

AO (v. 04/10) Application for Search Warrant

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SEP 23 2011

UNITED STATES DISTRICT COURT

for the

Western District of Washington

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
DEPUTY

In the Matter of the Search of

(Briefly describe the property to be searched
or identify the person by name and address)

2802 10th Avenue E.,
Seattle, Washington

Case No. MJ11-460

APPLICATION FOR A SEARCH WARRANT

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property (identify the person or describe the property to be searched and give its location):
2802 10th Avenue E., Seattle, Washington more fully described in Attachment A, attached hereto & incorporated herein by reference.

located in the Western District of Washington, there is now concealed (identify the person or describe the property to be seized):

See Attachment B, attached hereto and incorporated herein by reference.

The basis for the search under Fed. R. Crim. P. 41(c) is (check one or more):

- evidence of a crime;
- contraband, fruits of crime, or other items illegally possessed;
- property designed for use, intended for use, or used in committing a crime;
- a person to be arrested or a person who is unlawfully restrained.

The search is related to a violation of:

Code Section	Offense Description
18 U.S.C. §§ 1341/1343	Mail Fraud/Wire Fraud
18 U.S.C. §§ 1348/1349	Securities Fraud/Conspiracy to Commit Securities Fraud
18 U.S.C. §§ 1956/1957	Money Laundering

The application is based on these facts:

See Affidavit of Special Agent Spencer Walker, attached hereto and incorporated herein by reference.

- Continued on the attached sheet.
- Delayed notice of _____ days (give exact ending date if more than 30 days: _____) is requested under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.

Applicant's signature

SPENCER WALKER, Special Agent, FBI

Printed name and title

Sworn to before me and signed in my presence.

Date: Sept. 22, 2011

Judge's signature

City and state: Seattle, Washington

BRIAN A. TSUCHIDA, United States Magistrate Judge

Printed name and title

ATTACHMENT A

Premises to be Searched

2802 10th Avenue E., Seattle, Washington 98102

The premises to be searched is located at 2802 10th Avenue E., Seattle, Washington 98102 to include all rooms, basements, attics, storage spaces, garages, or out buildings, and all containers therein and thereon, which could contain any of the items to be seized. The premises is more fully described as a two-story single-family dwelling. The dwelling consists of a brick colonial structure, with white trimmed windows and green window awnings. The front entrance has a light brown door with two small window panes in the door, and three small windows above the door frame. The front door faces west. Two white pillars rest in front of the door on either side. To the right of the door the numbers "2802" are affixed to white paneling. The south side of the dwelling has a white garage door. An alternate entrance is located on the south side of the building. The alternate entrance consists of a door with three small window panes. The alternate entrance opens to the backyard of the dwelling. The roof of the dwelling is black with a brick chimney near the southwest corner.

ATTACHMENT B

ITEMS TO BE SEIZED

For the period April 1, 2003 to present, the following records, documents, files, or materials, in whatever form, including handmade or mechanical form (such as printed, written, handwritten, or typed); photocopies or other photographic form; and electrical, electronic, and magnetic form (such as tapes, cassettes, hard disks, floppy disks, diskettes, compact discs, CD-ROMs, DVDs, optical discs, Zip cartridges, printer buffers, smart cards, or electronic notebooks, or any other storage medium) that constitute evidence, instrumentalities, or fruits of violations of Title 18, United States Code, Sections 1341, 1343, 1348, 1349, 1956 and 1957, and relating to

INCOME + INVESTORS GROUP, LLC;

SG INCOME + INVESTORS GROUP, LLC;

EQUITY INVESTORS GROUP, LLC;

SG GROWTH + INVESTORS GROUP, LLC;

SV6, LLC;

SV7, LLC;

SV9, LLC;

SV10, LLC;

SV11, LLC;

TAMARAC INC;

TERAHOP NETWORKS, INC;

ZPower;

SEEKERNET, INC;

1. All corporate, partnership, and investor related financial records, including but not limited to records relating to the acquisition and disposition of assets, bank statements, investor statements, Schedule K-1s, Confidential Private Placement Memoranda, Portfolio Position Summaries, Portfolio Position Analyses, credit card statements, documents relating to financial wire transactions, checks, cashier's checks, deposit slips/books, promissory notes and other financial and/or property and/or investment records

2. Any and all corporate, partnership, and investor related records, agreements, minutes, investor information, shareholder information, or other communications;

3. Any and all correspondence or other documents;

4. All documents, records and tangible things, including bills, mortgage or ownership documents, letters, invoices, and personal effects, including passports, tending to show ownership, possession, occupancy or control of the SUBJECT PREMISES;

5. Tax Records (including tax records for MARK SPANGLER and LUANN RENFROW) for the time period of January 1, 2003 to the present date, ;

6. Digital devices and/or their components, which include, but are not limited to:

- a. Any digital devices and storage device capable of being used to commit, further or store evidence of the offense listed above;
- b. Any digital devices used to facilitate the transmission, creation, display, encoding or storage of data, including word processing equipment, modems, docking stations, monitors, cameras, printers, plotters, encryption devices and optical scanners;
- c. Any magnetic, electronic or optical storage device capable of storing data, such as floppy disks, hard disks, tapes, CD-ROMs, CD-Rs, CD-RWs, DVDs, optical disks, printer or memory buffers, smart cards, PC cards, memory calculators, electronic dialers, electronic notebooks, and personal digital assistants;
- d. Any documentation, operating logs and reference manuals regarding the operation of the digital device or software;
- e. Any applications, utility programs, compilers, interpreters, and other software used to facilitate direct or indirect communication with the computer hardware, storage devices, or data to be searched;
- f. Any physical keys, encryption devices, dongles and similar physical items that are necessary to gain access to the computer equipment, storage devices or data; and
- g. Any passwords, password files, test keys, encryption codes or other

information necessary to access the computer equipment, storage devices or data.

7. Evidence of who used, owned or controlled any seized digital device(s) at the time the things described in this warrant were created, edited, or deleted, such as logs, registry entries, saved user names and passwords, documents and browsing history;

8. Evidence of malware that would allow others to control any seized digital device(s) such as viruses, Trojan horses, and other forms of malicious software, as well as evidence of the presence or absence of security software designed to detect malware; as well as evidence of the lack of such malware;

9. Evidence of the attachment to the digital device(s) of other storage devices or similar containers for electronic evidence;

10. Evidence of counter-forensic programs (and associated data) that are designed to eliminate data from a digital device;

11. Evidence of times the digital device/s was used; and

12. Any other ESI from the digital device(s) necessary to understand how the digital device was used, the purpose of its use, who used it, and when.

THE SEIZURE OF DIGITAL DEVICES AND/OR THEIR COMPONENTS AS SET FORTH HEREIN IS SPECIFICALLY AUTHORIZED BY THIS SEARCH WARRANT, NOT ONLY TO THE EXTENT THAT SUCH DIGITAL DEVICES CONSTITUTE

INSTRUMENTALITIES OF THE CRIMINAL ACTIVITY DESCRIBED ABOVE, BUT ALSO FOR THE PURPOSE OF CONDUCTING OFF-SITE EXAMINATIONS OF THEIR CONTENTS FOR EVIDENCE, INSTRUMENTALITIES, OR FRUITS OF THE AFOREMENTIONED CRIMES.

7. Evidence of who used, owned or controlled any seized digital device(s) at the time the things described in this warrant were created, edited, or deleted, such as logs, registry entries, saved user names and passwords, documents and browsing history;

8. Evidence of malware that would allow others to control any seized digital device(s) such as viruses, Trojan horses, and other forms of malicious software, as well as evidence of the presence or absence of security software designed to detect malware; as well as evidence of the lack of such malware;

9. Evidence of the attachment to the digital device(s) of other storage devices or similar containers for electronic evidence;

10. Evidence of counter-forensic programs (and associated data) that are designed to eliminate data from a digital device;

11. Evidence of times the digital device/s was used; and

12. Any other ESI from the digital device(s) necessary to understand how the digital device was used, the purpose of its use, who used it, and when.

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THEIR CONTENTS FOR EVIDENCE, INSTRUMENTALITIES, OR FRUITS OF THE
AFOREMENTIONED CRIMES.

AFFIDAVIT

STATE OF WASHINGTON)
COUNTY OF KING) ss

I, Spencer Walker, Special Agent of the Federal Bureau of Investigation, Seattle, Washington, having been duly sworn, state:

I. INTRODUCTION

1. I am a Special Agent of the Federal Bureau of Investigation (FBI) currently assigned to the Seattle Field Division. In addition to receiving formal training in financial investigative techniques and securities fraud, I have personally participated in a variety of fraud investigations as a member of the White Collar Crime Squad, including complex investigations involving Securities Fraud, Mail Fraud, Wire Fraud, Bank Fraud and Money Laundering. I have been employed as a Special Agent of the FBI for over two years.

2. I am currently investigating MARK F. SPANGLER, President of The Spangler Group, Inc. (SG) for his involvement in a scheme to defraud several investors, who entrusted significant funds to SPANGLER, which he promised to invest in funds holding publicly traded securities. Specifically, my investigation to date shows that SPANGLER (1) invested in high risk private companies contrary to formal agreements with investors, contrary to their wishes, and without requesting consent or notifying investors; (2) provided false and misleading written statements that reflect that the investors' funds remained invested in funds holding publicly traded securities, knowing that he had invested the money in private companies; and (3) provided false and misleading written statements which misrepresented to investors the value and growth of their investment portfolios.

3. I have also learned that SPANGLER had a personal and business interest in at least two of the private companies: TeraHop Networks Inc. and Tamarac, Inc., in which he invested their money. According to Consolidated Lead Evaluation and Reporting

1 (CLEAR) database checks, SPANGLER is the President of TeraHop and Chairman of
2 Tamarac. This information is corroborated by Washington's Secretary of State corporate
3 records database, which lists SPANGLER as "Chairman, Director" of "Tamarac Inc." and
4 "President, Chairman" of "TeraHop Networks, Inc." SPANGLER failed to notify
5 investors of his personal and business interest in TeraHop and Tamarac.

6 4. This Affidavit is being submitted in support of an application for a search
7 warrant for the following location:

8 The residence of MARK F. SPANGLER, located at 2802
9 10th Avenue East, Seattle, Washington, 98102, which at all
10 relevant times served as the business office for SG. The
11 residence of MARK F. SPANGLER is described in more
12 detail in Attachment A, attached hereto and incorporated
13 herein by reference.

14 5. The information contained in this Affidavit is based on my own personal
15 knowledge and information provided to me during my participation in this investigation,
16 including information provided by victims, other federal agencies, and other witnesses.
17 Because this Affidavit is submitted for the limited purpose of establishing probable cause
18 in support of the application for a search warrant, it does not set forth each and every fact
19 that I or others have learned during the course of this investigation.

18 II. FEDERAL OFFENSES.

19 6. I believe probable cause exists that the individual identified in this Affidavit
20 as target/subject of the investigation, and others unknown, are engaged in, among others,
21 the following offenses and that evidence, fruits, and/or instrumentalities of such offenses
22 may be found at the above listed property:

- 23 A. Securities Fraud and Conspiracy to Commit Securities Fraud, in violation of
24 Title 18, United States Code, Sections 1348 and 1349;
- 25 B. Wire Fraud, in violation of Title 18, United States Code, Section 1343;
- 26 C. Mail Fraud, in violation of Title 18, United States Code, Section 1341; and
- 27 D. Money Laundering, in violation of Title 18, United States Code, Sections
28 1956 and 1957.

