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.	§	Civil Action No. 15-cv-648-LY
GRADY H. VAUGHN III, Defendant.	§	

RECEIVER'S MOTION FOR PARTIAL SUMMARY JUDGMENT AGAINST DEFENDANT GRADY H. VAUGHN III

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The undisputed material facts[1] establish that Robert Helms ("Helms") and Janniece Kaelin ("Kaelin") perpetrated a fraudulent Ponzi scheme primarily through Vendetta Royalty Partners, Ltd. ("Vendetta"), Vendetta Royalty Management, LLC ("Vendetta Management"), Barefoot Minerals, GP ("Barefoot"), Iron Rock Royalty Partners, LP ("Iron Rock"), and other entities under their control. From this Ponzi scheme, Helms and Kaelin incurred obligations and transferred funds to, and for the benefit of, Defendant Grady H. Vaughn III ("Vaughn"), totaling $442,254.35.

Pursuant to controlling decisions of the U.S. Court of Appeals for the Fifth Circuit, these transfers and obligations made by a Ponzi scheme were presumptively made with intent to defraud. *Janvey v. Brown*, 767 F.3d 430, 439 (5th Cir. 2014) (quoting *Janvey v. Alguire*, 647 F.3d 585, 598 (5th Cir. 2011)); accord *Warfield v. Byron*, 436 F.3d 551, 558 (5th Cir. 2006) (citing *Scholes v. Lehmann*, 56 F.3d 750, 757 (7th Cir. 1995)). Accordingly, Plaintiff Thomas L. Taylor III ("Receiver")[2] moves for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure (the "Rules") with respect to causes of action Counts I and II of his Complaint [Dkt. #1, ¶¶77-89]: (I) for the avoidance of obligations and transfers made to, and for the benefit of, Vaughn pursuant the Texas Uniform Fraudulent Transfer Act, TEX. BUS. & COM. CODE §§24.001 *et seq*. ("TUFTA") and (II) disgorgement of these amounts which unjustly enriched Vaughn.[3]

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[1] The Receiver has filed an Appendix contemporaneously with, and in support of, this Motion. The Receiver incorporates the Appendix herein by reference.

[2] Court-appointed receiver in *SEC v. Helms, et al.*, No. 1:13-cv-1036-ML (W.D. Tex. 2013) (the "Enforcement Action") ("EA Dkt. #_") for defendants Helms, Kaelin, Deven Sellers ("Sellers"), Roland Barrera ("Barrera"), Vendetta, Vendetta Management, Vesta Royalty Partners, LP ("Vesta"), Vesta Royalty Management, LLC, Iron Rock, Iron Rock Royalty Management, LLC, Arcady Resources, LLC, Barefoot, G3 Minerals, LLC, Haley Oil Company, Inc., Lake Rock, LLC, SeBud Minerals, LLC, Technicolor Minerals, GP, and all entities they own or control (collectively the "Vendetta Defendants"). EA Dkts. #11, 76.

[3] The Receiver reserves for trial all relief requested in the Complaint and not expressly sought herein, including without limitation costs and reasonable attorney's fees and all liability and damages arising from causes of action

I. Summary Judgment Standard

Summary judgment is appropriate under Rule 56 "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a). The movant bears the initial burden of "informing the district court of the basis for its motion, and identifying those portions of [the record] which it believes demonstrate[] the absence of a genuine issue of material fact." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).[4]

Once the movant meets its burden, the non-movant "must go beyond the pleadings and designate specific facts showing that there is a genuine issue for trial." *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994) (citing *Celotex*, 477 U.S. at 325). "This burden is not satisfied with 'some metaphysical doubt as to the material facts,' by 'conclusory allegations,' by 'unsubstantiated assertions,' or by only a 'scintilla' of evidence." *Id*. (citations omitted). Instead, the non-moving party must "come forward with 'specific facts showing that there is a *genuine issue for trial*.'" *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (emphasis in original).

Additionally, if the non-movant wishes to defeat summary judgment by relying on any affirmative defenses,[5] he bears the burden to "come forward with summary judgment evidence

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Counts III – VI for, respectively, Aiding, Abetting or Participation in Breaches of Fiduciary Duties; Aiding, Abetting or Participation in Fraud; Aiding, Abetting or Participation in Conversion; and Civil Conspiracy. Compl. at ¶¶77, 90-99.

[4] A movant may move for summary judgment upon "materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials." FED. R. CIV. P. 56(c)(1)(A).

[5] There is only one statutory affirmative defense to a TUFTA §24.005(a)(1) claim. It requires the defendant to establish that he received a fraudulent obligation or transfer ***both*** in exchange for "reasonably equivalent value" ***and*** with "objective" good faith. TUFTA § 24.009(a). Vaughn cannot establish the statutory affirmative defense because, *inter alia*, and as detailed *infra*, at §III(A)(1), "broker services" on behalf of a Ponzi scheme do not constitute reasonably equivalent value as a matter of law. *Byron*, 436 F.3d at 560. Nor can Vaughn establish objective good faith because, *inter alia*, he promoted the Vendetta Offering unlawfully as an unregistered broker and for compensation in excess of amounts disclosed to the SEC and potential investors, and with knowledge of numerous

sufficient to raise an issue of material fact on each element of the defense." *Barrington Group, Ltd., Inc. v. Classic Cruise Holdings S. DE. R.L.*, 2010 U.S. Dist. LEXIS 3738, at *15, 2010 WL 184307 (N.D. Tex. Jan. 15, 2010) (quoting *Bassett v. Am. Nat'l Bank*, 145 S.W.3d 692, 696 (Tex. App.—Fort Worth, 2004, no pet.)).

II. Helms and Kaelin perpetrated a fraudulent Ponzi scheme and the transfers to, or for the benefit of, Vaughn came from the Ponzi scheme

A. Helms and Kaelin Operated a Fraudulent Ponzi Scheme

This Court has twice held in the Enforcement Action that Helms and Kaelin operated a fraudulent Ponzi scheme[6] through Vendetta and other entities under their control. *See SEC v. Helms*, 2015 U.S. Dist. LEXIS 29149, at *19 – 22 (W.D. Tex. Mar. 10, 2015) ("*Helms I*"); *SEC v. Helms*, 2015 U.S. Dist. LEXIS 110758, at *39 – 42 (W.D. Tex. Aug. 21, 2015) ("*Helms II*").[7]

Vendetta raised proceeds from the public through a private placement securities offering pursuant to the Securities Act of 1933 ("Securities Act") and Regulation D thereunder (the "Vendetta Offering") upon a private placement memorandum dated June 1, 2011 [APPX_000397 – 426] (the "PPM"). Helms and Kaelin represented in the PPM that Vendetta

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red flags. *See infra*, at §III(A)(2). Failure by Vaughn to establish a triable issue of material fact with respect to *either* value *or* good faith requires entry of summary judgment. *Byron*, 436 F.3d at 560 ("We need not draw a conclusion on good faith, however, as [defendant's] defense would still fail because he did not receive the transfers … in exchange for reasonably equivalent value.").

