

**IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA**

Oklahoma Department of Securities )  
*ex rel.* Irving L. Faught, )  
Administrator, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
Farmers & Merchants Bank, an Oklahoma )  
banking entity; Farmers & Merchants )  
Bancshares, Inc., an Oklahoma corporation; )  
John V. Anderson, individually, as an officer )  
and director of Farmers & Merchants Bank, )  
and as a shareholder of Farmers & )  
Merchants Bancshares, Inc.; and John Tom )  
Anderson, individually, as an officer and )  
director of Farmers & Merchants Bank, and )  
as a shareholder of Farmers & Merchants )  
Bancshares, Inc., )  
 )  
Defendants. )

FILED IN THE DISTRICT COURT  
OKLAHOMA COUNTY, OKLA.

JUN 22 2006

Case No. CJ-2006-3311

PATRICIA PRESLEY, COURT CLERK  
by \_\_\_\_\_  
DEPUTY

**PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO DISMISS AND  
BRIEF IN SUPPORT**

Plaintiff, Oklahoma Department of Securities *ex rel.* Irving L. Faught, Administrator (Department), respectfully submits this response in opposition to the motion to dismiss (Motion to Dismiss) filed by Defendants Farmers & Merchants Bank, Farmers & Merchants Bancshares, Inc., John V. Anderson, and John Tom Anderson (collectively, "Defendants").

**BACKGROUND**

Between January of 2000, and October 14, 2004, Marsha Schubert, individually and doing business as Schubert and Associates, (collectively, "Marsha Schubert"),

orchestrated a securities fraud in and from Crescent, Oklahoma. Marsha Schubert, promising large financial returns, accepted funds in excess of Two Hundred Million Dollars (\$200,000,000) for purported investment (the "Purported Investment Program"). The majority of the investment proceeds were deposited into Farmers & Merchants Bank accounts controlled by Marsha Schubert (F&M Accounts). Approximately 100 persons lost in excess of Nine Million Dollars (\$9,000,000) in the Purported Investment Program.

The securities fraud had two components: 1) a "Ponzi" scheme in which most of the money entrusted to Marsha Schubert by participants in the Purported Investment Program was not invested in a legitimate venture, but instead, was paid out as purported returns to other participants in the Purported Investment Program; and 2) a check exchange scheme. The check exchange scheme involved a continual movement of funds primarily between the bank accounts of three individuals and one of the F&M Accounts. The scheme created a "float" that Marsha Schubert used to pay fictitious investment returns thereby perpetuating the "Ponzi" scheme.

On October 14, 2004, the Administrator of the Department (Administrator) filed suit against Marsha Schubert in the District Court of Logan County, State of Oklahoma, for violations of the Oklahoma Uniform Securities Act of 2004 (Successor Act), Okla. Stat. tit. 71, §§ 1-101 through 1-701 (Supp. 2003), and the Oklahoma Securities Act (Predecessor Act), Okla. Stat. tit. 71, §§ 1-413, 501, 701-703 (1991 & Supp. 2003).<sup>1</sup> The Administrator alleged, *inter alia*, that Marsha Schubert committed fraud in connection with the offer, sale, or purchase of securities. On November 15, 2004, upon the stipulation and consent of Marsha Schubert, the Logan County District Court entered a

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<sup>1</sup> The Predecessor Act was repealed by the adoption in 2003 of the Successor Act, effective July 1, 2004.

permanent injunction against Marsha Schubert. *Oklahoma Department of Securities ex rel. Irving L. Faught, Administrator v. Marsha Schubert, et al.*, CJ 2004-256.

On April 21, 2006, the Administrator filed this suit alleging the Defendants materially aided and/or participated in the securities fraud committed by Marsha Schubert. Defendants move to dismiss this action arguing the Administrator failed to state a claim upon which relief can be granted. Such motion should be denied.

### ARGUMENTS AND AUTHORITIES

#### **I. Defendants waived their defense.**

The Oklahoma Pleading Code (Pleading Code), 12 O.S. §§ 2001-2027, requires a defendant to serve his answer within twenty (20) days after being served with a summons and petition. Under the provision found in subsection B of Section 2006 of the Pleading Code, a defendant may request an enlargement of time in which to respond. Whether such request is granted is within the court's discretion. Alternatively, pursuant to subsection A of Section 2012 of the Pleading Code, a defendant may file a "reservation of time" and automatically obtain an additional twenty (20) days in which to respond. However, when filing under Section 2012, a defendant waives certain defenses including failure to state a claim upon which relief can be granted.

