

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**ADMINISTRATIVE PROCEEDING**  
**File Nos. 3-20239, 3-20242**

**In the Matter of**

**MICHAEL SEAN MURPHY and  
JOCELYN MURPHY,**

**Respondents.**

**DIVISION OF ENFORCEMENT’S REPLY  
IN SUPPORT OF ITS MOTION FOR  
SUMMARY DISPOSITION AND  
IMPOSITION OF SANCTIONS AGAINST  
RESPONDENTS  
MICHAEL SEAN MURPHY AND  
JOCELYN MURPHY.**

The Division of Enforcement (“Division”) submits this reply brief in support of its Motion for Summary Disposition and Imposition of Sanctions (“Division’s Motion”) against Respondents Michael Sean Murphy and Jocelyn Murphy (“Respondents”). Respondents’ opposition brief (“Opposition”) fails to provide any compelling reason to deny the Division’s Motion. As such, the Division respectfully requests the Commission grant the Motion and permanently bar Michael Murphy and Jocelyn Murphy from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

**I. Respondents’ Opposition is without merit**

In their Opposition, Respondents state four reasons to deny the Division’s Motion, each of which are without merit.

*First*, Respondents claim the Division’s Motion should be denied because, under SEC Rules of Practice 230 and 250, the Division has not made “documents . . . available for inspection in copying.” (Respondent’s Brief at p. 2). Respondents’ tellingly fail to advise the Commission that Respondents received the non-privileged documents in the SEC’s investigative file as part of the SEC’s discovery obligations in the federal court litigation, *SEC v. RMR Asset Management, et al.*, No. 18-cv-1895 (S.D. Cal.) (SEC Initial Disclosures (Attached as Exhibit

A); March 21, 2019 Production letter (Attached as Exhibit B); March 25, 2019 email from SEC counsel to Defense counsel (Attached as Exhibit C); November 26, 2019 Production Letter (Attached as Exhibit D); March 5, 2020 Production Letter (Attached as Exhibit E)).

Respondents never served any additional discovery requests on the SEC in that litigation and documents produced in that litigation formed the basis of the SEC's motion for summary judgment, which were relied upon by the Court in ruling that Respondents violated Section 15(a) and Section 10(b) of the Exchange Act.

The Division served Respondents with the Division's Motion on July 16, 2021. (July 16, 2021 email (Attached as Exhibit F)). Following the Division's filing, the Office of the Secretary issued an order setting the briefing schedule that was emailed to all parties under the Jocelyn Murphy file number. *See In re Jocelyn Murphy and Michael Sean Murphy*, Admin. Proc. File No. 3-20239, Release No. 34-92459, 2021 WL 3109828 (July 21, 2021). In that Order, the Commission stated:

Motions for summary disposition may be made under Rule 250(b) after a respondent's answer has been filed and documents have been made available to the respondent for inspection and copying pursuant to Rule of Practice 230. *Id.*; [17 C.F.R. § 201.230](#). Both respondents have answered, and *we assume that documents have been made available to them pursuant to Rule 230. If that is not the case, the parties should notify the Commission and this scheduling order will be modified.*

*Id.* at \*1 n. 5 (emphasis added). Respondents did not raise with the Commission the absence of a Rule 230 production after receiving that July 21 briefing schedule. On October 7, 2021, the Office of the Secretary emailed the parties the same briefing schedule order under the Michael Sean Murphy file number (3-20242). On October 12, 2021, Respondents filed a motion seeking a modification of the briefing schedule, claiming they did not receive the Commission's Order until October 7, 2021.<sup>1</sup> In their October 12 extension motion, Respondents did not raise the

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<sup>1</sup> The Division notes that it also received a copy of the Commission's July 21, 2021 Order by email on October 7, 2021. The Division further notes that the October 7, 2021 service email is identical to the service email the Commission sent, presumably to all parties, on July 21, 2021.

absence of a Rule 230 production as a basis for the extension. The Division did not object to Respondents' request, and on October 20, 2021, the Commission granted Respondent's extension motion and set a new briefing schedule. *See In re Jocelyn Murphy and Michael Sean Murphy*, Admin. Proc. File No. 93393 (S.E.C. Release No.), Release No. 34-93393, 2021 WL 4894888 (Oct. 20, 2021). The October 20 scheduling order cited the earlier July 21 order and again stated: "if documents had not been made available, the parties should notify the Commission and the ordered briefing schedule would be modified." *Id.* at \*1 n. 9. Following receipt of the October 20 Order, Respondents did not seek a further modification of the briefing schedule based on the absence of a Rule 230 production. Instead, Respondents raise the absence of a Rule 230 production in their response brief, and propose that the Division withdraw its Motion, make a Rule 230 production, and then re-file its Motion after making such production. As Respondents tactics effectively concede, resolution of the Division's Motion is predicated on the District Court ruling and judgment and not materials that might be part of the Rule 230 production. The Commission should reject their transparent form-over-substance gamesmanship.