[6] A Ponzi scheme is a "fraudulent investment scheme in which money contributed by later investors generates artificially high dividends or returns for the original investors, whose example attracts even larger investments." *Alguire*, 647 F.3d at 597 (quoting BLACK'S LAW DICTIONARY 1198 (8th ed. 2004)). "[I]n a classic Ponzi scheme, as new investments [come] in …, some of the new money [is] used to pay earlier investors." *United States v. Setser*, 568 F.3d 482, 486 (5th Cir. 2009). In a Ponzi scheme, "investors are promised high returns on their investments, and prior investors are paid distributions from new investors' contributions, rather than a legitimate, underlying business concern." *Helms II*, at *40 (citing *Janvey v. DSCC, Inc.*, 712 F.3d 185, 188 n.1 (5th Cir. 2013)).

[7] In each *Helms* opinion, the Court relied on the declarations and/or live testimony of Danielle Supkis Cheek ("Cheek"), president of D. Supkis Cheek, PLLC ("DSC PLLC"), in finding that Helms and Kaelin perpetrated a Ponzi scheme through the entity Vendetta Defendants. *See Helms I*, at *9 – 12; *Helms II*, at *5 – 11. The Ponzi scheme evidence herein is materially identical to the evidence presented in the declaration of Cheek submitted by the SEC in support of its Motion for Summary Judgment against Vendetta Defendants Helms and Kaelin. EA Dkt. #259-1 at pp. 1 – 36. Evidence presented herein regarding the comingling and conflation of assets of the Vendetta Defendants is materially identical to the evidence presented in the declaration of Cheek [EA Dkt. #60-2] submitted by the Receiver in support of his Motion to Amend the Order Appointing Receiver, which Motion was granted by the Court through its First Amended Order Appointing Receiver. EA Dkt. #76.

would use 99.14% of investor proceeds for the "Purchase cost of Royalty Interests"; 0.76% of investor proceeds for "Loan Repayment"; and 0.10% of investor proceeds to pay "Promotional Expenses" [APPX_000413]; *i.e.*, Vendetta purportedly generated revenues from "Royalty Interests" acquired using 99.14% of investor funds, from which profits (*i.e.*, revenues less expenses) were then paid to investors as partnership distributions. *See* APPX_000579 ("Every dollar that comes in goes out in acquisitions. … Revemue [*sic*] then comes in and the bills are paid. … After the overhead is paid, the revenue is then distributed to our partners."). In reality, Vendetta made partnership distributions in amounts far greater than royalty ***revenues*** generated by the oil-and-gas portfolio -- let alone in excess of any purported ***profits*** which might have remained after expenses were paid from those revenues.

Analysis by DSC PLLC, the forensic accounting firm engaged by the Receiver, confirms that once the Vendetta Offering commenced, every investor distribution was a Ponzi payment -- since cumulative royalty income fell well below both (i) cumulative partnership distributions, and (ii) cumulative business expenses. In this regard, cumulative net royalty income received by Vendetta Defendants equaled $3,925,295. APPX_000003. Distributions to partners equaled $8,692,836. *Id.* Business expenses paid by the Vendetta Defendants during the same time period totaled at least $12,851,455.[8] APPX_000013.[9] Accordingly, there were never profits from which to pay partnership distributions, which necessarily were made with later investors' funds -- the hallmark of a Ponzi scheme. *Setser*, 568 F.3d at 486.[10]

[8] This amount is calculated as: [$8,824,624: Business Expenses] + [$1,838,370: Commissions & Investor Recruiting] + [$2,617,961: Amegy & Other Loan] – [$50,000: Disclosed Maximum Promotional Payments] – [$379,500: Disclosed Maximum Amegy Loan Payments]. *See* APPX_000013 – 14. Because the Vendetta Offering did not reach the $50,000,000 maximum offering amount [APPX_000397], this calculation of business expenses is necessarily understated.

[9] Additional business expenses were incurred, but not paid. The Receiver currently estimates that claims against the Estate of approximately $1.625 million will be made by trade creditors. *See, e.g.*, EA Dkt. #272-2.

[10] As previously held by this Court, Helms and Kaelin also misappropriated at least $8,442,116 through personal

Specifically, but without limitation, the following partnership distributions were made using later investor proceeds: (i) $187,836 on August 17, 2011; (ii) $650,000 on January 25, 2012; (iii) $222,000 on November 30 – December 1, 2012; and (iv) $255,841 on December 6 – 8, 2012. *See Helms I* at *9-10; *Helms II* at *5-8.[11]

Moreover, Helms and Kaelin obfuscated their fraudulent scheme through the conflation and comingling of funds between and among the entity Vendetta Defendants. "[C]ommingling of funds is a common characteristic of a Ponzi scheme." *Helms II*, at *40 (citing *In re LLS Am., LLC*, 2013 Bankr. LEXIS 2684, 2013 WL 3305393, at *7 (Bankr. E.D. Wash. Jul. 1, 2013)). 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, showing a continuous flow of funds among and between the Vendetta Defendants, including millions being transferred among Vendetta, Vendetta Management, Barefoot, and Iron Rock. APPX_000017 – 24 (Tables 3 – 7, Figure 6); *see also* EA Dkt. #60-2 (Cheek Declaration).[12]

This evidence conclusively establishes that the Vendetta fraud, directed by Helms and Kaelin, was accomplished through the operations of Vendetta, Vendetta Management, Barefoot, Iron Rock and other Vendetta Defendants, and was a Ponzi scheme. As cited above, this Court has twice found in the Enforcement Action -- based on evidence materially identical to that cited

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spending, including without limitation at least (i) $137,460 for a 23-day trip around the world during March – April 2012; (ii) $247,415 for Kaelin's daughter's wedding in Hawaii; (iii) $111,600 for airfare, including for the wedding; (iv) $102,440 for tuition; and (v) $287,928 for mortgage payments. *Helms II*, at *8 – 9; *see also* APPX_000015– 16.