III. LOCATION TO BE SEARCHED

1
2 7. According to property records, MARK F. SPANGLER is the owner of 2802
3 10th Avenue East, Seattle, Washington 98102 ("Subject Premises"). The Subject
4 Premises is a single family residence. I know, based on witness statements, CLEAR
5 checks, and Washington's Secretary of State corporate records database that Subject
6 Premises is the listed address for SG, and the home address of SPANGLER. Witnesses
7 have told me that SPANGLER operated his business out of his home. On August 9 and
8 August 10, 2011, I conducted a surveillance of Subject Premises. On August 9, I
9 observed a white Nissan Maxima parked in front of Subject Premises. Washington State
10 Department of Licensing records identified the license plate of the Maxima as registered
11 to Luann Renfrow. I know, based on witness statements, CLEAR checks, and
12 Washington's Secretary of State corporate records database that Luann Renfrow is the
13 wife of MARK F. SPANGLER and is the Vice President of The Spangler Group, Inc.
14 Based on my investigation I believe that Ms. Renfrow is the only other resident of the
15 subject premises. No witnesses have told me that SPANGLER has operated any of his
16 businesses at any address other than Subject Premises, SPANGLER's home.

17 8. On August 10, 2011, at approximately 7:10 am, I observed SPANGLER
18 leave and later reenter Subject Premises. On August 19, 2011, I entered Subject Premises
19 as a prospective buyer of the home, which is listed on the Multiple Listing Service as for
20 sale, and open to viewing. While there I observed photographs of SPANGLER located
21 inside Subject Premises. I observed that the home contains two offices, one on the entry
22 level, and one downstairs. The entry level office contained two laptop computers, and
23 one desktop computer. The downstairs office contained one desktop computer. The
24 downstairs office also contained several boxes containing documents.

25 9. On September 22, 2011, I interviewed Margie Zech, the realtor handling
26 the sale of the subject premises. Ms. Zech told me that SPANGLER is still living at 2802
27 10th Avenue East, Seattle, Washington. Zech said that on September 20, 2011,
28 SPANGLER told her that he was leaving for a trip to Ecuador on Sunday September 25,

1 2011. Then, the next day, SPANGLER told Ms. Zech that his trip to Ecuador had been
2 postponed until mid-October 2011. Zech also told me that she talked to SPANGLER'S
3 wife, Luann Renfrow, on September 20, 2011, and that she asked Ms. Renfrow if any
4 "confidential materials" were still at the subject premises. Ms. Renfrow replied that all
5 the "confidential materials" were gone. Zech further told me that when she was last in
6 the subject premises within the last week or so, she saw computer peripherals present.
7 Zech was not sure whether the computers were still present.

8 10. King County Superior Court approved an order appointing a general
9 receiver and receiver counsel for SG Growth + Investors Group, LLC, along with related
10 companies, The Spangler Group, SG Income + Investors Group, LLC, Spangler Ventures
11 Seven, LLC, Spangler Ventures Nine, LLC, and Spangler Ventures Eleven, LP.
12 SPANGLER has provided some documents, and what is purported to be a copy of his
13 computer server, to the receiver. The receiver has provided some documents, and what is
14 purported to be a copy of the computer server, to the Securities and Exchange
15 Commission (SEC), which is conducting a parallel civil investigation of SPANGLER and
16 his affiliated companies. The SEC has been unable to open all of the files; some appear
17 to be corrupted. However, the SEC has observed the presence of two folders, named
18 "tam" and "TERA," on the file. I can make no assumption that SPANGLER has
19 provided all the documents or computer files to the receiver that are relevant to the
20 criminal investigation, including documents and digital information related to TeraHop
21 and Tamarac.

22 11. Each witness I have interviewed has told me that Subject Premises is
23 SPANGLER's place of business, and that SPANGLER operates his business out of his
24 home. I have confirmed this through my review of SG documents, which commonly list
25 SG's address as that of Subject Premises. Based on my training and experience, it is
26 common for individuals engaged in business and personal enterprises that are involved in
27 fraudulent activity, including wire fraud, mail fraud, and securities fraud to maintain
28

1 records, digital and otherwise, of their fraudulent activities at their place of business.

2 Such records include those records specified in Attachment B.

3 **IV. SUMMARY OF PROBABLE CAUSE**

4 **A. Background to the Current Investigation**

5 12. This investigation concerns allegations that MARK F. SPANGLER, an
6 investment manager in Seattle, fraudulently told investors that he would invest their assets
7 in funds holding securities of publically traded companies, but instead used their funds
8 without authorization, and through concealment, to invest in his own unsuccessful
9 business, TeraHop Networks, Inc., and other privately held companies. SPANGLER
10 disclosed to the SEC through Form ADV that "The Spangler Group, Inc." had
11 \$106,083,458 in assets under management as of March 31, 2011. I have reviewed
12 presentation materials provided by the court appointed receiver for SG. According to his
13 presentation, dated August 22, 2011, between \$20 and \$60 million is potentially
14 recoverable from SG assets. Given these statements, losses may exceed \$46 million.

15 **B. Details of the Investigation**

16 13. The allegations in this Affidavit first came to the attention of the FBI after I
17 learned of a Securities and Exchange Commission examination of SPANGLER and his
18 affiliated companies. I have also reviewed a Joint Statement of Claim in Arbitration (the
19 "Arbitration Claim"), which was filed against SPANGLER in late May 2011 by investors
20 M.V. and S.V, husband and wife, and S.G., and C.M., also husband and wife. According
21 to the Arbitration Claim, M.V. and S.V. began investing with SPANGLER in October
22 1994. S.G. and C.M. began investing with SPANGLER in 2004. After these investors
23 became clients of The Spangler Group, MARK F. SPANGLER recommended that they
24 invest in a company known as Equity Investors Group, LLC. SPANGLER was the
25 manager of Equity Investors Group, LLC. In connection with the investment in Equity
26 Investors Group, LLC, SPANGLER provided these investors with a Confidential Private
27 Placement Memorandum (CPPM), dated September 22, 1998. The CPPM provided that
28 substantially all of the capital of Equity Investors Group, LLC would be invested in

1 equity securities that “are expected to be traded in public markets. . . .” The CPPM also
2 named Southeastern Asset Management as the investment manager. Both the CPPM and
3 the Operating Agreement (OA) provided that any change in the investment objectives of
4 Equity Investor Group, LLC would require a vote of a super-majority (66%) of the
5 outstanding membership interests.

6 14. In reliance on these representations, M.V. and S.V. asserted that they
7 invested over \$4.3 million. S.G. and C.M. asserted that they invested over \$1.6 million.

8 15. Contrary to these representations, however, the investors asserted in their
9 Arbitration Claim that SPANGLER had invested much if not all of their investment funds
10 in non- publicly traded, illiquid private companies. In February 2011, SPANGLER
11 allegedly revealed to them that the CPPM and OA for Equity Investors Group, LLC had
12 been amended in 2008 without their knowledge. The 2008 amendments to the CPPM,
13 among other things, changed the investment objective to long term capital appreciation, a
14 riskier investment strategy; stated that equities in the fund “may” be traded in public
15 markets, rather than “are expected to” be traded in public markets; and authorized
16 SPANGLER himself to serve as an investment advisor replacing Southeastern Asset
17 Management, Inc. The amendments also changed the name of Equity Investors Group,
18 LLC to SG Growth + Investors Group. LLC.

19 16. SPANGLER also reportedly revealed to these investors in February 2011
20 that he had moved most of their funds in SG Growth + Investors Group, LLC into private
21 equities, to include three companies: TeraHop Networks, Inc. (“TeraHop”), ZPower, Inc.
22 (“ZPower”), and Tamarac, Inc. (“Tamarac”). SPANGLER did not reveal, according to
23 the Arbitration Claim, that he co-founded TeraHop in 2001, and that he was the current
24 Chairman and CEO of that privately-held company. Moreover, according to M.V. and
25 S.G., SPANGLER previously had recommended that they invest in TeraHop. M.V. had
26 simply declined to do so. M.V. told SPANGLER that he wanted no more than 5% of his
27 portfolio to be invested in such private companies.
28

1 17. In April 2011, SPANGLER advised investors of SG Growth + Investors
2 Group, LLC in a letter that "TeraHop was closed," effectively ceasing its operations.
3 Pressed for an answer by the investors, SPANGLER claimed that 50% of the funds of SG
4 Growth + Investors Group, LLC had been invested in TeraHop. Based on this revelation
5 by SPANGLER, M.V. and S.V. calculated their loss at over \$2.8 million. S.G. and C.M.
6 calculated their loss at over \$940,000.

7 18. Counsel for M.V., S.V., S.G. and C.M. told me that, after filing the
8 Arbitration Claim on or about May 20, 2011, counsel unsuccessfully pressed SPANGLER
9 and his counsel for discovery in the arbitration matter. On or about June 28, 2011,
10 counsel for SPANGLER and his affiliated companies successfully petitioned the King
11 County Superior Court for an order appointing a general receiver and receiver counsel for
12 SG Growth + Investors Group, LLC, along with related companies: The Spangler Group,
13 SG Income + Investors Group, LLC, Spangler Ventures Seven, LLC, Spangler Ventures
14 Nine, LLC, and Spangler Ventures Eleven, LP. SPANGLER also successfully petitioned
15 the King County Superior Court for a general receiver and receiver counsel for himself
16 and his wife. As a result of these Court orders, litigation in connection with the
17 Arbitration Claim ceased.

18 **MARK F. SPANGLER and Related Entities**

19 19. MARK F. SPANGLER is fifty-six years old. He describes himself in
20 memoranda to investors as "founding principal and president of Spangler Financial
21 Group, Inc." SPANGLER also states he is a Certified Financial Planner and graduate of
22 the Master of Science in Financial Services program from the American College in Bryn
23 Mawr, Pennsylvania. SPANGLER further reports that he served as Chairman of the
24 National Association of Personal Financial Advisors Board of Directors from 1996 to
25 1998. SPANGLER cites his appearance in several notable publications, including the
26 Wall Street Journal among many others, as well as having appeared nationally on CNN
27 and The Nightly Business Report.
28

1 established as funds to invest in TeraHop, of which SPANGLER was Chairman and CEO.

2 SV9 is a fund established to invest in Tamarac, of which SPANGLER was Chairman.

3 **Income +**

4 24. I have reviewed the Confidential Private Placement Memorandum (CPPM)
5 for Income +, dated August 17, 1998. The Memorandum describes the purpose of the
6 fund organization as, "participating in one or more private investment funds that seek to
7 achieve current income through investments." The Risk Factor section of the
8 Memorandum states, "The Company intends to invest substantially all of its available
9 capital (other than the capital the Manager determines to retain in cash or cash
10 equivalents) in the Hutchison Richardson Limited Liability Company Value Added
11 Municipal Bond Program (the "Fund") which in turn will invest the capital invested by
12 the Company in mutual funds holding debt securities and other instruments and which
13 may engage in short sales of securities and trade in publicly traded and over-the-counter
14 options." Based on the CPPM, it is my understanding that SPANGLER represented to
15 investors that Income + would generate income by investing in mutual funds holding debt
16 securities which would trade in public markets. The Memorandum does not disclose the
17 fund's intent to invest in or make loans to TeraHop, Tamarac or any other private
18 company.

