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 Vendetta Royalty Partners, Ltd., *et al.*, *Plaintiff*,	§ § § § §	
v.	§	Civil Action No. 1:16-cv-42
TERRI RANDLE f/k/a TERRI WILMOTH and 2-RIVERS ROYALTY, LLC, *Defendants*.	§ § § § §	

PLAINTIFF RECEIVER'S ORIGINAL COMPLAINT AGAINST TERRI RANDLE f/k/a TERRI WILMOTH and 2 RIVERS ROYALTY, LLC

I. SUMMARY

1. Plaintiff Thomas L. Taylor III ("Receiver"), solely in his capacity as equity receiver appointed by Order of this Court in the case styled *SEC v. Helms, et al.*, No. 1:13-cv-1036-ML (W.D. Tex. 2013) (the "Enforcement Action") ("EA Dkt. _"), brings this action to avoid and recover fraudulent transfers made to Defendants Terri Randle f/k/a Terri Wilmoth ("Randle") and 2-Rivers Royalty, LLC ("2 Rivers" and together the "Defendants") from a multi-million dollar Ponzi scheme perpetrated by Robert A. Helms ("Helms") and Janniece S. Kaelin ("Kaelin").

2. On December 3, 2013 the Securities and Exchange Commission (the "SEC" or "Commission") initiated the Enforcement Action, asserting against Helms and Kaelin numerous violations of the antifraud provisions of the federal securities laws. EA Dkt. 1. This Court, acting *ex parte*, entered an Order on the same day appointing Mr. Taylor as equity receiver for

defendants Helms, Kaelin, Deven Sellers, Roland Barrera, and several entities[1] under their control (collectively the "Vendetta Defendants"). EA Dkt. 11. The Court ordered the Receiver to take control of all assets of, and traceable to, the Receivership Estate in order to make an equitable distribution to claimants injured by Helms' and Kaelin's fraud. *Id*.

3. This Court twice has held that Helms and Kaelin operated a fraudulent Ponzi scheme through Vendetta and other entities under their control. *SEC v. Helms*, 2015 U.S. Dist. LEXIS 29149 (W.D. Tex. Mar. 10, 2015) ("*Helms I*"); *SEC v. Helms*, 2015 U.S. Dist. LEXIS 110758 (W.D. Tex. Aug. 21, 2015), reconsideration denied by *SEC v. Helms*, 2015 U.S. Dist. LEXIS 142704 (W.D. Tex. Oct. 20, 2015) ("*Helms II*"). A Final Judgment against the individual Vendetta Defendants was entered on October 21, 2015. EA Dkt. 292. Helms and Kaelin are jointly and severally liable for $35,295,904 in disgorgement of ill-gotten gains and prejudgment interest, plus a civil penalty in the amount of $4,221,058 each. *Id*.

4. Helms and Kaelin perpetrated their fraudulent Ponzi scheme primarily through Vendetta and Vendetta Management, but also through several other entities under their control, including Barefoot and Iron Rock. Helms and Kaelin operated the Vendetta Entities as a single fraudulent enterprise. Upon evidence that Helms and Kaelin routinely comingled and conflated the assets of the Vendetta Entities, the Receiver moved the Court to amend the Order Appointing Receiver to treat the various Vendetta Defendants as a single Receivership Estate. *See* EA Dkt.

[1] Vendetta Royalty Partners, Ltd. ("Vendetta"), Vendetta Royalty Management, LLC ("Vendetta Management"), Vesta Royalty Partners, LP, Vesta Royalty Management, LLC, Iron Rock Royalty Partners, Ltd. ("Iron Rock"), Iron Rock Royalty Management, LLC, Arcady Resources, LLC, Barefoot Minerals, G.P. ("Barefoot"), G3 Minerals, LLC, Haley Oil Company, Inc. ("Haley Oil"), Lake Rock, LLC, SeBud Minerals, LLC and Technicolor Minerals, G.P. (the "Vendetta Entities").

60-1 at, *e.g.*, ¶¶2, 7(A), 35 – 36. On May 27, 2014 this Court adopted the amendments sought by the Receiver and entered the First Amended Order Appointing Receiver. EA Dkt. 76.

5. Defendant Randle conducts a mineral interest real estate brokerage business in Palestine, Texas through Defendant 2 Rivers. Randle is a member and manager of 2 Rivers, as well as its registered agent. Between approximately January 31 and June 28, 2013, Vendetta, Barefoot and Iron Rock (collectively the "Transferring Entities") transferred $60,000 and $50,000 to Randle and 2 Rivers, respectively.

