

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

THOMAS L. TAYLOR III, SOLELY IN HIS
CAPACITY AS COURT-APPOINTED RECEIVER
FOR ROBERT A. HELMS, ET AL.,

Plaintiff,

v.

PHILIP E. GAUCHER,

Defendant.

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Civil Action No. 1:14-cv-965

RECEIVER’S ORIGINAL COMPLAINT AGAINST PHILIP E. GAUCHER

**I.
SUMMARY**

1. This Court appointed Plaintiff Thomas L. Taylor III (“Receiver”) as the Receiver for defendants Robert A. Helms (“Helms”), Janniece S. Kaelin (“Kaelin”), Vendetta Royalty Partners, Ltd. (“Vendetta Partners”), Vendetta Royalty Management, LLC (“Vendetta Management”), Vesta Royalty Partners, LP (“Vesta Partners”), Vesta Royalty Management, LLC, Iron Rock Royalty Partners, LP (“Iron Rock Partners”), Iron Rock Royalty Management, LLC, Arcady Resources, LLC, Barefoot Minerals, G.P. (“Barefoot Minerals”), G3 Minerals, LLC, Haley Oil Company, Inc. (“Haley Oil”), Lake Rock, LLC, SeBud Minerals, LLC and Technicolor Minerals, G.P. (collectively the “Vendetta Defendants”) in the civil action styled *SEC v. Robert A. Helms, et al.*, Civil Action No. 1:13-cv-01036-ML, in the United States District Court for the Western District of Texas, Austin Division (the “Enforcement Action”). *See* Enforcement Action Docs. 11, 76 (hereinafter cited as “EA Doc. _”).

2. The Court has ordered the Receiver to take control of all assets of the Receivership Estate in order to make an equitable distribution to claimants injured by a massive fraud orchestrated by Vendetta Defendants Helms and Kaelin.

3. The Receiver's investigation to date reveals that Helms and Kaelin, individually and through others, fraudulently offered and sold securities of Vendetta Partners, Vesta Partners and Iron Rock Partners, which offerings were made pursuant to the Securities Act of 1933 (15 U.S.C. §§77 *et seq.*) and Regulation D thereunder (17 C.F.R. §§ 230.501 *et seq.*) (respectively, the "Vendetta Offering," the "Vesta Offering" and the "Iron Rock Offering," and collectively the "Offerings"). The Offerings were made through private placement memoranda ("PPMs") which contained misleading statements of material fact, and omissions of material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading.

4. The Receiver's investigation to date also reveals that Helms and Kaelin operated the Receivership Entities as a Ponzi scheme, in which later investors' subscription proceeds were used to make partnership distributions to earlier investors. Moreover, this Court issued its *ex parte* Temporary Restraining Order (EA Doc. 10) (the "TRO") upon evidence and allegations by the Commission that Helms and Kaelin were operating a Ponzi scheme. *See* EA Doc. 3 p. 2; EA Doc. 4 pp. 5-7, 13-18. Based upon such evidence, this Court held that good cause existed "to believe that investor funds and assets obtained by the [Vendetta] Defendants from the unlawful activities described in the Commission's Complaint," including the allegations that Helms and Kaelin operated the Vendetta Defendants as a Ponzi scheme, "have been misapplied and will be misappropriated, hidden, wasted, or otherwise used to the detriment of investors," and that good

cause existed “to believe that the [Vendetta] Defendants [did] not have sufficient funds or assets to satisfy the relief that might be ordered in this action.” TRO ¶3.

5. Defendant Philip E. Gaucher, through an entity he controlled -- Cambrian Royalties, LLC, a Florida limited liability company (“Cambrian Royalties”) -- was a member of Clovis Capital Ventures, LLC (“Clovis”), a Florida limited liability company. Clovis subscribed to the Vendetta Offering in or about November of 2012. Clovis invested approximately \$2,885,000 with Vendetta Partners between November of 2012 and January of 2013.