[11] *See also* EA Dkt. #5-22 (Hahn declaration) at 8 – 9; EA Dkt. #186-1 (Cheek declaration) at 8 – 11.

[12] Helms and Kaelin also obfuscated their Ponzi scheme by using Technicolor and its assets in sham accounting transactions to give the appearance of legitimate royalty revenues. Enforcement Action relief defendant William Barlow executed a series of documents at Kaelin's request that she told him were releases for funds that had been transferred to his account. APPX_000113 – 120 (Barlow Depo. 33:22 – 62:15). In reality, these documents were signature pages for deeds conveying to Vendetta certain properties which he did not own. *Id*. These properties already were owned by Helms and Kaelin through Technicolor, since approximately 2009. APPX_00045 (Helms Depo. 61:2-13); APPX_000378 – 382 (*e.g.*, compare APPX_000380 to APPX_000393).

herein -- that Helms and Kaelin perpetrated a Ponzi scheme. See *Helms I*, at *19 – 22; *Helms II*, at *39 – 42.

B. Helms and Kaelin Caused Vendetta and other Ponzi scheme entities to make numerous payments to, and for the benefit of, Vaughn

Because Helms and Kaelin operated a Ponzi scheme, the transfers made from (and obligations incurred by) that scheme were presumptively accomplished with actual intent to defraud under TUFTA. *Brown*, 767 F.3d at 439. Vaughn is liable to the Receiver for the transfers made from (and obligations incurred by) the Ponzi scheme which were made to him directly or subsequently, or otherwise made for his benefit. TUFTA §24.009(b).

Helms and Kaelin obligated Vendetta to compensate Vaughn for his promotion of the Vendetta Ponzi scheme. APPX_000201 – 203, APPX_000205 – 209. Vaughn met with Helms and Kaelin, and agreed to promote the Vendetta Offering in or about June 2012. APPX_000199 – 200, APPX_000395. Vaughn then proceeded to seek out investors for Vendetta. In promoting the Vendetta Offering, Vaughn received offering materials and distributed these materials to the investors he was recruiting. APPX_000145 – 146 (Vaughn Depo. 56:3 – 57:8), APPX_000396 – 475, APPX_000515 – 564. These offering materials included the Vendetta PPM and limited partnership agreement. *Id.*; APPX_000145 (Vaughn Depo 54:25-55:3; 57:4-8). Vaughn also distributed Vendetta financial information. APPX_000276 – 277.

In 2012 Vaughn formed Upland Energy Partners, LP ("Upland Partners") for the sole purpose of subscribing to the Vendetta Offering with the funds he received from the investors he recruited into the Vendetta Ponzi scheme.[13] APPX_000145 (Vaughn Depo 53:17-54:4, 55:24-56:9). Helms also was involved in Vaughn's formation of Upland Partners -- in fact, Vaughn

[13] Vaughn controlled Upland Partners through Upland Resources, its general partner, APPX_000144 (Vaughn Depo 50:12-21), of which he was the sole owner. *Id.* (Vaughn Depo 50:20-23).

provided Helms with draft Upland Partners formation documents, including the limited partnership agreement, for Helms' review, comment and approval. APPX_000484 – 485. The only activity undertaken by Upland Partners was to invest in Vendetta. APPX_000145 – 146 (Vaughn Depo 55:21-56:2, 157:20-21).

Vaughn continued to promote the Vendetta Ponzi scheme following the Upland Partners investment. APPX_000278 – 284, APPX_000488 – 573. For these services, Vendetta paid Vaughn as a purported independent "consultant". APPX_000025 – 26; Vaughn Answer [Dkt. # 5] at ¶56. Vaughn's "consulting" activity included appeasing restless investors who were growing increasingly frustrated at Helms' and Kaelin's conduct -- and encouraging further investment by these investors. In this regard, Vaughn traveled to California in December 2012 -- paid for by Vendetta -- to meet with investors who had been recruited by Enforcement Action Defendants Sellers and Barrera -- Jamie Moore and John Morally. APPX_000153 – 155 (Vaughn Depo. 87:23 – 95:22), APPX_000488 – 497, APPX_000499 – 514; *see also Helms II*, at *21 – 27. Moore and Morally had sought information from Helms and Kaelin, who had not been forthcoming. *Id*. Vaughn and others (including Vaughn's son and Sellers), appeased Moore and Morally and acted as go-between with Helms and Kaelin. *Id*. Their efforts were undertaken in order to secure their "next investment in the fund." APPX_000488.

For Vaughn's help in promoting and helping to extend the Vendetta Ponzi scheme, Helms and Kaelin caused transfers totaling $292,254.35 to be made from accounts in the names of Vendetta, Vendetta Management, Iron Rock and Barefoot as follows: to Vaughn directly ($126,909.59); to Upland Resources, LLC ("Upland Resources") for Vaughn's benefit[14]

[14] The transfers to Upland Resources were made for Vaughn's benefit. In this regard, Vaughn testified that "[a]s a matter of convenience and timing, [he] occasionally had [his] consulting fees wired to Upland Resources," and then from Upland Resources to himself. APPX_000190 (Vaughn Depo. 233:4-11, 233:24-234:3). Moreover, Vaughn's assistant directed Kaelin to transfer funds for Vaughn through the Upland Resources bank account. APPX_000487.

($130,000); and to third-parties, also for Vaughn's benefit[15] ($35,344.76). APPX_000024 – 28. In addition to these payments from the Ponzi scheme, Vaughn retained investor funds in satisfaction of Vendetta's compensation obligations. In this regard, Vaughn raised $1,350,000 from investors, APPX_000584, but caused Upland Partners to contribute only $1,200,000 to Vendetta, which occurred on October 5, 2012. APPX_000204. The un-invested $150,000 balance was retained by Vaughn -- he and Helms agreed that Vaughn would retain these funds in satisfaction of promotional expenses Vendetta was obligated to pay to Vaughn, rather than investing the entire amount and receiving commission payments from Vendetta. APPX_000585 – 586.