6. In the Fifth Circuit, transfers made from a Ponzi scheme are presumptively made with actual intent to hinder, delay or defraud creditors. *Janvey v. Brown*, 767 F.3d 430, 439 (5th Cir. 2014); *Warfield v. Byron*, 436 F.3d 551, 558 (5th Cir. 2006). Accordingly, the Receiver is entitled to avoid transfers from the Vendetta Ponzi scheme to Defendants pursuant to the Texas Uniform Fraudulent Transfer Act, TEX. BUS. & COM. CODE §§24.001 *et seq*. ("TUFTA") and other applicable law. TUFTA §§ 24.005(a)(1), 24.008(a).[2]

7. Liability for these transfers lies with the first transferee, the person for whose benefit the transfer was made, and/or any subsequent transferee. TUFTA §24.009(b). In other words, Defendants each are liable for transfers made (a) directly to them from the Transferring Entities, (b) subsequently to them from an initial transferee (namely, each other), and (c) to others for their benefit. 2 Rivers also is vicariously liable for the transfers made directly to Randle because Randle acted as agent for 2 Rivers in her dealings with Kaelin and the Vendetta Entities.

[2] The Receiver has standing to assert the TUFTA claims of the Transferring Entities. See *Janvey v. Democratic Senatorial Campaign Comm., Inc.*, 712 F.3d 185, 192 (5th Cir. 2013) ("Applying the principles of *Scholes* [*v. Lehmann*, 56 F.3d 750 (7th Cir. 1995)] and its progeny, we conclude that the Receiver has standing to assert the claims of [the receivership entities] … to recover" fraudulent transfers made from the Ponzi scheme).

8. Because the Ponzi scheme is established, it is Defendants' burden to establish the TUFTA affirmative defense in order to avoid liability for the transfers they received from the Ponzi scheme: that they took each transfer *both* with objective good faith *and* in exchange for reasonably equivalent value. TUFTA § 24.009(a). Defendants cannot establish either prong of this affirmative defense.

9. Defendants did not exchange any value, let alone reasonably equivalent value, for the transfers at issue. These transfers were purportedly commission payments and/or commission advances for mineral interest purchases of the Vendetta Entities, which purchases were brokered by Defendants. However, no corresponding mineral interest purchases took place in exchange for these payments. Accordingly, Defendants never earned any commissions -- nor could they -- for sales which did not close. The Vendetta Entities did not gain any assets or other value in exchange for these payments to Defendants.

10. Defendants also lacked "objective" good faith in their receipt of these transfers. 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)); see also *In re Pace*, 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)) ("One 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.").

11. Randle (and therefore 2 Rivers) knew that no purchases had taken place on which commissions could have been earned, but accepted the transfers anyway. Moreover, Randle (and

therefore 2 Rivers) was aware of numerous red flags which would have caused a reasonable person to inquire further regarding, at minimum, Vendetta's operations and solvency under Helms and Kaelin. As Randle (and therefore 2 Rivers) was aware, Kaelin routinely failed to consummate mineral interest purchases, whether due to a lack of available funds or otherwise, yet Defendants unreasonably continued to accept unearned commissions and advances from Kaelin for potential purchases. Additionally, Randle was aware that a landman -- with whom she worked closely -- had lied to Kaelin in emails regarding amounts purportedly owed by Vendetta, and failed to correct these lies. Furthermore, Randle regularly directed Kaelin to transfer certain of the unearned commissions to her personal bank account, rather than to a 2 Rivers account, in order to divert them from 2 Rivers and conceal their existence from her business partner at 2 Rivers.

12. Randle and 2 Rivers are liable to the Receivership Estate for $110,000 in actual damages, plus pre- and post-judgment interest, costs and reasonable attorneys' fees.

II. PARTIES

13. Plaintiff **Thomas L. Taylor III** ("Receiver") has been appointed by this Court in the Enforcement Action as equity receiver for the Vendetta Defendants. In marshaling the assets of the Receivership Estate, the Receiver is authorized "to sue for and collect, recover, receive and take into possession from third parties all Receivership Property and records relevant thereto," EA Dkt. 76 at ¶7(B), and "[t]o bring such legal actions based on law or equity…as the Receiver deems necessary or appropriate in discharging his duties." *Id.* at ¶7(I). Without limitation, the Receiver may seek the imposition of constructive trusts, disgorgement of profits, asset turnover, avoidance of fraudulent transfers, rescission and restitution. *Id.* at ¶43. The

Receiver is asserting the causes of action contained herein solely in his capacity as Court-appointed Receiver for the Vendetta Defendants.

14. Defendant **Terri Randle, f/k/a Terri Wilmoth** ("Randle") is an individual residing in or around Palestine, Texas, and will be served pursuant to the Federal Rules of Civil Procedure.

15. Defendant **2-Rivers Royalty, LLC** ("2 Rivers") is a Texas limited liability company with its principal place of business in Palestine, Texas. 2 Rivers will be served through its registered agent, Defendant Randle, pursuant to the Federal Rules of Civil Procedure.

