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. 1:14-cv-965-LY-ML
PHILIP E. GAUCHER,	§	
Defendant.	§	

RECEIVER'S FIRST AMENDED COMPLAINT AGAINST PHILIP E. GAUCHER[1]

I.
SUMMARY

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

[1] Receiver files this First Amended Complaint as a matter of course pursuant to Fed. R. Civ. P. 15(a)(1)(B) ("A party may amend its pleading once as a matter of course within … 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier"). Gaucher filed a motion under Rule 12(b) on December 22, 2014. Doc. 12.

"Enforcement Action"). *See* Enforcement Action Docs. 11, 76 (hereinafter cited as "EA Doc. _") (the "Orders Appointing Receiver").[2]

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

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

4. The Receiver's investigation has further uncovered that assets of the Vendetta Defendants, including without limitation Vendetta Partners and Barefoot Minerals, were routinely conflated and comingled by and at the direction of Helms and Kaelin; these entities were inextricably intertwined and operated by Helms and Kaelin as a single fraudulent enterprise. On April 23, 2014, the Receiver filed a Motion to Amend the Order Appointing Receiver (EA Doc. 60). The Receiver's Motion was supported by the affidavit of Danielle

[2] Citations to the Orders Appointing Receiver refer to pages and paragraphs in Doc. 76. Citations to page numbers of documents on the docket of the Enforcement Action refer to page numbers in the Court's CM/ECF header.

Supkis Cheek (EA Doc. 60-2, incorporated herein by reference), president of D. Supkis Cheek PLLC ("DSC PLLC"), the forensic accounting firm engaged by the Receiver to review and analyze the books and records of the Vendetta Defendants. Upon evidence of the extensive comingling and conflation of funds in accounts of the Vendetta Defendants -- including without limitation Vendetta Partners and Barefoot Minerals -- this Court entered its First Amended Order Appointing Receiver (EA Doc. 76), pursuant to which the Court ordered that the estates of the various Vendetta Defendants be treated as a single Receivership Estate. *See id*.

5. The Receiver's investigation to date, and analysis by DSC PLLC,[3] also reveal that the fraudulent scheme perpetrated by Helms and Kaelin through the Vendetta Defendant entities was a Ponzi scheme, in which later investors' subscription proceeds were used to make partnership distributions to earlier investors. Moreover, this Court issued its *ex parte* Temporary Restraining Order (EA Doc. 10) (the "TRO") against all Vendetta Defendants upon evidence and allegations by the Commission that Helms and Kaelin were operating a Ponzi scheme. *See* EA Doc. 3 p. 2; EA Doc. 4 pp. 5-7, 13-18. Based upon such evidence, this Court held that good cause existed "to believe that investor funds and assets obtained by the [Vendetta] Defendants from the unlawful activities described in the Commission's Complaint," including the allegations that Helms and Kaelin fraudulently offered Vendetta Partners, Vesta Partners and Iron Rock Partners securities, and operated the Vendetta Defendants as a Ponzi scheme, "have been misapplied and will be misappropriated, hidden, wasted, or otherwise used to the detriment of investors," and that good cause existed "to believe that the [Vendetta] Defendants [did] not have sufficient funds or assets to satisfy the relief that might be ordered in this action." TRO ¶3.

[3] *See, e.g.*, Doc. 95-2 (incorporated herein by reference).

6. Defendant Philip E. Gaucher, along with partners Douglas Smith ("Smith") and Avery Chapman ("Chapman"), formed Clovis Capital Ventures, LLC ("Clovis"), a Florida limited liability company, for the purpose of subscribing to the Vendetta Offering. Gaucher was a member of Clovis through an entity he controlled, Cambrian Royalties, LLC, a Florida limited liability company ("Cambrian Royalties").

7. Gaucher conducted "extensive due diligence" on the Vendetta Offering on behalf of Clovis, "serving as the financial analyst." EA Doc. 113, p. 4. Gaucher received the Vendetta Partners PPM (*see* **Exhibit A** attached hereto, p. 5-35), the Vendetta Partners Agreement of Limited Partnership ("Partnership Agreement") (*see* **Exhibit B** attached hereto, p. 47-83), and the Vendetta Partners Subscription Agreement (*see* Exh. A p. 36-46). Gaucher also received marketing materials, engineering reports, and other documents and information regarding Vendetta Partners and its assets. *See, e.g.*, Exh. A p. 95-102. Gaucher's due diligence efforts resulted in a seven page "Investment Memorandum" regarding the Vendetta Offering, which Gaucher drafted. See **Exhibit C** attached hereto. Gaucher, in the Investment Memorandum, stated that the Clovis subscription to the Vendetta Offering could result in a return on invested capital of 250% to 300% or more (*i.e.*, **profits** of $4.33 to $5.77 million, or more) in a time frame of approximately three months. *Id*. p. 2.

