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

SECURITIES AND EXCHANGE COMMISSION, *Plaintiff,*	§ § §	
v.	§	Civil Action No. 1:13-cv-01036-LY
ROBERT A. HELMS, ET AL., *Defendants,*	§ § §	
and	§ §	
WILLIAM L. BARLOW AND GLOBAL CAPITAL VENTURES, LLC, *Relief Defendants, solely for the purposes of equitable relief.*	§ § §	

RECEIVER'S REPLY IN SUPPORT OF MOTION FOR ENTRY OF AN ORDER REJECTING SECURED CLAIM OF CLOVIS CAPITAL VENTURES, LLC

Thomas L. Taylor III, Court-appointed Receiver[1] in the above-styled action, respectfully files this Reply in Support of the Receiver's Motion for Entry of an Order (1) Rejecting Secured Claim of Clovis Capital Ventures, LLC; and (2) Authorizing the Sale of Certain Royalty Interests Free and Clear of All Liens, Claims and Encumbrances (Doc. #95) (the "Motion").

A. Clovis' Admissions in its Response Support Granting the Receiver's Motion

Clovis admits that Chapman, Gaucher and Smith formed Clovis. Resp. p. 4. They were agents of Clovis, Mot. pp. 14-15, and their actions and knowledge are imputed to Clovis. *See Smith v. Suarez (In re IFS Fin. Corp.),* 417 B.R. 419, 444 (Bankr. S.D. Tex. 2009) (citations omitted). Clovis further admits it performed "extensive" due diligence, had knowledge of the Amegy Bank, N.A. credit facility and structured the Clovis investment to evade restrictions in

[1] Capitalized terms not defined herein have the same meaning as in the Receiver's Motion. Clovis' Response to the Motion (Doc. #113) is referred to herein as the "Response."

the Amegy credit facility. *Id*. p. 26-27. Clovis admits and unabashedly asserts that the security interest it purportedly acquired would uniquely position it ahead of other investors, *id*. p. 7, who paid the same consideration and who were similarly defrauded. *Id*. p. 5.[2] Upon these admissions it is inconceivable that Clovis' "extensive" due diligence into an investment containing one security interest (Amegy's) would not include investigation into other potential secured interests that may have been conveyed -- or that Clovis was unaware that the other limited partners did not have "side letter" arrangements giving them secured interests in specific property.

B. Clovis Fails to Address Numerous Outcome Determinative Contentions Made by the Receiver in his Motion

First, Clovis does not dispute -- and therefore concedes -- that Helms and Kaelin operated a Ponzi scheme, including the use of Clovis funds to make Ponzi payments. Mot. pp. 9-14. Transfers made from, and obligations incurred by, a Ponzi scheme are presumptively made and incurred with fraudulent intent, Mot. p 23, and it is Clovis' burden to establish the affirmative defenses of good faith and the exchange of reasonably equivalent value. *Hahn v. Love*, 321 S.W.3d 517, 526 (Tex.App.—Houston [1st Dist.] 2009) (citations omitted). Clovis has not and cannot meet this burden. Second, Clovis ignores -- and therefore concedes -- that the guaranty clause contained in the Side Letter is invalid. Mot. pp. 23-24.[3] Third, Clovis ignores the kick-back payments of commissions to Clovis member and agent Gaucher from commissions paid to

[2] Clovis' knowledge in this regard supports the equitable subordination of its claim. Helms and Kaelin -- who controlled Vendetta Management -- breached the fiduciary duty of loyalty by purporting to place Clovis' interests above other limited partners'. Clovis knew of preexisting limited partners (to whom fiduciary duties were owed) and that Helms and Kaelin were subordinating those partners' interests to Clovis.

[3] In addition to being voidable under TUFTA, the guaranty clause is also an improper amendment to the Limited Partnership Agreement -- language therein regarding "the guaranteeing of ***indebtedness and other liabilities***," Resp. p. 11 (citing §6.1(a)(ii) (emphasis added)), is inapplicable as to the guaranteeing of ***equity contributions*** -- a separate accounting category than liabilities. *See infra*, §C.