III. JURISDICTION AND VENUE

16. 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)) and Section 27 of the Securities Exchange Act of 1934 (the "Exchange Act") (15 U.S.C. § 78aa). Further, as the Court that appointed the Receiver, this Court has jurisdiction over any claim brought by the Receiver to execute Receivership duties. Additionally, within 10 days of the entry of the First Amended Order Appointing Receiver (EA Dkt. 76), the Receiver filed the Commission's Complaint and the First Amended Order Appointing Receiver in the United States District Court for the Eastern District of Texas (Case No. 4:14-mc-00015). Accordingly, this Court has jurisdiction over Defendants pursuant to FED. R. CIV. P. 4(k)(1)(C) and 28 U.S.C. §§ 754 and 1692.

IV. STATEMENT OF FACTS

A. The Enforcement Action and Appointment of the Receiver

17. The Commission initiated the Enforcement Action on December 3, 2013, alleging, *inter alia*, that Helms and Kaelin violated the anti-fraud provisions of the federal securities laws through the offer and sale of securities. EA Dkt. 1. This Court, acting *ex parte*, entered a Temporary Restraining Order on the same day (EA Dkt. 10) ("TRO"), 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 and authorizing expedited discovery.

18. Contemporaneously with the TRO, this Court entered an Order Appointing Receiver (EA Dkt. 11), appointing Thomas L. Taylor III as equity receiver for the Vendetta Defendants. The Court took "exclusive jurisdiction and possession of the assets, of whatever kind and wherever situated, of the [Vendetta] Defendants," *id.* at ¶1, and ordered the Receiver to take control of and marshal all assets and records of the Receivership Estate in order to make an equitable distribution to claimants injured by a massive fraud orchestrated by Helms and Kaelin. *Id*.

19. Helms and Kaelin operated the Vendetta Entities as a single fraudulent enterprise. Upon evidence that Helms and Kaelin routinely comingled and conflated the assets of the Vendetta Defendants, including the assets of Vendetta Entities,[3] the Receiver moved the Court to amend the Order Appointing Receiver to treat the various Vendetta Defendants as a single Receivership Estate. *See* EA Dkt. 60-1 at, *e.g.*, ¶¶2, 7(A), 35 – 36. On May 27, 2014 this Court entered the First Amended Order Appointing Receiver (EA Dkt. 76).

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[3] *See* EA Dkt. 60-2, Declaration of Danielle Supkis Cheek, incorporated herein by reference.

B. The Fraudulent Vendetta Ponzi Scheme

20. Vendetta was formed as of January 1, 2010 upon the divisional merger of the entity Robro Royalty Partners, Ltd. ("Robro"). Upon the formation of Vendetta, limited partners owning approximately 43% of Robro's equity became limited partners in Vendetta, and approximately 43% of Robro's assets and liabilities were transferred to Vendetta. Helms and Kaelin alone controlled Vendetta through its general partner Vendetta Management.

21. In 2011, Helms and Kaelin decided to raise additional proceeds from the public through a Regulation D private placement offering ("Vendetta Offering"). The offer to public investors of securities in Vendetta commenced in or about May 2011, and the first sales were made in July 2011.

22. The Vendetta Offering was effectuated through a private placement memorandum ("PPM"). Through the Vendetta PPM, Vendetta 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%

23. However, Helms and Kaelin did not use 99.14% of investor proceeds to purchase royalty interests. Helms and Kaelin raised approximately $31,500,000 from investors through the Vendetta Entities between July 2011 and December 2013. During the same time period, royalty interest assets increased, at most, by approximately $9,900,000. Accordingly at most, 32% of investment proceeds were used to purchase mineral interests. *See, e.g., Helms II* at *11.

24. Helms and Kaelin further misappropriated millions of dollars of investor proceeds for the payment of undisclosed personal and business expenses, and to make Ponzi payments to existing investors. In this regard, from January 1, 2010 to the appointment of the Receiver on December 3, 2013, the Vendetta Entities received approximately $4,000,000 in cumulative net royalty income. However, the business expenses of the Vendetta Entities far exceeded these revenues, meaning that payment of the remaining expenses and partnership distributions necessarily came from investor proceeds rather than profits from legitimate business operations.

25. During this time period, Helms and Kaelin paid (A) approximately $8,400,000 in personal expenses for themselves and their families, friends, and associates (*Helms II* at *63); (B) approximately $12,800,000 for business expenses -- including over $1,800,000 for "promotional expenses" to unlicensed "brokers" and over $2,500,000 for debt service (*Id*. at *10-11); and (C) approximately $8,670,000 in partnership distributions -- more than twice the cumulative net royalty income received by the Vendetta Entities during the same time period. *Id*. at *7-8. Their lavish personal spending included more than (i) $240,000 for Kaelin's daughter's wedding in Hawaii; (ii) $110,000 for airfare, including for the wedding; (iii) $100,000 for tuition; and (iv) $285,000 for mortgage payments. *Id*. at *8-9. Helms and Kaelin also used investor funds to take a 23-day trip around the world during March – April 2012, at a cost of over $135,000. *Id*.

a. *<u>The Vendetta Ponzi Scheme</u>*

26. As this Court has twice held previously, Helms and Kaelin operated a Ponzi scheme through the Vendetta Entities. *Helms I* at *19-22; *Helms II* at *39-46.