8. Clovis subscribed to the Vendetta Offering in or about November of 2012. Clovis invested approximately $2,885,000 with Vendetta Partners between November of 2012 and January of 2013. Vendetta Partners transferred to Gaucher a commission of 3% of the funds invested by Clovis -- by definition, impermissible under the Vendetta Partners PPM's disclosures -- totaling approximately $86,565.

9. Additionally, Gaucher marketed the Vesta Offering and the Iron Rock Offering. Gaucher was not licensed to market these Offerings. With respect to the marketing of the Iron Rock Offering, Gaucher received transfers from Barefoot Minerals totaling approximately $76,000.

10. Through this lawsuit, the Receiver seeks the return of the $162,565 transferred from Helms' and Kaelin's Ponzi scheme to Gaucher in order to make an equitable distribution to the claimants of the Receivership Estate. The Receiver's investigation is continuing, and should additional payments from the Vendetta Defendants to Gaucher be discovered, the Receiver will amend this Complaint to assert claims for the return of such additional payments.

11. At all times relevant to this Complaint, and the transfers made to Gaucher as alleged herein, the Vendetta Defendants were insolvent, and Helms and Kaelin operated the entity Vendetta Defendants -- including without limitation Vendetta Partners and Barefoot Minerals -- as a single fraudulent enterprise in furtherance of their Ponzi scheme. Accordingly, each transfer made to Gaucher was made with actual intent to hinder, delay or defraud creditors of the Vendetta Defendants. Accordingly, the transfers to Gaucher are avoidable as fraudulent transfers under the Texas Uniform Fraudulent Transfer Act, TEX. BUS. & COM. CODE ANN. §§24.001, *et seq*. ("TUFTA").

12. Consequently, the burden is on Gaucher to establish an affirmative defense, if any, of good faith and provision of reasonably equivalent value. *See* TUFTA §25.009(a); *Scholes v. Lehmann*, 56 F.3d 750, 756-57 (7th Cir. 1995) ("If the plaintiff proves fraudulent intent, the burden is on the defendant to show that the fraud was harmless because the debtor's assets were not depleted even slightly.").

13. Gaucher did not provide reasonably equivalent value for the transfers he received from Vendetta Partners and Barefoot Minerals. Gaucher performed no services in exchange for these transfers. To the extent any action taken by Gaucher with respect to these transfers could be considered a "service," such "services" were in furtherance of the Vendetta Ponzi scheme and conferred no value upon the Receivership Estate. Pursuant to holdings of the U.S. Court of Appeals for the Fifth Circuit, services provided in furtherance of a Ponzi scheme do not constitute reasonably equivalent value as a matter of law. See *Warfield v. Byron*, 436 F.3d 551, 560 (5th Cir. 2006) ("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.").

14. Gaucher did not receive the transfers from Vendetta Partners and Barefoot Minerals with objective good faith. See *Warfield*, at 559-560 (good faith is determined under an "objectively knew or should have known" standard). Through his due diligence efforts as a member of Clovis, and his conduct in marketing the Vesta and Iron Rock Offerings, Gaucher knew, or should have known, the following:

a. that the Vendetta Partners PPM limited total Promotional Expenses for the Vendetta Offering to 0.1% of proceeds raised in the Vendetta Offering, and that the 3% commissions paid by Vendetta Partners to Gaucher, and the 3% commissions paid to William J. Brock ("Brock"), for the Clovis subscription to the Vendetta Offering each violated the terms of the Vendetta Partners PPM;

b. that, through his Clovis due diligence activities and his marketing of the Vesta and Iron Rock Offerings, the purported security interest and guaranty obtained by Clovis from Helms and Kaelin through the Side Letter Security Agreement (the "Side

Letter") and related documents were not terms offered to other Vendetta Partners investors through the PPM and Partnership Agreement and that security interests were not offered to investors in the Offerings;

c. that Vendetta Partners had a credit facility with Amegy Bank, N.A. ("Amegy"), which was disclosed in the Vendetta Partners PPM, and that the Clovis subscription to the Vendetta Offering as amended by the Side Letter was structured in a specific manner to evade restrictions placed on Vendetta Partners by its credit facility with Amegy and to prevent Amegy and other limited partners from learning of the security interest purportedly given to Clovis by Helms and Kaelin;

d. that the 250% to 300% (or higher) return on invested capital anticipated by Clovis (as stated by Gaucher in his Investment Memorandum) through its subscription to the Vendetta Offering was too good to be true; and

e. that the $76,000 that Helms and Kaelin transferred to him related to the marketing of the Iron Rock Offerings came from Barefoot Minerals, an entity for which he performed no services whatsoever.

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

II.
THE PARTIES

16. Plaintiff **Receiver** has been appointed by this Court in the Enforcement Action as the Receiver for the Vendetta Defendants. *See* EA Docs. 11, 76. The Receiver is asserting the

claims contained herein solely in his capacity as Court-appointed Receiver for the Vendetta Defendants.