The Division attached to its Motion the materials it relies upon to support its request for summary disposition in this follow-on administrative proceeding – the ruling of the U.S. District Court for the Southern District of California finding Respondents liable for violations of Sections 15(a) and 10(b) of the Exchange Act and the Final Judgment from that Court against Respondents – and Respondents have possession of these documents. It is difficult to conceive, already having possession of the Division's investigative file and the two documents the Division relies upon to support its Motion, what additional documents Respondents now seek. Clearly, Respondents' argument is nothing more than a delay tactic to avoid an imposition of a lifetime bar from the securities industry. Respondents have already delayed this action by failing

to adhere to the Commission's orders and Respondents' last minute request to obtain materials already in their possession is no reason to delay this matter further.<sup>2</sup>

*Second*, Respondents claim that genuine issues of material fact exist and cite to declarations Respondents submitted in the District Court as support for their argument. The District Court, in ruling on summary judgment and remedies, determined these declarations were nothing more than conclusory, unsupported, self-serving statements that failed to rebut the SEC's factual claims, and thus failed to create a genuine issue of disputed material fact. *SEC v. RMR Asset Mgmt., et al.*, 479 F. Supp.3d 479, 923, 927 (S.D. Cal 2020) (citing *Hansen v. United States*, 7 F.3d 137, 138 (9th Cir. 1993) (“When the nonmoving party relies only on its own affidavits to oppose summary judgment, it cannot rely on conclusory allegations unsupported by factual data to create an issue of material fact.”)). Just as in the District Court litigation, Respondents' declarations fail to create a genuine issue of material fact, and, just as in the District Court action, Respondents fail to provide additional materials and documents to corroborate and support their self-serving declarations. Regardless, the affidavits cannot overcome the fact that the District Court found that Respondents:

- Frequently traded securities on behalf of RMR Asset Management (“RMR”), using RMR's capital;
- Did not have a partnership with Ralph Riccardi of RMR; and
- Received transaction-based compensation for the securities trading they did on behalf of RMR.

*RMR Asset Mgmt.*, 479 F. Supp.3d at 927-28. The District Court further found the SEC submitted evidence that “clearly establish[ed Jocelyn Murphy acted with] scienter” when she

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<sup>2</sup> On November 3, 2021, Respondents sent two computer hard drives to the Division. Upon receipt, the Division will load the previously produced investigative file and return the hard drives to Respondents. As the Division notes above, the material it will produce will be the same material produced in the District Court litigation. Not only does this production satisfy Rule 230, it causes no reason to delay these administrative proceedings any further.

provided erroneous zip codes to obtain new-issue municipal bonds. *Id.* at 929-30. These judicial findings demonstrate that the Respondents should be barred from the securities industry.

*Third*, contrary to Respondents' contention, the relief the Division seeks here, a permanent industry bar, is not simply "additional punishment." Industry bars have long been considered effective deterrence and justified in the case of egregious conduct. *See, e.g., Springsteen-Abbot v. SEC*, 989 F.3d 4, 9 (D.C. Cir. 2021); *Monetta Fin. Servs., Inc.*, Admin. Proc. File No. 3-9546, 86 SEC Docket 1071, 2005 WL 2453949, \*3 (Oct. 4, 2005); *Lester Kuznetz*, Admin. Proc. File No. 3-6356, 36 SEC Docket 332, 1986 WL 625417, \*3 (August 12, 1986) (noting that the sanction of a bar "serves the purpose of general deterrence"). Moreover, the Division's request is not an effort, as Respondents claim, to "tack on" additional sanctions. The Division seeks sanctions against Respondents that by statute are expressly available in this forum. *See* 15 U.S.C. § 78o. Thus, the Division is merely requesting the sanctions available to deter Respondents from engaging in similar and egregious conduct that led to the underlying action.

*Finally*, Respondents contend that because the District Court found that Respondents violated Section 15(a) of the Exchange Act for failing to register as a broker dealer, the Commission cannot now bar them from ever becoming, or associating with, a broker dealer. As with each of their previous arguments, Respondents' contention is a futile attempt to stave off the imposition of a lifetime bar.

In the District Court, Judge Battaglia determined that Respondents' conduct required them to register as broker/dealers under Section 15(a) with the Commission, but that they were not and should have been. *RMR Asset Mgmt.*, 479 F. Supp.3d at 926-27. Thus, Respondents' conduct required that they register as broker/dealers under Section 15 of the Exchange Act. Because their conduct in this action (albeit illegally performed) was the same conduct Section 15(b)(6) requires before the Commission can impose a lifetime bar, the sanctions found in

Section 15(b)(6) are applicable and appropriate. Respondents' arguments to the contrary, like their entire opposition brief, fail to recognize or consider the impact of the District Court's ruling.

## **II. Conclusion**

The Division respectfully submits that the evidentiary record shows that Respondents Michael Murphy and Jocelyn Murphy violated the registration provisions of the Exchange Act, Respondent Jocelyn Murphy violated the antifraud provision of the Exchange Act, and it is in the public interest that they be barred from the industry. An injunction against a scheme involving dishonesty requires a bar, and because of the Commission's obligation to maintain honest securities markets, an industry-wide bar is appropriate.