27. The term Ponzi scheme "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 at 189. 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).

28. As stated above, between approximately August 2011 and August 2013, Helms and Kaelin effected payments of approximately $8,670,000 to limited partners as partnership equity distributions -- not withstanding that business expenses far exceeded revenues from operations, and therefore these partnership equity distributions were not made from profits. Specifically, but without limitation, Helms and Kaelin made the following partnership distributions: (i) $187,836 on August 17, 2011; (ii) $650,000 on January 25, 2012; (iii) $222,000 on November 30 and December 1, 2012; and (iv) $255,841 on December 6-8, 2012. *See Helms II* at *6. In each instance, Helms and Kaelin used investor funds to make these investor distributions. *Id.*

b. *<u>The Iron Rock Offering</u>*

29. In or about January of 2013, Helms and Kaelin sought to continue their Ponzi scheme through Iron Rock. Helms, Kaelin and others formed Iron Rock and thereafter began to market the Iron Rock Offering.

30. At the commencement of the Enforcement Action and the appointment of the Receiver, only one investor had subscribed to the Iron Rock Offering, investing $500,000. Helms and Kaelin misappropriated these proceeds, including transferring approximately $277,000 in investor proceeds from Iron Rock Partners to Barefoot Minerals between about June 27 and

August 2, 2013, *see, e.g.*, EA Dkt. 60-2 p. 5 Table 1, and making a Ponzi payment of approximately $100,000 to buy out a Vendetta investor. As further detailed below, Kaelin also directed the transfer of $40,000 from Iron Rock accounts to Defendants.

c. *Additional Acts of Helms and Kaelin in Furtherance of their Fraudulent Ponzi Scheme*

31. Helms and Kaelin obfuscated their fraudulent Ponzi scheme through the continuous conflation and comingling of investor proceeds between and among the Vendetta Entities, including the Transferring Entities. *See* EA Dkt. 60-2 at Tables 1 – 5, Figure 1; EA Dkt. 186-1 at ¶6.

32. Helms and Kaelin further obfuscated their fraudulent Ponzi scheme by laundering over $5,000,000 in investor proceeds through sham transactions with the Enforcement Action Relief Defendants and other entities under Helms' and Kaelin's control, including the Vendetta Entities, and identifying in accounting records the return of these funds to Vendetta as purchases of, and income from, oil and gas royalty interests. *See, e.g.*, EA Dkt. 186-1 at ¶19; EA Dkt. 259-1 at p. 12 ¶¶29(a), 30.

33. Helms and Kaelin extended their Ponzi scheme by continuously lying to limited partners about the value of the underlying portfolio of royalty interests, the business operations of the Vendetta Entities, the use of investor proceeds, and the preparation of the Vendetta portfolio of assets for sale.

34. Helms and Kaelin transmitted to investors a counterfeit audit of Vendetta' oil and gas asset portfolio -- purportedly written by Haas Petroleum Engineering Services, Inc. ("Haas") -- to give investors the impression that the Vendetta portfolio had an audited value of over $26 million. The letter, dated January 17, 2011, stated that as of December 30, 2010 Vendetta owned over 18,000 properties worth over $26,189,000. As Helms and Kaelin knew or were reckless in

not knowing, however, this letter was a fake. In reality, Haas did not perform an audit for Vendetta during this time period. The last work that Haas did for any entity related to Vendetta was an audit letter for the Robro portfolio, dated August 14, 2009. This was one of only two audits that Haas performed for Robro.

35. Helms and Kaelin represented in the Vendetta PPM and other offering materials that over 99% of investor funds would be used to buy royalty interests. As they knew, since they were misappropriating funds as described above, these representations were false. At most, approximately 32% of investor proceeds were used to purchase mineral interests.

36. Helms and Kaelin also made at least $1,100,000 in loan payments to Amegy Bank -- approximately three times the amount disclosed to investors in the Vendetta PPM. EA Dkt. 5-22 at ¶11. They paid these excess amounts in an effort to cure delinquency and covenant violations in the loan agreement with Amegy. Helms and Kaelin knew about the loan delinquency, the covenant violations, and Amegy payment amounts, they did not disclose these material facts to investors -- in the Vendetta PPM or otherwise.

37. Helms and Kaelin also made material misrepresentations to investors about their professional backgrounds, representing that they had extensive experience in royalty-interest acquisitions and that they had successfully managed multiple portfolios. These representations were false. In Vendetta marketing materials given to potential investors, Helms and Kaelin claimed that they had invested over $300 million since 2003, and had managed seven investment partnerships and achieved "consistent" and "significant" returns, including representations of gross returns of more than 700% to 1000% of proceeds raised. These statements were false -- Helms and Kaelin had neither invested $300 million nor managed seven partnerships, much less produced the returns claimed.