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

III.
JURISDICTION AND VENUE

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

19. Within 10 days of the entry of the First Amended Order Appointing Receiver (EA Doc. 76), the Receiver filed the Commission's Complaint and the Order Appointing Receiver in the United States District Court for the Southern District of New York pursuant to 28 U.S.C. § 754, giving this Court *in rem* and *in personam* jurisdiction in such district, and any other District where the Complaint and Order have been filed.

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

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

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

IV.
STATEMENT OF FACTS

The Enforcement Action and Appointment of the Receiver

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

24. Contemporaneously with the TRO, this Court entered an Order Appointing Receiver (EA Doc. 11), appointing Thomas L. Taylor III as equity Receiver for the Vendetta

Defendants. This Court directed the Receiver to take control and possession of, to operate the Receivership Estate, and to perform all acts necessary to conserve, hold, manage and preserve the value of the Receivership Estate. Upon motion by the Receiver (EA Doc. 60), through which the Receiver established that Helms and Kaelin operated the Vendetta Defendants as a single fraudulent enterprise and routinely comingled the assets of the Vendetta Defendants -- including assets of Vendetta Partners and Barefoot Minerals -- this Court entered the First Amended Order Appointing Receiver (EA Doc. 76). Pursuant to the First Amended Order Appointing Receiver the Court ordered that the estates of the various Vendetta Defendants be treated as a single Receivership Estate.

25. Through the Orders Appointing Receiver, the Receiver is authorized, empowered and directed to investigate the manner in which the financial and business affairs of the Vendetta Defendants were conducted and, as necessary and appropriate, institute legal proceedings for the benefit and on behalf of the Receivership Estate. *Id*. ¶42. Such proceedings include, *inter alia*, seeking the imposition of constructive trusts, disgorgement of profits, asset turnover, and avoidance of fraudulent transfers. *Id*.

26. Through his investigation into the manner in which the financial and business affairs of the Vendetta Defendants were conducted, the Receiver has discovered that Defendant Gaucher received transfers of funds from the Vendetta Defendants which are avoidable as fraudulent transfers under TUFTA. Defendant Gaucher was also unjustly enriched by these transfers of funds from the Vendetta Defendants to the detriment of claimants upon the Receivership Estate.

The Vendetta Fraudulent Ponzi Scheme

The Vendetta Offering

27. Vendetta Defendants Helms and Kaelin controlled Vendetta Partners through its general partner Vendetta Management. Helms and Kaelin owned 100% of Vendetta Management. Through Vendetta Partners, Helms and Kaelin offered limited partnership interests to the investing public pursuant to the Securities Act of 1933 (15 U.S.C. §§77 *et seq.*) and Regulation D thereunder (17 C.F.R. §§ 230.501 *et seq.*). The Vendetta Offering began in early 2010.

28. The Vendetta Offering was effectuated through the Vendetta Partners PPM. *Id*. Limited partners subscribed to the Vendetta Offering through a Subscription Agreement. *See* Exh. A p. 36-46. Pursuant to the express terms of the Vendetta Partners Subscription Agreement, the execution of that agreement also constituted an execution of the Partnership Agreement, which bound all partners. *Id*. p. 41.

29. Through the Vendetta Partners PPM, Vendetta Partners represented to potential investors that proceeds raised in the Vendetta Offering would be applied as follows (Exh. A p. 21):

	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%

30. In reality, Helms and Kaelin did not use 99.14% of proceeds raised to purchase royalty interests. The Receiver's investigation has uncovered that across all entity Vendetta

Defendants, there was an increase of approximately $17,675,000 in mineral interest assets in accounting records (on top of the initial beginning balance of mineral interest assets at the formation of Vendetta Partners). Approximately $34,000,000 of cash inflows were made from investors to the entity Vendetta Defendants subsequent to initial equity balances at the formation of Vendetta Partners. Even assuming all mineral interests purchased are legitimate, only 52% of investor funds raised by the entity Vendetta Defendants were used for the purchase of mineral interest assets. *See* Doc. 95-2 p. 4 n.3.

31. Helms and Kaelin also failed to disclose to investors that they would misappropriate millions of dollars including for the payment personal expenses from the Vendetta Defendants by paying those amounts to themselves, or on behalf of themselves (and their family and close confederates). *See id*. p. 6-7, ¶13(f), Graphic 1.

32. Helms and Kaelin also extravagantly compensated unlicensed "brokers" who were not registered with FINRA or any other regulatory organization for the sale of Vendetta Partners securities. These "brokers" were paid commissions ranging from 3% to 6% or more for recruiting investors into the Ponzi scheme. These commissions far exceeded the representations in the Vendetta PPM that "Promotional Expenses" would not exceed 0.1% of proceeds raised in the Vendetta Offering. Payments to these unlicensed "brokers" from the Receivership entities exceeded $2,000,000, Doc. 95-2 ¶21, an amount 40 times greater than the maximum amount permitted if the Vendetta Offering had reached its $50,000,000 limit.