19 **Revised Income + CPPM Creates SG Income +**

20 25. A revised CPPM dated May 2008 was created for the Income + fund. The
21 new fund was named SG Income + Investors Group, LLC (SG Income +). I have
22 reviewed a "redlined" version of the CPPM, which shows what sections of the original
23 Income + CPPM have been changed, revised, deleted, or added to, resulting in the revised
24 CPPM. I summarize the most important and germane changes as follows:

25 A. The fund's name is changed from Income + to SG Income +.

26 B. Hutchinson Richardson Limited Liability Company is removed as the fund
27 in which SG Income + would invest its money. Instead, the CPPM states that
28 substantially all of the proceeds will be invested with "one or more investment advisors

1 (the "Investment Advisor"), who will invest substantially all of such investment in
2 securities for the purpose of generating current income.... The Manager [SPANGLER]
3 may himself be an Investment Advisor."

4 In short, SPANGLER thereby appointed himself as the investment advisor. The
5 CPPM continues, "The Manager may, in his sole discretion, from time to time invest the
6 Company's assets in one or more other investment vehicles having similar investment
7 objectives.... In addition, the Manager may, with the approval of Members holding at
8 least two-thirds of the then outstanding Membership Interests in the Company, invest the
9 Company's assets in one or more investment vehicles having different objectives."

10 C. The minimum initial investment is increased to \$500,000 from \$100,000,
11 and the minimum additional investment is increased to \$100,000 from \$25,000.

12 D. SPANGLE's management fee is increased from 1.0% to 2.0%.

13 E. "Full or partial withdrawals will be permitted at the end of each calendar
14 quarter of each year... by giving 45 days' prior written notice to the Manager."

15 F. The Risk Factor section states, in part, "The Company intends to invest...
16 with one or more investment advisors... which in turn will invest substantially all of the
17 capital invested by the Company in debt and hybrid securities and which may engage in
18 short sales of securities and trade in publicly traded and over-the-counter options.... The
19 Manager may himself serve as an Investment Advisor to the Company. While the
20 securities in which the Fund invests may be traded in public markets, markets for such
21 securities are subject to fluctuations."

22 The phrase "mutual funds" is deleted throughout the revised CPPM. However the
23 CPPM still uses the word "securities" and suggests they will be traded in "public
24 markets."

25 G. The Investment Selection section states, in part, "The Manager will select
26 all of the Company's Investment Advisors, and may choose to serve as an Investment
27 Advisor himself. Each Investment Advisor will have investment discretion over its
28 selection of investments for the Company...."

1 H. Section 8, titled "No Control Over Portfolio Issuers," states, in part, "The
2 Fund may from time to time acquire substantial positions in the securities of particular
3 entities. Nevertheless, the Fund is not likely to obtain representation on the board of
4 directors or any control over the management of any company in which the Fund may
5 invest."

6 I. A new section, titled "Illiquidity of Investments" is added. The section
7 advises that certain "investments may be very illiquid..." and that the "Illiquidity may
8 result from the absence of an established market for the investments.... Furthermore, the
9 nature of the Fund's investments, especially those in financially distressed companies,
10 may require a long holding period prior to profitability."

11 J. A new section, titled "Concentration of Investments" is added. The section
12 states, in part, "It is the intention of the Manager to continue to allocate the capital of the
13 Fund in a manner that may not provide for diversification among securities. There can
14 also be no assurance that the Manager will not take substantial positions in particular
15 securities...."

16 K. A new section, titled "Investment in Small Companies" is added. The
17 section states, in part, "There is no limitation on the size or operating experience of the
18 companies in which the Fund may invest. Some small companies in which the Fund may
19 invest may lack management depth or the ability to generate internally or externally the
20 funds necessary for growth. Companies... could sustain significant losses if projected
21 markets do not materialize...."

22 L. The section which provides for the assets of the company to be placed with
23 a clearing broker is deleted in its entirety.

24 26. The SG Income + CPPM makes some disclosures and disclaimers about
25 investing in small companies, lack of diversification, and the illiquidity of the
26 investments. However, the CPPM does not mention SPANGLER's intention to invest the
27 funds of investors in TeraHop, Tamarac, or other private companies.

28 **Equity Investors**

1 27. I have reviewed the CPPM for Equity Investors, dated September 22, 1998.
2 The Memorandum describes the purpose of the fund organization as, “participating in one
3 or more private investment funds that seek to achieve capital appreciation through
4 investments in equities at a discount to their corporate worth.” The Risk Factor section of
5 the Memorandum states, “The Company intends to invest substantially all of its available
6 capital (other than the capital the Manager determines to retain in cash or cash
7 equivalents) with Southeastern Asset Management, Inc., investment advisor (the
8 “Investment Advisor”), which in turn will invest substantially all of the capital invested
9 by the Company in equity securities and which may engage in short sales of securities and
10 trade in publicly traded and over-the-counter options....”

11 Based on the CPPM and witness statements, it is my understanding that SPANGLER
12 represented to investors that the Equity Investors fund would generate income by
13 investing in funds that would hold publicly traded securities. The Memorandum does not
14 disclose the fund's intent to invest in TeraHop, Tamarac, or other private companies.

15 **Revised Equity Investors CPPM Creates Growth +**

16 28. I have reviewed the CPPM for Growth +, which is not dated other than
17 “May 2008.” According to the CPPM, the Growth + CPPM served to amend the Equity
18 Investors CPPM. The Memorandum is similar in format and content to the CPPM for the
19 Equity Investors fund. The CPPM describes Growth + as having changed its name from
20 Equity Investors to SG Growth, effective in May 2008, with the day left blank. The
21 Memorandum describes the purpose of the fund as, “for the purpose of pursuing long-
22 term capital appreciation through investments.” The Risk Factor section of the
23 Memorandum states, “The Company intends to invest substantially all of its available
24 capital (other than the capital the Manager determines to retain in cash or cash
25 equivalents) with one or more investment advisors (each, the “Investment Advisor”)
26 which in turn will invest substantially all of the capital invested by the company for long-
27 term capital appreciation, and which may engage in short sales of securities and trade in
28 publicly traded and over-the-counter options....” The Investment Selection section of the

1 Memorandum states that the Manager may designate himself as an Investment Advisor,
2 with discretion over the investment selections of the Company.

3 29. The "Limited Diversification" section of the CPPM states, in part, that the
4 "Manager does not intend or expect to diversify the Fund's portfolio over various asset
5 classes, but currently intends to concentrate the portfolio primarily in securities with a
6 potential for capital appreciation."

7 30. The "Illiquidity of Investments" section states, in part, "Certain investments
8 made by the Fund may be very illiquid, and consequently the Fund may not be able to sell
9 such investments at prices that reflect the Manager's assessment of their value....
10 Furthermore, the nature of the Fund's investments, especially those in financially
11 distressed companies, may require a long holding period prior to profitability."

12 31. The "Concentration of Investments" section of the CPPM states, in part,
13 that "It is the intention of the Manager to continue to allocate the capital of the Fund in a
14 manner that may not provide for diversification among securities."

15 32. The "Investment in Small Companies" section states, in part, "There is no
16 limitation on the size or operating experience of the companies in which the Fund may
17 invest. Some small companies in which the Fund may invest may lack management depth
18 or the ability to generate internally or obtain externally the funds necessary for growth."

19 33. The Growth + CPPM makes some disclosures and disclaimers about
20 investing in small companies, lack of diversification, and the illiquidity of the
21 investments. However, the CPPM does not mention SPANGLER's intention to invest the
22 funds of investors in TeraHop, Tamarac or other private companies.

23 **Long/Short**

24 34. I have reviewed the Form K-1 for Long/Short, which was issued to the
25 members of Long/Short by Cox & Gracia, P.S., Certified Public Accountants. A K-1 is a
26 form prepared for tax purposes that reports one's share of income in a partnership (in this
27 case Long/Short). The K-1 describes Long/Short as a "fund that trades in various stocks,
28

1 securities, and related financial instruments.” The K-1 does not disclose the fund’s intent
2 to invest in TeraHop, Tamarac or other private companies.

3 TeraHop Networks

4 35. I have learned, through review of databases and TeraHop’s corporate
5 website, that TeraHop is a company headquartered in Alpharetta, Georgia. The company
6 is described as a manufacturer of wireless devices used to monitor the location and
7 activity of company assets. MARK F. SPANGLER is CEO and Chairman of TeraHop.
8 According to a Dunn & Bradstreet federal information report on TeraHop, 100% of the
9 company’s stock is owned by the officers.

10 36. I attempted to contact TeraHop by calling the phone number listed on their
11 website. There was no response. Several witnesses have stated that they understand that
12 TeraHop has closed. An Atlanta-based FBI Special Agent visited the TeraHop campus
13 on August 16, 2011. The Special Agent noted that at approximately 11:30 am the doors
14 were locked on both TeraHop suites, the lights were off, and the parking lot nearest to the
15 TeraHop offices was vacant. In September 2011, I visited 811 First Avenue, Suite 261,
16 Seattle, Washington, formerly a TeraHop Seattle office. I observed that the space is now
17 occupied by an unrelated company. I have learned from witness statements and review of
18 documents provided by said witnesses that SPANGLER announced to various investors
19 in February and/or April 2011 that TeraHop had closed.

20 37. I know, based on my analysis of bank records, that Equity Investors
21 transferred approximately \$7.7 million dollars to TeraHop between January 2007 and
22 April 2008. I know, based on my analysis of bank records, that Equity Investors
23 transferred approximately \$3.7 million to SV11 between June 2004 and May 2008. I
24 have reviewed the Confidential Information Statement for SV11, which states that the
25 fund was established to invest in TeraHop. I reviewed a report prepared by the SG court
26 appointed receiver and dated August 22, 2011. In the report, the receiver states that SV11
27 invested \$39,827,450 (debt and equity components) in TeraHop. I know, based on my
28 analysis of bank records, that Income + transferred approximately \$1.6 million dollars to

1 SV7 between April 2006 and May 2006. I have reviewed the Confidential Information
2 Statement for SV7, which states that the fund was established to invest in TeraHop. I
3 know, based on my analysis of bank records, that SV7 transferred approximately \$2.7
4 million dollars to TeraHop between May 2006 and December 2006.

5 **Tamarac**

6 38. I have learned through a review of databases and Tamarac's website that
7 Tamarac, Inc. was started in 2000. The company designs and sells investment portfolio
8 management software. Tamarac is a debtor to SV9, which I know to be a SPANGLER
9 company. Per Washington Secretary of State's corporate records database, SPANGLER
10 is listed as Tamarac's Chairman, and a company director. CLEAR database checks report
11 SPANGLER to be chairman of Tamarac. I interviewed R.R. on August 11, 2011, who
12 had previously and knowingly invested in Tamarac through SV9 based on SPANGLER's
13 recommendations. R.R., who spoke with Tamarac's CEO, advised that SPANGLER was
14 on Tamarac's board of directors, and involved with Tamarac until February of 2011.

15 39. I know, based on my analysis of bank records, that Income + transferred
16 approximately \$1 million dollars to Tamarac between August 2006 and May 2008. I
17 know, based on my analysis of bank records, that Income + transferred \$110,000 to SV9
18 on February 16, 2006. I know, based on my analysis of bank records, that SV9
19 transferred \$110,000 to Tamarac on February 16, 2006. I know, based on my analysis of
20 bank records, that Equity Investors transferred approximately \$1.6 million to SV9
21 between February 2007 and April 2008. I know, based on my analysis of bank records,
22 that SV9 transferred approximately \$2.4 million to Tamarac between late February 2006
23 and April 2008. I know, based on my analysis of bank records, that Equity Investors
24 transferred approximately \$1.1 million dollars to Tamarac between April 2003 and April
25 2005.

26 **ZPower**

27 40. I have learned through a review of databases and ZPower's website that
28 ZPower is a designer of high performance batteries. The company was started in 1996.