38. Helms' only meaningful experience in this area consisted of his work for Robro, Vendetta and its related entities -- the only experience that he did have previously was focused on tax and estate planning work, not the acquisition and management of royalty interests. Kaelin grossly overstated her experience as well, which was limited to cold calling land owners and attempting to get them to sell their mineral interests -- acquisitions which required separate approval by her superiors at her previous employer.

39. Helms and Kaelin also made material representations regarding litigation against them and the entities they controlled, stating in PPMs that there were no material pending legal proceedings against them or their affiliates. In truth, a private party had sued Helms and Kaelin in December 2011, alleging that they committed fraud by purporting to sell mineral interests that they did not even own in exchange for $1.2 million. Additionally, the Illinois EPA had initiated action against Haley Oil in May 2012, alleging illegal "release incidents." Helms and Kaelin each owned 50% of Haley Oil.

40. On numerous occasions starting in or about 2012, Helms and Kaelin represented that the sale of the Vendetta portfolio was imminent, and that they had received offers to purchase the Vendetta portfolio for amounts ranging from $40 million to in excess of $100 million. These representations were not true. Helms and Kaelin made these misrepresentations to placate increasingly impatient limited partners. They also made Ponzi payments, including those detailed above, to placate increasingly impatient limited partners and give their scheme an air of legitimacy.

C. Defendants Received Transfers from the Vendetta Ponzi Scheme

41. In the fall of 2012, Kaelin engaged Defendants Randle and 2 Rivers to locate and broker the purchase of mineral interests by the Vendetta Entities. Kaelin agreed to compensate

the Defendants by commission, equaling approximately 4% of the purchase price of an acquisition and, in certain instances, a 5% interest in the mineral interest being purchased by a Vendetta Entity.

42. The only mineral interests purchased by any Vendetta Entity through Defendants occurred in or about December 2012 and January 2013 when Vendetta funded the purchase of certain mineral interests in Karnes County, Texas ("Karnes County interests") from three sellers. Between about January 2 and 29, 2013, Kaelin transferred cash commissions equal to 4% of the purchase price of the Karnes County interests to Defendants. Defendants also received 5% of the Karnes County interests purchased by Vendetta -- the transaction was structured so that the Karnes County interests were conveyed to 2 Rivers by the three sellers, and 2 Rivers was then supposed to convey 95% of what it received to Vendetta. The subsequent conveyance to Vendetta did not occur. In or about March 2013, Randle stated to a landman -- with whom she worked closely -- that she intended not to transfer the Karnes County interests to Vendetta until she was paid unearned commissions on a transaction which had not, and never did, close.

43. Upon demand by the Receiver pursuant to the Order Appointing Receiver, 2 Rivers transferred to the Receivership Estate Vendetta's 95% interest in the Karnes County interests in January 2016, and paid to the Receiver an amount in satisfaction of all revenues received since January 2013 by 2 Rivers and attributable to Vendetta's interests in the Karnes County interests.

44. Vendetta's purchase of the Karnes County interests was the only purchase a Vendetta Entity made through Defendants. However, in January 2013, after Vendetta had paid Defendants cash commissions for the Karnes County interests purchase, Kaelin began paying to Defendants "advances" on commissions for potential future transactions that had yet to occur.

45. Between approximately January 31 and June 28, 2013, Randle and 2 Rivers received wire transfers totaling $110,000 from Vendetta Entities.

46. On or about January 31, 2013, 2 Rivers received a wire transfer of $20,000 from a Vendetta bank account at Austin Telco Federal Credit Union ("Telco").

47. On or about March 8, 2013, Randle received a wire transfer of $10,000 from a Vendetta bank account at Telco.

48. On or about April 9, 2013, Randle received a wire transfer of $20,000 and 2 Rivers received a wire transfer of $20,000 from a Barefoot bank account at Telco.

49. On or about June 28, 2013, Randle received a wire transfer of $30,000 and 2 Rivers received a wire transfer of $10,000 from an Iron Rock bank account at Whitney Bank.

50. No Vendetta Entity made any corresponding asset purchases -- through Defendants or at all -- with respect to these transfers. Nevertheless, the Defendants received $110,000 in fraudulent transfers from the Vendetta Ponzi scheme. Because these transfers were made from a Ponzi scheme, they were presumptively made with actual intent to hinder, delay or defraud creditors. *Byron*, 436 F.3d at 558. Accordingly, these transfers are avoidable by the Receiver.