In total, Vaughn received or benefitted from transfers from the Ponzi scheme (or otherwise retained funds in satisfaction of obligations of the Ponzi scheme) totaling $442,254.35. APPX_000024 – 28, APPX_000584 – 597. As further detailed below, these amounts may be avoided under TUFTA, and judgment entered for this amount in favor of the Receiver.

III. As a matter of law, the transfers made to, and for the benefit of, Vaughn were fraudulent under TUFTA and, therefore, are subject to recovery by the Receiver

TUFTA provides that "[a] transfer made or obligation incurred by a debtor is fraudulent as to a creditor … if the debtor made the transfer or incurred the obligation … with actual intent to hinder, delay, or defraud any creditor of the debtor." TUFTA §24.005(a)(1). If the debtor's

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The use of Upland Resources in this manner is confirmed by the accounting records. Fraudulent transfers were regularly made both directly to Vaughn and to Upland Partners without rhyme or reason as to which was the recipient. APPX_000024 – 28. For example, in the months of December 2012 and February, June through September, and November 2013, transfers were made from the Vendetta Ponzi scheme both to Vaughn and Upland Resources. *Id*. However in the months of July, August, and October through December 2012, and March, May, and October 2013, transfers were made from the Vendetta Ponzi scheme only to Vaughn, and in the months of April and December 2013, only to Upland Resources. *Id*. Additionally, in two instances transfers of several thousand dollars were made from different entities in the Vendetta Ponzi scheme to Upland Resources on the same date. *Id*. (February 5, 2013; April 3, 2013). The undisputable evidence establishes that payments from the Vendetta Ponzi scheme to Upland Resources were made for Vaughn's benefit and are avoidable under TUFTA §24.005(a)(1). *Id*. §24.009(b).

[15] Vaughn's Austin rent and maid service were paid for by Vendetta, APPX_000191 – 192 (Vaughn Depo. 240:15-241:1), as were IPAA-related expenses. APPX_000193 (Vaughn Depo. 248:6-9).

actual intent to defraud[16] is established, then the Receiver is entitled to "avoidance of the transfer or obligation" – namely to recover judgment for that amount. *Id.* §§24.008(a)(1), 24.009(b). Such "judgment may be entered against: (1) the first transferee of the asset or the person for whose benefit the transfer was made; or (2) any subsequent transferee…." *Id.* §24.009(b). Accordingly, this Court may enter judgment against Vaughn not only for the transfers he received directly from Vendetta, Vendetta Management, Iron Rock and Barefoot as the initial transferee (and amounts retained in satisfaction of obligations incurred by Vendetta), but also for transfers made from the Vendetta Ponzi scheme to Upland Resources and others which were (i) for Vaughn's benefit or (ii) subsequently transferred to Vaughn.

The undisputable evidence conclusively establishes actual intent to defraud. Pursuant to controlling decisions of the U.S. Court of Appeals for the Fifth Circuit, "proving that [a transferor] operated as a Ponzi scheme establishes the fraudulent intent behind the transfers it made." *Brown*, 767 F.3d at 439 (quoting *Alguire*, 647 F.3d at 598; *Res. Dev. Int'l*, 487 F.3d at 301). Transfers made from and obligations incurred by a Ponzi scheme "are presumptively made with intent to defraud, because a Ponzi scheme is, as a matter of law, insolvent from inception." *Quilling v. Schonsky*, 247 F. App'x 583, 586 (5th Cir. 2007) (affirming summary judgment in favor of receiver) (citing *Byron*, 436 F.3d at 558). The transfers and obligations at issue were made from the Vendetta Ponzi scheme, and therefore were made with fraudulent intent and are avoidable under TUFTA.

A. The TUFTA Affirmative Defense is Not Available to Vaughn

The undisputed material facts establish that Vaughn is not entitled to the TUFTA affirmative defense with respect to the transfers and obligations at issue. TUFTA offers

[16] The intent at issue in subsection 24.005(a)(1) is that of the "debtor," not the transferee. *SEC v. Res. Dev. Int'l, LLC*, 487 F.3d 295, 301 (5th Cir. 2007) ("'the transferees' knowing participation is irrelevant under [TUFTA]' for purposes of establishing the [actual fraud] premise ….") (quoting *Byron*, 436 F.3d at 559).

transferees an affirmative defense if they ***both*** (i) exchanged reasonably equivalent value for the transfer or obligation, ***and*** (ii) received the transfer or obligation with good faith. TUFTA §24.009(a). In other words, each prong of this affirmative defense must be established to avoid liability, with Vaughn bearing the burden of proof.[17]

1. As a Matter of Law, Vaughn Did Not Provide Reasonably Equivalent Value for the Transfers from and Obligations of the Vendetta Ponzi Scheme

Controlling decisions of the Fifth Circuit hold that "broker services" and other conduct promoting a Ponzi scheme, extending the fraud, and helping it endure do not constitute "reasonably equivalent value" as a matter of law. *Byron*, 436 F.3d at 560 ("It takes cheek to contend that in exchange for the payments he received, the … Ponzi scheme benefitted from his efforts to extend the fraud by securing new investments. This argument is unacceptable.") (citing *Ramirez Rodriguez v. Dunson (In re Ramirez Rodriguez)*, 209 B.R. 424, 434 (Bankr. S.D. Tex. 1997) (stating that "as a matter of law, the Defendant gave no value to the [Ponzi scheme operators] for the commissions attributable to investments made by others"); *Martino v. Edison Worldwide Capital (In re Randy)*, 189 B.R. 425, 438 – 39 (Bankr. N.D. Ill. 1995) (as illegal services premised on illegal contracts, broker services provided in furtherance of a Ponzi scheme do not provide reasonably equivalent value); *Dicello v. Jenkins (In re Int'l Loan Network, Inc.)*, 160 B.R. 1, 16 (Bankr. D.D.C. 1993) (investors who talked up Ponzi scheme, even if they had a contract, conferred no value since enforcing an illegal contract exacerbates harm to defrauded creditors)). Accordingly, the TUFTA affirmative defense cannot be invoked by Vaughn with respect to the transfers from and obligations of the Vendetta Ponzi scheme.

[17] See *Janvey v. Alguire*, 846 F. Supp. 2d 662, 672 (N.D. Tex. 2011) ("A transferee invoking [the TUFTA affirmative defense] has the burden to show ***both*** objective good faith ***and*** the exchange of reasonably equivalent value." (emphasis added)); *Byron*, 436 F.3d at 560 ("We need not draw a conclusion on good faith, however, as [defendant's] defense would still fail because he did not receive the transfers … in exchange for reasonably equivalent value.").