1 ZPower is a private company; 100% of its stock is owned by company officers. Based on
2 documentation I have reviewed, 3.1% of the Growth + fund's investment portfolio was
3 invested in ZPower.

4 41. I have reviewed a report prepared by SG's court appointed receiver. The
5 report, which is dated August 22, 2011, states that SG Growth + invested \$1,188,650 in
6 SV6. SV6 invested \$4,501,631 in ZPower.

7 **Victim Investor V. I.**

8 42. I interviewed V.I. on July 27, 2011. V.I. is a Washington resident and
9 investor in SG. V.I. does not have any experience as an investment advisor or financial
10 planner. V.I. decided to hire MARK F. SPANGLER as her investment fund manager in
11 1993, after interviewing him. V.I. hired SPANGLER to keep her money safe and provide
12 a reasonable return. She advised SPANGLER that she did not want to "take chances"
13 with her money. At no time did V.I. revise the risk level of her investments with
14 SPANGLER. V.I. did not know SPANGLER was investing her money in private
15 companies in which he had an interest until November 2010.

16 43. I have reviewed various Realized Gains and Losses statements for V.I.,
17 issued by MARK F. SPANGLER and Associates and Spangler Financial Group from
18 1996 to 2002. These statements show that V.I. held investments in funds, such as Janus
19 Flexible Income fund, Kemper Dreman High Return, Longleaf Partners fund, SoGen
20 Int'l, Vista Growth & Income fund, Delafield fund, PIMCO, FPA New Income fund and
21 Scout Worldwide fund. Based on my consultations with representatives of the SEC in
22 San Francisco, the funds described in V.I.'s statements are consistent with the diversified
23 portfolio investments that V.I. intended to make. I understand that the risk associated
24 with investments in such diversified funds is much lower than the risk of investing in a
25 private start-up company, such as TeraHop or Tamarac.

26 44. It is my understanding, based on a review of V.I.'s Realized Gains and
27 Losses statement dated December 31, 2004, that V.I. sold her investments in the
28 diversified funds on June 30, 2004. On July 1, 2004, V.I. transferred \$450,000 from her

1 Schwab account to Income + (\$100,000), Equity Investors (\$200,000) and Long/Short
2 (\$150,000).

3 45. V.I. told me that she thought Income +, Equity Investors and Long/Short
4 were funds that would make investments similar to those SPANGLER had been making
5 for her previously. The CCPM for Income +, for example, specifies the funds will be
6 used to invest in "mutual funds holding debt securities." The CPPM for Equity Investors
7 specifies the funds will substantially all be invested "in equity securities and which may
8 engage in short sales of securities and trade in publicly traded and over-the-counter
9 options."

10 46. Based on my review of V.I.'s Charles Schwab account statements, I
11 understand that on October 3, 2006, V.I. transferred \$1,500,000 from her Schwab
12 account — \$750,000 went to Income +, \$500,000 went to Equity Investors, and \$250,000
13 went to Long/Short.

14 47. V.I. told me she periodically reviewed account statements provided to her
15 by SPANGLER. Based on her review of the statements, V.I. felt she was receiving an
16 adequate return. V.I. periodically received consent forms from SPANGLER, which she
17 signed and returned to him. In October 2006, V.I. received a "Renewed Letter of
18 Understanding" from SPANGLER. The letter confirmed V.I.'s ongoing relationship with
19 SG and asked for her signature. It is my understanding, based on V.I.'s statements to me,
20 that she signed this and other forms sent to her by SPANGLER.

21 48. The Renewed Letter of Understanding did not ask for consent to make
22 changes to V.I.'s investment strategy or objectives. Nor did it notify V.I. that her
23 investment portfolio would be changing. Nor did it state that new investments in her
24 accounts would be made in private companies.

25 49. In May 2008, V.I. received a CD-Rom from SPANGLER with an
26 accompanying letter and consent form. The letter is dated May 21, 2008, and proposes
27 changes to The Income + fund. The following statements were made in the letter.

28 A. The name is changed to SG Income + Investors Group, L.L.C;

1 B. The purpose of the Company has been refined to reflect our overall goal of
2 current income from investments;

3 C. The term has been extended to December 31, 2038;

4 D. Redemption procedures regarding reserves have been implemented;

5 E. The minimum investment for new investors has been increased to \$500,000;

6 F. The Operating Agreement has been updated with respect to federal tax
7 matters and tax legends;

8 G. The Management Fee for Non-client Members has been increased from
9 1.0% to 2.0% of total capital accounts of those Members;

10 H. Section 12.14 providing for amendment procedures has been added; and

11 I. Certain other non-substantive typographical, time-related and clarifying
12 changes have been introduced.

13 In the letter, SPANGLER then refers investors to the CD-Rom, which contains the
14 revised CPPM for the SG Income + fund. In closing, the letter reads, "Your
15 consideration and your support for the changes are very important." The CD-Rom did not
16 include any materials that specifically mentioned TeraHop, Tamarac or ZPower.

17 **The May 2008 Letter is Misleading**

18 50. V.I. signed the consent form after reviewing the letter, but without
19 reviewing the revised CPPM. V.I. told me that she believed the only changes were those
20 described by the letter. The letter did not suggest to V.I. that SG Income + was adopting
21 new investment objectives. Specifically, the letter did not disclose any intent for SG
22 Income + to make investments in private companies/equities such as TeraHop or
23 Tamarac. V.I. told me that she believed there was no substantive change to the type of
24 investments SG Income + would making. V.I. trusted SPANGLER to make diversified
25 investments in accordance with her instructions, which she described to me as "to keep
26 her money safe and provide a reasonable return." V.I. therefore signed the consent form
27 without reviewing the revised CPPM.
28

V.I.'s Equity Investors and Long/Short Assets Moved to Growth +

1
2 51. I have reviewed a portfolio position analysis (PPA), dated September 30,
3 2008, which was sent to V.I. by SPANGLER. The PPA indicates her transfer of funds
4 from Equity Investors into Growth +. As of September 30, 2008, V.I.'s share in Growth
5 + was valued at \$1,455,760.77. I have reviewed a PPA dated June 30, 2009, which was
6 sent to V.I. by SPANGLER. The PPA no longer shows V.I.'s participation in the
7 Long/Short fund. V.I.'s value in Growth + increased to \$1,910,140.36. It is my
8 understanding that V.I.'s Long/Short assets were allocated to Growth +.

Spangler Discloses SG Income + Investments in TeraHop and Tamarac

9
10 52. V.I. told me that in November 2010, V.I. spoke with SPANGLER and
11 learned for the first time that SG Income + and Growth + had significant investments in
12 private companies; namely, TeraHop, Tamarac and ZPower. At that time, SPANGLER
13 sent V.I. a pie chart, dated as of September 30, 2010, for SG Income +. The SG Income +
14 chart revealed that 64.74% of the fund was invested in "Debt Securities." I have
15 reviewed bank statements for the bank accounts associated with SG Income +. Based on
16 that review, I know that substantial wire transfers were sent from SG Income + to
17 TeraHop and Tamarac. Therefore, I believe that part of the "64.74%" of "Debt
18 Securities" includes loans to private companies, including TeraHop and Tamarac.

Spangler Discloses Growth + Investments in TeraHop and Tamarac

19
20 53. In November 2010, SPANGLER provided V.I. with a pie chart, dated as of
21 September 30, 2010, for Growth +. The Growth + chart revealed 76.5% of the fund was
22 in "Private Equity Stock," with another 23.3% in "Private Equity Conv. Sec." — a total of
23 99.8%. SPANGLER provided V.I. with another pie chart showing the Growth +
24 investment allocation. The chart reveals that Growth + invested 64.2% in TeraHop stock,
25 and 10.6% in Tamarac stock.

26 54. V.I. confronted SPANGLER about the magnitude of private company
27 investments held by the SG Income + and Growth + funds. SPANGLER replied by
28 asking V.I. if she had read her statements. V.I. replied that she had reviewed the numbers

1 on her statements, but that the statements did not disclose the underlying assets held by
2 the funds. 55. V.I. told me that she instructed SPANGLER in November 2010 to
3 liquidate her portfolio. V.I. followed up on this request with a letter, dated December 17,
4 2010, requesting complete withdrawal from SG Income +, and Growth +, effective
5 immediately. SPANGLER replied that he could liquidate 80% of her portfolio by the
6 second quarter of 2011, and the rest following "completion of taxes." V.I. next learned
7 that SG had been placed in receivership.

8 56. The last PPA V.I. received was dated December 31, 2010. The PPA valued
9 V.I.'s portfolio at \$3,123,949.74, with \$874,608.48 in SG Income + and \$2,213,006.95 in
10 Growth +. However, the PPA includes the large text disclaimer, "INCLUDES
11 UNEARNED DIVIDENDS." The December 31, 2010 PPA was the only PPA that V.I.
12 has received with this disclaimer.

13 **Victim Investor M.V.**

14 57. I interviewed M.V. on July 26, 2011. During that interview and review of
15 documents supplied to me by M.V., I learned that M.V. is a former Microsoft employee
16 and self-described "tech guy." I have reviewed the arbitration statement of claim (the
17 "Arbitration Claim") filed by M.V., S.G. and C.M. against SPANGLER. Through this
18 review I have learned that M.V. became a SPANGLER client in October 1994. After
19 receiving and reviewing the Equity Investors CPPM, M.V. elected to invest with Equity
20 Investors in 1998. Prior to investing with SPANGLER, M.V.'s money was invested in
21 mutual funds.

22 58. SPANGLER made representations to M.V. that Equity Investors intended to
23 invest in publicly traded equities, and that the investment advisor of the fund would be
24 Southeastern Asset Management Inc. These representations were consistent with those
25 stated in the CPPM. According to the Arbitration Claim, M.V.'s investments with
26 SPANGLER from 1998 to 2010 totaled \$4,366,769. As of December 31, 2010, M.V.'s
27 interest in Equity Investors, which became Growth + in 2008, was valued at
28 \$5,688,380.31.

1 59. M.V. told me that, in a separate investment venture, M.V. invested in a
2 company called Seekernet, after receiving a pitch from SPANGLER. The company
3 failed, and SPANGLER purchased Seekernet's intellectual property. SPANGLER
4 created TeraHop using Seekernet's intellectual property. SPANGLER invited M.V. to
5 invest in TeraHop. M.V. declined.

6 60. At other times, SPANGLER pitched other private companies to M.V..
7 These companies include Who's Calling? and Tamarac. M.V. declined investing in
8 Who's Calling? and Tamarac. M.V. told SPANGLER that he was not interested in
9 investing in venture capital. M.V. did not hear about TeraHop again until he received a
10 letter in April 2011 advising of TeraHop's closure.

11 **M.V. Learns of Growth + Investments in TeraHop and Tamarac**

12 61. In January or February 2011, M.V. learned from another investor that
13 Growth + had invested heavily in private companies. M.V. told me that he asked
14 SPANGLER for a schedule showing Growth +'s investments. SPANGLER subsequently
15 disclosed to M.V. that Growth + was 50% invested in TeraHop. This representation
16 conflicts with the pie chart SPANGLER provided to V.I., in November 2010, which
17 discloses Growth + was 99.8% invested in private equity stock and convertible securities
18 as of September 30, 2010, including a 64.2% investment in TeraHop stock, with another
19 19.7% investment in TeraHop convertible securities. SPANGLER also disclosed that
20 Growth + was invested in Tamarac, and claimed that Tamarac gains could go to offset
21 TeraHop losses.

22 62. Upon learning of the magnitude of Growth +'s investments in TeraHop,
23 M.V. asked SPANGLER for an explanation. SPANGLER had no answer. M.V. told
24 SPANGLER that he did not receive a consent form requesting his permission to amend
25 the Equity Investors CPPM, or a revised CPPM (the Growth + CPPM). SPANGLER
26 replied that he did not know why M.V. did not get the revised CPPM. SPANGLER
27 provided M.V. with a copy of the Growth + CPPM in 2011. M.V. told me that was the
28 first time he received the Growth + CPPM.

Victim Investors S.G. and C.M.

1
2 63. I interviewed S.G. and C.M., who are married, on August 8, 2011. During
3 the interview and my review of the Arbitration Claim, I learned S.G. became a
4 SPANGLER client in December 2004. After reviewing the Equity Investors CPPM, S.G.
5 elected to invest. SPANGLER made oral representations to S.G. that Equity Investors
6 intended to invest in funds holding publicly traded equities and that the fund's investment
7 advisor would be Southeastern Asset Management Inc. The representations were
8 consistent with those stated in the CPPM.

9 64. Per the Arbitration Claim, S.G. invested \$1,608,692 between 2004 and
10 2010. As of December 31, 2010, the value of S.G. and C.M.'s interest in Growth + was
11 valued at \$1,884,476.41.

Spangler Discloses Growth + Investments

12
13 65. S.G. told me that in January or February 2011, SPANGLER disclosed to
14 S.G. that Growth + was 100% invested in non-publicly traded, illiquid private equities,
15 including an investment in Tamarac. This information had not been disclosed to S.G. or
16 C.M. prior to that time. S.G. shared the information with M.V. Both S.G. and M.V.
17 asked SPANGLER to withdraw their funds from Growth +. SPANGLER did not disclose
18 that Growth + had invested heavily in TeraHop. On April 11, 2011, SPANGLER told
19 S.G. that 50% of Growth +'s investment was in TeraHop. This representation conflicts
20 with the pie chart SPANGLER provided to V.I., which discloses Growth + was 99.8%
21 invested in private equity stock and convertible securities as of September 30, 2010,
22 including a 64.2% investment in TeraHop stock, with another 19.7% investment in
23 TeraHop convertible securities. SPANGLER also disclosed to S.G. on April 11, 2011,
24 that he was co-founder, Chairman and CEO of TeraHop.

25 66. M.V. and S.G. told me that, following their January or February 2011
26 discussion, SPANGLER advised M.V. and S.G. that the Equity Investors' CPPM had
27 been amended in June 2008. SPANGLER later provided copies to M.V. and S.G. of the
28 amended CPPM, which was dated June 20, 2008 (the Growth + CPPM). Prior to

1 receiving the amended CPPM in 2011, neither M.V. nor S.G. had knowledge the Growth
2 + fund's operating agreement had been amended. M.V. told me that SPANGLER did not
3 request his consent to change the Growth + fund's objectives in 2008. M.V. and S.G. had
4 seen on their PPAs that the name of Equity Investors had changed to Growth +. They
5 told me they thought only the name of the fund had changed. There was no indication
6 that the investment profile had changed, other than operating under a different name.
7 Likewise, M.V. and S.G. told me that they had no knowledge that SPANGLER had
8 named himself as the investment advisor.

9 67. S.G. told me SPANGLER pitched Tamarac and other private companies to
10 him and C.M. at various times between 2005 and 2010. S.G. and C.M. declined
11 invitations to invest in Tamarac because SPANGLER did not provide them with enough
12 information about the company to make an informed decision.

13 **Projected Losses for Victim Investors**

14 68. Based on SPANGLER's representation that TeraHop had closed, it is
15 possible that V.I., M.V., S.G. and C.M. lost their entire investment in the company.
16 Based on SPANGLER's representation that Growth + had 50% in TeraHop, V.I.'s loss
17 would equal approximately \$1.1 million, M.V.'s loss would equal approximately \$2.8
18 million, and S.G. and C.M.'s loss would be \$0.9 million. Alternatively, based on
19 SPANGLER's representation to V.I. that Growth + was 99.8% invested in TeraHop,
20 V.I.'s loss would equal approximately \$1.9 million, M.V.'s loss would equal
21 approximately \$5.6 million, and S.G. and C.M.'s loss would be \$1.8 million.

22 **Spangler PPAs are Misleading As to Underlying Assets**

23 69. S.G. and M.V. both told me they were not shown the amended Equity
24 Investor CPPM until 2011, after they confronted SPANGLER regarding their
25 investments. I have reviewed the year-end PPAs received by S.G. and C.M. for 2005,
26 2007 and 2008. Each PPA is composed of three asset classes: "Cash and Equivalents,"
27 "Fixed Income" and "Equities." Investments in Income + fall under the "Fixed Income"
28 section. Investments in Equity Investors fall under the "Equities" section. The "Equities"

1 section contains subsections, which are “Domestic Stock,” “Energy,” “Consumer
2 Durables” and “Technology.” The S.G./C.M. 2005 year-end PPA states that 33.2% of
3 their portfolio was invested in the Equity Investors fund and 5.9% of their portfolio was
4 invested in the Income + fund.

5 70. S.G. and C.M. told me that they understood, based on their review of the
6 CPPM, that any of their money invested in Equity Investors would be invested in publicly
7 traded securities. Similarly, there is no mention on the PPA of any investments in private
8 companies, such as Tamarac.

9 71. In contrast, other areas of the PPA are more descriptive. The Domestic
10 Stock subsection advises of ownership in the “Pimco All Asset Fund.” Similar
11 breakdowns are apparent in the “Energy,” “Consumer Durables” and “Technology”
12 subsections, which advise of investments in “Enron Corp,” “General Electric” and
13 “Microsoft Corp,” respectively. SPANGLER represented to investors that Hutchinson
14 Richardson Limited Liability Company Value Added Municipal Bond Program would
15 have custody over Income + assets. SPANGLER represented to investors that
16 Southeastern Asset Management, Inc would have custody over Growth + investments.
17 However, according to my analysis of wire transfers, it appears that SPANGLER was
18 sending money from the Equity Investors checking account to Tamarac in 2003, 2004,
19 and 2005. There is no disclosure on the 2005 year end PPA of any investment in
20 Tamarac.

21 72. The S.G./C.M. 2007 year-end PPA is similar in format to the 2005 PPA. As
22 in the 2005 year-end PPA, the 2007 year-end PPA does not disclose the underlying
23 investments of Income + and Equity Investors. There is no mention of any investments in
24 Tamarac, or TeraHop, although my analysis shows over \$7.4 million flowed to either
25 TeraHop or SV9 in 2007 alone.

26 73. The S.G./C.M. 2008 year-end PPA is similar in format to the 2007 PPA.
27 S.G. and C.M.’s 46.7% ownership in Equity Investors has been replaced by a 50.1%
28 ownership in Growth +. The Growth + section is located in the same place that the

1 Equity Investors section was in prior PPAs. As in other years, there is no disclosure
2 regarding the underlying investments of SG Income + and Growth +.

3 74. SPANGLER claims to have replaced the Equity Investors CPPM in June
4 2008 with the Growth + CPPM. The Growth + CPPM contained additional disclaimers
5 about investing in small companies, and making non-diversified investments. However,
6 M.V. and S.G. told me SPANGLER never provided them with the Growth + CPPM.
7 M.V. and S.G.'s assertion that Equity Investors had merely changed its name to Growth +
8 is reasonable, given the circumstances. They had no reason to believe SG Income + or
9 Growth + would invest their assets differently than Income + or Equity Investors had.

10 **PPAs are Misleading as to Value**

11 75. The S.G./C.M. 2008 year-end PPA reports the "Current Value" of their
12 interest in SG Income + as \$132,406.99. The Growth + "Current Value" is
13 \$1,242,298.21. 76. The S.G./C.M. 2009 year-end PPA reports the "Current
14 Value" of SG Income + as \$135,349.78, and Growth + as \$1,716,583.82

15 77. The S.G./C.M. 2010 year-end PPA reports the "Current Value" of SG
16 Income + as \$141,459.44 and Growth + as \$1,884,476.41.

17 78. In my experience, it is reasonable to believe an asset is appreciating in value
18 if the statement advises a year-to-year increase in value, while the cost basis of the
19 investment remains constant. A comparison of the 2009 and 2010 PPAs shows an
20 increase in the "Current Value" of SG Income + and Growth +. Based on SPANGLER's
21 representations, as well as my review of the SG Income + and Growth + bank statements,
22 both funds included considerable investments in TeraHop. As TeraHop's CEO and
23 Chairman, SPANGLER had direct knowledge of the company's financial health, or lack
24 thereof in 2010. In spite of this, SPANGLER represents in the 2010 PPA that SG
25 Income + and Growth + are appreciating in value. It is deceptive to provide a statement
26 to investors showing an increase in value, when a large portion of said value is invested in
27 a company that would close a few months later.
28

1 79. The deception is underscored by two contrasting letters SPANGLER sent
2 out to investors. The first letter, on TeraHop letterhead, was sent out to V.I. in November
3 2010, after V.I. demanded to know the underlying investments of SG Income + and
4 Growth +. The letter is addressed to "TeraHop Shareholder." V.I. was puzzled by the
5 letter, as she had no idea she was a TeraHop Shareholder. The letter at first describes a
6 "false start" into the "hard hit" emergency services sector. The rest of the letter, which is
7 over five pages, goes on to describe TeraHop's strategy in sales, marketing and
8 development, including new products that will be offered. SPANGLER, as Chairman and
9 CEO, closes the letter by stating, "I strongly believe the changes we made in the last year
10 and our current progress has set us on the path to become a market leader and profitable
11 company." V.I. responded to the letter by sending her own letter to SPANGLER
12 requesting liquidation of her portfolio, effective immediately.

13 80. In April 2011, SPANGLER sent a letter to investors in the various SG
14 entities. The letter gives exciting news about the "50 percent year-over-year revenue
15 growth" of Tamarac. The letter continues to describe successes in "ZPower" and "Five
16 States," which are other businesses SPANGLER pitched to investors. Paragraph five of
17 the letter states:

18 Please also note that through Q3 2010, the 'Current Value' of SG
19 Income + and Growth + included accrued dividends from company(s) in the
20 portfolio. In Q4 2010, we determined that accrued dividends related to the
21 preferred stock would not be recognized for periods subsequent to
22 December 31, 2009. Current values reflect removal of dividends accrued in
23 the first three quarters of 2010, thus reducing the value in those
24 investments.

25 SPANGLER admits in this letter that prior statements were inaccurate, at least with
26 respect to "accrued dividends," or "Unearned Dividends," as they appear on V.I.'s
27 statements.

28 81. The letter concludes with a brief paragraph that states, "In addition, this
week we received some sad news, TeraHop has closed." It was deceptive for
SPANGLER to state, "we received some sad news" when SPANGLER was TeraHop's
CEO and Chairman. "We received some sad news" implies something one hears second-

1 hand. News of TeraHop's failure and earlier distress could not have been "news" to
2 SPANGLER. As CEO and Chairman, SPANGLER had access to, among other
3 information, TeraHop's financial statements. As President of SG and Manager of various
4 SV funds that transferred money to TeraHop, SPANGLER was also privy to TeraHop's
5 cash situation and needs.

6 **Spangler Transfers Income + Money to Private Companies**

7 **A. Income + Wires to Tamarac**

8 82. I have reviewed bank statements for the Income + bank accounts from June
9 2004 to June 2008 (the review period). The funds had two bank accounts, xxxxxx3853, a
10 checking account, and xxxxxx1371, a money market account (the Income + accounts).
11 Both accounts were at Comerica Bank. In the time period I reviewed, I located two wire
12 transfers from account xxxxxx3853 to Comerica account xxxxxx7981, an account I know
13 to belong to Tamarac. The transfers occurred in August 2006 and May 2008, and totaled
14 \$1,056,460.59.