William Brock, who sold Vendetta Partners interests without proper licensing. Mot. pp. 13-14.[4] Finally, Clovis does not deny that -- unlike other investors -- it invested in Vendetta Partners expecting to earn 250% to 300% in ***profits*** -- $4.33 to $5.77 million -- within ***three months***. Mot. p. 5, 26-27; Chapman Depo. 88:15-89:8 (relevant excerpts attached hereto as **Exhibit A**). Extensive case law -- unaddressed by Clovis -- holds that knowing an investment is too good to be true negates the defense of good faith. Mot. p. 27.[5]

C. The Side Letter Security Agreement is Not Valid as an Amendment to the Agreement of Limited Partnership[6]

Clovis blithely asserts that the Side Letter does not amend the Limited Partnership Agreement, Resp. p. 11, notwithstanding the Side Letter's express language to the contrary.[7] Tellingly, Clovis focuses solely on the authority of Vendetta Management to encumber partnership assets, *id*. pp. 11-14, and ignores that numerous Side Letter provisions effectuating the encumbrance of the Ozona Interests therein expressly amend the Limited Partnership

[4] Clovis' knowledge of these payments defeats the affirmative defense of good faith, and establishes that Clovis received more than other limited partners to the extent these payments were actually re-invested by Gaucher. Mot. pp. 19, 25, 27-28.

[5] Clovis' application of the facts in *Smith v. Suarez (In re IFS Fin. Corp.)*, 417 B.R. 419, 445 (Bankr. S.D. Tex. 2009) to the Motion is at best incomplete. Despite the straw man argument advanced by Clovis, Receiver has not asserted Clovis was a Vendetta insider or advisor. The Receiver has asserted (and Clovis has not disputed) that (a) expected returns were too good to be true; (b) the transaction was structured to evade restrictions regarding another secured party; and (c) excessive commissions were paid to a Clovis member. Mot. pp. 25-28. Most importantly, Clovis knowingly received a benefit placing it above other limited partners through the breach of the fiduciary duty of loyalty owed to those limited partners by Helms and Kaelin. *Id*. 29.

[6] Clovis' argument that Exhibit B to the Motion is not authentic is specious. That document was transmitted to Clovis by email from Robert Helms during negotiations with Clovis (Doc. #95-1 p. 39) and, despite the selective recollection displayed by Clovis' members at deposition, was reviewed by Clovis prior to investing in Vendetta Partners. Chapman Depo. 30:2-6, 51:11-20.

[7] "This Side Letter shall be deemed to be an amendment to the Limited Partnership Agreement and Subscription Agreement, to the extent provided below…." Doc. #95-1 p. 99.

Agreement.[8] *See* Mot. p. 21.[9] The terms of the Side Letter are inextricably intertwined and, because the Side Letter contains no savings or severance clause, the entire agreement is void.[10]

D. Clovis Did Not Exchange Value for the Security Interest or Guaranty[11]

Clovis erroneously equates its equity investment in Vendetta Partners to a liability. Relying on a single conclusory assertion, Resp. p. 21, Clovis claims that the net worth of Vendetta Partners was preserved by the transaction at issue. To the contrary, Clovis purchased an equity share in Vendetta Partners (calculated upon the same formula as equity shares of other limited partners. Mot. p. 16 n.10) which entitled it only to a proportionate share in the profits and losses of the partnership. The security interest and guaranty embodied in the Side Letter represent an increase in the liabilities of Vendetta Partners above and beyond any increase in Vendetta Partners' assets and equity from the Clovis Capital Contribution. The cases cited by Clovis -- each of which involves the securing of a debt liability, and not an equity contribution -- are not applicable to the present facts.[12]

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[8] The Side Letter (a) requires the assignment of ownership rights in partnership assets to a limited partner (requiring amendment of §5.1); (b) permits the accrual of interest on a limited partner's contributed equity (requiring amendment of §3.5); and (c) terminates a limited partner and requires the return of its contributed equity (requiring amendment of §7.4). As stated *supra* at p. 2, n.3, the guaranty of equity contributions requires the amendment of §6.1(a)(ii).