To support their Ponzi scheme, Helms and Kaelin deployed a team of brokers (not registered with the SEC[18]) to promote the Vendetta Offering. Helms and Kaelin not only failed to disclose these promoters (and their compensation) to the SEC,[19] they compensated them far in excess of limits represented to potential investors in the Vendetta PPM. APPX_000413. Vaughn was one such broker, *see infra*, §III(A)(2)(a), and was aware of other brokers promoting the Ponzi scheme.[20]

As detailed above, *see* §II(B), Helms and Kaelin caused transfers totaling $292,254.35 to Vaughn, to Upland Resources for Vaughn's benefit, or to unaffiliated third-parties for Vaughn's benefit from accounts in the names of Vendetta, Vendetta Management, Iron Rock and Barefoot. APPX_000028. Helms also agreed that Vaughn would retain certain funds he raised directly from investors in satisfaction of promotional obligations Vendetta had incurred -- Vaughn retained $150,000 of the funds he raised from investors. APPX_000584 – 597.

There is no evidence that the above transfers and obligations made from the Vendetta Ponzi scheme were in exchange for any reasonably equivalent value. Rather, the evidence establishes that these transfers and obligations were for "broker services" and other promotion by Vaughn of Vendetta and other entities underlying the Ponzi scheme. With respect to services

[18] *See, e.g.*, *Helms II*, at *22 – 27, 39, 46 – 54 (finding Vendetta Defendants Sellers and Barrera violated federal securities laws as brokers in the unregistered offer and sale of Vendetta securities).

[19] Helms executed and caused to be filed with the SEC a "Form D Notice of Exempt Offering of Securities," dated August 15, 2011 ("Form D") [APPX_000288 – 293]. In this Form D, Helms represented that (i) Vendetta Management, Helms, and Kaelin were the only "promoters" of the Vendetta Offering; and (ii) no promoter had received, or would receive, any sales compensation, commissions or finder's fees. *Id*. at §§3, 12, 15. As established herein, Helms and Kaelin employed numerous "promoters" (including Vaughn) and heavily compensated them for their efforts.

[20] Vaughn knew Enforcement Action Defendant Sellers promoted the Vendetta Ponzi scheme through his and Sellers's California meeting with investors Moore and Morally. *See supra*, at §II(B). Vaughn also knew that Helms and Kaelin had engaged brokers Michael Samouce and Mark Kyle to promote the Vendetta Offering. APPX_000186 (Vaughn Depo 219:10-24). Vaughn regarded William Brock, with whom the Receiver has settled Receivership claims for commissions and other transfers (*see* EA Dkt. #172) as the "head of the marketing team" for Vendetta and Iron Rock. APPX_000180, APPX_000184 (Vaughn Depo. 194:3-9, 212:16-17).

performed by Vaughn which he asserts were "consulting" services, there is no evidence that these services did not extended the fraud and help it endure. In fact these services were in furtherance of the scheme. *See supra*, at §II(B).[21]

Vaughn cannot establish a triable issue of fact with respect to the exchange of reasonably equivalent for the transfers made (or obligations incurred) to him (or for his benefit) as a matter of law. Accordingly, judgment for these transfers may be entered by the Court.

2. Vaughn Did not Receive the Transfers at Issue with Objective Good Faith

Because Vaughn cannot raise a triable issue of fact on the exchange of reasonably equivalent value, the Court need not address whether Vaughn acted with good faith. *Byron*, 436 F.3d at 560 ("We need not draw a conclusion on good faith, however, as his defense would still fail because he did not receive the transfers … in exchange for reasonably equivalent value."). Nevertheless, the undisputed material facts do not raise a triable issue with respect to Vaughn's lack of good faith under TUFTA.[22]

Good faith under TUFTA "is determined by looking at what the transferee 'objectively knew or should have known instead of examining the transferee's actual knowledge from a subjective standpoint.'" *Byron*, 436 F.3d at 560 (quoting *Brown v. Third Nat'l Bank (In re Sherman)*, 67 F.3d 1348, 1355 (8th Cir. 1995)). Put another way, "[o]ne lacks the good faith that is essential to the [TUFTA] defense to avoidability if possessed of enough knowledge of the actual facts to induce a reasonable person to inquire further about the transaction." *In re Pace*,

[21] There is no evidence that these "consulting" services preserved the net worth of the entities in the Vendetta Ponzi scheme, or otherwise provided utility from a creditors' perspective. *Byron*, 436 F.3d at 560 ("The primary consideration in analyzing the exchange of value for any transfer is the degree to which the transferor's net worth is preserved.") (citing *Butler Aviation Int'l v. Whyte*, 6 F.3d 1119, 1127 (5th Cir. 1993)); *Res. Dev. Int'l*, 487 F.3d at 301; *In re Hinsley*, 201 F.3d 638, 644 (5th Cir. 2000).

[22] Vaughn began to promote the Vendetta Offering for excessive compensation in June 2012. APPX_000199 – 200, APPX_000395. Because Vaughn's lack of good faith is established prior to the first transfer made July 10, 2012, APPX_000024, he cannot assert the TUFTA affirmative defense with respect to any of the transfers at issue.

456 B.R. 253, 275 (Bankr. W.D. Tex. 2011) (quoting *SEC v. Cook*, 2001 U.S. Dist. LEXIS 2601, 2001 WL 256172, at *4 (N.D. Tex. Mar. 8, 2001)). Knowledge of facts which "would excite the suspicions of a person of ordinary prudence and put him on inquiry of the fraudulent nature of an alleged transfer" defeats any assertion of good faith. *GE Capital Commer., Inc. v. Wright & Wright, Inc.*, 2011 U.S. Dist. LEXIS 3962, at *16 (N.D. Tex. Jan. 13, 2011).[23]

a. **Vaughn unlawfully promoted the Vendetta Offering for excessive compensation**

As established *supra*, Vendetta represented in the PPM that "Promotional Expenses" were limited to 0.10% of investor proceeds raised, APPX_000413, and represented to the SEC that Vendetta Management, Helms, and Kaelin were the only "promoters" of the Vendetta Offering and that no promoter had, or would, receive compensation. APPX_000288 – 293. Vaughn knew, or should have known, that these representations were false, both with respect to himself and several other unregistered brokers engaged to promote the Vendetta Offering unlawfully by Helms and Kaelin.