15 **B. Income + Wires to SV9**

16 83. During the review period I located one wire transfer from the Income +
17 accounts to Comerica account xxxxxx9615. I know, based on my review of e-mails sent
18 from SG personnel, that account xxxxxx9615 belongs to SV9. I know, based on witness
19 statements, that SPANGLER used SV9 to fund Tamarac. The wire transfer was dated
20 February 16, 2006, and was for \$110,000.

21 **C. SV9 Wires to Tamarac**

22 84. During the review period I examined bank statements for Comerica account
23 xxxxxx9615. I know this account belongs to SV9. I located several wire transfers to a
24 Comerica account identified on the statements as "Tamarac." The transfers were made
25 between February 2006 and April 2008, and totaled \$2,548,440.56. Two transfers were
26 made in February of 2006, totaling \$160,000.

D. Income + Wires to SV7

85. During the review period I located several wire transfers from Income + accounts to Comerica account xxxxxx8757. I know that this account is owned by SV7. I know, based on witness statements, that SV7 was used by SPANGLER to fund TeraHop. The wire transfers were made between April and May 2006, and totaled \$1,846,000.

E. SV7 Wires to TeraHop

86. During the review period I examined bank statements for Comerica account xxxxxx8757. I know this account belongs to SV7. I located several wire transfers to a Comerica account identified on the statements as "TeraHop Network." The transfers were made between May and December 2006, and totaled \$2,738,000. Two transfers were made in May 2006, totaling \$292,000.

SG Income + Wires to TeraHop After Investors Requested Liquidation

87. I located a confirmation of wire transfer from the Income + (at this time SG Income +) checking account to Comerica account xxxxxx3880, which I know belongs to TeraHop. The transfer, in the amount of \$39,000, was made on May 3, 2011. This transfer is particularly troubling, first because by this time SPANGLER had already announced TeraHop's closure, but also because V.I., M.V., S.G. and C.M. had already requested liquidation of their portfolios.

Total Income + Wires to TeraHop, Tamarac, SV7, and SV9

88. During the review period, according to my review of bank statements, I have identified transfers from Income + to TeraHop, Tamarac, SV7 or SV9 totaling approximately \$2.8 million.

SG Receiver Reports SG Income + Investments

89. According to the report given by the SG court appointed receiver on August 22, 2011, SG Income + loaned \$6,349,270 to TeraHop, and \$1,236,461 to Tamarac. SG Income + invested \$380,495 in SV7. SV7 invested \$6,371,196 (debt and equity components) in TeraHop. SG Income + invested \$427,431 in SV9. SV9 invested \$7,997,107 in Tamarac.

1 **Spangler Transfers Equity Investors Money to Seekernet, TeraHop and Tamarac**

2 **A. Equity Investors Wires to Tamarac**

3 90. I have reviewed bank statements for the Equity Investors bank accounts
4 from June 2004 to June 2008 (the review period). Equity Investors primarily used one
5 Comerica account, xxxxxx4646 (the Equity Investors checking account), to disburse
6 funds to outside entities. I located several transfers from the Equity Investors checking
7 account within the review period to Comerica account xxxxxx3655. I know this account
8 belongs to Tamarac. I also located several wire transfers to an account identified on the
9 statement as "Tamarac." These transfers were made between January 2005 and April
10 2005, and totaled \$260,000. Based on the date of the wire transfers, it appears the Equity
11 Investors checking account was making monthly transfers from January to April 2005.
12 The Equity Investors checking account made many more wire transfers to Tamarac.
13 During my review of additional periods, I located wire transfers beginning in April 2003.
14 The total of wire transfers from April 2003 through June 2008 is over \$1 million.

15 **B. Equity Investors Wires to SV9**

16 91. During the review period I located wire transfers from the Equity Investors
17 checking account to Comerica account xxxxxx9615. I know this account belongs to SV9,
18 which SPANGLER has used to fund Tamarac. Between February 2007 and April 2008,
19 \$1,673,768.08 was wired to SV9.

20 **C. Equity Investors Helps Tamarac With Payroll**

21 92. I located and reviewed an e-mail, dated August 12, 2003, written from Joe Snell,
22 JSnell@Tamaracinc.com, to SPANGLER. The e-mail reads as follows:

23 **Mark,**

24 **I was out from Wednesday through Friday last**
25 **week and am not sure if you and Matt communicated**
26 **about the upcoming payroll needs.**

27 **The amount would be \$46k.**

28 **We will have the proper paperwork signed and sent over to you.**
Thanks,

Joe

1 93. On August 13, 2003 a wire transfer in the amount of \$46,000 was sent from
2 the Equity Investors checking account to Tamarac. Based on these facts, it appears
3 SPANGLER was using the Equity Investors checking account for Tamarac's payroll
4 needs.

5 **D. SG Helps TeraHop With Payroll**

6 94. I have located and reviewed an e-mail, dated January 2, 2008, from Greg
7 Fletcher, gletcher@terahop.com. Fletcher's e-mail signature advises that he is the Chief
8 Financial Officer of TeraHop Networks, Inc., 1225 Old Alpharetta Road, Suite 120,
9 Alpharetta, Georgia. The e-mail is written to Kit Maas, and reads as follows:

10 **Hi Kit,**

11 **Happy New Year! I was wondering about the**
12 **status of our transfer for today. Do you need anything**
13 **from me?**

14 Luann Renfrow, luann@spanglergroup.net, replies to Fletcher's e-mail on Maas'
15 behalf. Renfrow's e-mail signature identifies her as "Executive VP, The Spangler
16 Group." Renfrow states, in part:

17 **just faxed the transfer to the bank, will let you know when**
18 **it is confirmed. L**

19 Renfrow later writes Fletcher advising that the transfer fax was sent.

20 Fletcher replies to Renfrow on January 2, 2008, stating:

21 **Thanks, Luann, I just needed it before tomorrow's payroll**
22 **funding.**

23 Renfrow replies on January 2, 2008, stating:

24 **great, should get there just fine....**

25 On January 3, 2008, Fletcher writes Renfrow. The e-mail reads as follows:

26 **Hi Luann,**

27 **The wire was deposited to our account last night.**
28 **Thanks again for your help.**

Greg

1 95. The e-mails do not specify from which fund the money is transferred, or the
2 amount of the transfer. However, through my review of bank statements, I located a wire
3 transfer from Comerica account xxxxxx4646, which is owned by Equity Investors, on
4 January 2, 2008. The transfer is for \$225,000. The recipient is not listed, and the transfer
5 is identified as "Debit - Miscellaneous." A subsequent transfer in the amount of
6 \$245,000 was made 14 days later on January 16, 2008. The recipient is not listed, and the
7 transfer is identified as "Debit - Miscellaneous." A subsequent transfer in the amount of
8 \$280,000 was made 13 days later on January 29, 2008. The recipient is not listed, and the
9 transfer is identified as "Debit - Miscellaneous."

10 **E. Equity Investors Wires to TeraHop**

11 96. During the review period the Equity Investors checking account made
12 several wire transfers to a company identified on the statements as "TeraHop Networks
13 Inc." The transfers were made between January 2007 and April 2008, and totaled
14 \$7,740,000.

15 **F. S.G. and C.M. Equity Investor Funds Wired to Tamarac**

16 97. On January 5, 2005, the Equity Investor checking account received a wire
17 from S.G. and C.M. in the amount of \$250,000. On January 24, 2005, \$29,725 was wired
18 out of the Equity Investors checking account to Southeastern Asset Management Inc.,
19 which is where money invested in Equity Investors should go according to the CPPM.
20 Sixty-five Thousand Dollars (\$65,000), more than twice what was wired to Southeastern
21 Asset Management Inc., was sent on January 25, 2011 to Tamarac.

22 98. On April 1, 2005, the Equity Investors checking account received a wire
23 from S.G. and C.M. in the amount of \$500,000. On April 19, 2005, \$29,481 was wired
24 out of the Equity Investors checking account to Southeastern Asset Management Inc. In
25 contrast, \$65,000, more than twice what was wired to Southeastern Asset Management
26 Inc., was sent on April 11, 2005 to Tamarac. Additional funds totaling over \$1.3 million
27 were sent to SV, SV5 or SV11.
28

1 99. S.G. told me he declined repeated invitations to invest in Tamarac. Given
2 this fact, the flow of funds to Tamarac and other SPANGLER ventures, and the apparent
3 lack of transfer to Southeastern Asset Management Inc., is troubling.

4 **G. V.I. Equity Investors Funds Not Wired to Southeastern Asset Management
5 Inc.**

6 100. On July 1, 2004, a wire was received into the Equity Investors checking
7 account in the amount of \$200,000. The money was sent by V.I., who thought the money
8 would be sent to Southeastern Asset Management Inc. in accordance with the CPPM.
9 However, in my analysis of outgoing wire transfers from the Equity Investors checking
10 account, I see no wire transfer to Southeastern Asset Management Inc. until January 24,
11 2005, in the amount of \$29,725. Between the receipt of V.I.'s transfer, and the
12 January 24, 2005 wire to Southeastern Asset Management Inc., \$90,000 was wired to
13 Comerica account xxxxxx8815, owned by Spangler Ventures 8 ("SV8"), \$200,000 was
14 wired to an account identified as "Special Situat," and \$22,000 was wired to an account
15 identified as "Cyber Oasys Corp."

16 **H. Total Equity Investors Wires to TeraHop, Tamarac, SV9 and SV11**

17 101. During the review period, according to my review of bank statements, I
18 have identified transfers to TeraHop, Tamarac, SV9 or SV11 totaling approximately
19 \$13.4 million.

20 **SG Receiver Reports Growth + Investments**

21 102. According to the report given by the SG court appointed receiver on August
22 22, 2011, SG Growth invested \$36,073,456 in SV11. SV11 invested \$39,827,450 (debt
23 and equity components) in TeraHop. SG Growth invested \$4,409,876 in SV9. SV9
24 invested 7,997,107 in Tamarac.

25 **I. Income+/SG Income+ and Equity Investors/SG Growth + Funds were
26 Permeated with Fraud**

27 103. Based on my investigation I believe that Income+/SG Income+ and the
28 Equity Investors/SG Growth+ funds were permeated with fraud. As explained above
SPANGLER diverted a significant amount of money invested in these funds to private

1 entities including TeraHop Networks and Tamarac, Inc. in which he had a personal and
2 business interest. Because Income+/SG Income+ and Equity Investors/SG Growth +
3 investor funds were commingled into one bank account for each fund, it is my belief that
4 every investor who invested in these funds will have been defrauded out of some or all of
5 their money. SPANGLER did not always divert all of the investor funds directly to
6 private companies including TeraHop Networks and Tamarac, Inc. Rather, on some
7 occasions he would transfer a portion of the funds to bank accounts held in the name of
8 other funds run by SPANGLER including SV7, SV9, and SV11 and then from these
9 accounts the funds would be transferred to TeraHop Networks, Tamarac, Inc. and other
10 private companies including ZPower.

11 104. Based on the information in this Affidavit, I also believe that the digital
12 device(s) at the SUBJECT PREMISES are instrumentalities of crime and constitute the
13 means by which violations of 18 U.S.C. §§ 1341, 1343, 1348, 1349, 1956 and 1957 have
14 been committed. Therefore, I believe that in addition to seizing the digital
15 devices/systems to conduct a search of their contents as set forth herein, there is probable
16 cause to seize those digital devices/systems as instrumentalities of the criminal activity.