[9] Clovis erroneously asserts that "the Receiver does not contest that Clovis satisfied all the prerequisites … for obtaining and perfecting a security interest." Resp. p. 9. But, as the Receiver has specifically argued, *see* Mot. p. 21 n.13, 22, the attachment of the security interest to the collateral did not occur (and therefore could not be perfected) because the Side Letter is not a valid security agreement and value was not given by Clovis.

[10] *See Sec. Serv. Fed. Credit Union v. Sanders*, 264 S.W.3d 292, 300 (Tex.App.—San Antonio 2008) (citing *In re Kasschau*, 11 S.W.3d 305, 313 (Tex. App.—Houston [14th Dist.] 1999, *no pet*.) (court has authority to sever unenforceable provision from contract only if the parties would have entered into the contract without it).

[11] The issue of the exchange of value is dispositive with regard to (1) the attachment of the purported security interest to the Ozona Interests, *McGrath*, 786 S.W.2d at 756-57; and (2) Clovis' affirmative defense under TUFTA. *Id*. §24.009(a).

[12] *See First Nat'l Bank of Seminole v. Hooper*, 104 S.W.3d 83, 84 (Tex. 2003); *Van Slyke v. Teel*

E. The Receiver Does Not Assert Claims on Behalf of Limited Partners

Clovis' standing argument is a straw man which reflects a complete lack of understanding of the relief sought; it so misses the mark that its inclusion is baffling. The Receiver seeks an Order holding that the Ozona Interests are unencumbered by the documents executed by Clovis and Helms. The authority to seek relief related to the Receivership Assets is wholly contemplated by and provided for in the Orders Appointing Receiver. *See* Docs. #11, 76 at p. 2, ¶¶4, 7(G), (I)-(J), 42, 43. Receiver does not assert claims on behalf of individual limited partners or against Receivership Entities or their former principals. It is inarguable that it is within the Court's discretion to fashion appropriate relief with respect to Receivership Assets. *See* Mot. p. 30-32.[13]

F. Clovis Has Not Demonstrated the Need for Additional Discovery

Clovis has failed to demonstrate how the discovery requested[14] would affect the Receiver's entitlement to the relief he seeks, given its admissions and failures to dispute facts asserted by the Receiver in support of his Motion.[15]

Holdings, LLC, 2010 Tex. App. LEXIS 5551 (Tex.App.—Houston [1st Dist.] July 15, 2010); *In re Gold & Appel Transfer S.A.*, 2013 WL 4824428, at *25 (Bankr. D. Colo. Sept. 6, 2013).

[13] Cases cited by Clovis are wholly distinguishable and illustrative of the claims the Receiver ***does not*** assert. *See Florida Dep't of Ins. v. Chase Bank of Texas Nat'l Ass'n*, 274 F.3d 924 (5th Cir. 2001) (receiver lacked standing to assert claims that Chase defrauded and breached fiduciary duties to policyholders); *Glusband v. Fittin Cunningham Lauzon, Inc.*, 582 F. Supp. 145, 148-49 (S.D.N.Y. 1984) (receiver lacked standing to assert "claims for any damages caused by [investors] being fraudulently induced by defendants to purchase limited partnership interests").

[14] Clovis seeks (a) the identity and investments of other limited partners, (b) to depose Vendetta Management, Helms and Kaelin, and (c) to obtain "relevant documents." Resp. p. 18.