33. William J. Brock was a limited partner of Vendetta Partners and a "co-founder" and principal of the Iron Rock Management executive team (along with Helms, Kaelin and others). Brock was also compensated for recruiting investors into the Vendetta Defendants'

fraudulent scheme. Brock was not associated with a FINRA registered broker-dealer in connection with his offer and sale of Vendetta Offering securities.

The Vesta and Iron Rock Offerings

34. In addition to Vendetta Partners, Helms and Kaelin sought to continue their scheme through Vesta Partners and Iron Rock Partners. In or about late 2011, Helms and Kaelin sought to raise additional proceeds to finance the purchase of certain oil and gas-related assets through Vesta Partners, formed in February 2012. Helms and Kaelin effectuated the Vesta Offering pursuant to the Vesta Partners PPM. See **Exhibit D** attached hereto, p. 3-55. Similarly to the Vendetta Offering, Brock marketed the Vesta Offering to potential investors.

35. Brock also recruited Gaucher to market the Vesta Offering. Gaucher agreed to market $100 million of the $300 million Vesta Offering in or about February 2012. *See* **Exhibit E** attached hereto. Gaucher marketed the Vesta Offering over the telephone and by email to numerous parties from, without limitation, January through May of 2012. *See* **Exhibit F** attached hereto, Exh. D. Gaucher was not licensed to market the Vesta Offering. *See* **Exhibit G** attached hereto. In marketing the Vesta Offering, Gaucher distributed the Vesta Partners PPM, Powerpoint presentations and other documents promoting investment into the Vesta Offering. *See* Exh. F.

36. By late 2012, the contemplated transaction for the purchase of certain oil and gas-related assets by Vesta Partners failed to occur. The principals of Vesta Partners discontinued the Vesta Offering. In its place, certain principals of Vesta Partners (including Helms, Kaelin and Brock) created Iron Rock Partners in January of 2013 and thereafter began to market the Iron Rock Offering. Iron Rock Partners represented that it would engage in business activities equivalent to those of Vendetta Partners -- namely the purchase of oil and gas-related interests with proceeds raised from limited partners.

37. In or about April 2013, Gaucher agreed to market the Iron Rock Offering in exchange for $75,000 and a 6% commission for all newly introduced capital to Iron Rock Partners, including any capital "rolled over" by Clovis from Vendetta Partners to Iron Rock Partners. *See* **Exhibit H** attached hereto.

38. At the commencement of the Enforcement Action and the appointment of the Receiver, only one investor had subscribed to the Iron Rock Offering, with an investment of $500,000. That investor was recruited into the Iron Rock Offering by Brock. Helms and Kaelin misappropriated the proceeds raised in the Iron Rock Offering, including transferring approximately $275,000 in investor funds from Iron Rock Partners to Barefoot Minerals between June 27 and August 2, 2013. *See, e.g.*, Doc. 60-2 p. 5 Table 1.

The Vendetta Ponzi Scheme

39. The term Ponzi scheme "typically describes a pyramid scheme where earlier investors are paid from the investments of more recent investors, rather than from any underlying business concern, until the scheme ceases to attract new investors and the pyramid collapses." *Janvey v. Democratic Senatorial Campaign Comm., Inc.*, 712 F.3d 185, 189 (5th Cir. 2013).[4] 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

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

requirements." *Bear, Stearns Sec. Corp. v. Gredd (In re Manhattan Inv. Fund Ltd.)*, 397 B.R. 1, 12 (S.D.N.Y. 2007).

40. In legitimate investment vehicles, equity distributions to investors are typically made from cash flows generated from operations. However, the accumulated losses of the entity Vendetta Defendants show that their operations were not funding distributions. Additionally, cash reserves of the entity Vendetta Defendants were always relatively low, and could not have been a source of distributions to investors. The only remaining source of funds with which to pay distributions to investors was equity cash inflows from more recent investors, which is consistent with a Ponzi scheme. *See* Doc. 95-2 ¶¶11, 12.