6. Clovis has asserted in court filings that it conducted “extensive due diligence” on the Vendetta Offering, with Gaucher “serving as the financial analyst,” and making “two separate trips to Austin to meet with Mr. Helms and Ms. Kaelin and to investigate the possible investment.” EA Doc. 113, p. 4. In conducting due diligence into the Vendetta Offering on behalf of Clovis, Gaucher received the Vendetta Partners PPM, the Vendetta Partners Agreement of Limited Partnership (“Partnership Agreement”), and the Vendetta Partners Subscription Agreement. Gaucher also received marketing materials, engineering reports, and other documents and information regarding Vendetta Partners and its assets. Gaucher’s due diligence efforts resulted in a seven page “Investment Memorandum” regarding the Vendetta Offering, which Gaucher drafted.

7. Gaucher received transfers from Vendetta Partners totaling approximately \$86,565, and transfers from Barefoot Minerals totaling approximately \$76,000. Through this lawsuit, the Receiver seeks the return of the \$162,565 transferred from the Vendetta Partners Ponzi scheme to Gaucher in order to make an equitable distribution to the claimants of the Receivership Estate. The Receiver’s investigation is continuing, and should additional payments

from the Vendetta Defendants to Gaucher be discovered, the Receiver will amend this Complaint to assert claims for the return of such additional payments.

8. Gaucher did not provide reasonably equivalent value for the transfers he received from Vendetta Partners. The services performed by Gaucher in exchange for the transfers, if any were performed at all, were in furtherance of the Vendetta Partners Ponzi scheme and conferred no value upon the Receivership Estate. Pursuant to holdings of the U.S. Court of Appeals for the Fifth Circuit, services provided in furtherance of a Ponzi scheme do not constitute reasonably equivalent value as a matter of law. See *Warfield v. Byron*, 436 F.3d 551 (5th Cir. 2006).

9. Gaucher did not receive the transfers from Vendetta Partners in good faith. Through his due diligence efforts, Gaucher knew, or but for willful blindness should have known, the following: (a) that the Vendetta Partners PPM limited total Promotional Expenses for the Vendetta Offering to .1% of proceeds raised in the Vendetta Offering, and that the 3% commissions paid by Vendetta Partners to Gaucher (and the 3% commissions paid to William J. Brock) for the Clovis subscription to the Vendetta Offering violated the terms of the Vendetta Partners PPM; (b) that the purported security interest and guaranty obtained by Clovis from Helms through the Side Letter Security Agreement (the "Side Letter") and related documents were not terms offered to other Vendetta Partners investors through the PPM and Partnership Agreement; and (c) that Vendetta Partners had a credit facility with Amegy Bank, N.A., and that the Clovis subscription to the Vendetta Offering as amended by the Side Letter was structured in a specific manner to evade restrictions placed on Vendetta Partners by its credit facility with Amegy and to prevent Amegy from learning of the security interest purportedly given to Clovis by Helms.

10. At all times relevant to this Complaint, and the transfers made to Gaucher as alleged herein, the Vendetta Defendants were insolvent, and Helms and Kaelin operated the entity Vendetta Defendants in furtherance of their Ponzi scheme. Accordingly, each transfer made to Gaucher was made with actual intent to hinder, delay or defraud creditors of the Vendetta Defendants.

11. The Receiver was only able to discover the fraudulent nature of the above-referenced transfers after Helms and Kaelin were removed from control of the entity Vendetta Defendants and after a time-consuming and extensive review of thousands of pages of paper and electronic records and documents relating to the Vendetta Defendants.

II. THE PARTIES

12. Plaintiff **Receiver** has been appointed by this Court in the Enforcement Action as the Receiver for the Vendetta Defendants. *See* Enforcement Action Docs. 11, 76. The Receiver is asserting the claims contained herein solely in his capacity as Court-appointed Receiver for the Vendetta Defendants.

13. Defendant **Gaucher** is an individual residing in New York, New York.

III. JURISDICTION AND VENUE

14. This Court has jurisdiction over this action, and venue is proper, under Section 22(a) of the Securities Act of 1933 (the “Securities Act”) (15 U.S.C. § 77v(a)), Section 27 of the Securities Exchange Act of 1934 (the “Exchange Act”) (15 U.S.C. § 78aa), and pursuant to FED. R. CIV. P. 4(k)(1)(c) and 28 U.S.C. §§ 754 and 1692.