[15] Including without limitation (i) the existence of a Ponzi scheme, (ii) that its investment was too good to be true, (iii) the receipt of kick-backs by Gaucher in excess of amounts disclosed to investors, (iv) the structuring of the transaction to evade restrictions in the Amegy credit facility documents, and (v) that Clovis paid the same amount as other investors relative to its investment but was placed above other limited partners who did not receive security for their equity contributions. *See, generally, supra*.

The Receiver made the present Motion for the very purpose of affording Clovis more time than would have been available to it under the sale confirmation procedures. *See* Doc. #77 ¶8 ("Sale Order"). It is remarkable that Clovis -- contrary to its own interests -- continues to present the utterly pointless argument that, in making the present Motion, the Receiver "disregard[ed] the Court's mandated procedures" before "chang[ing] course and [] comply[ing]" with the Sale Order. It is self-evident that a motion for an Order confirming the sale of Receivership Assets would have been necessary whether or not Clovis had a potential interest or, for that matter, whether Clovis existed. Clovis cannot now be heard to seek protracted proceedings when the Receiver gave it every opportunity to address its contentions through the present Motion. Notably, both the Commission and the Receiver offered to stipulate to Clovis' immediate intervention for the purpose of asserting its claims, which offer -- for reasons but known only to Clovis -- was rejected.[16]

Dated: September 29, 2014

Respectfully submitted,

THE TAYLOR LAW OFFICES, P.C.

By: /s/ Andrew M. Goforth
Andrew M. Goforth

Andrew M. Goforth
Texas State Bar: 24076405
goforth@tltaylorlaw.com

[16] Clovis has failed to seek any discovery from the Receiver or any other party, notwithstanding that it was afforded several weeks of additional notice through the Receiver's filing of the Motion prior to the Receiver moving for the confirmation of the sale of the Ozona Interests. Rather than make any attempt to obtain discovery, Clovis has instead resorted to the filing of procedural motions seeking delay and filing its response papers out of time.

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COUNSEL FOR RECEIVER

CERTIFICATE OF SERVICE

On September 29, 2014, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Western District of Texas, using the electronic case filing system, though which all counsel of record and *pro se* parties have been served.

I further assert that the following non-parties have been served through counsel as listed below:

Via Email, with permission:

Amegy Bank, N.A.
C/O Winstead P.C.
Yasmin Atasi
yatasi@winstead.com
1100 JPMorgan Chase Tower
600 Travis Street
Houston, Texas 77002

Via CM/ECF Notice:

Clovis Capital Ventures, LLC
C/O Nexsen Pruett, LLC
Charles Miller
cmiller@nexsenpruet.com
The Carillon Building
227 W. Trade St. Ste. 1550
Charlotte, North Carolina 28202

/s/ Andrew M. Goforth
Andrew M. Goforth

Exhibit A

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION
CIVIL ACTION NO. 1:13-CV-1036-LY

SECURITIES AND EXCHANGE COMMISSION,
Plaintiff,
-vs-
ROBERT A. HELMS, ET AL.,
Defendants,
and
WILLIAM L. BARLOW, AND GLOBAL CAPITAL VENTURES, LLC,
Relief Defendants, solely for the purpose of equitable relief,

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DEPOSITION OF AVERY CHAPMAN, ESQUIRE
Tuesday, July 15, 2014
10:00 - 2:13 p.m.
505 S. Flagler Drive
Suite 1100
West Palm Beach, Florida 33401

Reported By:
Wendy Beath Anderson, RMR, CRR, CLR
Notary Public, State of Florida
Esquire Deposition Services
West Palm Beach Office Job #168463

APPEARANCES:

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On behalf of the receiver via telephone:

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On behalf of the Witness:

SCOTT G. HAWKINS, ESQUIRE
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I N D E X

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E X H I B I T S

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P R O C E E D I N G S

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Deposition taken before Wendy Beath Anderson, Certified Realtime Reporter and Notary Public in and for the State of Florida at Large, in the above cause.