41. Helms and Kaelin obfuscated their fraudulent scheme through the conflation and comingling of funds between and among the entity Vendetta Defendants, including Vendetta Partners and Barefoot Minerals. Over 4,500 discrete transactions have been identified in the QuickBooks files and banking records of the Vendetta Defendants representing related-party movements of funds and showing a continuous flow of funds among and between, and on behalf of, the entity Vendetta Defendants and Helms and Kaelin. *See* Doc. 60-2 ¶7; Doc. 95-2 ¶6. For example, from January 1, 2010 through December 3, 2013:

a. The following Vendetta Defendants received gross cash inflows from other Vendetta Defendants in the following approximate amounts: Vendetta Partners ($3,560,000); Vendetta Management ($7,162,000); Barefoot Minerals ($943,500); Haley Oil ($120,100); Iron Rock Partners ($35,270.00); Technicolor Minerals ($2,820,000); and Helms and Kaelin ($3,454,000 to $3,624,000). Over $590,000 was transferred to Barefoot Minerals from Vendetta Partners and Vendetta Management. *See* Doc. 60-2 p. 5, 6 Tables 1, 2.

b. The following Vendetta Defendants transferred gross cash outflows to other Vendetta Defendants in the following approximate amounts: Vendetta Partners ($8,650,000 to $9,675,800); Vendetta Management ($2,670,000); Barefoot Minerals ($2,809,000); Haley Oil ($1,130,000 to $2,155,000); Iron Rock Partners ($280,000); Technicolor Minerals ($1,340,000); and Helms and Kaelin ($2,050,000 to $2,100,000). Over $2,000,000 was transferred to Vendetta Partners from Barefoot Minerals. *Id*. p. 7, 8 Tables 3, 4.

c. Between June 27 and August 2, 2013, approximately $275,000 in investor funds was transferred from Iron Rock Partners to Barefoot Minerals.

42. The net effect of these transfers among and between the Vendetta Defendants calculates to negative $2,751,545.40; however, these transfers should net out to $0 under proper documentation. Doc. 60-2 p. 9 Table 5, ¶8. Moreover, these numbers reflect only inter-company transfers -- they do not include expenditures improperly made by Vendetta Defendants for the personal use or benefit of Defendants Helms and Kaelin (and their associates and family members). *Id*. ¶9.

43. The books and records of Barefoot Minerals show net transfers between it and the other Vendetta Defendants from January 1, 2010 through December 3, 2013 in the following approximate amounts (*Id*. p. 9 Table 5):

Vendetta Defendant	**Approximate Amount of Net Transfers to (from) Barefoot Minerals**
Vendetta Partners	(1,711,000)
Vendetta Management	(49,000)
Haley Oil	17,000
Iron Rock Partners	241,000

Vendetta Defendant	**Approximate Amount of Net Transfers to (from) Barefoot Minerals**
Iron Rock Management	(1,000.00)
Technicolor Minerals	(96,000)
Helms/Kaelin	(280,000)
TOTAL	(1,880,000)

44. Helms and Kaelin also used Barefoot Minerals to funnel investor funds used to purchase mineral interest assets on behalf, or for the benefit, of Haley Oil, a Receivership entity owned and controlled by Helms and Kaelin.[5] In or about October 2010 and April 2011, Helms and Kaelin raised funds from investors which they represented would be used to purchase oil and gas interests in Illinois (the "Haley Properties").

45. These investors wired $503,000 on or about September 27, 2010 to accounts of Barefoot Minerals as the purchase price for the first set of Haley Properties. Helms and Kaelin transferred approximately $450,000 on or about October 1, 2010 for the first purchase of Haley Properties. Doc. 60-2 p. 12 Table 6. After the purchase, Helms represented to these investors that their funds only purchased a 60% override and that Haley Oil had purchased the remaining 40% as a working interest. In reality, Haley Oil (Helms and Kaelin) did not supply any funds to the purchase, and misappropriated the balance of $53,000 supplied by the investors.

46. In April 2011, Kaelin represented to these same investors that the purchase price for the balance of the Haley Properties to be purchased was $2,100,000, that their share of the purchase was $1,800,000 and that Helms and Kaelin would be supplying the balance of $300,000. Investors wired $1,800,000 on or about April 5, 2011 to accounts of Barefoot

[5] Helms and Kaelin also regularly laundered funds through Haley Oil in perpetrating their Ponzi scheme. *See, e.g.*, ¶¶47-51, *infra*.

Minerals. In reality, the purchase price was $1,800,000 and Helms and Kaelin did not supply any funds to the purchase. Doc. 60-2 p. 12 Table 6. Nonetheless, Helms and Kaelin placed an interest in approximately 40% of the revenues generated by these Haley Properties in the names of Haley Oil and Barefoot Minerals -- notwithstanding that the Haley Properties were purchased entirely with investor funds.

47. Additionally, Helms and Kaelin did not disclose their ownership and control of Haley Oil to the investors who funded the Haley Properties purchase, and actively concealed their affiliation with Haley Oil from these investors. Additionally, utility accounts (including electricity accounts) for the benefit of Haley Oil's operations of the Haley Properties were opened in the name of, and paid by, Barefoot Minerals.