15. Within 10 days of the entry of the First Amended Order Appointing Receiver (EA Doc. 76), the Receiver filed the Commission’s Complaint and the Order Appointing Receiver in

the United States District Court for the Southern District of New York pursuant to 28 U.S.C. § 754, giving this Court *in rem* and *in personam* jurisdiction in such district, and any other District where the Complaint and Order have been filed.

16. Further, as the Court that appointed the Receiver, this Court has jurisdiction over any claim brought by the Receiver in his capacity as Receiver for the Vendetta Defendants.

17. Additionally, diversity jurisdiction exists pursuant to 28 U.S.C. § 1332(a). The Receiver seeks damages of at least \$162,565, and therefore the amount in controversy, exclusive of interest and costs, exceeds \$75,000. Moreover, the Receiver brings the causes of action asserted herein on behalf of (a) Vendetta Partners, a Texas limited partnership which at all times relevant to this Complaint conducted its business from Austin, Texas; and (b) Barefoot Minerals, G.P., a Texas limited partnership which at all times relevant to this Complaint conducted its business from Austin, Texas. Gaucher is a resident of New York. Accordingly complete diversity exists between the parties.

18. Moreover, Gaucher is subject to service of process issuing from the Western District of Texas. During times relevant to this Complaint, Gaucher was the sole member of Cambrian Royalties. During times relevant to the causes of action made by the Receiver in this Complaint, Cambrian Royalties was a member of Clovis. Gaucher, along with the other members of Clovis, caused Clovis to subscribe to the Vendetta Offering. Between November 2012 and December 3, 2013, Gaucher traveled on more than one occasion to the Austin, Texas offices of the Vendetta Defendants for purposes related, without limitation, to Clovis' subscription to the Vendetta Offering.

**IV.
STATEMENT OF FACTS**

The Enforcement Action and Appointment of the Receiver

19. On December 3, 2013, the Securities and Exchange Commission (the “Commission”) initiated the Enforcement Action alleging, *inter alia*, that Vendetta Defendants Helms and Kaelin offered and sold securities of Vendetta Partners and other entities in violation of the anti-fraud provisions of the federal securities laws. EA Doc. 1. This Court, acting *ex parte*, entered a Temporary Restraining Order on the same day (EA Doc. 10), restraining and enjoining the Vendetta Defendants, *inter alia*, from further violating the anti-fraud provisions of the federal securities laws, and granting further ancillary relief enjoining the destruction of books and records, ordering interim accountings by the Vendetta Defendants and authorizing expedited discovery. On December 18, 2014, the Court entered a Preliminary Injunction, by consent, against all of the Vendetta Defendants (EA Doc. 37). The Receiver consented to the Preliminary Injunction as to the Vendetta Defendant entities.

20. Contemporaneously with the TRO, this Court entered an Order Appointing Receiver (EA Doc. 11), appointing Thomas L. Taylor III as equity Receiver for the Vendetta Defendants. This Court directed the Receiver to take control and possession of, to operate the Receivership Estate, and to perform all acts necessary to conserve, hold, manage and preserve the value of the Receivership Estate. On May 28, 2014, this Court entered the First Amended Order Appointing Receiver (EA Doc. 76) (collectively with EA Doc. 11, the “Orders Appointing Receiver”).¹

21. Through the Orders Appointing Receiver, the Receiver is authorized, empowered and directed to investigate the manner in which the financial and business affairs of the Vendetta

¹ Citations to the Orders Appointing Receiver refer to Doc. 76.

Defendants were conducted and, as necessary and appropriate, institute legal proceedings for the benefit and on behalf of the Receivership Estate. *Id.* ¶42. Such proceedings include, *inter alia*, seeking the imposition of constructive trusts, disgorgement of profits, asset turnover, and avoidance of fraudulent transfers. *Id.*

22. Through his investigation into the manner in which the financial and business affairs of the Vendetta Defendants were conducted, the Receiver has discovered that Defendant Gaucher received transfers of funds from the Vendetta Defendants which are avoidable as fraudulent transfers under the Texas Uniform Fraudulent Transfer Act, TEX. BUS. & COM. CODE ANN. §§24.001, *et seq.* (“TUFTA”). Defendant Gaucher was also unjustly enriched by these transfers of funds from the Vendetta Defendants.

