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**UNITED STATES DISTRICT COURT**

**CENTRAL DISTRICT OF CALIFORNIA**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

CHRISTIAN STANLEY, INC. and DANIEL C.S. POWELL,

Defendants,

and

CHRISTIAN STANLEY, LLC and DANIEL CHRISTIAN STANLEY POWELL REALTY HOLDINGS, INC.,

Relief Defendants.

Case No. CV 11-7147 GHK (MANx)

**PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S NOTICE OF MOTION AND MOTION FOR ORDER COMPELLING DEFENDANT DANIEL C.S. POWELL TO ANSWER COMPLAINT**

**DATE:** **JANUARY 23, 2012**
**TIME:** **9:30 A.M.**
**CRTRM:** **650**
**(HON. GEORGE H. KING)**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD, PLEASE TAKE NOTICE that on January 23, 2012 at 9:30 a.m., or as soon thereafter as the matter may be heard, before the Honorable George H. King, located at 255 East Temple Street, Courtroom 650, Los Angeles, California 90012, plaintiff Securities and Exchange Commission will and hereby does move, pursuant to Federal Rule of Civil Procedure 8(b) for an order compelling Defendant Daniel C.S. Powell ("Defendant") to file an answer and authorizing the clerk to enter Powell's default if he fails to file an answer.

This motion is made on the grounds that upon the denial of his previously filed motion to dismiss, Defendant was ordered by this Court to file an answer on or before November 29, 2011. Defendant has not filed an answer; however the Defendant must file an answer in order to allow this litigation to proceed. This motion is based upon the accompanying memorandum of points and authorities, and the Declaration of Spencer E. Bendell, filed concurrently herewith, and such other evidence and argument as the Court may hear.

Counsel for the Plaintiff attempted to meet and confer with Defendant (who is *pro se*) concerning this motion, pursuant to Local Rule 7-3. However, Defendant refused to meet and confer pursuant to Local Rule 7-3. (See Bendell Decl. ¶4, Ex. 3).

DATED: December 20, 2011

Respectfully submitted,

/s/ Spencer E. Bendell
Spencer E. Bendell
Attorney for Plaintiff
Securities and Exchange Commission

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**UNITED STATES DISTRICT COURT**

**CENTRAL DISTRICT OF CALIFORNIA**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

CHRISTIAN STANLEY, INC. and DANIEL C.S. POWELL,

Defendants,

and

CHRISTIAN STANLEY, LLC and DANIEL CHRISTIAN STANLEY POWELL REALTY HOLDINGS, INC.,

Relief Defendants.

Case No. CV 11-7147 GHK (MANx)

**PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR ORDER COMPELLING DEFENDANT TO ANSWER COMPLAINT**

**DATE:** **JANUARY 23, 2012**
**TIME:** **9:30 A.M.**
**CRTRM:** **650**
**(HON. GEORGE H. KING)**

## I. INTRODUCTION

Defendant Daniel C.S. Powell has failed to file an answer despite three clear orders from this Court directing him to do so, all in the context of the Court denying his previously filed motion to dismiss. Plaintiff Securities and Exchange Commission ("Commission") respectfully requests that Powell be ordered to file an answer and that his default be entered if he does not do so. This Court ordered Powell to file an answer no later than November 29, 2011. Powell is aware of the Court's order, but has chosen not to comply and has not filed an answer, apparently contending that the notice of appeal of the decision denying his motion to dismiss divests this Court of jurisdiction and relieves him of his obligation to answer. Powell is wrong and should be ordered to answer, so that the Commission may have notice of which allegations Powell intends to controvert, and what additional defenses he seeks to raise.