With respect to "Promotional Expenses," Vaughn received, reviewed and transmitted the PPM containing the 0.10% limitation to several potential investors, APPX_000153 (Vaughn Depo. 86:21 – 87:7), yet agreed to promote the Vendetta Offering for commissions and other expenses in excess of those limits.[24] APPX_000201 – 203, APPX_000205 – 209. Vaughn ultimately retained $150,000 in investor funds in satisfaction of promotional obligations incurred by Vendetta, APPX_000584 – 597, in addition to the transfers to him, and for his benefit, of

[23] While the determination of good faith is a fact-focused inquiry, the Court may determine that Vaughn lacked such good faith as a matter of law. *See Spring St. Partners - IV, L.P. v. Lam*, 730 F.3d 427, 439 – 440 (5th Cir. 2013) ("We therefore conclude that Spring Street should prevail on its fraudulent transfer claim … as Ngo has raised no genuine dispute of material fact … that he was a good faith transferee.").

[24] At most, Vaughn could have received 0.10% of $1,200,000, or $1,200. However, by the time of Vaughn's letter agreement with Helms regarding payments to him, APPX_000205 – 209, he already had received over $55,000 [APPX_000024 – 25, APPX_000587] -- an amount exceeding the $50,000 "promotional expense" limit for the entire Vendetta Offering (0.10% of $50,000,000). *See* APPX_000291, APPX_000397.

$292,254.35. APPX_000024 – 28.

The contradiction between Vaughn's remuneration and the limits on "promotional expenses" in the Vendetta PPM clearly "would excite the suspicions of a person of ordinary prudence and put him on inquiry of the fraudulent nature" of the Vendetta Offering. *Wright & Wright, Inc.*, *supra*, at *16.[25] Indeed Vaughn was a person of above-ordinary prudence, as he had taken and passed the Series 65 securities license exam in or about 2001. APPX_000141 (Vaughn Depo. 40:10-41:8).[26] Vaughn cannot establish objective good faith in light of such contradictory conduct.[27]

Additionally, Vaughn cannot demonstrate objective good faith because he unlawfully promoted the Vendetta Offering as an unregistered broker.[28] This Court recently held that

[25] *See also Helms II*, at *49 ("The fact that Sellers and Barrera both admitted to receiving the PPM and providing [an investor] with the PPM charges them with knowing that their commissions were excessive.").

[26] Vaughn was never registered with FINRA, the State of Texas, or any broker dealer, or otherwise registered to promote the Vendetta Offering. APPX_000136, APPX_000143 (Vaughn Depo. 19:10 – 11, 46:20 – 47:3).

[27] With respect to the Form D, because Vaughn received and reviewed the Vendetta Offering materials, APPX_000145 – 146 (Vaughn Depo. 54:25-55:3; 56:3 – 57:8), APPX_000396 – 475, APPX_000515 – 564, he therefore knew that the Vendetta Offering was conducted pursuant to the Securities Act and Regulation D thereunder. APPX_0000400. Moreover, Vaughn caused the Upland Partners offering to be made pursuant to the same laws. APPX_0000601. At minimum, a "reasonable person" would have "inquired further," *In re Pace*, 456 B.R. at 275, into the terms under which the securities offering he was promoting was being made, particularly someone who held a securities license, APPX_000141 (Vaughn Depo. 40:10-41:8). Vaughn knew, or should have known, that Vendetta failed to disclose Vaughn (and others, *see supra* at §III(A)(1)) as a promoter. This failure "would excite the suspicions of a person of ordinary prudence and put him on inquiry of the fraudulent nature" of the Vendetta Offering. *Wright & Wright, Inc.*, *supra*, at *16 – 17. Whether Vaughn (a) unreasonably failed to review the Form D, or (b) reviewed it, knew it contained false disclosures, and continued to promote the Vendetta Offering, his conduct does not constitute "objective" good faith.

[28] Pursuant to the Exchange Act, a broker or dealer effecting transactions in, or inducing or attempting to induce the purchase or sale of, any security is acting unlawfully unless that broker or dealer is registered to do so. 15 U.S.C. § 78o(a)(1). In determining if a person is a broker, courts have considered "whether the person: (1) is an employee of the issuer; (2) received commissions as opposed to a salary; (3) is selling, or previously sold, the securities of other issuers; (4) is involved in negotiations between the issuer and the investor; (5) makes valuations as to the merits of the investment or gives advice; and (6) is an active rather than passive finder of investors." *Helms II*, at *51 (citing *SEC v. Martino*, 255 F.Supp. 2d 268, 283 (S.D.N.Y. 2003)). Courts also consider "whether the person: (1) solicited investors to purchase securities, (2) was involved in negotiations between the issuer and the investor, and (3) received transaction-related compensation." *Id.* (citing *SEC v. Earthly Mineral Solutions, Inc.*, 2011 U.S. Dist. LEXIS 36767, 2011 WL 1103349, at *3 (D. Nev. Mar. 23, 2011); *SEC v. Hansen*, 1984 U.S. Dist. LEXIS 17835, 1984 WL 2413 (S.D.N.Y. Apr. 6, 1984)); *SEC v. U.S. Pension Trust Corp.*, 2010 U.S. Dist. LEXIS 102938, 2010 WL 3894082, at *21 (S.D. Fla. Sept. 30, 2010) (compiling list of 11 factors courts consider when determining whether someone is a broker)).

