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-ML
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 MOTIONS (1) FOR ENTRY OF ORDER CONFIRMING SALE OF CERTAIN OIL AND GAS INTERESTS; AND (2) FOR APPROVAL OF SETTLEMENT WITH AMEGY BANK

Thomas L. Taylor III, Court-appointed Receiver[1] in the above-styled action, respectfully files this Reply in Support of his Motions (A) for Entry of Order Confirming Sale of Certain Oil and Gas Interests of Receivership Estate (Doc. #110) (the "Confirmation Motion") and (B) for Order Approving Settlement with Amegy Bank, N.A. (Doc. #88) (the "Amegy Motion").[2]

[1] Capitalized terms not defined herein have the same meaning as in the Confirmation Motion.

[2] Clovis' opposition to the Confirmation Motion and Amegy Motion (Doc. #127-2) (the "Opposition") is filed as Exhibit B to Clovis' second Motion to Intervene (Doc. #127). Receiver incorporates by reference herein his Response in Opposition to Clovis' first Motion to Intervene. Doc. #106. The Receiver and the Securities and Exchange Commission (the "Commission") each have offered to stipulate to Clovis' intervention for the limited purpose of asserting its claimed secured interests in the Ozona Interests, *see* Docs. #105, 106, which offer Clovis has declined.

The Receiver also incorporates by reference herein his 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 "Clovis Motion") and his Reply in Support thereof (Doc. # 119).

I.
THE SALE OF THE OZONA INTERESTS WAS CONDUCTED PURSUANT TO PROCEDURES ORDERED BY THIS COURT AND SHOULD BE CONFIRMED

A. Clovis improperly objects to the Sales Procedures themselves, not the sale of the Ozona Interests by the Receiver pursuant to the Sales Procedures

The sale of the Ozona Interests was conducted pursuant to the notice and sales procedures proposed by the Receiver, *see* Doc. #69 ("Sales Motion"), and, following a hearing held May 27, 2014 (*see* Doc. #74), approved by Court Order. *See* Doc. #77 ("Sales Order").[3] No opposition to the Sales Motion was filed with this Court -- whether by Clovis or any other party or non-party. Clovis now asserts for the first time -- more than four months after the Sales Order was entered -- that the Sales Procedures approved therein are "inadequate." Opposition, Doc. #127-2 pp. 7-8 (citations to pages in the Opposition refer to the CM/ECF header for Doc. #127-2).[4] Clovis' opposition to the Sales Procedures should be disregarded and the sale of the Ozona Interests confirmed.

Clovis offers no legal basis whatsoever for its objections to the Sales Procedures, and no explanation as to why the Court should revisit its prior order. *See id*. Clovis does not assert that the Court abused its broad discretion sitting in equity and supervising an equity receivership,[5]

[3] The procedures contained in the Sales Order are referred to herein as the "Sales Procedures."

[4] The Opposition also contains an impermissible sur-reply to the Receiver's Reply in Support of the Clovis Motion, Opposition p. 4 (Opposition an "additional response to the Receiver's reply in support of the Receiver's Motion"), in violation of the Local Rules of the Western District of Texas. *See* LR.CV-7(f)(1) ("A party may file a reply in support of a motion. Absent leave of court, no further submissions on the motion are allowed."). Clovis addresses issues in the Opposition which it failed to raise in its Response to the Clovis Motion, including the validity of the guaranty clause in the Side Letter, and newly requested discovery. Clovis also attempts to rebut assertions made by the Receiver in his Reply in Support of the Clovis Motion. Opposition pp. 7-8. These arguments should be stricken or otherwise disregarded.

[5] Federal courts "have inherent equitable authority to issue a variety of 'ancillary relief' measures in actions brought by the SEC to enforce the federal securities laws." *SEC v. Wencke*, 622 F.2d 1363, 1369 (9th Cir. 1980); *see also SEC v. Safety Fin. Serv.*, 674 F.2d 368, 372 – 73 (5th Cir. 1982) (discussing *Wencke*). This authority "derives from the inherent power of a court of equity

nor does Clovis assert that the Court lacked the authority to modify requirements in 28 U.S.C. §§2001 and 2002, which modifications are embodied in the Sales Procedures. The Court appropriately exercised its authority in fashioning the relief sought by the Receiver with regard to the sale of oil and gas-related assets of the Receivership Estate, and Clovis' belated opposition should be disregarded.

B. The Sales Procedures establish the market value for the Ozona Interests and the Court should not decline to confirm the sale based upon unverified assertions of the Ozona Interests' value by Clovis

The Sales Procedures provide for the targeted notice of the sale of Receivership Assets to a large group of potential buyers in the energy industry and, through the sealed-bid auction process on EnergyNet's website, adequately ensure that Receivership Assets will sell for fair market value. As stated in the Confirmation Motion, notice of the sale of the Ozona Interests was published numerous times by Hart Energy, an industry publication, and provided to potential buyers by EnergyNet. Confirmation Motion pp. 4-5. The "data room" on the EnergyNet website opened to the public on or about July 25, 2014 -- approximately seven weeks before the end of the auction window -- and was visited by 477 unique users. *Id*. pp. 3, 4. Accordingly, Clovis' assertion that more time should have been afforded to potential buyers to review and bid on the Ozona Interests is specious. *See* Opposition p. 8. Clovis offers no support for its conclusory contention that the Sales Procedures did not adequately establish the market value for the Ozona Interests.[6]

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to fashion effective relief." *Wencke*, at 1369.

