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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

TOTAL WEALTH MANAGEMENT, INC.
and JACOB KEITH COOPER,

Defendants.

Case No. 15-cv-226 BAS (DHB)

**(1) PRELIMINARY INJUNCTION,
APPOINTMENT OF A
PERMANENT RECEIVER, AND
RELATED ORDERS; AND
(2) ORDER VACATING
HEARING ON PRELIMINARY
INJUNCTION**

1 This matter came before the Court upon the Stipulation and Temporary
2 Restraining Order and Orders (1) Freezing Assets; (2) Prohibiting the Destruction of
3 Documents; (3) Granting Expedited Discovery; (4) Requiring Accountings; and (5)
4 Appointing a Temporary Receiver, and Order to Show Cause Re Preliminary
5 Injunction and Appointment of a Permanent Receiver (“TRO”). Because the
6 defendants have filed a notice of non-opposition to the motion for a preliminary
7 injunction, the hearing on February 13 at 8:30 a.m. is **VACATED**.

8 The Court having considered the documents filed in support of a preliminary
9 injunction, defendants’ assertion that they do not oppose the imposition of a
10 preliminary injunction, and other evidence presented, finds that:

- 11 A. This Court has jurisdiction over the parties to, and the subject matter of,
12 this action.
- 13 B. The SEC has made a sufficient and proper showing in support of the
14 relief granted herein, as required by Section 209(d) of the Investment
15 Advisers Act of 1940 (“Advisers Act”), 15 U.S.C. § 80b-9(d), by
16 evidence establishing a *prima facie* case and reasonable likelihood that
17 Defendants Total Wealth Management, Inc. and Jacob Keith Cooper
18 have engaged in, are engaging in, are about to engage in, and will
19 continue to engage in unless restrained, transactions, acts, practices and
20 courses of business that constitute violations of Sections 206(1), (2), and
21 (4) of the Advisers Act, 15 U.S.C. §§ 80b-6(1), (2), and (4), and Rule
22 206(4)-8 thereunder, 17 C.F.R. § 275.206(4)-8.
- 23 C. Good cause exists to believe that, unless restrained and enjoined by
24 order of this Court, Defendants will dissipate, conceal, or transfer assets
25 which could be the subject to an order directing disgorgement or the
26 payment of civil money penalties in this action. It is appropriate for the
27 Court to issue a preliminary injunction to prevent the dissipation of
28 assets.

1 D. Good cause exists to believe that, unless restrained and enjoined by
2 order of this Court, Defendants may alter or destroy documents relevant
3 to this action.

4 E. Good cause exists to believe that discovery is necessary.

5 **I.**

6 IT IS HEREBY ORDERED that good cause exists for the entry of a
7 preliminary injunction, appointment of a permanent receiver, and the related orders
8 herein.

9 **II.**

10 IT IS FURTHER ORDERED that Defendants Total Wealth Management, Inc.
11 and Jacob Keith Cooper, and their officers, agents, servants, employees, attorneys,
12 subsidiaries and affiliates, and those persons in active concert or participation with
13 any of them who receive actual notice of this Preliminary Injunction, by personal
14 service or otherwise, and each of them, be and hereby are preliminarily enjoined
15 from, directly or indirectly, by the use of any means or instruments of transportation
16 or communication in interstate commerce or by the use of the mails:

17 A. with scienter, employing devices, schemes or artifices to defraud clients
18 or prospective clients; or

19 B. engaging in transactions, practices, or courses of business which
20 operated as a fraud or deceit upon clients or prospective clients;
21 in violation of Sections 206(1) and (2) of the Advisers Act, 15 U.S.C. §§ 80b-6(1)
22 and (2).

23 **III.**

24 IT IS FURTHER ORDERED that Defendants Total Wealth Management, Inc.
25 and Jacob Keith Cooper, and their officers, agents, servants, employees, attorneys,
26 subsidiaries and affiliates, and those persons in active concert or participation with
27 any of them, who receive actual notice of this Preliminary Injunction, by personal
28 service or otherwise, and each of them, be and hereby are preliminarily enjoined

1 from, directly or indirectly, while acting as an investment adviser to a pooled
2 investment vehicle, by the use of any means or instrumentality of interstate
3 commerce,

4 A. making untrue statements of a material fact or omitting to state a
5 material fact necessary in order to make the statements made, in the light
6 of the circumstances under which there were made, not misleading, to
7 any investor or prospective investor in the pooled investment vehicle; or

8 B. engaging in acts, practices, or courses of business that are fraudulent,
9 deceptive, or manipulative with respect to any investor or prospective
10 investor in the pooled investment vehicle;

11 in violation of Section 206(4) of the Advisers Act, 15 U.S.C. § 80b-6(4), and Rule
12 206(4)-8 thereunder, 17 C.F.R. § 275.206(4)-8.

13 **IV.**

14 IT IS FURTHER ORDERED that, except as otherwise ordered by this Court,
15 Defendants Total Wealth Management, Inc. and Jacob Keith Cooper, and their
16 officers, agents, servants, employees, attorneys, subsidiaries and affiliate, and those
17 persons in active concert with them, who receive actual notice of this Preliminary
18 Injunction, by personal service or otherwise, and each of them, be and hereby are
19 preliminarily enjoined from, directly or indirectly, transferring, assigning, selling,
20 hypothecating, changing, wasting, dissipating, converting, concealing, encumbering,
21 or otherwise disposing of, in any manner, any funds, assets, securities, claims or other
22 real or personal property, including any notes or deeds of trust or other interest in real
23 property, wherever located, of any one of the Defendants, or their subsidiaries or
24 affiliates, owned by, controlled by, managed by or in the possession or custody of any
25 of them and from transferring, encumbering dissipating, incurring charges or cash
26 advances on any debit or credit card of the credit arrangement of any one of the
27 Defendants, or their subsidiaries and affiliates.

V.

IT IS FURTHER ORDERED that, except as otherwise ordered by this Court, an immediate freeze shall be placed on all monies and assets (with an allowance for necessary and reasonable living expenses to be granted only upon good cause shown by application to the Court with notice to and an opportunity for the SEC to be heard) in all accounts at any bank, financial institution or brokerage firm, or third-payment processor, all certificates of deposit, and other funds or assets, held in the name of, for the benefit of, or over which account authority is held by Defendants Total Wealth Management, Inc. and Jacob Keith Cooper, including but not limited to the accounts listed below:

| Account Name | Bank Name | Account Number |
|---|---------------------------|-----------------------|
| Total Wealth Management, Inc. | Wells Fargo | xxxxxx-2232 |
| Total Wealth Management, Inc. | Wells Fargo | xxxxxx-6979 |
| Total Wealth Management, Inc. | Wells Fargo | xxxxxx-3195 |
| Total Wealth Management, Inc. | Navy Federal Credit Union | xxxxxx-6443 |
| Total Wealth Management, Inc. | Navy Federal Credit Union | xxxxxx-2808 |
| Jacob Keith Cooper Joint owner – Kristen F. Cooper | Navy Federal Credit Union | xxxxx-7712 |
| Jacob Keith Cooper Joint owner – Kristen F. Cooper | Navy Federal Credit Union | xxxxx-7100 |
| Jacob Keith Cooper Joint owner – Kristen F. Cooper | Navy Federal Credit Union | xxxxxx-3700 |
| Pinnacle Wealth Group, Inc. | Wells Fargo | xxxxxx-6961 |
| Pinnacle Wealth Group, In | Wells Fargo | xxxxxx-2544 |
| Pinnacle Wealth Group, In | Navy Federal Credit Union | xxxxxx-0541 |
| Pinnacle Wealth Group, In | Navy Federal Credit Union | xxxxxx-5757 |
| Altus Capital Management, LLC | Wells Fargo | xxxxxx-9643 |