In the instant case, the Defendants did not request an extension of time to respond under the general provision of Section 2006 of the Pleading Code. *See* Exhibit 1, Defendants' motion for extension of time. Rather, the Defendants cited Section 2012 as authority for their motion.

The Oklahoma Supreme Court examined the provisions of Section 2012(A) in *Young v. Walton*, 1991 OK 20, 807 P.2d 248. At that time, the language provided that

the filing of “an appearance” within twenty (20) days of service of process automatically extended the time to respond and operated as a waiver of certain defenses. The statute was later amended by the substitution of the words “reservation of time” for the word “appearance.”

In *Young*, the defendants responded to the petition by making a “special appearance” and requesting an enlargement of time in which to respond. On appeal, the plaintiff argued that the defendants’ “special appearance” extended the time to respond but waived their defenses. The Court ruled that the defendants did not waive their Section 2012(B) defenses and held that the Section 2012(A) waiver “applies only to a defendant’s *general* . . . appearance, not to one that is explicitly qualified (emphasis in original).” *Id.* at 249. The *Young* analysis is still appropriate in interpreting Section 2012 in its current form.

In their motion for additional time to respond, the Defendants failed to state that they were not filing a “reservation of time” and failed to explicitly qualify their motion so as not to waive any of the Section 2012(B) defenses.<sup>2</sup> Consequently, the Defendants’ motion operated as a “reservation of time” under Section 2012(A) by which the Defendants waived the defense of failure to state a claim upon which relief can be granted.

Defendants’ Motion to Dismiss should be denied.

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<sup>2</sup> Such qualifying language would include the following: “Defendant is not filing a ‘reservation of time’ pursuant to 12 O.S. § 2012(A), but is only requesting an extension of time, without waiver of any procedural rights, objections, or defenses.” Clyde A. Muchmore & Harvey D. Ellis, Jr., *Oklahoma Civil Procedure Forms and Practice* vol.1, § 701, 7-7 (2d ed., LexisNexis 2006).

## II. Defendants state an improper standard of review.

Defendants specifically make their motion to dismiss under 12 O.S. § 2012(b)(6) of the Pleading Code alleging the Administrator failed to state a claim upon which relief can be granted. Oklahoma's appellate courts have repeatedly warned that "motions to dismiss are generally viewed with disfavor." *Miller v. Miller*, 1998 OK 24, 956 P.2d 887, 894.

In support of their motion, Defendants cite *Indiana. Nat'l Bank v. State Dep't of Human Services*, 1994 OK 98, 880 P.2d 371. Defendants argue that the applicable standard for considering dismissal of this case is two-fold: 1) lack of "any cognizable legal theory of recovery" and 2) insufficient "facts to support a viable claim for relief . . . under any cognizable legal theory." However, the Oklahoma Supreme Court in *Indiana Nat'l Bank* cited such grounds as *general* reasons for dismissing a petition as a matter of law. *Id.* at 375.

Defendants stopped short in describing the applicable standard cited by the Court for review of a motion to dismiss for the specific reason of Plaintiff's failure to state a cause of action upon which relief can be granted. The Court stated that "to withstand a motion to dismiss it is not necessary for a plaintiff to either identify a specific theory of recovery or set out the correct remedy or relief to which he/she may be entitled." *Id.* The Court added: "[w]hen a trial court is considering his ruling on a § 2012(B)(6) motion he should **not** ask whether the petition points to an appropriate statute or legal theory, but whether relief is possible under any set of facts that could be established consistent with the allegations." *Id.* at 375-376 (emphasis in original).

In the instant case, Plaintiff goes to great lengths to state the factual basis for its claim against Defendants. There have been violations of Oklahoma securities laws of great proportion in terms of victims and amounts of money lost. Plaintiff lays out sufficient facts to show that Defendants knew, or in the exercise of reasonable care could have known, of Marsha Schubert's securities violations and that the Defendants substantially aided the perpetuation of the fraud.

The relief requested by the Plaintiff is possible, and necessary, under the facts presented in the Petition. Defendants' motion to dismiss should be denied.

### **III. The Administrator has authority to seek its claim against Defendants.**

The Defendants challenge the Administrator's authority to pursue a civil action against those alleged to have materially participated or aided another person in a securities fraud. The Defendants also contend that the Administrator lacks standing to sue since the Department was not itself a purchaser of the securities in question.

Without question, the Administrator has the express authority to pursue a civil action against any person that materially aids one or more violations of the Successor Act. Section 1-603 of the Successor Act provides in pertinent part as follows:

- A. **If the Administrator believes** that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this act or a rule adopted or order issued under this act or constituting a dishonest or unethical practice or that **a person** has, is, or is about to engage in an act, practice, or course of business **that materially aids a violation of this act** or a rule adopted or order issued under this act or a dishonest or unethical practice, the Administrator may, . . . maintain an action in the district court of Oklahoma County or the district court of any other county where service can be obtained to enjoin the act, practice, or course of business and to enforce compliance with this act or a rule adopted or order issued under this act.

B. In an action under this section and on a proper showing, the court may:

1. Issue a permanent or temporary **injunction**, restraining order, or declaratory judgment;
2. **Order other appropriate or ancillary relief, which may include:**

\* \* \*

c. imposing a civil penalty . . . ; an order of rescission, **restitution**, or disgorgement directed to a person that has engaged in an act, practice, or course of business **constituting a violation of this act or the predecessor act** or a rule adopted or order issued under this act or the predecessor act . . . , and

\* \* \*

3. **Order such other relief as the court considers appropriate.** (Emphasis added.)

The specific arguments raised by the Defendants in connection with the Administrator's authority under the Predecessor Act were considered by the Iowa Supreme Court in *State ex rel. Goettsch v. Diacide Distributors, Inc.*, 561 N.W.2d 369 (Iowa 1997). That court addressed whether the Iowa Superintendent of Securities (Iowa Regulator) could use aiding and abetting to establish secondary liability for securities fraud, and whether the Iowa Regulator could seek restitution, rescission or disgorgement against aiders and abettors under Iowa's securities laws (Iowa Code).<sup>3</sup> The Iowa Supreme Court answered these questions in the affirmative.

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<sup>3</sup> Like the Oklahoma statutes, the Iowa securities laws are modeled after the state uniform securities acts. Section 1-608 of the Successor Act sets forth general policies to be considered by the Administrator in carrying out his duties under the act, to include: maximizing effectiveness of regulation for the protection of investors, and maximizing uniformity in federal and state regulatory standards.

**A. Oklahoma's securities laws establish "aiding and abetting" liability.**

Like the Iowa Code, the Predecessor and the Successor Acts contain an "aiding and abetting" provision. Section 408(b) of the Predecessor Act provides in part:

**Every person who materially participates or aids in a sale or purchase made by any person liable under paragraph (1) or (2) [persons who offer or sell securities in violation of the anti-fraud provisions] of subsection (a) of this section . . . shall also be liable jointly and severally with and to the same extent as the person so liable[.] (Emphasis added.)**

The *Diacide* court interpreted the similar statute in the Iowa Code to impose secondary liability on *any* person who "materially participates or aids" in act(s) constituting securities fraud.

Section 1-509 of the Successor Act provides in pertinent part as follows:

G. The following persons are **liable jointly and severally with and to the same extent** as persons liable under subsections B through F of this section:

\* \* \*

5. **Any other person who materially aids** in the conduct giving rise to the liability under subsections B through F of this section[.] (Emphasis added.)

Under the plain language of the Predecessor Act and the Successor Act, secondary liability may be imposed on *any* person who materially aids fraudulent securities acts or practices.

**B. The Administrator may seek the imposition of "aiding and abetting" liability**

Contrary to the Defendants' assertions, imposition of such secondary liability may be sought by a securities regulatory agency. In *SEC v. Wong*, 252 F.Supp. 608 (D.P.R. 1966), the court held that the Securities and Exchange Commission may seek an

enforcement action even though it is not a defrauded purchaser or seller. In making its ruling the court stated:

This is the case of a public agency enforcing public policy. The [Securities and Exchange] Commission does not have to engage in the purchase or sale of securities. In order to bring suit under the statutes which it has a duty to enforce, a regulatory agency need not be itself the victim.

*Id.* at 611.

The *Diacide* court found that the language in the Iowa Code, which is similar to that in Section 408 of the Predecessor Act and Section 1-509 of the Successor Act, does **not** limit standing to sue to purchasers of securities. On the issue of standing and “purchaser” status, the court in *Diacide* declared:

‘Purchaser’ status . . . goes only to the requirements for a private suit involving fraudulent practices in the offer, sale, and purchase of securities. The requirements for a private party to maintain an action and the requirements for State action must not be confused under a clear legislative mandate. . . . **The State must therefore have the benefit of any theory of liability available to individual purchasers** suing in their own names in the absence of any contrary legislative intent.

*Id.* at 375 (emphasis added).

The Iowa Supreme Court in *Diacide* concluded that the Iowa Regulator may seek and the courts may impose secondary liability on any person who materially aids and abets a securities fraud. The Administrator should be allowed to pursue this claim in order to fulfill his statutory duty to enforce Oklahoma’s securities laws.

#### **IV. The Administrator is authorized to seek restitution against the Defendants.**

Section 1-603 clearly authorizes the Administrator to maintain a district court action to enjoin an act, practice, or course of business constituting a violation of the Successor Act and to enforce compliance with the statute. On a proper showing, the

court may, pursuant to Section 1-603, also order rescission, **restitution**, or disgorgement against a “person that has engaged in an act, practice or course of business constituting a **violation of this act or the predecessor act[.]”** (Emphasis added.)

The Defendants mistakenly rely on the narrow definition of “restitution” referenced by the Court in *Stites v. DUIT Constr. Co., Inc.*, 1995 OK 69, 903 P.2d 293. *Stites* involved the vacation of an involuntarily satisfied judgment and the imposition of liability based on the defendant’s unjust enrichment. Unjust enrichment by the Defendants is not a prerequisite to the Court ordering restitution in this case.

“‘Restitution’ is an ambiguous term, sometimes referring to the disgorging of something which has been taken and at times referring to compensation for injury done.” *Black’s Law Dictionary* (8th ed. 2004). The latter meaning was referenced by the Oklahoma Supreme Court in *State ex rel. Oklahoma Bar Assn. v. Leigh*, 1996 OK 37, 914 P.2d 661:

Black’s Law Dictionary defines the term ‘restitution’ as an ‘equitable remedy under which a person is restored to his or her original position prior to loss or injury, or placed in the position he or she would have been, had the breach not occurred. Act of restoring; restoration; restoration of anything to its rightful owner; the act of making good or giving equivalent for any loss, damage or injury; and indemnification. (Citation omitted.) Act of making good or giving an equivalent for or restoring something to the rightful owner. (Citation omitted.)

at 668, n. 23. In bringing this case, the Administrator is seeking to restore the victims of Marsha Schubert’s securities fraud to the position they would have been in had the fraud not occurred.

While the Defendants appear to concede that the Administrator’s injunctive authority under the Successor Act applies to any person who “materially aids” a violation, the Defendants erroneously contend that Section 1-603 does not allow the

Administrator to seek equitable remedies, such as restitution, against anyone but the primary wrongdoer. The Defendants argue that because Section 1-603 of the Successor Act does not specifically reference remedies against aiders and abettors, such remedies cannot be pursued. In deciding this same question under the Iowa securities laws, the court in *Diacide* said:

[The Iowa Code] makes aiders and abettors 'liable jointly and severally with and to the same extent as the [primary violator].' This is an expression of aider and abettor status similar to that found in the criminal law where aiders and abettors may be charged, tried, and punished as principals. . . . For purposes of criminal responsibility and punishment aiders and abettors are therefore primary violators. Likewise, when the legislature authorized the remedies of rescission, restitution, or disgorgement against 'any person who has engaged in an act constituting a violation of [the Iowa Code,]' we think it was using such language broadly to include both aiders and abettors and primary violators. . . . Otherwise, the language 'liable jointly and severally with and to the same extent [as the primary violator]' . . . would mean nothing as far as aiders and abettors are concerned.