The Vendetta Partners Fraudulent Ponzi Scheme

The Vendetta Offering

23. Vendetta Defendants Helms and Kaelin controlled Vendetta Partners through its general partner Vendetta Management. Helms and Kaelin owned 100% of Vendetta Management. Through Vendetta Partners, Helms and Kaelin offered limited partnership interests to the investing public pursuant to the Securities Act of 1933 (15 U.S.C. §§77 *et seq.*) and Regulation D thereunder (17 C.F.R. §§ 230.501 *et seq.*).

24. The Vendetta Offering was effectuated through the Vendetta Partners PPM. Limited partners subscribed to the Vendetta Offering through a Subscription Agreement. Pursuant to the express terms of the Vendetta Partners Subscription Agreement, the execution of that agreement also constituted an execution of the Partnership Agreement, which bound all partners.

25. Through the Vendetta Partners PPM, Vendetta Partners represented to potential investors that proceeds raised in the Vendetta Offering would be applied as follows:

	Application of Maximum Proceeds	Percent of Subscriptions
Purchase cost of Royalty Interests	\$49,570,500	99.14%
Loan Repayment	\$ 379,500	.76%
Promotional Expenses	\$ 50,000	.10%
TOTAL:	\$ 50,000,000	100.00%

26. In reality, Helms and Kaelin did not use 99.14% of proceeds raised to purchase royalty interests. The Receiver's investigation has uncovered that across all entity Vendetta Defendants, there was an increase of approximately \$17,675,000 in mineral interest assets in accounting records (on top of the initial beginning balance of mineral interest assets at the formation of Vendetta Partners). Subsequently, \$34,013,909.49 of cash inflows were made from investors to the entity Vendetta Defendants. Even assuming all mineral interests purchased are legitimate, only 52% of investor funds raised by the entity Vendetta Defendants were used for the purchase of mineral interest assets.

27. Helms and Kaelin also extravagantly compensated unlicensed "brokers" who were not registered with FINRA or any other regulatory organization for the sale of Vendetta Partners securities. These "brokers" were paid commissions ranging from 3 to 6% or more for recruiting investors into the Ponzi scheme. These commissions far exceeded the representations in the Vendetta PPM that "Promotional Expenses" would not exceed 0.1% of proceeds raised in the Vendetta Offering. Payments to these unlicensed "brokers" from the Receivership entities exceeded \$2,000,000, an amount 40 times greater than the maximum amount permitted if the Vendetta Offering had reached its \$50,000,000 limit.

28. William J. Brock (“Brock”) was a limited partner of Vendetta Partners and a “co-founder” and principal of the Iron Rock Management executive team (along with Helms, Kaelin and others). Brock was also compensated for recruiting investors into the Vendetta Defendants’ fraudulent scheme. Brock was not associated with a FINRA registered broker-dealer in connection with his offer and sale of Vendetta Offering securities.

The Vendetta Ponzi Scheme

29. The term Ponzi scheme “typically describes a pyramid scheme where earlier investors are paid from the investments of more recent investors, rather than from any underlying business concern, until the scheme ceases to attract new investors and the pyramid collapses.” *Janvey v. Democratic Senatorial Campaign Comm., Inc.*, 712 F.3d 185, 189 (5th Cir. 2013).² Apart from the “essential characteristic or pattern of payment of earlier investors with funds of later investors, the manner in which such schemes are conducted is limited only by the imagination of the perpetrator.” *Kriegman v. Bigelow (In re LLS Am., LLC)*, No. 09-06194-PCW11, 2013 Bankr. LEXIS 2684, at * 20 (Bankr. E.D. Wash. July 1, 2013). “[T]here is no precise definition of a Ponzi scheme and courts look for a general pattern, rather than specific requirements.” *Bear, Stearns Sec. Corp. v. Gredd (In re Manhattan Inv. Fund Ltd.)*, 397 B.R. 1, 12 (S.D.N.Y. 2007).