17 V. SEARCH AND SEIZURE OF DIGITAL DEVICES

18 105. As set forth above and in Attachment B to this Affidavit, I seek permission
19 to search for and seize evidence, fruits and instrumentalities of the above-referenced
20 crimes that might be found on the SUBJECT PREMISES, in whatever form they are
21 found. It has been my experience that it is common for individuals involved in wire fraud
22 and mail fraud to use digital devices¹ to create documents used to commit the crimes, and
23 thereby store those documents which are evidence of the crimes on digital devices, and to
24

25 ¹ "Digital device" includes any electronic device capable of processing and/or storing
26 data in digital form, including, but not limited to: central processing units, laptop or notebook
27 computers, peripheral input/output devices such as keyboards, printers, scanners, plotters,
28 monitors, and drives intended for removable media, related communications devices such as
modems, cables and connections, electronic storage media, electronic/digital security devices,
wireless communication devices such as telephone paging devices, beepers, mobile or cellular
telephones, personal data assistants ("PDAs"), iPods, blackberries, digital cameras, and digital
gaming devices.

1 use digital devices as an instrument to transmit interstate communications related to the
2 various schemes described above. For example, in this case, I have seen several
3 computers at SUBJECT PREMISES. I know SPANGLER has rooms in his home that
4 contain computers. I also know SPANGLER operated his business out of one of the
5 rooms. As a result, one form in which the items I am seeking to obtain through this
6 search warrant may be found is as electronic evidence stored on a digital device.

7 **PAST EFFORTS TO OBTAIN THE EVIDENCE**

8 106. Because of the nature of the evidence that I am attempting to obtain and the
9 nature of the investigation, I have not made any prior efforts to obtain the evidence based
10 on the consent of any party who may have authority to consent. I believe, based upon the
11 nature of the investigation and the information I have received, that if SPANGLER
12 becomes aware of the investigation in advance of the execution of a search warrant, he
13 may attempt to destroy any potential evidence, whether digital or non-digital, thereby
14 hindering law enforcement agents from the furtherance of the criminal investigation. The
15 SEC has received what is purported to be a copy of the server provided by SPANGLER
16 to the court appointed receiver for SG. The SEC has been unable to open all of the files;
17 some appear to be corrupted. However, the SEC has observed the presence of two
18 folders, named "tam" and "TERA," on the file. I can make no assumption that
19 SPANGLER has provided all the documents or computer files to the receiver that are
20 relevant to the criminal investigation, including documents and digital information related
21 to TeraHop and Tamarac.

22 **RISK OF DESTRUCTION OF EVIDENCE**

23 107. I know, based on my training and experience, that digital information can
24 be very fragile and easily destroyed. Digital information can also be easily encrypted or
25 obfuscated such that review of the evidence would be extremely difficult, and in some
26 cases impossible. I do not know whether, in the instant case, SPANGLER uses
27 encryption on the computer systems he utilizes to engage in his crimes. If an encrypted
28 computer is either powered off, or if the user has not entered the encryption password and

1 logged onto the computer, it is likely that any information contained on the computer will
2 be impossible to decipher. If the computer is powered on, however, and the user is
3 already logged onto the computer, there is a much greater chance that the digital
4 information can be extracted from the computer. This is because when the computer is on
5 and in use, the password has already been entered and the data on the computer is
6 accessible. However, giving the owner of the computer time to activate a digital security
7 measure, pull the power cord from the computer, or even log off of the computer, could
8 result in a loss of digital information that could otherwise have been extracted from the
9 computer.

10 SEARCH TECHNIQUES

11 108. In accordance with the information in this Affidavit, law enforcement
12 personnel will execute the seizure and search of digital devices seized pursuant to this
13 warrant as follows:

14 A. Securing the Data

15 (1) Upon securing the physical search site, the search team will conduct
16 an initial review of any digital devices/systems located at the subject premises that are
17 capable of containing data or items that fall within the scope of Attachment B to this
18 Affidavit to determine if it is possible to secure the data contained on these devices on
19 site in a reasonable amount of time and without jeopardizing the ability to accurately
20 preserve the data.

21 (2) In order to examine the Electronically Stored Information (ESI) in a
22 forensically sound manner, law enforcement personnel with appropriate expertise will
23 attempt to produce a complete forensic image, if possible and appropriate, of any digital
24 device that is capable of containing data or items that fall within the scope of Attachment
25 B to this Affidavit.²

26
27
28 ² The purpose of using computer personnel to conduct the imaging of digital devices is to ensure the integrity of the evidence and to follow proper, forensically sound, scientific procedures. When the investigative agent is a trained computer examiner, it is not always

1 (3) A forensic image may be created of either a physical drive or a
2 logical drive. A physical drive is the actual physical hard drive that may be found in a
3 typical computer. When law enforcement creates a forensic image of a physical drive, the
4 image will contain every bit and byte on the physical drive. A logical drive, also known
5 as a partition, is a dedicated area on a physical drive that may have a drive letter assigned
6 (for example the c: and d: drives on a computer that actually contain only one physical
7 hard drive). Therefore, creating an image of a logical drive does not include every bit and
8 byte on the physical drive. Law enforcement will create an image of only physical or
9 logical drives physically present on or within the subject device. Creating an image of the
10 devices located at the subject premises will not result in access to any data physically
11 located elsewhere. However, digital devices at the subject premises that have previously
12 connected to devices at other locations may contain data from those other locations.

13 (4) In addition to creating an image of a physical or logical drive from a
14 digital device, law enforcement may attempt to create an image of the random access
15 memory (RAM) of a digital device. Agents may create an image of a digital device's
16 RAM only if the computer is powered on at the time of the search. This is because RAM
17 is active only when the device is in operation. Any data contained in the RAM will be
18 lost when the computer is powered off. A computer's RAM may contain evidence related
19 to who else is logged onto the computer (even remotely), open connections that might
20 indicate a program is waiting for commands, passwords for encryption programs,
21 hardware and software settings, maps of recent files and applications accessed, and
22

23 necessary to separate these duties. Prior to recent court-imposed limitations on the conduct of
24 ESI search warrants, computer personnel typically worked closely with investigative personnel
25 in all investigations involving digital evidence to assist investigators in their search for digital
26 evidence. The point of using computer personnel to segregate data in a digital investigation was
27 typically technological rather than legal. Computer personnel are needed because they generally
28 have technological expertise that investigative agents do not possess. Computer personnel,
however, typically lack the factual and investigative expertise that an investigative agent may
possess on any given case. Therefore, it is important that computer personnel and investigative
personnel work closely together. In more complex computer investigations, especially those
involving computer intrusions, law enforcement will often assign an investigative agent with
training and experience in computer examinations and/or computer science because of the
importance of combining the investigative and technological skills.

1 information related to what communication vendors have recently been utilized on the
2 device (i.e., instant messaging services, e-mail services, social networking sites, etc.). In
3 addition, RAM may contain encryption keys necessary to access other elements of the
4 subject device.

5 (5) If, based on their training and experience, and the resources available
6 to them at the search site, the search team determines it is not practical to make an on-site
7 image within a reasonable amount of time and without jeopardizing the ability to
8 accurately preserve the data, then the digital devices will be seized and transported to an
9 appropriate law enforcement laboratory to be forensically imaged and reviewed.

10 **B Searching the Forensic Images**

11 (1) Searching the forensic images for the items described in Attachment
12 B may require a range of data analysis techniques. In some cases, it is possible for agents
13 and analysts to conduct carefully targeted searches that can locate evidence without
14 requiring a time-consuming manual search through unrelated materials that may be
15 commingled with criminal evidence. In other cases, however, such techniques may not
16 yield the evidence described in the warrant, and law enforcement may need to conduct
17 more extensive searches to locate evidence that falls within the scope of the warrant. The
18 search techniques that will be used will be only those methodologies, techniques and
19 protocols as may reasonably be expected to find, identify, segregate and/or duplicate the
20 items authorized to be seized pursuant to Attachment B to this affidavit.

21 (2) These methodologies, techniques and protocols may include the use
22 of a "hash value" library to exclude normal operating system files that do not need to be
23 further searched. Agents may utilize hash values to exclude certain known files, such as
24 the operating system and other routine software, from the search results. However,
25 because the evidence I am seeking does not have particular known hash values, agents
26 will not be able to use any type of hash value library to locate the items identified in
27 Attachment B.

28 **REQUEST FOR AUTHORITY TO CONDUCT OFF-SITE SEARCH OF DIGITAL DEVICES OR FORENSIC IMAGES IF NECESSARY**

1 109. Based on my training and experience and my consultation with Forensic
2 Examiner Special Agent Thomas Nesbitt, I know that in most cases it is impossible to
3 successfully conduct a complete, accurate, and reliable search for ESI from a digital
4 device during the physical search of a search site for a number of reasons, including but
5 not limited to **the following:**

6 **A. Technical Requirements:** Searching digital devices for criminal evidence
7 is a highly technical process requiring specific expertise and a properly controlled
8 environment. The vast array of digital hardware and software available requires even
9 digital experts to specialize in particular systems and applications, so it is difficult to
10 know before a search which expert is qualified to analyze the particular system(s) and
11 electronic evidence found at a search site. As a result, it is not always possible to bring to
12 the search site all of the necessary personnel, technical manuals, and specialized
13 equipment to conduct a thorough search of every possible digital device/system present.
14 In addition, electronic evidence search protocols are exacting scientific procedures
15 designed to protect the integrity of the evidence and to recover hidden, erased,
16 compressed, password-protected, or encrypted files. Since ESI is extremely vulnerable to
17 inadvertent or intentional modification or destruction (both from external sources or from
18 destructive code embedded in the system such as a "booby trap"), a controlled
19 environment is often essential to ensure its complete and accurate analysis.

20 **B. Volume of Evidence:** The volume of data stored on many digital devices is
21 typically so large that it is impossible to search for criminal evidence in a reasonable
22 period of time during the execution of the physical search of a search site. A single
23 megabyte of storage space is the equivalent of 500 double-spaced pages of text. A single
24 gigabyte of storage space, or 1,000 megabytes, is the equivalent of 500,000 double-
25 spaced pages of text. Computer hard drives are now being sold for personal computers
26 capable of storing up to two terabytes (2,000 gigabytes of data.) And, this data may be
27 stored in a variety of formats or encrypted (several new commercially available operating
28 systems provide for automatic encryption of data upon shutdown of the computer).

1 Because of the massive volume of data contained on modern digital devices, even after
2 completing an exhaustive search and forensic examination of a digital device that may
3 take weeks or months, agents often review less than fifty percent of the data on a digital
4 device.

5 **DIGITAL DEVICES AS INSTRUMENTALITIES OF THE CRIMES**

6 110. During the course of my investigation, I have learned that SPANGLER
7 directed e-mail to be used to order the interstate transfer of money between the various SG
8 and SV bank accounts. On June 15, 2004, Kit Maas, a SPANGLER employee, sent an
9 e-mail to Comerica bank employees requesting the transfer of \$500,000 from Equity
10 Investors account xxxxxx4646 to SV11 bank account xxxxxx5304. I know SV11 was
11 used to fund TeraHop. I know that in 2004, the Equity Investors CPPM did not disclose
12 any intent to invest in a private companies, in this case, TeraHop.

13 111. During the course of my investigation, I have read e-mail exchanged
14 between SPANGLER and an employee of Tamarac. The e-mail requested money to be
15 transferred interstate to Tamarac to meet payroll. During my review of the bank
16 statements I observed that the transfer took place.