Dated: November 9, 2021

Respectfully submitted,

/s/ James E. Smith

James E. Smith

Christian D. H. Schultz

Division of Enforcement  
Securities and Exchange Commission  
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Washington D.C. 20549  
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[smithja@sec.gov](mailto:smithja@sec.gov)

COUNSEL FOR  
DIVISION OF ENFORCEMENT

**CERTIFICATE OF SERVICE**

I certify that on November 9, 2021, I served a true and correct copy of the foregoing document on Respondents by email to the following counsel of record for Respondents Michael Murphy and Jocelyn Murphy:

Robert Knuts  
Sher Tremonte LLP  
90 Broad Street, 23<sup>rd</sup> Floor  
New York, New York 10004  
tel: 212.202.2600  
direct: 212.202.2638  
fax: 212.202.4156  
[rknuts@shertremonte.com](mailto:rknuts@shertremonte.com)

/s/ James E. Smith  
James E. Smith

# **Exhibit A**



1 NICHOLAS A. PILGRIM (NY Bar No. 5285416)  
Email: pilgrimn@sec.gov  
2 KEVIN GUERRERO (AZ Bar No. 023673)  
Email: guerrerok@sec.gov  
3 WARREN E. GRETH, JR. (VA Bar No. 72988)  
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4 CORI M. SHEPHERD (DC Bar No. 993503)  
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5

6 Attorneys for Plaintiff  
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100 F Street, NE  
7 Washington, DC 20549  
Telephone: (202) 551-8430 (Pilgrim)  
8 Facsimile: (202) 772-9282

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

12 SECURITIES AND EXCHANGE COMMISSION,

13  
14 Plaintiff,

15 vs.

16 RMR ASSET MANAGEMENT COMPANY, et  
17 al.,

18 Defendants.  
19  
20

Case No. 3:18-cv-01895-AJB-LL

**PLAINTIFF'S INITIAL  
DISCLOSURES PURSUANT  
TO FED. R. CIV. P. 26(a)(1)**

21  
22 Plaintiff Securities and Exchange Commission (the "SEC" or "Plaintiff") hereby makes  
23 its initial disclosures pursuant to Fed. R. Civ. P. 26(a)(1):

- 24 (i) **The name and, if known, the address and telephone number of each**  
25 **individual likely to have discoverable information – along with the subjects**  
26 **of that information – that the disclosing party may use to support its claims**  
27 **or defenses, unless the use would be solely for impeachment.**  
28

Based on information presently and reasonably available to it, Plaintiff identifies the following persons and entities as those likely to have discoverable information that it may use to support its claims against Defendants Jocelyn M. Murphy (“J. Murphy”), Michael S. Murphy (“M. Murphy”), and Richard C. Gounaud (“Gounaud” and collectively “Defendants”):

<u>Individual &amp; Entities</u>	<u>Subjects of information</u>
Ralph Riccardi c/o D. Loren Washburn Smith Washburn LLP 8 East Broadway, Suite 320 Salt Lake City, UT 84111 (801) 584-1800	Information concerning trading activity and compensation of the Defendants; information concerning the business operations and trading activity of RMR Asset Management Company (“RMR”); and communications and interactions with the Defendants and other RMR employees and independent contractors.
Raquel Otis c/o D. Loren Washburn Smith Washburn LLP 8 East Broadway, Suite 320 Salt Lake City, UT 84111 (801) 584-1800	Information concerning trading activity and compensation of the Defendants; information concerning the business operations and trading activity of RMR; and communications and interactions with the Defendants and other RMR employees and independent contractors.
Veronica Otis c/o D. Loren Washburn Smith Washburn LLP 8 East Broadway, Suite 320 Salt Lake City, UT 84111 (801) 584-1800	Information concerning trading activity and compensation of the Defendants; information concerning the business operations and trading activity of RMR; and communications and interactions with the Defendants and other RMR employees and independent contractors.
New York City Transitional Finance Authority 255 Greenwich Street, 6th Floor New York, NY 10007-2106 (212) 788-5864	Information concerning the initial offering and sale of securities traded by Defendant J. Murphy, including, but not limited to, details concerning the order period rules associated with offerings in which Defendant J. Murphy submitted an indication of interest for a bond.
New Jersey Turnpike Authority Mailing address: PO Box 5042 Woodbridge, NJ 07095-5042 Physical address: 1 Turnpike Plaza Woodbridge N.J., 07095 732-750-5300	Information concerning the initial offering and sale of securities traded by Defendant J. Murphy, including, but not limited to, details concerning the order period rules associated with offerings in which Defendant J. Murphy submitted an indication of interest for a bond.
State of California Mailing address: Post Office Box 942809 Sacramento, CA 94209-0001	Information concerning the initial offering and sale of securities traded by Defendant J. Murphy, including, but not limited to, details concerning the order period rules associated with offerings in which Defendant J.