30. In legitimate investment vehicles, equity distributions to investors are typically made from cash flows generated from operations. However, the accumulated losses of the entity Vendetta Defendants show that their operations were not funding distributions. Additionally, cash reserves of the entity Vendetta Defendants were always relatively low, and could not have

² See also Wells, Dr. Joseph T., *Encyclopedia of Fraud* (3d Ed.) (“In accounting terms, money paid to Ponzi investors, described as income, is actually a distribution of capital.”).

been a source of distributions to investors. The only remaining source of funds with which to pay distributions to investors was equity cash inflows from more recent investors, which is consistent with a Ponzi scheme.

31. Helms and Kaelin obfuscated their fraudulent scheme through the conflation and comingling of funds between and among the entity Vendetta Defendants. Over 4,500 discrete transactions have been identified in the QuickBooks files and banking records of the Vendetta Defendants representing related-party movements of funds and showing a continuous flow of funds among and between the entity Vendetta Defendants and Helms and Kaelin. Helms and Kaelin further attempted to conceal the origin of Vendetta Offering proceeds used to make Ponzi-payments of quarterly distributions to limited partners by laundering the proceeds through other entities -- Helms and Kaelin directed the circular transfer of such proceeds from Vendetta Partners and, eventually, back to Vendetta Partners. These transfers were wrongly identified in the Vendetta Partners accounting records as purchases of, and income from, oil and gas royalty interests.

32. Numerous examples of transactions in the books and records of the Vendetta Defendants support the conclusion that new investor funds were paid to existing investors. In August of 2011, a withdrawal was made from a Vendetta Partners bank account in the amount of approximately \$188,000 and coded in Vendetta Partners' general ledger as a partner distribution to an existing investor. The funds in the account from which this distribution was paid consisted entirely of new investor funds.

33. On or about January 25, 2012 a \$650,000 distribution was made to an existing investor from a Vendetta Partners bank account. Prior to that distribution, the Vendetta Partners bank account contained approximately \$500,000 from new investors received in December 2011,

\$1,370,000 from new investors received in January 2012, and \$1,405,000 received from Haley Oil, an entity controlled by Helms and Kaelin. The funds from Haley Oil were Vendetta Offering proceeds which had been laundered by Helms and Kaelin in November and December of 2011 through bank accounts in the names of the Enforcement Action relief defendants William Barlow and Global Capital Ventures, LLC (“Barlow”). On November 17, 2011, \$2,208,800 in Vendetta Offering proceeds were transferred from Vendetta Partners to accounts of Barlow. On the following day \$2,200,300 was transferred from an account of Barlow to Haley Oil. The amount of \$1,405,000 was returned from Haley Oil to Vendetta Partners via checks on December 1 and 5, 2011. In January 2012, and prior to the \$650,000 distribution alleged above, only approximately \$82,000 of royalty income was deposited into Vendetta Defendant accounts.

34. In fact, the Vendetta Offering proceeds contributed by Clovis was used to effect Ponzi payments to other limited partners. The initial Clovis contribution to Vendetta Partners of \$1,150,000 was made on November 30, 2012. The preexisting balance in the Vendetta Partners account was approximately \$100,000. On the same day and the day after, Vendetta Partners issued distribution checks to limited partners totaling approximately \$222,000. These distribution checks issued on November 30 and December 1, 2012 exceeded the pre-Clovis-investment account balance of the Vendetta Partners account by approximately \$122,000 -- all funded by the Clovis investment.

35. Additionally, the initial Clovis investment was laundered through accounts in the name of relief defendant Barlow. On the day Clovis transferred its initial investment to Vendetta Partners, Helms and Kaelin wired approximately \$1,025,000 to an account of Barlow, purportedly for the purchase of mineral interests. On December 3 and 4, 2012, \$525,721.56 and \$479,386.74, respectively, was deposited into the Vendetta Partners account from an account of

Barlow. The transaction was a sham and part and parcel of the Vendetta Partners fraudulent scheme. There was no mineral interest underlying this roundtrip of funds. The previous account balance of approximately \$100,000 and the approximate \$125,000 in Clovis funds not wired to the Barlow account on November 30, 2012 were sufficient to cover the Ponzi payments of approximately \$225,000 issued by Helms and Kaelin in the days immediately following the initial Clovis contribution of funds. The \$1,006,000 in funds transferred back to Vendetta Partners on December 3 and 4, 2012 from an account of Barlow was used by Helms and Kaelin for a variety of purposes, including the payment of approximately \$256,000 in limited partner distributions through December 8, 2012.

Transfers from the Vendetta Fraudulent Ponzi Scheme to Gaucher

36. Brock was a limited partner of Vendetta Partners. Brock initially subscribed to the Vendetta Offering in or about August of 2011. Subsequent to Brock's subscription to the Vendetta Offering, Brock began to recruit investors into the Vendetta Offering for compensation without a license to do so.

37. Brock was a family friend of Gaucher. Gaucher learned of the Vendetta Offering from Brock. Gaucher learned of the Vendetta Offering as early as August of 2011. Brock received from Vendetta Partners a 6% commission and a 1.5% "fee" for recruiting investors into the Vendetta Offering. Brock agreed to split his 6% commission with Gaucher with respect to any investors that subscribed to the Vendetta Offering as a result of Gaucher's promotion of the Vendetta Offering.

38. Gaucher received transfers from Vendetta Partners totaling approximately \$86,565, and transfers from Barefoot Minerals totaling approximately \$76,000. These transfers were made as follows:

Transferred From	Date	Amount
Vendetta Partners	12/3/2012	\$ 34,500.00
Vendetta Partners	12/18/2012	\$ 33,000.00
Vendetta Partners	12/19/2012	\$ 2,400.00
Vendetta Partners	1/25/2013	\$ 16,650.00
Vendetta Partners	1/25/2013	\$ 15.00
Barefoot Minerals	4/16/2013	\$ 1,000.00
Barefoot Minerals	6/27/2013	\$ 75,000.00

39. Gaucher knew, or but for willful blindness should have known, that the 6% commission paid to Brock (and the 3% commission he received through his agreement with Brock) were in violation of the representations made in the Vendetta Partners PPM, stating that promotional expenses were limited to .1% of proceeds raised in the Vendetta Offering.

The Clovis Subscription to the Vendetta Offering

40. In or about August 2012, Gaucher presented the Vendetta Offering opportunity to a business partner, Douglas Smith (“Smith”). Gaucher, Smith, and Avery Chapman (“Chapman”), an attorney and executive for various other business concerns of Smith, agreed to form Clovis for the purpose of subscribing to the Vendetta Offering. Gaucher, Smith and Chapman were the sole members of Clovis, through entities each of them controlled, respectively.

41. Chapman and Gaucher performed extensive due diligence on the Vendetta Offering on behalf of Clovis. Chapman and Gaucher traveled to the Austin, Texas offices of the Vendetta Defendants on at least two occasions each for the purpose of conducting due diligence into the Vendetta Offering and Vendetta Partners. Through the due diligence he conducted on behalf of Clovis, Gaucher received, *inter alia*, the Vendetta Partners PPM, the Partnership Agreement, and the Vendetta Partners Subscription Agreement.

42. Vendetta Partners and Clovis negotiated an investment transaction whereby Clovis, through a “Side Letter Security Agreement” (the “Side Letter”) and related documents, would purportedly receive a security interest in mineral assets of Vendetta Partners as collateral to secure the return of Clovis’ capital contribution to Vendetta Partners. Helms also purported to guarantee the repayment of Clovis’ capital contribution to Vendetta Partners on behalf of Vendetta Management and Vendetta Partners.

43. Gaucher knew, or but for willful blindness should have known, that the purported security interest and guaranty obtained by Clovis from Helms through the Side Letter and related documents were not offered to other Vendetta Partners investors through the PPM and Partnership Agreement. Gaucher knew through his due diligence activities, or but for willful blindness should have known, that no other limited partner in Vendetta Partners had received a security interest or guaranty of their investment.

44. Vendetta Partners had a credit facility with Amegy. Vendetta Partners’ credit facility with Amegy was disclosed four times in the Vendetta Partners PPM.

45. Gaucher knew, or but for willful blindness should have known, that Vendetta Partners had a credit facility with Amegy. Gaucher also knew, or but for willful blindness should have known, that the transaction by which Clovis subscribed to the Vendetta Offering, and

purportedly received a security interest and guaranty from Helms through the Side Letter and related documents, was structured in a specific manner to evade restrictions placed on Vendetta Partners by its credit facility with Amegy -- and to prevent Amegy (and other Vendetta Partners limited partners) from learning of the security interest purportedly given to Clovis by Helms.

**V.
CAUSES OF ACTION**

COUNT I: Avoidance of Fraudulent Transfers Made to Gaucher pursuant to TUFTA §24.005(a)(1)

46. The Receiver incorporates and re-alleges paragraphs 1 through 45 as if fully incorporated herein.

47. Helms and Kaelin operated a fraudulent Ponzi scheme through the Vendetta Defendant entities, including Vendetta Partners and Barefoot Minerals. The entity Vendetta Defendants were inextricably intertwined by Helms and Kaelin, who operated these entities as a single enterprise.

48. Helms and Kaelin made transfers of funds from Vendetta Partners and Barefoot Minerals to Defendant Gaucher. Helms and Kaelin made these transfers with actual intent to hinder, delay or defraud creditors of the Vendetta Defendants, in furtherance of the Ponzi scheme alleged herein.

49. Gaucher did not provide reasonably equivalent value for the transfers he received from Vendetta Partners and Barefoot Minerals. To the extent Gaucher provided any services at all, those services were in furtherance of the Vendetta Ponzi scheme and conferred no value on the Vendetta Defendants.

50. Gaucher cannot demonstrate good faith in receiving the transfers from Vendetta Partners and Barefoot Minerals. Gaucher was aware of numerous red flags with regard to the

subscription of Clovis to the Vendetta Offering, the “extensive due diligence” he performed on behalf of Clovis with respect to its subscription to the Vendetta Offering, and representations made in the Vendetta PPM. Gaucher knew, or but for willful blindness should have known, the limits of Promotional Expenses represented in the Vendetta PPM and that he received amounts greater than those limits. Gaucher knew, or but for willful blindness should have known, that the purported security interest and guaranty obtained by Clovis in subscribing to the Vendetta Offering were inconsistent with the terms of the PPM and Partnership Agreement, and no other limited partners had received such terms in subscribing to the Vendetta Offering. Gaucher knew, or but for willful blindness should have known, that Vendetta Partners had a credit facility with Amegy, and that Helms and Clovis structured the subscription of Clovis to the Vendetta Offering in a specific manner to evade restrictions placed on Vendetta Partners by its credit facility with Amegy -- and to prevent Amegy (and other Vendetta Partners limited partners) from learning of the security interest purportedly given to Clovis by Helms.

51. The Receiver was only able to discover the fraudulent nature of the transfers from Vendetta Partners and Barefoot Minerals to Gaucher after Helms and Kaelin were removed from control of the entity Vendetta Defendants and after a time-consuming and extensive review of thousands of pages of paper and electronic records and documents relating to the Vendetta Defendants.

52. The Receiver is entitled to the avoidance of the fraudulent transfers from Vendetta Partners and Barefoot Minerals to Gaucher in the amount alleged herein, and the return of those funds to the Receivership Estate.

53. The Receiver is also entitled to costs and reasonable attorney's fees pursuant to TEX. BUS. & COM. CODE §24.013. On three occasions, the Receiver transmitted demands to

Gaucher, through counsel, that he return to the Receivership Estate the fraudulent transfers alleged herein. Gaucher and his counsel have failed even to respond to the Receiver's demands. The Receiver is therefore entitled to the costs and reasonable attorney's fees related to the commencement and prosecution of this litigation.