48. Helms and/or Kaelin also transferred approximately $50,000 from Barefoot Minerals accounts in an apparent payment of debt on behalf of Kaelin in or about May 2013. Doc. 60-2 p. 12 Table 6. Additionally, in or about April 2013, Helms and/or Kaelin paid approximately $50,000 from Barefoot Minerals accounts for commissions on mineral acquisitions in Louisiana and Texas, which on information and belief did not occur. *Id*. In or about November 2011, Vendetta Partners also made transfers of approximately $500,000 related to mineral interest assets held by Technicolor Minerals and Barefoot Minerals, apparently to refund purchases made by outside entities through Kaelin for $400,000; these transfers were approximately $100,000 in excess of the purchase price being refunded. *Id*.

49. Helms and Kaelin further attempted to conceal the origin of Vendetta Offering proceeds used to make Ponzi-payments of quarterly distributions to limited partners by laundering the proceeds through other entities -- Helms and Kaelin directed the circular transfer of such proceeds from Vendetta Partners and, eventually, back to Vendetta Partners. These

transfers were wrongly identified in the Vendetta Partners accounting records as purchases of, and income from, oil and gas royalty interests. *See, e.g.*, Doc. 95-2 ¶19.

50. Numerous examples of transactions in the books and records of the Vendetta Defendants support the conclusion that new investor funds were paid to existing investors. In August of 2011, a withdrawal was made from a Vendetta Partners bank account in the amount of approximately $188,000 and coded in Vendetta Partners' general ledger as a partner distribution to an existing investor. The funds in the account from which this distribution was paid consisted entirely of new investor funds. Doc. 95-2 ¶14.

51. On or about January 25, 2012 a $650,000 distribution was made to an existing investor from a Vendetta Partners bank account. *Id*. Prior to that distribution, the Vendetta Partners bank account contained approximately $500,000 from new investors received in December 2011, $1,370,000 from new investors received in January 2012, and $1,405,000 received from Haley Oil, an entity controlled by Helms and Kaelin. *Id*. The funds from Haley Oil were Vendetta Offering proceeds which had been laundered by Helms and Kaelin in November and December of 2011 through bank accounts in the names of the Enforcement Action relief defendants William Barlow and Global Capital Ventures, LLC ("Barlow"). On November 17, 2011, $2,208,800 in Vendetta Offering proceeds were transferred from Vendetta Partners to accounts of Barlow. On the following day $2,200,300 was transferred from an account of Barlow to Haley Oil. The amount of $1,405,000 was returned from Haley Oil to Vendetta Partners via checks on December 1 and 5, 2011. In January 2012, and prior to the $650,000 distribution alleged above, only approximately $82,000 of royalty income was deposited into Vendetta Defendant accounts. *Id*.

52. In fact, the Vendetta Offering proceeds contributed by Clovis were used to effect Ponzi payments to other limited partners. The initial Clovis contribution to Vendetta Partners of $1,150,000 was made on November 30, 2012. The preexisting balance in the Vendetta Partners account was approximately $100,000. On the same day and the day after, Vendetta Partners issued distribution checks to limited partners totaling approximately $222,000. These distribution checks issued on November 30 and December 1, 2012 exceeded the pre-Clovis-investment account balance of the Vendetta Partners account by approximately $122,000 -- all funded by the Clovis investment. *Id*. ¶¶17-18.

53. Additionally, the initial Clovis investment was laundered through accounts in the name of relief defendant Barlow. On the day Clovis transferred its initial investment to Vendetta Partners, Helms and Kaelin wired approximately $1,025,000 to an account of Barlow, purportedly for the purchase of mineral interests. On December 3 and 4, 2012, $525,721.56 and $479,386.74, respectively, was deposited into the Vendetta Partners account from an account of Barlow. The transaction was a sham and part and parcel of the Vendetta Partners fraudulent scheme. There was no mineral interest underlying this roundtrip of funds. The previous account balance of approximately $100,000 and the approximate $125,000 in Clovis funds not wired to the Barlow account on November 30, 2012 were sufficient to cover the Ponzi payments of approximately $225,000 issued by Helms and Kaelin in the days immediately following the initial Clovis contribution of funds. The $1,006,000 in funds transferred back to Vendetta Partners on December 3 and 4, 2012 from an account of Barlow was used by Helms and Kaelin for a variety of purposes, including the payment of approximately $256,000 in limited partner distributions through December 8, 2012. *Id*. ¶¶19-20, Table 1.

Transfers from the Vendetta Fraudulent Ponzi Scheme to Gaucher

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

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

56. Clovis subscribed to the Vendetta Offering in or about November of 2012. Clovis invested approximately $2,885,000 with Vendetta Partners between November of 2012 and January of 2013. Gaucher received 3% of the $2,885,000 invested by Clovis into Vendetta Partners.