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MR. HAWKINS: Andrew, this is Scott Hawkins. I just want to say a couple of things preliminarily.

I have a stack of documents that Mr. Chapman has collected relative to your notice and subpoena.

MR. GOFORTH: Okay.

MR. HAWKINS: And so I can produce those to you following the conclusion of today.

I also want to say that, you know, I'm not sure what the scope of your inquiry is going to be, but it is the position of Mr. Chapman that he served relative to the Vendetta matter in an executive capacity and not as legal counsel.

MR. GOFORTH: Okay.

MR. HAWKINS: However, to the extent you make an inquiry of matters where Mr. Chapman may have provided legal services, he will be asserting the attorney-client privilege in that regard and/or the work product immunity. So I want you to understand

attached a draft attachment called "Reasons to Invest."
Do you see that?
A. I do.
Q. Okay. And is the attachment to this e-mail, do you recall the memo that you said was sent to you by Phil Gaucher similar to this memo that's attached to this e-mail?
A. Give me a second here.
You know, I don't presently remember what the Reasons to Invest memo from Bill Brock said that I received, you know, more than 20 months ago or so. This looks familiar, is about the best I can say, and I don't recall what I looked at saying "Draft" in the upper left-hand corner, as this one does.
That's the best I can say about it.
Q. And if I can point you to No. 2 in this draft memo. It states that "The portfolio is being prepared for sale in January of 2013. Estimated exit multiples for the investor at this time is estimated to be 2X. This multiple, in addition to the cash returns, provides an extraordinary IRR for the investment."
Do you see that?
A. I do.
Q. Okay. What do you recall being told regarding the potential return on this investment to Clovis and,

you know, that question for, you know, what you were told by Mr. Gaucher and Mr. Smith and also by what you were told by Janniece and Robert at Vendetta?
A. Sure. At some point prior to the investment, Phil Gaucher told me, and wrote a memo, a lengthy memo, discussing what he thought the return would be for this investment and that it was a short investment, you know, sale in January of 2013.
I believe that that information was echoed or repeated by Janniece Kaelin and Robert Helms and/or Mr. Brock in Austin subsequently before the investment was made.
Q. Okay. And --
A. You know, and Mr. Smith, in discussing the investment with myself and Mr. Gaucher, said that he was attracted to the investment because of the IRR and the quick turnaround, but he wasn't making the representations to me as to what the IRR and the quick turnaround were.
Q. Okay. And the investment memo from Mr. Gaucher that you've mentioned a couple of times, did you receive that from him?
A. Yes. He sent it to myself --
Q. Do you know if that is in the production of documents that you have made today?

A. Yes. He sent that memo to me and Mr. Smith.
MR. GOFORTH: Okay. All right. If I could have Exhibit 23 marked and placed before the witness, please.
(Deposition Exhibit No. 23 was marked for identification.)
BY MR. GOFORTH:
Q. Mr. Chapman, do you have Exhibit 23 in front of you?
A. I do.
Q. Okay. This is one of the e-mails I referenced earlier in which Robert Helms sent to you the limited partnership agreement for Vendetta?
A. Okay. I see the cover e-mail.
Q. Okay. And turning to the attachment, do you recall receiving this document?
A. I do.
Q. And did you review this document?
A. I presently do not have a recollection whether I did or did not.
Q. Well, let's see if we can refresh your recollection. This is the partnership agreement that all investors to the Vendetta partnership are -- well, not all investors signed this agreement, but the subscription agreement I'll show you later states that