17 112. During the course of my investigation, I have reviewed "Wire Transfer
18 Request" forms. The forms appear to have been prepared on a computer, printed, signed
19 by SPANGLER, and faxed to Comerica Bank. One such form, dated April 14, 2003,
20 authorized the interstate wire transfer of \$49,000 from Equity Investors Comerica account
21 xxxxxx4646 to Tamarac Comerica account xxxxxx3655.

22 113. During the course of my investigation, I have reviewed PPAs issued to
23 various investors. The PPAs appear to have been prepared on a computer, and those dated
24 between 2006 and 2009 contain the following header information:

25 "The Spangler Group, Inc.
26 2802 10th Avenue East
27 Seattle, Washington 98102
28 (206) 720-6114"

1 114. SPANGLER provided these computer prepared PPAs at first through the
2 mail, and later via the Internet, in furtherance of his scheme to defraud investors.

3 115. I know that SPANGLER operated his business out of SUBJECT
4 PREMISES, and I have observed computers inside SUBJECT PREMISES. Based on my
5 training and experience, it is common for individuals engaged in business and personal
6 enterprises that are involved in fraudulent activity, including wire fraud, mail fraud, and
7 securities fraud, to maintain digital records of their fraudulent activities at their place of
8 business. Based on my review of the e-mails and documents, I know SPANGLER used
9 computers in furtherance of wire fraud, mail fraud, and securities fraud.

10 116. If, after conducting its examination, law enforcement personnel
11 determine that any digital device is an instrumentality of the criminal offenses referenced
12 above, the government may retain that device during the pendency of the case as
13 necessary to, among other things, preserve the instrumentality evidence for trial, ensure the
14 chain of custody, and litigate the issue of forfeiture. If law enforcement personnel
15 determine that a device was not an instrumentality of the criminal offenses referenced
16 above, it shall be returned to the person/entity from whom it was seized within 90 days of
17 the issuance of the warrant, unless the government seeks and obtains authorization from
18 the court for its retention.

19 117. Unless the government seeks an additional order of authorization from any
20 Judge in this District, the government will return any digital device that has been
21 forensically copied, that is not an instrumentality of the crime, and that may be lawfully
22 possessed by the person/entity from whom it was seized, to the person/entity from whom it
23 was seized within 90 days of seizure.

24 **TYPES OF DIGITAL DEVICES TO BE SEIZED AND SEARCHED**

25 118. In order to search for ESI that falls within the list of items to be seized
26 pursuant to Attachment B to this Affidavit, law enforcement personnel will seize and
27 search the following items (heretofore and hereinafter referred to as "digital devices"),
28 subject to the procedures set forth above:

1 A. Any digital device capable of being used to commit, further, or store
2 evidence of the offense(s) listed above;

3 B. Any digital device used to facilitate the transmission, creation, display,
4 encoding or storage of data, including word processing equipment, modems, docking
5 stations, monitors, printers, cameras, plotters, encryption devices, and optical scanners;

6 C. Any magnetic, electronic or optical storage device capable of storing data,
7 such as thumb drives, memory sticks, CD-ROMs, CD-RS, CD-RWs, DVDs, optical disks,
8 printer or memory buffers, smart cards, PC cards, memory calculators, electronic dialers,
9 electronic notebooks, personal digital assistants, floppy disks, hard disks, and tapes;

10 D. Any documentation, operating logs and reference manuals regarding the
11 operation of the digital device, or software;

12 E. Any applications, utility programs, compilers, interpreters, and other
13 software used to facilitate direct or indirect communication with the device hardware, or
14 ESI to be searched;


15 F. Any physical keys, encryption devices, dongles and similar physical items
16 that are necessary to gain access to the digital device, or ESI; and

17 G. Any passwords, password files, test keys, encryption codes or other
18 information necessary to access the digital device or ESI.

19 **VI. CONCLUSION**

20 119. Based on my experience and the facts set forth in this Affidavit, I believe
21 that MARK F. SPANGLER, and others yet unknown, are involved in violations of the
22 various federal offenses set forth above. Furthermore, there is probable cause to believe
23 that a search of 2802 10th Avenue East, Seattle, Washington, 98102, as described in more
24 detail in Attachment A, and the seizure and search of computer systems and the items
25 listed in Attachment B found on the premises, will provide evidence, fruits and
26 instrumentalities of the illegal activities of the targets/subjects and other coconspirators.
27 Accordingly, a search warrant is requested to search for and seize the items described in
28 Attachment B.

1 120. I declare under penalty of perjury that the statements made herein are true
2 and correct to the best of my knowledge and belief.

3
4 
5 SPENCER WALKER
6 Special Agent, Federal Bureau of Investigation

7 SUBSCRIBED AND SWORN to before me this 22 day of September, 2011, by
8 FBI Special Agent SPENCER WALKER.

9
10 
11 BRIAN A. TSUCHIDA
12 United States Magistrate Judge

ATTACHMENT A

Premises to be Searched

2802 10th Avenue E., Seattle, Washington 98102

The premises to be searched is located at 2802 10th Avenue E., Seattle, Washington 98102 to include all rooms, basements, attics, storage spaces, garages, or out buildings, and all containers therein and thereon, which could contain any of the items to be seized. The premises is more fully described as a two-story single-family dwelling. The dwelling consists of a brick colonial structure, with white trimmed windows and green window awnings. The front entrance has a light brown door with two small window panes in the door, and three small windows above the door frame. The front door faces west. Two white pillars rest in front of the door on either side. To the right of the door the numbers "2802" are affixed to white paneling. The south side of the dwelling has a white garage door. An alternate entrance is located on the south side of the building. The alternate entrance consists of a door with three small window panes. The alternate entrance opens to the backyard of the dwelling. The roof of the dwelling is black with a brick chimney near the southwest corner.

ATTACHMENT B

ITEMS TO BE SEIZED

For the period April 1, 2003 to present, the following records, documents, files, or materials, in whatever form, including handmade or mechanical form (such as printed, written, handwritten, or typed); photocopies or other photographic form; and electrical, electronic, and magnetic form (such as tapes, cassettes, hard disks, floppy disks, diskettes, compact discs, CD-ROMs, DVDs, optical discs, Zip cartridges, printer buffers, smart cards, or electronic notebooks, or any other storage medium) that constitute evidence, instrumentalities, or fruits of violations of Title 18, United States Code, Sections 1341, 1343, 1348, 1349, 1956 and 1957, and relating to

INCOME + INVESTORS GROUP, LLC;

SG INCOME + INVESTORS GROUP, LLC,

EQUITY INVESTORS GROUP, LLC;

SG GROWTH + INVESTORS GROUP, LLC;

SV6, LLC;

SV7, LLC;

SV9, LLC;

SV10, LLC;

SV11, LLC;

TAMARAC INC;

TERAHOP NETWORKS, INC;

ZPower;

SEEKERNET, INC;

1. All corporate, partnership, and investor related financial records, including but not limited to records relating to the acquisition and disposition of assets, bank statements, investor statements, Schedule K-1s, Confidential Private Placement Memoranda, Portfolio Position Summaries, Portfolio Position Analyses, credit card statements, documents relating to financial wire transactions, checks, cashier's checks, deposit slips/books, promissory notes and other financial and/or property and/or investment records
2. Any and all corporate, partnership, and investor related records, agreements, minutes, investor information, shareholder information, or other communications;
3. Any and all correspondence or other documents;
4. All documents, records and tangible things, including bills, mortgage or ownership documents, letters, invoices, and personal effects, including passports, tending to show ownership, possession, occupancy or control of the SUBJECT PREMISES;
5. Tax Records (including tax records for MARK SPANGLER and LUANN RENFROW) for the time period of January 1, 2003 to the present date, ;
6. Digital devices and/or their components, which include, but are not limited to:

- a. Any digital devices and storage device capable of being used to commit, further or store evidence of the offense listed above;
- b. Any digital devices used to facilitate the transmission, creation, display, encoding or storage of data, including word processing equipment, modems, docking stations, monitors, cameras, printers, plotters, encryption devices and optical scanners;
- c. Any magnetic, electronic or optical storage device capable of storing data, such as floppy disks, hard disks, tapes, CD-ROMs, CD-Rs, CD-RWs, DVDs, optical disks, printer or memory buffers, smart cards, PC cards, memory calculators, electronic dialers, electronic notebooks, and personal digital assistants;
- d. Any documentation, operating logs and reference manuals regarding the operation of the digital device or software;
- e. Any applications, utility programs, compilers, interpreters, and other software used to facilitate direct or indirect communication with the computer hardware, storage devices, or data to be searched;
- f. Any physical keys, encryption devices, dongles and similar physical items that are necessary to gain access to the computer equipment, storage devices or data; and
- g. Any passwords, password files, test keys, encryption codes or other

information necessary to access the computer equipment, storage devices or data.

7. Evidence of who used, owned or controlled any seized digital device(s) at the time the things described in this warrant were created, edited, or deleted, such as logs, registry entries, saved user names and passwords, documents and browsing history;

8. Evidence of malware that would allow others to control any seized digital device(s) such as viruses, Trojan horses, and other forms of malicious software, as well as evidence of the presence or absence of security software designed to detect malware; as well as evidence of the lack of such malware;

9. Evidence of the attachment to the digital device(s) of other storage devices or similar containers for electronic evidence;

10. Evidence of counter-forensic programs (and associated data) that are designed to eliminate data from a digital device;

11. Evidence of times the digital device/s was used; and

12. Any other ESI from the digital device(s) necessary to understand how the digital device was used, the purpose of its use, who used it, and when.

THE SEIZURE OF DIGITAL DEVICES AND/OR THEIR COMPONENTS AS SET FORTH HEREIN IS SPECIFICALLY AUTHORIZED BY THIS SEARCH WARRANT, NOT ONLY TO THE EXTENT THAT SUCH DIGITAL DEVICES CONSTITUTE

INSTRUMENTALITIES OF THE CRIMINAL ACTIVITY DESCRIBED ABOVE, BUT ALSO FOR THE PURPOSE OF CONDUCTING OFF-SITE EXAMINATIONS OF THEIR CONTENTS FOR EVIDENCE, INSTRUMENTALITIES, OR FRUITS OF THE AFOREMENTIONED CRIMES.

7. Evidence of who used, owned or controlled any seized digital device(s) at the time the things described in this warrant were created, edited, or deleted, such as logs, registry entries, saved user names and passwords, documents and browsing history;

8. Evidence of malware that would allow others to control any seized digital device(s) such as viruses, Trojan horses, and other forms of malicious software, as well as evidence of the presence or absence of security software designed to detect malware; as well as evidence of the lack of such malware;

9. Evidence of the attachment to the digital device(s) of other storage devices or similar containers for electronic evidence;

10. Evidence of counter-forensic programs (and associated data) that are designed to eliminate data from a digital device;

11. Evidence of times the digital device/s was used; and

12. Any other ESI from the digital device(s) necessary to understand how the digital device was used, the purpose of its use, who used it, and when.

THE SEIZURE OF DIGITAL DEVICES AND/OR THEIR COMPONENTS AS SET FORTH HEREIN IS SPECIFICALLY AUTHORIZED BY THIS SEARCH WARRANT, NOT ONLY TO THE EXTENT THAT SUCH DIGITAL DEVICES CONSTITUTE INSTRUMENTALITIES OF THE CRIMINAL ACTIVITY DESCRIBED ABOVE, BUT ALSO FOR THE PURPOSE OF CONDUCTING OFF-SITE EXAMINATIONS OF

THEIR CONTENTS FOR EVIDENCE, INSTRUMENTALITIES, OR FRUITS OF THE
AFOREMENTIONED CRIMES.