| Account Name | Bank Name | Account Number |
|-------------------------------------|------------------|-----------------------|
| Altus Capital Management, LLC | Wells Fargo | xxxxxx-6716 |
| Altus Capital Opportunity Fund, LP | Wells Fargo | xxxxxx-9076 |
| Altus Capital Opportunity Fund, LP | Wells Fargo | xxxxxx-5066 |
| Altus Capital Opportunity Fund, LP | Wells Fargo | xxxxxx-2285 |
| Altus Conservative Portfolio Series | Wells Fargo | xxxxxx-7001 |
| Altus Conservative Portfolio Series | Wells Fargo | xxxxxx-6146 |
| Altus Conservative Portfolio Series | Wells Fargo | xxxxxx-2254 |
| Altus Growth Portfolio Series | Wells Fargo | xxxxxx-7035 |
| Altus Growth Portfolio Series | Wells Fargo | xxxxxx-6161 |
| Altus Income Portfolio Series | Wells Fargo | xxxxxx-7019 |
| Altus Income Portfolio Series | Wells Fargo | xxxxxx-6310 |
| Altus Income Portfolio Series | Wells Fargo | xxxxxx-6120 |
| Altus Moderate Growth Portfolio | Wells Fargo | xxxxxx-6995 |
| Altus Moderate Growth Portfolio | Wells Fargo | xxxxxx -6138 |
| Altus Moderate Growth Portfolio | Wells Fargo | xxxxxx -2270 |
| Altus Moderate Growth Portfolio | Wells Fargo | xxxxxx -0008 |
| Altus Moderate Portfolio Series | Wells Fargo | xxxxxx -7027 |
| Altus Moderate Portfolio Series | Wells Fargo | xxxxxx -7540 |
| Altus Moderate Portfolio Series | Wells Fargo | xxxxxx -2296 |
| Altus Moderate Portfolio Series | Wells Fargo | xxxxxx -6153 |

Any bank, financial institution or brokerage firm, or third-party payment processor holding such monies and assets described above shall hold and retain within their control and prohibit the withdrawal, removal, transfer or other disposal of any such funds or other assets except as otherwise ordered by this Court.

1 **VI.**

2 IT IS FURTHER ORDERED that, within ten days from the date of this
3 Preliminary Injunction, Defendants Total Wealth Management, Inc. and Jacob Keith
4 Cooper, any bank, financial institution or brokerage firm, and each of them, shall
5 transfer to the permanent receiver all assets, funds and other property held in foreign
6 locations in the name of any Defendant, or for the benefit or under the direct or
7 indirect control of any of them, or over which any of them exercises control or
8 signatory authority, that is equal to the value of all funds transferred by U.S.
9 investors, whether by wire transfer, third-party payment processor or otherwise, at the
10 direction of either Defendants or any of their agents, representatives or accredited
11 advisors.

12 **VII.**

13 IT IS FURTHER ORDERED that, except as otherwise ordered by this Court,
14 each of the Defendants Total Wealth Management, Inc. and Jacob Keith Cooper, and
15 their officers, agents, servants, employees, attorneys, subsidiaries and affiliates, and
16 those persons in active concert or participation with any of them, who receive actual
17 notice of this Preliminary Injunction, by personal service or otherwise, and each of
18 them, be and hereby are preliminarily enjoined from, directly or indirectly: destroying,
19 mutilating, concealing, transferring, altering, or otherwise disposing of, in any
20 manner, any documents, which includes all books, records, computer programs,
21 computer files, computer printouts, contracts, emails, correspondence, memoranda,
22 brochures, or any other documents of any kind in their possession, custody or control,
23 however created, produced, or stored (manually, mechanically, electronically, or
24 otherwise), pertaining in any manner to Defendants Total Wealth Management, Inc.
25 and Jacob Keith Cooper.

26 **VIII.**

27 IT IS FURTHER ORDERED that Defendants Total Wealth Management, Inc.
28 and Jacob Keith Cooper, within five days of the issuance of this Preliminary

1 Injunction, shall prepare and deliver to the SEC a detailed and complete schedule of
2 all of their personal assets, including all real and personal property exceeding \$5,000
3 in value, and all bank, securities, and other accounts identified by institution, branch
4 address and account number. The accounting shall include a description of the
5 sources of all such assets. Such accounting shall be filed with the Court and a copy
6 shall be delivered to the SEC to the attention of David J. Van Havermaat, Trial
7 Counsel. After completion of the accounting, each of the Defendants shall produce to
8 the SEC at a time agreeable to the SEC, all books, records and other documents
9 supporting or underlying their accounting.

10 **IX.**

11 IT IS FURTHER ORDERED that any person who receives actual notice of this
12 Preliminary Injunction by personal service or otherwise, and who holds, possesses or
13 controls assets exceeding \$5,000 for the account or benefit of any one of the
14 Defendants, shall within 5 days of receiving actual notice of this Preliminary
15 Injunction provide counsel for the SEC with a written statement identifying all such
16 assets, the value of such assets, or best approximation thereof, and any account
17 numbers or account names in which the assets are held.