57. Gaucher also learned of the Vesta and Iron Rock Offerings from Brock. Gaucher agreed to market $100 million of the Vesta Offering in February of 2012. Between January and May 2012, Gaucher marketed the Vesta Offering to numerous individuals by telephone and over email. In these marketing efforts, Gaucher distributed the Vesta Partners PPM, along with Powerpoint presentations and other documents promoting investment into the Vesta Offering. After the Vesta Offering was discontinued and replaced by the Iron Rock Offering, Gaucher agreed to market the Iron Rock Offering for compensation consisting of, without limitation, $75,000 plus 6% of all capital Gaucher recruited into Iron Rock Partners, including any capital

"rolled over" by Clovis from Vendetta Partners into Iron Rock Partners. Gaucher marketed the Vesta and Iron Rock Offerings notwithstanding that he was not licensed to do so.

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

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

Gaucher did not Provide Reasonably Equivalent Value for the Transfers

59. Gaucher did not provide reasonably equivalent value for the transfers he received from Vendetta Partners and Barefoot Minerals. Gaucher performed no services in exchange for these transfers. To the extent any action taken by Gaucher with respect to these transfers could be considered a "service," such "services" were in furtherance of the Vendetta Ponzi scheme and conferred no value upon the Receivership Estate. Pursuant to holdings of the U.S. Court of Appeals for the Fifth Circuit, services provided in furtherance of a Ponzi scheme do not constitute reasonably equivalent value as a matter of law. See *Warfield v. Byron*, 436 F.3d 551, 560 (5th Cir. 2006) ("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.").

Red Flags which Defeat Any Assertion of Good Faith by Gaucher

60. Gaucher knew, or should have known, that the 250% to 300% (or higher) return on invested capital anticipated by Clovis (as stated by Gaucher in his Investment Memorandum) through its subscription to the Vendetta Offering was too good to be true, negating any assertion of good faith. See *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) ("although Ponzi schemes are revealed by … payment of earlier investors with funds of later investors, … [c]ertain characteristics are often, but not invariably, present in the pattern underlying such schemes. [¶] The most common characteristic which appears to be almost invariable, is a promise of a high rate of return on the funds."); *Hecht v. Malvern Preparatory Sch.*, 716 F. Supp. 2d 395, 401 (E.D. Pa. 2010) (citing *Donell v. Kowell*, 533 F.3d 762, 770 (9th Cir. 2008)) ("If the court determines that the investor should have known the investment was 'too good to be true,' it will void the return of principal to the investor."); *SEC v. Forte*, Nos. 09-63, 09-64, 2010 U.S. Dist. LEXIS 24705, at *5 (E.D. Pa. Mar. 17, 2010) ("under PUFTA, [transferees] could be required to return their principal investments to the Estate if it were shown that … they should have seen 'red flags' that the Partnership was 'too good to be true.'").

61. Gaucher knew, or should have known, that the 6% commission paid to Brock -- and the 3% commission he received through his agreement with Brock -- were in violation of the representations made in the Vendetta Partners PPM, stating that Promotional Expenses were limited to 0.1% of proceeds raised in the Vendetta Offering. See Exh. A p. 21. In fact, the 3% of

transfers received by Brock and Gaucher *each* exceeded the maximum amount of Promotional Expenses permitted by the Vendetta Partners PPM.

62. Gaucher knew, or should have known, that the $76,000 that Helms and Kaelin transferred to him related to the Iron Rock Offering came from Barefoot Minerals, an entity for which he performed no services whatsoever.

63. Gaucher knew, or should have known, that the purported security interest and guaranty obtained by Clovis from Helms through the Side Letter and related documents were not offered to other Vendetta Partners investors through the PPM and Partnership Agreement. Gaucher knew through his due diligence activities, and his marketing of the Vesta and Iron Rock Offerings, or should have known from these activities, that no other limited partner in Vendetta Partners had received a security interest or guaranty of their investment and that security interests were not offered to investors generally in the Offerings.

64. Gaucher knew, or should have known, that Vendetta Partners had a credit facility with Amegy (which was disclosed numerous times in the Vendetta Partners PPM). Exh. A p. 6, 13, 19. Gaucher also knew, or should have known, that the transaction by which Clovis subscribed to the Vendetta Offering, and purportedly received a security interest and guaranty from Helms through the Side Letter and related documents, was structured in a specific manner to evade restrictions placed on Vendetta Partners by its credit facility with Amegy -- and to prevent Amegy (and other Vendetta Partners limited partners) from learning of the security interest purportedly given to Clovis by Helms.

V.
CAUSES OF ACTION

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

65. The Receiver incorporates and re-alleges paragraphs 1 through 64 as if fully incorporated herein.

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

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

68. Gaucher did not provide reasonably equivalent value for the transfers he received from Vendetta Partners and Barefoot Minerals. Gaucher performed no services in exchange for the transfers he received. To the extent any action taken by Gaucher with respect to these transfers could be considered a "service," such "services" were in furtherance of the Vendetta Ponzi scheme and conferred no value upon the Receivership Estate. Pursuant to holdings of the U.S. Court of Appeals for the Fifth Circuit, services provided in furtherance of a Ponzi scheme do not constitute reasonably equivalent value as a matter of law. See *Warfield v. Byron*, 436 F.3d 551, 560 (5th Cir. 2006) ("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.").