1	Physical address: State Treasurer's Office 915 Capitol Mall, C-15, Room 110 Sacramento, CA 95814 (916) 653-2995	Murphy submitted an indication of interest for a bond.
4	State of Louisiana State Bond Commission Mailing address: P.O. Box 44154 Baton Rouge, Louisiana 70804 Physical address: 900 North Third Street 3rd Floor, State Capitol Baton Rouge, Louisiana 70802 (225) 342-0010	Information concerning the initial offering and sale of securities traded by Defendant J. Murphy, including, but not limited to, details concerning the order period rules associated with offerings in which Defendant J. Murphy submitted an indication of interest for a bond.
10	The City of New York New York City Comptroller One Centre Street New York, NY 10007 (212) 669-3916	Information concerning the initial offering and sale of securities traded by Defendant J. Murphy, including, but not limited to, details concerning the order period rules associated with offerings in which Defendant J. Murphy submitted an indication of interest for a bond.
13	New Jersey Transportation Trust Fund Authority P.O. Box 600 Trenton, NJ 08625-0600 (609) 530-5113	Information concerning the initial offering and sale of securities traded by Defendant J. Murphy, including, but not limited to, details concerning the order period rules associated with offerings in which Defendant J. Murphy submitted an indication of interest for a bond.
16	State of Connecticut Office of the Treasurer 55 Elm Street Hartford, CT 06106 (860) 702-3010	Information concerning the initial offering and sale of securities traded by Defendant J. Murphy, including, but not limited to, details concerning the order period rules associated with offerings in which Defendant J. Murphy submitted an indication of interest for a bond.
19	Morgan Stanley & Company LLC c/o Michael R. Trocchio Sidley Austin LLP 1501 K St, NW Washington DC 20005 202-736-8070	Information concerning the initial offering and sale of securities traded by Defendant J. Murphy, including, but not limited to, details concerning the order period rules associated with offerings in which Defendant J. Murphy submitted an indication of interest for a bond.
23	J.P. Morgan Securities LLC c/o Fiona Philip Sidley Austin LLP 1501 K Street, N.W. Washington, D.C. 20005 (202) 736-8214	Information concerning the initial offering and sale of securities traded by Defendant J. Murphy, including, but not limited to, details concerning the order period rules associated with offerings in which Defendant J. Murphy submitted an indication of interest for a bond.
26	Merrill Lynch, Pierce, Fenner & Smith Incorporated c/o Gerald Russello	Information concerning the initial offering and sale of securities traded by Defendant J. Murphy, including, but not limited to, details concerning the order period

1	Sidley Austin LLP 787 Seventh Avenue New York, NY 10019 (212) 839-5716	rules associated with offerings in which Defendant J. Murphy submitted an indication of interest for a bond.
2		
3	Citigroup Global Markets Inc. c/o Nader Salehi Sidley Austin LLP 787 Seventh Avenue New York, NY 10019 (212) 839-5338	Information concerning the initial offering and sale of securities traded by Defendant J. Murphy, including, but not limited to, details concerning the order period rules associated with offerings in which Defendant J. Murphy submitted an indication of interest for a bond.
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5		
6	Kimberley Frazier [REDACTED]	Communications, interactions, and trading activity with Defendant J. Murphy.
7		
8	Formerly with Lebenthal & Co., LLC	
9	Thomas Jett [REDACTED]	Communications, interactions, and trading activity with Defendant J. Murphy.
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11	Formerly with Wells Fargo Securities, LLC	
12	Laura Taylor [REDACTED]	Communications, interactions, and trading activity with Defendant J. Murphy.
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14	Formerly with Wells Fargo Securities, LLC	
15	Gabriel Velasquez [REDACTED]	Communications, interactions, and trading activity with Defendant J. Murphy.
16		
17	Formerly with Alamo Capital	
18	Kevin O'Rourke Williams Capital Group 650 Fifth Avenue, 9 <sup>th</sup> Floor New York, NY 10019 212-830-4559	Communications, interactions, and trading activity with Defendant J. Murphy.
19		
20	Clark Durham Jefferies & Co. 300 Crescent Court, Suite 500 Dallas, TX 75201 972-701-3000	Communications, interactions, and trading activity with Defendant J. Murphy.
21		
22		
23	Austin Myers Wells Fargo Securities 2141 Rosecrans Ave. El Segundo, CA 90245 866-257-9050	Communications, interactions, and trading activity with Defendant J. Murphy.
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25		
26	Daniel Reilly Mesirow Financial 140 East 45 Street, 30 <sup>th</sup> Floor	Communications, interactions, and trading activity with Defendant J. Murphy.
27		