by signing this subscription agreement that you're essentially signing this agreement. This agreement lays out the terms of the partnership.
If we can go to page 3. I'll point out the phrase "Majority in interest" to you on page 3, "shall mean one or more partners whose aggregate sharing percentages exceed 50 percent."
Do you recall ever reading that term or learning of that term in regard to the partnership agreement or the terms which the partnership would abide by?
A. No.
Q. Okay. And above that there's definitions for Class A limited partner.
Did you ever have an understanding that the investment into Vendetta by Clovis would be of a Class A limited partner?
A. I'll refer you back to my earlier answer. I do not think I had an understanding as to whether it was Class A or if there were multiple classes.
Q. Okay. Turning to page 4 and the term "sharing percentage" defined in this agreement as numbers found in an exhibit to this document or that, you know, as modified from time to time.
What is your understanding of the sharing

immediately. That's my understanding of the background.
And the sharing ratio calculations on page 3 above in the table which came from Mr. Gaucher somehow -- and I don't recall how -- figured into that analysis by Mr. Gaucher and Mr. Smith.
Q. And you participated in the drafting of this side letter; is that correct?
A. Yes.
Q. Okay. And what was your understanding with regard to whether any prior limited partners had received any sort of guarantee agreement in regard to their capital contributions to the partnership?
A. You asked me a similar question before and my answer was I do not recall whether or not any other partners had any other agreements of this nature.
Q. Okay. And similarly as before, did you ask -- did you ever ask if any other limited partners received similar guarantee agreements as expressed in the side letter?
A. My answer is the same.
Q. Which is?
A. Which is I do not recall.
Q. If we can look at page 5 of C1 and C1 states three lines up that -- oh, I'm sorry, three lines down, that "The pro rata quarterly or royalty distribution

that CCV shall have received prior to full repayment of the capital contribution upon exercise of election to liquidate the mineral rights shall be in lieu of interest paid on the capital contribution and that no other interest upon the capital contribution shall be due."
To what does that refer to when it says, "In lieu of interest paid upon the capital contribution"?
A. I have no present recollection.
Q. Was interest allowed to be paid upon any capital contribution to the limited partners under the subscription agreement or limited partnership agreement?
A. I have no present recollection. Again, I was serving as an executive, not as an attorney here. So if you're asking me what the legal documents allowed or didn't allow, I have no present recollection.
Q. Okay. Do you know if any other limited partners received interest upon their capital contribution?
A. I do not know.
MR. GOFORTH: Okay. If we can place and mark Exhibit 66, please.
(Deposition Exhibit No. 66 was marked for identification.)

MR. GOFORTH: Actually, if I could get five minutes, I think I can get organized here and be able to wrap up after the break.
Is that all right with everyone?
MR. HAWKINS: Sure.
THE WITNESS: Sure.
MR. HAWKINS: Okay. We'll take five minutes.
(Off the record.)
BY MR. GOFORTH:
Q. All right, Mr. Chapman. Back to the side letter for a second, which was 108, what was the purpose of executing that side letter in regard to the investment into Vendetta?
A. That's a very broad question. I'll endeavor to answer it.
The option of a side letter was brought to me by Phil Gaucher, who told me that it was being offered, that is a side letter with a collateralization of some portion of the Vendetta assets, as encouragement or inducement for the investment.
Mr. Gaucher discussed that with me and Mr. Smith. So it was being offered if we wanted it.
Q. Do you know at what point or why it was offered? Was this something that was offered initially in regard to the investment, or was this something that

was offered later? You speak of inducement.
Let me withdraw that poorly worded question and ask you something more simple.
Do you know if the collateralization represented in the side letter was offered initially in regard to a potential investment of Vendetta?
A. I know Philip Gaucher brought it to my attention at some point in time. It probably was not in the first conversation when Philip told me the investment conversation with Doug or the second conversation where Doug and Philip presented the opportunity to me, but sometime thereafter I was made aware that it was offered by Vendetta.
Q. And was it -- let me rephrase that.
Did the side letter add additional terms to the transaction that were not within the private placement memorandum or limited partnership agreement or subscription agreement?
MR. HAWKINS: Objection; vague, calls for a legal conclusion.
THE WITNESS: I don't know. I'll say this --
BY MR. GOFORTH:
Q. What was the purpose of executing the side letter if it did not offer broader terms than in the offering documents that I just referenced?