69. Gaucher cannot demonstrate objective good faith in receiving the transfers from Vendetta Partners and Barefoot Minerals. Gaucher was aware of numerous red flags with regard to the subscription of Clovis to the Vendetta Offering, the "extensive due diligence" he performed on behalf of Clovis with respect to its subscription to the Vendetta Offering, the representations made in the Vendetta PPM, and his marketing efforts on behalf of the Vesta and Iron Rock Offerings. Gaucher knew, or should have known, the limits of Promotional Expenses represented in the Vendetta PPM and that both he and Brock received amounts greater than those limits. Gaucher knew, or should have known, that the purported security interest and guaranty obtained by Clovis in subscribing to the Vendetta Offering were inconsistent with the terms of the PPM and Partnership Agreement, and other Offerings that he marketed, and no other limited partners had received such terms in subscribing to the Offerings. Gaucher knew, or should have known, that Vendetta Partners had a credit facility with Amegy, and that Helms and Clovis structured the subscription of Clovis to the Vendetta Offering in a specific manner to evade restrictions placed on Vendetta Partners by its credit facility with Amegy -- and to prevent Amegy (and other Vendetta Partners limited partners) from learning of the security interest purportedly given to Clovis by Helms. Gaucher knew, or should have known, that the 250% to 300% (or higher) return on invested capital anticipated by Clovis (as stated by Gaucher in his Investment Memorandum) through its subscription to the Vendetta Offering was too good to be true. Gaucher knew, or should have known, that partnership distributions paid to Clovis by Vendetta Partners for the third calendar quarter of 2012 were improper, as Clovis first invested in Vendetta Partners in November 2012. Gaucher knew, or should have known, that the transfers he received related to the marketing of the Iron Rock Offering were from Barefoot Minerals, an entity for which Gaucher performed no services.

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

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

72. The Receiver is also entitled to costs and reasonable attorney's fees pursuant to TUFTA §24.013. On three occasions, the Receiver transmitted demands to Gaucher, through counsel, that he return to the Receivership Estate the fraudulent transfers alleged herein. Prior to the filing of the Original Complaint, however, Gaucher and his counsel failed even to respond to the Receiver's demands. The Receiver is therefore entitled to the costs and reasonable attorney's fees related to the commencement and prosecution of this litigation.

COUNT II: Unjust Enrichment

73. The Receiver incorporates and re-alleges paragraphs 1 through 64 as if fully incorporated herein.

74. The Receiver is entitled to disgorgement of the transfers made from the Vendetta Ponzi scheme -- in particular, from accounts of Vendetta Partners and Barefoot Minerals -- to Gaucher pursuant to the doctrine of unjust enrichment under applicable law. Gaucher received funds that in equity and good conscience belong to the Receivership Estate for ultimate

distribution to defrauded investors and creditors and that Gaucher received through the taking of undue advantage *vis-à-vis* the investors in the Vendetta Ponzi scheme.

75. Gaucher has 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 him to retain the funds.

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

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

78. The Receiver is also entitled to costs and reasonable attorney's fees. On three occasions, the Receiver transmitted demands to Gaucher, through counsel, that he return to the Receivership Estate the fraudulent transfers alleged herein. Prior to the filing of the Original Complaint, however, Gaucher and his counsel failed even to respond to the Receiver's demands. The Receiver is therefore entitled to the costs and reasonable attorney's fees related to the commencement and prosecution of this litigation.

VI.
PRAYER

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

(a) transfers received by Defendant Gaucher were fraudulent transfers under applicable law or, in the alternative, unjustly enriched Gaucher;

(e) transfers received by Defendant Gaucher are property of the Receivership Estate;

(f) transfers received by Defendant Gaucher are subject to a constructive trust for the benefit of the Receivership Estate;

(g) Gaucher is liable to the Receiver for an amount equaling the amount of funds he received from Vendetta Defendants as alleged herein;

(h) Receiver is entitled to costs and pre-judgment and post-judgment interest associated with all claims against Gaucher;

(i) Receiver is entitled to attorneys' fees associated with his claims against Gaucher; and

(j) Receiver is entitled to such other and further relief as the Court deems proper under the circumstances.

Dated: January 5, 2015

Respectfully submitted,

THE TAYLOR LAW OFFICES, P.C.

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

CERTIFICATE OF SERVICE

On January 5, 2015, I electronically submitted the foregoing Receiver's First Amended Complaint Against Philip E. Gaucher with the clerk of court for the U.S. District Court, Western District of Texas, using the CM/ECF electronic filing system. All counsel of record have been served electronically via CM/ECF notice.

/s/ Andrew M. Goforth
Andrew M. Goforth