COUNT II: Unjust Enrichment

54. The Receiver incorporates and re-alleges paragraphs 1 through 45 as if fully incorporated herein.

55. The Receiver is entitled to disgorgement of the transfers made from the Vendetta Ponzi scheme to Gaucher pursuant to the doctrine of unjust enrichment under applicable law. Gaucher received funds that in equity and good conscience belong to the Receivership Estate for ultimate distribution to defrauded investors and creditors and that Gaucher received through the taking of undue advantage *vis-à-vis* the investors in the Vendetta Ponzi scheme.

56. Gaucher has been unjustly enriched by such funds, and it would be unconscionable for him to retain the funds.

57. In order to carry out his duties as ordered by this Court, the Receiver seeks complete and exclusive control, possession, and custody of the transfers received by Gaucher.

58. Gaucher has been unjustly enriched by his receipt of transfers from the Vendetta Defendants. The Receiver, therefore, is entitled to disgorgement of all transferred funds he received. Pursuant to the equity powers of this Court, the Receiver seeks a judgment that: (a) funds transferred to Gaucher from the Vendetta Defendants unjustly enriched him; (b) funds transferred to Gaucher from the Vendetta Defendants are property of the Receivership Estate held pursuant to a constructive trust for the benefit of the Receivership Estate; and (c) Gaucher is

liable to the Receiver for an amount equaling the amount of funds transferred to Gaucher from the Vendetta Defendants.

59. The Receiver is also entitled to costs and reasonable attorney's fees. On three occasions, the Receiver transmitted demands to Gaucher, through counsel, that he return to the Receivership Estate the funds he received from the Vendetta Defendants. Gaucher and his counsel have failed even to respond to the Receiver's demands. The Receiver is therefore entitled to the costs and reasonable attorney's fees related to the commencement and prosecution of this litigation.

VI. PRAYER

60. Receiver respectfully request that the Court enter Judgment in his favor providing that:

- (a) transfers received by Defendant Gaucher were fraudulent transfers under applicable law or, in the alternative, unjustly enriched Gaucher;
- (e) transfers received by Defendant Gaucher are property of the Receivership Estate;
- (f) transfers received by Defendant Gaucher are subject to a constructive trust for the benefit of the Receivership Estate;
- (g) Gaucher is liable to the Receiver for an amount equaling the amount of funds he received from Vendetta Defendants as alleged herein;
- (h) Receiver is entitled to costs and pre-judgment and post-judgment interest associated with all claims against Gaucher;
- (i) Receiver is entitled to attorneys' fees associated with his claims against Gaucher; and
- (j) Receiver is entitled to such other and further relief as the Court deems proper under the circumstances.

Dated: October 23, 2014

Respectfully submitted,

THE TAYLOR LAW OFFICES, P.C.

By: /s/ Andrew M. Goforth

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COUNSEL FOR RECEIVER

JS 44 (Rev. 12/12)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
 Thomas L. Taylor III, solely in his capacity as Court-appointed Receiver for Robert A. Helms, et al.

DEFENDANTS
 Philip E. Gaucher

(b) County of Residence of First Listed Plaintiff **Harris**
 (EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant _____
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)
 Andrew Goforth; The Taylor Law Offices, PC; 4550 Post Oak Place Dr. Ste. 241, Houston, TX 77027; (713) 626-5300

Attorneys (If Known)
 William Terpening; Nexsen Pruet, PLLC; 227 West Trade Street, Ste. 1550; Charlotte, NC 28202; (704) 338-5358

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
 2 U.S. Government Defendant
 3 Federal Question (U.S. Government Not a Party)
 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from Another District (specify)
 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 28 U.S.C. 754 & 1692; 15 U.S.C. § 77v(a); 15 U.S.C. § 78aa
 Brief description of cause:
 Receivership action to avoid fraudulent transfers, for unjust enrichment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.
DEMAND \$ 162,565.00
 CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

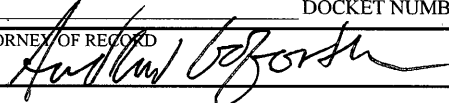
VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE Mark Lane

DOCKET NUMBER 1:13-cv-1036-ML

DATE 10/23/2014 SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____