## II. BACKGROUND AND PROCEDURAL HISTORY

On August 30, 2011, the Commission filed the Complaint in this action alleging that Defendants Christian Stanley, Inc. and its principal, Powell, were conducting an ongoing fraudulent and unregistered offering of securities. (Compl. Dkt. No. 1) From March 2009, the Defendants offered and sold at least $4.5 million in unregistered securities in the form of debentures that promised to pay "secured and structured" annual returns ranging from 5% to 15.5% to about 50 investors nationwide. (*Id.*) In the written debenture agreements, which Powell authored and signed on behalf of Christian Stanley, Inc., debenture purchasers are assured that their monies would be used to purchase life settlements, to develop coal leases purportedly worth $11.8 billion or interests in gold mines or some combination thereof. (*Id.*) The debenture agreements state that the investment is secured and collateralized by the purchase of life settlements, by the coal leases, and/or by the gold mine interests. (*Id.*) In reality, Defendants spent almost no money toward these avowed purposes, and spent over 50% of the remaining

investor funds for purposes that bear no relation to the operation of Christian Stanley, Inc.'s purported business, including payment of commissions to debenture sales agents, funding Powell's lavish lifestyle, and the perpetuation of a Ponzi-like scheme whereby interest due on some of the debentures was paid with investor principal. (*Id.*)

Along with the Complaint, the Commission also filed an e*x parte* application for a temporary restraining order, other relief, and an order to show cause re: preliminary injunction. (Dkt. No. 2.) The Court granted the temporary restraining order on September 1, 2011. (Dkt. No. 7.) The preliminary injunction was granted, without opposition, on September 15, 2011, and the preliminary injunction order was issued on September 19, 2011. (Dkt. Nos. 15 and 17.)

Defendant Powell was served with the summons and complaint on September 2, 2011. (Proof of Service, Dkt. No. 11.) Thereafter, Defendant Powell filed a motion to dismiss the Complaint (Dkt. No. 32), which was denied by the Court on November 9, 2011.[1] (Order re: Motion to Dismiss Plaintiff's Complaint for Failure to State a Claim Upon which Relief Can Be Granted or, in the Alternative for Lack of Subject Matter Jurisdiction, Dkt. No. 36 ("Nov. 9 Order").) In denying the motion to dismiss, the Court specifically ordered: "Defendant **SHALL** answer the Complaint **within fourteen (14) days hereof.**" (Nov. 9 Order at 2. (emphasis in original).) In response to a late-filed Reply brief by Powell, the Court reiterated its previous Order that the motion to dismiss had been denied and that Powell should file an answer within fourteen days. (November 15, 2011 Order re: Defendant Daniel C.S. Powell's Untimely Reply to Plaintiff SEC's Opposition to Defendant's Motion to Dismiss, Dkt. No. 41. ("Nov. 15 Order").) Finally, in its November 23, 2011, Order re: "Defendant's Respectful Abstinence of Order" (Dkt.

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[1] The remaining Defendant and Relief Defendants are entities in receivership, pursuant to this Court's Order. (Dkt. No. 17.)

No. 48) ("Nov. 23 Order"), the Court considered the "Defendant's Respectful Abstinence of Order" as a Motion for Reconsideration of the denial of his motion to dismiss, and denied such reconsideration. The Court again reiterated Defendant Powell's obligation to answer the Complaint, and made the deadline explicit – November 29, 2011. (*Id.*)

The November 29 deadline came and went without Powell filing an answer or seeking leave of the Court for additional time to answer. Powell did, however, file a Notice of Appeal, purporting to appeal from the Nov. 15 and Nov. 23 Orders. (Dkt. No. 49.)[2] After the November 29 deadline passed, counsel for the Commission contacted Powell to advise him that his answer was overdue and to offer him the opportunity to avoid entry of default by filing an answer. (Declaration of Spencer E. Bendell ("Bendell Decl.") ¶3, Ex. 1.) Powell contended in response that this Court had been divested of jurisdiction by virtue of his Notice of Appeal, and he ultimately indicated that he would not file an answer while his appeal is pending. (*Id.* ¶4, Ex. 2.) Powell also refused to meet and confer regarding this motion, stating "Defendant will not participate in any discussions that are construed pursuant to L.R. 7-3." (*Id.*)

## III. DEFENDANT'S ANSWER OVERDUE AND NECESSARY

Powell is clearly capable of complying with the filing requirements of this Court, when he chooses to do so. He timely filed a motion to dismiss attacking the sufficiency of the Complaint. The Court denied the motion to dismiss and explicitly ordered Powell to answer the Complaint within fourteen days. Although Powell chose initially to respond to the Complaint with a motion to dismiss, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, rather than with

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2 The Notice of Appeal purports to be on behalf of Defendant Christian Stanley, Inc., as well as Defendant Powell; however, the Court has previously informed Defendant Powell of Local Rule 83-2.10's prohibition against appearance of a corporate entity *pro se*. Nov. 15 Order at 1.

an answer, he is still required to file an answer upon the denial of such a motion to dismiss. Fed. R. Civ. Proc. 12(a)(4)(A). The Court has twice reiterated its order requiring Powell to answer. Although Powell is *pro se*, he cannot credibly claim confusion over the due date for his answer, since the Court made the November 29, 2011 deadline explicit in its latest order on the subject, the Nov. 23 Order.