*Diacide*, at 376.

The court's rationale in *Diacide* applies in the instant case whether interpreting the Predecessor Act or the Successor Act. Under both acts, material participants are "liable jointly and severally with and to the same extent as the [primary wrongdoer]" and are subject to the same sanctions, to include restitution, as the primary violator. To hold otherwise, would render meaningless the language establishing "joint and several liability."

Further support for Plaintiff's position can be found in the case of *State ex rel. Day v. Southwest Mineral Energy, Inc.*, 1980 OK 118, 617 P.2d 1334. At issue before the Oklahoma Supreme Court was the Administrator's authority under the Predecessor Act to seek disgorgement or other forms of equitable relief. The Court found nothing in

Oklahoma's securities laws that would restrict the Administrator's right to seek equitable remedies in order to enforce such laws.

The Predecessor Act provided the Administrator with the specific authority to seek injunctive relief as well as restitution to investors. Section 406.1 of the Predecessor Act provided in pertinent part as follows:

- (a) Upon a showing by the Administrator that a person has violated or is about to violate the Oklahoma Securities Act . . . , **the Administrator** . . . may bring an action in the district court of Oklahoma County or the district court of any other county where service can be obtained on one or more of the defendants and the district court may grant or impose one or more of the following appropriate legal or equitable remedies:

- (1) Upon a showing of a violation of the Oklahoma Securities Act or a rule or order of the Administrator under the Oklahoma Securities Act or conduct involving dishonest or unethical practices in the securities business:

- (i) a temporary restraining order, permanent or temporary prohibitory or mandatory injunction, or a writ of prohibition or mandamus;

\* \* \*

- (iv) **restitution** to investors[.] (Emphasis added.)

As previously cited above, Section 1-603 of the Successor Act also authorizes the Administrator to seek injunctive relief and restitution to investors in district court. It is extremely important to note that, like the Uniform Securities Act of 2002, Section 1-603 authorizes the imposition of an order of restitution in connection with violations of the Successor Act **and** the Predecessor Act. Based on the court's rationale in *Diacide*, and the similar statutory language in the Oklahoma acts as in the Iowa Code, the restitution

order may be directed at any person who materially aids the conduct of the securities violator.

Defendants' arguments as to the Predecessor Act are clearly without merit. Section 1-603 of the Successor Act authorizes the pending action against the Defendants for all of the fraudulent transactions described in the Petition, regardless of whether the Predecessor Act or the Successor Act was in effect at the time the transactions occurred.

**V. This Court has the power to fashion appropriate equitable relief.**

The Court in *Day* also considered whether the trial court had the power to order disgorgement by violators of this state's securities laws. Relying on several federal cases, including United States Supreme Court decisions, the Court held that Oklahoma's district courts "are empowered to do equity in actions brought under the Oklahoma Securities Act. Once the equity jurisdiction of the District Court has properly been invoked, the Court possesses the necessary power to fashion appropriate remedies." *Day*, at 1338. The Court ruled that a district court may grant relief in the form of disgorgement, as well as any other legal or equitable remedy available to the Administrator of the Department and private investors.

In the present case, the equity jurisdiction of this Court has properly been invoked. As shown above, restitution is an equitable remedy available to the Administrator and to the private investors who are the victims of Marsha Schubert's securities fraud. Consequently, this Court may order that the Defendants make restitution to such victims for the Defendants' material aid in Marsha Schubert's securities law violations.

## CONCLUSION

Defendants' motion for additional time to respond to the Petition operated as a "reservation of time" under Section 2012(A) by which Defendants waived the defense of failure to state a claim upon which relief can be granted. For this reason alone, the Defendant's Motion to Dismiss should be denied.

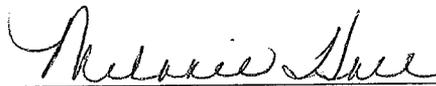
As to the substantive arguments raised by the Defendants, the Administrator's enforcement powers extend to all parts of the Predecessor and Successor Acts. At the request of the Administrator, this Court may impose secondary liability on the Defendants for their material aid in Marsha Schubert's investment fraud. In addition, the Administrator may seek an order of restitution against the Defendants to restore the victims of the fraud to the position they would have been in had the fraud not occurred. Based on the facts that can, and will, be established in support of the allegations in the Petition, the relief requested by Plaintiff is not only possible, but likely. Plaintiff urges the Court to deny the Defendant's Motion to Dismiss.