Vendetta Defendants Sellers and Barrera violated 15 U.S.C. § 78o(a)(1) as unregistered brokers through their activities "to solicit investors to purchase limited-partnership interests in Vendetta." *Helms II*, at *51 – 53, 53 – 54 (citing *SEC v. StratoComm Corp*., 2 F.Supp. 3d 240, 262 – 63 (N.D.N.Y. 2014)) (reconsideration denied October 21, 2015, EA Dkt. #291). The Court found that Sellers was hired to solicit investors to purchase limited-partnership interests in Vendetta; contacted and negotiated with an investor; relayed the transaction terms; and received a large transaction-based bonus that depended on how much money he raised. *Helms II*, at *52.[29]

Similarly, Vaughn unlawfully effected transactions in, or induced or attempted to induce the purchase or sale of, Vendetta securities. Like Sellers, Helms and Kaelin offered compensation to Vaughn to solicit investors to purchase limited partnership interests in Vendetta (*see* §§II(B), III(A)(1)); Vaughn contacted and relayed the transaction terms to numerous potential investors (*id*.); and Vaughn received large transaction-based commissions that depended on how much money he raised for Vendetta. *Id*.; APPX_000024 – 28. Like Sellers, who raised $3,050,000 for Vendetta, *Helms II*, at *53, Vaughn raised $1,350,000 from investors, although he caused only $1,200,000 to be invested. APPX_000584 – 597. Accordingly, Vaughn was a broker not registered with the SEC to offer or sell Vendetta securities, and acted unlawfully. Therefore, Vaughn cannot raise a triable issue of material fact over whether he received the transfers at issue with objective good faith.

b. **Vaughn was aware of red flags which reasonably would have alerted him to Helms and Kaelin's fraud**

At least one potential investor Vaughn tried to recruit raised several issues which would have "induce[d] a reasonable person to inquire further" about the underlying Vendetta scheme,

[29] These activities were held to be analogous to the conduct at issue in *StratoComm*, and thus violations of the Exchange Act. *Id*. at *51 – 53.

which Vaughn failed to do. *In re Pace*, 456 B.R. at 275. This potential investor emailed Vaughn on September 28, 2012 regarding the Vendetta financials Vaughn had provided to him, and which "raise[d] several questions." APPX_000276 – 277. These questions included contradictions which should have placed Vaughn on notice of the Ponzi scheme. The investor questioned "how [Vendetta can] continue to run at a loss" given that "through the 9 months of 2011 they have LOST $673,320.23" and "Year end 2010 they LOST $205,268.39." *Id*. With such losses, Vaughn was unreasonable not to have known that there were no profits from which to make investor distributions, and that the source of such distributions could only be sourced from new investors funds -- *i.e.*, Vendetta was a Ponzi scheme. The investor also questioned the high management fees and how "the $12,147,656 of Producing mineral rights [could be sold] for a lot more money than the $11,693,407 that they were bought for." *Id*. The potential investor concluded: "Grady, based on the company requiring contributions, running at a loss, the promise of a big equity event, huge management fees, etc. this doesn't sound like my kind of a deal. What have I missed?" *Id*. The investor had not missed anything -- Vaughn had.

Vaughn further acted unreasonably in response to the email. *See* APPX_000170 – 173 (Vaughn Depo. 155:1 – 167:7). When presented with facts which "would excite the suspicions of a person of ordinary prudence and put him on inquiry of the fraudulent nature" of the Vendetta Offering, *Wright & Wright, Inc.*, 2011 U.S. Dist. LEXIS 3962, at *16, Vaughn took no action "to inquire further." *In re Pace*, 456 B.R. at 275. APPX_000171 (Vaughn Depo 160:9-22). Nor did he respond to the investor, or ensure that Helms or Kaelin did so. APPX_000171 – 172 (Vaughn Depo 160:19-161:14). When presented with a set of facts which would undermine a large source of income, Vaughn preferred to bury his head in the sand and move on to investors who didn't ask so many questions. APPX_000172 (Vaughn Depo 164:5-9). Vaughn cannot demonstrate

good faith with respect to the transfers at issue, and the Court may enter judgment against him.

c. **Vaughn's lack of good faith is further demonstrated by his conduct after the appointment of the Receiver**

Vaughn's lack of objective good faith is bolstered by his actions after Helms and Kaelin's Ponzi scheme was shut down and the Receiver was appointed, on December 3, 2013. *See* EA Dkt. #10, 11. In the weeks following entry of the Order Appointing Receiver (EA Dkt. #11), Vaughn, Helms and Kaelin attempted to negotiate the sale of Receivership assets which had been frozen by the Court. APPX_000197 – 198. This blatant violation of the Order Appointing Receiver by Vaughn is telling. Moreover, Vaughn continued to partner with Helms and Kaelin in prospective business ventures following the filing of the Enforcement Action. APPX_000136 – 137 (Vaughn Depo. 18:8-21:25).

The undisputed material facts clearly establish that Vaughn has consistently placed his own remuneration from the Vendetta Ponzi scheme above any reasonable conduct. He has received hundreds of thousands of dollars in compensation for promoting the Vendetta Offering without being registered to do so, and has been paid far more than limits represented to investors and the SEC. Vaughn continued to accept money from the Vendetta Ponzi scheme long after he was aware of facts which placed him on notice of the fraud, and continued working with Helms and Kaelin following the filing of the Enforcement Action. The Court should enter summary judgment in favor of the Receiver for amounts requested herein.

IV. Vaughn Must Disgorge the Funds Paid to Him, and for His Benefit, Under the Theory of Unjust Enrichment

"'Unjust enrichment is an equitable principle holding that one who receives benefits unjustly should make restitution for those benefits,' regardless of whether the defendant engaged in wrongdoing." *Janvey v. Alguire*, 846 F. Supp. 2d 662, 673 (N.D. Tex. 2011) (quoting *Tex. Integrated Conveyor Sys., Inc. v. Innovative Conveyor Concepts, Inc.*, 300 S.W.3d 348, 367

(Tex. App.—Dallas 2009, pet. denied)). "Unjust enrichment occurs when the person sought to be charged has wrongfully secured a benefit or has passively received one which it would be unconscionable to retain." *Id*. "A party may recover under the unjust enrichment theory when one person has obtained a benefit from another by fraud, duress, or the taking of an undue advantage." *Heldenfels Bros. v. City of Corpus Christi*, 832 S.W.2d 39, 41 (Tex. 1992) (citations omitted).

It is indisputable that (1) Helms and Kaelin fraudulently raised money from investors and operated a Ponzi scheme (*see supra* at §II(A)); (2) Vaughn unlawfully promoted the Vendetta Ponzi scheme as an unregistered broker, causing investors to be defrauded (*see supra* at §III(A)(2)(a)); (3) Vaughn received hundreds of thousands of dollars for recruiting victims into the Vendetta Ponzi scheme upon terms contrary to representations made to investors (*see supra* at §II(B), §III(A)(2)(a)); and (4) Vaughn continued to receive compensation from the Vendetta Ponzi scheme with actual knowledge of facts which would have placed him on inquiry notice of Helms' and Kaelin's fraud (*see supra* at §III(A)(2)(a) – (c)). All of the funds received by Vaughn for engaging in such conduct necessarily came from the proceeds from investors. *See* §II(A), (B).

