needed money to take the company to the next level. Kirby also explained that the software was built using a Microsoft platform because most computer users have Microsoft operating software. Kirby also informed the Pulleys that he had been talking with three other investors who had expressed an interest in investing. Kirby told the Pulleys that the company did not want any more investors than necessary. The Pulleys wanted to invest $500,000, but Kirby wasn't willing at that time to accept this much from the Pulleys because of the interest that had been expressed by other investors. The Pulleys said that they were were committing to invest $500,000, but would invest $250,000 for now because that is all Kirby would accept.

11. Admit.

12. Deny. On February 11, 2009, Julie Taylor signed and received a document entitled "GreenFolders Investor Information," in which she acknowledged receiving various documentation about GreenFolders, including a ledger of shareholders. In her deposition, Julie Taylor admitted that her signature appears on this document, but accused Kirby of copying her signature onto the document from another document she had signed as a member of HDP Properties, LLC. She testified that the only documents she has ever signed on behalf of HDP

Properties, LLC are loan payoff statements. She further testified that Kirby had access to the loan payoff statements she had signed on behalf of HDP Properties, LLC. Respondents subpoenaed Julie Taylor's records, including all loan payoff statements which could have been used, according to her, to copy her signature onto the acknowledgement. All of the loan payoff statements include signatures that are similar to the signature appearing on the acknowledgement which she denies signing, but they are not identical and could not have been used to copy her signature onto the acknowledgement. Julie Taylor's testimony is sheer speculation, and there is no legal or factual basis for her accusations that Kirby fraudulently copied her signature onto the acknowledgement. (Deposition of Julie Taylor, pp. 76, 87-88.) As set forth more fully below, the Pulleys received more than adequate disclosure to make an informed investment decision.

13. In response to paragraph 13, Respondents admit only that funds from the Pulleys were deposited into accounts of GreenFolders and were used solely for ordinary and necessary operating expenses of the business. Respondents further admit that GreenFolders had accounts at Bank of American Fork and at America First Credit Union. Respondents deny all remaining allegations in paragraph 13.

14. In response to paragraph 14, Respondents admit that GreenFolders had accounts at Bank of American Fork. Respondents further assert that to the extent any funds in any GreenFolders account were used to pay American Express bills, the payments were for the purpose of covering expenses incurred for the benefit of GreenFolders in its ordinary course of business. Respondents deny the remaining allegations in paragraph 14.

15. In response to paragraph 15, Respondents assert that all of GreenFolders' funds were used to cover expenses incurred for the benefit of GreenFolders, in the ordinary course of

GreenFolders' business, including payments to American Express. Respondents further assert that expenses incurred for the benefit of GreenFolders included travel and restaurant charges. Contrary to this paragraph, Emageo did have an American Express account, and all payments from GreenFolders were on this account. Furthermore, no GreenFolders funds were used to pay ITS bills from American Express. In addition, GreenFolders has paid no funds to ITS except monthly rent for use of office space at below market rates. Respondents deny the remaining allegations in paragraph 15.

16. In response to paragraph 16, Respondents assert that all of GreenFolders' funds were used to cover expenses incurred for the benefit of GreenFolders in the ordinary course of business, including payroll and other business expenses. Respondents deny the remaining allegations in paragraph 16.

17. In response to paragraph 17, Respondents admit that the Pulleys invested an additional $125,000 in July 2009. Respondents further assert that, according to Harvey Pulley's deposition testimony, the Pulleys had committed to make this investment at the time of the first investment in February 2009. Respondents deny the remaining allegations in paragraph 17.

18. In response to paragraph 18, Respondents admit that GreenFolders received $125,000 from the Pulleys on or about July 22, 2009, pursuant to a commitment made by the Pulleys in February 2009. Respondents further admit that the Pulleys received 50,000 shares of stock in return for the investment. Respondents deny the remaining allegations in paragraph 18.

19. Deny. *See* paragraph 12 above.

20. In response to paragraph 20, Respondents assert that all funds of GreenFolders, including amounts invested by the Pulleys, were used for the ordinary and necessary business purposes of GreenFolders, and deny the remaining allegations in paragraph 20.

21. In response to paragraph 21, Respondents admit that all funds of GreenFolders, including investments from the Pulleys, were used for the ordinary and necessary business purposes of GreenFolders, and deny the remaining allegations in paragraph 21. *See* Response to paragraph 15, above.

22. In response to paragraph 22, Respondents assert that all funds of GreenFolders were used for the ordinary and necessary business purposes of GreenFolders. Respondents deny the remaining allegations in paragraph 22. *See* Response to paragraph 15, above.

23. In response to paragraph 23, Respondents admit that all funds of GreenFolders were used for the ordinary and necessary business purposes of GreenFolders, and deny any remaining allegations in paragraph 23.

24. Respondents admit that the Pulleys and other shareholders were advised of a potential sale of GreenFolders to First American in July 2011, and a shareholders' meeting was held in August to address the sale. Respondents further assert that the Pulleys received a stock ledger showing what all shareholders paid for their stock at the time of their investment in February 2009. Respondents deny the remaining allegations in paragraph 24.

25. In response to paragraph 25, Respondents admit that the Pulleys have not yet received a return on their investment, but the Pulleys, as well as GreenFolders management, fully expect that the shareholders will receive a return. First American purchased the assets of GreenFolders for $3.95 million, which included a $1.5 million down payment and a $2.45

million earnout contingent upon reaching revenue targets. The GreenFolders product has sold well, and it is fully expected that the entire earnout will be received. *See* response to paragraph 7, above. Respondents deny the remaining allegations in paragraph 25.

26. In response to paragraph 26, Respondents incorporate by reference the foregoing responses.

27. Admit.

28. Deny.

a. This assertion is untrue. All of GreenFolders' funds, including investments from the Pulleys, were used solely to cover ordinary and necessary business expenses incurred by or for the benefit of GreenFolders. None of GreenFolders' funds have ever been used to pay American Express bills of Kirby or ITS. Contrary to the Division's assertions, Emageo did have an American Express account, and any payments from GreenFolders to American Express were for this account. The Division has made this allegation without ever having requested or reviewed the accounting records of GreenFolders, and this assertion is unfounded.

b. Deny. Respondents made no such representation. In any event, it would have been a reasonable expectation for such an occurrence because GreenFolders management, as well as the Pulleys, believed that GreenFolders had an excellent software product that would be attractive to a potential acquiring company. Furthermore, no misrepresentation could be evidenced by such a statement inasmuch as GreenFolders was in fact acquired by First American for $3.95 million. First American is a wholly owned subsidiary of First American Financial Corporation. First American Financial

Corporation is a company whose stock is traded on the New York Stock Exchange and has billions of revenues annually. GreenFolders was in fact acquired by a large company like Microsoft and with hindsight any such prediction about a potential acquisition, if made, would be true.

c. This allegation is denied as untrue and immaterial. The Pulleys knew that GreenFolders was a startup company with no track record, and only in its beginning stages. The Pulleys knew that GreenFolders needed to raise capital in order to continue developing the product and to grow the company. Furthermore, GreenFolders did obtain other investors in 2010, who invested $900,000 in the form of a loan with a right to convert the loan to equity at over $2.00 per share.

d. Deny. This assertion is completely contrary to the Pulleys' deposition testimony. In his deposition, Harvey Pulley testified that at the time of his purchase of GreenFolders stock, he knew that GreenFolders had not yet sold any product. (Deposition of Harvey Pulley, pp. 127-28.) He further testified that he knew at the time of the purchase of stock that GreenFolders had not yet "reached any level of competency at all." (*Id.* at pp. 142-43.) Furthermore, Julie Taylor, the Pulleys' daughter and a vice president at Bank of American Fork, testified that at the time of the GreenFolders investment, she knew that GreenFolders was a "startup business," meaning it was not well established and it was just getting off the ground. (Deposition of Julie Taylor, p. 48.) Julie Taylor further testified that she attended the February 2009 meeting with her father to discuss the GreenFolders investment because her father wanted her opinion. (Deposition of Julie Taylor, p. 51.)

e. Deny. The Pulleys received a shareholder ledger at the time of their purchase of stock which showed what all prior shareholders had paid for their stock. (*See* paragraph 12, above.) Moreover, all of the other shareholders had bought stock either at different times or in different circumstances such that their purchases were immaterial to the Pulleys inasmuch as they were not similarly situated. Mike Kirby, for example, had options to purchase stock at $.40 a share, but also had an employment agreement whereby he acted as CEO of GreenFolders for a period of 2½ years without any salary or other benefits. Other shareholders purchased stock before the GreenFolders software product had been developed or had rendered services for GreenFolders as employees or directors.

f. Deny. The Pulleys had ample information to make an informed investment decision. There is no obligation to disclose obvious information or matters already known to an investor. Harvey Pulley had operated a successful business for over 40 years, averaging during many years a quarter of a million dollars in annual revenues. (Deposition of Harvey Pulley, pp. 11-12.) He testified in his deposition that he is well aware of ups and downs and risks in the operation of a business. (*Id.* at pp. 16-17, 102, 108-109.) Harvey Pulley had educated himself about the high-risk futures market, and he had invested in futures over a period of about 20 years. (*Id.* at pp. 103-108.)

The Pulleys also were very familiar with Kirby, who was the chief executive officer of GreenFolders beginning in approximately July 2008. The Pulleys knew his background as the owner and manager of ITS. (Deposition of Julie Taylor, p. 42.) The Pulleys have described Kirby as a close family friend, and he had dated their daughter

Julie Taylor for four years. Kirby attended numerous Pulley family gatherings and vacations and went on numerous trips with Julie Taylor. (*Id.* at pp. 27, 64, 66-67.) Through their connection to Kirby, the Pulleys had access to any information they desired about GreenFolders, and they received all information deemed necessary before investing.

In addition, the Pulleys' daughter, DeAnn Backus, became the vice president of customer relations for GreenFolders on July 6, 2009, before the second investment. (Deposition of DeAnn Backus, pp. 18-20.) She is also a member of HDP Properties. Before any investment by the Pulleys, she was employed in the title industry and had seen a demonstration of GreenFolders product and was very impressed. In her capacity as an employee of GreenFolders, she learned a lot about GreenFolders and shared the information with her parents. (*Id.* at pp. 43-44.) She knew all the employees of GreenFolders and testified that she believes all, including Kirby, were competent in their jobs. (*Id.* at pp. 24-26.) She further testified that she knew that GreenFolders was a beginning stage company started by two young men, and Kirby had joined the company to help further develop it. (*Id.* at p. 21.) Julie Taylor also testified that before her parents invested in GreenFolders, she visited GreenFolders' offices one to two times a week, and knew all the employees and what their roles were with the company. (Deposition of Julie Taylor, pp. 46-47, 66-70.)

HDP Properties, which provided the funding for the purchase of the Pulleys' stock, had assets of $4.5 million in the beginning of 2009 when the investments in GreenFolders were made. The Pulleys invested approximately 8% of HDP's assets in

GreenFolders. They did so knowing, as Harvey Pulley testified, that GreenFolders had not yet sold any product and had not yet reached any level of competency. (Deposition of Harvey Pulley, pp. 127-28, 142-43.) His daughter Julie Taylor knew at the time of the investment that GreenFolders was a "startup business" meaning that it was not well established and was just getting off the ground. (Deposition of Julie Taylor, p. 48.) The Pulleys invested in GreenFolders because they believed then and continue to believe that GreenFolders had a terrific product. (Deposition of Harvey Pulley, pp. 142-43.) The Pulleys daughter DeAnn Backus became the vice president of client relations for GreenFolders on July 6, 2009, before the second investment. After the First American acquisition, DeAnn Backus continued to work for First American in a similar role. She believes that GreenFolders' software program is "fantastic." (Deposition of DeAnn Backus, p. 28.)

Furthermore, it was immaterial and irrelevant whether registration was required for the sale of stock to the Pulleys and whether Respondents were licensed to sell securities. This is so because there was no registration or licensing requirement that applied, as is evidenced by the fact that the Division has not alleged registration or licensing violations.

Given the Pulleys' financial profile, it cannot be said that investing 8% of their assets in a startup company was unsuitable, and they had ample information to make that decision.

It is abundantly clear from the Pulleys' deposition testimony that all of the alleged nondisclosures alleged in paragraph 28 are either untrue or wholly immaterial to the Pulleys' investment decision. Mr. Pulley testified as follows:

> Q: . . . and I want to know very specifically what you think the fraud was and I have—you have said he wasn't forthcoming with information. What information do you think he was not forthcoming with?
>
> . . . .
>
> THE WITNESS: He didn't furnish information about what other people had paid for the stock.
>
> Q: . . . anything else that you believe he was not forthcoming about?
>
> . . . .
>
> THE WITNESS: At that point, I can't really remember anything specifically.

(*Id.* at p. 93; *see also id.* at pp. 170, 196-99.)

Directly contrary to Harvey Pulley's accusation of fraud in his deposition, however, the Pulleys received full disclosure of what other shareholders paid for their stock. (*See* paragraph 12, above.) The Pulleys make a futile attempt to invalidate the disclosure with the speculative, sham testimony of Julie Taylor. (*Id.*)

The Pulleys were not defrauded. They are disgruntled shareholders who now, in hindsight, wish they would have negotiated a different price for the purchase of their stock.

REQUEST FOR RELIEF

For the reasons set forth above, Respondents request that all claims against them be dismissed with prejudice, and for such other and further relief as may be deemed appropriate.

DATED this 15th day of February, 2013.

KRUSE LANDA MAYCOCK & RICKS, LLC

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Paula W. Faerber
Attorneys for Respondents

MAILING CERTIFICATE

The undersigned hereby certifies that the signed original of the foregoing RESPONSE OF MICHAEL SHAUN KIRBY AND GREENFOLDERS, INC. TO ORDER TO SHOW CAUSE has been mailed, postage fully prepaid, this 15th day of February, 2013, to the following:

Administrative Court Clerk
c/o Julie Price
Utah Division of Securities
160 E. 300 South, 2nd Floor
Box 146760
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with a copy to:

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