[6] Clovis' request for discovery related to the internal valuation of the Ozona Interests by the Receiver's retained personnel and documents and communications related to the offer and sale of the Ozona Interests should be denied. The Sales Procedures resulted in nearly 500 potential buyers viewing due diligence information on the Ozona Interests and 21 such parties placed 60 bids during the auction. Confirmation Motion p. 4. Permitting discovery with regard to the minimum reserve bid price (which was exceeded) and the auction participants would not alter the

Rather, Clovis relies on valuations of the Ozona Interests from its own internal investment memorandum (Doc. #95-1, Exh. 1(M)) and a document purportedly generated by Scott Marshall and supplied to it recently by Defendant Helms.[7] Opposition p. 7. While it is notable that Helms and Clovis are once again colluding in an effort to benefit Clovis at the expense of Vendetta Partners' other investors, Clovis offers no context or support for its assertion that these valuations establish the existence of purchasers willing to pay millions of dollars in excess of those who participated in the EnergyNet auction. In fact, contrary to Clovis' assertions, it received a valuation of the Ozona Interests from Scott Marshall on November 26, 2012 (four days before Clovis' first contribution of capital to Vendetta Partners) valuing the Ozona Interests at approximately $1.7 million, the equivalent of ten years of the average monthly cashflow generated in 2011. *See* **Exhibit A**, Declaration of Andrew M. Goforth, **Exhibit 1**. Clovis' assertion that the sale of the Ozona Interests should not be confirmed because the winning bid sale price is inadequate should be disregarded, and the sale confirmed.

II.
THE COURT SHOULD DECLINE TO ENTERTAIN CLOVIS' OPPOSITION TO THE PROPOSED SETTLEMENT BETWEEN THE RECEIVER AND AMEGY BANK

Clovis seeks to intervene in this case and implores the Court not to approve the

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fact that the Ozona Interests sold for what buyers in the marketplace were willing to pay. The costs of conducting such unnecessary discovery would burden the Receivership Estate to the detriment of Estate claimants and potentially expose the Estate to such costs for each sale of Receivership Assets going forward.

[7] Helms has failed and refused to respond to demands of the Receiver that he produce all Receivership Records and other relevant documents and tangible things in his possession, custody and control pursuant to subpoena (*see* Exhibit 1 to Helms Depo.; excerpts and exhibits of which are attached hereto **Exhibit A**, Declaration of Andrew M. Goforth, **Exhibit 2**) and the Orders Appointing Receiver (Docs. #11, 76). Helms asserts that all such documents are in the Vendetta offices (*see, e.g.*, Helms Depo., 10:2-11:1, 13:11-24), or otherwise would be produced electronically. *Id*. 255:22-256:16. To date, the only production Helms has made to the Receiver is the turnover of credit and debit cards for frozen accounts of Receivership entities. *See, e.g.*, *id*., 9:24-10:1.

Receiver's proposed settlement with Amegy because it "disputes Amegy Bank's 'assert[ion] [of] the priority of its claim as to all other creditors and investors of the Receivership Estate.'" Opposition p. 11. However, Clovis fails to assert any legitimate reason that it would have a security interest ahead in priority of that asserted by Amegy.[8]

Clovis relies solely upon a specious and disingenuous assertion of ignorance with regard to Vendetta Partners' credit facility with Amegy. Clovis would have this Court believe -- based upon a single email in which a Clovis member does not identify Amegy as the supplier of the Vendetta Partners credit facility -- that Clovis was unaware of any potential secured interest of Amegy in Vendetta Partners' assets. The absurdity of Clovis' assertion of ignorance is belied by the numerous disclosures of the Amegy credit facility in the Vendetta Partners offering memorandum. *See* Doc. #95-1, pp. 9, 16, 22, 23. Clovis received these offering documents prior to subscribing to the Vendetta Partners offering. *See id.*, p. 7. Defendant Helms also supplied Clovis with the Amegy credit facility transactional documents. Helms Depo., 135:6-9.[9] Moreover, it is inconceivable that the "extensive" due diligence purportedly conducted by Clovis into the Vendetta Partners offering (*see* Doc. #113, p. 4) would not uncover a multi-million dollar credit facility (which was disclosed in the offering memorandum). Accordingly, and for the reasons set forth in the Amegy Motion, the Court should disregard Clovis' opposition to the Amegy settlement and enter an Order approving same.

[8] Clovis' assertion that the sale price of the Ozona Interests bears any relation to its objection to the proposed Amegy settlement is nonsensical to say the least. Opposition p. 12 n.11. The Receiver gave notice of the Amegy Motion by posting it on the Receivership Estate website shortly after it was filed -- which method of notice had been communicated to all potential claimants at the inception of the Receivership.

[9] Previously filed excerpts of Defendant Helms' deposition are located at Doc. #95-1, pp. 170-178 (Exh. 1(N)).

Dated: October 6, 2014

Respectfully submitted,

THE TAYLOR LAW OFFICES, P.C.

By: /s/ Andrew M. Goforth
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COUNSEL FOR RECEIVER

CERTIFICATE OF SERVICE

On October 6, 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* Defendants have been served, electronically or by other means.

I further assert that the following have been served as listed below:

Via Email, with permission:

William Barlow; Global Capital Ventures, LLC
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/s/ Andrew M. Goforth
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