18 **X.**

19 IT IS FURTHER ORDERED that the parties to this action may immediately
20 proceed as of the date of this Preliminary Injunction with discovery pursuant to the
21 Federal Rules of Civil Procedure, and prior to any discovery conference under Fed.
22 R. Civ. P. 26(f) or other scheduling order by the Court.

23 **XI.**

24 IT IS FURTHER ORDERED that Kristin A. Janulewicz is appointed as
25 permanent receiver of Defendant Total Wealth Management, Inc., and its subsidiaries
26 and affiliates, including but not limited to Altus Capital Management, LLC, with full
27 powers of an equity receiver, including, but not limited to, full power over all funds,
28 assets, collateral, premises (whether owned, leased, occupied, or otherwise

1 controlled), choses in action, books, records, papers and other property belonging to,
2 being managed by or in the possession of or control of Defendant Total Wealth
3 Management, Inc., and its subsidiaries and affiliates, and that such receiver is
4 immediately authorized, empowered and directed:

- 5 A. to have access to and to collect and take custody, control, possession,
6 and charge of all funds, assets, collateral, premises (whether owned,
7 leased, occupied, or otherwise controlled), choses in action, books,
8 records, papers and other real or personal property, wherever located, of
9 or managed by Defendant Total Wealth Management, Inc., and its
10 subsidiaries and affiliates, with full power to sue, foreclose, marshal,
11 collect, receive, and take into possession all such property (including
12 access to and taking custody, control, and possession of all such
13 Defendant Total Wealth Management, Inc. property, and that of their
14 subsidiaries and affiliates);
- 15 B. to have control of, and to be added as the sole authorized signatory for,
16 all accounts of the entities in receivership, including all accounts at any
17 bank, title company, escrow agent, financial institution or brokerage firm
18 (including any futures commission merchant) which has possession,
19 custody or control of any assets or funds of Defendant Total Wealth
20 Management, Inc., and its subsidiaries and affiliates, or which maintains
21 accounts over which Defendant Total Wealth Management, Inc., and its
22 subsidiaries and affiliates, and/or any of its employees or agents have
23 signatory authority;
- 24 C. to conduct such investigation and discovery as may be necessary to
25 locate and account for all of the assets of or managed by Defendant Total
26 Wealth Management, Inc., and its subsidiaries and affiliates, and to
27 engage and employ attorneys, accountants and other persons to assist in
28 such investigation and discovery;

- 1 D. to take such action as is necessary and appropriate to preserve and take
2 control of and to prevent the dissipation, concealment, or disposition of
3 any assets of or managed by Defendant Total Wealth Management, Inc.,
4 and its subsidiaries and affiliates;
- 5 E. to make an accounting, as soon as practicable, to this Court and the SEC
6 of the assets and financial condition of Defendant Total Wealth
7 Management, Inc., and to file the accounting with the Court and deliver
8 copies thereof to all parties;
- 9 F. to make such payments and disbursements from the funds and assets
10 taken into custody, control, and possession or thereafter received by him
11 or her, and to incur, or authorize the making of, such agreements as may
12 be necessary and advisable in discharging his or her duties as permanent
13 receiver;
- 14 G. to employ attorneys, accountants, and others to investigate and, where
15 appropriate, to institute, pursue, and prosecute all claims and causes of
16 action of whatever kind and nature which may now or hereafter exist as
17 a result of the activities of present or past employees or agents of
18 Defendant Total Wealth Management, Inc., and its subsidiaries and
19 affiliates; and
- 20 H. to have access to and monitor all mail, electronic mail, and video phone
21 of the entities in receivership in order to review such mail, electronic
22 mail, and video phone which he or she deems relates to their business
23 and the discharging of his or her duties as permanent receiver.

24 **XII.**

25 IT IS FURTHER ORDERED that Defendant Total Wealth Management, Inc.,
26 its subsidiaries and affiliates, including all of the other entities in receivership, and
27 their officers, agents, servants, employees and attorneys, and any other persons who
28 are in custody, possession or control of any assets, collateral, books, records, papers

1 or other property of or managed by any of the entities in receivership, shall forthwith
2 give access to and control of such property to the permanent receiver.

3 **XIII.**

4 IT IS FURTHER ORDERED that no officer, agent, servant, employee or
5 attorney of Defendant Total Wealth Management, Inc. shall take any action or
6 purport to take any action, in the name of or on behalf of Defendant Total Wealth
7 Management, Inc., without the written consent of the permanent receiver or order of
8 this Court.