D. Defendants Cannot Establish the TUFTA Affirmative Defense

51. TUFTA provides an affirmative defense for transferees who took *both* with objective good faith *and* in exchange for reasonably equivalent value. TUFTA § 24.009(a).

a. *Defendants did not Provide Reasonably Equivalent Value for the Transfers*

52. Defendants did not provide reasonably equivalent value for the transfers they received from Vendetta, Barefoot and Iron Rock. The primary consideration when determining whether an exchange is for reasonably equivalent value is "the degree to which the transferor's

net worth is preserved." *Byron*, 436 F.3d at 560 (citing *Butler Aviation Int'l v. Whyte*, 6 F.3d 1119, 1127 (5th Cir. 1993)).

53. Defendants agreed to be compensated by the Vendetta Entities in the form of commissions calculated as a percentage of the purchase price of mineral interests purchased by the Vendetta Entities. Blacks Law Dictionary defines a commission as "a fee paid to an agent or employee for a particular transaction, usu. as a percentage of the money received from the transaction." Miriam-Webster defines a commission as "a fee paid to an agent or employee for transacting a piece of business or performing a service; *especially*: a percentage of the money received from a total paid to the agent responsible for the business."

54. The only purchase of mineral interests through Defendants by the Vendetta Entities was the Karnes County interests. Vendetta paid Defendants commissions equal to 4% of the cash purchase price of the Karnes County interests.

55. No other mineral interests were purchased by a Vendetta Entity through Defendants. Accordingly, Defendants never earned the commissions paid or advanced to them by the Transferring Entities. The Transferring Entities never received any corresponding asset with respect to these transfers, or anything else of "value." The net worth of the Transferring Entities decreased by the amount of funds transferred to Defendants. Accordingly, the TUFTA affirmative defense cannot be established by Defendants, who are liable to the Receivership Estate for the amounts transferred from the Vendetta Ponzi scheme.

b. *Defendants Did Not Receive the Fraudulent Transfers with Objective Good Faith*

56. Because Defendants cannot establish the exchange of reasonably equivalent value for the transfers they received, the Court does not need to address whether they 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, Defendants also lacked the good faith required under TUFTA.

57. Good faith under TUFTA is measured objectively. *Byron*, 436 F.3d at 559-60. “One 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*, 456 B.R. 253, 275 (Bankr. W.D. Tex. 2011) (quoting *SEC v. Cook*, 2001 WL 256172, at *4, 2001 U.S. Dist. LEXIS 2601 (N.D. Tex. Mar. 8, 2001)); see also *GE Capital Commer., Inc. v. Wright & Wright, Inc.*, 2011 U.S. Dist. LEXIS 3962, at *16 (N.D. Tex. Jan. 13, 2011) (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).

58. Randle admitted to Kaelin that she knew the payments to her and 2 Rivers were “commission on the deals that did not close,” which “[made her] feel bad for taking it.” Moreover, Randle (and therefore 2 Rivers) was aware of numerous red flags regarding the ongoing funding issues of Vendetta and Kaelin’s repeated failure to act in accordance with her word, yet Randle continued to transact business with Kaelin and accept commissions and advances which she had not earned. In this regard, Kaelin regularly unresponsive to communications from Defendants and others and also regularly failed to consummate transactions through Defendants due to liquidity issues and the inability to fund those transactions.

59. Additionally, Randle (and therefore 2 Rivers) was aware that a landman – with whom she worked closely -- lied to Kaelin with respect to amounts purportedly owed by Vendetta. When demanding payment from Kaelin on March 19, 2013, this landman told Kaelin

that "I owe my landmen, attorneys and engineers, and staff $61,000," and thereafter told Randle "You are built into that $61,000. In case you didn't know you are also a landman, attorney, engineer and STAFF, LOL." There is no evidence that Randle notified Kaelin of this lie after it was brought to her attention in March 2013.

60. Moreover, Randle regularly directed Kaelin to transfer portions of commission payments and "advances" to her personal bank account rather than to an account of 2 Rivers. Randle gave these directions in order to divert the funds from 2 Rivers and conceal their existence from others at 2 Rivers.

61. Randle (and therefore 2 Rivers) did not act with objective good faith in their receipt of the fraudulent transfers from the Vendetta Ponzi scheme. Accordingly, the TUFTA affirmative defense cannot be established by Defendants, who are liable to the Receivership Estate for the amounts transferred from the Vendetta Ponzi scheme.

V. CAUSES OF ACTION

62. The Receiver incorporates by reference and reasserts the allegations above for each of the Causes of Action below.

COUNT I: Avoidance of Fraudulent Transfers Made to, or for the benefit of, Defendants pursuant to TUFTA §24.005(a)(1)

63. Helms and Kaelin operated a fraudulent Ponzi scheme through the Vendetta Entities, including Vendetta, Barefoot and Iron Rock. The Vendetta Entities were inextricably intertwined by Helms and Kaelin, who operated these entities as a single fraudulent enterprise.

64. The Transferring Entities transferred at least $110,000 to, or for the benefit of, Defendants. These transfers were made from the Ponzi scheme alleged herein with actual intent to hinder, delay or defraud creditors of the Transferring Entities.