Respectfully submitted,

OKLAHOMA DEPARTMENT OF  
SECURITIES

Irving L. Faught, Administrator

By:



Melanie Hall (OBA #1209)

Amanda Cornmesser (OBA #20044)

Gerri Stuckey (OBA #16732)

Oklahoma Department of Securities

120 North Robinson, Suite 860

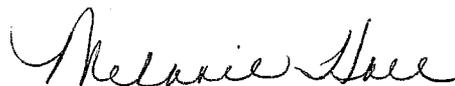
Oklahoma City, Oklahoma 73102

(405) 280-7700

## CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the Plaintiff's Response to Defendants' Motion to Dismiss and Brief in Support, was mailed this 22nd day of June, 2006, by depositing it in the U.S. Mails, postage prepaid, to the following counsel of record:

Patrick J. Ryan, Esq.  
Daniel G. Webber, Jr., Esq.  
Jason A. Ryan, Esq.  
Matthew C. Kane, Esq.  
RYAN, WHALEY & COLDIRON  
900 Robinson Renaissance  
119 North Robinson  
Oklahoma City, Oklahoma 73102  
*Attorneys for Defendants*

  
\_\_\_\_\_

IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA

FILED IN THE DISTRICT COURT  
OKLAHOMA COUNTY, OKLA.

MAY 15 2006

PATRICIA PRESLEY, COURT CLERK  
by \_\_\_\_\_  
DEPUTY

OKLAHOMA DEPARTMENT OF SECURITIES )  
*ex rel.* Irving L. Faught, Administrator, )

Plaintiff, )

vs. )

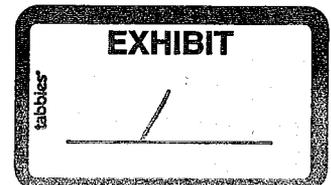
Case No. CJ-2006-3311  
Honorable Patricia G. Parrish

FARMERS & MERCHANTS BANK, )  
an Oklahoma banking entity; )  
FARMERS & MERCHANTS BANCSHARES, )  
INC., an Oklahoma corporation; )  
JOHN V. ANDERSON, Individually, as an officer )  
and director of Farmers & Merchants Bank, and )  
as a shareholder of Farmers & Merchants )  
Bancshares, Inc.; and JOHN TOM ANDERSON, )  
Individually, as an officer and director of )  
Farmers & Merchants Bank, and as a shareholder )  
of Farmers & Merchants Bancshares, Inc., )

Defendants. )

**DEFENDANTS FARMERS & MERCHANTS BANK,  
FARMERS & MERCHANTS BANCSHARES, INC.,  
JOHN V. ANDERSON, AND JOHN TOM ANDERSON'S  
UNOPPOSED MOTION FOR EXTENSION OF TIME**

Defendants Farmers & Merchants Bank, Farmers & Merchants Bancshares, Inc.,  
John V. Anderson, and John Tom Anderson ("Defendants") moves the Court for an  
Order extending the time by twenty (20) days, or until Monday, June 5, 2006, in which  
Defendants may serve their answer or otherwise plead pursuant to 12 O.S. §2012 in  
response to Plaintiff's original Petition. In support of this Motion, Defendants would  
show the Court as follows:



1. Defendants presently are required to answer or otherwise plead in response to Plaintiff's original Petition on or before Monday, May 15, 2006.

2. This is Defendants' first request for an extension of time to serve their answer or responsive pleading to Plaintiff's original Petition and it is sought in good faith and not for the purpose of delay.

3. The undersigned counsel was just recently retained by Defendants. Defendants and their counsel need the additional time sought by this Motion in which to complete their review and prepare and serve responses to Plaintiff's original Petition.

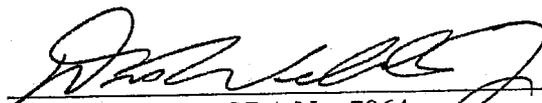
4. The undersigned attorney is authorized to state that Plaintiff's counsel has no objection to the Court granting this Motion.

5. There are no deadlines scheduled in this case and, therefore, granting this Motion will not delay or adversely affect any other deadline in this case.

6. A proposed Order has been submitted with this Motion for the consideration of the Court.

WHEREFORE, Defendants respectfully request that the Court enter its Order granting this Motion and permitting Defendant to answer or otherwise plead pursuant to 12 O.S. §2012 in response to Plaintiff's original Petition on or before Monday, June 5, 2006.

Respectfully Submitted,



Patrick M. Ryan, OBA No. 7864

Daniel G. Webber, Jr., OBA No. 16332

Jason A. Ryan, OBA No. 18824

Matthew C. Kane, OBA No. 19502

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**ATTORNEYS FOR DEFENDANTS**

**FARMERS & MERCHANTS BANK, FARMERS**

**& MERCHANTS BANCSHARES, INC., JOHN**

**V. ANDERSON and JOHN TOM ANDERSON**

**CERTIFICATE OF SERVICE**

I hereby certify that on this 15<sup>th</sup> day of May 2006, a true and correct copy of the above and foregoing instrument was mailed, via U.S. First Class Mail, postage prepaid, to the following counsel of record:

Melanie Hall, Esq.

Amanda Cornmesser, Esq.

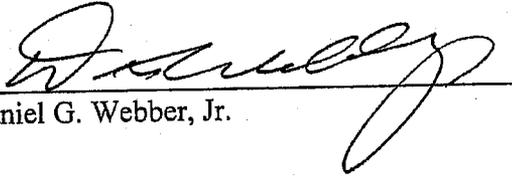
Gerri Stuckey, Esq.

OKLAHOMA DEPARTMENT OF SECURITIES

120 North Robinson Avenue, Suite 860

Oklahoma City, Oklahoma 73102

*Attorneys for Plaintiff Oklahoma Department of  
Securities, Irvin L. Faught, Administrator*

  
Daniel G. Webber, Jr.

IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA

OKLAHOMA DEPARTMENT OF SECURITIES )  
*ex rel.* Irving L. Faught, Administrator, )

Plaintiff, )

vs. )

Case No. CJ-2006-3311  
Honorable Patricia G. Parrish

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FARMERS & MERCHANTS BANCSHARES, )  
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and director of Farmers & Merchants Bank, and )  
as a shareholder of Farmers & Merchants )  
Bancshares, Inc.; and JOHN TOM ANDERSON, )  
Individually, as an officer and director of )  
Farmers & Merchants Bank, and as a shareholder )  
of Farmers & Merchants Bancshares, Inc., )

Defendants. )

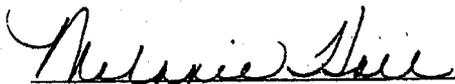
**AGREED ORDER**

On this \_\_\_\_\_ day of May 2006, the Court considered Defendants Farmers & Merchants Bank, Farmers & Merchants Bancshares, Inc., John V. Anderson, and John Tom Anderson's Motion for Extension of Time. FOR GOOD CAUSE SHOWN, the Court finds that said Motion should be and hereby is **GRANTED**. Defendants are hereby permitted to answer or otherwise pled pursuant to 12 O.S. §2012 in response to Plaintiff's original Petition on or before Monday, June 5, 2006.

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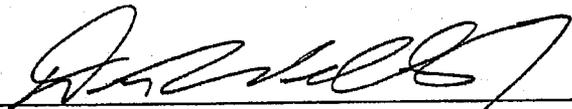
Honorable Patricia G. Parrish  
JUDGE OF THE DISTRICT COURT

APPROVED:



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Melanie Hall, OBA No. 1209  
Amanda Cormmesser, OBA No. 20044  
Gerri Stuckey, OBA No. 16732  
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**ATTORNEYS FOR PLAINTIFF OKLAHOMA  
DEPARTMENT OF SECURITIES, IRVIN L.  
FAUGHT, ADMINISTRATOR**



---

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**ATTORNEYS FOR DEFENDANTS  
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& MERCHANTS BANCSHARES, INC., JOHN V.  
ANDERSON and JOHN TOM ANDERSON**