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A. The context of this was that Philip Gaucher was pushing very, very, very hard for the investment. He had written a memorandum you have not asked me about extolling its virtues.

Mr. Smith thought the investment was a risky but terrific idea, liked the idea of an immediate return, and was really pushing for the investment as well. I was not. This sounded real risky and I was not a big proponent.

I expressed those misgivings to both those gentlemen and sometime thereafter I heard from Mr. Gaucher that this side letter and collateralization construct was being offered again with a push by Mr. Gaucher and enthusiasm by Mr. Smith to proceed with the investment.

Q. Okay. And once the side letter was offered, did you find that the deal was less risky than previously?

A. I always thought the deal was risky and you asked me before if it was risky in light of the side letter. No. I thought the deal was risky and I told Mr. Smith and Mr. Gaucher that in my mind it didn't change it, the risk complexion.

Q. Well, the addition of the side letter didn't make the deal less risky to you?

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MR. HAWKINS: Objection; vague.

MR. GOFORTH: I'm going to object to your answer as nonresponsive because --

MR. HAWKINS: Just restate your question.

THE WITNESS: Just restate your question.

MR. GOFORTH: -- because you thought the deal was more risky --

THE WITNESS: Why don't you restate your question.

BY MR. GOFORTH:

Q. Okay. Was the investment into Vendetta less risky with the inclusion of the side letter?

MR. HAWKINS: Objection; asked and answered, form.

THE WITNESS: I don't think it was less risky.

BY MR. GOFORTH:

Q. Why is that?

A. Well, at best, it marginally was another consideration for the Vendetta general partner to think about in terms of making sure that they closed on time the fund, because then they would have to deal with it.

But as I stated in my earlier answer, the nature of the investment assets, mineral royalties, the timing of the investment coming in, the production -- the productivity or not of the assets, the calculation

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of the sharing ratios, and all of this was explained to me by Mr. Gaucher and Janniece Kaelin and Robert Helms, who you've not asked me about, all of that to me made the investment risky no matter what. And I shared that with Mr. Gaucher and Mr. Smith.

Q. Was it your understanding that there were investors coming in after Clovis?

A. Are you asking me who made that representation or if I had an understanding as to that representation?

Q. I'm asking if you were aware of any investors coming in after closing?

A. I was in the understanding that that fund was continually seeking investors up and to the closing date.

Q. All right. Do you recall how many separate deposits of capital contribution that Clovis made to Vendetta?

A. I believe it was two.

Q. Okay. What is your recollection as to the total amount of capital contribution that was made by Clovis?

A. My present recollection is approximately 2.3 million.

Q. Okay. If we could mark Exhibit 101, please.

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(Deposition Exhibit No. 101 was marked for identification.)

BY MR. GOFORTH:

Q. Okay. This is the 2012 K1 for Clovis that's attached to an e-mail from Chelsey Upshaw at Vendetta to Robert Helms, but that's a forward of an e-mail that was sent to Mr. Chapman and Mr. Gaucher.

Do you see that on the first page e-mail?

A. If I'm reading this right, it looks like on Tuesday, September 17th, 2013, at 2:17 a.m., I and Phil Gaucher were sent a K1 by Chelsey Upshaw and then on the top of this it looks like Chelsey Upshaw, at 2:38 a.m., forwarded the e-mail she sent to myself and Mr. Gaucher.

Am I reading that right?

Q. Yes, forwarded it to Mr. Helms.

A. To Mr. Helms, yeah, Robert Helms, one of the principals of Vendetta.

Q. And so if we can go to the first page of the tax form at the bottom. It's under box L. It states, "Capital contributed during a year." It's 2.33 million. Is that in line with your recollection of the capital contribution that Clovis made in 2012?

A. Approximately. I don't have the exact numbers, but I said 2.3, you're saying it's 30,000 more. So there's your answer.