9 **XIV.**

10 IT IS FURTHER ORDERED that, except by leave of this Court, during the
11 pendency of this receivership, all clients, investors, trust beneficiaries, note holders,
12 creditors, claimants, lessors and all other persons or entities seeking relief of any
13 kind, in law or in equity, from Defendant Total Wealth Management, Inc., or its
14 subsidiaries or affiliates, and all persons acting on behalf of any such investor, trust
15 beneficiary, note holder, creditor, claimant, lessor, consultant group or other person,
16 including sheriffs, marshals, servants, agents, employees and attorneys, are hereby
17 restrained and enjoined from, directly or indirectly, with respect to these persons and
18 entities:

- 19 A. commencing, prosecuting, continuing or enforcing any suit or
20 proceeding (other than the present action by the SEC or any other action
21 by the government) against any of them;
- 22 B. using self-help or executing or issuing or causing the execution or
23 issuance of any court attachment, subpoena, replevin, execution or other
24 process for the purpose of impounding or taking possession of or
25 interfering with or creating or enforcing a lien upon any property or
26 property interests owned by or in the possession of Defendant Total
27 Wealth Management, Inc.; and
- 28 C. doing any act or thing whatsoever to interfere with taking control,

1 possession or management by the permanent receiver appointed
2 hereunder of the property and assets owned, controlled or managed by or
3 in the possession of Defendant Total Wealth Management, Inc., or in
4 any way to interfere with or harass the permanent receiver or her
5 attorneys, accountants, employees, or agents or to interfere in any
6 manner with the discharge of the permanent receiver's duties and
7 responsibilities hereunder.

8 **XV.**

9 IT IS FURTHER ORDERED that Defendant Total Wealth Management, Inc.,
10 and its subsidiaries, affiliates, officers, agents, servants, employees and attorneys,
11 shall cooperate with and assist the permanent receiver and shall take no action,
12 directly or indirectly, to hinder, obstruct, or otherwise interfere with the permanent
13 receiver or her attorneys, accountants, employees or agents, in the conduct of the
14 permanent receiver's duties or to interfere in any manner, directly or indirectly, with
15 the custody, possession, management, or control by the permanent receiver of the
16 funds, assets, collateral, premises, and choses in action described above.

17 **XVI.**

18 IT IS FURTHER ORDERED that Defendant Total Wealth Management, Inc.,
19 and its subsidiaries and affiliates, shall pay the costs, fees and expenses of the
20 permanent receiver incurred in connection with the performance of her duties
21 described in this Preliminary Injunction, including the costs and expenses of those
22 persons who may be engaged or employed by the permanent receiver to assist her in
23 carrying out her duties and obligations. All applications for costs, fees, and expenses
24 for services rendered in connection with the receivership other than routine and
25 necessary business expenses in conducting the receivership, such as salaries, rent, and
26 any and all other reasonable operating expenses, shall be made by application setting
27 forth in reasonable detail the nature of the services and shall be heard by the Court.

28 **XVII.**

1 IT IS FURTHER ORDERED that no bond shall be required in connection with
2 the appointment of the permanent receiver. Except for an act of gross negligence, the
3 permanent receiver shall not be liable for any loss or damage incurred by any of the
4 defendants, their officers, agents, servants, employees and attorneys or any other
5 person, by reason of any act performed or omitted to be performed by the permanent
6 receiver in connection with the discharge of her duties and responsibilities.

7 **XVIII.**

8 IT IS FURTHER ORDERED that representatives of the SEC and any other
9 government agency are authorized to have continuing access to inspect or copy any
10 or all of the corporate books and records and other documents of Defendant Total
11 Wealth Management, Inc., and the other entities in receivership, and continuing
12 access to inspect their funds, property, assets and collateral, wherever located.

13 **XIX.**

14 IT IS FURTHER ORDERED that this Court shall retain jurisdiction over this
15 action for the purpose of implementing and carrying out the terms of all orders and
16 decrees which may be entered herein and to entertain any suitable application or
17 motion for additional relief within the jurisdiction of this Court.

18
19 **IT IS SO ORDERED.**

20 Dated: February 12, 2015

21 
22 Hon. Cynthia Bashant
23 United States District Judge
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