Rule 8(b)(1)(B) of the Federal Rules of Civil Procedure requires a defendant in an answer to admit or deny the allegations asserted against him. Thus, an answer to a complaint serves the purpose of apprising the plaintiff of "the allegations that stand admitted and will not be at issue in the trial and those that are contested and will require proof." *In re Pabst Licensing*, No. MDL 1298, 2000 WL 798465 at *1 (E.D. La. June 21, 2001) (citing 5 Wright & Miller § 1261). Without an answer, the Commission will be left to guess which of its allegations Powell intends to dispute and which he intends to admit – information crucial to determining the scope of discovery necessary in the case. Likewise, the Commission would have no way to determine what affirmative defenses, if any, Powell intends to assert. This type of one-way pleading is inimical to the pleadings process set forth by Rules 7 and 8 of the Federal Rules of Civil procedure, which contemplate a responsive pleading in the form of an answer. Whether intentional or not, the only purposes served by Powell's refusal to file an answer are delay of the progress of this case or an attempt to gain unfair advantage by depriving the Commission of notice of Powell's purported defenses.

## IV. IF DEFENDANT POWELL WILL NOT ANSWER THE COMPLAINT, ENTRY OF DEFAULT IS APPROPRIATE.

A default judgment may be entered against a defendant who fails to answer a complaint after his motion to dismiss has been denied. *J2 Global Communications, Inc. v. Blue Jay Inc.*, No. C 08-4525 PJH, 2009 WL 4572726 at *4 (N. D. Cal. Dec. 1, 2009). Of course, before the entry of a default judgment, a default may be entered against a defendant who fails to answer a complaint.

*Investcorp Retirement Specialists, Inc., v. Ohno*, No. C-07-01304 RMW, 2007 WL 2462122 at *2 (N. D. Cal. Aug. 2007). Therefore, if Powell will not answer the complaint, his default should be entered.

## V. THIS COURT MAINTAINS JURISDICTION TO PROCEED WITH THIS CASE

In attempting to meet and confer with Powell regarding this motion, Powell asserted that this Court has been deprived of jurisdiction to proceed in this matter by the filing of Powell's Notice of Appeal. Powell may contend that this Court is without jurisdiction to require him to file an answer. Such an argument must fail. While it is true that "[a]s a general rule, '[t]he filing of a notice of appeal . . . confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal, this transfer of jurisdiction from the district court to the court of appeals is not effected, however, if a litigant files a notice of appeal from an unappealable order." *Estate of Conners v. O'Connor*, 6 F.3d 656, 658 (9th Cir. 1993) (quoting *Griggs v. Provident Consumer Discount Co.,* 459 U.S. 56, 58, 103 S. Ct. 400, 402, 74 L. Ed. 2d 225 (1982) (per curiam)). "Filing an appeal from an unappealable decision does not divest the district court of jurisdiction." *United States. v. Hickey*, 580 F.3d 922, 928 (9th Cir. 2009) (citing *Estate of Conners*, 6 F.3d at 658); *accord Neal v. United States*, No. 2:90-CR-00003-PHX-RCB, 2010 WL 1752491 at * 2 (D. Ariz. Apr. 29, 2010). "Where the deficiency in a notice of appeal, by reason of untimeliness, lack of essential recitals, *or reference to a non-appealable order*, is clear to the district court, it may disregard the purported notice of appeal and proceed with the case, knowing that it has not been deprived of jurisdiction." *Ruby v. Secretary of U.S. Navy*, 365 F.2d 385, 389 (9th Cir. 1966).

Here, Powell has attempted to appeal from an order denying his motion to dismiss, an order which is clearly not a final judgment and therefore clearly non-appealable. 28 U.S.C. § 1291 confers jurisdiction on the courts of appeals to hear

appeals only from "final decisions" of the district courts of the United States.[3] "Generally, denial of a motion to dismiss is not an appealable final order under 28 U.S.C. § 1291." *Roe v. Northern Mariana Islands Retirement Fund*, No. 10-15427, 2011 WL 4914609 at *1 (9th Cir. Oct. 17, 2011) (citing *Confederated Salish v. Simonich*, 29 F.3d 1398, 1401-02 (9th Cir. 2004). A district court's decision is appealable under § 1291 only when it constitutes a "final order," that is, one that "'ends the litigation on the merits and leaves nothing for the Court to do but execute the judgment.'" *In re Benny*, 791 F.2d 712, 718 (9th Cir. 1986) (quoting *Catlin v. U.S.*, 324 U.S. 229, 233, 65 S. Ct. 631, 633, 89 L. Ed. 911 (1945)). For this reason, "denial of a motion to dismiss, even when the motion is based upon jurisdictional grounds, is not immediately reviewable." *Catlin v. U.S.*, 324 U.S. at 233, 65 S. Ct. 631at 633; *see also 15A Wright, Miller & Cooper, Federal Practice and Procedure* § 3914.1 ("Denial of a motion to dismiss for failure to state a claim presents few difficulties in applying finality doctrine. Ordinarily the denial is not appealable.")

Powell has indicated that he believes the orders he purports to appeal are appealable pursuant to the collateral order doctrine, which is a narrow exception to the finality rule, set forth by the Supreme Court in *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 54, 69 S.C. 1221, 93 L. Ed. 1528 (1949). "To be included among 'the small class of decisions excepted from the final-judgment rule by *Cohen*,' an order 'must [1] conclusively determine the disputed question, [2] resolve an

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3 28 U.S.C. § 1292(a) allows for interlocutory appeals in circumstances not applicable here, such as appeals of orders granting or refusing injunctions, or appointing receivers. Powell has not attempted to appeal from any such order of this Court, but only the denial of his motion to dismiss. Nor did the orders purportedly appealed from contain a statement that such orders "involve[d] a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation," the inclusion of which would have allowed for appeal pursuant to 28 U.S.C. § 1292(b).

important issue completely separate from the merits of the action, and [3] be effectively unreviewable on appeal from a final judgment.'" *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1103 (9th Cir. 2005) (quoting *Coopers & Lybrand v. Livesay,* 437 U.S. 463, 468, 98 S. Ct. 2454, 57 L. Ed. 351 (1978) (alterations in the original)). Each of these elements must be met for the collateral order doctrine to apply. *McElmurry v. U.S. Bank, Nat'l. Ass'n.*, 495 F.3d 1136, 1140 (9th Cir. 2007). Assuming that the first element, conclusive determination, is met here, it is clear that neither of the remaining elements is met.

The orders at issue deny a motion to dismiss, which motion was premised on the assertion that the debentures sold by Defendants were not securities and/or that they were exempt from registration. These issues are in no way distinct from, and certainly not "completely separate from" the merits of the action. The Commission has alleged the unregistered offer and sale of securities in violation of Section 5 of the Securities Act of 1933, 15 U.S.C. § 77e, and fraud in connection with those sales in violation of Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a), Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5. It will obviously be necessary for the Commission to establish that the debentures in question were securities in order to prevail on the merits of its claims. Likewise, should Powell continue to assert a defense of exemption from registration (which would, at best, constitute an affirmative defense only to the Commission's claims for registration violations, not its fraud claims), that defense will be adjudicated on its merits via summary judgment or trial.

Similarly, the third element of the collateral order doctrine is also missing in that any final judgment in this case will include a determination of whether the debentures were securities and whether their offer and sale were exempt from registration requirements. The Court of Appeals will be able to review these determinations on any appeal from a final judgment, if and when one is issued. An

order is deemed "unreviewable" only where the legal and practical value of the right at stake will be destroyed if not vindicated before trial. *McElmurry*, 495 F.3d at 1136 (quoting *Midland Asphalt Corp. v. United States*, 489 U.S. 794, 799, 109 S. Ct. 1494, 103 L. Ed. 2d 879 (1989) (internal quotations and brackets omitted). Denials of motions to dismiss or for summary judgment are not immediately appealable. *Alaska v. United States*, 64 F.3d 1352, 1357 (9th Cir. 1995). For a decision to be sufficiently "unreviewable" to satisfy this element, the defendant must point to some irreparable hardship that will be imposed on him beyond the need to prepare for trial. *Id.* The denial of the motion to dismiss will merge into the final judgment in this action and can be appealed at that stage. *Cohen*, 337 U.S. at 546, 69 S. Ct. at 1225 (holding 28 U.S.C. § 1291 does not "permit appeals, even from fully consummated decisions, where they are but steps towards final judgment in which they will merge).

## VI. CONCLUSION

For the foregoing reasons, the Court should enter an order compelling Defendant Powell to file an answer and directing the clerk to enter Powell's default if no answer is filed.

DATED: December 20, 2011

Respectfully submitted,

/s/ Spencer E. Bendell
Spencer E. Bendell
Attorney for Plaintiff
Securities and Exchange Commission

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**UNITED STATES DISTRICT COURT**

**CENTRAL DISTRICT OF CALIFORNIA**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

CHRISTIAN STANLEY, INC. and DANIEL C.S. POWELL,

Defendants,

and

CHRISTIAN STANLEY, LLC and DANIEL CHRISTIAN STANLEY POWELL REALTY HOLDINGS, INC.,

Relief Defendants.

Case No. CV 11-7147 GHK (MANx)

**DECLARATION OF SPENCER E. BENDELL IN SUPPORT OF PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S MOTION FOR ORDER COMPELLING DEFENDANT DANIEL C.S. POWELL TO FILE ANSWER TO COMPLAINT**

**DATE:** **JANUARY 23, 2012**
**TIME:** **9:30 A.M.**
**CRTRM:** **650**
**(HON. GEORGE H. KING)**

I, Spencer E. Bendell, declare, pursuant to 28 U.S.C. § 1746, as follows:

1. I am an attorney admitted to practice law by the State Bar of California and by this Court. I am counsel of record to the Plaintiff Securities and Exchange Commission ("Commission") in this action.

2. I have personal knowledge of each of the matters set forth below, and, if called as a witness, I could and would competently testify to the facts stated herein.

3. By letter dated, December 1, 2011, I informed Defendant Daniel C.S. Powell ("Powell") that the Court had ordered him to answer by November 29, 2011, and that the Commission intended to seek his default if he did not file an answer by December 5, 2011. A true and correct copy of my December 1, 2011 letter to Mr. Powell is attached as Exhibit 1.

4. Powell responded to my letter in a December 2, 2011 e-mail, in which he contended that this Court "is barred from jurisdiction over this matter" during the pendency of his appeal. We then exchanged a series of e-mails on the subject, including a December 7, 2011 e-mail in which Powell informed me that "[u]ntil a ruling is issued by the 9th Circuit Court of Appeals, Defendant does not intend to answer Plaintiff's complaint." On November December 8, 2011, I e-mailed Powell requesting that he meet and confer regarding the instant motion pursuant to Local Rule 7-3. After a series of additional e-mails, in an e-mail dated December 12, 2011, Powell refused to meet and confer pursuant to Local Rule 7-3 "because

there shall be no further L.R. 7-3 conferences between us until such time as the 9th CCA has concluded its plenary review of this action and issued an order and opinion." A true and correct copy of our e-mail exchange is attached as Exhibit 2.

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

Executed on December 20, 2011 at Los Angeles, California.

/s/ Spencer E. Bendell
Spencer E. Bendell

# EXHIBIT 1

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
LOS ANGELES REGIONAL OFFICE
11TH FLOOR
5670 WILSHIRE BOULEVARD
LOS ANGELES, CALIFORNIA 90036-3648

DIRECT DIAL: 323-965-3833
FAX NUMBER: 323-965-3908

December 1, 2011

**VIA E-MAIL AND U.S. MAIL**

Mr. Daniel C.S. Powell
5042 Wilshire Boulevard, #18503
Los Angeles, CA 90036
dpowell2003@yahoo.com

Re: *SEC v. Christian Stanley, Inc., et al.*, CV 11-7147 GHK (MANx) (C.D. Cal)

Dear Mr. Powell:

As you know, on November 9, 2011 the Court denied your motion to dismiss and ordered you to file an answer. The court reiterated this ruling in its November 15, 2011 Order. On November 23, 2011, the Court issued its Order re: "Defendant's Respectful Abstinence of Order" in which it again reiterated that "Defendant Powell SHALL answer the Complaint by November 29, 2011."

As of the writing of this letter, we have not received a service copy of any answer filed on your behalf, and on that basis I assume that you have not filed one. Please be advised that if you fail to file an answer to the Complaint on or before December 5, 2011, we will seek to have your default entered by the Clerk of the Court, and will thereafter seek entry of a default judgment against you.

Please contact me if you wish to discuss this matter further.

Very truly yours,

Spencer E. Bendell
Senior Trial Counsel

# EXHIBIT 2

**Bendell, Spencer E.**

**From:** Daniel Powell [dpowell2003@yahoo.com]
**Sent:** Monday, December 12, 2011 12:20 PM
**To:** Bendell, Spencer E.
**Cc:** Kirka, Lucee S.; DelGreco, Peter F.
**Subject:** Re: SEC v. Christian Stanley, et al.

December 12, 2011
Mr. Bendell,

The weather is almost torrential today. Unfortunately, I am not able to travel to a remote location where I can access a public phone. Therefore, today will not work for us to talk. However, in any event, before we carve out time to speak, you need to indicate the legal basis upon which you disagree with the points and authorities cited in my email dated December 7, 2011.

So far, all that you have done is state--"We believe the District Court continues to have jurisdiction and you continue to have an obligation to file an answer"--but you have not substantiated your 'belief,' or rebutted my argument whatsoever. I am 100% confident that your 'belief' is erroneous--as a matter of law, the 9th CCA has jurisdiction and the district court is divested of jurisdiction at this point in time.

The reason I offered lunch was because your 'belief' has made it quite clear that you are unfamiliar with the points and authorities cited in Dec. 7 email, so, as a courtesy, I thought that perhaps meeting face-to-face would help you understand and present intangible mutual benefits. Defendant has perfected his appeal and only recognizes the jurisdiction of the 9th CCA as a matter of law.

Therefore, Defendant will not participate in any discussions that are construed pursuant to L.R. 7-3, as this rule does not apply to the 9th CCA. Defendant is happy to speak with you. However, we expressly stipulate that any discussions shall not be pursuant to L.R. 7-3 because this rule does not apply to the 9th CCA, which has sole jurisdiction at this point in time.

Hence, if you do attempt to file a motion based upon your 'belief', you are prohibited from stating in your motion-- ["This motion is made following the conference of counsel pursuant to L.R. 7-3 which took place on (date)."]--because there shall be no further L.R. 7-3 conferences between us until such time as the 9th CCA has concluded its plenary review of this action and issued an order and opinion.

Regards,

-Daniel C.S. Powell

Christian Stanley, Inc.

**From:** "Bendell, Spencer E." <BendellS@sec.gov>
**To:** Daniel Powell <dpowell2003@yahoo.com>
**Cc:** "Kirka, Lucee S." <KirkaL@SEC.GOV>; "DelGreco, Peter F." <DelGrecoP@sec.gov>; "Bendell, Spencer E." <BendellS@sec.gov>
**Sent:** Friday, December 9, 2011 4:00 PM
**Subject:** RE: SEC v. Christian Stanley, et al.

Mr. Powell,

Thanks for getting back to me. I think a phone call would suffice. Would 2:00 p.m. on Monday December 12, 2011, work for you? If so, please call me at that time at 323-965-3833.

Spencer Bendell

---

**From:** Daniel Powell [mailto:dpowell2003@yahoo.com]
**Sent:** Friday, December 09, 2011 3:04 PM
**To:** Bendell, Spencer E.
**Subject:** Re: SEC v. Christian Stanley, et al.

December 9, 2011
Mr. Bendell,

Yes, you are correct--'we obviously disagree' regarding the 'legal effect' of my notice of appeal and the Time Schedule Order issued from the 9th CCA regarding this matter.

From your previous email, I do not see any legal points and authorities to support your belief about 'jurisdiction' and your belief about my obligation to' file an answer'. Therefore, as you have not refuted any of the numerous points and authorities cited in my previous email, it appears that your position is simply an erroneous 'belief', perhaps hallowed by time, but not by reason.

However, I would be pleased to confer with you (perhaps meet in person) regarding your Motion. You are correct--I do not have a phone number right now. I can call you any time next week that you indicate?

As per conferring face-to-face, I propose that you and I individually meet alone in a 'delta neutral' environment, such as at a Deli for a small lunch, as this may have intangible benefits towards substantively discussing your Motion above a phone call.

Normally, as a courtesy, I, at least, offer to pay for business related lunch meetings, however, I have a slight financial problem right now, so if we do confer as I propose, lunch will have to be on you.

P.S: I remain available for a phone call if you prefer, just let me know a time.

Have a good weekend,

-DP

**From:** "Bendell, Spencer E." <BendellS@sec.gov>
**To:** "'dpowell2003@yahoo.com'" <dpowell2003@yahoo.com>
**Cc:** "Kirka, Lucee S." <KirkaL@SEC.GOV>; "DelGreco, Peter F." <DelGrecoP@sec.gov>; "Bendell, Spencer E." <BendellS@sec.gov>
**Sent:** Thursday, December 8, 2011 7:35 PM
**Subject:** Re: SEC v. Christian Stanley, et al.

Mr. Powell,

We obviously disagree regarding the legal effect of your notice of appeal. We believe the District Court continues to have jurisdiction and you continue to have an obligation to file an answer.

I request that you meet and confer with me regarding a motion the Commission intends to file seeking an order requiring you to file an answer. The last time we discussed the issue, you indicated that you do not have a phone number I can reach you at, but that you could make arrangements to call me. Please email me back so we can set up a time for you to call me (or to meet in person) to accomplish our conference.

Thank you.

Spencer Bendell

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**From**: Daniel Powell [mailto:dpowell2003@yahoo.com]
**Sent**: Wednesday, December 07, 2011 05:57 PM
**To**: Bendell, Spencer E.
**Cc**: Kirka, Lucee S.; DelGreco, Peter F.
**Subject**: Re: SEC v. Christian Stanley, et al.

December 7, 2011
Mr. Bendell,

I appreciate your email. However, I disagree with your legal analysis that, in the Appeal of Christian Stanley, the District Court is not divested of jurisdiction because-- "As a general rule, the timely filing of a notice of appeal is an event of jurisdictional significance, immediately conferring jurisdiction on a Court of Appeals and divesting a district court of its control over those aspects of the case involved in the appeal." Griggs v. Provident Consumer Discount Co., 459 U.S. 56, 58 (1982).

In your previous email, citing the Catlin and Ruby cases(s), you basically argue that the Appeal of Christian Stanley is in reference to a 'non-appealable order'. However, as a matter of law, you are incorrect because in Catlin, the Court states, "The question for review is whether orders entered in the [324 U.S. 229, 231] course of the proceedings are appealable as 'final decisions' within the meaning of Section 128 of the Judicial Code, as amended, 28 U.S.C. 225(a ), 28 U.S.C.A. 225(a).2." The precedent established in Catlin is limited to the definitional purview of Section 128. Also, you are citing Ruby completely out of context because, in Ruby, based upon res judicata, the Court dismissed the Complaint, without expressly dismissing the action--hence, the order was not regarded as final.

However, as a matter of law, the Appeal of Christian Stanley is made pursuant to 28 U.S.C. § 1291, which has been interpreted by the Supreme Court to permit an exception for matters classified as "collateral orders." In Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541 (1949), the Supreme Court carved out a small class of decisions for which appellate consideration need not be deferred. As satisfied in the Appeal of Christian Stanley, three criteria must be met in order for the collateral order doctrine to apply: (1) the order must conclusively determine the disputed question, (2) the order must resolve an important issue completely apart from the merits of the action, and (3) the order must be effectively unreviewable on appeal from a final judgment. See Coopers & Lybrand v. Livesay, 437 U.S. 463, 468 (1978).

Hence, the Clerk of the District Court is barred from entering Plaintiff's request for a default against Defendant, as it lacks jurisdiction regarding this Matter, and besides any erroneous entries to the contrary will be stayed by the Court of Appeals . Until a ruling is issued by the 9th Circuit Court of Appeals, Defendant does not intend to answer Plaintiff's Complaint. Defendant intends to demonstrate to the Court of Appeals that due to its numerous inefficiencies and due to the damages unduly suffered by Defendant, Plaintiff's Complaint should be dismissed with prejudice as a matter of law. I cordially invite your further correspondence regarding these points and authorities, or any other topics you may want to discuss. It is always my pleasure to be of service to you.

Regards,

-Daniel C.S. Powell
Christian Stanley, Inc.

**From:** "Bendell, Spencer E." <BendellS@sec.gov>
**To:** Daniel Powell <dpowell2003@yahoo.com>
**Cc:** "Kirka, Lucee S." <KirkaL@SEC.GOV>; "DelGreco, Peter F." <DelGrecoP@sec.gov>; "Bendell, Spencer E." <BendellS@sec.gov>
**Sent:** Wednesday, December 7, 2011 9:52 AM
**Subject:** RE: SEC v. Christian Stanley, et al.

Mr. Powell,

Thank you for your email. Your assertion that the District Court has been divested of jurisdiction is incorrect. The denial of a motion to dismiss is not a final judgment and is a non-appealable order. *Catlin v. U.S.*, 324 U.S. 229, 236 (1945) ("[D]enial of a motion to dismiss, even when the motion is based upon jurisdictional grounds, is not immediately reviewable."); *see also Wright, Miller & Cooper, Federal Practice and Procedure § 3914.6.*

"Where the deficiency in a notice of appeal, by reason of untimeliness, lack of essential recitals, *or reference to a non-appealable order*, is clear to the district court, it may disregard the purported notice of appeal and proceed with the case, knowing that it has not been deprived of jurisdiction." *Ruby v. Secretary of U.S. Navy,* 365 F.2d 385, 389 (9th Cir. 1966)(emphasis added). Therefore, the action before the District Court continues, and your answer remains due. As I stated previously, if you do not file an answer, we will have no choice but to seek to have your default entered.

Regards,

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Spencer E. Bendell
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**From:** Daniel Powell [mailto:dpowell2003@yahoo.com]
**Sent:** Friday, December 02, 2011 11:01 AM
**To:** Bendell, Spencer E.
**Cc:** Kirka, Lucee S.; DelGreco, Peter F.
**Subject:** Re: SEC v. Christian Stanley, et al.

December 2, 2011
Mr. Bendell,

As I personally made service of process to your office with 'Ivory' relating to this matter, I suspect that you have already received Defendant's
Notice of Appeal and the Time Schedule Order from the 9th Circuit Court of Appeals for Christian Stanley, Inc and Daniel C.S. Powell, which is
CCA No. 11-57078.

These items are also available on the PACER docket, however, as a courtesy, in case you have not received these items, I have attached them to this
email. Therefore, I will remind Counsel for Plaintiff that while Defendant is prosecuting an interlocutory Appeal with respect to Defendant's Motion

to Dismiss, the lower Court is barred from any jurisdiction over this matter, and this is now in the jurisdiction of the 9th Circuit Court of Appeals.

Moving forward, Defendant intends to seek dismissal of Plaintiff's complaint for failure to state a claim upon which relief may be granted, or in the
alternative, for lack of subject-matter jurisdiction, or in the alternative, for failure to join a required party pursuant to Rule 19, via said Appeal. Please
be so advised and take Notice.

Regards,

-Daniel C.S. Powell
Christian Stanley, Inc.

**From:** "Bendell, Spencer E." <BendellS@sec.gov>
**To:** Daniel Powell <dpowell2003@yahoo.com>
**Cc:** "Bendell, Spencer E." <BendellS@sec.gov>
**Sent:** Thursday, December 1, 2011 11:57 AM
**Subject:** SEC v. Christian Stanley, et al.

Please see attached correspondence.

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