1	New York, NY 10017 800-425-5762	
2	Antonio Vercelli Keybank Capital Markets Inc. 227 W. Monroe St., Suite 1700 Chicago, IL 60606 (312) 360-3870	Communications, interactions, and trading activity with Defendant J. Murphy.
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5	William Welsh Roosevelt & Cross, Inc. One Exchange Plaza 55 Broadway New York, NY 10006 (212) 344-2500	Communications, interactions, and trading activity with Defendant J. Murphy.
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8	Emanuel Schmalz Blaylock Van, LLC 600 Lexington Ave. 3 <sup>rd</sup> Floor New York, NY 10022 (212) 715-6600	Communications, interactions, and trading activity with Defendant J. Murphy.
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11	Craig Croone Raymond James and Associates, Inc. 50 North Front St. Memphis, TN 38103 (901) 524-4100 Formerly with Morgan Keegan & Co., Inc.	Communications, interactions, and trading activity with Defendant J. Murphy.
12		
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14		
15	Traci Sarmiento APW Capital, Inc. 425 South Cherry St., Suite 900 Denver, CO 80246 (303) 399-9090 Formerly with Citigroup Global Markets Inc.	Communications, interactions, and trading activity with Defendant J. Murphy.
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18		
19	David Johnson Mesirow Financial, Inc. 353 N. Clark St. Chicago, IL 60654 (312) 595-6000	Communications, interactions, and trading activity with Defendant J. Murphy.
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21		
22	Ronald Devries The William Blair Building 150 North Riverside St. Chicago, IL 60606 (312) 236-1600	Communications, interactions, and trading activity with Defendant J. Murphy.
23		
24		
25	Jason Wong Tribal Capital Markets, LLC 475 Springfield Ave., Suite 301 Summit, NJ 07901	Communications, interactions, and trading activity with Defendant J. Murphy.
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1	212-606-0226 Formerly with Drexel Hamilton, LLC	
2	Kevin Bruening UBS Financial Services Inc. 1501 K. Street NW Washington, Dc 20005 (202) 585-4000	Communications, interactions, and trading activity with Defendant J. Murphy.
3		
4		
5	Kenneth Kramer [REDACTED]	Communications, interactions, and trading activity with Defendant J. Murphy.
6	Formerly with Rice Financial Products Company	
7		
8	Michael Perry [REDACTED]	Communications, interactions, and trading activity with Defendants J. Murphy and M. Murphy.
9	Formerly with Academy Securities	
10	Michael Keane [REDACTED]	Communications, interactions, and trading activity with Defendants J. Murphy and M. Murphy.
11	Formerly with Academy Securities	
12		
13	John Goltermann Highgate Securities Investments 100 Fillmore Street 5th Floor Denver, CO 80206 (303) 968-1230 Formerly with Obermeyer Wood Investment Counsel, LLLP	Communications, interactions, and trading activity with Defendants J. Murphy and M. Murphy.
14		
15		
16		
17	Steve Logan Citi Private Advisory, LLC Citi Private Bank 1225 17th Street, 21st Floor, Suite 2100 Denver, CO 80202 (303) 296-5808	Communications, interactions, and trading activity with Defendants J. Murphy and M. Murphy.
18		
19		
20		
21	Robert Wright UBS Financial Services Inc. 1501 K. Street NW Washington, Dc 20005 (202) 585-4000	Communications, interactions, and trading activity with Defendants J. Murphy and M. Murphy.
22		
23		
24	Steven J. Elias Sr. EK Riley Investments, LLC 1420 5th Avenue Suite 3300 Seattle, WA 98101 (206) 832-1520	Communications, interactions, and trading activity with Defendants J. Murphy and M. Murphy.
25		
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27		

1	Chris Shay George K. Baum & Company 1400 Wewatta Street, Suite 800 Denver, CO 80202 (303) 292-1600	Communications, interactions, and trading activity with Defendant M. Murphy.
2		
3		
4	Daniel Derisio Morgan Stanley Smith Barney LLC 7500 Old Georgetown Road Bethesda, MD 20814 (301) 961-1800 Formerly with Wells Fargo Clearing Services, LLC	Communications, interactions, and trading activity with Defendant M. Murphy.
5		
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7		
8	David Borenstein Wells Fargo Clearing Services LLC 1133 Connecticut Ave. NW 9TH Fl. Washington, DC 20036 (202) 861-4400	Communications, interactions, and trading activity with Defendant M. Murphy.
9		
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11	Timothy "Matt" Murphy Wells Fargo Clearing Services LLC 6233 Sienna Pkwy. Missouri City, TX 77459 (281) 778-2111	Communications, interactions, and trading activity with Defendant M. Murphy.
12		
13		
14	Scott Livingston Livingston Securities, LLC 626 Rexcorp Plaza Suite 603, West Tower Uniondale, NY 11556 212-520-8477	Communications, interactions, and trading activity with Defendant M. Murphy.
15		
16		
17	John Glasmann Precision Securities, LLC 16885 Via Del Campo Ct., Suite 120 San Diego, CA 92127 (858) 673-6653	Communications, interactions, and trading activity with Defendant M. Murphy.
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19		
20	Stephen Stanford Portsmouth Financial Services 11197 County Road 1 Fairhope, AL 36532 (415) 543-8500	Communications, interactions, and trading activity with Defendant M. Murphy.
21		
22		
23	David S. Roth RBC Capital Markets, LLC 200 Nyala Farms Road Suite One Westport, CT 06880-6261 (203) 221-2525	Communications, interactions, and trading activity with Defendant M. Murphy.
24		
25		
26	Robert Reimers J.P. Morgan Securities LLC	Communications, interactions, and trading activity with Defendant Gounaud.
27		

1 2	3801 PGA Boulevard, Suite 800 Palm Beach Gardens, FL 33410 (561) 694-5640	
3 4 5	Melinda Abood UBS Financial Services, Inc. 1251 Avenue of the Americas 2nd Floor New York, NY 10020 (212) 626-8500	Communications, interactions, and trading activity with Defendant Gounaud.
6 7 8	Michael Pizzutello Merrill Lynch 75 Rockefeller Plaza New York, NY 10019 (800) 333-9701	Communications, interactions, and trading activity with Defendant Gounaud.
9 10 11	Lorri L. Sieranski Merrill Lynch 75 Rockefeller Plaza New York, NY 10019 (800) 333-9701	Communications, interactions, and trading activity with Defendant Gounaud.
12 13 14	Clinton Tighe Wells Fargo Clearing Services, LLC 800 N. Magnolia Ave. Ste. 1401 Orlando, FL 32803 (407) 649-6000	Communications, interactions, and trading activity with Defendant Gounaud.
15 16 17	Ipreo Holdings, LLC c/o John McSherry, Esq. Executive Vice President and General Counsel 1359 Broadway, 2nd Floor New York, NY 10018	Information concerning orders for securities placed, and allotments of securities received, by Defendants.

18  
19 The SEC reserves the right to amend or modify the aforementioned list of persons and/or  
20 entities based upon information it may subsequently learn in connection with this litigation or  
21 otherwise. Additionally, although not identified above, the SEC believes that each of the  
22 Defendants have discoverable information that the SEC may use to support its claims in this  
23 litigation.

- 24  
25 **(ii) A copy – or a description by category and location – of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment.**



1 During the course of its investigation and since this action commenced, the SEC has  
2 obtained documentary evidence and taken sworn investigative testimony, which is in the SEC's  
3 possession. To the extent the SEC may use any of that evidence to support its claims, and to the  
4 extent the evidence is not privileged or otherwise protected by law from disclosure, the SEC will  
5 make the same available for review and inspection, upon reasonable notice to undersigned  
6 counsel, at the Washington, D.C. office of the Securities and Exchange Commission, 100 F Street,  
7 N.E., Washington, DC 20549-5553, or in some other manner mutually agreeable to the parties.  
8

9 These documents consist of the following:

10 A. Documents provided to Commission's staff in the course of the Commission's  
11 investigation of Defendants by the following persons or entities: Bloomberg L.P., Neil Kelly,  
12 Sean Murphy, David Frost, RMR Asset Management Company, Smith Correll, Jocelyn Murphy,  
13 John Kirschenbaum, David Luttbeg, Richard Gounaud, Tim McAloon, Paul Horns, Philip  
14 Weiner, Bruce Stone, A&T Mobility, UBS Financial Services, Inc., J.P. Morgan Securities LLC,  
15 Hilltop Securities Inc., Morgan Stanley Smith Barney LLC, Raymond James & Associates Inc.,  
16 NW Capital Markets Inc., Samuel A. Ramirez & Co., Inc., Jeffries LLC, Wells Fargo Clearing  
17 Services LLC, Wells Fargo Securities, LLC, Roosevelt & Cross, Boenning & Scattergood, Inc.,  
18 Robert W. Baird & Co., George K. Baum & Company, Piper Jaffray & Co., Stifel Nicolaus &  
19 Company, Inc., Citigroup Global Markets Inc., and Merrill Lynch, Pierce, Fenner & Smith Inc.  
20

21 B. Transcripts of investigative testimony taken by the Commission's staff during the  
22 investigation of Defendants (and exhibits thereto) of the following persons:

- 23 • 10/28/16 Testimony of Bruce Broekhuizen
  - 24 • 8/17/16 Testimony of Douglas Derryberry
  - 25 • 8/16/16 Testimony of David Frost
- 26  
27  
28

- 1 • 8/15/17 Testimony of Richard Gounaud<sup>1</sup>
- 2 • 10/25/16 Testimony of Neil Kelly
- 3 • 8/18/16 Testimony of John Kirschenbaum
- 4 • 8/17/16 Testimony of David Luttbeg
- 5 • 10/24/16 Testimony of Tim McAloon
- 6 • 9/29/16 Testimony of Jocelyn Murphy
- 7 • 9/28/16 Testimony of Sean Murphy
- 8 • 8/15/16 Testimony of Ralph Riccardi
- 9 • 10/27/16 Testimony of Dewey Tran
- 9 • 9/30/16 Testimony of Phil Wiener

10 C. Commission investigative correspondence with Defendants and third parties,  
11 subpoenas, document or information requests and responses thereto.

12  
13 The SEC notes that discovery in this case has yet to commence, and therefore reserves  
14 the right to amend and/or add to this disclosure if additional relevant, non-privileged documents  
15 become known.

16 **(iii) A computation of each category of damages claimed by the disclosing**  
17 **party—who must also make available for inspection and copying as under**  
18 **Rule 34 the documents or other evidentiary material, unless privileged or**  
19 **protected from disclosure, on which each computation is based, including**  
20 **materials bearing on the nature and extent of injuries suffered.**

21 The SEC does not seek damages in this matter. Instead, the SEC seeks (i) a permanent  
22 injunction restraining and enjoining Defendants from violating the federal securities laws; (ii) an  
23 order directing Defendants to pay disgorgement with prejudgment interest; (iii) an order  
24 directing Defendants to pay civil money penalties; and (iv) an order enjoining Defendants from  
25 opening or maintaining any brokerage account without providing the brokerage firm a copy of  
26 the Complaint and copy of any final judgment entered against them in this action.

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27 <sup>1</sup> Gounaud failed to appear and testify despite receiving a subpoena requiring his attendance.

1 The SEC reserves the right to supplement or amend this disclosure statement.

2 Dated: March 13, 2019

3 Respectfully submitted,

4 /s/ Nicholas A. Pilgrim

5 Nicholas A. Pilgrim  
6 Kevin Guerrero  
7 Warren E. Greth, Jr.  
8 Cori Shepherd  
9 Attorneys for Plaintiff  
10 Securities and Exchange Commission  
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12  
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**PROOF OF SERVICE**

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2 On March 13, 2019, I caused to be served the document entitled PLAINTIFF'S  
3 INITIAL DISCLOSURES PURSUANT TO FED. R. CIV. P. 26(a)(1) on the Defendants  
4 or their counsel in this action:

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

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

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

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

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

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

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

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

27  
28 I declare under penalty of perjury that the foregoing is true and correct.

Date: March 13, 2019

/s/ Nicholas A. Pilgrim

Nicholas A. Pilgrim

# **Exhibit B**



UNITED STATES  
**SECURITIES AND EXCHANGE COMMISSION**

100 F Street N.E.  
Washington, D.C. 20549-5041

**DIVISION OF  
ENFORCEMENT**

**Nicholas A. Pilgrim**  
Asst. Chief Litigation Counsel  
Tel: 202.551.8430  
PilgrimN@sec.gov

March 21, 2019

**Via UPS**

Robert Knuts, Esq.  
Sher Tremonte LLP  
90 Broad Street, 23rd Floor  
New York, NY 10004

Re: *Securities and Exchange Commission v. RMR Asset Management Co., et al.*, Case No.  
3:18-cv-1895-AJB-LL

Dear Mr. Knuts:

Enclosed, please find two hard drives that contain files obtained by the Division of Enforcement staff in connection with its investigation relating to the above-captioned matter. The documents and files contained in this production are covered by the Protective Order entered by the Court in this matter. (See Dkt Nos. 69 & 70.) Please contact the undersigned counsel to confirm receipt of the production. I can be reached at (202) 551-8430 or by email at [pilgrimn@sec.gov](mailto:pilgrimn@sec.gov) should you wish to discuss this matter further.

Sincerely,

A handwritten signature in blue ink, appearing to be "NP", written over a light blue horizontal line.

Nicholas A. Pilgrim  
Asst. Chief Litigation Counsel

# **Exhibit C**

## Smith, James

---

**From:** Pilgrim, Nicholas  
**Sent:** Monday, March 25, 2019 11:10 AM  
**To:** 'Robert Knuts'  
**Cc:** Ryan Pollock; Greth, Warren; Cunningham, Laura  
**Subject:** RE: SEC v. RMR, etc.; Hard Drives received  
**Attachments:** Discovery Production Index (3-21-19).xlsx

Good morning,

The password for the files is Sec\_HO-12248\$.

Attached, please find an index associated with the production identifying the producing parties and the corresponding Bates ranges, where applicable.

Regards,

-Nick

**Nicholas A. Pilgrim**  
**Assistant Chief Litigation Counsel**  
**U.S. Securities and Exchange Commission**  
**Division of Enforcement**  
**100 F Street, N.E.**  
**Washington, D.C. 20549**  
**(202) 551-8430**  
**[pilgrimn@sec.gov](mailto:pilgrimn@sec.gov)**

---

**From:** Robert Knuts [<mailto:RKnuts@shertremonte.com>]  
**Sent:** Monday, March 25, 2019 11:00 AM  
**To:** Pilgrim, Nicholas  
**Cc:** Ryan Pollock  
**Subject:** SEC v. RMR, etc.; Hard Drives received

And they appear to be password protected. Please "reply all" with the password so that my colleague Ryan Pollock can start assessing what has been produced.

Thanks.

Bob

Robert Knuts | Sher Tremonte LLP | 90 Broad Street, 23<sup>rd</sup> Floor | New York, New York 10004 |  
tel: 212.202.2600 | direct: 212.202.2638 | fax: 212.202.4156 | [rknuts@shertremonte.com](mailto:rknuts@shertremonte.com) | [www.shertremonte.com](http://www.shertremonte.com)



Confidentiality Notice: This e-mail is for the sole use of the intended recipient(s) and may contain confidential and/or privileged information. Any unauthorized use or dissemination of this communication or any of its contents or attachments is strictly prohibited. If you received this communication in error, please notify Sher Tremonte LLP immediately and destroy the original message and all paper and electronic copies.

# **Exhibit D**



SECURITIES AND EXCHANGE COMMISSION  
DIVISION OF ENFORCEMENT  
100 F Street, N.E.  
WASHINGTON, DC 20549

James E. Smith  
Assistant Chief Litigation Counsel  
Trial Unit, Mail Stop 5971  
(202) 551-5881 (t)  
(202) 772-9292 (f)  
Smithja@SEC.gov

November 26, 2019

**BY EMAIL AND E-PRODUCTION**

Robert Knuts  
Sher Tremonte, LLP  
90 Broad Street  
23<sup>rd</sup> Floor  
New York, NY 10004

Re: *SEC v. RMR Asset Mgmt., et al*, No. 18-cv-1895 (SD Cal)

Dear Mr. Knuts:

Pursuant to Fed. R. Civ. P. 26(e), attached please find a supplemental production from the Securities and Exchange Commission ("SEC"). Based on the recent deposition testimony of your clients, Michael and Jocelyn Murphy, the SEC believes the supplemental materials are relevant to the claims and defenses discussed therein. The SEC produced these documents to Defendant Richard Gounaud on October 9, 2019, in response to his Fed. R. Civ. P. 34 request for production of documents (the "Gounaud Supplemental Production"). As you recall, during our October 4, 2019, discovery conference call, the SEC offered to produce a copy of the Gounaud Supplemental Production to you, but you declined the SEC's offer.

If you want to receive the entirety of the Gounaud Supplemental Production, please let me know and we will prepare those materials for production.

Sincerely,

A handwritten signature in blue ink, appearing to read "James E. Smith", with a long horizontal flourish extending to the right.

James E. Smith

Attachment

cc: Richard Gounaud w/o attachment (via email)

# Exhibit E



**SECURITIES AND EXCHANGE COMMISSION  
DIVISION OF ENFORCEMENT  
100 F Street, N.E.  
WASHINGTON, DC 20549**

James E. Smith  
Assistant Chief Litigation Counsel  
Trial Unit, Mail Stop 5971  
(202) 551-5881 (t)  
(202) 772-9292 (f)  
Smithja@SEC.gov

March 5, 2020

**VIA UPS**

Robert Knuts  
Sher Tremonte, LLP  
90 Broad Street  
23<sup>rd</sup> Floor  
New York, NY 10004

Richard Gounaud  


Re: *SEC v. RMR Asset Management Co., et al.*, Case No. 3:18-cv-1895-AJB-LL

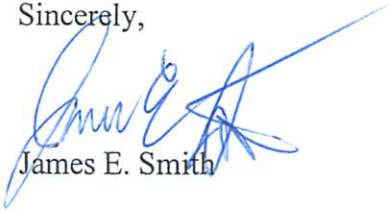
Dear Messrs. Knuts and Gounaud:

Please find enclosed a password-protected hard drive containing additional discovery materials that the Securities and Exchange Commission (the "Commission") received from third parties. The documents are being produced on an encrypted disk that contains TIFF images, a Recommind database with a data load file (.dat), and an image (.opt) load file. Each image is endorsed with a unique Bates number. The disk contains the following categories of documents:

<b>Third Party</b>	<b>Bates Range</b>
Apex Clearing Corporation	SEC-APEX-E-0000001-0000106
RJL Capital Group, LLC	SEC-RJL-E-0027733-0067219
Wedbush Securities, Inc.	SEC-WEDBUSH-E-0000001-0007744
Wedbush Securities, Inc.	EPROD-SEC-DEF2-000000001-000339713

Each disc is password protected and I will send those passwords to you in separate emails.

Sincerely,

A handwritten signature in blue ink, appearing to read "James E. Smith", with a long, sweeping horizontal stroke extending to the right.

James E. Smith

Encl.

# Exhibit F

**Smith, James**

---

**From:** Smith, James  
**Sent:** Friday, July 16, 2021 12:41 PM  
**To:** Robert Knuts  
**Cc:** Schultz, Christian  
**Subject:** AP Nos. 3-20239 and 3-20242  
**Attachments:** Division of Enforcement Motion for Summary Disposition.Filed.pdf; Divison of Enforcement Exhibits to Motion for Summary Disposition.Filed.pdf

Bob,

Attached please find the filed copies of the Division's motion for summary disposition and attached exhibits.

Thanks

Jim

James E. Smith  
Assistant Chief Litigation Counsel  
Securities and Exchange Commission  
Division of Enforcement  
100 F Street, N.E.  
Washington, D.C. 20549  
202-551-5881 (ph)  
202-772-9282 (fax)  
smithja@sec.gov