65. Defendants did not provide reasonably equivalent value for the transfers made to them or for their benefit by Vendetta, Barefoot and Iron Rock. The transfers were commission payments and/or advances, but no corresponding mineral interest transactions upon which such commissions were based ever took place. The commissions were never earned. The Transferring Entities' net worth decreased by the amounts transferred to Defendants, with no corresponding increase in value.

66. Defendants cannot demonstrate objective good faith in receiving the transfers from Vendetta, Barefoot and Iron Rock. The Defendants knowingly accepted the payment of unearned commissions. Defendant Randle (and therefore 2 Rivers) was aware of numerous red flags with respect to Kaelin and the Vendetta Defendants' operations. Randle (and therefore 2 Rivers) was aware of sufficient facts that would cause a reasonable person to inquire further; Randle ignored these red flags and made no such inquiry. Randle and 2 Rivers continued to accept commission advances after Kaelin repeatedly failed to close mineral interest transactions. Randle also knowingly diverted funds away from 2 Rivers to conceal their existence from others at 2 Rivers. Randle knew that others lied to Kaelin regarding amounts purportedly owed by Vendetta, and did nothing to correct the lies.

67. The Receiver was only able to discover the fraudulent nature of the transfers from Vendetta, Barefoot and Iron Rock to, and for the benefit of, Defendants after Helms and Kaelin were removed from control of the Vendetta Entities and after a time-consuming and extensive

review of thousands of pages of paper and electronic records and documents relating to the Vendetta Defendants.

68. The Receiver is entitled to the avoidance of the fraudulent transfers from Vendetta, Barefoot and Iron Rock to or for the benefit of Defendants in the amounts alleged herein.

69. The Receiver also is entitled to pre- and post-judgment interest, costs and reasonable attorney's fees related to the commencement and prosecution of this litigation pursuant to TUFTA §24.013 and other applicable law.

COUNT II: Unjust Enrichment

70. The Receiver is entitled to disgorgement of the transfers made from the Vendetta Ponzi scheme -- in particular, from accounts in the name of Vendetta, Barefoot and Iron Rock -- to or for the benefit of Defendants, pursuant to the doctrine of unjust enrichment. Defendants received funds that in equity and good conscience belong to the Receivership Estate for ultimate distribution to defrauded investors and creditors with claims against the Receivership Estate, and that Defendants received through Helms' and Kaelin's taking of undue advantage vis-à-vis the investors in the Vendetta Ponzi scheme.

71. Defendants have been unjustly enriched by such funds, at the expense of defrauded investors in and creditors of the Vendetta Ponzi scheme, and it would be unconscionable for them to retain these funds.

72. 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 or for the benefit of Defendants.

73. Defendants have been unjustly enriched by their receipt of transfers from Vendetta, Barefoot and Iron Rock. The Receiver, therefore, is entitled to disgorgement of all transferred funds they received. Pursuant to the equity powers of this Court, the Receiver seeks a judgment that: (a) funds transferred to Defendants from Vendetta, Barefoot and Iron Rock unjustly enriched them; (b) such funds transferred to Defendants are property of the Receivership Estate held pursuant to a constructive trust for the benefit of the Receivership Estate; and (c) Defendants are liable to the Receiver for amounts equaling the amount of funds transferred to them, or for their benefit, from Vendetta, Barefoot and Iron Rock.

74. The Receiver is also entitled to pre- and post-judgment interest, costs and reasonable attorney's fees related to the commencement and prosecution of this litigation.

VI. ACTUAL DAMAGES

75. The Vendetta Entities, and therefore the Receiver, have suffered the loss of at least $110,000 in funds fraudulently transferred from the Vendetta Ponzi scheme to Defendants as alleged herein. Additionally, the Receiver is entitled to recover pre-and post-judgment interest and his just and reasonable attorneys' fees and costs, subject to Court approval, for it would be inequitable not to award such amounts to him.

VII. CONDITIONS PRECEDENT

76. All conditions precedent to filing this Complaint have been met.

VIII. PRAYER

WHEREFORE, the Receiver requests that the Defendants be summoned to answer this Complaint, that the case be set for trial, and that upon final judgment the Receiver recovers the

damages as alleged herein, including without limitation $110,000 fraudulently transferred to and for the benefit of Defendants and other actual damages, interest, costs and expenses of suit, including reasonable attorneys' fees. The Receiver prays for such other relief to which he may be justly entitled.

Dated: January 20, 2016

Respectfully submitted,

THE TAYLOR LAW OFFICES, P.C.

By: /s/ Andrew M. Goforth

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COUNSEL FOR RECEIVER
THOMAS L. TAYLOR III

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

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 Vendetta Royalty Partners, Ltd., et al.