Accordingly, Vaughn either (a) wrongfully secured a benefit from the Ponzi scheme, or (b) passively received one which it would be unconscionable to retain. *Villarreal v. Grant Geophysical, Inc*., 136 S.W.3d 265, 270 (Tex.App.—San Antonio 2004). Disgorgement is proper upon either basis. It would be unconscionable for Vaughn to retain the benefits of the Vendetta Ponzi scheme because he directly profited from Helms' and Kaelin's fraudulent conduct, and to the detriment of the Ponzi scheme victims, who now can only make claims for their losses against the Receivership Estate. Indeed the disgorgement of these funds from Vaughn would benefit these defrauded investors by increasing the assets available for the ultimate distribution

to claimants by the Receiver.

The undisputed material facts show that investors were defrauded through their subscriptions to the Vendetta Offering, and that Vaughn -- whether wrongfully or passively -- received a benefit from this fraud -- namely, $442,254.35. It would be unconscionable for Vaughn to retain these funds to the detriment of defrauded investors, and the Court should enter summary judgment upon his claim for unjust enrichment.

V. The Receiver is Entitled to Pre- and Post-Judgment Interest

"A district court has discretion to impose a pre and post-judgment interest award to make a plaintiff whole." *GE Capital Commer., Inc. v. Worthington Nat'l Bank*, 2012 U.S. Dist. LEXIS 82631, *53, 2012 WL 2159185 (N.D. Tex. June 13, 2012) (quoting *Williams v. Trader Publ'g Co.*, 218 F.3d 481, 488 (5th Cir. 2000)). An award of prejudgment interest also "is intended to: (1) encourage settlement; and (2) expedite 'both settlements and trials by removing incentives for defendants to delay without creating such incentives for plaintiffs.'" *Arete Partners, L.P. v. Gunnerman*, 643 F.3d 410, 413 (5th Cir. 2011) (citing *Johnson & Higgins of Tex., Inc. v. Kenneco Energy, Inc.*, 962 S.W.2d 507, 529 (Tex. 1998); *Cavnar v. Quality Control Parking, Inc.*, 696 S.W.2d 549, 554-55 (Tex. 1985)); *Perry Roofing Co. v. Olcott*, 744 S.W.2d 929, 930 (Tex. 1988)).

In Texas, "[t]here are two legal sources for an award of prejudgment interest: (1) general principles of equity and (2) an enabling statute." *Johnson & Higgins*, 962 S.W.2d at 528. Equity supports an award of pre-judgment interest in this case. The Receivership Estate has been damaged and denied the use of the money that was fraudulently transferred to and unjustly enriched Vaughn. Vaughn has had the enjoyment of those funds to the exclusion of the Receivership Estate. Therefore, the Court should award prejudgment interest to compensate Receiver for such delay. *See id.*; *Gunnerman*, 643 F.3d at 413.

In calculating pre-judgment interest on state law claims, such as TUFTA, the Court looks to state law. *Canal Ins. Co. v. First. Gen. Ins. Co.*, 901 F.2d 45, 47 (5th Cir. 1990). In Texas, pre-judgment interest "accrues at the rate for postjudgment interest," *Johnson & Higgins*, 962 S.W.2d at 532, and is calculated as the greater of the prime rate published by the Board of Governors of the Federal Reserve System, or 5%, per year. See *Gunnerman*, 643 F.3d at 415 (citing TEX. FIN. CODE §304.003). The current prime rate published by the Board of Governors of the Federal Reserve System is 3.25%, and has been since 2009. APPX_000578 (Goforth Decl., ¶8); APPX_000575 – 576. Accordingly, the Court should assess prejudgment interest at an annual rate of 5% a year. Such interest calculates to $60.58 per day with respect to the $442,254.35 received by Vaughn (or otherwise transferred for his benefit). APPX_000578 (Goforth Decl., ¶8); APPX_000574.

Pre-judgment interest begins to accrue on the earlier of 180 days after the date the defendant receives written notice of a claim, or the day suit is filed. *Worthington Nat'l Bank*, at *56 (citing *Primrose Operating Co. v. National Am. Ins. Co.*, 382 F.3d 546, 564 (5th Cir. 2004)). The Receiver first gave notice to Vaughn for his TUFTA claim on June 18, 2014. APPX_000285 – 287. Accordingly, the Court should impose pre-judgment interest from December 15, 2014, 180 days following such demand, until the date preceding entry of summary judgment. APPX_000574.

Post-judgment interest "shall be allowed on any money judgment in a civil case recovered in a district court." 28 U.S.C. § 1961(a). It "shall be computed daily to the date of payment … and shall be compounded annually." *Id.* § 1961(b). Post-judgment interest is calculated "at a rate equal to the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the calendar week

preceding the date of the judgment." *Id.* § 1961(a). Accordingly, the Receiver is entitled to post-judgment interest at the applicable federal rate based upon the date of entry of judgment.

VI. Relief Requested

The Receiver respectfully requests the Court enter summary judgment against Defendant Vaughn, providing that:

(a) transfers were made from, and obligations were incurred by, the Vendetta Ponzi scheme (from Vendetta, Vendetta Management, Iron Rock and Barefoot) to Vaughn or for Vaughn's benefit, totaling $442,254.35;

(b) these transfers and obligations were made and incurred with actual intent to hinder, delay or defraud creditors of Vendetta, Vendetta Management, Iron Rock and Barefoot;

(c) Vaughn did not exchange reasonably equivalent value for these transfers and obligations or receive them with objective good faith;

(d) Vaughn is liable to the Receiver for actual damages of $442,254.35, plus pre-judgment interest of $60.58 per day from December 15, 2014 until the date of judgment, plus post-judgment interest from the date of judgment until the judgment and interest thereon is paid in full (equal to the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding the date of the judgment); and

(e) Receiver is entitled to such other and further relief, at law and in equity, as the Court deems proper under the circumstances.

Dated: November 12, 2015

Respectfully submitted,

THE TAYLOR LAW OFFICES, P.C.

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COUNSEL FOR RECEIVER

CERTIFICATE OF SERVICE

On November 12, 2015, I filed the foregoing document with the Clerk of the Court for the Western District of Texas using the CM/ECF electronic filing system, through which all counsel of record were served electronically.

/s/ Andrew M. Goforth
Andrew M. Goforth