(b) County of Residence of First Listed Plaintiff Harris

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*

The Taylor Law Offices, PC, Andrew Goforth, Esq., 4550 Post Oak Place Dr., Suite 241, Houston, TX 77009, (713) 626-5988

DEFENDANTS

Terri Randle f/k/a Terri Wilmoth and 2-Rivers Royalty, LLC

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.

Attorneys *(If Known)*

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

- ❒ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question *(U.S. Government Not a Party)*
- ❒ 2 U.S. Government Defendant
- ❒ 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)*

(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	❒ 1	❒ 1	Incorporated *or* Principal Place of Business In This State	❒ 4	❒ 4
Citizen of Another State	❒ 2	❒ 2	Incorporated *and* Principal Place of Business In Another State	❒ 5	❒ 5
Citizen or Subject of a Foreign Country	❒ 3	❒ 3	Foreign Nation	❒ 6	❒ 6

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

CONTRACT
- ❒ 110 Insurance
- ❒ 120 Marine
- ❒ 130 Miller Act
- ❒ 140 Negotiable Instrument
- ❒ 150 Recovery of Overpayment & Enforcement of Judgment
- ❒ 151 Medicare Act
- ❒ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ❒ 153 Recovery of Overpayment of Veteran's Benefits
- ❒ 160 Stockholders' Suits
- ❒ 190 Other Contract
- ❒ 195 Contract Product Liability
- ❒ 196 Franchise

REAL PROPERTY
- ❒ 210 Land Condemnation
- ❒ 220 Foreclosure
- ❒ 230 Rent Lease & Ejectment
- ❒ 240 Torts to Land
- ❒ 245 Tort Product Liability
- ❒ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ❒ 310 Airplane
- ❒ 315 Airplane Product Liability
- ❒ 320 Assault, Libel & Slander
- ❒ 330 Federal Employers' Liability
- ❒ 340 Marine
- ❒ 345 Marine Product Liability
- ❒ 350 Motor Vehicle
- ❒ 355 Motor Vehicle Product Liability
- ❒ 360 Other Personal Injury
- ❒ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ❒ 365 Personal Injury - Product Liability
- ❒ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ❒ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ❒ 370 Other Fraud
- ❒ 371 Truth in Lending
- ❒ 380 Other Personal Property Damage
- ❒ 385 Property Damage Product Liability

CIVIL RIGHTS
- ❒ 440 Other Civil Rights
- ❒ 441 Voting
- ❒ 442 Employment
- ❒ 443 Housing/ Accommodations
- ❒ 445 Amer. w/Disabilities - Employment
- ❒ 446 Amer. w/Disabilities - Other
- ❒ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ❒ 463 Alien Detainee
- ❒ 510 Motions to Vacate Sentence
- ❒ 530 General
- ❒ 535 Death Penalty

Other:
- ❒ 540 Mandamus & Other
- ❒ 550 Civil Rights
- ❒ 555 Prison Condition
- ❒ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ❒ 625 Drug Related Seizure of Property 21 USC 881
- ❒ 690 Other

LABOR
- ❒ 710 Fair Labor Standards Act
- ❒ 720 Labor/Management Relations
- ❒ 740 Railway Labor Act
- ❒ 751 Family and Medical Leave Act
- ❒ 790 Other Labor Litigation
- ❒ 791 Employee Retirement Income Security Act

IMMIGRATION
- ❒ 462 Naturalization Application
- ❒ 465 Other Immigration Actions

BANKRUPTCY
- ❒ 422 Appeal 28 USC 158
- ❒ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ❒ 820 Copyrights
- ❒ 830 Patent
- ❒ 840 Trademark

SOCIAL SECURITY
- ❒ 861 HIA (1395ff)
- ❒ 862 Black Lung (923)
- ❒ 863 DIWC/DIWW (405(g))
- ❒ 864 SSID Title XVI
- ❒ 865 RSI (405(g))

FEDERAL TAX SUITS
- ❒ 870 Taxes (U.S. Plaintiff or Defendant)
- ❒ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ❒ 375 False Claims Act
- ❒ 400 State Reapportionment
- ❒ 410 Antitrust
- ❒ 430 Banks and Banking
- ❒ 450 Commerce
- ❒ 460 Deportation
- ❒ 470 Racketeer Influenced and Corrupt Organizations
- ❒ 480 Consumer Credit
- ❒ 490 Cable/Sat TV
- ❒ 850 Securities/Commodities/ Exchange
- ☒ 890 Other Statutory Actions
- ❒ 891 Agricultural Acts
- ❒ 893 Environmental Matters
- ❒ 895 Freedom of Information Act
- ❒ 896 Arbitration
- ❒ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ❒ 950 Constitutionality of State Statutes

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 USC 754 & 1692; 15 USC 78aa & 77v(a)

Brief description of cause:
Fraudulent transfer from entities in federal equity receivership action by SEC

VII. REQUESTED IN COMPLAINT:

❒ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.

DEMAND $ 110,000.00

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 1/20/2016

SIGNATURE OF ATTORNEY OF RECORD /s/ Andrew Goforth

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE